

**Case Officer:** Caroline Ford

**Applicant:** Cherwell District Council

**Proposal:** Pedestrian underpass

**Ward:** Bicester North And Caversfield

**Councillors:** Cllr Nicholas Mawer  
Cllr Lynn Pratt  
Cllr Jason Slaymaker

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

**Expiry Date:** 31 July 2019

**Committee Date:** 18 July 2019

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

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

##### **Proposal**

The proposal is for a pedestrian underpass to pass under the railway to the North West of Bicester. The proposal is to provide connectivity for pedestrians and cyclists between the two sides of the NW Bicester site which sit either side of the railway line contributing to reducing walking and cycling distances and reducing car use.

##### **Consultations**

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

- Bucknell Parish Council (other than raising some concern regarding flooding)
- CDC Environmental Protection
- Oxfordshire County Council – Transport and Drainage

The following have made **comments** on the application:

- Network Rail
- CDC Arboricultural Team
- Thames Valley Police Crime Prevention Design Advisor

1 letter has been received raising a concern if the pedestrian underpass were to replace the road tunnel.

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

The application site sits on the land allocated by Policy Bicester 1 for a zero carbon residential led development. The underpass is proposed under the current mainline London to Birmingham railway, which runs on an embankment to the north west of Bicester. The embankment is covered by trees and vegetation and there could be some ecological interest. The land itself is also potentially contaminated.

The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance as listed in detail at Section 8 of the report.

## **Conclusion**

The key issues arising from the application details are:

- Principle of development
- Design, and impact on the character of the area including trees
- Residential amenity
- Ecology impact
- Highway safety

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

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

## **MAIN REPORT**

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

- 1.1. The application site is situated to the North West of Bicester to the north of Aldershot Farm (which is accessed by a track which is also a bridleway) and south of the Bucknell Road. The application site is part of the existing mainline London to Birmingham railway and its associated embankment. It is currently isolated between agricultural fields with natural vegetation along the embankments.

### **2. CONSTRAINTS**

- 2.1. The application site is within the strategic development site allocated by Policy Bicester 1. It has a number of natural constraints including being under the railway and natural vegetation along the embankment. The site has the potential to be contaminated and a SSSI site is within 2km. The closest access to the site is the bridleway track which accesses Aldershot Farm and the Bucknell Road as a main vehicular route.

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

- 3.1. The development proposed is a pedestrian underpass under the railway line. This would be in the form of a reinforced concrete portal unit 13.5m in length, 5.1m wide to be positioned under the railway with associated alterations to the embankment including the provision of wing walls. Lineside security fencing would also be required. The design has been progressed with ongoing negotiation with Network Rail through their technical GRIP process.
- 3.2. A pedestrian underpass in the position shown is identified through the Masterplan within the Supplementary Planning Document (SPD) for NW Bicester and is identified as an infrastructure need through Policy Bicester 1. The delivery of the pedestrian underpass is currently planned to take place when the main road tunnel is to be provided. Ongoing discussions are taking place with Network Rail with a view to achieving a 100 hour track possession at Easter 2021 to allow the pedestrian underpass and main road tunnel to be constructed.

#### 4. RELEVANT PLANNING HISTORY

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

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
15/00003/SO	SCREENING OPINION - non-motorised users underpass connecting the sites for NW Bicester Application 1, NW Bicester Application 2 and NW Bicester New A4095 Strategic Link Road	Screening Opinion not requesting EIA

4.2. The application is not accompanied by an Environmental Impact Assessment.

4.3. Whilst there is limited planning history for this specific proposal, the principle of an underpass in this location has been proposed through the Masterplan for NW Bicester (now embedded in the SPD).

#### 5. PRE-APPLICATION DISCUSSIONS

5.1. No formal pre-application discussions have taken place with regard to this proposal but Officers have been involved in the evolution of the design of the underpass and the vehicular bridge with Network Rail through their technical approval process.

#### 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 11.06.2019, although comments received after this date and before finalising this report have also been taken into account.

