

**Land North And West Of Bretch Hill Reservoir Adj To
Balmoral Avenue Banbury**

19/01811/OUT

Case Officer: Clare Whitehead

Applicant: Lone Star Land Limited

Proposal: OUTLINE - Erection of up to 70 homes, public open space, and other infrastructure, with all matters reserved except access

Ward: Banbury Calthorpe And Easington

Councillors: Cllr. Colin Clarke, Cllr. Kieron Mallon, Cllr. Tony Mephram

Reason for Referral: Major development

Expiry Date: 2 December 2019

Committee Date: 14 November 2019

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: REFUSE PERMISSION

Proposal

Outline planning permission is sought for up to 70 dwellings including 30% affordable housing. All matters reserved except access which is proposed from Balmoral Avenue to the south of the site. The site is on the eastern edge of Banbury, to the north of the Broughton Road and surrounded on three sides by existing residential development.

Consultations

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

- Banbury Town Council, Thames Valley Police, Thames Water, CDC Strategic Housing, CDC Ecology, OCC Highways, OCC Lead Local Flood Authority

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

- CDC Planning Policy, CDC Building Control, CDC Landscape Services, OCC Education, Legal Services Rights of Way, CDC Community Infrastructure

19 letters of objection have been received and 1 petition of objection with 17 signatures.

1 letter of support has been received.

Planning Policy and Constraints

The site is allocated for residential development in the non-statutory Cherwell Local Plan (Policy H1b). This non-statutory allocation remains a material planning consideration. The proposal would assist in the delivering of new homes and meeting overall district housing requirements, including affordable housing to 2031.

The site is identified to be Grade 5 (the lowest quality) agricultural land and there are records of protected species including badgers on site and within 250m of the site. There are a great number of well established and healthy trees across the site.

The application has been assessed against the relevant policies in the adopted Local Plan as well as the National Planning Policy Framework (NPPF) 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
- Site layout and design principles
- Impact on the character and appearance of the area
- Highways
- Residential amenity
- Affordable housing
- Flood Risk and drainage
- Ecology
- Infrastructure
- Other matters

The report looks into the key planning issues in detail, and Officers conclude that the proposal is unacceptable for the following reasons:

1. The indicative layout is not acceptable as it fails to adequately take account of policy requirements relating to recreation, outdoor sports provision, children's play space, affordable housing tenure and suitable layout for parking and existing rights of way.
2. The proposal would be poorly connected to services and facilities via pedestrian and cycle links to the surrounding area including public transport links and routes to local schools.
3. The submitted Flood Risk Assessment is inadequate due to contradictions in the calculations and methodology.
4. There is a net loss of biodiversity across the site as a result of the development and conflicting requirements in terms of retained woodland, enhancement of a priority habitat and biodiversity against providing public open space and safe accessible linkages to existing development.
5. Absence of a satisfactory Planning Obligation.

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 located on the western edge of Banbury to the immediate west of Bretch Hill. The site comprises approximately 2.8 hectares and is land formerly used for agricultural purposes associated with Bretch Farm but is now scrub. The physical remains of Bretch Farm lie in the south-west corner of the site with a number of buildings in ruin.
- 1.2. To the west is an existing water tower and an underground reservoir under the ownership and control of Thames Water. On three sides the site is bounded by existing residential development.
- 1.3. The site is generally flat with a slight drop in land level from west to east and the site is effectively on the top of the hill. There is also a significant fall on the northern boundary of the site and the rear gardens of properties on Harlech Close. The fall means that the site sits approximately 2.5 metres above these rear gardens.

- 1.4. The proposed access to the site would be off the existing gated entrance from Balmoral Avenue to the south of the site. Balmoral Avenue is a steep road on rising and from the Broughton Road to the south.

2. CONSTRAINTS

- 1.5. The land is predominantly enclosed by hedgerows and well-established mature trees. There is a copse of trees in the northern corner which extends in a linear fashion along the northern boundary backing on to dwellings on Harlech Close. This woodland is classified as deciduous woodland priority habitat.
- 2.1. A public right of way (ref 120/24/10) runs along the northern boundary to the northeast corner to join a hard-surfaced footpath stretching into Bretch Hill. The current footpath within the site is unmarked, not levelled or laid to hardstanding or surfaced and is unlit.
- 2.2. There are a number of notable protected species which have been recorded as present on the site or within 250m of the site. Within 2km of the site is a Site of Special Scientific Interest (Neithrop Fields Cutting).

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The planning application seeks outline consent for residential development with all matters reserved except access. The proposal comprises the following elements:
- Erection of up to 70 dwellings;
 - 30% affordable housing;
 - Vehicular access from Balmoral Avenue;
 - Pedestrian access from Balmoral Avenue and via public right of way to Bretch Hill;
 - 0.68 hectares of public open space;
 - Informal play space;
 - Sustainable urban drainage systems; and
 - Other supporting infrastructure.
- 3.2. The application proposes vehicular and pedestrian access to be taken from Balmoral Avenue to the south of the site. This is a continuation of the existing road. In addition, the illustrative plan shows the public right of way running along the northern boundary of the site would remain in situ and as is, to provide a link through to Bretch Hill.
- 3.3. Whilst the layout is not submitted for approval, an illustrative layout plan has been submitted to show one way that the development could be delivered. The development proposed comprises up to 70 homes, both houses and flats. A mix has been provided for illustrative purposes alongside the layout. It is acknowledged in the Planning Statement that the figures submitted are illustrative only and the mix for affordable units would be set by an agreed S106 agreement and the mix for market housing set through the relevant reserved matters application.
- 3.4. The illustrative layout shows the retention of the woodland to the north and this includes an area of public open space and informal play space. The layout does not include a LAP and a LEAP.
- 3.5. In terms of density, the proposed 70 dwellings are provided on approximately 1.52 hectares of developable land resulting in a density of 46 dwellings per hectare.

4. RELEVANT PLANNING HISTORY

- 4.1. There is no planning history directly relevant to the proposal.

5. PRE-APPLICATION DISCUSSIONS

- 5.1. Pre-application advice was given in January 2018 (17/00170/PREAPP refers). It was advised that the site was allocated through Policy H1b of the non-statutory Cherwell Local Plan. The designation is a material planning consideration but carries little weight. The report concluded that careful consideration would need to be given to the landscape impact of the proposed development and design and layout of the proposed development to ensure that satisfactory visual amenity (both perceived and actual) was achieved for future residents. Subject to these matters being satisfactorily resolved, and to the assessment of access and traffic matters and other technical matters, the principle of development was considered to be acceptable.
- 5.2. Limited advice was also given on the affordable housing requirements, developer contributions, landscape and visual impact, residential amenity, impact on trees and access and transport matters.
- 5.3. Advice was given on the requirement to provide suitable access from the site to existing bus stops in that any application should ensure dwellings are within 400m of bus stops in Bretch Hill. It was considered that bringing the existing public right of way across the northern boundary of the site up to a suitable standard to encourage people to use it would likely be too expensive and as it passes through woodland this would be difficult to light and people would avoid it due to personal safety concerns. The officer at the time expressed a preference to providing a footpath connection to Balmoral Avenue to the north which would allow access to bus stops at Chepstow Gardens. This link would also provide access towards schools and local shops.
- 5.4. The pre-application advice concluded that, although there was no pressing need for the release of further housing for development, the presumption in favour of sustainable development would need to be applied. Taking into account the previous allocation of the site and the apparent wider limited landscape impacts it was officer opinion that the development of the site could possibly be supported. This was on the basis that it could be demonstrated that development could be appropriately accommodated taking into account the site's constraints.

