

**Case Officer:** Samantha Taylor

**Applicant:** Cherwell District Council

**Proposal:** Installation of a piece of artwork on a designated site off Chalker Way

**Ward:** Banbury Grimsbury And Hightown

**Councillors:** Councillor Andrew Beere; Councillor Shaida Hussain; Councillor Perran Moon

**Reason for Referral:** Council is the applicant

**Expiry Date:** 30 December 2019

**Committee Date:** 18<sup>th</sup> December 2019

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## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

### **RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

#### **Proposal**

The application proposes a piece of public art on the land adjacent to Chalker Way. The piece of art is named the 'Figure of Industry' and is a concept piece depicting a figure drawing on 'The Iron Man of Banbury' showing the human side to industry. The piece would be situated on a circular steel plinth and would have a height of 9.5 metres.

#### **Consultations**

- Banbury Town Council, Environmental Health, OCC Highways, Thames Water

The following consultees have raised **no objections** to the application:

- Environmental Health and OCC Highways

Comments have not been received from Banbury Town Council or Thames Water.

#### **Planning Policy and Constraints**

The site lies within the Banbury 6 allocation for employment development, and immediately to the south of a disused railway line. The site is within Flood Zones 2 and 3 (zones of highest flood risk). A potential western link road is shown on the submitted plans immediately to the south of the application site. The application has been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance as listed in detail at Section 8 of the report.

#### **Conclusion**

The key issues arising from the application details are:

- Principle of Development
- Design, Landscape Character and Visual Impact
- Highway Safety
- Flood Risk

The report looks into the key planning issues in detail, and Officers conclude that the proposal is acceptable subject to conditions.

Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.

## **MAIN REPORT**

### **1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site forms part of the Banbury 6 Allocation for employment land to the west of the M40. Much of the Banbury 6 Allocation has been developed or has been granted planning permission for employment purposes.
- 1.2. To the east of the site lies currently undeveloped greenfield land. However, planning application 19/00771/F has been received for the provision of two new commercial units on the site and is currently under consideration.

### **2. CONSTRAINTS**

- 2.1 The application site is within Flood Zone 3 as defined by the Environment Agency and therefore, has a high risk of flooding. The site is also close to the point that a potential western link road (linking through to Higham Way) would connect to Chalker Way; this is shown on the submitted plan immediately to the south of the application site.

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The application proposes a piece of public art on the land adjacent to Chalker Way. The piece of art is named the 'Figure of Industry' and is a concept piece depicting a figure drawing on 'The Iron Man of Banbury', Sir Bernhard Samuelson, showing the human side to industry. Sir Bernhard is seen as one of the leading figures in Banbury's industrial development.
- 3.2. The piece would be situated on a circular steel plinth and would have a height of 9.5 metres. The form and appearance of the figure is inspired by the machining, turning and milling of metals in engineering, in particular the cutting and peeling of surfaces which creates spirals and coiling strands of swarf.

### **4. RELEVANT PLANNING HISTORY**

- 4.1. The following planning history is considered relevant to the current proposal:

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
11/01878/OUT	Erection of up to 115,197 sqm of floorspace to be occupied for either B2 or B8 (use classes) or a mixture of both B2 and B8 (use classes). Internal roads, parking and service areas, landscaping and the provision of a sustainable urban drainage system incorporating landscaped area with balancing pond and bund (OUTLINE)	Application Permitted

