

Case Officer: Stuart Howden

Applicant: Bellway Homes Limited (Northern Home Counties)

Proposal: Full planning application for 83 dwellings comprising a partial re-plan of the approved layout under reserved matters phase 2 (LPA ref: 15/00961/REM) to include an uplift of 23 no. dwellings and a revised mix across the development parcel, and associated development

Ward: Banbury Hardwick

Councillors: Cllr Tony Illot
Cllr J A Donaldson
Cllr Nicholas Turner

Reason for Referral: Major Development

Expiry Date: 12th April 2019

Committee Date: 14 March 2019

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS AND SUBJECT TO A S106 LEGAL AGREEMENT

Proposal

Planning permission is sought for 83 residential dwellings on the site, this being an increase in 23 to what has been already approved on this site (13/00159/OUT and 15/00961/REM)

Consultations

The following consultees have raised **objections** to the application:

- OCC Highways (but amended plans have since been submitted) and CDC Strategic Housing.

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

- Banbury Parish Council, CDC Arboriculture, OCC Developer Contributions, OCC Drainage and Thames Water.

Planning Policy and Constraints

The site is approximately 140 metres to the east of the Grade II* listed building of Hardwick House. The site is on land that has high archaeological interest and is potentially contaminated. The site has some ecological potential as a number of legally protected species have been recorded within the vicinity of the site including, but limited to, swifts, the smooth newt and the West European Hedgehog.

The application has been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance.

Conclusion

The key issues arising from the application details are:

- Principle of the Development
- Design, and Impact upon the Character and Appearance of the Area
- Impact upon Historic Environment
- Residential Amenities
- Accessibility, Highway Safety and Parking
- Ecological and Trees
- Affordable Housing
- Flooding and Drainage
- Infrastructure Provision

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

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, which comprises 2.51 hectares of land, is situated to the north of Banbury and covers land which lies within the Banbury 2 Cherwell Local Plan (2011-2031) Part 1 allocation. Outline planning permission and detailed reserved matters approval have been granted on the east of Southam Road site for the erection of 510 homes, and construction is underway. The application site sits within the south eastern element of this residential development and 60 dwellings have been approved on the site to which this application relates. The north east boundary of the site lies adjacent to the M40 and beyond this is open countryside. To the south east of the site is scrub land (with a pending application to erect a warehouse – ref: 19/00010/F) and beyond this is the Birmingham to London/Oxford railway line. To the south is a warehouse, whilst to the south west is offices and warehousing.

2. CONSTRAINTS

- 2.1. The site is approximately 140 metres to the east of the Grade II* listed building of Hardwick House. The site is on land that has high archaeological interest and on land that is potentially contaminated. The site has some ecological potential as a number of legally protected species have been recorded within the vicinity of the site including, but limited to, swifts, the smooth newt and the West European Hedgehog.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. Planning permission is sought for 83 residential dwellings on the site, this being an increase in 23 to what has been already approved on this site. The proposal seeks a reduction in the provision of 4 and 5 bedroom units on site, with 2 and 3 bed units in

their place. The applicant's agent indicates that the re-plan is driven by market conditions, i.e. there is a greater demand for smaller dwellings in this location and less demand for the larger 4 and 5 bed units.

- 3.2. The proposal would therefore make revisions to the details of phase 2 of the approved applications at the site (these being 13/00159/OUT and 15/00961/REM), including alterations to the layout of the site and landscaping. It should be noted that the proposed road layout is relatively similar to what has already been approved at the site, with the main spine road having been delivered already in line with the extant Reserved Matters approval.

4. RELEVANT PLANNING HISTORY

- 4.1. The following planning history is considered relevant to the current proposal:
- 4.2. 13/00159/OUT - OUTLINE - Demolition of existing structures; development of up to 510 residential units (use Class C3/extra care housing) and Class D1 education use, with associated access, landscaping/open space, parking and related works – Granted with conditions
- 4.2. The site benefits from outline planning permission (ref: 13/00159/OUT) for the “Demolition of existing structures; development of up to 510 residential units (use Class C3/extra care housing) and Class D1 education use, with associated access, landscaping/open space, parking and related works”. A Section 106 agreement was attached to this planning permission to secure contributions. Planning permission was granted on the 18th December 2013. The Design Code for the site was approved on 19th February 2015 (ref: 14/00383/DISC), so as to ensure the quality of the scheme envisaged is delivered.
- 4.3. 14/01871/OUT - Variation of Conditions 6 and 47, including the consolidation and alteration of conditions 5, 8, 14, 16, 17, 19, 23, 24, 45 and 46 of 13/00159/OUT – Granted with conditions
- 4.4. A Section 73 application (ref: 14/01871/OUT) was made to vary conditions 6 and 47 of the outline planning permission. Condition 6 was amended to require a design code to be submitted before the submission of the first reserved matters, rather than for a design code to be submitted and approved. Condition 47 was amended to change the wording of the condition in relation to noise attenuation measures.
- 4.5. 14/02140/REM - Reserved Matters Application to 14/01871/OUT - Appearance, landscaping; layout and scale for 98 dwellings and associated development – Granted with conditions
- 4.6. 15/00961/REM - Reserved Matters Application for Phase 2 to 14/01871/OUT - Appearance, landscaping; layout and scale for 412 dwellings and associated development – Granted with conditions
- 4.7. The first reserved matters application (ref: 14/02140/REM) for 98 dwellings was approved on 16th July 2015. The second reserved matters application (ref: 15/00961/REM) for 412 dwellings was approved on 23rd October 2015.
- 4.8. 18/00053/F - Sensory garden on previously approved Locally Equipped Area of Play (LEAP); provision of LEAP on copse land and continuation of existing bund; RETROSPECTIVE planning permission for installation of sub-station – Granted with conditions