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 (amend as appropriate). The final date for comments was **4 November 2019**, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. The comments raised by third parties are summarised as follows:
- The council has a demonstrated 5 year land supply and land is not required for further housing
 - The land is not allocated in the Cherwell Local Plan
 - The development would spoil the landscape and be visible from the surrounding area
 - Unacceptable increase in traffic along Balmoral Avenue, through Bretch Hill and Broughton Road to the detriment of highway safety

- Balmoral Avenue (south) was not designed or built to cope with construction vehicles and extra traffic serving 70 additional dwellings. Furthermore, the road is currently in a state of disrepair which would be made worse by construction traffic and the regular use of another 155 vehicles associated with the new dwellings.
- The proposed access would create issues for the residents at the top of Balmoral Avenue (south) in exiting their properties in a vehicle as they need to turn out across the road. Extra traffic on this road would make that manoeuvre dangerous
- Alternative access should be made from Balmoral Avenue (north) connecting to Bretch Hill
- It would exacerbate the on-street parking problem already present on Balmoral Avenue (south) and its three side roads
- Concern about traffic conditions and parking arrangements during the construction phase and during adverse weather conditions such as snow and ice
- Schools in the area are at maximum capacity
- A play area on the site would attract anti-social behaviour and place heavier resources on the Safer Neighbourhood Policing Teams
- Increase in air pollution, noise pollution and light pollution
- The type of housing proposed would not satisfy local housing needs for social housing
- Concern regarding surface water drainage and whether there is capacity in the existing network for additional foul and surface water drainage
- Concern regarding the underground reservoir and the network of water mains laid across the site
- Pressure on the local broadband network
- Detrimental impact on ecology and protected species
- There are many informal footpaths across the site which have been used for in excess of thirty five years and so could now be legally considered to be public rights of way and the application fails to take account of these
- Development on this land would make use of an otherwise useless, underused piece of land and deter anti-social behaviour.

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.

TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. BANBURY TOWN COUNCIL: **Objects** on the grounds of a) adverse impact on the local highway network as Broughton Road junction is not suitable for the additional traffic generated; b) adverse impact on wildlife and ecology; c) the site is not within the adopted Local Plan and CDC has its 3 year housing supply so the additional housing is not needed.

CONSULTEES

7.3. CDC PLANNING POLICY: **No objections** to the principle of development on the site.

- 7.4. CDC STRATEGIC HOUSING: **Comments.** Strategic Housing would not seek flats for the affordable housing units with their preference being maisonettes for 1 bed units and houses for 2 bed units, due to the issues associated with the management of the flats, the service charges linked to the communal areas and the suitability of the property type with regards to housing families. The proposed Affordable Housing Schedule and Illustrative Site Layout will therefore need to be re-worked in order to replace the flats.
- 7.5. CDC BUILDING CONTROL: **No objections** subject to a level approach in accordance with Part M should be provided to all new dwellings.
- 7.6. CDC LANDSCAPE SERVICES: **No objection** in terms of visual impact. The officer comments that the methodology for the report is not clear and that the visual receptor assessment is to be better explained. This information has been passed to the agent to clarify.
- 7.7. **However**, the officer made the following comments: Requested to see wireframe visualisations and additional recorded viewpoints assessments. Comments were also offered on the illustrative site layout as follows: there is currently no provision for a LAP or a NEAP. The trigger for a LAP is 10 units and a LEAP is 50 units. A public right of way runs along the northern boundary and given that this route runs through the tree root protection area a “no-dig” path in accordance with BS5837 is required. Plots likely to be overshadowed by trees would cause a future issue when occupiers wish to remove or cut back that trees in increase light to internal living spaces in the dwellings. There is currently an insufficient number of street trees to improve visual amenity and climate amelioration. Any underground attenuation must be designed so as not go under play areas or public open space as this disrupts their usage when closed for maintenance.
- 7.8. CDC ECOLOGY: **Objects.** In general the ecological appraisal has considered all the features required and makes some valid recommendations as regards protected species and habitat on site.
- 7.9. The report suggests badgers are likely absent from the site. However, it is known that there is an active sett on the immediately adjacent land. The need to retain foraging access for the sett would need to be taken into consideration when designing a layout. The illustrative layout does not address this and would need to be changed. Also, additional surveys should be undertaken and liaison with the badger group carried out prior to layouts being finalised.
- 7.10. The woodland on the site is a priority habitat (Section 41 NERC Act) and whilst it is proposed to be retained there is little provision on site in the illustrative layout for any amenity space and concern is raised whether the aim to enhance the woodland is possible alongside the minimisation of loss of the woodland. The woodland would be heavily used for recreation and this aspect should be considered when it comes to assessing potential impacts – similarly for the buffer areas and other important habitats on site to be retained (e.g. hedgerows). If these are amenity areas, questions are raised at how well they would function as green corridors for wildlife. This is not addressed in the illustrative layout or any Landscape and Ecological Management Plan.
- 7.11. It is also mentioned that there would be a need for a full lighting strategy to ensure dark corridors are maintained and the retained woodland is not affected by light.
- 7.12. Any boundaries on site need to be wildlife permeable. A minimum of the equivalent of one bat or bird provision per dwelling is required.

- 7.13. The ecologist's main concern is the net loss for biodiversity identified on the site, which is demonstrated in the submitted ecological appraisal. Local policy is to seek a net gain in biodiversity from all development and recently guidance to seek a minimum of 10% net gain was agreed by CDC. There is a significant shortfall in biodiversity units with this proposed development. A financial contribution is not sufficient to discharge net gain responsibilities. Currently there is no proposal put forward as to how the net loss for biodiversity is to be addressed and on the grounds of this lack of information the Ecology Officer objects.
- 7.14. CDC COMMUNITY INFRASTRUCTURE: **Comments.** We seek contributions in line with the adopted 2018 SPD developer contributions guidance. These are:
- Off-site Outdoor Sports Contribution – 70 dwellings x £2,017.03 per dwelling contribution = £141,192.10 towards the development of a new artificial pitch at Hanwell Fields playing fields in Banbury.
 - Off-site Indoor Sports Contribution – 70 dwellings x 2.49 avg. people per dwelling x £335.32 per person contribution = £58,446.28 towards the development of an indoor tennis centre at Hanwell Fields playing fields in Banbury.
 - Community Hall Contribution – 70 dwellings x 2.49 avg. people per dwelling x £520 contribution per person = £90,636 towards improvements at the Sunshine Centre in Banbury.
- 7.15. CDC HOUSING STANDARDS (PRIVATE HOUSING SECTOR): **No response at the time of writing this report.** Any response received prior to the committee meeting will be included in the written updates.
- 7.16. CDC RECREATION AND LEISURE: **No response at the time of writing this report.** Any response received prior to the committee meeting will be included in the written updates.
- 7.17. CDC WASTE AND RECYCLING: **No response at the time of writing this report.** Any response received prior to the committee meeting will be included in the written updates.
- 7.18. PUBLIC ART: **No response at the time of writing this report.** Any response received prior to the committee meeting will be included in the written updates.
- 7.19. OXFORDSHIRE COUNTY COUNCIL HIGHWAYS: **Objects.** The site as proposed has insufficient pedestrian and cycle links to the surrounding residential area, bus stop and amenities. In addition, the application contains insufficient and contradictory information surrounding the proposed use of the public right of way along the northern boundary as a pedestrian link. Footpath 120/24 would require significant improvements to be utilised as a credible pedestrian link to the wider Bretch Hill area and Balmoral Avenue (north), none of which are referenced in the application documents,
- 7.20. If despite of OCC Highway's objection permission is granted then prior to the issuing of planning permission OCC require a S106 legal agreement including an obligation to enter into a S278 agreement to mitigate the impact of the development plus planning conditions and informative notes (mentioned below).
- 7.21. The following obligations are requested:

- Public transport services - £70,000 (£1,000 per dwelling) – towards the strengthening and enhancing of the B5 bus service which runs through Bretch Hill
- Public rights of way - £5,000 – to improve the surfaces of all routes within 2km and to take account of the likely increase in use by residents of the development as well as new or replacement structures like gates, bridges and seating, sub-surfacing and drainage to enable easier access, improved signing etc.
- Strategic highway contribution - £89,674 – a) Bridge Street/Cherwell Street eastern corridor improvements and b) A361 Bloxham Road/Queensway/Springfield Avenue junction movements.
- Developer to enter into a S278 agreement to secure mitigation/improvement works including:
 - A dropped kerb crossing facility to be provided at the origin of footpath 120/24 where it joins onto Bretch Hill.
 - Provision of the site access and pedestrian footways as shown by a plan agreed with Highway Authority.
 - Improvement of Public Right of Way 120/24 into a “blacktop” footpath which is illuminated to OCC standards. The footpath should connect the development to Bretch Hill and Balmoral Avenue north or Harlech Close.

