

**OS Parcel 5616 South West Of Huscote Farm And
East Of Daventry Road Banbury**

22/01488/OUT

Case Officer: Chris Wentworth

Applicant: Greystoke CB

Proposal: Construction of up to 140,000 sqm of employment floorspace (use class B8 with ancillary offices and facilities) and servicing and infrastructure including new site accesses, internal roads and footpaths, landscaping including earthworks to create development platforms and bunds, drainage features and other associated works including demolition of the existing farmhouse

Ward: Banbury Grimsbury and Hightown

Councillors: Cllr Beere, Cllr Biegel, and Cllr Moon

Reason for Referral: Major development/Departure from Development Plan

Expiry Date: 30 September 2022

Committee Date: 9 February 2023

SUMMARY OF RECOMMENDATION: THAT THE COMMITTEE CONFIRM THAT THEY WOULD HAVE REFUSED THE APPLICATION, AND DELEGATE POWERS TO OFFICERS TO DEAL WITH THE UPCOMING APPEAL

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is located on land northeast of Junction 11 of the M40, east of the A422 Daventry Road and north of the A422 Brackley Road. It lies opposite and east of the new Frontier Park development and east of the built-up area of Banbury, which lies primarily west of the M40. The site would be accessed from two points on the A361 Daventry Road, which in turn provides direct access to Junction 11 of the M40.
- 1.2. The site extends to 66.15ha of greenfield agricultural land, comprising nineteen field parcels that are defined by mature hedgerows and trees. The fields comprise a mixture of arable and pastoral land (of Grade 3a and 3b quality).
- 1.3. The site is bounded by the A422 Brackley Road to the south, and the A361 Daventry Road to the west. It adjoins open countryside to the north and east. Carrdus School, an independent day preparatory school, lies c.180m east of the site, separated by a dense woodland copse. To the west of the A361 and opposite the site is the recent commercial development of Frontier Park, which comprises a mix of B1, B2 and B8 employment uses on an area of land allocated for employment development (Policy Banbury 15) in the Cherwell Local Plan Part 1 2011-2031 (2015).
- 1.4. There are no footpaths (Public Right of Way, PRoW) within the site, although there are several within the wider vicinity.

2. CONSTRAINTS

- 2.1. The application site is not covered by any national or local landscape designations. With one small exception, most of the site is not in, or adjacent to, an environmentally sensitive area (i.e., sites designated as Sites of Special Scientific Interest (SSSI), National Parks, World Heritage Sites, Scheduled Monuments, Area of Outstanding Natural Beauty, or sites covered by international conservation designations), and therefore does not represent an environmentally sensitive location, as defined by Regulation 2(1) of the EIA Regulations.
- 2.2. The one exception is a woodland copse in the northeast corner of the site, which is listed under S41 of the Natural Environment and Rural Communities Act 2006 as a habitat of principal importance for the conservation of biodiversity. In addition to this copse, there are another forty individual and groups of trees spread throughout the site that are protected by Tree Preservation Order (TPO).

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The 22/01488/OUT planning appeal (Ref: APP/C3105/W/22/3311992) proposes the construction of up to 140,000sqm (1,500,000sqft) of B8 employment logistics floorspace (with ancillary offices and facilities) together with two new site accesses to the A361 Daventry Road, internal roads and footpaths, landscaped open space including earthworks to create development platforms and bunds, plus drainage features and other associated works including demolition of the existing Huscote Farm farmhouse.
- 3.2. Notwithstanding a holding direction from National Highways (currently lasting until 21st March 2023) stipulating that no decision be taken on the application without reference to the Secretary of State whilst National Highways consider the likely transport impacts of the development proposals on the strategic highway network, the applicant has appealed non-determination of the application to the Planning Inspectorate. An 8-day Public Inquiry is scheduled to consider that appeal, which is due to start on 11th April 2023.
- 3.3. The current application is an outline planning application and only includes detail of proposed site access and landscaping. All other matters are reserved for future assessment and determination.
- 3.4. There are no detailed design plans that accompany this application in respect to the proposed buildings or their layout. However, an indicative site layout plan has been prepared to demonstrate one way in which the development could be achieved in accordance with suggested development parameters.
- 3.5. It is suggested that in any final detailed design there would be up to ten new logistics warehouse buildings creating circa 140,000m² of proposed floor area. The final number and locations of the buildings have yet to be determined and would depend on the needs of future users of the buildings. However, they would be spread across ten zones of the site and it is suggested that all roof heights would be up to or less than the maximum building height specified for each zone which are outlined below.

Zones	Suggested Maximum Building Heights
A, C, D and F	23m
B, E, G, H, J and K	19m

4. RELEVANT PLANNING HISTORY

- 4.1. The application site has not been the subject of any planning application history that is relevant to this proposal.
- 4.2. The land was proposed for logistics employment development as part of the last Local Plan review, but the Local Plan Inspector did not support the suggested allocation of the land for development.
- 4.3. However, the applicant did submit a pre-application enquiry in 2021 (Ref: 21/04026/PREAPP) and a Screening Opinion request in 2022 (Ref: 22/00385/SO) requesting guidance on the draft proposals and an opinion as to whether or not any subsequent application would require an accompanying Environmental Statement under the terms of the EIA Regulations.
- 4.4. The Screening Opinion under Regulation 6 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 concluded that the proposal represented an 'Industrial Estate Development Project' that fell within Schedule 2, section 10(a) of the Regulations and the site area exceeded the applicable threshold in column 2 of Schedule 2.
- 4.5. Given the scale of the site proposed to be developed and that significant environmental effects were likely to result when considered against the EIA Regulations, Officers concluded that the proposal did constitute EIA Development and the screening opinion, issued on 3rd March 2022, confirmed this. The subsequent application was accompanied by an Environmental Statement (ES).

5. RESPONSES TO PUBLICITY

- 5.1 The planning application was publicised by way of site notices 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 was been able to identify from its records. The final date for comments was **1st December 2022**. There were 208 objection representations, 3 submissions of support and 8 general comments raised by third parties in respect to that publicity.
- 5.2 The comments raised by third parties are summarised as follows:

Support

- Anything which creates more jobs in the area is a great benefit;
- More workplaces are needed in Banbury.

Objections/Comments

- This will devastate the countryside. Given that HS2 is already doing this, it is unacceptable;
- The plan to convert yet more farmland to warehousing will ruin more wildlife habitats. Many species of birds have lost habitats in wetlands and around the motorway area;
- We have many vacant buildings around the town that could be utilised and converted for warehouse solutions without building more;

- The area and motorway are already highly packed with large vehicles and lorries making the surrounding roads slow, particularly around the area of the proposed warehouses;
- The jobs generated by construction of and the ongoing employment in the facility would not benefit the local area;
- Automation and the very nature of warehousing mean staffing and jobs are low skilled and do not add to the local economy;
- It would dominate the landscape, which is attractive;
- If the land is levelled there is an increased risk of subsidence on the hill behind it that has residential homes atop – would this make the escarpment unstable?;
- Lack of existing road capacity on A361 and M40 J11;
- No public consultation has taken place, which should have been paramount and comprehensive for a development of this size;
- The proposal was previously dismissed by the Local Plan Inspector in 2015;
- Further erosion of rural land, that creates natural habitats for wildlife and an attractive screening from the M40 traffic, noise, and pollution for local homes and villages. This destruction of a rural aspect would be detrimental to all the surrounding area;
- It is dangerously close to the Northamptonshire County boundary line [which it adjoins];
- The area will become a concrete jungle;
- At a time of climate crisis, when Government is working hard on Nature Recovery Strategies, it seems abhorrent that any consideration would be given to destroy what we already have in this area;
- The site is not allocated within the adopted Local Plan;
- We note that the application contains only a narrow selection of viewpoint images;
- The Oxfordshire Historic Landscape Characterisation Project, Capacity for Change, shows the landscape in the location of the application to be Level 5: High Sensitivity to Urban Development;
- Building in open countryside destroys the value of local heritage assets to the authority and local community, and in some cases, nationally. The fields in the site are medieval ridge and furrow landform. The ridge and furrow is well-preserved and therefore it is unlikely that the ground has been disturbed significantly since medieval times, making it impossible to have any detailed knowledge of what lies beneath or what the land may have been previously used for;
- The loss of biodiversity that would occur in the event of the proposed development would lead to the loss of much natural habitat for wildlife and birds;
- 42 TPOs on trees across the site, many of which overlap the proposed location of units within the proposals;
- Such large-scale commercial development gives no consideration for residents in nearby areas and would bring unreasonable disturbance from units such as alarms, machinery and HGV movements;

