

ApplicationNo: 09/00570/F	Ward: Cropredy, Banbury, Grimbury and Castle	Date Valid: 03.08.09
Applicant:	Environment Agency	
Site Address:	Land Adjoining And To The North Of M40 Motorway, East Of Little Bourton, Adjacent And East Of Oxford Canal/River Cherwell. Land Adjacent River Cherwell, To The North Of Wildmere Road And Acorn Way.	

Proposal:	Construction of engineering works to form the Banbury flood alleviation scheme. The works will comprise the construction of an earth embankment adjacent to the Oxford Canal, the local excavation of earth and clay material to construct the embankment, realignment of two sections of the River Cherwell, the raising of an 850m long section of the A361. The whole works to the north of the M40 will increase the floodwater storage capacity of the existing natural floodplain. There will also be the construction of a secondary embankment and floodwalls at Wildmere Industrial Estate to lesson the risk of flooding to industrial premises on that estate (as amended by drawing Nos 07012501 P04 and 07012502 P05 received 03/08/09 and Addendum to Environmental Statement considering CPO No. 4 and Cropredy Bridge Registered Historic Battlefield received 5 th November 2009)
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1. Site Description and Proposal

- 1.1 This application is related to a flood alleviation scheme for Banbury which seeks to provide flood defences and flood storage areas to the north of the town to mitigate flooding from the River Cherwell. The majority of the works involved with this wider scheme fall within the administrative boundaries of Cherwell District Council, with a small element falling with South Northamptonshire Council area, particularly around the A361. The proposed flood alleviation scheme is intended to reduce flooding to an approximate 1 in 200 (0.5%) chance of flooding in any given year and as such would have a major positive impact on Banbury and downstream communities and commercial properties.
- 1.2 The overall scheme would be implemented in phases and would involve the creation of a Flood Storage Reservoir (FSR) on the river Cherwell upstream of Banbury with local defences at the Wildmere Industrial Estate, Moorfield Brook and Tramway Industrial Estate which includes 3km of earth embankments of variable width and slope, which will be 4.5m high at its highest point with an average height of 2.5m with it eventually running into high ground to the south of Cropredy. A 850m long section of the A361 is to be raised in graduation (up to approx 850 – 1000mm). Also proposed are 2 no. control structures that throttle the river flow that can pass out of the FSR to Banbury and these are located immediately upstream of the existing 2 no. river crossings under the M40.

- 1.3 In combination these works will enable a flood storage area to be created, north of Banbury, the realignment of parts of the River Cherwell route and to introduce a control arrangement to the flow of water along the river. The river flow control structures will restrict water in the river channel the flood water will 'back up' and flood approx. 260 ha grazing land on the existing floodplain. The flood waters are then released in a managed fashion by the control structures. An earth embankment will prevent water entering the Oxford Canal and flooding Banbury.
- 1.4 The application has been accompanied by an Environmental Statement.
- 1.5 The plans have been amended since originally submitted, both to correct an error in the draughting of the County boundaries and to amend the red application site boundary to include all temporary working areas, compounds, accesses etc. The temporary working areas were always shown on the plans and reference made to them in the supporting information however they were simply excluded from the red boundary.
- 1.6 Furthermore an Addendum to the Environmental Statement has been submitted, this covers an area of land known as CPO no. 4 and also Cropredy Bridge Registered Historic Battlefield.
- 1.7 In 2004 planning permission was granted for a similar development to that currently proposed (04/00923/F refers), however, this permission expired on 27th September 2009. It was not possible to commence works pursuant to this permission within the timeframe approved due to the need to CPO the land involved. This is subject to a CPO inquiry due to recommence in Nov/Dec 2009. As there is no facility to extend the time limit a fresh application has been submitted to avoid further delay.

2. Application Publicity

- 2.1 The application was advertised in the local press and a site notice was posted. The final date for comments regarding the addendum to the ES is 3rd December 2009.
- 2.2 Three letters of representation has been received which supports the principle of the proposed Banbury Flood Alleviation Scheme and the benefits that it will bring to residents and businesses of the Banbury area.
- 2.3 One letter however objected to the planning application as originally logged, however following the receipt and re-consultation of the Addendum to the ES no further representation on this matter has been received at the time of writing the report. Basically the objection represents a local landowner who is directly affected by the proposed Scheme and is currently in discussions with the Environment Agency in order to ensure that their survey data accurately reflects the local topography and potential extent of flooding, as well as the agricultural impact. The same survey data is being used to support both the compulsory purchase order and the planning application.

The full extent of the survey work in relation to the extent and impact of the Scheme has not been completed or reported. Specifically, awaited is the

addendum to the environmental statement, as described in the extract from the statement of reasons that accompany CPO no. 4, issued on 23 September 2009:

“A revised environmental statement has been prepared and was submitted along with new planning applications, as described in paragraph 7.1 below. This revised environmental statement does not cover the area of land included in the Number Four CPO. Therefore, an addendum to this environmental statement is currently being prepared to cover the area included in the Number Four CPO and will be submitted to Cherwell District Council.”

- 2.4 Since receiving this letter, an Addendum to the Environmental Statement dated 5th November 2009 has been submitted considering CPO No. 4 and Cropredy Bridge Registered Historic Battlefield. This information has been re-consulted upon, with the final date for comments being 3rd December 2009.
- 2.5 The two other letters received, generally support the scheme but raise concern about potential for increased noise from the motorway.

3. Consultation

- 3.1 *Banbury Town Council* – No objections and welcomes the protection this scheme will give the town.
- 3.2 *The Bourtons Parish Council* – Concerned at the impact that this scheme will have to the High Landscape Value of the Cherwell Valley and requested a meeting to enable greater understanding of the scheme.