7.22. In other comments, the overall conclusions of the Transport Statement are accepted. However, it is difficult to know whether the Queensway Roundabout should have been excluded from the analysis without seeing how the applicant reached that decision. It is noted that the Balmoral Avenue/Broughton Road junction is within capacity.

7.23. If consent is granted planning conditions are requested for the provision of new permanent public footpaths, the provision of a link to Balmoral Avenue North, full details of access between the land and the highway, travel pack information and submission of a Construction Travel Management Plan. In addition, an informative is recommended outlining the requirements of the road agreements team in terms of standards and provisions relating to access widths, surfacing, private and visitor parking, visibility splays and vehicle tracking plans.

7.24. OXFORDSHIRE COUNTY COUNCIL LEAD LOCAL FLOOD AUTHORITY: **Objects** on the following grounds. The calculation files contradict the Flood Risk Assessment in the methodology used to define flow and volume. In addition, opportunities to maximise SuDS techniques on site have been missed.

7.25. OXFORDSHIRE COUNTY COUNCIL EDUCATION: **No objection** subject to S106 contributions as follows:

- Primary education - £326, 326 – for the expansion of primary capacity serving the Banbury area. This is based on 21.39 being the number of primary pupils expected to be generated from the development. The estimated cost per pupil of expanding a primary school is £15,256.
- Secondary education (including sixth form) - £469, 255 – towards a new secondary school in Banbury. This is based on 15.06 being the number of secondary and sixth form pupils expected to be generated from the development. The estimated cost per pupil of building a new 600-place secondary school is £31,159.

7.26. The above contributions are based on a unit mix of:

9 x 1 bed dwellings

18 x 2 bed dwellings

30 x 3 bed dwellings

13 x 4 bed dwellings

7.27. THAMES VALLEY POLICE: **Comments.** Raises concern about the content of the Design and Access Statement which does not address crime prevention. To ensure that the opportunity to design out crime is not missed the following condition is requested:

“No development shall commence until details of the measures to be incorporated into the development demonstrating how ‘Secured by Design (SBD)’ principles and standards on physical security of dwellings will be integrated have been submitted to and approved in writing by the authority. The development shall be carried out in accordance with the approved details and shall not be occupied or used until written confirmation of compliance with SBD is received by the authority.”

7.28. Thames Valley Police go on to state that any reserved matters application would need to consider the following:

- Appropriate and sustainable natural surveillance to/from the dwellings and across the site and along any footpaths
- Adequate lighting for entrance route and parking to recommended standards.
- Provision of defensible space where the front aspect of the dwellings adjoins public/semi-public space.
- Installation of appropriate boundary treatments with toppings that help to prevent climbing.
- A holistic approach to landscaping, to ensure none are compromised during the lifetime of the development.
- Utility meters installed where access can be gained without entering private spaces
- I note that from the Outline illustrative site layout shows the dwellings parking spaces are next to the side elevation of many dwellings I would like to see windows to active rooms on these elevations looking over parking spaces.
- Adequate access control measures for the apartment blocks.

7.29. THAMES WATER: **Objects.** The proposed development proposes to build on operational land owned by Thames Water Utilities and as such the applicant does not have permission to build on this land. The objection will remain until such a time as Thames Water are reassured that their operational land will remain unimpacted by the proposed development.

7.30. In addition, Thames Water has identified an inability of the existing foul water network infrastructure to accommodate the needs of the development. If consent is granted the following condition is required:

“No properties shall be occupied until confirmation has been provided that either:-

a. All wastewater network upgrades required to accommodate the additional flows from the development have been completed: or

b. A housing and infrastructure phasing plan has been agreed with Thames Water to allow additional properties to be occupied. Where a housing and infrastructure plan is agreed, no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan.”

- 7.31. With regard to surface water drainage, Thames Water advises that if the developer follows the sequential approach to the disposal of surface water then they hold no objection. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required.
- 7.32. With regard to existing water network infrastructure, Thames Water has identified an inability of the network to accommodate the needs of this development proposal. As such, if consent is granted they require the imposition of the following condition.

“No properties shall be occupied until confirmation has been provided that either:-

- a. all water network upgrades required to accommodate the additional flows from the development have been completed; or*
- b. a housing and infrastructure phasing plan has been agreed with Thames Water to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan.”*

- 7.33. The proposed development is located within 5 metres of a strategic water main that Thames Water do not permit the building over or construction within 5m of this water main and recommend a condition to reinforce this. As there is proposed development within 15 metres of a strategic water main a condition is recommended which requires a piling method statement be submitted and approved prior to any such work being undertaken.
- 7.34. There are water mains (non-strategic) crossing the or close to the site and Thames Water do not permit building over or construction within 3 metres of these mains. Finally, the proposal is within 15 metres of a Thames Water underground water asset and as such recommend an informative be attached to any approval granted. The informative refers the developer to the Thames Water guide “Working near our assets” to ensure any work is in line with the necessary processes to be followed when working above or near Thames Water assets.
- 7.35. *Officer comment: The agent has confirmed and provided details of the applicant’s land ownership and evidence that the appropriate notice was served on Thames Water. Thames Water have been reconsulted with this information.*
- 7.36. Response to second consultation: *“We are not disputing the validity of the application as a notice 1 has been served on Thames as noted by the agent. However, we do dispute their statutory declaration of truth, which as the agent states is a matter for the lawyers and is being disputed. Ultimately the applicant won’t be able to build on land that they do not own, or which they do not have an agreement to do so on, as such whilst permission could be granted, it cannot be implemented.”*
- 7.37. **CAMPAIGN TO PROTECT RURAL ENGLAND OXFORDSHIRE: No response at the time of writing this report.** Any response received prior to the committee meeting will be included in the written updates.

- 7.38. CLINICAL COMMISSIONING GROUP (CCG): **No response at the time of writing this report.** Any response received prior to the committee meeting will be included in the written updates.
- 7.39. LEGAL SERVICES RIGHTS OF WAY OFFICER: **Comments** that the proposal does not appear to require any diversion to the Banbury public footpath numbered 120/24 which extends along the northern boundary of the site. Its retention on its current legal alignment with additional planting and screening is welcomed. Requests an informative reminding the applicant
- 7.40. FINANCE (NEW HOMES BONUS AND BUSINESS RATES): **No response at the time of writing this report.** Any response received prior to the committee meeting will be included in the written updates.
- 7.41. *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.*
- 7.42. *In this particular instance, any 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)

- Policy PSD1: Presumption in Favour of Sustainable Development
- Policy BSC1: District Wide Housing Distribution
- Policy BSC2: The Effective and Efficient Use of Land – Brownfield Land and Housing Density
- Policy BSC3: Affordable Housing
- Policy BSC4: Housing Mix
- Policy BSC10: Open Space, Outdoor Sport and Recreation Provision
- Policy BSC11: Local Standards of Provision – Outdoor Recreation
- Policy ESD1: Mitigating and Adapting to Climate Change
- Policy ESD2: Energy Hierarchy and Allowable Solutions

- Policy ESD3: Sustainable Construction
- Policy ESD6: Sustainable Flood Risk Management
- Policy ESD7: Sustainable Drainage Systems (SuDS)
- Policy ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- Policy ESD15: The Character of the Built and Historic Environment
- Policy Banbury 10: Bretch Hill Regeneration Area

NON-STATUTORY CHERWELL LOCAL PLAN 2011

- Policy H1b: Allocation of sites for residential development

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- Policy C28: Layout, design and external appearance of new development
- Policy C30: Design control

8.3. Other Material Planning Considerations

- Cherwell Residential Design Guide SPD
- Cherwell Developer Contributions SPD
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- EU Habitats Directive
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)

9. APPRAISAL

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

- Principle of development
- Site layout and design principles
- Impact on the character and appearance of the area
- Highways
- Rights of Way, access and pedestrian connectivity
- Residential amenity
- Affordable housing
- Flood Risk and drainage
- Ecology
- Infrastructure
- Other matters

Principle of Development

9.2. Planning law requires that planning decisions are made in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 12 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. Proposed development that conflicts with the development plan should be refused unless other material considerations indicate otherwise. Cherwell has an up to date Local Plan and can demonstrate a 5 year housing land supply. However, the NPPF is a significant material consideration.

NPPF

- 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.

