

**Land Opposite Hanwell Fields Recreation Adj To
Dukes Meadow Drive Banbury**

22/03064/OUT

Case Officer: Linda Griffiths

Applicant: Armstrong Rigg Planning

Proposal: Outline planning application for up to 176 dwellings and associated open space with all matters reserved other than access

Ward: Cropredy, Sibfords & Wroxton and Banbury Hardwick

Councillors: Cllr Phil Chapman, Cllr George Reynolds, Cllr Douglas Webb, Cllr Brasha, Cllr Crichton, Cllr Donaldson

Reason for Referral: Major development/Significant departure from adopted development plan

Expiry Date: 30 June 2023

Committee Date: 15th June 2023

RECOMMENDATION: REFUSE PERMISSION

MAIN REPORT

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is located north of Dukes Meadow Drive and extends to approximately 8.6 hectares of agricultural land and comprises the eastern extent of a larger parcel of land immediately to the north of Dukes Meadow Drive. It has been resolved previously to grant the same applicant outline planning permission for the erection of 78 dwellings immediately to the south of the site (21/03426/OUT). This application, which seeks consent for a further 176 dwellings, is described within the application submission as Phase 2.
- 1.2. The site slopes quite steeply upwards from Dukes Meadow Drive (rising from east to west) and is open and exposed in views from the south and east. It is currently uncultivated Grade 2 and 3 agricultural land. The Hanwell Fields Recreation Ground and pavilion lies immediately to the east of the site.

2. CONSTRAINTS

- 2.1. The application site comprises Grades 2 and 3 agricultural land and the Neithrop Fields Cutting SSSI is located within 1km of the site. The constraints for the site have also identified that the site could contain Priority Grassland Habitat and also Oxfordshire Protected and Notable Species. To the west of the site are a network of public rights of way linking Hanwell village to the north with the northern edge of Banbury. In addition to the nearby PRoW's, there is evidence of informal pathways across the application site. The site is in flood zone 1 although the constraints have identified that pooling can occur on parts the site.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The application proposes the erection of a further 176 dwellings, described in the application as phase 2 of the development north of Dukes Meadow Drive. All matters are reserved except for access.

- 3.2. Vehicular access to the site is proposed via a new spur to the existing Dukes Meadow roundabout and the previously agreed new access to serve the Phase 1 development.

4. RELEVANT PLANNING HISTORY

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

21/03426/OUT – resolution to grant outline consent for up to 78 dwellings subject to prior completion of a Section 106 planning obligation agreement (referenced as Phase 1).

21/03484/SO – Screening Opinion to the above outline – EIA not required.

- 4.2. It was resolved to grant the outline planning permission for the 78 dwellings under 21/03426/OUT on the grounds that the site was close to very local amenities, it formed a natural bowl at the base of the slope, and any harmful landscape impact would not outweigh the benefits of the proposal having regard to the fact that the Council could not demonstrate a five-year housing land supply at the time of the determination. The Section 106 Agreement is currently being negotiated and the permission has therefore not yet been issued.

5. PRE-APPLICATION DISCUSSIONS

- 5.1. No pre-application discussions have taken place with regard to this latest proposal.

6. RESPONSE TO PUBLICITY

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **22 November 2022**, although comments received after this date and before finalising this report have also been considered.

- 6.2. The numerous objections raised by third parties are summarised as follows:

- Development is taking place at frenzied pace without any thought to wildlife and conservation impacts;
- Creep towards Hanwell is objectionable as it is destroying the greenness of the area, loss of countryside;
- Would have significant impact on the heritage character of Hanwell;
- Increased traffic on roads through Hanwell, which are narrow and winding;
- Prominent site, particularly when viewed from the east;
- Area is subject to flooding;
- Object on the grounds of the Deer Act 1991, which aims to protect wild deer. Often deer are seen in the fields so will destroy the quality of life of wild deer;
- Wildlife and Countryside Act 1981 seeks to protect flora and fauna which would be damaged by this project. Regular sightings of deer, badger, hawks, red kites and bats;
- Wild Mammals Protection Act 1995 is relevant in respect to deer and badgers;
- Loss of grade II agricultural land;

- Companies cram far too many ugly homes onto very small plots with cars parked everywhere;
- Where are the facilities to support the population such as doctors surgeries, schools, dentists, vets, hospital beds, buses, police, shops;
- Banbury has lost its vibrancy, and more should be done to encourage the regeneration of the town centre;
- Volume of traffic already a major issue on congested roads getting around the town, increased pollution and issues for emergency vehicles, road widening, and improvements are required; by-pass suggested;
- Spaces and derelict sites within the town and surrounding area could better serve the purpose of providing extra housing;
- Hanwell is a small 800-year-old village with conservation area surrounded by fields; object to being swallowed up into a large housing estate of lego-brick houses that won't last;
- Buffer between Hanwell and Banbury is being incrementally eroded;
- Site is outside the plots currently in the agreed Local Plan and the assessment of the previously approved 78 houses on the southern part of the site mentioned that it was only approved due to its smaller scale. This would be considerably larger, more visible from Hanwell and directly impact upon the light pollution affecting the observatory;
- Contrary to Policy ESD13 and would destroy local green areas;
- Development would extend beyond the built-up limits of Banbury and would have a materially greater impact than the approved application 21/03426/OUT;
- The Council's HELAA assessed site as 'not suitable' for development;
- Contrary to Local Plan 1996 policies – TR7, R14, C8, C13, C15, C17 & C33;
- Precedent for further development, resulting in coalescence of Banbury town and Hanwell village;
- Area is of significant historical interest – Saxon burial grounds, impact on setting of Hanwell's conservation area and many listed buildings; also Tree Preservation Orders;
- Impact on global warming.