6.2. One comment has been received from Councillor Nick Mawer:

- Object if there is any suggestion that the pedestrian underpass is a substitute for any revised vehicular underpass as laid out in the original plans for the urban boulevard

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

#### 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. BICESTER TOWN COUNCIL: **No comments** received.

7.3. BUCKNELL PARISH COUNCIL: **concerns** regarding flooding of the area since it is very low lying. Otherwise, no objections.

## CONSULTEES

- 7.4. OXFORDSHIRE COUNTY COUNCIL: **Support** this application for the pedestrian/cycle underpass at NW Bicester which will provide a key sustainable transport link between the sites north and south of the railway.

OCC TRANSPORT: **No objection** subject to conditions to seek full details of the path through the underpass and a construction traffic management plan. (Other comments and key points are referred to where necessary in the appraisal).

OCC LEAD LOCAL FLOOD AUTHORITY: **No objection** subject to additional information to ensure full technical drainage audit.

- 7.5. NETWORK RAIL: Network Rail is aware of this proposed underpass. The Council are in discussions with Network Rail re. the proposal and the underpass is subject to Network Rail sign off and a two party Underbridge Agreement and Property Agreement.
- 7.6. CDC ENVIRONMENTAL PROTECTION: **No comments** with regard to matters of noise, contaminated land, air quality, odour and light.
- 7.7. CDC LANDSCAPE: **will not be commenting** on the application.
- 7.8. CDC ARBORICULTURE: **comments** that there are no plans giving reference to the trees clearly on site. An arboricultural report, impact assessment and method statement/ tree protection plan must be provided.
- 7.9. THAMES VALLEY POLICE CRIME PREVENTION DESIGN ADVISOR: **comments** that the applicants should be referred to the principles and standards of the police's Secured by Design (SBD) scheme. The incorporation of SBD principles and standards would help the proposals meet the requirements of the NPPF and the PPG guidance on Design.

## **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
- ESD1 – Sustainable Development Principles
- ESD6 – Sustainable Flood Risk Management
- 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
- Policy Bicester 1 – North West Bicester Eco-Town

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

- C8 – Sporadic Development in the Open Countryside
- C28 – Layout, design and external appearance of new development

#### 8.3. Other Material Planning Considerations

- North West Bicester Supplementary Planning Document (February 2016)
- Planning Policy Statement 1 supplement: Eco Towns
- 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 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)

#### 8.4. Council Corporate Priorities

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

The three corporate priorities are to ensure the District is “Clean, Green and Safe”, that it supports “Thriving Communities & Wellbeing”, and is a District of “Opportunity & Growth”. All three priorities are of significance to the determination of planning applications and appeals. Below these priorities, the key actions which are of most relevance to planning applications and appeals are: (1) deliver the Local Plan; (2) increase tourism and increase employment at strategic sites; (3) develop our town centres; (4) protect our built heritage; (5) protect our natural environment; (6) promote environmental sustainability; (7) promote healthy place shaping; (8) deliver the Growth Deal; (9) delivery innovative and effective housing schemes; and (10) deliver affordable housing.

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

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

### **9. APPRAISAL**

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

- Principle of development
- Design, and impact on the character of the area including trees
- Residential amenity
- Ecology impact
- Highway safety