14/00175/REM	Reserved Matters to Outline application (14/00180/OUT) - Approval of appearance, landscaping, layout and scale	Application Permitted
14/00180/OUT	Variation of Condition 29 (Height of building to enable Unit 1 to be constructed to an overall height of 16.75m) of 11/01878/OUT	Application Permitted
14/00407/ADJ	Variation of conditions 25 and 29 on S/20144/1620/MAO - Change of roof colour to Goosewing Grey and alter height of Unit 1 to 16.75m.	No Objections
15/02206/REM	Reserved matters pursuant to Condition 5 (Phase 2) OF 14/00180/OUT	Application Permitted
19/00487/F	Phase 2 Central M40 - Unit 6 - 17,768 sqm of logistics floorspace within Class B2 or B8, including ancillary class B1(a) offices (697 sqm), service yard and access to Chalker Way.	Application Permitted
19/00771/F	Full planning permission for 27,685 sq.m / 298,000 sq.ft. of logistics floorspace within class B2 or B8 of the town and country planning use classes order 1987, with ancillary class b1(a) offices (units 9 and 10), and ancillary retail and trade showroom (unit 10 only), not to exceed 300 sq.m (excluding convenience goods) together with the extension of Chalker Way, access from Chalker way, associated site infrastructure including lorry parking, landscaping, amenity open space and sustainable drainage system.	Under Consideration

## 5. PRE-APPLICATION DISCUSSIONS

- 5.1. Informal advice on the requirements for submitting a planning application and what information would be required have taken place internally.

## 6. RESPONSE TO PUBLICITY

- 6.1. This application has been publicised by way of a site notice displayed near the site, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **9 December 2019**, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. No comments have been raised by third parties.

## 7. RESPONSE TO CONSULTATION

- 7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

### TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 7.2. BANBURY TOWN COUNCIL: no response received

### CONSULTEES

- 7.3. OCC HIGHWAYS: **no objections** and no conditions requested
- 7.4. ENVIRONMENTAL PROTECTION: response received – no comments in respect of noise, contaminated land, air quality, odour or light.

## 8. RELEVANT PLANNING POLICY AND GUIDANCE

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- ESD6 – Sustainable Flood Risk Management
- ESD15 - The Character of the Built and Historic Environment
- BANBURY 6 – Employment Land to the West of M40

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development

- 8.3. Other Material Planning Considerations
- National Planning Policy Framework (NPPF)
  - Planning Practice Guidance (PPG)
  - Human Rights Act 1998 ("HRA")
  - Equalities Act 2010 ("EA")

- 8.4. Council Corporate Priorities

Cherwell District Council's Business Plan for 2019-20 sets out the Council's three strategic priorities which form our overarching business strategy. Below these are the key actions for the year 2019–20. This is a strategy which looks to the future taking into account the priorities and aspirations of the communities who live and work in the district.

The three corporate priorities are to ensure the District is "Clean, Green and Safe", that it supports "Thriving Communities & Wellbeing", and is a District of "Opportunity

& Growth". All three priorities are of significance to the determination of planning applications and appeals. Below these priorities, the key actions which are of most relevance to planning applications and appeals are: (1) deliver the Local Plan; (2) increase tourism and increase employment at strategic sites; (3) develop our town centres; (4) protect our built heritage; (5) protect our natural environment; (6) promote environmental sustainability; (7) promote healthy place shaping; (8) deliver the Growth Deal; (9) delivery innovative and effective housing schemes; and (10) deliver affordable housing.

The remaining key actions may also be of significance to the determination of planning applications and appeals depending on the issues raised.

The above corporate priorities are considered to be fully compliant with the policy and guidance contained within the National Planning Policy Framework and National Planning Practice Guidance.

## **9. APPRAISAL**

9.1. The key issues for consideration in this case are:

- Principle of development
- Design, and impact on the character of the area
- Highway Safety
- Flood Risk

### Principle of development

- 9.2. The application site is situated within the Banbury 6 Allocation for employment development consisting of 35 hectares in total. A large proportion of the site has been constructed or granted planning permission for employment purposes.
- 9.3. The remaining area of land of which this site forms part of, is allocated for employment purposes. However, due to the challenges of flood risk on the site, the developers have submitted application 19/00771/F for the provision of two new commercial buildings on the area of land to the east of the site. This application is currently under consideration.
- 9.4. The artwork has been positioned on the edge of the remaining site allocation such that if – notwithstanding the outcome of application 19/00771/F - this land were to come forwards for employment development, the position of the artwork itself would not impact on ability to deliver employment development on the remainder of the allocation.
- 9.5. Policy Banbury 6 requires the provision of public art to enhance the quality of place within the allocated site. In addition, S106 funding was secured toward the provision of public art, through the grant of earlier permission for the wider development of employment uses along Chalker Way and therefore, the provision of art within the local vicinity is acceptable.
- 9.6. Overall, the principle of development is considered acceptable and accords with Policy Banbury 6 of the Local Plan.