Issues of concern include:

- Impact on the landscape in the Cherwell Valley – the embankment at a max height of 4.5m will appear as a manmade form in an otherwise unspoilt valley. The visual impact needs to be minimized.
- Removal of earth between Little Bourton and the M40 and railway – the noise of the motorway already has a great impact and the removal of the earth may exacerbate this. Would welcome more planting along this section to screen the motorway and railway and to baffle the noise.
- Has the level of arsenic contamination of the land in this area been considered?
- Embankment near Bourton Lock Cottage will be narrower to preserve the ridge and furrow field, will this appear even more intrusive?
- No mention of Cropredy flooding in the EA report, yet Cropredy has significant flooding problems.
- Access track from Little Bourton Village – proposed that this track is to be used for emergency purposes but the railway crossing has a locked gate at this point which should be given further consideration. It is also suggested that this access track be used as a public right of way to the embankment.

- There is some difficulty getting to the Bourtons during a flood event from various points, what impact would the scheme have at all these points?
- 3.3 *Cropredy Parish Council* – no objection, however extremely concerned about the implication for the village of the raising of the A361 which will presumably mean that the road will be closed for a lengthy period and what plans Oxfordshire County Council has to divert traffic when roadworks are taking place.
 - 3.4 Since receiving these comments from the Bourtons and Cropredy Parish Councils a meeting took place with the Area Flood Risk Manager for the Environment Agency and the Parish Councils concerned who were generally reassured about the scheme with concerns expressed about construction noise and traffic and the long term vista of the area on completion of the works. Photomontage material was also forwarded to the Parish Council's after the meeting to illustrate the minimal change in the nature of the landscape.
 - 3.5 *Wardington Parish Council* – no objection, however need assurance that there will be clear and advance warning of such disruption and the inevitable closure of the A361 be kept to a minimum through those works. Diversion route must be well thought out and at all times enforceable to avoid disruption and damage to verges and peripheral property.
 - 3.6 *British Waterways* – welcomes the general principle of constructing an earth embankment to separate the Oxford canal as it will prevent floodwater flowing along it to flood Banbury which happened in the flood of 1998 and more recently 2007. The earth embankment runs close the tow path of the canal, and has a footprint of 10.5 hectares and being of variable width and slope, on average it is 2.5m high and 4.5m high at its highest point.
 - 3.7 Potential concerns would be visual intrusion from the canal and opting the best methods to reduce the artificiality of shape in the local landscape and the need to adopt a high quality planting scheme and maximize ecological potential.
 - 3.8 Welcome the inclusion of an Environmental Action Plan (EAP) that proposed environmental mitigation works and any additional requirements as necessary. The EAP will form the basis for monitoring the environmental performance of the contractor on the site and will minimize dust, noise and potential.
 - 3.9 *Environment Agency* – The proposed development will only be acceptable if the measures detailed in the FRA are undertaken and the scheme is conditioned accordingly to ensure development complies with the FRA and in respect of any land contamination.
 - 3.10 *Highways Agency* - directs conditions to be attached should permission be granted. These conditions include; monitoring equipment to be installed in accordance with an agreed scheme and no earthworks within 3m of the M40 boundary.
 - 3.8 *Natural England* - supportive in principle. The EIA refers to various protected species and ecological surveys. Further protected species surveys are required and whilst these should normally be done before any permission is

granted, these are 'follow up' surveys and therefore can be addressed by conditions.

- 3.9 *Network Rail* - Network Rail is making a financial contribution to this flood alleviation scheme, identified as a benefit to Network Rail in alleviating flooding of Banbury Station. Once planning permission has been granted and at least six weeks prior to works commencing on site the Outside Parties Engineer (OPE) MUST be contacted, contact details as below. The OPE will require to see any method statements/drawings relating to any excavation, drainage, demolition, lighting and building work or any works to be carried out on site that may affect the safety, operation, integrity and access to the railway.
- 3.10 Additionally, there is no objection in principle to the development, however due to its close proximity to the operational railway; request that the development be carried out in further consultation with Network Rail to ensure the safety, operational needs and integrity of the railway during the course of the works proposed.
- 3.11 *Thames Water* - There would not appear to be any direct impact on drainage assets. The only concern would be possible consequential impact upon level of local watercourses and subsequent effects on surface water sewers.
- 3.12 *Oxfordshire County Council (Head of Sustainable Development)* – supports the application in principle as it would reduce flood risk in Banbury through increasing flood storage capacity upstream in line with South East Plan 2009 Policy CC2 reducing disruption to local businesses and helping unlock the Canalside area for regeneration in line with OCC's priority of developing a world class economy.
- 3.12 *Oxfordshire County Council (Archaeological Services)* - The scheme concerned lies within an area of known archaeological interest already identified through an Archaeological Evaluation and Geophysical Survey. The evaluation recorded a number of features dated to the Neolithic to Roman period. A pit and a number of linear features have been dated to the Neolithic period from pottery dating. Neolithic evidence is rare within the county and these features are therefore of some considerable importance for understanding this period in the region. The Roman features probably represent a farmstead or small settlement dated to the C1st – C3rd. A number of other undated features were also recorded during the evaluation towards the northern end of the site. An archaeological geophysical survey was then carried out which highlighted a complex of enclosures and trackways which are most likely related to the Roman settlement. The results of the survey however do not appear to match up with the features identified through the evaluation and so it is possible that the archaeology is more complex than the evaluation suggested. These archaeological features and deposits will be destroyed by this development and will therefore need to be excavated and recorded in advance of any construction. A written scheme of investigation for this has already been arranged with the Environment Agency.