6.3. Letter of support – clearly people need homes, a lot have been built but are not standing empty, so there must be a demand.

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

7. RESPONSE TO CONSULTATION

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

PARISH/TOWN COUNCILS AND NEIGHBOURHOOD FORUMS

7.2. BOURTON PARISH COUNCIL: **strongly object** as follows:

- Scale of development on a greenfield site, a natural boundary between Banbury and the rural area of Hanwell is unacceptable in principle and contrary to Policy ESD15 of CLP 2011-2031, saved Policy C33 of CLP 1996 and NPPF. The development would be a serious breach of those policies;
- Parish Councils throughout Oxfordshire are currently swamped with applications from developers using the lack of a 5-year housing land supply for securing inappropriate development such that rural settlements are losing their identities and changing our landscapes beyond the recognition of Historic England's statement '*England's rural landscape is a jewel of our national heritage, formed by people living on and working the land over thousands of years*';
- With the level of existing approved development in the District, one could assume that the emerging Local Plan will indicate more than a 5-year housing land supply;
- Already can see the development in Banbury, specifically towards Bloxham and Bodicote is not adequately supported by current infrastructure;
- If accepted, the development would cast a long shadow, not only for the historic village of Hanwell with its exceptional heritage assets but also set a precedent for every Oxfordshire village desperate to retain their village identity as a rural settlement and who are currently faced with similar applications.

7.3. HANWELL PARISH COUNCIL: **strongly object** and consider the application should be refused as follows:

- Not allocated for housing and therefore contrary to Development Plan;
- Site recently assessed by the CDC 2018 HELAA (Site 036) as not suitable for development;
- Contrary to Policy ESD13 as would cause undue visual intrusion into open countryside and cause harm to important natural landscape features and topography;
- Would have seriously harmful impacts on the local area which Local Plan policies aim to prevent, namely significant urban extension not in the adopted CLP – BSC2, ESD1, piecemeal development on open countryside (saved policy C8) and loss of important landscape feature (ESD13);
- Would set a precedent for further urban development north of Dukes Meadow Drive, adversely affecting setting of surrounding villages, notably Hanwell. This is further demonstrated by previous approval 21/03426/OUT. Damaging precedent for greater coalescence of Banbury and Hanwell (saved policy C15);
- Future housing should be identified in formal updates of housing land supply through CLP for example, the balance between greenfield and previously used land as well as sustainability issues, so they can be considered in a comprehensive fashion;
- Site is not sustainable in all other respects as claimed by the submission as loss of an important and prominent landscape feature (C13, ESD13); loss of important open vistas (saved policy C33 & ESD13); loss of informal open space for residents of Hanwell Fields (BSC11); adverse impacts on environment and biodiversity (ESD10), does not enhance the area (ESD10);

adverse impact on local road networks, poor public transport (TR7, SLE4, ESD1, ESD15) and lack of further community facilities to serve the development (saved policy R14 and BSC12);

- Notional benefits of the development are outweighed by the harm;
- After COP26 must be more emphasis on overall sustainability of future development if we are to combat global warming, which can only be achieved through robust national and local planning framework, not piecemeal developments;
- Is Grade 2 and 3 best and most versatile arable land;
- Impacts on Hanwell Village include, but not limited to: increased traffic through the village; light pollution including impact on the observatory; further erosion of green buffer which conveys Hanwell's integrity as a village;
- Over the years this area has absorbed thousands of new homes and there is simply not the local infrastructure either in Hanwell or Banbury to support such over-development; enough is enough;
- Any future additional housing provision for the Banbury area must be assessed through the Cherwell Local Plan review process, so that proper consideration can be given to all the key planning issues and all potential housing sites.

7.4. BANBURY TOWN COUNCIL: **object** on the grounds of scale and siting beyond the built-up limits of the settlement, within the countryside, on a greenfield site that contributes to the rural character of the approach into Banbury. Is important in preserving the character of this edge of Banbury and would be unduly prominent in the landscape. Unacceptable in principle and contrary to Policy ESD15, saved Policy C33 and the NPPF.

CONSULTEES

- 7.5. OCC HIGHWAYS: **No objections** subject to standard conditions in respect of width of the access, Construction Traffic Management Plan and Residential Travel Plan & Residents Information Pack and Sec 106 contributions towards strategic highway works, public transport services, travel plan monitoring and public rights of way.
- 7.6. OCC LOCAL LEAD FLOOD AUTHORITY: **Objection** on several grounds – surface water to be restricted to Qbar greenfield run-off rate; provide infiltration testing results and its locations; provide watercourse/ditch ownership details and permission to discharge surface water; discharge rate to be identified on drainage plan.
- 7.7. OCC EDUCATION: **No objection** subject to Section 106 contributions towards secondary and special education.
- 7.8. OCC ARCHAEOLOGY: **Commented** the area is in an area of archaeological interest and potential; and have already accepted a Written Scheme of Investigation from an archaeological contractor for the evaluation.
- 7.9. OCC WASTE MANAGEMENT: **No objection** subject to Section 106 contributions towards household waste recycling centres.
- 7.10. CDC ECOLOGY: No comments received to date.
- 7.11. CDC ARBORICULTURE: based on a desk-based assessment, the Arboricultural Statement appears to highlight a low arboricultural impact with only 2x groups of trees of category C along with sections of hedgerow for access. The hedgerow removals