## Principle of Development

### *Policy Context*

- 9.2. Policy Bicester 1 of the Cherwell Local Plan is a policy to allocate land to the North West of Bicester for a new zero carbon mixed use development including 600 homes. It confirms that planning permission will only be granted for development in accordance with a comprehensive masterplan for the whole area. In relation to this proposal, it identifies a key infrastructure need at the site that proposals should include appropriate crossings of the railway line to provide access and integration across the North West Bicester site. This includes changes and improvements to Howes Lane and Lords Lane to facilitate integration of new development with the town. In addition, there are a number of key site specific design and place shaping principles including new footpaths and cycleways provided to link with existing networks, the wider urban area and community facilities with a legible hierarchy of routes to encourage sustainable modes of travel. Policy SLE4 confirms that all development, where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling. Policy ESD17 also seeks to ensure that green infrastructure network considerations are integral to the planning of new development and that proposals should maximise the opportunity to maintain and extend green infrastructure links to form a multi-functional network of open space, providing opportunities for walking and cycling and connecting the towns to the urban fringe and the wider countryside beyond.
- 9.3. The NPPF confirms the role of planning in promoting sustainable transport including to ensure that opportunities to promote walking, cycling and public transport use are identified and pursued. It goes on to confirm that applications for development should give priority first to pedestrian and cycle movements as well as to facilitate access to high quality public transport and create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles.
- 9.4. In order to respond to the requirement for a comprehensive Masterplan for NW Bicester and following negotiation, A2 Dominion proposed a masterplan, which was submitted to the Council accompanied by a raft of assessment and environmental information. This was agreed and embedded within the NW Bicester Supplementary Planning Document. The SPD expanded on the requirements of Policy Bicester 1 and the Eco Towns PPS supplement setting out the standards required at NW Bicester and it therefore supports the implementation of Policy Bicester 1.
- 9.5. The Masterplan for NW Bicester identifies two crossings of the railway line. A main road tunnel (which is linked to the realignment of Howes Lane), which appears elsewhere on the Committee agenda and a pedestrian underpass. The position of the underpass was chosen taking into account the level of the embankment whilst being far enough away from the road tunnel to justify a second crossing. The SPD sets out that cycling and walking will be encouraged and supported to be the first choice of transport in new development. This is important in meeting the modal shift targets at NW Bicester, which require at least 50% of trips originating in the development to be made by non-car means with the potential for this to increase to 60% of trips. In addition, given the size of the NW Bicester site and with the aim to increase connectivity between the land uses on either side of the railway embankment, create walkable neighbourhoods and to support the achievement of walking distance targets to key facilities (schools and local centres), the provision of a separate pedestrian underpass to the west of the main road tunnel was considered to be important.

## *Assessment*

- 9.6. Given the above policy context, it is considered that the principle of a pedestrian underpass is acceptable within the position applied for. The provision of an underpass in this location will contribute to meeting the policy requirements at NW Bicester in terms of promoting walking and cycling through the provision of necessary infrastructure, securing connected communities in the long term (once development is constructed around the position of the underpass) and to meet the policy requirements for appropriate crossings of the railway to provide access and integration. Lighting is shown within the underpass and it is 5.1m wide such that it can accommodate pedestrians and cyclists.
- 9.7. Until development is constructed around the position of the underpass it is possible that it could sit in a relatively isolated position for some time. However in order to construct the underpass, a track possession from Network Rail is required. There are time and financial efficiencies by both the underpass and the road tunnel being installed within the same track possession (currently targeted for April 2021). As such, it is considered justified to grant planning permission for the underpass notwithstanding the potential for it to remain unconnected to the wider transport network for a period of time, if it is financially possible to install both tunnels at the same time.

## Design and impact on the character of the area including trees

### *Policy Context*

- 9.8. Policy Bicester 1 of the Cherwell Local Plan Part 1 requires a high quality development and for proposals to comply with Policy ESD15. It requires a well-designed approach to the urban edge which relates development to its rural setting and affords good access to the countryside. In addition and as referred to above, footway and cycle way links are to be supported. Policy ESD15 confirms that development will be expected to complement and enhance the character of its context and be designed to deliver high quality safe, attractive, durable and healthy places to live and work. Policy ESD13 advises that development will be expected to respect and enhance the local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Policy ESD10 requires the protection and enhancement of biodiversity and the natural environment by protecting trees, ecology and achieving a net biodiversity gain.
- 9.9. The NW Bicester SPD seeks the provision of Green Infrastructure and in accordance with Policy Bicester 1, 40% of the total gross site area is planned to be green infrastructure. The linking of green infrastructure to the countryside is important and pedestrian routes are part of this as well as linking the different types of green infrastructure to be provided.

## *Assessment*

- 9.10. In terms of landscape impact, the underpass would sit under the railway line and therefore the main elements visible would be the wing walling at the entrances on either side and required security fencing. Until development surrounds the position of the underpass, the feature could appear out of place given its generally rural location currently, however in the long term, once the rest of NW Bicester builds out, the underpass would be surrounded by development and in all likelihood used regularly as an important part of the site infrastructure. It would therefore be visually acceptable in the long term when it sits as part of the strategic extension at NW Bicester. The security fencing is a little unfortunate but necessary given the proximity of the railway for safety reasons. In terms of the finish, the internal tunnel

would be concrete, and the external wing wall finish would be also be concrete, with it then being landscaped to tie into the existing embankment, which is likely to be a grassed finish. This is considered to be acceptable, particularly as the design has evolved to shorten the tunnel to the minimum required length for amenity reasons, albeit this has resulted in the provision of wing walls. An appropriate colour finish could be secured for the security fencing by condition.

