

**Case Officer:** Wayne Campbell

**Applicant:** Churchill Retirement Living

**Proposal:** Redevelopment of the site to form 38no Retirement apartments including communal facilities, access, car parking and landscaping

**Ward:** Bicester East

**Councillors:** Councillor Dallimore, Councillor Mould and Councillor Wallis

**Reason for Referral:** Major development comprising erection of 10 or more dwelling units

**Expiry Date:** 20 August 2021

**Committee Date:** 13 January 2022

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**SUMMARY OF RECOMMENDATION: THAT THE COMMITTEE CONFIRM THAT THEY WOULD HAVE REFUSED THE APPLICATION**

**1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is located within the Bicester Town confines and is currently occupied by 4 separate private dwellings. Located mainly along St. John's Street the site also occupies a prominent position at the junction with St. John's Street and Queens Avenue.
- 1.2. The properties currently on the site are two storeys in height while on the other side of St. John's Street are similar two storey dwellings along with a three-storey building known as Fane House located on the opposite side of the junction with St. John's Street and Field Street.
- 1.3. To the rear of the site is a public park area onto which properties in Hunt Close front. The rear / southern boundary of the site is also marked by the River Bure.

**2. CONSTRAINTS**

- 2.1. The application site is within Bicester Town Centre and located to the immediate north of the River Bure. Due to the location of the River Bure the site is located within an area allocated as Bank Top Width Planning - Development Near Watercourse as such any development within this area will require the consent of the Environment Agency. The site is also located within an area of Archaeological Alert identified as part of the Bicester historic core which has shown possible Anglo Saxon inhumation cemetery and settlement, medieval inhumations and other multi-period features.

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. This application seeks planning permission for the re-development of the site with a single building to initially provide 40no retirement apartments but following amendments to the scheme this has reduced to 38no apartments along with communal facilities, access, car parking and landscaping.

- 3.2. The proposed building would be a mix of heights from 2.5 / 3 storeys rising to 4 storeys on the part of the site at the junction with St. Johns Street and Queens Avenue. The building would be externally faced in a range of materials including brick and render.
- 3.3. Access would be provided off St. John's Street with a single access point leading to the rear of the main block into a surface car park with 14 parking spaces. The remainder of the space around the building would be maintained as landscaped gardens.
- 3.4. *Timescales for Delivery*: The applicant/agent has not advised, in the event that planning permission is granted, by when they anticipate commencing development.

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

- 4.1. There is no planning history directly relevant to the proposal. However, on 23 November 2021 the applicant lodged an appeal with the Planning Inspectorate on the grounds of the non-determination of the planning application.

#### **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. The following pre-application discussions have taken place with regard to this proposal:
- 5.2. 21/005124/PREAPP - Application for redevelopment to form retirement housing - 40-45 units.
- 5.3. The advice provided to the applicant highlighted that the details submitted showed the building to have varying roof heights and roof forms and to be externally finished in brick and render. The building would have an 'L-shaped' form, with amenity space, parking and storage areas to the rear of the building. It was accepted that the use of varying roof forms and heights does break up the bulk of the building slightly and add some visual interest. However, the overall scale and form would result in a monolithic bulk of development that would fail to respond well to the established character of the area.
- 5.4. To conclude, whilst the broad principle of development was considered acceptable, there were significant concerns regarding the impact the development on the character and appearance of the area, the amenities of neighbours, the impact on flood risk and air quality. On the basis of the information submitted in the pre-app, the advice back was that the proposal would not be supported in its current form.

#### **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 **22 June 2021**.
- 6.2. A total of 24 letters of objection have been received from members of the public and 0 letters of support. The comments raised by third parties are summarised as follows:
  - Concern over the bulk of the building at 4 storeys high and the design lacks any inspiration or enhance the aesthetic of the surrounding areas and conservation area;
  - Height is totally inappropriate and will impact on daylight to existing properties resulting in over shadowing;

- Over development of the site;
- Development is not going to enhance the road or community in any way
- Significant coverage of retirement properties already in locality;
- 40 flats will generate 80 cars as in modern life every family or couple has a car each, the lack of parking would lead to further pressure on the highway and traffic congestion on a very busy junction and with the already significant parking issues in Dunkin's Close, St John's Street, Crockwell Close, Bucknell Road and Hunt Close and an inevitable further overflow from this increase in residents will push the parking to breaking point;
- One of the busiest junctions in Bicester, so suitability of it being a site for a care home is questionable due to noise and pollution at all hours;
- Not a good location for elderly relative living on the main road through Bicester;
- Development is poorly sited and poorly chosen, a plot designed to make the most money without providing the necessary site infrastructure to support it;
- No information on staff parking;
- Adverse impact on local wildlife such as bats, birds and amphibians;
- Several trees have been lost in recent years and so it is quite likely that the same fate would occur to the trees at the rear of the proposed development, and new planting would not disguise such a mass of glass and brickwork.
- Increase would place further pressure on local infrastructure such as local GP's;
- Noise disturbance during build phase and once finished the increased height and unrelenting frontage would mean that sound is reflected back and the noise of traffic and street noise would be far louder, as well as increased pollution;
- Surrounding properties would be overlooked and suffer from a loss of privacy;
- Development would be literally across the road from the Crockwell Close/Field Street Conservation Area. How would such a dominant building fit in with Cherwell's pledge to 'protect our Conservation Areas and other heritage assets from harmful growth as these help to define how the area looks and feels'
- Hanover Gardens, around the corner, frequently has flooding issues. Given the proximity to the River Bure can it really be guaranteed that such a large building footprint, despite the submitted drainage statement, will not exacerbate flooding problems?