Development Plan

- 9.4. The Development Plan comprises the saved policies of the 1996 adopted Cherwell Local Plan (CLP1996) and the 2015 adopted Cherwell Local Plan (CLP 2031 Part 1). The policies important for determining this application are referenced above.
- 9.5. Policy PSD1 of the Cherwell Local Plan 2011-2031 accords with the NPPFs requirement for sustainable development and that planning applications that accord with policies in the statutory Development Plan will be approved without delay.
- 9.6. The Cherwell Local Plan 2011-2031 seeks to allocate sufficient land to meet District Wide Housing needs. The overall housing strategy is to focus housing growth at the towns of Bicester and Banbury.
- 9.7. Policy H1b of the Non-Statutory Cherwell Local Plan identifies the site as suitable for residential development of approximately 70 dwellings. This document was never formally adopted as part of the Development Plan but it does hold some weight in terms of decision making in the District, albeit more limited. The adopted Part 1 Local Plan does not allocate sites under the threshold of 100 residential units, thus not considering this site.

Assessment

- 9.8. The 2018 AMR (December 2018) demonstrates that the District presently has a 5.2 year housing land supply for the period 2019-2024. In addition to this, the Secretary of State for Ministry of Housing, Communities and Local Government issued a written statement on 12 September 2018 containing a "*temporary change to housing land supply policies as they apply in Oxfordshire*". It sets out that the Oxfordshire authorities will only need to demonstrate a 3 year housing land supply and not 5 years so that the authorities can focus their efforts on the Joint Statutory Spatial Plan. As such, policies for determining the application are only considered to be out of date where a 3 year supply of deliverable sites cannot be demonstrated.
- 9.9. Whilst the Council can demonstrate a 3 year housing land supply, significant weight is still afforded to benefits of providing housing to contribute towards meeting the requirements of Local Plan Part 1, meeting the housing needs of the area and contributing towards meeting the need of the Oxfordshire Growth deal.
- 9.10. Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development. The NPPF sets out the economic, social and environmental roles of planning in seeking to achieve sustainable development: contributing to building a strong, responsive and competitive economy; supporting strong, vibrant and healthy communities; and contributing to protecting and enhancing our natural, built and historic environment.
- 9.11. In terms of the economic impact, the proposed development would create jobs both directly and indirectly. Socially, the development would provide both market and affordable housing whilst environmentally it would provide new planting and some

enhancements for a range of habitats available for wildlife and the setting of the site. It is considered that the proposed development fulfils the requirements of paragraph 8 of the Framework and can be considered to be sustainable. However, these aspects are explored in greater detail through the coming paragraphs.

Conclusion

- 9.12. Therefore, considering (1) the site allocation (albeit it holds limited weight), (2) the physical location of the site in Banbury and it being bounded by existing residential development on three sides, (3) that the proposal would assist in the delivering of new homes and meeting overall district housing requirements, including affordable housing to 2031 and (4) the presumption in favour of sustainable development, it follows that the development is acceptable in principle.

Site Layout and Design Principles

Policy Context

- 9.13. Policy ESD15 of the CLP 2015 provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. It seeks to secure development that would complement and enhance the character of its context through sensitive siting, layout and high quality design meeting high design standards and complementing any nearby heritage assets. The National Planning Policy Framework is clear that good design is a fundamental to what the planning and development process should achieve.
- 9.14. Policy BSC10 of the Cherwell Local Plan Part 1 2011-2031 outlines the requirements for open space, outdoor sport and recreation provision. Policy BSC11 sets out the local standards of provision for outdoor recreation including children's play space.
- 9.15. The Council's Residential Design Guide SPD seeks to ensure that new development responds to the traditional settlement pattern, character and context of a village. This includes the use of continuous building forms along principle routes and adjacent to areas of the public open space, the use of traditional building materials and detailing and form that respond to the local vernacular.

Assessment

- 9.16. The application is in outline with all matters reserved except for access. The application is accompanied by an indicative concept layout. The layout as submitted is not considered to embrace the principles as set out in the 2018 adopted Residential Design Guide. The issues, briefly, are as follows:
- There is no active surveillance from proposed dwellings onto the footpath which is broadly parallel to the northern boundary and terminates at the north/north-eastern corner,
 - There is no active surveillance from proposed dwellings onto the public open space,
 - No LAP nor LEAP is provided on site (requirement of proposals for dwellings over 50 units),
 - Frontages are dominated by parking,
 - The entrance to the site in particular is dominated by car parking spaces,
 - There is no pedestrian or cycle link from Balmoral Avenue south to north,
 - Flats for affordable housing are not supported and strategic housing require maisonettes and houses instead (see paragraphs 9.71 to 9.74). Since 18 of

the 70 units are proposed to be provided as flats, this brings into question whether 70 units can be delivered at the site.

- 9.17. Whilst design and materials would be assessed under a reserved matters application it is considered that, given the location of the site on the edge of the town and adjacent existing residential development, appropriate levels of control should be secured at any such detailed application stage, to ensure compliance with design principles reflective of those within the area and wider district.
- 9.18. The proposed landscaping, with retention of the existing tree lined boundaries, woodland and introduction of landscape buffers would provide a softer edge to the proposed development allowing for a transition to the rural landscape to the west.
- 9.19. That said, whilst every application would need to be assessed on its own planning merits at the time of the of any such application, officers are confident of the level of control that could be safeguarded through ensuring broad compliance with any approved plans secured by way of appropriate condition attached to any such permission.

Conclusion

- 9.20. It is considered that the submitted indicative layout would not be acceptable, and although this plan would not form part of any approval of the current application even if supported, it must be mentioned that the proposed layout fails to provide a well-designed, safe, accessible and well-connected environment with an appropriate tenure mix, and means that it is unlikely that 70 dwellings could be achieved on the site. The application and accompanying indicative layout fail to adequately take into account the policy requirements relating to recreation and children's play space. In addition, it fails to ensure a safe and overlooked means of pedestrian and cycle route connection to the existing development. As such, the proposal is contrary to Policies BSC10, BSC11 and ESD15 of the adopted Cherwell Local Plan 2011-2013 and government guidance within the NPPF.

Impact on the character and appearance of the area

Policy context

- 9.5. 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 NPPG 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. Further, Paragraph 130 of the NPPF states that permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.
- 9.6. 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;
- Optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks;
- 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.

9.21. Policy ESD15 of the Cherwell Local Plan Part 1 states that: *“New development proposals should:*

- *Contribute positively to an area’s character and identity by creating or reinforcing local distinctiveness and respecting local topography, including skylines, valley floors, significant trees, historic boundaries, landmarks, features or views.*
- *Respect the traditional pattern routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings. Development should be designed to integrate with existing streets and public spaces, and buildings configured to create clearly defined active public frontages.”*

9.22. Policy ESD13 of the Cherwell Local Plan Part 1 states that: *“Development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Proposals will not be permitted if they would:*

- *Cause undue visual intrusion into the open countryside;*
- *Cause undue harm to important natural landscape features and topography;*
- *Be inconsistent with local character;*
- *Harm the setting of settlements, buildings, structures or other landmark features;*
- *Harm the historic value of the landscape.”*

9.23. 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 and Saved Policy C8 seeks to limit sporadic development beyond the built limits of settlements.

9.24. Saved Policy C33 states the Council will seek to retain any undeveloped gap with is important in preserving the character of a loose knit settlement structure or maintaining the setting of heritage assets.

9.25. The Cherwell Residential Guide SPD (2018) builds on the above policies and provides a framework to deliver high quality locally distinctive development.

9.26. The Non Statutory Local Plan also contains relevant policies as set out below:

Policy EN31 (Countryside Protection) (like its equivalent policy C9 in the Adopted Cherwell Local Plan 1996) states that beyond the existing and planned limits of the towns of Banbury and Bicester, development of a type, size or scale that is incompatible with a rural location will be refused.

9.27. Policy EN34 (Landscape Character) sets out criteria that the Council will use to seek to conserve and enhance the character and appearance of the landscape through the control of development. Proposals will not be permitted if they would:

- *cause undue visual intrusion into the open countryside*
- *cause undue harm to important natural landscape features and topography*
- *be inconsistent with local character*
- *harm the setting of settlements, buildings, structures or other landmark features*
- *harm the historic value of the landscape*

Assessment

9.28. Given the site's location on the edge of the town, its rural location and on top of the hill, the proposed development has the potential to cause harm and each of these criteria needs to be carefully considered.