- 3.13 OCC would therefore recommend that, should planning permission be granted, the applicant should be responsible for implementing a staged programme of archaeological work. This is in accordance with PPG16 and the Local Plan. This can be ensured through a suitably worded condition.
- 3.14 *Oxfordshire County Council (Highways)* – No objection in principle subject to a S278 Agreement to carryout the works on the public highway and requirements regarding:
- Diversion routes during the work period/traffic management
 - Addressing any damage to local roads caused by associated vehicles
 - Additional landscaping along highway boundary
- 3.15 *Head of Building Control and Engineering Services* – No comments other than the project has been prepared by the Environment Agency in conjunction with the Council.
- 3.16 *Urban and Rural Services (Landscape Officer)* – supports the application however there are concerns regarding the thinning out of trees at Wildmere Wood as it would open up views of bund and industrial estate from M40 and Oxford Canal Walk. Request that a financial contribution towards management and maintenance of the woodland.
- 3.17 In respect of the Towpath and Little Broughton, walkers along the canal towpath, between Canal Bridge east of Little Broughton and the flow control structure (PRoW ref 138/19 to 138/16) may feel that the embankment provides a degree of oppressiveness and physical constraint so I recommend that at least another footpath link between towpath/top of embankment is included, preferably at the Broughton Lock Cottage, to allow walkers to have a choice of route, to go on to the top of the embankment where the Northamptonshire countryside can be experienced (otherwise obscured by the embankment when on the towpath).
- 3.18 The residents on the eastern extremities of Little Broughton will experience major visual and noise impacts when the flood embankments are being constructed. From these vantage points the embankment will obscure midground detail such as ridge and furrow, hedge and trees on the opposite side of the canal, however with the establishment of wildflower mix on the westward side of the embankment, this strong linear feature will integrate into the landscape well and contribute to the landscape heritage of railway and canal (a photomontage would be very useful).
- 3.19 In respect of works at the Tramways Industrial Estate, the implementation of the ramp access to the river near Magnet store car park will mean that 3 trees are to be removed. The EA must replace this tree loss with at least one large tree on the corner of the car park and protect the existing formal Hedge on the edge of the car park during the course of the works.

Without any to cross-section details and photomontages it is difficult to ascertain the visual impact of the Flood Wall on the car park boundary to users of Banbury Football Club. The EA must replace construction-damaged native vegetation on the field boundary to ensure that the wall is visually mitigated from the rural side. Mitigation planting on the car park side is also required.

- 3.20 *Urban and Rural Services (Rural Development and Countryside Manager)* - Banbury footpath No.7 (old A361) is directly affected by this proposal, being ramped over the new bund. The gradient of 1 in 12 is steeper than ideal, but the flat platforms and handrail will enable access by mobility impaired users. The proposed alignment of the route appears to remain unchanged, so there is no need for a diversion order.
- 3.21 From the recreational point of view I welcome the proposals to link the canal towpath to the crest path and to make the crest path between FP7 and the canal towpath a permissive right of way. This will contribute to Aim 15.3 of the Cherwell Rural Strategy ("Improve access to a well maintained joined up and improved rights of way and countryside network.").
- 3.22 Access to this permissive section will be controlled by Kissing gates and bicycle and motorbike stop features. I am pleased to see that the Design & Access Statement (section 4.2.3) states "These features will allow pram, pushchair and wheelchair access for people with low mobility and follow best practice for designing for the visually impaired."
- 3.23 *Head of Planning and Affordable Housing (Conservation Officer)* – Concerns regarding the position of the embankment as it appears very close to the listed Lock Cottage.
- 3.24 *Head of Planning and Affordable Housing* - The Banbury Flood Alleviation Scheme (FAS) proposals will reduce the risk of flooding in the town centre and other areas of Banbury benefitting existing residents and businesses. The supporting text to Policy ENV14 of the Non Statutory Cherwell Local Plan (paragraph 9.28.1) refers specifically to the Banbury FAS. The Cherwell Non Statutory Local Plan also contains policies for the regeneration and redevelopment of the areas around the railway station (Policy S5) and the proposed Banbury cultural quarter surrounding Chamberlain Court and the site of the existing Spiceball Leisure Centre. The land west of the railway station identified in Policy S5 of the Non Statutory Cherwell Local Plan was suggested as an option for major development in the Options for Growth document as part of the preparation of the Local Development Framework. The redevelopment of this site could reduce pressure on Greenfield sites. The proposed scheme will provide flood defences against up to a 1 in 200 year event and as such will have a positive impact on Banbury and downstream communities. In particular the scheme will reduce the flood risk within the existing built up area including the employment areas of Tramway Industrial Estate and the surrounding area. It will also reduce the risk of flooding to road and rail facilities.
- 3.25 The proposed flood storage area is located within a local landscape gap in the countryside north of Banbury. The other proposed flood defence works are in the Wildmere Industrial Estate within Banbury.
- 3.26 PPS25 advises that only water-compatible uses and essential infrastructure including flood control infrastructure are appropriate in the functional flood plain (flood zone 3b). The River Control Structures will restrict the amount of water that flows downstream and enable the existing flood plain to store more

water. The construction work will include earthworks to create a flood storage area, an embankment to prevent water entering the Oxford Canal and localised flood defence works at Wildmere Industrial Estate. There will be some localised impacts in terms of ecological interest at Wildmere Road, but these will be mitigated by the relocation of the grassland and creation of new habitats. The construction of the embankments will have the most significant impact on the local environment but the overall benefits of the proposal are considered to outweigh this impact.

3.27 In summary, the proposal generally accords with the policies of the development plan and should be supported.

3.28 South Northamptonshire Council – raise no objection

4. Relevant Planning Policy

4.1 South East Plan Policies:

CC2: Climate Change

NRM1: sustainable Water Resources and Groundwater Quality

NRM4: Strategic Flood Management

C4: Landscape and Countryside Management

SP3: Urban Focus and urban renaissance

4.2 Adopted Cherwell Local Plan, 1996 saved policies:

TR11 – The policy seeks to ensure that the use of the Oxford Canal for recreational purposes is not compromised and that its use and value is enhanced or preserved. Whilst the landscape will be changed by the construction of the embankment, essentially the canal will be protected in the long term and additional habitats created will be an enhancement.

R7 – Recreational roles of the Oxford Canal and River Cherwell - The policy seeks to control development and thus protect and enhance their recreation role. While the proposed bund will have some visual effects, the overall proposals will protect the canal from future flood events and create additional habitats that could provide recreational benefits.