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

## 7. RESPONSE TO CONSULTATION

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

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. BICESTER TOWN COUNCIL: **Objection** on the grounds that the *oversize and height of the building will dominate the neighbourhood the nature of its size will block light; the roundabout at St John's Street is already busy and with the potential closure of the London Road will be impacted by the additional traffic of this business; the parking to be provided appears to be inadequate; air pollution is already a problem in this area so not practical for the elderly with health issues and will be exaggerated should the development commence; residents in Hunt Close still continue to have inconsiderate and illegal parking despite yellow lines having been applied; accessing and exiting the service road is not viable; it is felt that there are already several retirement and*

*care homes close to the town centre, why demolish excellent family homes; an alternative site for this retirement home would be better placed on the outskirts of Bicester; it is felt that the community engagement is incomplete and residents were not consulted widely enough.*

## CONSULTEES

- 7.3. OCC HIGHWAYS: **Objection** - Applicant must provide a revised site access design drawing that improves the visibility splays for all road users and also easily and safely accommodates the Vehicle access and exit manoeuvres of the different types vehicles associated with the development. A Stage one Road Safety Audit of the redesigned site access and junction across the Service Road will be required to establish compliance with Highway Design and Safety Standards. The footway width should be extended to 2m in width. Details of the pedestrian route within the site and its connectivity with the existing local footway network outside the site will be helpful.
- 7.4. OCC LEAD LOCAL FLOOD AUTHORITY: **No objection** subject to conditions.
- 7.5. OCC ARCHAEOLOGY: **No objection** subject to conditions.
- 7.6. ENVIRONMENT AGENCY: **Objection** - application not supported by an acceptable Flood Risk Assessment contrary to paragraph 163 of the National Planning Policy Framework and Local Plan Policy ESD6. Proposed development provides inadequate ecological buffer zone to the River Bure and the development falls within 8 metres of the river. The application is therefore contrary to paragraphs 170 and 175 of the National Planning Policy Framework and Local Plan Policy ESD10.
- 7.7. CRIME PREVENTION DESIGN ADVISOR: **No objection** but comments on a number of design issues across the site
- 7.8. THAMES WATER: **No objection** subject to conditions.
- 7.9. CDC RECREATION & LEISURE: **Comments** on contribution required towards community facilities as part of any S106.
- 7.10. CDC Strategic Housing: **Comment** review of the financial viability statement carried out by an independent assessor supports the conclusion that the proposed scheme is unable to viably sustain any level of Section 106 obligations, including any affordable housing contributions. In view of this, we will not be requesting any affordable housing contributions at present.
- 7.11. CDC ENVIRONMENTAL HEALTH: **No objections** subject to conditions.
- 7.12. WILDLIFE TRUST: No comments received
- 7.13. CDC ECOLOGY: No comments received
- 7.14. CDC PLANNING POLICY: No comments received

## **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 ('CLP 2015') was formally adopted by Cherwell District Council on 20 July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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 2015)

- PSD1: Presumption in Favour of Sustainable Development
- SLE4: Improved Transport and Connections
- BSC1: District Wide Housing Distribution
- BSC2: The Effective and Efficient Use of Land – Brownfield land and Housing Density
- BSC3: Affordable Housing
- BSC4: Housing Mix
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- BSC11: Local Standards of Provision – Outdoor Recreation
- BSC12: Indoor Sport, Recreation and Community Facilities
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDs)
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13: Local Landscape Protection and Enhancement
- ESD15: The Character of the Built and Historic Environment
- INF1: Infrastructure

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

- C28: Layout, design and external appearance of new development
- C30: Design of new residential development
- C31: Compatibility of proposals in residential areas
- ENV1: Environmental pollution
- ENV12: Potentially contaminated land
- TR1: Transportation funding
- R12: Provision of public open space in association with new residential development

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)

## 9. APPRAISAL

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

- Principle of development
- Design, and impact on the character of the area
- Highway impact
- Flooding / drainage impact
- Residential amenity
- S106/Infrastructure

- Sustainable Construction
- Ecology

### Principle of Development

- 9.2. Policy PSD 1 of the CLP 2015 states that *when considering development proposals, the Council will take a proactive approach to reflect the presumption in favour of sustainable development contained in the National Planning Policy Framework*. The policy continues by stating that *planning applications that accord with the policies in this Local Plan (or other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise*. Paragraph B88 of the CLP 2015 also highlights that *by focusing development in and around the towns of Bicester and Banbury we aim to ensure that the housing growth which the District needs only takes place in the locations that are most sustainable and most capable of absorbing this new growth*.
- 9.3. Policy BSC 2 of the CLP 2015 highlights the importance of effective and efficient use of land and the use of sites. Under this Policy it is highlighted that *housing development in Cherwell will be expected to make effective and efficient use of land*. The Policy also states that *the Council will encourage the re-use of previously developed land in sustainable locations. New housing should be provided on net developable areas at a density of at least 30 dwellings per hectare unless there are justifiable planning reasons for lower density development*.
- 9.4. Policy BSC4 covers the issue of providing housing mix and includes the need to provide for a mixed community. It states that *opportunities for the provision of extra care, specialist housing for older and/or disabled people and those with mental health needs and other supported housing for those with specific living needs will be encouraged in suitable locations close to services and facilities*. The applicant is not providing sheltered housing, but the accommodation is aimed at those who have retired rather than general housing and therefore this policy is of relevance.
- 9.5. The Council is unable to demonstrate a sufficient housing land supply as required under paragraph 74 of the NPPF. Cherwell's position on five-year housing land supply has recently been reviewed by officers for the emerging 2021 Annual Monitoring Report (AMR) which is to be presented to the Council's Executive on 10 January 2022. Despite a strong record of delivery since 2015, the draft AMR presents a 3.8 year supply position for 2021-2026 and 3.5 years for the period 2022-2027 (the latter being effective from 1 April 2022). This compares to the 4.7 year housing land supply for the period 2021-2026 reported in the 2020 AMR. According to the draft AMR, an additional 1,864 homes would need to be shown to be deliverable within the current 2021-2026 five-year period to achieve a five year supply as required by the NPPF. Notwithstanding, the use of the site would remain in a residential use and as highlighted by paragraph B.88 of the CLP 2015 that housing growth will be directed towards the urban areas of Banbury and Bicester this proposal complies with the Council's housing strategy.
- 9.6. Furthermore, the proposed provision of accommodation for older and/or disabled people on this scheme would help meet a growing need/demand for this type of accommodation. As highlighted in the applicant's Design & Access Statement, the Government guidance document 'Housing for Older and Disabled People' highlights the importance of providing housing for older and/or disabled people and to plan for meeting a range of needs within these groups. It is accepted that people are living longer and the proportion of older people in the population is increasing. The Oxfordshire SHMA 2014 also states that the need to house a growing older population is one of the drivers expected to influence future need for homes