9.29. The western boundary to the site is heavily treed and with well-established mature hedgerow providing a strong visual barrier to the wider open countryside beyond the site. The site visually is well-contained by tree-lined boundaries and being bounded on three sides by existing residential development. It is also dominated by the adjoining water tower and telecommunications tower.

9.30. The application is accompanied by a Landscape and Visual Impact Assessment (LVIA) produced by Mood Landscape Ltd which seeks to introduce the principle of development into the context of the existing landscape character, visual environment and landscape related policy to assess the ability of the site to integrate future development. In terms of the visual assessment carried out by Mood Landscape, fieldwork was undertaken to identify several viewpoints in the immediate and wider setting of the site.

9.31. Within the Oxfordshire Wildlife & Landscape Study the site is identified as being adjacent the 'Farmland plateau' landscape type. Farmland plateau landscape type are identified as being:

- Level or gently rolling open ridges dissected by narrow valleys and broader vales,
- Large, rectangular arable fields enclosed by low thorn hedges and limestone walls,
- Rectilinear plantations and shelterbelts,
- Sparsely settled landscape with few nucleated settlements,
- Long, straight roads running along the ridge summits.

9.32. As noted above the site is a 'greenfield' site set at the edge of Banbury. It is described that the site is consistent with some of the key characteristics of the farmland plateau character area. It is a geometric elevated plateau with wooded rectilinear plantations of field maple, ash and oak on its boundaries. However, it has some distinct differences to the neighbouring farmland plateau character including the imposing water tower and mobile telephone mast on the site boundary and close proximity of neighbouring houses, which gives the site an urban fringe character and heavily dilutes any farmland character.

9.33. Although the site itself is not within the farmland plateau character area, the western boundary area of the site forms the eastern boundary of this character area and therefore the impact on the adjoining character area is relevant to the study and is categorised as being of medium sensitivity. The proposed development would bring

the built environment closer to the boundary of the character area. The current transitional zone that the site provides between the existing housing in Bretch Hill and the farmland plateau would change in character. However, this is the only example of a transition zone being between the built form and the character area and the close proximity of housing to the edge of the character area is considered to be typical of the character along this boundary.

- 9.34. The LVIA claims that the development would make a positive contribution to the character of the site area as it directly addresses and enhances an untidy fringe of the town and would help absorb the impact of the water tower and mobile phone mast in the urban fabric of the town. This coupled with the development bringing the boundary of the built form in line with the boundaries to the north and south represents a negligible overall impact on the farmland plateau character area and would not result in a significant impact on the character area.
- 9.35. The Landscape Visual Impact Assessment concludes that *“the site is heavily influenced by the surrounding housing and most notably the adjoining water tower and mobile phone mast, which are detracting features and dominate the view across the site. These necessary but overbearing urban influences coupled with the unkempt rough grassland create a site, which is typically urban fringe in character. The addition of properties and the associated infrastructure within the site will change its character from being urban fringe to urban”*.
- 9.36. The Council's Landscape Officer (CLO) has assessed the proposals and accompanying LVIA and associated assessment of key viewpoints. The CLO raises no objections. In summary, he largely agrees with the part of the LVIA conclusion as stated above but identifies that further wireframe visualisations and additional recorded viewpoint assessments from View Point E are required in order to fully satisfy the criteria. The visual receptor at view point E is described as “HIGH” in terms of sensitivity (rather than medium) and because of this the Landscape Architect requests at least another recorded view towards the site from the highest elevation. Another recorded view between this viewpoint and the field hedgerow is required. On receipt of this information and that the landscape impact is at a satisfactory level, there is no reasonable or sustainable objection on put forward on this basis.
- 9.37. The CLO goes on to offer feedback on the illustrative layout although it should be noted that this does not form part of the decision. Sufficient landscape buffers protect the trees and woodland to the north from encroaching development although plots that are overshadowed by trees would cause future issue when occupiers wish to fell or cut back trees to increase light to their properties. Overall there is an insufficient number of street trees to improve visual amenity and climate amelioration. There is currently no provision for a LAP or a LEAP the triggers for both are 10 units and 50 units respectively. These issues are due for consideration with the submission of any reserved matters application but it is worth highlighting the downfalls at this juncture, particularly as the need to provide a LAP and/or LEAP will have an impact on the number of dwellings that can be delivered on the site.

Conclusion

- 9.38. Officers consider that residential development of this site is generally acceptable in terms of the impact upon the character of the area and wider open countryside. This is demonstrated by a satisfactory Landscape Visual Impact Assessment although more wireframe visualisations are required at one viewpoint. Any harm that would be caused to the wider landscape setting would not be so significant to warrant a reason to refuse the application.

Highway safety and vehicular access

Policy context

- 9.39. The NPPF (Para. 108) states that the planning system should actively manage patterns of growth in support of the achievement of promoting sustainable transport. However, notes that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.
- 9.40. The NPPF (Para. 108) advises that in assessing specific applications for development, it should be ensured that:
- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
 - b) safe and suitable access to the site can be achieved for all users; and
 - c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 9.41. Both Policies ESD15 and SLE4 of the CLP 2031 reflect the provision and aims of the NPPF. Policy ESD15 of the CLP 2031 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”*; whilst Policy SLE4 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”*.
- 9.42. Policy TR7 states that: *‘Development that would regularly attract large commercial vehicles or large numbers of cars onto unsuitable minor roads will not normally be permitted’*.

Assessment

- 9.43. All matters are reserved except access. The development would include a new access from Balmoral Road (south) to serve the new housing. This would extend from the existing highway where there is currently a field access at the end of the highway. Pedestrian footpath would also be included with the access connecting with the existing footpath on Balmoral Avenue.
- 9.44. The Local Highway Authority (LHA) advises the proposed vehicular access is acceptable based on the information submitted. In terms of traffic impact, the overall conclusions of the Transport Statement are accepted however it is difficult to know whether Queensway Roundabout should have been excluded from the junction analysis without being party to the reasoning behind its exclusion. The calculations to determine that the roundabout should not be subject to the junction analysis should be included in the transport statement. This information has been requested of the agent/applicant and will be updated to members at the committee meeting. Nevertheless, the LHA is content with the methodology used to generate the final trip generation figures and it is noted that the Balmoral Avenue/Broughton Road junction is within capacity.
- 9.45. The NPPF (Para. 109) states that: *‘Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway*

safety, or the residual cumulative impacts on the road network would be severe'. The LHA raises no objection to the application on the basis of highway safety.

- 9.46. The LHA also requests financial contributions to Bridge Street/Cherwell Street eastern corridor improvements. A361 Bloxham Road/Queensway/Springfield Avenue junction improvements, enhancement of public transport services by addition extended route options, hours and weekend hours to the B5 bus service on Bretch Hill and a rights of way contribution towards mitigation measures to footpaths within 2km of the site.

Conclusion

- 9.47. The LHA concludes that the proposal would not have a significant adverse impact upon the safe and efficient operation of the highway network subject to conditions, S106 contributions and an obligation to enter into a S278 agreement. On that basis the proposal complies with Local Plan Policy ESD15 in this regard and government guidance within the NPPF.
- 9.48. Whilst officers acknowledge the concerns of the local residents in respect of traffic flow through the village at peak times, given that it is considered that the proposals would not result in a significant increase in traffic movements officers see no reason to disagree with the LHA's assessment.

Rights of Way, access and pedestrian connectivity

Policy Context

- 9.49. The National Planning Policy Framework outlines three overarching objectives being economic, social and environmental. From a social perspective the NPPF discusses achieving sustainable development means supporting "strong, vibrant and healthy communities.... By fostering a well-designed and safe built environment". At paragraph 102(c) the NPPF requires transport issues to be considered at the earliest stages of development proposals so that opportunities to promote walking, cycling and public transport use are identified and pursued".
- 9.50. At paragraph 122 section c) the NPPF states that planning decisions should support development which make efficient use of land, taking into account "the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit car use".
- 9.51. Local Plan Policy SLE4 relates to improved transport and connections. It supports the NPPF where it states; "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."
- 9.52. Local Plan Policy Banbury 10 requires the layout of new development to enable a high degree of integration and connectivity with the existing communities and to support improve walking and cycling connections to the town centre.
- 9.53. The Cherwell Residential Design Guide SPD gives advice on routes for pedestrians and cyclists and states they "should be safe, direct, attractive and legible". The SPD sets out guidance on how developments should respond to the site context and this includes where can access and connection to the wider network be gained and whether there are existing movement routes that should be retained. The SPD also poses questions about how can the scheme connect into the surrounding street and

footpath/cycleway network and how does the site relate to existing public transport routes.