will need to be mitigated through improvements to retained hedges. At reserved matters stage a new impact assessment and method statement/tree protection plan will be required; containing replanting/landscaping plan, layout should work around category A and B features, buffers to retained hedges and higher quality trees; many category C features have cavities observed, where safe to do so, the design should seek to retain these features. Veteran tree populations are declining faster than they are being replaced, consequently unique habitats are being lost. The site contains numerous ash trees. An ash dieback condition survey should be submitted at reserved matters stage as trees previously marked for retention may require removal and subsequent planting.

7.12. CDC CONSERVATION: a heritage impact assessment should be submitted which also provides verified views of the proposed development (winter views) from the Conservation Area/Hanwell Castle grounds to corroborate the assessment made by the application that the proposed development will not be perceived in views from Hanwell Conservation Area and the impact of the development on the setting of the listed building and conservation area.

7.13. CDC ENVIRONMENTAL HEALTH: **No Objection** but recommends the imposition of conditions relating to a construction environmental management plan, noise, contamination and air quality. No comments in respect of odour and light.

7.14. CDC LANDSCAPE SERVICES: **Objection**.

7.15. CDC PLANNING POLICY: **Objection**.

7.16. CDC RECREATION AND LEISURE: seek Sec.106 contributions towards community hall facilities, outdoor and indoor sport, public art, community development worker and community development fund towards existing facilities within the locality.

7.17. CDC STRATEGIC HOUSING: **No objection** subject to revisions to the proposed affordable housing mix.

7.18. CDC LAND DRAINAGE: have no comments on the Flood Risk Assessment at this outline stage but raise several concerns as follows:

- Site is very steeply sloping and it is likely that terraces will need to be constructed to create development platforms;
- Potential for ground water routes to be interrupted which may result in the emergence of springs and high hydrostatic pressures against any retaining walls that have to be constructed;
- Sloping topography will generate high drainage flow velocities which must be limited to a maximum of 3 m/s. A series of baffles is likely to be needed;
- SuDS feature proposed is directly adjacent to the sports pavilion. The design top water level must be at least 300mm below the floor level of the pavilion;
- Applicant must show there is a safe exceedance route which will not cause risk to the pavilion or other existing development.

7.19. BBOWT: **Objection** as follows:

- Potential impact on Hanwell Brook Wetland including hydrological impact, and recreational impact;
- Potential impact on existing grassland with adder's tongue fern;

- Application does not provide adequate evidence of a net gain in biodiversity; the importance of net gain in biodiversity being in perpetuity;
- Buffer zones and management of hedgerows in order to achieve biodiversity net gain;
- Application does not provide evidence that it will help to achieve the aims of the Conservation Target Area.

7.20. THAMES WATER: **No Objection** in respect of surface water, but in terms of foul water drainage, Thames Water have been unable to determine the foul water infrastructure needs of the application and therefore recommend a condition be included in any planning approval in respect of this. In terms of water, Thames Water has identified an inability of the existing water network infrastructure to accommodate the needs of the proposal and therefore also recommend a condition is attached to any planning approval regarding this.

8. RELEVANT PLANNING POLICY AND GUIDANCE

8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- Policy SLE4: Improved Transport and Connections
- Policy PSD1 – Presumption in favour of Sustainable Development
- Policy BSC1: District Wide Housing Distribution
- Policy BSC3: Affordable Housing
- Policy BSC4: Housing mix
- Policy BSC10: Open Space, Outdoor Sport and Recreation Provision
- Policy BSC11: Local Standards of Provision – Outdoor Recreation
- Policy BSC12: Indoor Sport, Recreation and Community Facilities
- Policies ESD1-5: Mitigating and Adapting to Climate Change
- Policy ESD6: Sustainable Flood Risk Management
- Policy ESD7: Sustainable Drainage Systems
- Policy ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- Policy ESD13: Local Landscape Protection and Enhancement
- Policy ESD15: Character of the Built and Historic Environment
- Policy ESD17: Green Infrastructure
- Policy INF1: Infrastructure

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- Policy H18: New dwellings in the open countryside
- Policy C7: Landscape Conservation
- Policy C8: Sporadic development in the open countryside
- Policy C28: Layout, design and external appearance of new development

- Policy C30: Design Control

8.3. Other Material Planning Considerations:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- CDC adopted Residential Design Guide SPD 2018
- CDC Planning Obligations SPD 2018
- National Design Guide
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)

8.4. Council Corporate Priorities

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

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

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

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

9. APPRAISAL

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

- Principle of development
- Landscape Impact
- Heritage impact
- Site Layout and Design Principles
- Highways and Vehicular Access
- Housing Mix and Affordable Housing
- Ecology and Biodiversity
- Flood Risk and Drainage
- Sustainability
- Section 106