- Planning Statement states that pedestrian and cycle linkages are designed into the site to improve connectivity with Banbury. Without significant infrastructure changes in the surrounding areas, there is no safe route to facilitate this;
- It is not expected that B8 units in this area would create the volume of jobs suggested by the applicant [1,900], in fact, the recently approved, Frontier Park, used the argument of low FTE job creation in mitigation of concerns surrounding traffic generation;
- Flood risk is a huge concern. Development of the area would create an increased risk of flooding by removing permeable surfaces, nearby areas have required much work against natural flooding and the lower grazing land is already prone to flooding;
- Despite the flood risk, it does not appear that ongoing future management of water levels have been considered in any depth;
- Sets a precedence to allow further building right into Nethercote and up the hill into Middleton Cheney, destroying the hamlet and village characters;
- A small market town doesn't have the services to support such a large development, with doctors already oversubscribed;
- Potential for light pollution;
- The M40 acts as a natural eastern boundary to Banbury's expansion into the green belt;
- Banbury already has sufficient levels of warehousing;
- Schemes such as these cannot work unless there is equivalent investment in infrastructure. CILs need to be collected from this and other new warehouse owners to construct an M40 junction 10a;
- Loss of good quality farmland;
- No faith that the developers, if given permission in any form would stick to their proposals;
- The proposed development both in the building process and thereafter would be a significant detriment to the air quality of the locality;
- Detrimental to town's image;
- It meets none of the aspirations of the CDC Local Plan;
- We are disappointed to see that the applicant has not made public the information related to badgers;
- We are concerned that the proposed site has no connection to the existing sewerage system, and that foul water would be treated at a new plant on the site and then discharged into the surface water network;
- We believe it would be irresponsible to permit a development that is solely reliant on road vehicle movements for its operation and construction and has no realistic possibility of any connection to the rail freight network;
- There is a major safety issue to consider and that is the addition of a roundabout so close to a very sharp bend in the road as you come off the M40 J11 roundabout onto the A361;
- The scale and height of the proposed commercial development would be ruinous to this part of the countryside and rural community;

- There are several references to Frontier Park, suggesting that precedents with this development have been set which are to be used in the current application.

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

6. RESPONSE TO CONSULTATIONS

6.1 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 COUNCILS

6.2 Banbury Town Council objected to the proposal on the following grounds:

- The principle of providing employment development on this site fails to comply with SLE 1 of the Cherwell Local Plan. If additional land for employment development is required it should be assessed and allocated through the Local Plan process which is underway, and therefore this proposal is premature;
- Development at this location would not be sustainable, given the site's location without direct and convenient access for pedestrians, cyclists and no frequent public transport service;
- The proposal would cause severe harm to highway safety and convenience and would worsen traffic conditions on the M40 junction;
- The proposed development would be out of scale and character with the open rural character of the site and its surrounding context, and the development would cause unacceptable harm to the visual amenity of the area and the local landscape;
- The development would worsen air pollution issues on Hennef Way;
- The type of development is restricted to warehousing, which is unacceptable.

6.3 Middleton Cheney Parish Council objected to the proposal on the basis of the environmental impacts, particularly to local agriculture and the noise and light pollution from increased traffic and deliveries and night-time lights in the warehouses. Furthermore, they state that the local roads are already at saturation point if there is an incident on the M40 and that the development would inevitably increase traffic on all neighbouring roads as lorries move in and out of the site. In addition, the suggested design, appearance and layout of the site is considered to be unsuitable for this position and the character of the land. Cherwell's local development plan references, respect for heritage assets (this site has furrows from past farming techniques), conservation of tranquillity and biodiversity and environmental character and the proposals pay no regard to these statements. Also, it is noted that Cherwell District Council has declared a climate emergency. It is difficult to reconcile these plans with that.

6.4 The Bourtons Parish Council objected to the proposal on the following grounds:

- The size of the proposed development across a significant and visually important area of countryside;
- Logistics warehousing does not provide the highest or optimum levels of employment per square metre;

- The traffic congestion already apparent around Junction 11 of the M40 would be increased dramatically;
- Air pollution would be increased;
- The application mentions the benefit of local bus services. It does not mention that the 200 hourly service between Banbury and Daventry, which serves Wardington, is threatened with closure. Nor does it consider that the 500 service for Chacombe and Middleton Cheney was under threat some ago and only saved for the benefit of the staff who work at Chacombe Park nursing home but would be under threat again if the extra traffic related to this development extends their journey times.

6.5 Chacombe Parish Council objected to the proposal on the following grounds:

- Planning Policy and Decision-Making Framework – Principle of the Development: - The site is specifically excluded from the currently adopted Local Plan and was assessed in detail by the Plan Inspector in 2015;
- The proposed development would have a significantly detrimental impact on the local landscape;
- The proposed development would have a significantly detrimental impact on the surrounding highway network;
- Absence of Community Engagement, contrary to NPPF guidance.

6.6 Overthorpe Parish Council objected to the proposal and fully support the comments made by Chacombe Parish Council.

6.7 Wardington Parish Council objected to the proposal on the following grounds:

- The size of the proposed development (too large);
- Yet more unsightly warehousing;
- The employment created would be mainly low skilled and low paid;
- Not consistent with the Cherwell District Council Local Plan and its aspirations;
- It would put yet more pressure on the already congested and air polluted M40 junction 11 area;
- It would result in the permanent loss of an environmentally and visually important area of the countryside.

6.8 West Northamptonshire Council initially placed a holding objection to the application with the following comments and objections subsequently provided:

- Environmental Protection comments: If permission is granted then the following conditions should be imposed:
 - Condition – Noise assessment
 - Condition – Extract ventilation system
 - Condition – External lighting
 - Condition – Land contamination remediation
 - Condition – Construction Management Plan
 - Condition – Air quality assessment and mitigation.
- Heritage Comments.
 - The report acknowledges and addresses the difference in assessment of heritage assets between the NPPF and EIA. The

report identifies the site has potential to impact two nearby heritage assets, the Grade II designated C17 Seals Farm farmhouse, which is located to the northeast of the proposed development site and Overthorpe Hall, to the southeast of the proposed development site, a non-designated heritage asset. I am satisfied that the significance of each asset has been appropriately considered and reasonable conclusions formed as to the potential impact of the proposed development on the setting / significance of the assets.

- Highway Comments – Objection.
 - This application for outline permission for a 140,000sqm logistics warehouse park cannot be supported without thorough assessment of the A422 to Brackley and A361 to the M1 at Daventry;
 - The Transport Assessment has identified the major role these two routes play in light and heavy traffic, therefore WNC's own strategic planning and transport policy must also be considered, and due process followed as if the site was within the WNC area;
 - There would be a need to secure bus improvements to serve Brackley which has been totally overlooked and depending on results of further assessment in the WNC areas, highway mitigations may be required.

6.9 CPRE objected to the application on the following grounds:

- The site is specifically and explicitly excluded from the Cherwell Local Plan 2011-2031;
- The Environmental Impact Assessment provided with the application is wholly inadequate and, in some places, inaccurate and/or misleading;
- The projected site plans for access to and egress from the site are wholly unrealistic and would have significant impact on flow of traffic entering and exiting Junction 11 of the M40 and the surrounding road system and quite possibly would have specific impacts on traffic on the M40 itself;
- The Transport Plan in the application is wholly inadequate;
- The claimed employment benefits for the Banbury area are, to say the least, tenuous. The applicants selectively misquote the Banbury Landscape Sensitivity and Capacity Assessment. In addition, reference to the linkage of the development to the Oxford-Cambridge Arc is disingenuous given that the Government has severely modified and reduced its proposals for that Arc, particularly in relation to transport infrastructure.