- 4.9. 18/00553/F - Retrospective planning permission for the erection of structurally engineered ties to support the fence on the noise bund to the M40, with associated landscaping detail – Granted with conditions
- 4.10. 18/00554/F - Works to site bund (central section) adjacent to the motorway and engineering operations for structural ties and associated landscaping. Retrospective engineering operations for structural ties to existing noise acoustic fence and associated landscaping – Granted with conditions
- 4.11. Various Discharge of Conditions applications from 2015 to 2018, some of which are still live (e.g. 16/00390/DISC)

5. PRE-APPLICATION DISCUSSIONS

- 5.1. The following pre-application discussions have taken place with regard to this proposal:

<u>Application Ref.</u>	<u>Proposal</u>
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18/00164/PREAPP	Re-Plan for provision of additional 23 No units and revision of mix across the development parcel
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- 5.2. A relatively similar proposal was put forward at the pre-application stage on this same site. Concerns were raised by officers that too many dwellings were being proposed on the site and that this would materially diminish the quality of the approved scheme. Officers had reservations with the overall design of the scheme as well as concerns with the standard of amenity for the occupiers of the proposed dwellings (due to loss of privacy and loss of outlook). The Local Highways Authority also raised concerns in relation to parking provision.

6. RESPONSE TO PUBLICITY

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, 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 25.10.2018, 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.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 7.2. BANBURY TOWN COUNCIL: **No objection** provided the total number of affordable units provided is based on the new total dwellings number post uplift
- 7.3. BOURTON PARISH COUNCIL: **No comments received.**

CONSULTEES

- 7.4. CDC ARBORICULTURE: **No objections** subject to conditions.
- 7.5. CDC BUILDING CONTROL: Regarding the block of flats 425-430: at ground floor level there appears to be very limited clearance between the swing of the main entrance door and the bottom of the stair, which would not be sufficient for wheelchair access. Also, there does not appear to be a smoke vent indicated at the head of the stairs
- 7.6. CDC CONSERVATION: **No comments received**.
- 7.7. OCC DEVELOPMENT FUNDING NEGOTIATOR: **No objections** subject to the existing S106 being varied to incorporate the new permission reference and where appropriate additional contributions will need to be secured to take account of the additional 23 dwellings proposed under this application.
- 7.8. OCC Drainage: **No objections**.
- 7.9. CDC ECOLOGY: **No comments received**.
- 7.10. CDC ENVIRONMENT AGENCY: Do not wish to comment – use Flood Risk Standing Advice.
- 7.11. CDC ENVIRONMENTAL HEALTH: **No comments received**.
- 7.12. HISTORIC ENGLAND: **No comments to make**
- 7.13. OCC HIGHWAYS: Object to the application for the following reasons:
- Vehicle tracking for a refuse vehicle with a length of 11.4m is required to demonstrate that such a vehicle can safely and easily enter, turn and exit the site. The tracking submitted is for a vehicle of 10.1m in length.
 - A plan demonstrating forward visibility splays on all bends is required. This must meet standards set out in the Manual for Streets.
- However, further plans have been submitted to attempt to address the concerns of OCC Highways. OCC Highways has been re-consulted and no comments have been received to date.
- 7.14. CDC HOUSING STANDARDS: **No comments received**.
- 7.15. CDC LANDSCAPE SERVICES: **No comments received**.
- 7.16. CDC LEGAL SERVICES: **No comments received**.
- 7.17. NETWORK RAIL: Lists informatives.
- 7.18. CDC RECREATION & LEISURE: **No objections** subject to contributions towards off-site outdoor and indoor sports facilities, community hall facilities and public art.
- 7.19. CDC STRATEGIC HOUSING: **Objects** to the application due to the mix of affordable housing being proposed.
- 7.20. SOUTH NORTHANTS COUNCIL: **No observations to make**.
- 7.21. THAMES WATER: **No objections** in principle.