- 9.7. This is not, however, to suggest that planning permission is guaranteed for the re-development of the site as paragraph B.90 of the CLP 2015 continues by stating that *new housing needs to be provided in such a way that it minimises environmental impact, including through the elimination and control of pollution and the effective and efficient use of natural resources. It needs to be planned in a way that helps to reduce carbon emissions, reflects the functions of our settlements and protects or enhances the identity of our towns and villages and the sense of belonging of our residents.* As such the impact of the development on neighbouring properties and the street scene also needs to be considered before a decision can be made.

#### *Conclusion*

- 9.8. The principle of the development is appropriate for this location. The site would remain in residential use. The proposal would allow for an increase in the level of retirement accommodation within the town centre as supported by Policy BSC4. The proposal also complies with Policies PSD 1 and BSC 2 of the CLP 2015. Overall acceptability is subject to other considerations.

#### Design, and impact on the character of the area

##### *Policy Context*

- 9.9 Government guidance contained within the NPPF requiring good design states that *good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.* Further, *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.*
- 9.10 Saved Policies C28 and C30 of the CLP 1996 exercise control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context. New housing development should be compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.
- 9.11 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 ensuring a high-quality design.
- 9.12 Paragraph 130 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*
- 9.13 The Council's Design Guide seeks to ensure that new development responds to the traditional settlement pattern and character of a town. This includes the use of continuous building forms along principal routes and the use of traditional building materials and detailing and form that respond to the local vernacular.

### *Assessment*

- 9.14 The existing buildings on the site are two storey residential dwellings as are the dwellings on the opposite side of St John's Street and this forms the character of the built form in this area. The exception to this is Fane House which is a 3-storey building located at the junction of St. John's Street and Field Street.
- 9.15 In this context, the proposed building at 3 to 4 storeys in height would appear as a large structure in the street scene when compared to the existing 2 storey dwellings. Notwithstanding, the applicant has designed the section overlooking the junction with St. Johns Street and Queen Avenue as a 4 storey feature with a curved walling. The adjoining sections would drop down to 3 Storeys on either side. The applicant contends that the taller curved feature would help the building turn the corner at the same time as addressing this important road junction. In addition the applicant also highlights that this feature also references an important architectural detail that can be seen on other buildings in the area, both historic and more contemporary.
- 9.16 The advice in the Cherwell Residential Design Guide section 3 states that in assessing the townscape it is important to question *how might the scheme reflect locally distinctive relationships between buildings and the public realm e.g. extent of frontage, angle of buildings to the street, boundary treatments?* Furthermore, the guide continues by highlighting *how might the scheme reflect locally distinctive building forms, groupings, heights, rooflines and architectural details, wall and surface materials?*
- 9.17 Although the building would be taller than the existing dwellings on the site, the stepped approach of the roofline from three up to four would help to soften the appearance of the scale. It is considered that the location of this four-storey section at the main road junction is an appropriate scale and design to emphasize the corner and provide a strong presence to address the junction on one of the key routes into Bicester town centre. The flat roof design would also ensure that although the taller part of the development the overall bulk of the development would not appear overbearing. Furthermore, in considering the roof lines of this part of the development alongside the roof line of Fane House the four-storey element would not appear significantly out of scale.
- 9.18 In terms of the choice of materials the elevation details show a mix of red brick, tile hanging and white render, all of which have been taken from the materials on the surrounding buildings in this area. The use of the rendered sections has been used to help break up the sections of the building along St. John's Street and Queens Avenue with the primary use of brick for the main parts of the building. The use of brick with rendered sections would help to reduce the mass of the building and is considered an acceptable use of material and the sections of render would ensure that the appearance of the building would not appear overall bulky within the street scene.

### *Conclusion*

- 9.19 The overall height of the building on the site at 3 – 4 storeys would be greater than the 2 storey dwellings and given its footprint the building would be of significant scale in the street scene. However, the design of the curved wall along the junction of St. Johns Street and Queen Avenue would act as pivot point to the development to emphasise this key route into Bicester. The design and use of materials is considered appropriate in this Town centre location. For these reasons it is considered that in terms of design and appearance the development is acceptable and would not warrant a reason to refuse the application.



## Highway impact

9.20 Paragraph 110 of the NPPF states 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.*

In addition to this paragraph 111 highlights 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.* In terms of parking provision paragraph 108 highlights that *maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport.* The paragraph continues by stating that *in town centres, local authorities should seek to improve the quality of parking so that it is convenient, safe and secure, alongside measures to promote accessibility for pedestrians and cyclists.*

9.21 Policy ESD 15 of the CLP 2015 highlights, amongst other things that in terms of design new development should demonstrate *a holistic approach to the design of the public realm to create high quality and multi-functional streets and places that promotes pedestrian movement and integrates different modes of transport, parking and servicing. The principles set out in The Manual for Streets should be followed.*

### *Assessment*

9.22 This application seeks to provide a new access point into the site off the existing private service road which runs alongside St. John's Street. This service road allows access by all the dwellings along this side of St. Johns Street as well as the application site. As part of the proposal the applicant also seeks to reinstate a currently closed access point onto St John's Street.