Principle of Development

Policy Context

- 9.2. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
- 9.3. The Development Plan for this area comprises the adopted Cherwell Local Plan 2011-2031 Part 1 (CLP 2015) and the saved policies of the Cherwell Local Plan 1996 (CLP 1996).
- 9.4. Policy PSD1 of the CLP 2015 embeds a proactive approach to considering development proposals to reflect the presumption in favour of sustainable development. It states, *'The Council will always work proactively with applicants to jointly find solutions which means that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area'*.
- 9.5. The CLP 2015 seeks to allocate sufficient land to meet district-wide housing needs. The Plan states *'The most sustainable locations for growth in the district are considered to be Banbury, Bicester and the larger villages as identified in Policies Villages 1 and Villages 2 as these settlements have a range of services and facilities, reducing the need to travel by car'*.
- 9.6. Policy BSC1 states that Cherwell District will deliver a wide choice of high-quality homes by providing for 22,840 additional dwellings between 1 April 2011 and 31 March 2031. 1,106 completions were recorded between 2011 and 2014 leaving 21,734 homes to be provided between 2014 and 2031.
- 9.7. A key material consideration is the National Planning Policy Framework (NPPF) which sets out the Government's planning policy for England. The NPPF is supported by Planning Practice Guidance (PPG). The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. This is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs. Paragraph 10 of the NPPF includes reference to 'a presumption in favour of sustainable development'. Paragraph 11 states that applying the presumption to decision making means:
 - *Approving development proposals that accord with an up-to-date development plan without delay; or*
 - *Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (this includes for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year housing land supply of deliverable housing sites), granting permission unless:*
 - *The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed;*
 - *Or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework as a whole.*

- 9.8. Paragraph 12 advises: *'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed'*.
- 9.9. Section 5 of the NPPF considers the issue of delivering a sufficient supply of homes and states, *'To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay'*.
- 9.10. Paragraph 74 highlights the need for Local Planning Authorities (LPAs) to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years supply of housing against their housing requirement set out in the adopted strategic policies, or against their local housing need where strategic policies are more than five years old (unless these strategic policies have been reviewed and found not to require updating as in Cherwell's case). The supply of specific deliverable sites should, in addition, include a buffer which is 5% in Cherwell's current circumstances (moved forward from later in the plan period).
- 9.11. In February 2023 Cherwell District Council approved a review of their adopted planning policies carried out under regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012. This review concluded that, due to the publication of more recent evidence on Housing Needs to support the preparation of the Cherwell Local Plan Review 2040, policies, including Policy BSC1 need updating. Paragraph 74 and footnote 39 of the NPPF requires that in such circumstances the 5-Year supply of land should be calculated using the government's standard methodology.
- 9.12. As set out in the Council's Housing Land Supply Statement (February 2023), the use of the standard method has the effect of reducing the annualised requirement from 1,142 dpa to 742 dpa for the purposes of calculating the land supply and consequently Cherwell District Council is able to demonstrate a 5.4-year supply. However, whilst it is for the Local Plan Review to set the revised requirement, the delivery of homes across the district remains an important material consideration in the planning balance.
- 9.13. The merits of providing additional homes (including affordable homes) on this site is therefore noted and the proposal would assist in delivering new homes and meeting overall Policy BSC1 housing requirements to 2031.

Assessment

- 9.14. The Council's housing land supply position of 5.4 therefore means that the relevant development plan policies are up-to-date and that development proposals must be assessed in accordance with the Development Plan. Whilst the NPPF states that the requirement to have a 5-year supply is not a cap on development, the housing policies of the Development Plan are a starting point for decision taking and afforded full weight. However, the delivery of homes across the district remains an important material consideration.

- 9.15. This application seeks outline planning permission for the development of agricultural land for a scheme of up to 176 dwellings. The site is not allocated for development in any adopted or emerging policy document forming part of the Development Plan. The site is undeveloped greenfield land that serves an important function in separating Banbury from Hanwell. Given its physical and visual relationship with the adjacent and surrounding area, is outside of the existing built-up form of Banbury and development would therefore be in open countryside.
- 9.16. As the application site is located beyond the existing built-up limits of Banbury, the proposal must also be assessed against saved Policies C8 and H18 of the CLP 1996. Policy C8 seeks to avoid sporadic development in the open countryside and applies to all new development proposals beyond the built-up limits of settlements. Policy H18 states that planning permission will only be granted for new residential development beyond the existing built-up limits of a settlement where the development is essential for agriculture or other existing undertakings, or where development would not conflict with other saved policies in the CLP 1996. This proposal is for a development of up to 176 dwellings, none of which would be for essential agricultural need or any identified undertaking in open countryside beyond the existing built-up limits of Banbury. The development proposed is therefore not in accordance with Policies C8 and H18 of the CLP 1996.

Conclusion

- 9.17. The provision of residential development on this site would assist in meeting the overall housing requirements of the district and would contribute to the provision of affordable housing, meeting overall Policy BSC1 housing requirements to 2031.
- 9.18. The latest housing supply figure for Cherwell District is calculated at 5.4 years. Whilst the NPPF states that the requirement to have a 5-year supply is not a cap on development, the housing policies of the Development Plan are the starting point for decision taking and afforded full weight. Whilst there may be some benefits of the additional housing, including the provision of affordable housing, the significant impact upon the character and appearance of the open countryside and locality through the development of this greenfield site that would threaten coalescence between Banbury and Hanwell is a concern which must be weighed significantly against any benefits of the proposal. The proposal is therefore considered contrary to the Development Plan and Government guidance within the National Planning Policy Framework accordingly.