6.10 Oxfordshire County Council as Local Highway Authority objected to the proposal on the following grounds:

- The site is in an unsustainable location for walking and cycling;
- The proximity of the access roundabout to M40 Junction 11 is likely to lead to severe congestion and potential safety issues arising from queuing on the M40 off slip;
- Any further development around Junction 11 of the M40 would add to the severe congestion and air quality problems on the A422, particularly along Hennef Way;
- This development does not demonstrate how it would mitigate its impact on these issues through adequate sustainable travel connections or by highway improvements;

- Safe and suitable operation of affected highway junctions has not been demonstrated by the use of a suitable analysis tool.
- 6.11 National Highways objected to the proposal and placed a holding objection based upon reviewing the most recently submitted information contained within the Transport Assessment to allow further consideration of the scheme. The holding objection is currently in place until 21st March 2023.
- 6.12 Banbury Civic Society objected to the proposal on the basis that the proposal is contrary to the following policies:
- Cherwell Local Plan Policy ESD 13 - Local Landscape Protection and Enhancement;
 - Cherwell Local Plan Policy ESD 15 - The Character of the Built and Historic Environment;
 - NPPF Paragraph 195: *“Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise”*.
 - NPPF Paragraph 199: *“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”*
 - NPPF Paragraph 203: *“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*
- 6.13 Oxfordshire County Council as Local Lead Flood Authority objected to the proposal on grounds that the applicant had failed to demonstrate through its FRA and a Surface Water Management Plan that the proposals would not increase the risk of surface water flooding.
- 6.14 Berkshire, Buckinghamshire & Oxfordshire Wildlife Trust (BBOWT) objected to the proposal on the following grounds:
- Application does not provide adequate evidence of a net gain in biodiversity - The importance of a net gain in biodiversity being in perpetuity;
 - Loss of or damage to hedgerow priority habitat contrary to the NPPF and Cherwell Local Plan;
 - Loss of ridge and furrow grassland;
 - Buffer zones and management of hedgerows required in order to achieve biodiversity net gain;
 - Insufficient evidence that populations of farmland bird species (42 species noted, including two red-data species) would be maintained, contrary to the NPPF, Cherwell Local Plan, and the Conservation of Habitats and Species Regulations 2017 (as amended).

6.15 Cherwell District Council Environmental Health Officer – following comments received.

- **Air Quality** – The methodology and findings of the assessment are accepted. Paragraph 10.5.3 of the report recommends that offsetting measures should be considered. A Damage Cost Calculations Assessment, to put into monetary terms the impact of the proposed development on air quality, should therefore be submitted which should include details of the appropriate off-setting measures based on the outcome of the assessment.

- **Light** – No assessment has been submitted but will be required. This could be submitted prior to approval or conditioned on any consent granted.

- **Land Contamination** – The methodology and findings of the Preliminary Geo-Environmental Risk Assessment are accepted. Further intrusive investigation is however required as recommended in section 4.0 Conclusions & Recommendations, and it is therefore recommended that the following conditions be attached to any consent granted:
 - *Land Contamination Intrusive Investigation*
 - *Land Contamination Remediation Scheme*
 - *Land Contamination Remediation Works*
 - *Unexpected Land Contamination*

- **Noise** – The methodology and findings of the assessment are generally accepted, although further clarification/assessment is required.
 - Operational Phase – Potential noise sources are considered in Appendix 11.6, however it is not clear if all potential noise sources associated with B8 use have been considered, for example reversing beepers as the site will operate 24/7. The last paragraph on page 3 of Appendix 11.6 references Tables 7.6-2 through Table 7.6-4, I'm assuming this is a typo and should read 11-6.4?
 - Construction Phase – The control of noise and dust to be in accordance with an approved Construction Environmental Management Plan (CEMP) via condition.

6.15 Cherwell District Council Ecology – Following comments received.

- In general, an appropriate Ecological assessment has been carried out at the site. There are however a number of ecological issues.
- Great crested newts have not been considered to the satisfaction of the newt officer and further information on great crested newts should be submitted.
- A licence is required for bats and, should permission be granted, would need to be conditioned due to the presence of roosts in some of the buildings impacted.
- A full lighting strategy is required which should be designed with the need to protect nocturnal wildlife in mind using guidance from the Bat Conservation Trust and ILP.
- A CEMP for biodiversity would be required to be conditioned to demonstrate how retained vegetation and protected and priority species would be protected during construction. This should include a clear plan of Ecological protection

zones, details of ECoW supervision and the need for updated surveys where relevant.

- Updated ecological surveys will be required should more than two years elapse since the submitted PEA and commencement of any works.
- A badger survey will be required prior to commencement of works and full details of any and all mitigation required submitted for approval.
- The site has a very large footprint with a number of farmland birds, including red list species holding territory and therefore potentially impacted by the development. I do not entirely agree with the Ecological appraisal that conditions will be better for these birds following construction. I would refer you to BBOWTs full outline of the issue within their comments. There appears to be additional land in the applicant's ownership to the South which could be used for a specific farmland bird mitigation site and this should be considered.
- The applicants have submitted a BIA metric. This has been updated with a less ambitious habitat enhancement (now proposing other neutral grassland rather than lowland meadow) which is more realistically achieved (but means the net gain demonstrate is significantly less). I don't think the illustrative landscape masterplan has been updated to reflect this.
- I concur with BBOWT that it would be prudent for the site to be considered on a field-by-field basis in terms of the metric and determining condition. Currently the whole 61ha of grassland is all put together and it seems unlikely that the condition would not vary at all within this large area and this would lead to an underestimate of current value which would likely result in a net loss to wildlife under current plans. Our records suggest that one of the fields in particular may be of greater value being highlighted as potentially Priority grassland.
- A full LEMP demonstrating how the net gain proposed will be achieved, monitored and secured ongoing would be required. This should commit to achieving a net gain in biodiversity of at least 10% in both linear and area-based habitats. It should include an updated BIA which considers the land area on a field-by-field basis, showing how each habitat will be created, enhanced and maintained. It is not clear to me whether the grassland to the South and East is intended for amenity use. If so there should be large areas reserved where public access is discouraged otherwise the biodiversity value will be much reduced.
- There should be provision on site for biodiversity enhancements such as log piles, hibernacula, bat and bird boxes and importantly features integrated into the buildings themselves to ensure their retention for the lifetime of the development.
- The feasibility of green roofs and walls on site should be considered and included wherever possible.

6.16 Oxfordshire Newt Officer (NatureSpace) placed a holding objection on the application and stated that they were not satisfied that the applicant had adequately demonstrated that there would be no impact to great crested newts and/or their habitat as a result of the development being approved.

6.17 Oxfordshire County Council's Archaeologist commented that the site is in an area of archaeological importance and potential with records of Roman, Romano-British, Neolithic and Bronze Age artefacts having been discovered locally. Therefore, recommended that prior to any determination of the application, an archaeological field evaluation should first be carried out.

6.18 The Environment Agency commented on the proposal and stated that whilst they had no objections to the principal of the proposal, connection to mains foul drainage was not feasible. They advised that Government guidance contained within the National Planning Practice Guidance (Water supply, wastewater and water quality – considerations for planning applications, paragraph 020) sets out a hierarchy of drainage options that must be considered and discounted in the following order:

1. Connection to the public sewer.
2. Package sewage treatment plant (adopted in due course by the sewerage company or owned and operated under a new appointment or variation).
3. Septic Tank.

6.19 The District Council's Land Drainage Officer commented as follows:

- The proposed development would create significant impermeable areas on a site located to the east of M40 J11 and north of the A422. An outline Flood Risk Assessment and Surface Water Management Plan is included in Chapter 9 of the Environmental Statement;
- This is a Major Application so will also require consideration by the LLFA. The site contains a number of ditches which generally flow in a westerly direction. These do not flow continuously and remain dry for the majority of the time;
- The superficial geology in this locality is generally impermeable clay and known not to be suitable for infiltration;
- Foul drainage is proposed to be to a private sewage treatment plant located on the site with the treated effluent being discharged to the ditch system. This would require the consents of both the Council as Land Drainage Authority and the Environment Agency;
- Normally, an Environment Agency consent/permit would only be issued if the receiving watercourse is continuously flowing. The applicant should seek guidance about this from the Environment Agency;
- The Surface Water Management Plan envisages attenuated discharges to the system of ditches;
- There are no objections in principle to this subject to the details being agreed with Cherwell as Land Drainage Authority and the LLFA. The layout of the development should be such that all ditches remain readily accessible for maintenance.