9.23 In considering the issue of access the Local Highway Authority (LHA) advises that the service road and the proposed access to St John's Street should comply with OCC's Design Standards and should be submitted by the applicant for approval. The service road surface is in a poor state of disrepair and would require Highway improvements to current Highway Standards. With regards to the access into the site itself, the LHA notes that the access proposing for use on to St Johns Street does not appear to have a dropped kerb and therefore would require dropping of the kerbs and resurfacing. Regarding the site access the main concern relates to the proposed access arrangement, this point has been reiterated to the applicant that they need to make the junction onto the main carriageway directly opposite the site access. However, it is noted that this change has still not been amended in the submitted updated Transport Statement. This issue cannot be conditioned as, highlighted below, the change required would have implications on the footprint of the building on the site to a point which would be materially different to the current arrangement and needs to be addressed by the applicant in advance the approval process.

9.24 With regards to the submitted visibility drawing it is noted that this does not appear to address the emerging visibility to the right onto the service road. The drawing shows it at 2.4 x 11m but this is based on a strange approach angle and a nearly 2m offset,

the adjacent boundary wall/hedge seems to reduce visibility to near zero. Concern is therefore expressed that the access does not allow for adequate visibility to the right of the access for vehicles leaving the site which is over land outside the applicant's control.

- 9.25 The LHA suggests that this could be improved by moving the access point further along the service road and moving the bin store to a new location as a free-standing feature. In response the applicant has advised that *this change would have significant implications on the site layout and design of the building*. In addition, the applicant has also stated that *in their view the change would not improve the visibility in any great deal and by moving the bin store residents would have to cross the access to reach the bin store which the applicant has suggested would not be safe*. Furthermore, *the doors to the bin store could not safely open without causing interference with access and as such the applicant has stated that the suggested changes would cause more detrimental issues to the scheme than the minor increase in visibility splay*.
- 9.26 The access onto the service road needs to be safe and as such adequate vision splays need to be provided in accordance with adopted standards. The revised Transport Statement shows the vision splays for the development. The splays shown are not considered appropriate, being set not from the centre line of the access point but from the left-hand side of the access and also set at an odd angle. The arrangement *as shown* demonstrates a clear vision to the right, but this would not be the case in the event that the vision splays were set in the correct position. Although it is suggested that the service road operates informally as a one-way street, there are no highway regulations which state / enforce this arrangement. It is also considered that the main reason why residents use it as a one-way street is more likely to be that in the event of parking along the service road vehicles need to park very close to the boundary edge of the property and as such this would make existing from the car impossible from the driver's side if access had been from the north.
- 9.27 With regards to access to and from the site the transport statement has provided tracking plans for various types of vehicles. The tracking plan shows vehicles leaving the site and turning into the site and out of the site using the access point from the service road onto St. John's Street but no details of access along the service road. In considering the access movements the route of a private car to and from St. John's Street into the site would require a slightly convoluted manoeuvre using the wider bell mouth into the site. Although this manoeuvre is possible, it is not a straightforward turn from the site into or off St. John's Street and the LHA's request for the access point to be moved seems reasonable.
- 9.28 In addition, it is concerning that access to the site along service road has not been shown on the tracking plans. It is feasible that residents may use the length of the service road as an access to the site rather than wait along St. John's Street in the event of congestion. Due to the restricted vision splay on the right, it is considered that the drivers' view into the site from along the service road would be restricted to a point that when turning into the site a vehicle would need to use almost the full width of the access drive into the site with no space allowed for any vehicles exiting the site at the same time. The suggested moving of the access slightly further north would require the footprint of the building to be moved by the same distance, which would require a reconfiguration of the design of this part of the building. This amendment has been requested of the applicant, but the applicant is unwilling to amend the design in this way.
- 9.29 Turning to the issue of parking, the layout plans show a parking courtyard to the south of the main building with 14 spaces allocated for the use of the residents. Concern has been expressed by objectors to the scheme that the level of parking on the site is too low and would lead to overflow parking by residents to the detriment of local

highway safety. The development proposes a total of 14 car parking spaces to serve the 38-unit retirement development, which gives a ratio of 0.36 spaces per apartment. To establish operational parking demands, the applicant's transport statement confirms that a survey was undertaken which showed that existing Churchill Retirement Homes had an average car parking demand of 0.28 (2016) - 0.29 (2020) per apartment. As such, and based upon these findings, the applicant contends that 12 spaces should be adequate to serve the development. The transport statement therefore claims the proposed 14 parking space facility is sufficient to accommodate all the parking demands, without any anticipated overspill onto the local road network.

- 9.30 The LHA advises that, given the type of land use development and evidence based comparable parking demand data, its sustainable location and lower car ownership for the demographics of the residents, together with the cycling and mobility scooter use options, the number of residential car parking provision is acceptable. For these reasons, officers consider the level of parking provision proposed to be acceptable for this type of development in this sustainable / town centre location.
- 9.31 On the issue of refuse collection the applicant had initially suggested that refuse could be collected from St Johns Street, which was not supported by the LHA. Furthermore, it was highlighted that no details of the number and size of bins for refuse storage nor any designated on-site collection point for refuse vehicles had been submitted. The collection of refuse from St. John's Street is considered unacceptable as this arrangement would impact adversely on the traffic movements and road capacity on the approach to an intersection, and that the collection would be operationally impractical. For this reason, the applicant has confirmed its willingness to use a private contractor which would use smaller refuse vehicles for the collection of refuse. The LHA confirms its support for this option where the vehicle is parked within a suitable location on site close to refuse store and an indicative drawing has been provided to demonstrate that both the on-site and access refuse collections is feasible.