C1 – This policy seeks to promote nature conservation interests and protect SSSI and sites of local nature conservation value from damage. There are no SSSI or designated County Wildlife Sites (CWS) affected by the proposals. The Huscote Link channel is listed as a potential CWS by the County Council, however, the Environmental Statement (ES) accompanying the proposals states that there are no statutorily protected species present. Therefore, there are no policy conflicts. It should also be noted that the proposals for the realignment of the River Cherwell will provide the opportunity to create new habitats and increase ecological diversity.

Sensitive areas of local interest are also being protected and/or relocated as part of the scheme.

C2 - Protected Species - provides protection for mammals protected under the Wildlife and Countryside Act 1981 and other EC Directives. The ES indicates that while badgers, bats, grass snakes and kingfishers are present within the site, they are not directly affected by the proposals.

C4 – The policy promotes the creation of new habitats to increase ecological diversity. The proposals will create new water channels, wetland areas and other habitats as part of wider mitigation measures. Therefore, there is no conflict with this policy.

C5 – The policy includes the Oxford Canal and River Cherwell corridors as an area where ecological interests will be protected and enhanced. While the construction of the storage reservoir bund will have some implications for ecological interests, these are not significant as no statutory sites are affected. The applicant has carried out extensive surveys of flora and fauna, and also proposes a package of mitigation measures, including the creation of new habitats.

C7 – The policy considers the issue of landscape character. The construction of the bund will have an effect upon the character of the landscape in this location. In order to reduce these effects, the applicant proposes to contour the earthwork to create different gradients that will assist in reducing the impact of the structure. The effect on the landscape in this instance should be balanced against the significant benefits that will be achieved in the future reduction of flood risk.

C9 – The policy states that development inappropriate to a rural location should not be permitted. While the proposal introduces an engineered earth bund and two concrete control structures into a rural location, the open nature of the rural area will be maintained. The control structures are located in close proximity to the M40 motorway and therefore, their impact upon the wider environment should be negligible. The impact upon the open countryside should also be balanced against the significant flood protection benefits arising from the scheme.

C10 – The policy considers the implications of development upon historic landscapes. The site of the battle of Cropredy Bridge lies to the north west of the flood storage reservoir. There is a potential to disturb and possibly destroy unknown Archaeological assets in the south-west corner filed where the flood embankment tails away to run into existing ground levels. The information produced by the applicant notes that the risk of loss to unknown assets will be reduced by employing experience Archaeologists to conduct pre-construction investigation work and a watching brief during the excavation stage of the embankment forming. The extent and duration of flooding in this area will have no major significant environmental impacts in either an positive or negative way.

C13 - The policy designates the Cherwell Valley as an Area of High Landscape Value, although this policy has not been maintained within the Revised Deposit Local Plan. While the proposal will have an impact upon the landscape of the valley, the applicant has developed a package of mitigation measures. In addition, the FAS will deliver significant protection from future flooding, which would outweigh landscape impacts in this instance.

C14 – The policy provides protection to significant trees and hedgerows within development sites. Although some trees and hedgerows are affected by the proposals, significant examples are protected. In limited circumstances, it is necessary to remove existing trees and hedgerows, but these are replaced and extensive new planting areas will be provided, including 2100 metres of new hedgerow.

C17 – The policy seeks to enhance the landscape, particularly in urban fringe locations. The FAS proposals will maintain the open character of the area, although the storage reservoir bund will have some localised impact. However, the mitigation measures proposed by the applicant will introduce new planted areas, which are likely to improve the character of the landscape.

ENV7 – The policy considers the impact of development on water quality. While there is likely to be some disruption of flows within the river and the creation of additional sediment, these effects will be temporary. The ES accompanying the application makes provision for the maintenance of water quality and prevention of pollution.

ENV12 – The policy considers issues related to contaminated land. Most of the land affected by the proposal is greenfield and contains no contaminants. However, at Tramway Road a small area of land has been found to be contaminated. This area is not currently included within the application, but it forms part of the wider FAS and proposals for this element of the scheme are expected to be submitted in the near future. The applicant has made reference to the means necessary to remove this contamination in accordance with the policy.

4.3 The following Non Statutory Local Plan policies:

S5 – Banbury Redevelopment Sites – the policy linked to S5a, addresses regeneration of land surrounding the railway station. The proposals for the proposed Cultural Quarter lie adjacent to Spiceball Park which will remain within the floodplain following the implementation of the FAS, however, there will be some protection when compared to current flood risk. The most significant benefit accrues to the Regeneration Area, which will be defended against a one in 200 year flooding event (0.5% risk of occurrence in any one year). This provides the necessary protection to residential and commercial development as defined by PPG25 – Development and Flood Risk and will assist the implementation of the Local Plan's proposals.

S5a – The policy is linked to S5 which seeks to provide development opportunity to create an enhanced cultural quarter comprising recreation, leisure and cultural facilities in this part of the canalside regeneration area.

R14 - As policy R7 of adopted Cherwell Local Plan

EN12 - As policy ENV7 of adopted Cherwell Local Plan

EN14 –The policy considers the effects of development on flood defences. This proposal, by its very nature will increase flood risk in areas within the proposed flood reservoir, however, much of this area is already subject to flooding. The proposals will marginally increase the floodplain to the north of the motorway, but this area is in agricultural use and provision has been made for the protection of buildings and livestock. There will be a significant reduction in flood risk in downstream areas as a consequence of the implementation of the scheme.

EN15 - The policy requires that appropriate measures are put in place to control surface water run off. Flood waters will be stored within the bunded area in a similar way to previous flood events. However, run off from the area will be controlled by the new structures in the Hardwick and Huscote channels.