6.20 Thames Valley Police stated that there was insufficient information provided to support this application in its current form, and therefore must object. The objection from Thames Valley Police may be addressed by the submission of additional documentation and information to address the following points. In addition, should this application be approved, the following, or similarly worded conditions should be imposed:

- Condition 1 - Prior to commencement of development, an application shall be made for Secured by Design Silver accreditation on the development hereby approved. The development shall be carried out in accordance with the approved details and shall not be occupied or used until confirmation of SBD accreditation has been received by the authority.
- Condition 2 - Prior to commencement of development, details of a proposed external lighting scheme shall be submitted to the local planning authority. The scheme shall set out the steps that will be taken to ensure that external lighting, including zonal/security lighting, particularly around parking areas,

promotes a secure environment and does not cause a nuisance to local residents.

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1 Section 38(6) of the Planning & Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 2 of the National Planning policy Framework (NPPF) makes clear that the NPPF does not change the statutory status of the Development Plan as the starting point for decision making.
- 7.2 The Development Plan for Cherwell consists of the Cherwell Local Plan 2011-2031 Part 1, which was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. This Plan replaced several previously 'saved' policies in the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the Development Plan. On 7th September 2020, the Council adopted the Cherwell Local Plan 2011-2031 (Part 1) Partial Review – Oxford's Unmet Housing Need, and it too forms part of the Development Plan, although it is not relevant to these application/appeal proposals because it only relates to development around Kidlington and neighbouring villages, on the northern edge of Oxford.
- 7.3 The full list of relevant planning policies in Cherwell District's statutory Development Plan is as follows, had the Council been able to have made a determination on the application.

Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1)

- PSD1 – Presumption in favour of Sustainable Development
- SLE1 – Employment development
- SLE2 – Securing dynamic Town Centres
- SLE4 – Improved Transport & Connections
- ESD1 – Mitigating & Adapting to Climate change
- ESD3 – Sustainable construction
- ESD6 – Sustainable flood risk management
- ESD7 – SuDS
- ESD10 – Protection & Enhancement of Biodiversity & 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)

- TR1 – Transportation funding
- C1 – Protection of sites of Nature Conservation Value
- C2 – Development affecting Protected Species
- C7 – Landscape Conservation
- C8 – Sporadic development in the open countryside
- EMP4 – Employment generating development in the Rural Areas

- ENV1 – Development likely to cause detrimental levels of pollution
- EN7 – Development affecting water quality

7.4 *Other Material Planning Considerations*

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell DC's Banbury Vision and Masterplan Supplementary Planning Document (SPD)
- Cherwell DC's Developer Contributions SPD February 2018
- EU Habitats Directive

8. APPRAISAL

8.1 The key issues for consideration in this case are:

- Principle of development
- Landscape/impact on the character of the area
- Heritage Impact
- Ecology Impact
- Economic Impact
- Highway Impact
- Air Quality Impact
- Flooding and Drainage Impact
- Infrastructure Contributions

Principle of Development

8.2 Section 38(6) of the Planning and Compulsory Purchase Act outlines that the starting point for the consideration of a planning application is the Local Plan unless material considerations dictate otherwise. Where the Local Plan is absent, silent or out-of-date, paragraph 11 of the National Planning Policy states that a presumption in favour of sustainable development applies, granting permission unless the benefits of the proposal are demonstrably outweighed by any harm caused.

8.3 As such, the starting point for the consideration of this proposal is the Cherwell Local Plan. The Cherwell Local Plan outlines the Council's policies for the period 2011-2031. These policies are considered up-to-date and includes the allocation of sites for employment purposes to meet the District's needs. As such, paragraph 11 of the NPPF is not engaged in this instance. Therefore, full weight is applied to the relevant policies within the local plan.

8.4 Policy SLE1 of the Cherwell District Local Plan outlines the strategic vision for the provision of new employment development within the District. Also contained within the Local Plan are site specific policies allocating land for employment purposes. Each policy sets out the type of employment development that is required for each site, and cumulatively these allocations provide sufficient employment development opportunities to meet the identified needs of the District until 2031.

8.5 In this case the application site is not allocated within the adopted local plan and sits outside of the built envelope of Banbury town to the east of the M40 motorway. It is noted that the site was put forward previously when a 'call for sites' exercise was

undertaken in a previous draft iteration of local plan but was not brought forward and the site remains unallocated.

- 8.6 The Inspector stated at that time that, amongst other matters, that only land west of the A361 (i.e., not the current application/appeal site) should be allocated for new employment development in the modified plan and none of that to the east of the road, even as a strategic reserve site as this would have the considerable benefit of reducing the very harmful landscape and potential environmental effects of the wider scheme on a main entrance to the town from the north, south east and east, as well as that on the largely rural landscape of the locality. On this basis, the authority can see no reason, through the evidence submitted to depart from the Inspectors previous findings.
- 8.7 Furthermore, the latest Annual Monitoring Report (AMR) shows that there is existing employment land available at both Banbury and Bicester within allocated sites. Therefore, until such time where the existing capacity within allocated sites has been exhausted and there is a robust and unequivocal evidential need for further employment land, speculative sites are unlikely to be supported.
- 8.8 On this basis it is not considered that the principle of development can be supported in this case and is therefore recommended for refusal on the basis of it being an unallocated site in an inappropriate location.

Ecology Impact

- 8.9 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.
- 8.10 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.
- 8.11 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.
- 8.12 This policy is 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.
- 8.13 Saved policy C2 contained within the Cherwell Local Plan 1996 states that development which would adversely affect any species protected by schedule 1, schedule 5 and schedule 8 of the 1981 Wildlife and Countryside Act and by the E.C. Habitats Directive 1992 will not normally be permitted.

- 8.14 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.
- 8.15 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.
- 8.16 The north-east part of the site contains a NERC Act S41 Habitat site (as per the Adopted Cherwell Local Plan 2011-2031 (Part 1) Partial Review- Oxford's unmet Housing Need, September 2020). This part will remain undeveloped with a substantial buffer around it, providing opportunities for habitat and biodiversity enhancements.
- 8.17 An Ecological Impact Assessment has been undertaken with a desk-based assessment undertaken to identify records of protected and/or notable habitats and species, and designated nature conservation sites in the vicinity of the site and has been provided within the Environmental Statement. The assessment states that, based on the data gathered, during the construction phase and without mitigation there is potential for significant negative effects at the site to a local level in relation to pollution events, loss of habitats and effects on species such as amphibians, reptiles, birds, bats and small mammals and invertebrates. It then goes on to state that at the operation stage, the Proposed Development will have established newly created habitats including enhanced grassland, species-rich hedgerows, native trees, new ponds, native woodland and an orchard all of which would be positive, permanent and of significance at up to a Local level with the inclusion of mitigation measures secure by planning condition through a LEMP and CEMP.
- 8.18 However, Oxfordshire Newt Officer has placed a holding objection to the application and have stated that they are not satisfied that the applicant has adequately demonstrated that there will no impact to great crested newts and/or their habitat as a result of the development being approved. The development falls within the amber impact risk zone for great crested newts with such impact risk zones derived through advanced modelling to create a species distribution map which predicts likely presence. In the amber impact zone, there is suitable habitat and a high likelihood of great crested newt presence and there are 14 ponds within 500m of the development proposal (5 within the site) and there is direct connectivity between the development and surrounding features in the landscape.
- 8.19 The newt officer goes on to state that they remain unsatisfied that the applicant has adequately demonstrated that there will no impact to great crested newts and/or their habitat because of the development being approved. As are P5 was inaccessible it must be assumed that there is a presence rather than absence without further information to prove otherwise and also that the surveying method (HSI Scores) are not a suitable replacement to GCN surveys.
- 8.20 Having regard to the Local Planning Authority's duty under the Conservation of Habitats and Species Regulations 2017, the lack of a suitable protected species/ecological survey and proposed mitigation strategy means that it has not been demonstrated that the proposal will not cause harm to any protected species or

its habitat which is reasonably likely to be present and affected by the development. The proposal is therefore contrary to Policy ESD10 of the CLP 2031 Part 1, advice contained in the PPG and Natural England's Standing Advice, and section 15 of the National Planning Policy Framework.