7.22. CDC WASTE & RECYCLING: **No comments received.**

7.23. *Officer comment:- Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the 1990 Act (as amended) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.*

7.24. *In this particular instance, the above financial payments are not considered to be material to the decision as they would not make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority and hence the above response from the Council's Finance department is therefore provided on an information basis only.*

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)

- PSD1: Presumption in Favour of Sustainable Development
- SLE4: Improved Transport and Connections
- BSC1: District Wide Housing Distribution
- BSC2: The Effective and Efficient and Efficient Use of Land
- BSC4: Housing Mix
- BSC9: Public Services and Utilities
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- BSC11: Local Standards of Provision – Outdoor Recreation
- BSC12: Indoor Sport, Recreation and Community Facilities
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDS)
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13: Local Landscape Protection and Enhancement
- ESD15: The Character of the Built and Historic Environment
- ESD17: Green Infrastructure
- BANBURY 2: Hardwick Farm, Southam Road (East and West)

- INF1: Infrastructure

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28: Layout, design and external appearance of new development
- C30: Design of new residential development
- ENV1: Environmental pollution
- ENV12: Contaminated land

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2010
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)
- Cherwell District Council: Home Extensions and Alterations Design Guide (2007)
- Cherwell Residential Design Guide Supplementary Planning Document (SPD) (July 2018)
- Banbury Vision and Masterplan SPD (December 2016)
- Developer Contributions SPD (February 2018)
- Infrastructure Delivery Plan (IDP) Update December 2017

8.4. Council Corporate Priorities

Cherwell District Council and South Northamptonshire District Council’s Joint Corporate Strategy for 2018-19 sets out the councils three strategic priorities which form our overarching business strategy. Below these are the key actions for the year 2018–19. 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 districts.

The three corporate priorities are to ensure the Districts are “Protected, Green & Clean”, are places which support “Thriving Communities & Wellbeing”, and are Districts 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 Plans for CDC & SNC; (2) increase tourism; (3) protect the built heritage; (4) reduce our carbon footprint & protect the natural environment; (5) mitigate the impact of High Speed 2; and (6) deliver affordable housing.

The remaining key actions are also of significance to the determination of planning applications and appeals in particular delivering the Bicester, Banbury, Kidlington, Brackley, Towcester and Silverstone Masterplans.

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 the Development
- Design, and Impact upon the Character and Appearance of the Area
- Impact upon Historic Environment
- Residential Amenities
- Accessibility, Highway Safety and Parking
- Ecological and Trees
- Affordable Housing
- Flooding and Drainage
- Infrastructure Provision

Principle of Development

Policy Context

- 9.2. Planning law requires that planning decisions are made in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 2 of the National Planning Policy Framework (NPPF) makes clear that it does not change the statutory status of the development plan as the starting point for decision making. However the NPPF is a significant material consideration.
- 9.3. Paragraph 11 of the NPPF explains the Government's presumption in favour of sustainable development. For decision-taking this means approving proposals that accord with an up to date development plan and in cases where there are either no relevant development plan policies or those policies important for determining the application are out of date; granting permission unless the NPPF policies provide a clear reason for refusal or any adverse impacts significantly and demonstrably outweigh the benefits.
- 9.4. The Development Plan comprises the saved policies of the 1996 adopted Cherwell Local Plan and the 2015 adopted Cherwell Local Plan (2011-2031) Part 1. The policies important for determining this application are referenced above in Section 8.
- 9.5. The site forms part of the allocated site Banbury 2 from the Cherwell Local Plan (2011 – 2031) Part 1. Policy Banbury 2 of sets out the development description and key specific design and place shaping principles for this allocated site known as (east and west of Southam Road). It is noted that Policy Banbury 2 allows for residential development of approximately 600 dwellings provided it can be demonstrated that high quality design has been applied to address the potential landscape/visual impact issues and that careful consideration has been given to minimise the impact on historic assets/potential archaeological sensitivity of the site.

Assessment

- 9.6. Cherwell District Council can demonstrate a five-year supply of deliverable housing sites and therefore the presumption in favour of sustainable development, as advised by the NPPF, will need to be applied in this context.
- 9.7. The principle of residential development was established with the granting of the original outline consent under application 13/00159/OUT. Furthermore, as noted above, the site is part of the allocated site Banbury 2 from the Cherwell Local Plan (2011 – 2031) Part 1. Policy Banbury 2 sets out that approximately 600 dwellings will be provided over the east and west of Southam Road sites cumulatively and the provision of an additional 23 dwellings would mean that the number of dwellings

would exceed this figure of 600. However, 600 dwellings is not a strict limit – the use of the word ‘approximately’ suggests an additional c.5% may be policy compliant, 5% of 600 being 30.

- 9.8. Thus, the provision of additional housing at the east of Southam Road site could be acceptable. That being said, the principle of the residential development is also dependent on other material planning considerations, including whether the proposal is in accordance with the criteria and master planning principles specified in Policy Banbury 2 of the Cherwell Local Plan (2011-2031) Part 1.