EN17 - As policy ENV12 of adopted Cherwell Local Plan

EN22 – As policy C1 of adopted Cherwell Local Plan

EN23 – The policy requires that an ecological survey is carried out prior to the development of a site with known or potential ecological interest. The application is accompanied by an ES, which contains the findings of a range of flora and fauna surveys and suggests further surveys are carried out. Therefore, the application complies with the requirements of this policy.

EN24 – The policy seeks to protect ecological interests that may be affected by development proposals. While the proposal has some impact upon the river corridor, mitigation measures are proposed and new habitats will be created. No statutory sites are affected and the overall solution may create additional nature conservation interest in the longer term.

EN25 – As policy C2 of adopted Cherwell Local Plan

EN27 - As policy C4 of adopted Cherwell Local Plan

EN28 - As policy C5 of adopted Cherwell Local Plan

EN31 - As policy C9 of adopted Cherwell Local Plan

EN34 - As policy C7 of adopted Cherwell Local Plan

EN36 - As policy C17 of adopted Cherwell Local Plan

EN37 - As policy C14 of adopted Cherwell Local Plan

EN44 – The policy requires that the setting of a listed building is respected by a development proposal. Lock Cottage at Little Bourton is a Grade II listed building that lies adjacent to the proposed bund. The setting of the building is affected to some degree by the proposed earthwork, however, the applicant has set back the bund in this location to reflect the building's status. The effect upon the building is not excessive and the cottage will also benefit from enhanced flood protection. For this reason I do not consider this issue significant.

EN47 – The policy requires the protection and enhancement of archaeological remains. The applicant has considered this issue within the ES. This finds that there are limited areas of significance affected by the proposals. Much of the material for the construction of the storage reservoir bund will be taken from RA6, which contains some Roman and Neolithic remains. The applicant proposes to excavate and record these remains as they would be lost due to the removal of raised land in this location. However, the remains present have only minor significance and are not regionally or nationally important. The proposed bund will also have some effects upon existing ridge and furrow remains to the east of the river channel. Small areas of this landscape will be lost, but these areas are not significant in archaeological terms.

EN48 - As policy C10 of adopted Cherwell Local Plan

4.4 **National Policy Guidance**

PPS1, PPS7, PPS9, PPG13, PPG15, PPS16, PPG17, PPS23 and PPS25

5. **Appraisal**

5.1 The application has been submitted in conjunction with 09/00713/ADJ which seeks consent from South Northamptonshire Council for a section of the scheme around the A361; however the majority of the development works proposed is within Cherwell District. The assessment of that adjacent scheme was reported to the last Planning Committee meeting for determination.

5.2 The elements of the scheme within Cherwell District and subject to this application involve:

- Raising a 150m section of the A361
- Realignment of a short section of the upper River Cherwell District Council
- Construction of an embankment between the Oxford Canal and River Cherwell. The embankment will be constructed from material excavated from an area north of the M40, east of the Banbury-Birmingham railway line and west of the Oxford Canal

- Part of the works associated with the proposed Hardwick Control Structure
- Huscote Control Structure
- Part of the works to realign the Huscote Link Channel
- Localised flood defence works at Wildmere Industrial Estate.

5.3 The main issues include:

- The need for the development and the effect on flooding
- The effect of the development on the character and appearance of the countryside
- The effect of the development on any features of ecological or archaeological importance and listed building
- The effect of the development of public rights of way
- The effect of the development on highway safety
- The effect of construction

5.4 Need

Banbury, which is located on the River Cherwell, has acknowledged flooding issues, which were highlighted in the 1998 floods. This area is identified as a flood risk area, level 2 and 3 at present. Following the 1998 floods the Environment Agency sought to bring forward a flood protection scheme in accordance with PPS25 advice and its own remit to reduce flooding to populated areas nationally. Both Cherwell District Council and South Northamptonshire Council have already granted planning permission for the flood protection works but these have either already lapsed or will do so imminently before development can commence (application 04/00923/F refers). In respect of the regional and development plan policies relevant to the consideration of the proposed works both national guidance and the development plan support flood protection measures. The Council therefore does not dispute that a flood relief scheme is required. The information supplied is sufficient to show that the development will not lead to increased flooding risks elsewhere within the District.

5.5 The Cherwell Non Statutory Local Plan also contains policies for the regeneration and redevelopment of the areas around the railway station (Policy S5) and the proposed Banbury cultural quarter surrounding Chamberlain Court and the site of the existing Spiceball Leisure Centre. The land west of the railway station identified in Policy S5 of the Non Statutory Cherwell Local Plan was suggested as an option for major development in the Options for Growth document as part of the preparation of the Local Development Framework. The proposed scheme would provide flood

protection to Banbury town centre and subject to the resolution of viability issues could also help unlock the Canalside for redevelopment in accordance with these policies and also policy SP3 of the South East Plan 2009 which looks to focus development in urban areas and would bring economic benefits to Banbury in terms of development to town centre uses in a relatively sustainable location adjacent to the existing town centre and the railway station.

- 5.6 Crucially, the proposed scheme will bring strategic benefits for the district and in essence will unlock previously restricted development potential within the town centre which is a vital element in the Council's vision for the district

5.7 **Impact on character and appearance of landscape**

In respect of the physical works, the main visual impacts relate to the raising of a section of the A361 highway, the provision of the earth embankment to the side of the river and remodelling of the river, the provision of access routes to the working area and the provision of concrete gabions to two areas adjacent to the M40 highway and localized flood defence works at Wildmere Industrial Estate. The proposed excavation area to the west of the Oxford Canal is illustrated as RA6, this will generate the material for the flood storage reservoir embankments.