Landscape Impact

- 9.19. Policy ESD13 of the adopted Cherwell Local Plan 2011-2031 requires landscape protection and enhancement opportunities 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 or 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 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.
- 9.20. Paragraph B.252 of the CLP 2015 lists key landscape and landform features of value around Banbury which includes ironstone ridges and valleys; the open and agricultural setting and identity of the outlying villages surrounding Banbury and Bicester and the historic villages and parkland of Hanwell and Wroxton. The site

comprises open and prominent steeply rising ground (rising from east to west) and from Dukes Meadow Drive with the northern boundary of the site being located on the brow of the hill. The site consists of open, agricultural land which is classified Grades 2 and 3 with field hedges and trees that contribute to its rural character. The site is visible from the adjacent public right of way network.

Assessment

- 9.21. The site is included within the Council's Housing and Economic Land Availability Assessment (HELAA) dated February 2018 (site HELAA036) – it concluded as follows: *Greenfield site outside the built-up limits. The site is considered to be unsuitable for development in this location would be prominent in the landscape, particularly when viewed from the east, on one of the highest points in the vicinity. It would lead to the loss of greenfield land and informal recreation resource for local people which is in close proximity to the existing Hanwell Fields development.*
- 9.22. The application site forms part of a parcel of land assessed by the Landscape Sensitivity Capacity Assessment prepared to inform the emerging Cherwell Local Plan Review. Although a wider parcel of land was assessed the Study concluded that the assessment unit has moderate-high sensitivity for residential and commercial development. The sensitivity to logistics development is high. This sensitivity arises from the physical character including the undulating valley slopes and openness of the assessment unit to views from the north and north-east. Observations from the top of the site showed that Grimsbury Reservoir was clearly visible as was the M40, Southam Road and Little Bourton.
- 9.23. Moreover, in describing the landscape setting of Banbury the September 2013 Banbury Green Buffer Report (paragraph 3.1.1) states; *'The town itself is strongly contained by landform, with the River Cherwell and its floodplain located on the eastern side of the town and the Sor Brook and its tributaries to the west. The rounded ridge-line located to the west and south west of the town, between the Sor Brook and Cherwell, marks the edge of development to the town, whilst to the east and north, a series of undulating hills and valleys beyond the River Cherwell create a sense of enclosure in the wider landscape.'*
- 9.24. It is noted that the Landscape and Visual Impact Assessment submitted in support of the application indicates that the site will be visible from a number of vantage points around the town. It is further noted that page 16 of the Design and Access Statement states that there are panoramic views of the development from higher ground to the west which will restrict building heights on the western part of the site.
- 9.25. The application submission and the submitted Landscape Impact Assessment has been assessed by the Landscape Officer but found it to be insufficient in its assessment of the site, advising that the site is clearly visible from the submitted viewpoints 3 and 4, in contrast to the surrounding development which is fairly well screened. The vegetation on viewpoint 6 is thin and gappy and poorly maintained and is also located behind the hedgerow, not in front. There has been no assessment made of the site from the adjacent Public Right of Way 239/9. The LVA contains very few viewpoints and as such is not thorough in its assessment of the site. No wirelines have been included which assess the landscape impact of the proposed development. Additional cross-sections are also required.

Conclusion

- 9.26. Having regard to the above, 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 around the town, Hanwell village and adjacent Public Rights of Way. The landscape impact of the application site is especially sensitive given its visual prominence. Its development will likely breach Banbury's contained environmental setting and erode landscape features which define Banbury as a compact historic market town. As such the development is considered to be contrary to Policies ESD10, ESD13 and ESD15 of the adopted Cherwell Local Plan and Government guidance within the National Planning Policy Framework.

Heritage Impact

Legislative and policy context

- 9.27. The site if developed as proposed could affect the setting of Hanwell Conservation Area and the setting of Hanwell Castle, a Grade II listed building.
- 9.28. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*
- 9.29. Likewise, Section 66 of the same Act states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Therefore, significant weight must be given to these matters in the assessment of this planning application.
- 9.30. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 193 of the NPPF states that: *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.* Policy ESD15 of the CLP 2031 Part 1 echoes this guidance.
- 9.31. The site is also located in an area of archaeological interest with later prehistoric through to Roman archaeological deposits recorded in the immediate vicinity. Two prehistoric ring ditches were recorded 600m west of the site along the prehistoric ditches and several undated post holes and pits which are likely to be of a similar date. A recent archaeological excavation to the west of Southam Road recorded prehistoric worked flint and Beaker Pottery (Wessex Archaeology forthcoming). A post medieval ring ditch, probably from a windmill, was also recorded on the site. This may have been built on a surviving prehistoric barrow mound. Iron Age and Roman settlement evidence has also been recorded 1km to the west of the site. Historic England have recorded the line of a Roman Road (RR 161a) from Harwell to Oxford 270m west of the application site. It is therefore likely that further archaeological deposits could survive on the site and a programme of archaeological evaluation will need to be undertaken.
- 9.32. As a consequence of the above, the applicant has been requested to submit a heritage impact assessment which also provides verified views of the proposed development (winter views) from the Conservation Area/Hanwell Castle grounds to corroborate the assessment made by the application submission that the proposed development will not be perceived in views from Hanwell Conservation Area and the impact of the development on the setting of the listed building and conservation area. To date this has not been received.