Conclusion

- 9.9. The principle of the development could be acceptable, but this is dependent on other material planning considerations which shall be discussed below.

Design, and Impact upon the Character and Appearance of the Area

Policy Context

- 9.10. Government guidance contained within the NPPF towards achieving well-designed places states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. The NPPF goes on to note that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

- 9.11. Paragraph 127 of the NPPF states that planning decisions should ensure that developments:

- Will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- Are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- Are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change;
- Establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- Create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

- 9.12. Paragraph 130 of the NPPF states that: *“Permission should be refused for development that fails to take the opportunities available for improving the character and appearance of an area and the way it functions.”* Highly relevant for this proposal, Paragraph 130 also states that: *“Local Planning Authorities should also seek to ensure that the quality of the approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.”*

- 9.13. Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1 states that: *“New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development*

will be required to meet high design standards.” The Cherwell Residential Design Guide SPD also encourages development which is locally distinctive and the use of appropriate materials and detailing, but states that new development should avoid the creation of ‘anywhere places’ which do not respond to local context.

- 9.14. Policy Banbury 2 of the Cherwell Local Plan (2011-2031) Part 1 sets out some key site specific plan shaping principles and in relation to the matters of landscape and visual impact, as well as the impact upon the character of the area.
- 9.15. Saved Policy C28 of the Cherwell Local Plan 1996 exercises control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context as well as compatible with existing buildings.

Assessment

- 9.16. A Design Code for the east of Southam Road site was approved on 19th February 2015 (ref: 14/00383/DISC) which sets out the key issues to be addressed by developers and describes the type of place to be created, thereby setting requirements for developers and officers to ensure that a high quality scheme is achieved, e.g. building lines, the position of landmark buildings and treatment of secondary frontages, amongst a wide range of other matters.
- 9.17. Following concerns from officers that the initial plans did not accord with the requirements set out within the Design Code for the site, amended plans have been received. It is considered that the amended proposal would generally be in accordance with the Design Code, in terms of building lines and landmark buildings, for example. There is some scope for improvement in terms of the externally facing materials being used, which can be controlled by condition. Thus, subject to appropriately worded condition, the amended proposals are considered acceptable in design terms.

Conclusion

- 9.18. It is considered that the proposal would not cause demonstrable harm to the visual amenities of the area, nor would it materially diminish the quality of the overall approved scheme.

Impact upon Historic Environment

Policy Context

- 9.19. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard to the desirability of preserving a listed building or its setting should be taken.
- 9.20. Paragraph 193 of the NPPF states that: *“When considering the impacts of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”* Paragraph 194 of the NPPF goes on to state that: *“Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification”*.

- 9.21. Policy ESD15 of the Cherwell Local Plan states that new development proposals should: *“Conserve, sustain and enhance designated ‘heritage assets’ (as defined in the NPPF) including buildings, features, archaeology, conservation areas and their settings, and ensure new development is sensitively sited and integrated in accordance with advice in the NPPF and NPPG.”*

Assessment

- 9.22. The site is approximately 140 metres away to the east of the Grade II* listed Hardwick House. As residential development has already been approved on the site, it is considered that the proposal would not materially alter the way this designated heritage asset is appreciated. It is therefore considered that the proposal would not cause harm to the significance of this listed building or its setting.
- 9.23. In terms of impact on the archaeological assets, there is a medieval village adjacent to the site. However, the proposed changes to the original permission are located within an area which has been subject to a full archaeological mitigation.

Conclusion

- 9.24. Given the above, it is considered that the proposal would not cause harm to the significance of any designated or non-designated heritage assets, or their setting.

Residential Amenities

Policy Context

- 9.25. Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1 states that new development proposals should consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space. Paragraph B.42 in the Cherwell Local Plan Part 1 states that: *“In all cases very careful consideration should be given to locating employment and housing in close proximity and unacceptable adverse effects on the amenity of residential property will not be permitted.”*
- 9.26. Policy Banbury 2 of the Cherwell Local Plan (2011-2031) Part 1 outlines that one of the design and place shaping principles that should inform proposals is development that demonstrates consideration for and addresses any potential amenity issues which may arise.
- 9.27. Cherwell Householder guidance seeks a separation distance of 22 metres to be achieved between directly facing habitable room windows, such as a rear elevation to rear elevation relationship to avoid unacceptable overlooking, and a distance of 14 metres between a windowless elevation and elevations with a ground floor habitable room window to avoid overshadowing.
- 9.28. Saved Policy ENV1 of the Cherwell Local Plan 1996 states that: *“Development which is likely to cause detrimental levels of noise, vibration, smell, smoke, fumes or other type of environmental pollution will not normally be permitted.”*

Assessment

- 9.29. The development at Southam Road is a relatively intensive use of land and there are numerous instances in the approved scheme where plot to plot relationships fall

short of the recommended minimum separation distances set out in the Council's adopted guidance.