- 5.8 The A361 highway at present is at a lower level generally than the surrounding countryside and would be raised. A total stretch of 850m of the A361 is affected which includes a 650m section within South Northamptonshire district and remaining 150m section within Cherwell district. Whilst raising of the road would elevate the surface of the carriageway and allow longer views of the road, for this short length, the proposal overall is mitigated by the inclusion of a comprehensive landscaping scheme and it is considered that in this respect the visual impact of raising the road would not be seriously detrimental to visual amenity in the long term or at conflict with the development plan.
- 5.9 A number of hedges and trees (including standard trees of high quality grades) will need to be felled to allow construction but replacement planting will be carried out. In addition, some canopy raising and crown reduction of other trees will be necessary.
- 5.10 A more significant impact occurs with the proposed realigning works and the embankment. In respect of the river realignment, north of Banbury this is an area of flat land with short and relatively long views. The river divides into two arms with the main river channel gently sweeping in a curve to the north of this specific area and a secondary smaller arm of the river meandering along the southern boundary, running parallel with the route of the M40 motorway. This part of the area lies close to the Oxford Canal and can therefore be viewed from public footpaths, the towpath and the canal itself. This is therefore an area that requires careful consideration in respect of the visual impact on the rural landscape.

- 5.11 The area at present has a quiet rural character, albeit with the M40 flyover passing overhead, and the meandering second arm of the river and low lying nature of the area adds to the quality of this environment. The proposed realigning of the smaller arm of the river retains this character but places an earth embankment along this section with a 1 in 3 gradient for the sides. This is positioned between 2 flow control structures to the main river channel. The area immediately around the realigned river is shown as an environmental mitigation area laid to grazing and wetland planting. This area, around the realigned section of river, will form part of the flood storage area and planting is proposed to take account of this periodic flooding. This will not differ from the flooding that occurs currently over this land but will enable controlled flooding to designated areas to take place.
- 5.12 The proposed embankment extends along this section of river and the M40. It also runs alongside a section of the Oxford Canal. The embankment is earth constructed with sloping sides and flat topped to enable a footpath to be created to link at the southern end to the A361 public right of way and the towpath, partway along the embankment's length. The main visual impact relates to the loss of the long views from the adjacent footpaths across the river to the canal, the views from the canal itself eastwards, the views from the M40 motorway and the longer views from the A361. The topography of this landscape, which is largely flat, will be artificially interrupted by the embankment. However, this will be mitigated by the sloping sides of the embankment and its construction, earth mounding with extensive natural planting onto the top and sides and around it.
- 5.13 Over time it is considered that the planting, including that of the RA6 excavation area, will establish and integrate visually with the natural rural landscape surrounding the site and the embankment will become less noticeable other than as a means to emphasis the new planting. The embankment will also have a secondary role to provide a new footway and during periods of flooding will act as a refuge area for cattle and sheep grazing. On balance weighing up the need for the development against visual impact, it is considered that this raises no conflict with development plan policies in relation to impact on the character of the area.
- 5.14 However, two pairs of concrete gabions are required to be provided as a part of the flow control mechanism for the river. Both will be clearly visible and prominent in the landscape once the works have been completed as they physically dissect the embankment. However their design is constrained by the need to accommodate river flows at peak flow rates during flood periods and therefore requires them to be of substantial construction and utilitarian in appearance. Their design accords with the role that these concrete sections of walling will have in slowing water flow and water pressure in times of flooding. On balance whilst these will be noticeable in the landscape, particularly at close proximity in the immediate years following their construction, at longer views they will, to an extent, be hidden once the landscaping is established. Again, weighing up the need for the development

against the visual impact it is considered that this aspect of the proposals is acceptable.

5.15 Wildmere Industrial Estate works

This area is situated immediately south of the M40 and works to this element of the scheme seeks to increase the amount of floodwater that can flow safely past Wildmere Ind., Estate. Works involve the construction of a low flood wall (between 0.3m and 0.6m high) between the River Cherwell and running through the ornamental gardens of the Prodrive Motorsport Ltd factory site and linking into the construction of an earth embankment (1.5m high) on land to the north of Facenda Chickens and Scania sites which runs through a recently planted woodland plantation owned by CDC. The earth embankment in turn ties into the high ground that the Banbury to Birmingham railway line runs into. A channel will be constructed to transfer flow from the drainage ditch to the north of the new embankment into the River Cherwell.

5.16 Essentially, other than the visual presence of the earth embankment the scheme allows an environmental enhancement in this area by increasing areas of fenland grass habitat and in partnership with CDC turning Wildmere Wood into a community woodland, through the thinning of the plantation to enhance the habitat quality of the developing woodland. A layout proposal reflecting the concerns of the Council's Landscape Officer regarding this area of the scheme has been prepared for further consideration.

5.17 Tramways Industrial Estate

This area lies to the south of Banbury adjacent and to the west of Banbury Station. Works here include a low flood wall running along the top of the River Cherwell's east Bank, an earth embankment to the side of Banbury United's pitch before reverting back to a floodwall to run around the outside of Banbury United's terrace and car parking area. In addition a new access into the river is proposed, to allow maintenance by the Environment Agency to clear debris that could cause blockages and lead to additional flooding.

5.18 Ecology/Archaeology/Listed Building

The ES makes reference to the effect on flora and fauna and various surveys that have been carried out. Surveys and mitigation in advance of works will ensure that any protected species are translocated. Nesting habitat will be felled outside the bird nesting season. Replacement planting will mitigate the loss of hedgerows and trees and will produce a net gain in the area.

5.19 Whilst the ES identifies that the excavation of RA6 will destroy an area of buried archaeology that suggests Romano-British settlement of the area, it concludes that a full exploration and recording of the archaeology will take place and whilst it will not prevent its destruction it will allow for data capture for future academic study. There is also a loss of a small area of medieval ridge and furrow field system to the north of listed Bourton Lock Cottage.