#### *Conclusion*

- 9.32 The access to and from the site would use the private service road along the side of St. John's Street. However, it is also noted that due to the position of the access point into the site the vision splay to the right along the remainder of the service road is compromised and that the suggested vision splays shown by the applicant are not acceptable from a highway safety point of view.
- 9.33 The applicant is not willing to amend the access arrangements because of the consequences it has for the re-design of the building – principally a reduction in footprint – and the re-configuration this would require. However, highway safety is a material consideration in the determination of this application and therefore if a change in the access is required this should have been designed into the scheme. For these reasons it is considered that the development would fail to provide a safe access to and from the site and therefore the proposal fails to comply with Policy ESD 15 as well as paragraph 110 of the NPPF.

#### Flooding / drainage impact

##### *Policy context*

- 9.34. Section 14 of the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. Paragraph 167 of which states that *when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at*

*risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:*

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) the development is appropriately flood resistant and resilient;*
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be safely managed; and e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.*

9.35 Paragraph 169 of the NPPF continues by stating that *major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:*

- a) take account of advice from the lead local flood authority;*
- b) have appropriate proposed minimum operational standards;*
- c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and*
- d) where possible, provide multifunctional benefits.*

9.36 Policy ESD 6 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.

9.37. Policy ESD 7 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*

9.38 The southern boundary to the application site is marked by the River Bure and as such parts of the site located in flood zones 2 and 3 due to the river as well as flood zone 1. For this reason, the application is supported by a detailed flood risk assessment (FRA) which, following an initial objection from the Environment Agency (EA), has been revised twice. The FRA acknowledges that the main development area of the site comprising the residential units would be located in flood zone 1 while the area of the car park would be located within flood zone 3. The applicant has stated that a sequential approach to the site layout has been undertaken and that the parts of the site which experience the highest impact from a flood event are located in the areas at the lowest flood risk.

9.39 In terms of changes to the site the FRA outlines that the far southeast extent of the site is at risk of fluvial flood events of approximately 1:20 (5% Annual Exceedance Period) or greater with existing ground levels at approximately 70.65m AOD placing highly localised areas of the site within Flood Zone 3B. The FRA also outlines that in the latest PPG guidance that as car parking is undefined as a vulnerable use it is therefore acceptable within all areas of Flood Zone 3 with its operation suitably managed using a flood management and action plan for this part of the site. Based on this assumption the applicant confirms that the proposed car parking area is designed to be at the 1:20 flood level of 70.75m AOD to place it outside the functional floodplain and into Flood Zone 3A. Where site levels are raised to achieve this compensatory flood storage would be provided on a 'level for level', 'volume for volume' basis.

- 9.40 The FRA along with the revised version has been considered by the EA and an objection raised. The main concern relates to the fact that the proposed car park is located within Flood Zone 3b, and that the FRA shows that land within Flood Zone 3b is proposed to be raised which the EA has advised is unacceptable. Furthermore, concern is also expressed over the fact that under paragraph 7.1.8 of the FRA it is stated that *the proposed car parking area will be designed to be at the 1:20 flood level of 70.75m AOD to place it outside the functional floodplain and into Flood Zone 3A* which the EA has advised is factually incorrect in that in this location, Flood Zone 3b is defined as land at or below the level of 70.75m above ordnance datum and therefore raising land to this level still places the proposed car park in Flood Zone 3b. The proposal to raise land to enable development within this flood zone is unacceptable as Flood Zone 3b must be retained and protected as functional floodplain in order to manage and reduce flood risk to surrounding areas. In addition, the FRA states that car parking is not defined as a vulnerable use within the flood risk and coastal change planning practice guidance. This assumption is incorrect in that car parks are now defined as less vulnerable uses in accordance with Annex 3 of the NPPF (amended July 2021) and are not compatible within Flood Zone 3b in accordance with Tables 1 and 3 of the PPG.
- 9.41 The FRA proposes mitigation for lost flood storage within the 1% climate change extent and Table 3 shows flood storage compensation volumes to be provided. The location of this mitigation work is shown in Appendix 12 of the FRA. It appears from Table 3 that level for level mitigation is proposed, however there is insufficient detail within the FRA to demonstrate that the proposed works are feasible and would be functional. Further details are required which show the final proposed land levels across the site and evidence that all flood storage compensation areas would function during the relevant flood event and are not isolated low-lying areas. For these reasons it is considered that the application is contrary to paragraph 167 in the NPPF and associated planning practice guidance and Local Plan Policy ESD 6.
- 9.42 In addition to the objection on the issue of development in the flood zone, the EA has also raised a further objection on the grounds that the submitted plans and documents show that the development would result in a significant amount of riparian natural habitat within 8 metres of the bank of the river Bure, which is a designated main river.
- 9.43 The ecological report submitted with the application does not adequately assess the importance of the river, nor the development's impact on its ecology. The ecological report also refers to the loss of a small watercourse but the impact of this has not been robustly assessed. The EA also considers that there is insufficient detail on the management of the river corridor and how the development would deliver net biodiversity gain and how the development can contribute towards extending the connectivity of habitats up and downstream.
- 9.44 The EA have confirmed that the proposed development will require a flood risk activity permit under the Environmental Permitting (England and Wales) Regulations 2016 but, as submitted, it is unlikely that a permit will be issued. This objection is supported by paragraphs 170 and 175 of the NPPF which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused. Opportunities to incorporate biodiversity in and around developments should be encouraged and Local Plan Policy ESD 10 requires development to deliver a net gain in biodiversity through protection and enhancing and extending existing resources and by creating new resources. Existing ecological networks will be expected to retain features of nature conservation value to form an element of green infrastructure. Development proposals are also expected

to submit a monitoring and management plan to ensure long-term management can and will be achieved.