- 8.21 The authorities Ecology officer has assessed the submission and has stated that generally an appropriate Ecological assessment has been carried out at the site. However, they go on to state that there are a number of ecological issues that have yet to be addressed. Great crested newts have not been considered to the satisfaction of the newt officer and further information on great crested newts should be submitted as discussed above.
- 8.22 The applicants have submitted a BIA metric. The Ecologist has noted that this has been updated with a less ambitious habitat enhancement (now proposing other neutral grassland rather than lowland meadow) which whilst considered to be more realistically achieved it does mean that the net gain demonstrated is significantly reduced and this has not been reflected in the current illustrative landscape masterplan. Therefore, at this stage the authority is unable to fully ascertain what level of biodiversity net gain would be achieved and therefore is recommended for refusal on this basis.
- 8.23 It has also been noted in the comments and objections raised by third parties that a large number of trees that are subject to Tree Preservation Orders (TPO) are located on site with a number to be lost as part of the proposal. The authority has assessed the proposal and it is noted that up to 40 no. trees comprising of a variety of species, including Oak trees, are located across the site and would highly likely be removed to facilitate the development proposal. Few details have been provided regarding the loss of these trees as the site is subject to an outline proposal with layout determined at a later stage. As a result of this, the loss of trees could be much greater than currently predicted either through tree loss or degradation of trees to be retained during construction and operation phases. On this basis it is considered that the authority does not have sufficient information to adequately assess such impacts, or the justification provided for such potential impacts in relation to protected trees. The proposal is therefore contrary to Policy ESD10 of the CLP 2031 Part 1 and the National Planning Policy Framework.

Economic Impact

- 8.24 Policy PSD1 contained within the Cherwell Local Plan 2011-2031 Part 1 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 Council will always work proactively with applicants to jointly find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.
- 8.25 Policy SO1 seeks to facilitate economic growth and employment and a more diverse local economy with an emphasis on attracting and developing higher technology industries whilst policy SO6 seeks to accommodate new development so that it maintains or enhances the local identity of Cherwell's settlements and the functions they perform.
- 8.26 Policy Banbury 7: Strengthening Banbury Town Centre contained within the Cherwell Local Plan 2011-2031 seeks to maintain and improve the vitality and viability of the town centre offering with an emphasis on the town centre being accessible, and by a variety of transport options.

- 8.27 The authority has significant concerns that the further development around Junction 11 of the M40 in the form and scale proposed would add to the severe congestion experienced. Junction 11 of the M40 is a key arterial route that serves the town of Banbury from the north and east. Increasing congestion at the junction would render both the town centre and the edge of town retail and employment land offerings comparatively less attractive as destinations thereby reducing the town's sustainability. Such concerns have not been addressed through the submission of the current planning application. It is acknowledged however, that the development proposal would create several economic benefits during the build phase and once it is operational. There would be a significant number of on-site jobs created (estimated to be approximately 1,100). The scheme is also proposed to be located in a strategically important area of the UK – the Oxford-Cambridge Arc.
- 8.28 However, whilst the creation of employment opportunities could be supported, this should not be at the expense of the town's continued operation, its attractiveness and sustainability. As such, the proposal is recommended for refusal on the basis that it fails to adequately assess the economic impacts upon the town of Banbury, specifically the attractiveness of Banbury town centre and the edge of town retail and employment centres as a result of additional traffic on the strategic and local highway network. The proposal is therefore contrary to policies SEL1 and SEL2 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 Saved Policies (CLP 1996) and Government guidance within the National Planning Policy Framework.

Highway Impact

- 8.29 Policy SLE4 contained within the Cherwell Local Plan 2011-2031 Part 1 states that all development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling. Encouragement will be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Development which is not suitable for the roads that serve the development, and which have a severe traffic impact will not be supported.
- 8.30 Saved policy TR1 contained within the Cherwell Local Plan 1996 states that before proposals for development are permitted the council will require to be satisfied that new highway, highway improvement works, traffic management measures, additional public transport facilities or other transport measures that would be required as a consequence of allowing the development to proceed will be provided.
- 8.31 The proposal would require additional infrastructure and amendments of the existing highway network on the A361 Daventry Road and the Junction 11 M40 roundabout itself to facilitate the development. However, a full assessment of the proposal and the mitigation required has yet to be agreed between the authority, relevant stakeholders and the applicant due to lack of modelling.
- 8.32 An objection has been made by OCC Highways on the following points;
- a) *The site is in an unsustainable location for walking and cycling* – The site is located in an area with limited footways, particularly along the A361 Daventry Road and limited opportunities to cycle across the M40 Junction 11 roundabout.
 - b) *The proximity of the access roundabout to M40 Junction 11 is likely to lead to severe congestion and potential safety issues arising from queuing on the M40 off slip* – The current proposal includes the provision of an additional roundabout on the A361 that is approx. 60m to the north of the M40 J11 roundabout which would provide the main vehicle access into the application site.

- c) *Any further development around Junction 11 of the M40 will add to the severe congestion and air quality problems on the A422, particularly along Hennef Way – this development does not demonstrate how it would mitigate its impact on these issues through adequate sustainable travel connections or by highway improvements – No information has been provided by the applicant to address this issue.*
- d) *Safe and suitable operation of affected highway junctions has not been demonstrated by the use of a suitable analysis tool – It is agreed by all parties that highway modelling (such as VISSIM) is required to accurately represent the flow of vehicles at all the primary local junctions and the interaction between them. Analysis using VISSIM has not been undertaken. However, Junction 11 has been analysed using LinSig but the results are inconclusive as:*
 - o The model does not entirely correspond to the proposed layout drawings.
 - o Traffic flows associated with another nearby development proposal (21/02467/F) have been erroneously included.
 - o LinSig is considered to have limitations that mean it is not suitable to predict the future operation of the local network with sufficient confidence.
- e) *It has not been demonstrated that a signalised crossing of the A361 for pedestrians and cyclists may be incorporated at a safe and suitable location, and the associated access into the site has not been indicated.*
- f) *Proposed modifications to Junction 11 to mitigate for increased traffic will involve extensive civil engineering works and it has not been demonstrated that these works are feasible. The main changes involve:*
 - o Realigning and widening the A361 entry on to the gyratory. This will entail the removal of trees and significant build-up of the embankment.
 - o Widening of the southern overbridge to accommodate an additional lane. This will also require tree removal and embankment works, and possibly the replacement of the entire bridge.

8.33 The objections raised above outline that a variety of factors that are considered fundamental to the appropriateness of the site for development have not been satisfactorily addressed and the objection is maintained.

8.34 Furthermore, given the sites location and access arrangements from the M40 J11 roundabout the proposal would give rise to impacts upon the Strategic Highway network. As such, National Highways have been consulted on the proposal and have placed a holding objection to the proposal which is currently in place until March 2023. National Highways has reviewed the most recently submitted information contained in a Transport Assessment and also a Transport Assessment Addendum and the review identified a number of recommendations which need to be addressed in order for National Highways to fully understand the impact of the development on the Strategic Road Network, hence the imposition of the current holding objection.

8.35 West Northamptonshire Council as adjacent highway authority has been consulted on the proposal and have also objected on the basis that it cannot be supported without a thorough assessment of the A422 to Brackley and A361 to the M1 at Daventry which has not been undertaken. They go on to state that the transport assessment has identified the major role these two routes play in light and heavy traffic, therefore WNC's own strategic planning and transport policy must also be considered, and due process followed as if the site was within the WNC area. Finally, they outline that there will be a need to secure bus improvements to serve Brackley which appears to have been totally overlooked and depending upon the results of

further assessment in the WNC areas, highway mitigations may be required on this basis.

- 8.36 On this basis, the development is not currently considered acceptable in terms of highway impacts with a lack of information provided to assess the overall development. WNC Highways, OCC Highways and National England have raised objections to the current submission and would therefore fail to provide safe access to the site and fails to comply with Policy ESD15 of the CLP 2015 and Government guidance within the NPPF.