- 9.11. The embankment is currently surrounded on both sides by tree and vegetation cover. No tree assessment has been provided to demonstrate the level of trees needing to be removed, however sections of this will need to be removed and this will impact the tree cover in this area as well as potentially biodiversity. The Masterplan Environmental Report identified the railway line as a green corridor which is largely unaltered and remains so other than the position of the two railway line crossings. The principle of an underpass has been established through the Masterplan and this would inevitably involve the loss of the rail side tree and vegetation cover. It is however considered appropriate for a condition to be imposed to require the provision of a tree survey to identify the trees to be removed and to provide an arboricultural method statement and tree protection plan to ensure that appropriate protection for retained trees is provided where necessary. In this regard, whilst there may be some conflict with Policy ESD10 in terms of the loss of the tree and vegetation cover in this area, the benefit of this proposal in terms of the integration and connectivity it will provide in the long term is considered to outweigh this policy conflict. In addition, the suggested condition would ensure that retained vegetation would be protected during the construction period.

#### Residential amenity

##### *Policy*

- 9.12. Policy ESD15 of the Cherwell Local Plan Part 1 requires development proposals to consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space. The NPPF confirms that places that have a high standard of amenity for existing and future users should be created.

##### *Assessment*

- 9.13. The underpass would not directly impact upon the amenity of nearby existing residential properties and therefore the proposal would comply with the above mentioned policies. The Masterplan shows parcels for residential development close to the position of the underpass on the southern side of the railway line (to the north are open space areas) and the underpass would not impact on the amenity of any proposed residential dwellings. The use of the underpass would enable the development either side of the railway line to be accessed, but this is a benefit and any planned development either side would be accommodated within the context of the underpass being there (or planned). It is not considered that the provision of the underpass would significantly increase safety issues for nearby farms in the short term as there are already accesses to the farms and the underpass would be between two fields. Overall, the proposal is considered to be acceptable in residential amenity terms and therefore to comply with the above mentioned policies.



## Ecology Impact

### *Legislative context*

- 9.14. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.
- 9.15. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 9.16. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 9.17. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
  - (2) That there is no satisfactory alternative.
  - (3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 9.18. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

### *Policy Context*

- 9.19. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological

value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

- 9.20. Paragraph 175 states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 9.21. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 9.22. Policy ESD10 of the Cherwell Local Plan 2011-2031 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 9.23. Policy ESD11 is concerned with Conservation Target Areas (CTAs), and requires all development proposals within or adjacent CTAs to be accompanied by a biodiversity survey and a report identifying constraints and opportunities for biodiversity enhancement.
- 9.24. These policies are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.25. The Planning Practice Guidance dated 2014 post dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

### *Assessment*

- 9.26. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development

It also states that LPA's can also ask for:

- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
- an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')

9.27. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site forms a railway embankment covered by trees/vegetation and it is close to the existing watercourse, which runs in a culvert under the embankment. The site therefore has some potential to be suitable for protected species. No biodiversity survey has been submitted with the application and so at this stage it has not been demonstrated that the proposal will not cause harm to any protected species or its habitat as a result of the development proposed.

9.28. In reviewing the Environmental Report submitted to support the Masterplan, the ecological chapter identified that the tributary of the River Bure which runs under the railway embankment supported a small number of common and widespread aquatic invertebrate species and that the embankment itself was likely to support a small population of reptiles. The position of the underpass is also close to the defined 'dark corridor' identified for nocturnal species such as bats due to its ecological value. In terms of mitigation, the report identifies that (i) the most valuable features and ecological corridors would be retained and enhanced, (ii) removal of trees and hedgerows to occur outside of the bird nesting season, (iii) the need for a Construction Environmental Management Plan to protect the environment including biodiversity as well as species specific mitigation such as avoidance of the bird nesting season and the reptile hibernation period (and with pre-construction checks and related mitigation), and (iv) tree protection, amongst other measures.