- 9.30. The current proposals, adding 23 units to the development within the same site would only serve to add to these challenges. Indeed, there are numerous instances in the current proposals where plot to plot relationships fall short of the recommended minimum separation distances.
- 9.31. These concerns were discussed with the applicant's agent, and amended plans have been received, which have made some improvements in this regard. In most cases, however, the current proposals are similar to the approved scheme, the latter providing a realistic fall-back position.
- 9.32. Under the amended plans, there is one substandard plot to plot relationship, which is new i.e. not part of the approved scheme. This relates to plots 393 and 421; the proposed occupants of 421 would overlook the rear garden of 393. Whilst this would be an undesirable situation, any prospective purchasers of plot 393 would be aware of the relationship between these properties. On balance, and in the context of a development where there are other instances of substandard plot to plot relationships, it is considered it is considered that the relationship between these two properties would not be so harmful as to warrant refusal.
- 9.33. Regarding noise, the principle of residential development on this site has already been accepted. A bund with fencing sits along the north east boundary of the site to mitigate the noise from the M40. A condition was also attached to the existing consent at this site (condition 39 of 14/01871/OUT) setting out that dwellings within the north eastern and eastern areas of the site must demonstrate that each dwelling can be attenuated to achieve the WHO guideline value for living rooms and bedrooms, as well as rear outdoor gardens.
- 9.34. The noise model output, which includes the revised layout, indicates that the sound levels within gardens do not exceed the criteria as set out within Condition 39. It is also noted in the noise report that internal sound levels will be able to accord with those set out in Condition 39.

Conclusion

- 9.35. It is considered that the proposal would result in an adequate standard of amenity for existing occupiers and proposed occupiers.

Accessibility, Highway Safety and Parking

Policy Context

- 9.36. Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1 states that: *"New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions."*
- 9.37. Policy SLE4 of the Cherwell Local Plan (2011-2031) Part 1 states that: *"All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported."*

Assessment

- 9.38. Comments from Oxfordshire County Council as Local Highways Authority (LHA) have been received. The LHA is generally content with the proposed street layout, but advises that a plan demonstrating forward visibility splays would need to be provided for all bends. The LHA has concerns that the forward visibility splay at the bend by the informal LAP appears to be potentially obstructed by the location of on-street parking and trees. The LHA also notes that given the proximity of the LAP it is particularly important that appropriate forward visibility at this bend is achievable. The LHA states that visibility envelopes must be marked out on a layout plan and forward visibility splays must meet the standards set out in Manual for Streets. The LHA therefore objects to the proposal.
- 9.39. Furthermore, the swept path analysis submitted with the application is for a refuse vehicle with a length of 10.1m. Cherwell District Council uses refuse vehicles with a length of 11.4m and the LHA has therefore stated that a swept path analysis for a vehicle of that length is required to demonstrate that those vehicles can safely and easily enter, turn and exit the site in a forward gear (taking into account the likely on street parking). This forms another reason for objection from the LHA.
- 9.40. Amended plans have been received which attempt to address the LHA's concerns, including refuse tracking plans and details regarding forward visibility. OCC Highways has been re-consulted. No comments have been received to date but any received will be reported to Planning Committee.
- 9.41. It has been noted by the LHA that a suitably located bin collection point would be required for plots to the north of the site (392-395) as these plots are not directly served from the adoptable highway and are located beyond an acceptable drag distance for refuse collections.
- 9.42. Regarding car parking, the LHA has stated that the proposed allocated parking provision is marginally lower than the county council's recommended parking standard in that three of the fifteen 2-bed houses are proposed to have one allocated parking space per unit, rather than two. This may lead to residents of those dwellings parking in visitor spaces. However, the LHA notes that this is unlikely to lead to significant problems related to overspill parking, and the proposed provision of 154 allocated spaces and 21 unallocated spaces for the 83 dwellings proposed is acceptable.
- 9.43. Off-street parking would be provided on driveways and in car-ports for the proposed houses and in parking courtyards for the proposed flats. The LHA states that all parking spaces meet the minimum dimensions set out in the county council's Design Guide for New Residential Developments.
- 9.44. Regarding cycle parking, the Transport Statement suggests that residents of the houses within the site are to provide their own cycle parking either within their car ports or within garden sheds to be 'installed by the resident'. The LHA advises this would not be acceptable and does not promote the use of sustainable transport amongst residents of the site. The LHA therefore requests that a planning condition is applied to any planning permission in order to secure the provision of residential cycle parking in line with the county council's cycle parking standards. However, sheds for cycle parking facilities are proposed for the dwellings without garages and this is displayed in the submitted plans. That said, it appears that elevational details of these sheds have not been submitted and this could be secured by condition of any permission given.