- 9.54. In addition, Oxfordshire County Council Residential Design Guide requires all developments of more than 50 homes to be served by at least an hourly bus service and for homes to be within 400m walkable distance of a bus stop.
- 9.55. Policy 34 of LTP4 states that “Oxfordshire County Council will require the layout and design of new developments to proactively encourage walking and cycling, especially for local trips, and allow developments to be served by frequent, reliable and efficient public transport”. One of the ways this is done is “ensuring that developers promote and enable cycling and walking for journeys associated with new development, including through the provision of effective travel plans”.

Assessment

- 9.56. A public right of way (footpath 120/24) follows the northern boundary of the site connecting the open countryside to Bretch Hill. The footpath is currently unsurfaced, unlit and runs along the tree line adjacent the boundary and then through the woodland to the northeast. The path is currently a muddy track, and in places is difficult to distinguish as a path because of the vegetation on and around it.
- 9.57. The site as proposed has insufficient pedestrian and cycle links to the surrounding residential area, bus stops and amenities. The nearest bus stops are in Bretch Hill as the bus stop on Broughton Road serves 4 buses a day and cannot be considered a credible bus service. The bus stops at Chepstow Gardens and Hampden Close on Bretch Hill are a 1 mile walk away using the Broughton Road access if no other credible pedestrian access is provided at the north of the site. These bus stops would be within 400m of the site if the public right of way is retained and upgraded as a pedestrian and cycle link or if a footpath is provided to join the development to Balmoral Avenue north.
- 9.58. In order to achieve the County Council’s requirement for dwellings to be within 400m walking distance of a bus route the public right of way would need to be retained and utilised. However, given its current state, it is considered that the public right of way would require significant improvements to enable it to be utilised as a credible pedestrian link to the wider Bretch Hill area and Balmoral Avenue (north). The public right of way appears to be retained but this is shown only as a thin line marked on the indicative site layout. No improvements to the public right of way, or creation of a new footpath to Balmoral Avenue north, is referenced in the application documents. The application contains insufficient and contradictory information surrounding the retention of the footpath and connection to the wider area. On this basis it cannot be demonstrated that the dwellings on the development would be within 400m walking distance of an established bus route.
- 9.59. Oxfordshire County Council objects to the application on this basis. Development of the site would need to include provision for strong cycle and pedestrian links. Particularly from Balmoral Avenue north to south and onward to the Broughton Road. Unfortunately, this has not been implemented into the proposals as there is no pedestrian and cycle link to the wider residential area besides the Broughton Road access.
- 9.60. In addition to its retention and upgrading the route would need to be subject to “active surveillance” from the proposed dwellings. The indicative layout would not allow this to happen and would therefore not foster the creation of a safe route, but the indicative is not submitted for approval in itself. That said, whether or not the indicative layout provides for such is immaterial. Whatever layout comes forward,

natural and/or active surveillance would also require the felling of trees and parts of the woodland to allow the footpath to be opened up. This would contradict the proposal to retain the trees and woodland as per the Arboricultural Retention Plan. As the wooded area is a Priority Habitat a careful balance would need to be achieved as to how much, if any, of it could be removed.

- 9.61. The opening up of the public right of way to make it safer and more accessible, particularly through the woodland area, would be detrimental to ecology and biodiversity. The need to light the footpath would have an impact on species using the tree lined boundary as a foraging and migrating route.
- 9.62. Safeguarding the priority habitat and biodiversity net gain is a priority in planning and must be balanced against the need to firstly deliver much needed housing and then providing sustainable, safe and accessible connections to the existing built environment and facilities.

Conclusion

- 9.63. For the reasons set out above, the site as proposed has insufficient pedestrian and cycle links to the surrounding residential area, bus stops and amenities. The application contains insufficient and contradictory information surrounding the proposed use of the public right of way along the northern boundary as a pedestrian link. In view of the lack of information it cannot be demonstrated that the proposed development complies with national and local planning policy as listed in the paragraphs above. On this basis, the application is recommended for refusal.

Residential amenity

Policy Context

- 9.64. Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2031 which states that: '*new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space*'.

Assessment

- 9.65. The application is in outline only. Any detailed proposals would need to have due regard to requirements of Section 6 of the Residential Design Guide SPD about appropriate standards of amenity for both existing and future residents. Appropriate positioning and scale of dwellings, boundary treatments and the nature of such treatments could be given due consideration at reserved matters stage.
- 9.66. The nearest residential properties to the site would be on Balmoral Avenue north, Harlech Close to the north and Balmoral Avenue south to the south. In terms of the properties along Balmoral Avenue north and Harlech Close these are to the north of the boundary of the proposed site separated by well-established trees its entire length. It is considered that, subject to appropriate scale and design of any proposed dwellings along the northern boundary of the site, and retention and potential enhancement of existing boundary planting it is likely that a satisfactory layout could be achieved that would avoid any significant unacceptable impacts on the residential amenity of the neighbouring residential properties.
- 9.67. Existing properties along Balmoral Avenue South would sit side on to the site and face the access road. They are currently separated from the site by some shrubs,

hedgerow and fencing. Again, subject to a satisfactory layout being achieved and any proposed landscaping and planting, it would avoid any unacceptable impacts on the residential amenity of these neighbouring properties.

- 9.68. Assessment of internal amenity with the proposed dwellings would be a matter for consideration at any reserved matters or detailed application stage. Whilst only indicative at this stage, the concept layout indicates an appropriate layout that would provide for both public and private outdoor amenity space that would allow for an acceptable standard of living to be achieved for potential future occupants.

Conclusion

- 9.69. Given the above, officers are satisfied that the development can be made acceptable in residential amenity terms, both for existing residents neighbouring the site and future occupiers, with acceptable details to be secured at reserved matters stage.

Affordable housing

Policy Context

- 9.70. The NPPF advises that in order to create sustainable, inclusive and mixed communities, Local Planning Authorities should plan for a mix of housing, reflect local demand and set policies for meeting affordable housing need. Policy BSC4 of the adopted Cherwell Local Plan part 1 2011-2031 requires new residential development to provide a mix of homes in the interests of meeting housing need and creating socially mixed and inclusive communities. Policy BSC3 requires development such as this are to provide 30% affordable housing on site and provides details on the mix that should be sought between affordable/social rent and shared ownership. Policy BSC2 requires that to make efficient use of land that new residential development should be provided at a net density of at least 30 dwellings per hectare.

Assessment

- 9.71. On a development of 70 units Policy BSC3 would require 21 units to be provided as affordable housing. Of these 212 affordable units, the Strategic Housing Team recommends an indicative mix of tenures and sizes of the following

- 4 x 1 bedroom 2 person maisonette for social rent
- 6 x 2 bedroom 4 person house for social rent
- 4 x 2 bedroom 4 person house for shared ownership
- 4 x 3 bedroom 5 person house for social rent
- 2 x 3 bedroom 5 person house for shared ownership
- 1 x 4 bedroom 7 person house for social rent

- 9.72. This represents a 70/30 split between social rent and shared ownership units as stated in the adopted Local Plan Part 1 Policy BSC3, but also blends the findings of the most recent county-wide Strategic Housing Market Assessment, with our own district-specific levels of in-house data to relate this mix which will best meet local needs.

- 9.73. The provision of flats for the affordable housing units is considered inappropriate, due to the issues associated with the management of flats, the service charges linked to the communal areas and the suitability of the property type with regards to housing families. The Affordable Housing provision would instead to comprise maisonettes for the 1 bed units and houses for the 2 bed units. The proposed

Affordable Housing Schedule and Illustrative Site Layout would therefore need to be re-worked in order to replace the flats. This would have an impact on the number of residential units which could be delivered at the site. The affordable housing provision would need to be secured through a Section 106 agreement.