9.29. The Masterplan Green Infrastructure and Landscape Strategy identifies the underpass as being a key convergence point where the two green loops (leisure route and linear park) meet. This and the fact it is identified through the Masterplan mean that in principle the provision of an underpass in this location is concluded to be acceptable in ecological terms.

9.30. The site conditions around the railway have not changed since the previous environmental work was completed – the embankment remains covered by trees and vegetation and the watercourse remains close to the proposed position of the underpass. Whilst the work itself is out of date, it is likely that the baseline conditions already known have not changed significantly. In the circumstances, it is considered acceptable for checks to be carried out prior to development commencing as a condition of the planning permission and for conditions to be used to ensure protection of the environment and biodiversity to be established through a biodiversity construction management plan. Ecological checks would be required in order for the developer to comply with the legislation as above and through their own due diligence requirements prior to development commencing (the development is likely to be delivered by Network Rail on behalf of Oxfordshire County Council).

9.31. In order for the local planning authority to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where protected species are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England would be likely to grant a

licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.

- 9.32. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.
- 9.33. In this case, if protected species were to be identified and a licence required, it is considered that it is likely a case could be made to justify the grant of the licence given the public benefits of this proposal and that there is no suitable alternative (the rest of the embankment is likely to be similarly affected in the same way as this site). The indication from the previous environmental work is that protected species are unlikely to be affected by this scheme.
- 9.34. In the circumstances, the proposal is therefore considered to comply with Policy ESD10 of the CLP 2031 Part 1, advice contained in the PPG and Natural England's Standing Advice, and section 15 of the National Planning Policy Framework.

#### Highway Safety

##### *Policy Context*

- 9.35. As mentioned previously, Policy Bicester 1 identifies an infrastructure need to include appropriate crossings of the railway line to provide access and integration across the North West Bicester site. There is also policy support (for example SLE4 and the NPPF) to promoting sustainable transport options.

##### *Appraisal*

- 9.36. The Highway Authority raises no objection to the proposal subject to the imposition of conditions. It is confirmed that the development would provide a key sustainable transport link between the sites, reducing walking and cycling distances and reducing car use. In addition, it is a necessary piece of infrastructure to provide the trip containment levels assumed within the transport work for NW Bicester. OCC confirm that as the path through the underpass would be a strategic link, OCC would expect it to be offered for adoption eventually and it would therefore have to be built to OCC adoptable standards. OCC confirm that the dimensions of the subway are acceptable albeit they request additional information via condition to ensure that the footway will be constructed to adoptable standards. They also confirm that bollards will be required to prevent vehicles being driven underneath (bollards are shown on the plans) and that until the adjacent cycle/ pedestrian network is in place, the underpass would need to be secured (this has been verbally confirmed).
- 9.37. OCC point out that planning permission has not been granted for the sites the underpass will connect and that there is no detailed layout of the routes it will connect to. It is agreed that future links will need to be appropriately designed to link into the underpass taking into account safety and personal security. In this regard, matters such as the lighting on the paths leading to the underpass will need to be agreed later.
- 9.38. Two highway conditions are recommended – a condition to require a construction traffic management plan which is agreed as being necessary but has been expanded to consider construction management more generally. The second being to request details of the path through the underpass. Whilst this is agreed as being necessary, it does not need to be a pre-commencement planning condition as

recommended as the footway may be installed later and so the recommendation is that the detail is agreed prior to any footway being installed.

- 9.39. On the basis of the above, it is considered that the proposal is acceptable on highway safety grounds and would be a positive addition to the site in promoting and providing the necessary infrastructure for sustainable modes of transport.