- 9.45 Since the second objection raised by the EA a third version / revision to the FRA has been submitted by the applicant. The EA has been re-consulted on this latest version but at the time of drafting this report no comments had been received. It is therefore not clear whether or not the latest FRA overcomes the concerns the EA has raised. Any comments received from the EA will be reported to Planning Committee.

#### *Conclusion*

- 9.46 The application site is located within flood zones 1, 2 and 3. The proposed development would ensure that the built form of the apartments would be located within the area of flood zone 1 while the area of the car park would be located within the area of flood zone 3b. To remove the area of car park out of the flood zone the applicant proposes to raise the level and provide Compensatory Flood Storage on the site. The EA objects to the proposals on the grounds that the proposed development would result in a loss of flood storage at this level. The FRA proposes no mitigation for this and as such the development as proposed would increase the risk of flooding elsewhere.
- 9.47 The FRA submitted in support of the application also fails to adequately assess the importance of the river, nor the developments impact on its ecology. The ecological report also refers to the loss of a small watercourse but the impact of this has not been robustly assessed. There is insufficient detail on the management of the river corridor and how the development will deliver net biodiversity gain and how the development can contribute towards extending the connectivity of habitats up and downstream. Following the detailed objection received from the EA that the latest FRA has not addressed the objections raised, it is considered that the application fails to comply with Policies ESD6 and ESD10 of the CLP 2015 as well as paragraphs 163 (footnote 50), 167, 170 and 175 of the NPPF.

#### Residential amenity

- 9.48 Saved 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 2015, 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.*
- 9.49 The closest neighbouring property is to the immediate south of the building known as Newstead which is separated by a distance of approximately 8m from the side of the built form of the development and the side elevation of this neighbouring property. With the roof slope of the development then sloping away from the boundary the impact of the development upon the neighbouring property reduces accordingly.
- 9.50 Although the overall height of the proposal is greater than the neighbouring property by approximately 3m for ridge to ridge, as the proposal is for a three storey with the third storey in the roof space the overall impact on the neighbouring property is reduced to a point that the proposed development would not appear overbearing when viewed from the neighbour's property. In addition to this it is also considered that the development would not result in any significant loss of light nor outlook to warrant a refusal of permission.

## S106/Infrastructure

### *Policy Context*

9.51 Paragraph 54 of the NPPF states that *local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.* Paragraph 56 continues by stating that *planning obligations must only be sought where they meet all of the following tests:*

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development.*

### *Development Plan*

9.52 Policy INF1 of the CLP 2015 covers the issue of Infrastructure. This Policy states, amongst other things, that the *Council's approach to infrastructure planning in the District will identify the infrastructure required to meet the District's growth, to support the strategic site allocations and to ensure delivery by:*

- *Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities.*

9.53 Policy BSC 3 of the CLP 2015 states, amongst other things that *at Kidlington and elsewhere, all proposed developments that include 11 or more dwellings (gross), or which would be provided on sites suitable for 11 or more dwellings (gross), will be expected to provide at least 35% of new housing as affordable homes on site. The Policy continues by stating that, all qualifying developments will be expected to provide 70% of the affordable housing as affordable/social rented dwellings and 30% as other forms of intermediate affordable homes. Social rented housing will be particularly supported in the form of extra care or other supported housing. It is expected that these requirements will be met without the use of social housing grant or other grant.*

9.54 The Council also has a Developer Contributions SPD in place which was adopted in February 2018. It should, however, be noted that this is a general guide and development proposals will continue to be assessed on a case-by-case basis with the individual circumstances of each site being taken into consideration when identifying infrastructure requirements.

### *Assessment*

9.55 Due to the level of development on the site the issue of affordable housing should be taken into account. Paragraph 65 of the NPPF states that *where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.* This application is for 38 apartments on the site which would represent a major application in terms of definition. For this reason, the application should provide an element of affordable housing as part of the proposal.

9.56 The policy requirement is for 30% affordable housing as set out in Policy BSC3 in the CLP 2015 which would equate to 12 units with a 70:30 tenure split between rented and shared ownership. However, as part of the application the applicant has provided a detailed viability assessment of the scheme which highlights that the proposal would

not be viable with the cost of providing an element of affordable housing as part of the development. For this reason, the application as submitted would not be supported by any S106 contributions such as affordable housing.

- 9.57 In considering the viability element of the scheme officers instructed an independent review of the applicant's viability assessment which was carried out by Bidwells. In reviewing the viability assessment Bidwells confirmed that the findings of the applicant's assessment were reasonable and within the region of costs expected for this type of development. Bidwells' review of the development has therefore concluded support for the applicant's view that the proposed scheme is unable to make any contribution towards the provision of affordable housing whilst maintaining economic viability. Bidwells noted that the applicant's viability assessment did not include reference to any potential abnormal costs arising as part of the development proposal. As such if these had also been introduced in the applicant's viability this would have had an even greater impact upon the viability of the scheme.
- 9.58 Taking this review into consideration the Strategic Housing Officer has confirmed that there will not be a request for any affordable housing contributions at present. It is also considered that the requirement to provide an element of affordable housing as outlined in Policy BSC3 has also not been met in that the applicant's viability assessment has outlined that the development would not be viable with an element of affordable housing being required.