Air Quality

- 8.37 Policy ESD 1: Mitigating and Adapting to Climate Change Measures contained within the Cherwell Local Plan 2011-2031 Part 1 states that measures will be taken to mitigate the impact of development within the District on climate change. At a strategic level, this will include: Distributing growth to the most sustainable locations as defined in this Local Plan and delivering development that seeks to reduce the need to travel and which encourages sustainable travel options including walking, cycling and public transport to reduce dependence on private cars.
- 8.38 Policy ESD 10: Air quality assessments will also be required for development proposals that would be likely to have a significantly adverse impact on biodiversity by generating an increase in air pollution.
- 8.39 Saved policy ENV1 contained within the Cherwell Local Plan 1996 states that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke, fumes or other type of environmental pollution will not normally be permitted.
- 8.40 The Site does not lie within an Air Quality Management Area (AQMA). However, it is noted that the closest AQMA is Cherwell District Council AQMA No.1, located approximately c.540m to the west of the Site. The designated area incorporates Hennef Way between the junctions with Ermont Way and Concorde Avenue which leads to the roundabout at Junction 11 of the M40.
- 8.41 There is already severe traffic congestion leading into the M40 Junction 11 gyratory along the A422 at Hennef Way from Banbury town centre and across the Wildmere Road/Ermont Way roundabout junction, some 300m west of the gyratory. The congestion is so severe and regular that Hennef Way has been designated an Air Quality Management Zone such is the poor air quality in the area. The proposed development would only add to traffic volumes and congestion in the locality and would therefore likely exacerbate air quality problems. The submission has thus far failed to demonstrate how such detrimental impacts could be satisfactorily mitigated.

Drainage and Flooding Impacts

- 8.42 Policy ESD 6: Sustainable Flood Risk Management within the Cherwell Local Plan 2011-2031 Part 1 states that the Council will manage and reduce flood risk in the District through using a sequential approach to development; locating vulnerable developments in areas at lower risk of flooding. Development proposals will be assessed according to the sequential approach and where necessary the exceptions test as set out in the NPPF and NPPG. Development will only be permitted in areas of flood risk when there are no reasonably available sites in areas of lower flood risk and the benefits of the development outweigh the risks from flooding. Site specific flood risk assessments will be required to accompany development proposals of 1 hectare or more located in flood zone 1.

- 8.43 Policy ESD 7: Sustainable Drainage Systems (SuDS) All development will be required to use sustainable drainage systems (SuDS) for the management of surface water run-off. Where site specific Flood Risk Assessments are required in association with development proposals, they should be used to determine how SuDS can be used on particular sites and to design appropriate systems. In considering SuDS solutions, the need to protect ground water quality must be taken into account, especially where infiltration techniques are proposed. Where possible, SuDS should seek to reduce flood risk, reduce pollution and provide landscape and wildlife benefits. SuDS will require the approval of Oxfordshire County Council as LLFA and SuDS Approval Body, and proposals must include an agreement on the future management, maintenance and replacement of the SuDS features.
- 8.44 Policy ESD 8: Water Resources states that the Council will seek to maintain water quality, ensure adequate water resources and promote sustainability in water use. Water quality will be maintained and enhanced by avoiding adverse effects of development on the water environment. Development proposals which would adversely affect the water quality of surface or underground water bodies, including rivers, canals, lakes and reservoirs, as a result of directly attributable factors, will not be permitted. Development will only be permitted where adequate water resources exist or can be provided without detriment to existing uses. Where appropriate, phasing of development will be used to enable the relevant water infrastructure to be put in place in advance of development commencing.
- 8.45 Saved policy ENV7 contained within the Cherwell Local Plan 1996 states that development which will adversely affect to a material level, the water quality of surface or underground water bodies, including rivers, canals, lakes and reservoirs, as a result of directly attributable factors, will not be permitted.
- 8.46 The site is in Flood Zone 1 with a low risk of flooding but is more than 1 hectare in size and therefore a detailed Flood Risk Assessment is required for assessment. The provision of such has not been submitted with an outline assessment provided.
- 8.47 OCC as Local Lead Flood Authority (LLFA) have assessed the submission and have objected. LLFA advise that as part of this application, a full drainage strategy including drawings and calculations are required to fully assess the proposal and which have not been provided to date.
- 8.48 The Environment Agency have also commented upon the proposal and have stated that whilst they have no objections to the proposal, connection to mains foul drainage is not feasible and therefore other options would need to be considered in conjunction with the hierarchy of drainage options outlined within Government guidance contained within the National Planning Practice Guidance (Water supply, wastewater and water quality – considerations for planning applications, paragraph 020). This has not been done to date.
- 8.49 Having regard to the above, it is considered that the application fails to comply with Policies ESD6 and ESD10 of the CLP 2015 and Government guidance within the National Planning Policy Framework and therefore would warrant a reason for refusal.

Landscape Impacts

- 8.50 Policy ESD 13: Local Landscape Protection and Enhancement Opportunities within the Cherwell Local Plan 2011-2031 Part 1 will be sought to secure the enhancement of the character and appearance of the landscape, particularly in urban fringe locations, through the restoration, management or enhancement of existing landscapes, features or habitats and where appropriate the creation of new ones, including the planting of woodlands, trees and hedgerows. 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 Impact on areas judged to have a high level of tranquillity.

- 8.51 The Site has two distinct topographical characters which together influence the character of the site and the wider landscape context. The main area of the Site falls gently to the west and northwest with local undulations. This land lies at approximately 100m AOD to 110m AOD. To the east the Site ascends quickly to form a local ridge which extends up to 160m AOD beyond the eastern boundary of the site.
- 8.52 The Proposed Development lies within the gently rolling, limestone hills and valley landscape of the 'Northamptonshire Uplands' National Character Area 95 (NCA). At a county level the Site is across the 'Clay Vale' and 'Upstanding Village Farmlands' landscape character type, as set out in the Oxfordshire Wildlife and Landscape Study. The Clay Vale landscape is associated as a flat, low-lying landform with small pasture fields, many watercourses and hedgerow trees and well-defined nucleated villages. The Upstanding Village Farmlands landscape is associated with elevated landform, with a strong pattern of hedgerows and nucleated villages; this is consistent with the western part of the Site where the topography rises to form a slope.
- 8.53 The site consists of open, agricultural land with field hedges and trees that contribute to its rural character. The land has not rare or valuable attributes and does not form part of a valued landscape with reference to NPPF paragraph 174. The change in topography from west to east is a feature of the site and marks a transition from the settled vale adjoining Banbury to the more deeply rural landscape to the east. The landscape of the site reflects published characteristics of the local landscape character types but the immediately adjoining urban edge, employment land and highway infrastructure are also key features of the local landscape, reflecting the site location on the edge of the wider urban area. The site creates a transitional area of land between the present urban edge and this more deeply rural landscape to the east.
- 8.54 The applicant has indicated that the sensitivity of the site has been assessed in the Cherwell District Council Banbury Landscape Sensitivity Assessment prior to the construction of the Frontier Park employment land to the immediate west of the Site. The assessment identified a generally medium sensitivity to the landscape and medium high sensitivity to the visual sensitivity. They consider that this baseline has now been changed due to the influence of the adjoining employment development and that the overall residual landscape and visual harm arising from the development is to be less than significant due to the illustrative landscape strategy for mitigation and its potential to contain detrimental effects to the site.
- 8.55 However, it is noted that the Inspector stated at the time the application site was put forward for inclusion within the updated local plan, that amongst other matters, that only land west of the A361 (i.e., not the current application site) should be allocated for new employment development in the modified plan and none of that to the east of the road, even as a strategic reserve site as this would have the considerable benefit of reducing the very harmful landscape and potential environmental effects of the wider scheme on a main entrance to the town from the north, south east and east, as well as that on the largely rural landscape of the locality. On this basis, the authority can see no reason, through the evidence submitted to depart from the Inspectors previous findings with particular reference to landscape and visual harm.

- 8.56 The submission states that the site creates a transitional area of land between the present urban edge and the more deeply rural landscape to the east. The CPRE considers this not to be the case with the view put forward that it is in fact contiguous with and an integral part of the rural landscape running east from the site into West Northamptonshire. Furthermore, the sensitivity of the site has been assessed in the Cherwell District Council Banbury Landscape Sensitivity Assessment prior to the construction of the Frontier Park employment land to the immediate west of the site. The assessment identified a generally medium sensitivity to the landscape and medium high sensitivity to the visual sensitivity. They consider that this baseline has now been changed due to the influence of the adjoining employment development. However, no evidence has been put forward to make this assertion regarding the baseline change, a view shared by CPRE.
- 8.57 As a further comment on the visual aspects of the proposal, the applicant states that the development proposals are in outline and consist of a number of large scale-built forms to accommodate employment uses. These are set within a layout that retains structural hedgerows and trees and avoid the ascending landforms found to the east of the land parcel. At this stage the proposal is in outline form and the site layout is indicative only and would be determined at reserved matters stage. This approach incorporates inherent mitigation that assists with limiting the potential for significant landscape and visual harm.
- 8.58 Furthermore, the application indicates that the heights of the proposed structures are 19m (62.7ft) and 24m (79ft). These are significantly higher than the constructions on Frontiers Park which at 17m (56.1ft) and 15m (50ft) are already highly prominent in the landscape to the west of the A361. The envisaged mitigations would be dwarfed by the proposed development which would obscure viewing of the upper reaches of the site from any conceivable angle of view for miles around which would not be supported.
- 8.59 On this basis, it is considered that the application has failed to demonstrate through the submission of a sufficiently detailed Landscape and Visual Impact Assessment that the proposals would not cause substantial landscape harm to the undeveloped rural character and appearance of the site when viewed from Public Rights of Way in the surrounding countryside. As such, the proposal is contrary to policies ESD10, ESD13 and ESD15 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1) and Government guidance within the National Planning Policy Framework.