Site Layout and Design Principles

- 9.33. The NPPF emphasises the need for good design and local distinctiveness, and this is further emphasised by Policy ED15 which advises that new development should build on the character of Cherwell. It also advises that design standards for new development, whether housing or commercial development are equally important and seeks to provide a framework for considering the quality of the built environment, to ensure we achieve locally distinctive design which reflects and respects the urban or rural context within which it sits. The CLP 1196 contains saved Policy c28, which states that *'control will be exercised over all new development to ensure the standard of layout, design and external appearance, including choice of materials are sympathetic to the character of the urban or rural context of the development'*. Saved Policy C30 states that *'design control will be exercised to ensure....(i) that new housing development is compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity and (iii) that new housing development or any proposal for the extension (in cases where planning permission is required) or conversion of an existing dwelling provides standards of amenity and privacy acceptable to the Local Planning Authority'*. These are all relevant to the proposals considered here.
- 9.34. The Cherwell Residential Design Guide SPD 2018 seeks to ensure that the quality of design across the district is raised, ensuring a legacy of successful places for future generations to enjoy. Regrettably the submission makes little reference to the Design Guide and therefore how the scheme has been designed having regard to its requirements and advice. It is however considered that the design guide is a material consideration, and the proposal should therefore accord with the requirements and advice of the Design Guide and this submission has therefore been assessed against it accordingly.
- 9.35. Section 12 of the NPPF – Achieving well-designed places advises that the creation of high-quality buildings and places is fundamental to what planning and the development process should achieve.
- 9.36. A well-designed layout will incorporate good design practice and standards. Urban form is also an important element in defining the character of a place. Design is not only about the physical appearance of a development but how it works, functions, and fits together, ensuring a quality of life for those who live there.

Assessment

- 9.37. The application is accompanied by a Design and Access Statement (DAS), but it fails to carry out a contextual analysis of Banbury and therefore how a locally distinctive development will be achieved. It also lacks sufficient detail to properly explain and illustrate how the proposed development will sit in the landscape and locality generally. Neither does it clearly set out any vision for the proposed development.
- 9.38. Parameter plans are provided on pages 26-29 of the DAS, however, these are not adequate or appropriate having regard to the nature of the site. The land use parameter plan does not include any reference to size, scale and width of landscape buffers and green infrastructure etc. It is not clear what form the green infrastructure areas between the dwellings will take and what their function and use will be. In terms of density, those shown are significantly higher than the adjacent development and will therefore be out of character with the locality. This will be further emphasised by the visual prominence of the site within the landscape and locality. Again, the storey heights indicated (up to 4 storey) are higher than those in the vicinity of the site and due to the exposed nature, the site's topography and visual prominence of the site, such heights are unlikely to be acceptable.

- 9.39. There is a considerable change in level across the site which is likely to result in the need for retaining walls and features. The sections of the DAS are not to scale, and it is therefore not possible to be clear whether the applicant's statement that most change levels will be accommodated within the green space and gardens, or how this will be successfully and appropriately achieved. Further detail and information have been requested in respect of the levels, but to date has not been forthcoming. The change in levels across the site have also been raised as an issue by both the Drainage Engineer and Landscape Officer. It is considered that as it is extremely likely that retaining features and development platforms will be required that these aspects must be considered holistically and at outline stage and included within the design and access statement to explain and illustrate how the changes in levels will be accommodated within the design for the development.
- 9.40. It is also considered that drainage design must also be considered at outline as the provision of deep, wet attenuation basins that need to be fenced for safety reasons are unlikely to be acceptable from a visual amenity point of view. These must be designed to be attractive, ecologically important features and fully integrated as part of the open space.

Conclusion

- 9.41. Having regard to the above, it is considered that the scale and form of development proposed on this prominent and elevated site would be contrary to Policy ESD15 of the adopted Cherwell local Plan and Government guidance within the National Planning Policy Framework.

Highways and Vehicular Access

- 9.42. 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.
- 9.43. 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 that would be required as a consequence of allowing the development to proceed will be provided.

Assessment

- 9.44. The proposed development will be accessed via a fourth arm (western arm) of the existing Dukes Meadow Drive/Lapsley Drive roundabout. Supporting this application is a Transport Assessment (TA) that suggest a realignment that would render access from Phase 1 to be the minor arm of a simple priority junction. This is acceptable in principle subject to an updated junction capacity assessment.
- 9.45. An emergency access point that also doubles as an updated cycle track or reinforced grass area is proposed off Dukes Meadow Drive further north of the access roundabout. However, drawing number SKL-02 Rev A appended to the TA shows that the emergency access would link the development along its boundary with Phase 1, which does not serve this purpose. Clarification and detail of this access will need to be provided by a planning condition if approved. A Construction Traffic Management Plan and temporary access for construction traffic will need to be agreed.