#### Other Matters

- 9.40. The need to promote healthy and safe communities is important and the NPPF provides guidance on this within chapter 8. It confirms that places should be created which promote social interaction and that allow for easy pedestrian and cycle connections within and between neighbourhoods, are safe and accessible so that crime and disorder and the fear of crime do not undermine the quality of life or community cohesion, and to enable and support healthy lifestyles.
- 9.41. It is considered that the provision of the underpass contributes to the promotion of a healthy and safe community. It will link the two sides of the NW Bicester site either side of the railway infrastructure and provide pedestrian and cycle connections that will support the opportunity for individuals to make healthy lifestyle choices which includes opening the site up to access all provided areas of green infrastructure and other community facilities including sports pitches. In terms of safety, the underpass has been shortened as far as possible (which has resulted in the wing walls on the embankment), which should improve the amenity for users and it is also proposed to be lit. The treatment either side of the underpass would also require careful consideration in this respect. It has also been confirmed that until the underpass is required to be used (i.e. connected either side), it would be secured to avoid trespass. The proposal is considered acceptable in these terms. The Secured by Design guidance advises that new pedestrian subways should be avoided, but that subways should be well lit with vandal resistant lighting, be as wide and as short as possible with a clear line of sight to the exit. Entrance/ exit walls should also help to reduce the opportunity for inappropriate loitering and wall finishes can be used to enable easy removal of graffiti. Given the above assessment, the proposal has taken on board this guidance as far as possible in the design of the underpass.
- 9.42. The physical construction of the underpass including access for construction vehicles and workers is still being negotiated; however it is possible that it may require use of the bridleway to the south of the site. As this matter is not yet confirmed, a construction management plan should be sought for agreement.
- 9.43. The Lead Local Flood Authority raises no objections but do seek additional information to ensure a full technical drainage audit. Drainage requirements will be important but can be the subject of a condition as the scheme is progressed.
- 9.44. Councillor Mawer raised concern that the underpass was instead of the proposed road tunnel. The underpass is in addition to the proposed road tunnel and provides pedestrian and cycle accessibility in a second location under the railway line.
- 9.45. The site is sat on the NW Bicester site, which is required to meet a number of standards given it is allocated to meet zero carbon development and was first identified as an Eco Town. This development contributes to the standards given it contributes towards the necessary highway infrastructure, linking green spaces, being a piece of infrastructure that will assist in meeting the modal shift targets and helps to promote healthy lifestyles and accessibility to local services. The development is therefore considered to be acceptable in terms of its contribution towards the eco town standards.

- 9.46. Contaminated Land is a recorded site constraint. The Council's Environmental Protection Team raises no objections regarding this matter and given the nature of the development, it is unlikely to be a constraint in terms of the development.

#### Human Rights and Equalities

- 9.47. 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.
- 9.48. 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 6*

- 9.49. Officers have considered these matters and have resolved that, whilst there are potential rights in play, these will not be affected by the application due to the application being publicised by way of neighbour letter, site notice and in the local press giving affected third parties the opportunity to comment on the application and their views taken into account when considering the application. In this case any comments/concerns raised by third parties are listed above and have been taken into account in assessing the application. Furthermore should a third party be concerned about the way the application was decided they could complain to the Local Government Ombudsman or if they question the lawfulness of a decision can appeal to the Courts for Judicial Review of the application.

#### *Article 8 and Article 1 of the First Protocol*

- 9.50. 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*

- 9.51. 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.
- 9.52. 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. The proposal complies with the relevant Development Plan policies and guidance listed at section 8 of this report, and so is considered to be sustainable development. The proposal would facilitate the provision of infrastructure to support

sustainable transport options and would therefore assist in meeting the requirements around creating healthy communities. Whilst there are some outstanding matters, the principle of the development is considered to be acceptable and these matters can be dealt with through the imposition of planning conditions. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

## **11. RECOMMENDATION**

**RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND ECONOMY TO GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY)**

### CONDITIONS

#### **Time Limit**

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

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

#### **Compliance with Plans**

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Drawing number 38616-1501-102 Rev P01

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

#### **Arboriculture**

3. No development shall take place until an Arboricultural survey undertaken in accordance with BS:5837:2012 and all subsequent amendments and revisions is carried out, submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of identifying and retaining important trees on the site in accordance with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

4. No development shall take place until an Arboricultural Method Statement and Tree Protection Plan has been submitted to and approved in writing by the Local Planning Authority. The existing trees to be retained shall be protected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of development and / or demolition and shall be maintained until all equipment machinery and surplus material has been removed from the site. Nothing shall be stored or placed within the areas protected by the barriers erected in accordance with this

condition and the ground levels within those areas shall not be altered, nor shall any excavations be made, without the written consent of the Local Planning Authority.