### *Use of S106 Contributions to fund the proposed artwork*

- 9.7. Under the Third Schedule of the S106 Agreement that was entered into in respect of the original outline consent for the wider development (ref: 11/01878/OUT and dated

27<sup>th</sup> November 2012), the developer agreed to pay the public art contribution towards a scheme for Public Art.

- 9.8. The proposed development is for a piece of public art that references the local industrial context. Therefore, the provision of this piece of art is considered to satisfy the requirement and justification for the public art contribution.

#### Design and Impact on the Character of the Area

- 9.9. The application site forms part of an area of currently undeveloped greenfield land but is also part of the Banbury 6 Employment Land allocation for development. The public art piece depicts a figure and is named the 'Figure of Industry'.
- 9.10. The artist has developed a proposal which seeks to symbolise the human side to development and industry, paying homage to Banbury's industrial past and looking forward to investment in its future. This is achieved through the use of a human figure constructed from machined, turned and milled metal. This metal pieces are pulled together to form the 'figure; which is stood arms out in a 'welcoming' manner.
- 9.11. Whilst the piece is relatively high at 9.5 metres, given the context of the area with large industrial units of varying heights up to 18.25 metres, the relative height is considered acceptable and would not be detrimental to the emerging character and appearance of the local area. It will provide a focal point for visual and cultural interest and will make a positive contribution to the area.
- 9.12. In concept and design, the art work is reflective of the industrial character of Chalker Way and the history of the area. The design is considered acceptable and would accord with policy ESD15 of the Local Plan.

#### Highway Safety

- 9.13. The application site lies adjacent to an area of land currently reserved for a potential Western Link Road.
- 9.14. Oxfordshire County Council have confirmed they have no objection to the proposed development and do not require any planning conditions to be imposed.
- 9.15. Whilst it lies in close proximity to the reserved land, it is considered the proposal would not prevent the delivery of this link road if it is to come forwards. As such, it is considered the proposed development would not cause harm to highway safety or prematurely impact the delivery of the link road.

#### Flood Risk

- 9.16. The application site falls within Flood Zone 3 as designated by the Environment Agency, which is the zone of highest flood risk. A flood risk assessment has not been submitted with the application.
- 9.17. Ordinarily a Sequential Test and an Exception Test must be applied to development proposed in Flood Zone 3. However, the Planning Practice Guidance is clear that the sequential test "does not need to be applied for individual developments on sites which have been allocated in development plans through the Sequential Test".
- 9.18. Policy Banbury 6 provides for both (a) provision of on site public art to enhance the quality of the place, legibility and identity, and (b) the creation of "blue corridors" to provide public open spaces/recreation areas near watercourses, whilst locating development outside the modelled flood zone 3. As such, it is considered that the Sequential and Exception Tests do not need to be applied.

9.19. As the proposal is relatively small in scale and would not be a use sensitive to flood risk, it is considered the proposal is appropriately sited, and would not give rise to an unacceptable risk of flooding as a result of its installation.

## **10. PLANNING BALANCE AND CONCLUSION**

10.1 The proposal complies with the relevant Development Plan policies and guidance listed at section 8 of this report, and so is considered to be sustainable development. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

## **11. RECOMMENDATION**

That planning permission is granted subject to the following conditions.

### **Time Limit**

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

### **Compliance with Plans**

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents:

Site Location Plan 6422-150

Site Layout Plan 6422-151

Sculpture Commission 'Figure of Industry' October 2019

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

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