- 9.46. The nearest bus stops to the site are located on Highlands to the south of the site, approximately 790m from the site's proposed western pedestrian/cycle access and are served by the B9 bus. The distance from the site could act as a deterrent to public transport use for those with mobility issues or small children. As with Phase 1, a transport contribution of £1.618 per dwelling is required to support the continued operation of the bus service. A Residential Travel Plan will be required to be submitted and approved as part of any approval.
- 9.47. Planning for cycling/walking, space for cycling within highways, transitions between carriageways, cycle lanes and cycle tracks, junctions and crossings, cycle parking and other equipment design within the development should follow LTN 1/20 guidance. Contributions towards upgrading the current footpath on the southern side of the carriageway to a segregated cycle and footpath in line with LTN 1/20 should be provided from Lapsley Drive roundabout to Winter Gardens Way roundabout. Contributions are also sought towards connectivity between the development and Banbury and the emerging Banbury Local Cycling and Walking Infrastructure Plan.
- 9.48. Whilst this is an outline application, it is expected that subsequent applications will show a comprehensive network throughout the site with footways provided on each side of the carriageway to make it suitably permeable with the surrounding infrastructure.
- 9.49. In terms of traffic impact, the submitted Transport Assessment has been assessed by OCC as local highway authority who consider that the person trip rates and resultant trips by mode presented in the TA are reasonable for a development of this size and in this location. The peak hour vehicular trips obtained from the trip generation exercise have been assigned on to the network using the distribution patterns obtained in 2011 Census data which is deemed acceptable.
- 9.50. In attempting to appraise the traffic impact of this development onto the local highway network, the TA has undertaken modelling exercises at the access Dukes Meadow Drive/Lapsley Drive, A423 Southam Road/Dukes Meadow Drive and Dukes Meadow Drive/B4100 Warwick Road/Walker Road. Assessment was undertaken for both the baseline scenario to forecast how these junctions would operate without and with the development traffic. The modelling undertaken on the A423 Southam Road/ Dukes Meadow Drive roundabout in the PM peak shows the RFC value for the Southam Road south to operate slightly over its designed threshold.

Conclusion

- 9.51. While OCC would have required the development to adequately mitigate the seemingly meagre impact on the network such as has been demonstrated at this roundabout, the approach captured in OCC's LTCP policies however seek only to consider road capacity improvements as the last resort. It is acknowledged that with improved public transport services and active travel opportunities, there would be a modal shift that would eventually balance out the need for the increase in road capacity.
- 9.52. In summary, it is agreed by OCC that subject to the improvements to public services and active travel infrastructure identified, the proposed development will not result in a detrimental impact on the highway network.

Housing Mix and Affordable Housing

- 9.53. The proposed development provides for up to 176 new dwellings on the site. No details of housing mix are provided at this stage. It is important to have consideration of the mix of housing when considering urban design as well as responding to

identified local housing needs. Policy BSC4 of the adopted Cherwell Local Plan 2025 seeks to encourage a mix of housing on all new developments that meets the need of the district as identified by the results of the SHMA 2014. This advises that there is a greater need for 3-bedroom properties in Cherwell and the suggested mix is shown on Table 67 of the Local Plan. Consideration of and compliance with Policy BSC4 is relevant in this respect.

- 9.54. Policy BSC3 requires the provision of 30% affordable housing which equates to 53 dwellings. The required tenure split is 70% rented and 30% Low-Cost Home Ownership (LCHLO). National policy requires that 10% of the overall scheme is provided as Low-Cost Home Ownership, and that 25% of the affordable element is provided as First Homes. A policy compliant affordable housing mix would therefore be 18 LCHO dwellings of which 13 would be First Homes and 5 shared ownership and 35 dwellings for social rent. The proposed tenure mix set out in the Planning Statement complies with this.

Assessment

- 9.55. In terms of housing mix, that proposed within the Planning Statement is not currently acceptable as there are insufficient 2-bed houses proposed. This number must be increased significantly as 2-bed flats and maisonettes are not considered suitable for families with children. Maisonettes are also preferred to flat as they offer greater privacy, although provided the affordable flats have the same external appearance as the market flats, flats may be considered acceptable in this instance. The number of 4-bed properties should be increased from 3 to 4. The application proposes that the proposed sizes comply with NDSS requirements which is welcomed.
- 9.56. The Developer Contributions SPD requires that 50% of the rented dwellings meet M4(2) requirements and 1% meet M4(3) requirements. Whilst 1% is less than 1 dwelling, it would contribute significantly to meeting pressing needs if one dwelling could be delivered to full wheelchair standard. There are households currently on CDC's housing register who specifically require a 3-bed wheelchair adapted property in the Banbury area.
- 9.57. All affordable housing units will need to deliver high standards/rates of energy efficiency to ensure household fuel (and water) bills are also affordable for the tenants. This supports the delivery of sustainable development and contributes to the government objective to reach Net Zero carbon.
- 9.58. The Developer Contributions SPD requires the affordable units to be indistinguishable from the market units in terms of materials used, design, parking arrangements etc. It is also expected that where appropriate, affordable housing should not be clustered in any more than 10 units of one tenure and 15 units of multiple affordable tenures with no contiguous boundary of the clusters. These matters would be addressed at reserved matters/detailed design stage.

Conclusion

- 9.59. Any planning approval will be subject to a Planning Obligation and many of the requirements above will be incorporated into the Section 106 to ensure that the affordable housing delivered accords with CDC standards, tenure mix and housing mix accordingly.