#### Sustainable Construction

- 9.59. Section 14 of the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. Paragraph 154 states that new development should be planned for in ways that:
- a) *avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and*
  - b) *can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.*

Paragraph 155 continues by stating, amongst other things, that *in order to help increase the use and supply of renewable and low carbon energy and heat, plans should:*

- c) *identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.*
- 9.60. Policy ESD1 of the CLP 2015 covers the issue of Mitigating and Adapting to Climate Change and includes a criteria under which application for new development will be considered. Included in the criteria is the requirement that development will incorporate suitable adaptation measures to ensure that development is more resilient to climate change impacts. These requirements will include the consideration of, *taking into account the known physical and environmental constraints when identifying locations for development. Demonstration of design approaches that are resilient to climate change impacts including the use of passive solar design for heating and cooling. Minimising the risk of flooding and making use of sustainable drainage methods and reducing the effects of development on the microclimate (through the provision of green infrastructure including open space and water, planting, and green roofs).*



- 9.61. With regards to Policy ESD2, this covers the area of Energy Hierarchy and Allowable Solutions. This policy seeks to achieve carbon emissions reductions, where the Council will promote an 'energy hierarchy' as follows: *Reducing energy use, in particular by the use of sustainable design and construction measures. Supplying energy efficiently and giving priority to decentralised energy supply. Making use of renewable energy Making use of allowable solutions.* Any new development will be expected to take these points into account and address the energy needs of the development.
- 9.62. Policy ESD 3 covers the issue of Sustainable Construction and states amongst other things that *all new residential development will be expected to incorporate sustainable design and construction technology to achieve zero carbon development through a combination of fabric energy efficiency, carbon compliance and allowable solutions in line with Government policy.* The Policy continues by stating that *Cherwell District is in an area of water stress and as such the Council will seek a higher level of water efficiency than required in the Building Regulations, with developments achieving a limit of 110 litres/person/day.* The Policy continues by stating that *all development proposals will be encouraged to reflect high quality design and high environmental standards, demonstrating sustainable construction methods including but not limited to: Minimising both energy demands and energy loss. Maximising passive solar lighting and natural ventilation. Maximising resource efficiency Incorporating the use of recycled and energy efficient materials. Incorporating the use of locally sourced building materials. Reducing waste and pollution and making adequate provision for the recycling of waste. Making use of sustainable drainage methods. Reducing the impact on the external environment and maximising opportunities for cooling and shading (by the provision of open space and water, planting, and green roofs, for example); and making use of the embodied energy within buildings wherever possible and re-using materials where proposals involve demolition or redevelopment.*
- 9.63 The applicant has made it clear that the flat roof areas of the building provide an ideal location for the positioning of a number of photo-voltaic panels which as they would be located within the valley of the roof the panels would be hidden from view. The applicant also notes that the electricity produced by solar cells is clean and silent and that solar energy is a readily available renewable resource. The applicant continues by stating that the proposed development would also seek to maximise passive solar lighting and natural ventilation and that all areas of the building internally and externally would be lit using low energy lighting and where applicable utilise appropriate daylight and movement sensor controls. With regards to water use the applicant has confirmed that in order to reduce excessive potable water use, water saving appliances are provided. All apartments would be fitted with flow restrictors, aerated taps and dual flush low capacity cisterns and that all apartments would have shower cubicles rather than baths fitted in their principle bathrooms.
- 9.64 Officers are satisfied that the proposed development would comply with the requirements of the Policy and that the development would be a sustainable proposal in terms of energy use. In the event of any permission being granted a condition would be attached requiring the implementation of these measures outlined by the applicant.

#### Ecology Impact

##### *Legislative context*

- 9.65 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.

- 9.66 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.
- 9.67 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.
- 9.68 The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
  - (2) That there is no satisfactory alternative.
  - (3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 9.69 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*

- 9.70 Paragraph 174 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.
- 9.71 Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) 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.

- 9.72 Paragraph 185 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.
- 9.73 Policy ESD 10 of the CLP 2015 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.
- 9.74 Policy ESD 11 is concerned with Conservation Target Areas (CTAs), and requires all development proposals within or adjacent CTAs to be accompanied by a biodiversity survey and a report identifying constraints and opportunities for biodiversity enhancement.
- 9.75 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.
- 9.76 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 LPAs 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*

- 9.77 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')
- 9.78 The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site consists of private garden spaces and built existing dwellings. The site backs onto the River Bure and this area of the site is an area of ecology value.
- 9.79 In order for the Local Planning Authority to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where 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 local planning authority should then

consider whether Natural England would be likely to grant a licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.

9.80 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.

9.82 The application is supported by a detailed protected species survey which concluded that *ecological features of significant ecological importance have been identified within the Site and even if present they could be accommodated within the proposed development*. Furthermore, the ecology assessment continues by stating that *measures outlined in this report to protect locally designated sites, retained habitats and mitigation strategies to ensure no impacts to protected and priority species are minimised can be controlled via a CEMP as a condition of the planning consent*.

9.83 An addendum to the main ecology assessment also highlighted that no bats or Great Crested Newts were found on or near the site. In conclusion the two ecology reports state that *the new development proposals offer a range of opportunities to increase the biodiversity resource on site and deliver net gains. This will be done through the removal existing barriers on site and the installation of fencing permeable to small animals, the incorporation of a range of native-species planting, and the installation of bird and bat boxes into the new buildings. Overall, the development proposals will further enhance the site for animals, contributing to an increase in biodiversity*.

9.83 The Council's Ecology Officer was consulted but no comments were received. Notwithstanding, the EA has objected to the application on the details of the ecology report. The EA highlights that the development would have a significant amount of riparian natural habitat within 8 m of the bank of the River Bure which, is a designated main river. The EA also advises that the ecological report submitted with the application does not adequately assess the importance of the river, nor the developments impact on its ecology. The ecological report also refers to the loss of a small watercourse but the impact of this has not been robustly assessed. There is insufficient detail on the management of the river corridor and how the development will deliver net biodiversity gain and how the development can contribute towards extending the connectivity of habitats up and downstream. In addition to this the EA also confirms that the proposed development will require a flood risk activity permit under the Environmental Permitting (England and Wales) Regulations 2016 but as submitted, it is unlikely that a permit will be issued.