- 5.20 In respect of the impact on the listed Bourton Lock Cottage, the distance from the toe of the proposed embankment will be between 10m-12m and the slope gradient at this point has been reduced from the typical 1 in 3 slope to 1 in 6 to make it appear less intrusive close to the property.
- 5.21 The Addendum to the ES Cropredy Bridge Registered Historic Battlefield. No new development is proposed by this additional information; it is issued to take into account the impact of the already proposed development on the site of the registered battlefield.
- 5.22 The overall character of the Registered Historic Battlefield will not be lost, as the embankment tail is a relatively small landscape feature that will not be visually prominent. The presence of the embankment and its impact within the battlefield may reduce its appreciation, however whilst it is considered to be adverse it is minor in significance due to its relative limited extent and its location on the periphery of the registered battlefield.
- 5.23 The negative impact on the battlefield is considered to be very small and reasonable to achieve the positive flood alleviation that the scheme brings to Banbury and other downstream communities.

5.24 **Construction**

Temporary storage and working areas are proposed with new accesses created to the working and storage areas. These are proposed to be removed on completion of the scheme and the areas landscaped over. Again whilst this will result in some loss of the rural landscape in the short term the restoration and landscaping of these areas will mitigate against the short term impacts in the longer term.

- 5.25 There is the potential for the development to generate temporary noise, vibration, pollution and dust. However, there are very few residential properties near the development site and the EIA includes measures for appropriate levels of mitigation.

5.26 **Highway Safety**

The concerns of the Parish Council's are noted however, in conjunction with Oxfordshire County Council and Northamptonshire County Council impacts of highway safety have been and will be taken into full consideration and diversion management with adequate signage and timing will be in place during the construction phase which will last for 12-18 months depending on ground and weather conditions. To minimize traffic impacts on the local road network, night-time working and raising the road on a half carriageway basis are being considered.

- 5.27 There is no objection in principle to the project by either the Highways Agency or OCC and NCC. There is no objection in principle to the project by either the Highways Agency or OCC and NCC, subject to a S278 Agreement to carry out the works on the public highway and requirements regarding:

- Diversion routes during the work period/traffic management
- Addressing any damage to local roads caused by associated vehicles
- Additional landscaping along highway boundary

5.28 **Effect on rights of way**

The scheme includes a new permissive footpath along the embankment linking the former A361 (a public right of way) with the Oxford Canal Walk. This will enhance the existing network.

5.29 **Conclusion**

The proposal forms part of a comprehensive flood relief scheme for Banbury. The proposed scheme will provide flood defences against up to a 1 in 200 year event and as such will have a positive impact on Banbury and downstream communities. In particular the scheme will reduce the flood risk within the existing built up area including the employment areas of Tramway Industrial Estate and the surrounding area. It will also reduce the risk of flooding to road and rail facilities.

5.29 The construction of the embankments will have the most significant impact on the local environment but the overall benefits of the proposal are considered to outweigh this impact.

5.30 The works are mitigated by an extensive landscaping scheme. The impact of flooding onto the A361 is considered acceptable whilst the raising of the road will provide some mitigation and the comprehensive landscaping of the site will enhance the character of the rural landscape.

5.31 The proposal is not considered to conflict with the development plan policies and accords with national planning advice in respect of reducing flood risk as set out in PPS25. Furthermore the proposal is considered to contribute to the character of the area and landscape as set out in PPS1 Delivering Sustainable Development and PPS7 Sustainable Development in Rural Areas and enhancing the ecology of the area in accordance with PPS9. Subject to appropriate conditions, the application is considered acceptable.

6. **Decision on the Environmental Statement**

6.1 Regulation 21 of The Town and Country Planning (Environmental Assessment) (England and Wales) Regulations 1999 requires that where an EIA application is determined by a local planning authority the authority will inform the secretary of state and the public of the decision. The authority must also make available for public inspection the content of the decision and any conditions, the main reasons and considerations and a description of the main measures to avoid, reduce and off set adverse impacts.

6.2 It is therefore **further recommended** that this report (minus the summary of consultation responses) and the planning conditions are approved as setting

out the main reasons, considerations and measures proposed with regard to the ES to comply with the requirements of Regulation 21 of The Town and Country Planning (Environmental Assessment)(England and Wales) Regulations 1999.

RECOMMENDATION

That this report and the following conditions are approved with the requirements of Regulation 21 of the Town and Country Planning (Environmental Assessment)(England and Wales) Regulations 1999.

- 1. 1.4A – 3 years time limit (RC2)**
- 2. The development hereby permitted shall be carried out in accordance with the approved schedule of plans attached.
Reason: For the avoidance of doubt and in the interest of proper planning**
- 3. No development shall commence on site until the applicant has secured a staged programme of archaeological investigation in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority. (RC61AA)**
- 4. No development shall commence on the temporary crossing of the Oxford Canal until detailed plans of the proposed works and restoration measures have been submitted to and approved in writing by British Waterways and the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason - In the interests of protecting the environment and amenities of the Oxford Canal, in accordance with Policy BE1 of the South East Plan and Policies R7 and C5 of the adopted Cherwell Local Plan.**
- 5. No development shall take place until details of the protective fencing and other root protection measures to be erected/implemented in order to protect existing trees and hedges to be retained as shown on the approved plans have been submitted to and approved in writing by the Local Planning Authority. The approved fencing shall be erected before development affecting those trees/hedges commences and the fencing shall thereafter be retained in situ at all times until such development is complete. The land so enclosed shall be kept clear of all materials, machinery and temporary materials at all times nor shall any fires be lit within the fencing. (RC72A)**
- 6. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for landscaping the site (including all boundaries to the route of the A361) which shall include details of all proposed tree, hedgerow and shrub planting including their species, number, sizes and positions, together with grass/wildflower seeded/turfed areas. (RC10A)**
- 7. That all planting, seeding or turfing comprised in the approved details of**

landscaping shall be carried out in accordance with a landscape implementation phasing plan which has been submitted to and approved in writing by the Local Planning Authority before any development commences. (RC10A)

8. No development shall take place until a maintenance schedule for the landscape planting for a minimum period of 5 years has been submitted to and approved in writing by the Local Planning Authority. The landscaping shall be maintained in accordance with the maintenance schedule at all times thereafter. (RC10A)

9. Monitoring equipment such as Inclinometers, shall be installed on the M40 embankment adjacent to borrow area RA6 and shall be retained in situ in good working order at all times thereafter until the completion of the embankment works in the vicinity.