- 9.45. The proposed dwellings are located toward the eastern end of the site and the LHA states that they are beyond what is considered a reasonable walking distance to the nearest bus stops. The LHA therefore requests a condition which restricts occupation of any of proposed dwellings until the bus route within the wider allocation site is available for use, thereby ensuring that residents of the proposed dwellings have suitable access to a public transport service from the point of occupation. Given that such a condition was not requested on previous applications covering this site, Officers do not consider it reasonable to now condition this.
- 9.46. The public transport service contribution secured through the existing S106 for the site can be revised under a Deed of Variation taking into account the increase in dwelling numbers proposed.
- 9.47. The LPA notes that the highway network in the vicinity of the site experiences congestion problems, particularly at peak network hours. The LHA is particularly concerned about any significant impacts on Hennef Way arising from additional dwellings. However, the LHA accepts that traffic impact of an additional 23 dwellings over the number previously permitted is not likely to be perceptible, particularly given the proposed mix of dwellings which has a lower number of larger dwellings and an increase in the number of 1-2 bed dwellings.
- 9.48. This site is part of a larger development which has an older historical travel plan. Having regard to this existing travel plan and given the general history of the site it is not considered reasonable to ask the developer for additional travel plan measures related to this application or travel plan monitoring fees.

Conclusion

- 9.49. In light of the LHA's objections (inadequate details in relation to forward visibility and vehicular tracking for a refuse vehicle) the originally submitted proposals are not considered acceptable in highway safety terms. However, officers consider the amended plans have satisfactorily addressed these concerns. OCC Highways has been re-consulted and no comments have been received to date.

Ecology and Trees

Policy Context

- 9.50. Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making. Paragraph 99 of Circular 06/2005: Biodiversity and Geological Conservation states that: *"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision"*.
- 9.51. Paragraph 170 of the NPPF states that: *"The planning system should contribute to and enhance the natural and local environment by...minimising impacts on biodiversity and providing net gains in biodiversity."*
- 9.52. Policy ESD10 of the Cherwell Local Plan (2011-2031) Part 1 reflects the requirements of the Framework to ensure protection and enhancement of

biodiversity. The Authority also has a legal duty set out in the Natural Environment and Rural Communities Act 2006 (NERC 2006) which states that: *“Every public authority must in exercising its functions, must have regard... to the purpose of conserving (including restoring / enhancing) biodiversity.”*

- 9.53. Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1 requires new development to respect local topography and landscape features including significant trees, hedgerows and views. Policy ESD10 has similar requirements including the objective of protecting existing trees as well as increasing the number of trees overall within the District.
- 9.54. Policy Banbury 2 of the Cherwell Local Plan (2011-2031) also notes that development should retain and enhance significant landscape features (e.g. hedgerows) which are or may be of ecological value; and where possible, introduce new features to enhance and increase biodiversity in the area.

Assessment

- 9.55. Unfortunately, the Council's Ecologist has not provided comments as part of the consultation process. However, at the pre-application stage, the Ecologist stated that consideration should be given to how the proposal affects biodiversity on the site (particularly proposed diversity gain), and this should be fully outlined in an application.
- 9.56. An addendum to the ecological assessment produced in 2015 has been submitted alongside this application, which describes whether there are any changes to the conclusions of the previous ecological assessment. This note that the conclusions of the 2015 Ecological Impact Assessment and other associated reports remain valid and there is no reason to suggest that any ecological designations, habitats of nature conservation interest or any protected species will be significantly harmed by the proposals. The addendum goes on to note that the biodiversity benefits described previously will still be provided under the revised scheme. Officers see no reason to disagree with the assessment.
- 9.57. The application proposed the removal of a category B tree and the remaining trees are to be retained. It is set out in the submission that the removal of this tree will be mitigated through the planting of a number of new trees throughout the site. The Council's Arboriculturalist has raised no objections to these proposals as long as the trees to be retained are protected in accordance with the tree protection plan produced by Aspect Arboriculture, which can be conditioned.
- 9.58. The Arboriculturalist has stated that in terms of the tree planting, further details of the tree pit design are required. The Arboriculturalist has raised no objections to the proposed species to be planting. Where hard surfaces are in proximity to tree pits, the Arboriculturalist has stated that root barriers should be used to divert roots away from the hard surfaces.

Conclusion

- 9.59. The proposal would not adversely impact upon trees of high amenity value subject to works being completed as specified in the Arboricultural Report. Furthermore, subject to conditions, it is considered that the proposal would not cause adverse impacts to biodiversity.