Conclusion

- 9.74. The current proposal and indicative layout does not provide a suitable affordable housing mix or layout and conflicts in this regard with Local Plan Policy BSC4. There is also an objection in the absence of a satisfactory Planning Obligation, which is discussed in greater detail in later paragraphs.

Flood Risk and drainage

Policy Context

- 9.75. Policy ESD6 of the CLP 2015 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.
- 9.76. Policy ESD7 of the CLP 2015 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

- 9.77. A site-specific Flood Risk Assessment (FRA) prepared BWB Consulting has been submitted in support of the application. The Environment Agency's flood maps indicate that site is not 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.
- 9.78. Oxfordshire County Council as Local Lead Flood Authority raises an objection to the development on the basis that the Flood Risk Assessment is not acceptable. The calculation files contradict the FRA in the methodology used to define flow and volume. In addition, the following comments were made:
- Awaiting detail to be provided from Thames Water in relation to the water tower, reservoir and awaiting consent to connect into highways drainage system.
 - Surface water post development flow path plan needs to be provided.
 - Soakage test results need to be provided including shallow testing.
 - Discharge at relevant return periods should be at greenfield rate.
 - The MicroDrainage calculations provided use default Cv values which are not representative of the site. It is recommended that values of 0.95 for roofs and 0.9 for paved areas area applied. The designer must justify where a Cv of less than 0.9 has been used. FEH methodology should be used for both run-off and attenuation requirements.
 - Calculations should be undertaken for all relevant return periods and identify the critical duration used. Greenfield run-off rates should reflect these return periods. Section 3.2 of the Sustainable Drainage Statement relates to underground tanking. It is felt that this could be designed out. [this would help mitigate further future maintenance and replacement.
 - Distributed site storage approach should be adopted. OCC recommends dividing the site into individual catchments.

- Long Term Storage is mentioned in point 3.2 but ruled out in point 3.28, this should be reconsidered.
- Gullies are mentioned as a means of conveyance and any conveyance should be on the surface via open dish channel.
- Areas to maximise permeable paving have not been fully exploited.
- A management and maintenance plan is required.
- Treatment and management train needs to be justified.
- Connection of proposed tanking to the pond needs to be confirmed if tanking is to be used. The Lead Local Flood Authority would advocate the removal of tanking if possible. If this is required a robust justification for its inclusion would need to be provided.
- Plan detailing sacrificial areas for shallow surface water ponding on site during exceedance events needs to be provided.
- Half drain down times of tanks and ponds needs to be confirmed.
- Confirmation required that only means of discharge is into Thames Water network, i.e. no infiltration potential or watercourse that could be used.
- Level of pipe entering pond to be confirmed.
- Mitigation measures need justifying in case of exceedance of failure of tank/pond.
- Woodland area should be considered for surface water SuDS
- Downpipe disconnection in to rain gardens or bio-retention to be explored.
- Shallow swales/basins for temporary storage of lesser return periods to be considered.
- Blue/Green roofs and rainwater harvesting to be examined as a potential.
- Green space must be maximised for on the surface SuDS feature. All surface water should be dealt with on or as close to the surface as possible.

9.79. Some of the above comments are relevant to a future reserved matters application and/or a drainage strategy. However, the contents of the Flood Risk Assessment should be addressed at the outline stage.

9.80. Third party comments have raised concerns with regards to the capacity of the sewage system and its ability to cope with additional load as a result of the proposed development. Thames Water, which provides waste water/sewage services, has raised concern regarding an inability of the existing foul water network to accommodate the needs of the development proposal. TW suggests this could be dealt with by an appropriately worded condition; however, further information is required as to what the necessary wastewater network upgrades are in order to ensure the network can accommodate the developments needs and without knowing this the works may not be deliverable. A sewage drainage strategy itself could be secured through an appropriate condition.

Conclusion

9.81. Officers consider that, in light of there being a technical objection raised by the Lead Local Flood Authority and concerns raised by Thames Water, the proposals cannot, at this stage, be considered acceptable in terms of flood-risk and drainage. As such, the application is recommended for refusal on this basis.

Ecology

Legislative context

9.82. 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.

- 9.83. 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.
- 9.84. 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.
- 9.85. 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:
- a) 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?
 - b) That there is no satisfactory alternative.
 - c) 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.
- 9.86. 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

- 9.87. 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.
- 9.88. 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.

- 9.89. 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.
- 9.90. 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.
- 9.91. 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.
- 9.92. 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

- 9.93. 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 LPAs 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')
- 9.94. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains a number of dilapidated ruined buildings, is on the edge of the built up area of Banbury abutting open countryside and there are a number of mature trees including Priority Habitat Woodland and hedgerows within and adjacent the site, and therefore has the potential to be

suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates.

- 9.95. In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS 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 LPA 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.
- 9.96. 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.
- 9.97. The application is supported by a detailed protected species survey which concluded that there is a bat assemblage of local level vale commuting and foraging round the boundaries of the Site. In addition, the habitats have potential to support other wildlife including breeding birds and potentially badger. Retained habitats and associated species interest have been buffered from the development footprint and recommendations for their protection during the construction, demolition and management during operation to ensure their long-term retention and enhancement. The report also proposed an ecological mitigation strategy for the scheme.
- 9.98. The site has been assessed within the Ecological Appraisal as habitat of relatively low ecological importance and poor quality. However, the Council's Ecologist is in disagreement with this assessment and feels the site should be elevated in importance due to the lack of this type of habitat close by. Grassland with scrub and woodland belts is not widespread in the surrounding area which is otherwise the urban edge of Banbury and largely arable land. Its loss is of greater important to wildlife in this location that the ecological appraisal outlines.
- 9.99. The surveys themselves are not a reason for refusal although additional ones are required especially for badgers. This could be controlled by condition on the basis that this is an outline application and the impact could be assessed at a later stage. This would also apply to further bat surveys in the woodland.
- 9.100. However, there is a concern regards the net loss of biodiversity across the site as a result of the proposed development. The ecological appraisal includes a biodiversity impact assessment metric which shows that there would be an overall net loss for biodiversity as a result of these proposals using the illustrative layout (even if the condition of the woodland is able to be improved). Policy for the conservation and enhancement of the natural environment at all levels aims to minimise impacts on biodiversity and provide net gains in biodiversity (NPPF para 170). Recent guidance adopted by the Council seeks a minimum of 10% net gain and this leaves the current proposal with a significant shortfall in 'biodiversity units'.
- 9.101. The report proposes off-site compensation. However, this should be a last resort and other means such as reduced housing numbers should be considered first. A financial contribution is not sufficient to discharge net gain responsibilities. In addition, no information has been submitted detailing a scheme to show how this could be delivered or if other means has been explored initially. The report states that this would be agreed with the LPA during the determination of the application but this fails to offer any assurance that a net gain or even no net loss is achievable from the scheme and this is necessary for any scheme to be considered acceptable.

9.102. Currently, there is no proposal put forward as to how the net loss of biodiversity can be managed neither is there any evidence that alternative levels of development have been explored to be able to achieve a net gain. Also, considering the concern surrounding the enhancement of the woodland whilst balancing the need and requirement for public amenity space. The lack of information relating to protecting and enhancing biodiversity through the development means the proposal conflicts with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance within the NPPF.

Infrastructure

Policy Context

9.103. 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.

9.104. Policy INF1 of the CLP 2015 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.”*

9.105. Policy BSC11 of the CLP 2015 states that: *“Development proposals will be required to contribute to the provision of open space, sport and recreation, together with secure arrangements for its management and maintenance. The amount, type and form of open space will be determined having regard to the nature and size of development proposed and the community needs generated by it. Provision should usually be made on site in accordance with the minimum standards of provision set out in ‘Local Standards of Provision – Outdoor Recreation’. Where this is not possible or appropriate, a financial contribution towards suitable new provision or enhancement of existing facilities off site will be sought, secured through a legal agreement.”* Policy BSD12 requires new development to contribute to indoor sport, recreation and community facilities.

9.106. The Developer Contributions Supplementary Planning Document (SPD February 2018) sets 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

9.107. 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

9.108. 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.