9.84 For the above reasons officers are not satisfied that the welfare of any European Protected Species found to be present at the site and surrounding land would continue. The proposal therefore fails to comply with Policy ESD 10 of the CLP 2015 and paragraphs 170 and 175 of the NPPF.

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

10.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise. The NPPF supports this position and adds that proposals that accord with an up-to-date development plan should be approved and those which do not should normally be refused unless outweighed by other material considerations.

10.2. With this application the principle of the redevelopment of the site is considered acceptable. In terms of design the revised scheme is also considered appropriate in

terms of scale and materials. It is also considered that the position and design of the building will step up from the neighbouring dwelling to ensure that the development would not result in any adverse impact on the neighbours' amenities in terms of any loss of light, outlook or privacy.

- 10.3. This scale and type of development would normally require a S106 to be negotiated and attached to any planning permission granted to include an element of affordable housing. As outlined under Policy BSC3 *the district council will need to be satisfied that such affordable housing:- is economically viable in terms of its ability to meet the need identified.* As part of the supporting documents attached to the application the applicant has submitted a detailed viability assessment with the application. The viability assessment outlines the fact that the development would not be viable in the event that a S106 would be required. In considering this the Council's viability consultant, Bidwells, has reviewed the details and advises that the applicant is correct and as such there is no S106 to be attached to the development in the event that the application was to be approved.
- 10.4. The development does not, however, provide an acceptable form of access to and from the public highway. The LHA objects to the proposed access arrangements onto the private service road to the east of the development. The vision splays as outlined in the report above are considered to be inadequate for the type of development and are obstructed by the adjoining neighbours' boundary. For these reasons it is considered that the development would fail to provide a safe access to and from the site and therefore the proposal fails to comply with Policy ESD15 as well as paragraph 110 of the NPPF.
- 10.5. As the site is partly located within flood zones 2 and 3 the application was supported by a detailed FRA on which the EA has raised an objection to and maintained its objection on the second revision to the FRA. A third FRA has been received from the applicant but at the time of drafting this report there has been no comments received from the EA. Unless further comments are received from the EA that the latest FRA has addressed the objections raised, it is considered that for the above reasons the application fails to comply with Policies ESD6 and ESD10 of the CLP 2015 as well as paragraphs 163 (footnote 50), 167, 170 and 175 of the NPPF.
- 10.6 A further objection from the EA relates to the impact of the development upon the ecology in the River Bure. The EA advises that the ecological report does not adequately assess the importance of the river, nor the development's impact on its ecology. The ecological report also refers to the loss of a small watercourse but the impact of this has not been robustly assessed. There is insufficient detail on the management of the river corridor and how the development would deliver net biodiversity gain and how the development can contribute towards extending the connectivity of habitats up and downstream. For this reason, the development fails to comply with Policy ESD10 of the CLP 2015 and paragraphs 170 and 175 of the NPPF.

## 11. RECOMMENDATION

**THAT THE COMMITTEE RESOLVE TO CONFIRM THAT, HAD THE POWER TO DETERMINE THE APPLICATION HAD CONTINUED TO REST WITH THEM, THEY WOULD HAVE REFUSED THE APPLICATION FOR THE REASONS SET OUT BELOW:**

### REASONS FOR REFUSAL

1. The proposed access into and out of the site and onto the private service road fails to provide adequate and necessary vision splays to the south of the access. The proposed development therefore fails to provide a safe access to and from the site

contrary to Policy ESD 15 of the Cherwell Local Plan 2011-2031 as well as paragraph 110 of the National Planning Policy Framework.

2. The PPG classifies development types according to their vulnerability to flood risk and provides guidance on which developments are appropriate within each Flood Zone. Car parks are classed as Less Vulnerable in accordance with table 2 of the Flood Zones and flood risk tables of the PPG. Tables 1 and 3 make it clear that this type of development is not compatible with this Flood Zone and therefore should not be permitted. In addition, the submitted Flood Risk Assessment (FRA) identifies a flood level for a 1% annual probability flood event with the appropriate allowance for climate change of 71.06m AOD. When compared to the topography of the site, the proposed development will result in a loss of flood storage at this level. The FRA proposes no mitigation for this and as such the development as proposed will increase the risk of flooding elsewhere. The proposed development is therefore contrary to paragraph 167 in the National Planning Policy Framework and its associated planning practice guidance and Policy ESD 6 of the Cherwell Local Plan 2011-2031.
3. The submitted Flood Risk Assessment does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the planning practice guidance. The Flood Risk Assessment does not therefore adequately assess the development's flood risks. In particular, the FRA fails to take the impacts of climate change into account. The development provides inadequate mitigation to address flood risk for the lifetime of the development. The floodplain has not been safeguarded or compensation for lost flood storage provided. The proposed development is therefore contrary to paragraph 167 in the National Planning Policy Framework and its associated planning practice guidance and Policy ESD 6 of the Cherwell Local Plan 2011-2031.
4. The ecological report submitted with the application does not adequately assess the importance of the river Bure, nor the developments impact on the river's ecology. The ecological report also refers to the loss of a small watercourse but the impact of this has not been robustly assessed. There is insufficient detail on the management of the river corridor and how the development would deliver net biodiversity gain and how the development can contribute towards extending the connectivity of habitats up and downstream. The proposed development therefore fails to comply with Policy ESD 10 of the Cherwell Local Plan 2011 – 2031 and paragraphs 170 and 175 of the National Planning Policy Framework.