Flooding and Drainage

Policy Context

- 9.60. Policy ESD6 of the Cherwell Local Plan (2011-2031) Part 1 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.
- 9.61. Policy ESD7 of the Cherwell Local Plan (2011-2031) Part 1 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

Assessment

- 9.62. Whilst the site is on Flood Zone 1 (land assessed as having a 1 in 100 or greater annual probability of river flooding), given that the site area is over 1ha, a Flood Risk Assessment is required.
- 9.63. A site-specific Flood Risk Assessment and Drainage Strategy (FRA) have been submitted alongside the application. The Environment Agency's flood maps indicate that none of the proposed new homes are within a higher risk flood zone and are within Flood Zone 1 where residential development is acceptable in principle subject to no increased flood risk elsewhere as a result of proposal. The FRA sets out that the proposals remain acceptable and that the previously approved surface and foul water drainage networks have sufficient capacity to accommodate the adjustments to the proposed site layout.
- 9.64. OCC Drainage has reviewed the documentation and they are content that the proposal will be able to adequately manage surface water generated by the additional development. Officers see no reason to disagree with this assessment.

Conclusion

- 9.65. Subject to compliance with the FRA and drainage strategy, the proposal would not increase flooding risk on or off the site.

Affordable Housing

Policy Context

- 9.66. Policy Banbury 2 of the Cherwell Local Plan (2011-2031) states that development on the site should make provision for 30% affordable housing and this is in line with the requirements of Policy BSC3 of the Cherwell Local Plan (2011-2031) Part 1. Policy Banbury 2 also states that provision should be made on site for extra care housing.

Assessment

- 9.67. The proposed scheme would ensure that 30% affordable housing would still be provided in line with requirements of Policies Banbury 2 and BSC3 of the Cherwell Local Plan (2011-2031) Part 1.
- 9.68. However, the Council's Strategic Housing Officer has raised concerns with the mix of affordable housing being provided on the site. Approval has been given to 6x 1 bed flats on the site to date, whereas the current proposals show those 6x 1 bed

flats and then 3x 2 bed flats and 4x 3 bed houses. The Strategic Housing Officer has requested that fewer flats are proposed and that more 2 or 3 bed houses are provided. Such changes would ultimately reduce the number of affordable units on the site overall (because apartments are less land hungry). Officers put this forward to the Strategic Housing Officer who stated that that they would still prefer fewer units for the 2 or 3 bed houses, especially as there is demand for 2 and 3 bed affordable houses locally and less demand for apartments locally.

- 9.69. The provision of affordable houses is a benefit to the proposals to be weighed in the balance. Officers note that this proposed scheme forms part of much larger scheme with a mix of dwellings. Furthermore, this application is proposing further smaller dwellings than previously approved on the site (albeit market housing). However, given the demand for additional 2 and 3 bed houses and the lack of demand for flats, the weight that can be given to this benefit is reduced.

Conclusion

- 9.70. The proposal would ensure that 30% affordable housing would still be provided on the site in line with the requirements of Policies Banbury 2 and BSC3 of the Cherwell Local Plan (2011-2031) Part 1, although for the reasons set out above, the weight to be attached to this benefit is reduced.

Infrastructure Provision

Policy Context

- 9.71. New development often creates a need for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect on local amenity and the quality of the environment. National planning policy sets out the principle that applicants may reasonably be expected to provide, pay for, or contribute towards the cost, of all or part of the additional infrastructure/service provision that would not have been necessary but for their development. Planning Obligations are the mechanism used to secure these measures.
- 9.72. Policy INF1 of the Cherwell Local Plan (2011-2031) Part 1 states that: “*Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities*”. Policy Banbury 2 lists some of the infrastructure requirements required including a new primary school, provision of onsite open space including play space, and community facilities including, ideally, an onsite community hall.
- 9.73. The Council has recently adopted a Supplementary Planning Document (SPD) setting out its position in respect of requiring financial and on site contributions towards ensuring the necessary infrastructure or service requirements are provided to meet the needs of development, and to ensure the additional pressure placed on existing services and infrastructure is mitigated. This is the starting point for negotiations in respect of completing S106 Agreements.

Assessment

- 9.74. Where on and off site infrastructure/measures need to be secured through a planning obligation (i.e. legal agreement) they must meet statutory tests set out in regulation 122 of the Community Infrastructure Ley (CIL) Regulations 2010 (as amended). These tests are that each obligation must be:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development;
- c) Fairly and reasonably related in scale and kind to the development.

9.75. Where planning obligations do not meet the above statutory tests, they cannot be taken into account in reaching a decision. In short, these tests exist to ensure that local planning authorities do not seek disproportionate and/or unjustified infrastructure or financial contributions as part of deciding to grant planning permission. Officers have had regard to the statutory tests of planning obligations in considering the application and Members must also have regard to them to ensure that any decision reached is lawful.