Archaeology Impacts

- 8.60 Policy ESD 15: The Character of the Built and Historic Environment within the Cherwell Local Plan 2011-2031 Part 1 states that new development proposals should: Conserve, sustain and enhance designated and non-designated 'heritage assets' (as defined in the NPPF) including buildings, features, archaeology, conservation areas and their settings, and ensure new development is sensitively sited and integrated in accordance with advice in the NPPF and NPPG. Proposals for development that affect non-designated heritage assets will be considered taking account of the scale of any harm or loss and the significance of the heritage asset as set out in the NPPF and NPPG. It should also provide Include information on heritage assets sufficient to assess the potential impact of the proposal on their significance. Where archaeological potential is identified this should include an appropriate desk-based assessment and, where necessary, a field evaluation.
- 8.61 The archaeological potential of the Site has been considered in a Desk-Based Assessment. This concluded that there is some potential for Romano-British archaeology within the site relating to the low-intensity settlement and agricultural

activity recorded on land immediately to the west. The assessment, taking a precautionary approach, considers that such remains would be of low value, at most and that the loss of such remains would be high as a result of groundworks associated with the development proposal.

- 8.62 Oxfordshire County Council's Archaeologist has been consulted on the proposal and commented that the site is in an area of archaeological importance and therefore recommend that prior to determination of the application, an archaeological field evaluation should be carried out. At this time, no such evaluation details have been provided for assessment. Having regard to the above, it is considered that the application fails to comply with Policies ESD15 of the CLP 2015 and Government guidance within the National Planning Policy Framework and therefore would warrant a reason for refusal.

Planning Obligations

- 8.63 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: Working with partners, including central Government, and other local authorities, to provide physical, community and green infrastructure Identifying infrastructure needs and costs, phasing of development, funding sources and responsibilities for delivery Completing a Developer Contributions SPD to set out the Council's approach to the provision of essential infrastructure including affordable housing, education, transport, health, flood defences and open space. Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities.

- 8.64 The proposal would seek to provide up to 140,000sq.m of commercial floorspace. Given the scale of the development, the Planning Obligations SPD specifies a minimum requirement to provide employment and training opportunities. In this case it equates to 3 no. Apprenticeships per 1,000sqm of floor space provided. As such, the proposal would need to provide a minimum of 420 apprenticeships through the provision of an Employment, Skills and Training Plan which would be secured through a S.106 agreement.

- 8.65 In this case the proposed development would require significant highway improvement works along the A361 and M40 J11, which OCC Highways have outlined the below figures for mitigation works on the basis that such works would not give rise to adverse highway impacts elsewhere in the locality as further assessment and modelling is yet to be undertaken.

- £1,069,970 – Highway Improvement Scheme to relieve congestion on Hannef Way.
- Amount TBC – Delivery of an A422 to Overthorpe Road link road (or similar mitigation).
- £600,000 – To establish bus service to site.
- £2,563 – Travel Plan Monitoring.
- Amount TBC – Admin fee.

- 8.66 These mitigation measures which have yet to be agreed, would be secured through a S.106 agreement (Appendix A). However, in the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a result of the development and necessary to

make the impacts of the development acceptable in planning terms, to the detriment of both existing and proposed residents and contrary to policy INF 1 of the Cherwell Local Plan 2015, Planning Obligations SPD 2018 and Government guidance within the National Planning Policy Framework.

9. PLANNING BALANCE AND CONCLUSION

- 9.1 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 normally refused unless outweighed by other material consideration.
- 9.2 In terms of this application, it is not considered that the principle of development can be supported in this case and is therefore recommended for refusal on the basis of it being an unallocated site in an inappropriate location and is contrary to Policy SLE1 of the CLP and Government guidance within the NPPF.
- 9.3 The development is also not currently considered acceptable in terms of highway impacts with a lack of information provided to assess the development. OCC Highways and Highways England who have raised objections to the current submission and would therefore fail to provide safe access to the site and fails to comply with Policy ESD15 of the CLP 2015 and Government guidance within the NPPF.
- 9.4 The application site is located immediately west of an existing Air Quality Management Zone and the proposal as submitted fails to adequately assess or mitigate against air quality matters as a result of increased vehicle movements associated with the development. The proposal is therefore contrary to policies SLE1, SLE4 and ESD1 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policies TR1 and ENV7 contained within the Cherwell Local Plan 1996 Saved Policies (CLP 1996) and Government guidance within the National Planning Policy Framework.
- 9.5 The proposal fails to adequately assess the economic impacts upon the town of Banbury, specifically the attractiveness, vitality and viability of Banbury town centre and the edge of town retail and employment centres as a result of additional traffic on the strategic and local highway network. The proposal is therefore contrary to policies SEL1 and SEL2 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 Saved Policies (CLP 1996) and Government guidance within the National Planning Policy Framework.
- 9.6 In terms of flood risk and drainage, the site lies in Flood Zone 1 and is therefore at low risk of flooding. OCC as Local Lead Flood Authority have objected to the proposal on the grounds of lack of detail and information. To date this objection has not been resolved and therefore the proposal is contrary to policy ESD6 and ESD10 of the CLP 2015 and Government guidance within the National Planning Policy Framework.
- 9.7 The application has failed to demonstrate through the lack of submission of a Landscape and Visual Impact Assessment that the proposals would not cause substantial landscape harm to the undeveloped rural character and appearance of the site when viewed from Public Rights of Way in the surrounding countryside. As such, the proposal is contrary to policies ESD10, ESD13 and ESD15 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1) and Government guidance within the National Planning Policy Framework.

- 9.8 The proposal has failed to adequately assess the sites archaeology and consequently the development may cause harm to significant archaeological remains and in the absence of the evaluation it is not possible for the Council to reach an informed decision on this issue. The proposal is therefore contrary to Policy ESD 15 of the Cherwell Local Plan 2011-2031, Policy EN47 of the Non-Statutory Cherwell Local Plan 2011 and paragraph 128 of the National Planning Policy Framework.
- 9.9 The submission includes the provision of a BIA metric. The Ecologist has noted that this has been updated with a less ambitious habitat enhancement (now proposing other neutral grassland rather than lowland meadow) which whilst considered to be more realistically achieved it does mean that the net gain demonstrated is significantly reduced and this has not been reflected in the current illustrative landscape masterplan. Therefore, at this stage the authority is unable to fully ascertain what level of biodiversity net gain.
- 9.10 In the absence of an appropriate protected species survey the welfare of protected species has not been adequately addressed in accordance with article 12(1) of the EC Habitats Directive. The Local Planning Authority cannot therefore be satisfied that protected species will not be harmed by the development and as such the proposal does not accord with Policy ESD10 of the Cherwell Local Plan 2011-2031 and Government guidance contained within the National Planning Policy Framework.
- 9.11 The proposal would result in the loss of a substantial number of trees that are subject to Tree Preservation Orders (TPO) for which no justification or replacement has been provided. As such, the proposal fails to accord with Policy EDS10 of the Cherwell Local Plan 2011-2031 and Government guidance contained within the National Planning Policy Framework.
- 9.12 In terms of Planning Obligations, a section 106 has not yet been agreed and drafted, and the issue of the viability of the development in terms of infrastructure contributions has not yet been resolved. A reason for refusal relating to the lack of a completed Section 106 is therefore also recommended.