Reason: To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

### **Ecology**

5. Prior to, and within two months of, the commencement of the development, the site shall be thoroughly checked by a suitably qualified ecologist to ensure that no protected species, which could be harmed by the development, have moved on to the site. Should any protected species be found during this check, full details of mitigation measures to prevent their harm shall be submitted to and approved in writing by the Local Planning Authority prior to any development taking place. Thereafter the development shall be carried out in accordance with the approved mitigation scheme.

Reason : To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

6. No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include as a minimum:
  - a) Risk assessment of potentially damaging construction activities;
  - b) Identification of 'Biodiversity Protection Zones';
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
  - d) The location and timing of sensitive works to avoid harm to biodiversity features including reptiles and nesting birds;
  - e) The times during construction when specialist ecologists need to be present on site to oversee works;
  - f) Responsible persons and lines of communication;
  - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
  - h) Use of protective fences, exclusion barriers and warning signs

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within Section 15 of



the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

### **Construction Management**

7. No development shall take place, including any works of demolition until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The statement shall provide for at a minimum:
- a) The parking of vehicles of site operatives and visitors;
  - b) The routing of HGVs to and from the site;
  - c) Loading and unloading of plant and materials;
  - d) Storage of plant and materials used in constructing the development;
  - e) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - f) Wheel washing facilities including type of operation (automated, water recycling etc) and road sweeping;
  - g) Measures to control the emission of dust and dirt during construction;
  - h) A scheme for recycling/ disposing of waste resulting from demolition and construction works;
  - i) Delivery, demolition and construction working hours;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason: To ensure the environment is protected during construction in accordance with Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

### **Drainage**

8. No development shall take place until a drainage strategy for the underpass to include how it will be drained, evidence of soakaway tests and evidence to show the drainage solution can be accommodated in the capacity of the proposed drainage solution and a management and maintenance plan, has been submitted to and approved in writing by the Local Planning Authority. Thereafter the drainage works shall be carried out and completed in accordance with the approved strategy and implemented prior to the first opening of the pedestrian underpass.

Reason: To ensure that sufficient capacity is made available to accommodate the new development and in order to avoid adverse environmental impact upon the community in accordance with Government guidance contained within the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

### **Waste**

9. No development shall take place until a Site Waste Management Plan, targeting zero waste to landfill, shall be submitted to and approved in writing by the Local Planning Authority. The approved Site Waste Management Plan shall thereafter be implemented in accordance with the approved details.

Reason - to ensure the appropriate management of waste in accordance with Government guidance contained within the Eco Town PPS and the National Planning Policy Framework. This information is required prior to the commencement of the development as it must be implemented from the point the development is commenced.

### **Transport**

10. Prior to the provision of any footway/ cycleway within the pedestrian underpass, full details of the path shall be submitted to and approved in writing by the Local Planning Authority. These details shall include the path construction, materials, drainage, lighting, signage, markings, and bollards to prevent use by motor vehicles. The path shall be constructed in accordance with the approved details and shall be retained for use as a pedestrian/cycle underpass thereafter.

Reason: In the interests of highway safety and to comply with Government guidance in Section 12 of the National Planning Policy Framework.

### **Design**

11. Prior to the installation of the security fencing hereby approved, full details of the colour finish of the security fencing shall be submitted to and approved in writing by the Local Planning Authority. The security fencing shall be finished in accordance with the approved colour finish and retained as such thereafter.

Reason: In the interests of visual amenity and to accord with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1 and Saved Policy C28 of the Cherwell Local Plan 1996.

### **Unexpected contamination**

12. If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.

Reason: To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

### **Sustainability**

13. The development shall be constructed to meet a minimum of CEEQUAL Standard 'Very Good'.

Reason – To ensure the development reaches high standards of sustainability in accordance with Policy Bicester 1 of the Cherwell Local Plan 2011 – 2031 Part 1 and Planning Policy Statement 1: Eco Towns.