- 9.109. Having regard to the above, in the event that Members were to resolve to grant planning permission, the following items would in officers' view need to be secured via a legal agreement with both Cherwell District Council and Oxfordshire County Council in order to secure an appropriate quality of development as well as adequately mitigate its adverse impacts:

Cherwell District Council

- Provision of 30% affordable housing together with 70/30 tenure split between social rented and shared ownership;
- Provision of public open amenity space and future maintenance arrangements;
- Provision of a combined on-site LAP and LEAP together with future maintenance arrangements;
- Maintenance arrangements for on-site trees, hedgerows, and drainage features;
- Payment of a financial contribution towards the provision of refuse/recycling bins for the development;
- Off-site Outdoor Sports Contribution – 70 dwellings x £2,017.03 per dwelling contribution = £141,192.10 towards the development of a new artificial pitch at Hanwell Fields playing fields in Banbury.
- Off-site Indoor Sports Contribution – 70 dwellings x 2.49 avg. people per dwelling x £335.32 per person contribution = £58,446.28 towards the development of an indoor tennis centre at Hanwell Fields playing fields in Banbury.
- Community Hall Contribution – 70 dwellings x 2.49 avg. people per dwelling x £520 contribution per person = £90,636 towards improvements at the Sunshine Centre in Banbury.

Oxfordshire County Council

- Highway Works Contribution of £81,820 towards Bridge Street/Cherwell Street eastern corridor improvements and A361 Bloxham Road/Queensway/Springfield Avenue junction improvements;
- Public Transport Service Financial Contribution of £70,000 towards the enhancement of public transport services serving the site by improving the B5 bus service on Bretch Hill by adding additional route options, extended hours and extended weekend hours;
- Public Rights of Way Contribution of £5,000 to provide mitigation measures in the impact area up to 2km from the site to primarily improve the surfaces of all routes as well as new or replacement structures like gates, bridges, seating etc and improved signage and drainage;
- To secure entry into a S278 agreement (Highways Act 1980) to secure mitigation/improvement works, including: a dropped kerb facility to be provided at the origin of footpath 120/24 where it joins onto Bretch Hill, provision of site access and pedestrian footways as show by a plan agreed by the LHA, improvement of PROW 120/24 into a blacktop footpath connecting the development to Bretch Hill and Balmoral Avenue north or Harlech Close.

- Primary education contribution of £326,326 for the expansion of primary capacity serving the Banbury area.
- Secondary education (including sixth form) contribution of £469,255 towards a new secondary school in Banbury.

9.110. CDC's Developer Contributions SPD states that new residential development will be expected to contribute towards the provision of additional health care infrastructure generated by its population growth where there is insufficient existing capacity, well located to serve the development. Whilst the Oxfordshire Clinical Commission Group has been consulted, comments have not been received from this consultee and they have indicated they are only likely to comment on larger applications. Thus, officers do not consider that they can request contributions towards health care infrastructure.

Conclusion

9.111. A number of items would need to be secured via a legal agreement with both Cherwell District Council and Oxfordshire County Council in order to secure an appropriate quality of development as well as adequately mitigate its adverse impacts. Given the application is not acceptable for other reasons these matters have not been progressed. In the absence of a legal agreement to secure these matters the proposal is therefore contrary to Policies INF1, PSD1, BSC3, BSC10 and BSC11 of the Cherwell Local Plan (2011-2031) Part 1, the Developer Contributions SPD (2018) and Government guidance contained within the National Planning Policy Framework.

10. PLANNING BALANCE AND CONCLUSION

10.1 The overall purpose of the planning system is to seek to achieve sustainable development as set out in the NPPF. The three dimensions of sustainable development must be considered in order to balance the benefits against the harm. Section 38(6) of the Planning and Compulsory Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise.

10.2 The application proposal seeks consent for up to 70 dwellings on the edge of Banbury, which is considered a sustainable location. Planning policy directs residential development towards Banbury and although the district benefits from a 3 year housing land supply the site has previously been allocated in the non-statutory local plan. As such, considering its location and the benefits of delivering further housing to meet the districts housing need, the principle of development is judged to be acceptable.

10.3 However, the proposed development fails to provide sufficient and coherent information regarding the retention and upgrading (if any) of the public right of way to the northern boundary of the site. Without ensuring the upgrade of this footpath to one that is well surfaced, accessible, lit and safe or the provision of a footpath link through to Balmoral Avenue north, there is no adequate connection to local bus stops meaning the proposal is contrary to the NPPF, Local Plan Part 1 Policy SLE4 and the Cherwell Residential Design Guide. In addition, there is a conflict between upgrading the section of the footpath through the woodland (Priority Habitat) and safeguarding biodiversity in this woodland through retention of trees, a sensitive lighting scheme and lack of public access.

10.4 The submitted Flood Risk Assessment fails to demonstrate that the development is acceptable in terms of flood risk and drainage. In light of the technical objection

raised by the Lead Local Flood Authority and concerns raised by Thames Water, the Local Planning Authority cannot be confident that the development complies with national and local planning policy.

- 10.5 In terms of ecology, the application proposal fails to demonstrate an overall biodiversity net gain and actually shows a net loss. There is no proposal put forward as to how this net loss of biodiversity can be managed, neither is there any evidence that alternative levels of development have been explored to be able to achieve a net gain. Also, there is a concern surrounding the enhancement of the woodland whilst balancing the need and requirement for public amenity space. As such, this is a sustainable and defensible reason for refusal on the grounds of lack of information relating to protecting and enhancing biodiversity through the development.
- 10.6 The current proposal and indicative layout does not provide a suitable affordable housing mix or layout and conflicts in this regard with Local Plan Policy BSC4, and which means it has not been demonstrated that 70 dwellings can be satisfactorily delivered at the site.
- 10.7 On balance, whilst the principle of development is acceptable and the development provides some benefits including delivering of housing including affordable units, which balances or outweighs any wider visual effects from development of the site, there are conflicting issues that require further investigation and information to be submitted to reach a development proposal that is both suitable and sustainable which connects to the existing built development and facilities, provides adequate protection from flooding, and safeguards biodiversity and protected species whilst providing a net gain of biodiversity across the site.
- 10.8 On this basis, it is therefore concluded that the proposal does not comply with national and local plan policy and the application is therefore recommended for refusal.

1. RECOMMENDATION

RECOMMENDATION - REFUSAL FOR THE REASONS SET OUT BELOW

Reasons for refusal

1. The application and accompanying indicative layout fail to adequately take account of the policy requirements relating to recreation, outdoor sports provision and children's play space. The current proposal and indicative layout does not provide a suitable affordable housing mix which means it has not been demonstrated that 70 dwellings can be satisfactorily delivered at the site. The proposal is therefore contrary to Policies BSC4, BSC10, BSC11 and ESD15 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.
2. The proposed development, by reason of its relationship and poor pedestrian connections to existing built development, services and facilities (including bus stops) would not provide good access to services and facilities and public transport in the interests of reducing the need to travel and promoting sustainable transport options. The proposal is therefore contrary to Policy SLE4, Cherwell Residential Design Guide (SPD), Policy 34 of LTP4 and Government guidance contained within the National Planning Policy Framework.
3. The submitted Flood Risk Assessment is inadequate due to contradictions in the calculations and methodology and fails to provide sufficient and coherent information to demonstrate that the proposal is acceptable in terms of flood risk

and drainage. The proposal is therefore contrary to Policy ESD6 of the Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

4. The application proposal fails to provide a biodiversity net gain across the site and fails to outline a scheme or means of mitigation as to how the net loss of biodiversity can be managed. As such, the proposal is contrary to policy ESD10 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.
5. In the absence of the completion of a satisfactory Planning Obligation, the Local Planning Authority is not satisfied that the necessary infrastructure (including education, open space, sports facilities, community facilities, highway infrastructure and affordable housing) directly required as a result of this development, in the interests of supporting the sustainability of the village and the development, mix and balanced communities, and in the interests of safeguarding public infrastructure and securing on site future maintenance arrangements, will be provided. This would be contrary to Policies INF1, PSD1, BSC3, BSC10 and BSC11 of the Cherwell Local Plan (2011-2031) Part 1, the Developer Contributions SPD (2018) and Government guidance contained within the National Planning Policy Framework.

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