Reason: To ensure the M40 trunk road continues to serve its purpose as part of a national system of route for through traffic in accordance with Section 10(2) of the Highways Act 1980 by minimising disruption on the trunk road and in the interests of road safety and to comply with Government advice contained in PPG13: Transport

10. All temporary storage and working areas and temporary accesses shall be removed on completion of the development hereby approved and the ground restored and landscaped in accordance with the approved landscaping scheme within the first available planting season following completion of the development unless otherwise agreed in writing by the Local Planning Authority. (RC10A)

11. The development hereby permitted shall not encroach within 3m of the M40 highway boundary.

Reason: To ensure the M40 trunk road continues to serve its purpose as part of a national system of route for through traffic in accordance with Section 10(2) of the Highways Act 1980 by minimising disruption on the trunk road and in the interests of road safety and to comply with Government advice contained in PPG13: Transport

12. No development shall commence until details of the proposed surfacing materials to be used in the construction of the proposed permissive footpath have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure the surface of the bridleway/cyclepath is appropriate to the proposed users and in the interests of visual amenity and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan

13. No development shall take place until a Working Method Statement and Ecological Management Plan has been submitted to and approved in writing by the Local Planning Authority which specifies the following;

- The methodology and timings of any vegetation and habitat

removal (including the felling of any trees identified as potentially supporting bat roosts) and engineering works to minimise the impacts on any potential protected species which may have colonised the site since the Environmental Statement was produced

- Information on the dates, timings and methodology for the construction of any habitat mitigation and compensation proposals, including the mitigation measures provided in the Environmental Statement, and the long term management and maintenance of any habitats created, retained or enhanced.

All development shall thereafter take place in accordance with the approved Method Statement and Management Plan. (RC85A)

14. The development shall be carried out in accordance with the Flood Risk Assessment (FRA) (Black and Veatch, July 2004 & Banbury FAS PPS25 Practice Guide – Appendix C FRA Pro-forma) and the mitigation measures therein unless otherwise previously approved in writing by the Local Planning Authority. (RC88A)
15. If, during development, contamination not previously identified is found to be present on the site then no further development (unless otherwise previously agreed in writing by the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority, for an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with (RC81)
16. Operations that involve the destruction and removal of vegetation or buildings (or parts of buildings) shall not be undertaken during the months of March to July inclusive, unless otherwise previously approved in writing by the Local Planning Authority.

Reason: To protect breeding birds and to ensure that the development will not cause harm to any protected species or its habitat in accordance with Policy NRM5 of the South East Plan 2009 and Policy C2 of the adopted Cherwell Plan.

Informatives

1. Any raised, new, diverted route of footpaths should be of the same width as the existing footpath. A planning permission does not authorise the diversion of a public footpath and there is a separate statutory procedure for such diversions.
2. Temporary closures of the footpath will be needed and warning signs will be required at new junctions.
3. With respect to construction works to be carried out in close proximity to Public Rights of Way, please note the following standard requirements:-
 - The routes must be kept clear, unobstructed, safe for users, and no structures or material placed on the right of way at all times.

- There must be no interference or damage to the surface of the right of way as a result of the construction. Any damage to the surface of the path must be made good by the applicant, specifications for any repair or surfacing work must be approved by this authority.
4. All works will be carried out via an Agreement with Northamptonshire County Council and Oxfordshire County Council under Section 278 of the Highways Act 1980. No works should be carried out until the applicant has submitted a detailed design of the scheme and the scheme approved in writing by the Highway Authorities. All diversion routes will need to be included in the Agreement.
 5. Measures will need to be in place to prevent rat running during the construction phase to protect the highway network and local villages. These measures need to be agreed in writing by the Highway Authority and will be carried out by way of a Section 278 Agreement and may involve consultation with local parishes.
 6. The applicant will be required to enter into a Section 59 and/or 60 Agreement under the Highways Act 1980 to address any damage to local roads.
 7. The landscaping required to form the highway boundary after any land dedication associated with the CPO will be subject to written agreement with the Highway Authority.
 8. Natural England can provide advice on the scope and suitability of any Working Method Statement and Ecological Management Plan.
 9. The applicant is advised to contact Paul Maison at British Waterways on 01908 302506 in order to ensure that any necessary consents are obtained and the works are compliant with the current British Waterways Code of Practice for works affecting British Waterways and also further consultation should take place in respect of drawing no. 07 012 501 P04 regarding Area A proposed wet woodland and Ox-Bow lake and Area RA6 (South) raised area-source of earth for main embankment. The area's after use plan for restoration could include potential facilities linked to the canal.
 10. X1

SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal pays proper regard to the character and

appearance of the landscape, nature conservation and protection of wildlife, ecology, recreation, historic landscape, the setting of listed buildings, archaeology, water quality, contaminated and flooding. As such the proposal is in general accordance with Policies CC2, NRM1, NRM4, C4 and SP3 of the South East Plan 2009 and Policies R7, C2, C4, C5, C7, C9, C10, C13, C14, C17, ENV7, ENV12 and TR11 of the adopted Cherwell Local Plan, Policies S5, S5a, R14, EN12, EN14, EN17, EN22, EN23, EN24, EN25, EN27, EN28, EN31, EN34, EN36, EN37, EN44, EN47 and EN48 of the Non-Statutory Cherwell Local Plan 2011 and PPS1, PPS7, PPS9, PPG13, PPG15, PPS16, PPG17, PPS23 and PPS25. Although there are some areas where the proposal conflicts with Policies in the adopted Local Plan, the Local Planning Authority considers that these conflicts are not significant and the overall strategic benefits arising from the reduction of flood risk, brought about by the proposed, far outweigh any conflicts with the Local Plan. For the reasons given above and having regard to all other matters raised, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions, as set out above.

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