10. RECOMMENDATION

- (i) **THAT THE COMMITTEE RESOLVE TO CONFIRM THAT, HAD THE POWER TO DETERMINE THE APPLICATION HAVE CONTINUED TO REST WITH THEM, THEY WOULD HAVE REFUSED THE APPLICATION FOR THE REASONS SET OUT BELOW;**
- (ii) **THAT POWERS BE DELEGATED TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT, OR AN OFFICER NOMINATED BY THEM, TO AGREE THE COUNCIL'S APPEAL SUBMISSIONS. THIS SHALL INCLUDE POWERS TO VARY OR REMOVE ANY OF THE COUNCIL'S REASONS FOR REFUSAL IF CONSIDERED APPROPRIATE TO PROTECT THE INTERESTS OF THE COUNCIL;**
- (iii) **THAT POWERS BE DELEGATED TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT, OR AN OFFICER NOMINATED BY THEM, HAVING REGARD TO THE HEADS OF TERMS SET OUT WITHIN APPENDIX 1 BELOW, TO NEGOTIATE AND COMPLETE AN AGREEMENT CONTAINING OBLIGATIONS PURSUANT TO S106 OF THE TOWN AND COUNTRY PLANNING ACT (AS AMENDED) RELATING TO ANY PLANNING APPEAL SUBMITTED AGAINST THE DECISION ISSUED UNDER 22/01488/OUT; AND**

(iv) THAT POWERS BE DELEGATED TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT, OR AN OFFICER NOMINATED BY THEM, TO NEGOTIATE AND COMPLETE A LIST OF PLANNING CONDITIONS RELATING TO ANY PLANNING APPEAL SUBMITTED AGAINST THE DECISION ISSUED UNDER 22/01488/OUT

REASONS FOR REFUSAL

1. The proposal is located on an unallocated site and development would represent an urbanising form of development which by reason of its location and proposed land use would result in a cluster of large warehouse buildings poorly related to Banbury that would result in a harmful visual intrusion of development into the landscape and open countryside and would therefore result in harm to the rural character, appearance and quality of the area. This identified harm would significantly and demonstrably outweigh the benefits of the proposal. Development would therefore fail to accord with Cherwell Local Plan 2011-2031 Part 1 policies ESD10, ESD13 and ESD15 and Cherwell Local Plan 1996 saved policies C7, C8 and EMP4, and with national policy guidance given in the National Planning Policy Framework (NPPF) (2021).
2. The proposed development would be sited in a geographically unsustainable location with poor access to services and facilities and therefore future employees would be highly reliant on the private car to access their workplace, which would not reduce the need to travel and would result in increased car journeys and hence carbon emissions. The proposed development would therefore conflict with policies PSD1, SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework. This identified harm would significantly and demonstrably outweigh the benefits associated with the proposed development and therefore the development does not constitute sustainable development when assessed against the National Planning Policy Framework as a whole.
3. The appeal site is located in an unsustainable location for cycling and walking. The proposal is therefore contrary to policies SLE1 and SLE4 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
4. The proximity of the access roundabout to M40 Junction 11 is likely to lead to severe congestion and potential safety issues arising from queuing on the M40 off slip. The proposal is therefore contrary to policies SLE1 and SLE4 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
5. Any further development around Junction 11 of the M40 will add to the severe congestion and air quality problems on the A422, particularly along Hennef Way. This development does not demonstrate how it would mitigate its impact on these issues through adequate sustainable travel connections or by highway improvements. The proposal is therefore contrary to policies SLE1 and SLE4 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policies TR1 and ENV7 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
6. Safe and suitable operation of affected highway junctions has not been demonstrated by the use of a suitable analysis tool. It has been agreed with the Appellant's transport consultant and National Highways that microsimulation

modelling (such as VISSIM) is required to accurately represent the flow of vehicles at all primary local junctions and the interaction between them. Without such analysis and resultant appropriate mitigation, the proposal is contrary to policies SLE1, SLE4 and INF1 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.

7. It has not been demonstrated that a signalised crossing of the A361 Daventry Road for pedestrians and cyclists may be incorporated at a safe and suitable location, and the associated access into the site has not been indicated. The proposal is therefore contrary to policies SLE1 and SLE4 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
8. The site is located immediately west of an existing Air Quality Management Zone and the proposal fails to adequately assess or mitigate against air quality matters as a result of increased vehicle movements associated with the development. The proposal is therefore contrary to policies SLE1, SLE4 and ESD1 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policies TR1 and ENV7 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
9. The proposal fails to assess the potential economic impact upon Banbury, specifically the attractiveness of Banbury town centre and the edge of town retail and employment centres as a result of additional traffic and congestion on the strategic and local highway network rendering Banbury a less sustainable location. The proposal is therefore contrary to policies SLE1 and SLE2 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
10. The proposal lacks detail and information relating to the drainage of the site and is therefore contrary to Oxfordshire County Council's published guidance "Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire" and policies ESD6 and ESD7 of the adopted Cherwell Local Plan 2015 and Government guidance within the National Planning Policy Framework.
11. The application has failed to demonstrate through the lack of submission of a Landscape and Visual Impact Assessment that the proposals on this prominent site would not cause substantial landscape harm to the undeveloped rural character and appearance of the site when viewed from Public Rights of Way in the surrounding countryside. As such, the proposal is contrary to policies ESD10, ESD13 and ESD15 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1) and Government guidance within the National Planning Policy Framework.
12. The proposal has failed to adequately assess the site's archaeology and consequently the development may cause harm to significant archaeological remains and in the absence of any evaluation it is not possible for the Council to reach an informed decision on this issue. The proposal is therefore contrary to policy ESD 15 of the Cherwell Local Plan 2011-2031 and paragraph 128 of the National Planning Policy Framework.
13. The proposal has failed to adequately demonstrate that development would not harm existing flora and fauna and ecological mitigation would successfully deliver a 10% net gain in biodiversity or protection, enhancement and connectivity with the

local green infrastructure network. As such the proposal fails to accord with policies ESD10 and ESD17 of the Cherwell Local Plan 2011-2031, saved policies C1 and C2 within the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

14. In the absence of an appropriate protected species survey, the welfare of protected species has not been adequately addressed in accordance with article 12(1) of the EC Habitats Directive. The Local Planning Authority cannot therefore be satisfied that protected species will not be harmed by the development and as such the proposal does not accord with policy ESD10 of the Cherwell Local Plan 2011-2031, saved policies C1 and C2 within the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.
15. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement, the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a result of the development and necessary to make the impacts of the development acceptable in planning terms, to the detriment of both existing and proposed residents and workers and contrary to policy INF 1 of the Cherwell Local Plan 2015, CDC's Planning Obligations SPD 2018 and Government guidance within the National Planning Policy Framework.

APPENDIX 1- Heads of Terms for Section 106 Agreement/undertaking

Planning obligation			Regulation 122 Assessment
Detail	Amounts (all to be Index linked)	Trigger points	
Highway Improvement Scheme to relieve congestion on Hannef Way.	£1,069,970	Upon completion of the S.106	TBC
Delivery of an A422 to Overthorpe Road link road (or similar mitigation).	TBC	Upon completion of the S.106	TBC
Bus Service contribution, for the establishment of bus services to and from the site.	£600,000	<p>First instalment of £150,000 upon commencement of development.</p> <p>Three further separate payments of £150,000 upon occupation of 1000sqm, 50,000sqm and 75,000sqm of floorspace respectively.</p>	<p>Necessary to ensure sustainable mode of transport and encourage and integrated into the development and made attractive to future users to reduce car dependency.</p> <p>Directly related as these will benefit the future occupants of the site and encourage use of sustainable transport options in the locality.</p> <p>Fairly and reasonably related in scale and kind. The contributions are in scale with the development and would be directly benefiting residents of the future development.</p>

Employment, Skills and Training Plan (ESTP) to secure a minimum of 420 no. apprenticeships.		Upon commencement of development.	
Obligation to enter into a S278 agreement to secure Highway Works and Traffic Regulation Order (if not dealt with under S278/S38 agreement) both on and offsite.			TBC
Travel Plan Monitoring fee	OCC: £2,563	On completion of the S106	TBC
CDC and OCC Monitoring fee	CDC: £5,500 OCC: £TBC	On completion of the S106	The CDC charge is based upon its recently agreed Fees and Charges A registration charge of £500 is also applicable. OCC to advise on their monitoring costs