9.76. Having regard to the above, in the event that Members were to resolve to grant planning permission, a deed of variation/linking agreement to the S106 agreement under application reference 13/00159/OUT would be required. Full Heads of Terms will be included in the Written Updates for Members to consider and approve, and these will form the basis of the Council's position in respect of negotiating completion of the S106 Agreement. However, based on the consultation responses received and contributions secured in respect of the previous permission at the site, the following matters are likely to be included:

- Financial contribution to off-site outdoor and indoor sports provision;
- Financial contribution to off-site community hall facilities (i.e. enhancement of existing facilities in the area).
- Highways Matters and infrastructure
- Provision of waste and recycling services
- Affordable housing (discussed further above in a separate section)

Conclusion

9.77. A number of items would need to be secured via a deed of variation/linking agreement to the legal agreement relating to the original permission at the site with both Cherwell District Council and Oxfordshire County Council in order to secure an appropriate quality of development as well as adequately mitigate its impacts.

Other Matters

9.78. Thames Water has noted that, following investigations, there is *an inability of the existing water network infrastructure to accommodate the needs of this development proposal. Thames Water have contacted the developer in an attempt to agree a position on water networks but have been unable to do so in the time available and as such Thames Water request that a condition be added to any planning permission to overcome this issue. Such a condition will be attached should permission be granted.*

Human Rights and Equalities

9.79. The Human Rights Act 1998 ("HRA") sets out fundamental freedoms which have been laid out by the European Convention on Human Rights ("ECHR"). In making any decisions, Cherwell District Council ("the Council") should have due regard to and take into account any implications that may arise under the HRA. As a public authority, it is unlawful for the Council to act in a manner which is incompatible with the ECHR.

- 9.80. The rights under the ECHR which the Council views as being the most likely to affect planning matters are: Article 6 (the right to a fair trial); Article 8 (right to respect for private and family life); Article 14 (prohibition of discrimination); and Article 1 of the First Protocol (protection of property).

Article 8 and Article 1 of the First Protocol

- 9.81. Officers have considered the duties under both Article 8 and Article 1 of the First Protocol and have resolved that the application does respect the private and family life of neighbours and does not fail to protect the neighbours' property.

Duty under The Equalities Act 2010

- 9.82. S149 of the Equalities Act 2010 ("EA") sets out what is known as the Public Sector Equality Duty ("PSED"). Under the PSED, the Council, as a public authority, must have due regard to the need to, inter alia, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and has to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics to which the PSED refers are: (a) age; (b) disability; (c) gender reassignment; (d) pregnancy and maternity; (e) race; (f) religion or belief; (g) sex; (h) sexual orientation.
- 9.83. Officers have considered the application and resolved that none of the protected characteristics is affected or potentially affected by the application.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise. The NPPF supports this position and adds that proposals that accord with an up-to-date development plan should be approved and those which do not should normally be refused unless outweighed by other material considerations.
- 10.2. The Cherwell Local Plan (2011-2031) Part 1 is an up-to-date Local Plan and as such it is considered to attract full weight including its housing supply policies.
- 10.3. The site is allocated in the Cherwell Local Plan (2011-2031) Part 1 (Banbury 2) for residential development and permission has already been granted on the site for residential development as set out in the Relevant Planning History section of the report (section 4). Whilst the proposal would result in a greater number of dwellings on the wider site than the 600 dwellings referred to in the Policy Banbury 2, this number is not a strict limit and the additional 23 dwellings would only be a modest increase over this figure. It is therefore concluded that the provision of additional housing at the east of Southam Road site could be acceptable subject to other materials planning considerations, including compliance with Policy Banbury 2.
- 10.4. It is considered that the proposal would not cause demonstrable harm to the visual amenities of the area, nor would it materially diminish the quality of the overall approved scheme. Furthermore, it is considered that the proposal would result in an adequate standard of amenity for existing occupiers and proposed occupiers. In addition the proposal would not adversely impact on protected species or increase the flooding risk on or off the site.

- 10.5. OCC Highways has objected to the application as it has not been demonstrated that a refuse vehicle can safely and easily enter, turn and exit the site, and that adequate forward visibility splays and all bends can be achieved. However, further plans have been submitted to attempt to address the concerns of OCC Highways who have been re-consulted, but no comments have been received to date.
- 10.6. Thus, subject to no objections being raised from OCC Highways, it is considered that the proposed development would not conflict with the Development Plan and would not cause adverse harm. Thus, the application is recommended for approval subject to conditions and a deed of variation/linking agreement to the S106 agreement under application reference 13/00159/OUT.

11. RECOMMENDATION

**DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND ECONOMY
TO GRANT PERMISSION SUBJECT TO**

- 1. NO OBJECTIONS FROM OCC HIGHWAYS**
- 2. THE CONDITIONS SET TO FOLLOW IN A WRITTEN UPDATE (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY), AND**
- 3. THE COMPLETION OF A PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS SUBSTITUTED BY THE PLANNING AND COMPENSATION ACT 1991, AS SET OUT IN A WRITTEN UPDATE (AND ANY AMENDMENTS AS DEEMED NECESSARY)**

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