Ecology Impact

Legislative context

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

Policy Context

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

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

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

Assessment

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

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

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

9.73. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site is within 1km of Neithrop Fields Cutting SSSI and Fishponds Wood, Hanwell Local Wildlife Site (LWS) and there are a number of mature trees and hedgerows within and adjacent the site, and therefore has the potential to be suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates.

9.74. In order for the Local Planning Authority to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England would be likely to grant a licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.

9.75. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.

9.76. The application is supported by an ecological appraisal following site surveys between August 2020 and July 2022, based on a standard extended Phase 1 methodology. In addition, a general appraisal of fauna species was undertaken to record the potential presence of any protected, rare or notable species, with specific surveys conducted in respect of bats, reptiles and Badger.

9.77. The site forms the eastern part of a semi-improved grassland field, with other habitats including boundary hedgerows and scattered scrub. Features of ecological importance include the hedgerows and associated trees, which are to be retained under the proposals and will be protected during construction, with only small sections removed to facilitate access. It is proposed to compensate by new hedgerow planting which will link with the existing/retained hedgerows. Further new planting is also proposed within the development itself. In terms of protected species, potential opportunities or confirmed use of the site by badger, bats and common nesting birds have been recorded.

9.78. The submitted appraisal concludes that the proposals have sought to minimise impacts on biodiversity and subject to the implementation of appropriate avoidance, mitigation and compensation measures, the proposals are unlikely to result in significant harm to biodiversity.

9.79. The application however has been assessed by Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (BBOWT) who have raised an objection to the proposals on several grounds. Just to the east of the development site lies an area known as the Hanwell Brook Wetland which supports a range of wildflowers such as bugle, meadowsweet and greater bird's trefoil and a range of birds, dragonflies, damselflies, frogs and toads. The proximity of the proposed development site to the wetland

combined with the topography of the site which slopes steeply to the east (toward the wetland) means there is potential for a negative hydrological impact on the wetland.

- 9.80. There is also a potential impact by the development on Adder's-tongue fern which is a good indicator of ancient meadows. Although this fern is locally abundant this is because there is a high concentration of important meadows in Oxfordshire; nationally it is much less common. The submitted ecological appraisal advises that its loss could be mitigated through translocation with details to be agreed at reserved matters stage, however, BBOWT are unsure about how successful the proposed translocation of the fern is likely to be as the success of any translocation is dependent upon many different factors such as management of the new site, hydrology and fungal associations. BBOWT therefore suggest that if approved the site should be redesigned in order to avoid development on areas of grassland with Adder's-tongue fern which should remain in situ with a buffer around to protect it.
- 9.81. In terms of net gain in biodiversity, BBOWT wish to see further information to justify the metric scoring, and off-site enhancement from poor to good, especially having regard to the presence of Adders'-tongue fern and to ensure that the gain is achievable within the timescales. The additional information and detail should include the submission of a Habitat Creation and Management Plan for all the main wildlife habitats and SuDS features, which should be provided at this stage rather than conditioned for later consideration to ensure that a net gain in biodiversity can be appropriately achieved in connection with the proposed development and that it will be retained and maintained in perpetuity.
- 9.82. The site is also located very close to the North Cherwell Conservation Target Area and the submission does not include information to illustrate how the development will secure biodiversity enhancement to help achieve the aims of the Conservation Target Area in line with Policy ESD11.

Conclusion

- 9.83. Having regard to the objections raised by BBOWT above, and the Local Planning Authority's duty under the Conservation of Habitats and Species Regulations 2017, the lack of a suitable proposed mitigation strategy to demonstrate 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, and the provision of biodiversity net gain, the proposal is considered to be contrary to Policies ESD10 and ESD11 of the Cherwell Local Plan 2011-2031, Part 1 and advice contained in the PPG and NPPF.

Flood Risk and Drainage

- 9.84. Section 14 of the NPPF considers the issue of meeting the challenge of climate change, flooding and coastal change. Paragraph 167 states that when determining any applications, local planning authorities should ensure that '*flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment*'.
- 9.85. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk and resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.
- 9.86. Policy ESD7 of the CLP 2015, relates to sustainable drainage systems and advises that 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 Lead Local Flood Authority (LLFA). Proposals must also include an agreement on the future management, maintenance and replacement of the SuDS features.

Assessment

9.87. The application site is located in Flood Zone 1 (low probability) and as such, the development itself is at a low (less than 1 in 1000 year) risk of flooding from rivers or the sea but is more than 1 hectare in size and therefore a detailed Flood Risk Assessment is required. The application was therefore accompanied by a Flood Risk Assessment accordingly.

9.88. The application submission has been assessed by OCC as Local Lead Flood Authority who has raised an objection to the proposal. The objection relates to the lack of detail and information submitted with the application.

9.89. The submission has also been assessed by the District Council's drainage engineer who has advised that the site will be difficult to develop due to its topography and steep slope and the following must be included in any detailed design:

- The site is very steeply sloping. It is likely that terraces will have to be constructed to create development platforms. These may entail considerable excavation in rock.
- There is a potential for ground water flow routes to be interrupted which may result in the emergence of springs and high hydrostatic pressures against any retaining walls that have to be constructed.
- The sloping topography will generate high flow velocities which must be limited to a maximum of 3 m/s. A series of baffles is likely to be needed.
- The SuDS feature is proposed to be directly adjacent to the sports pavilion. The design top water level must be at least 300mm below the floor level of the pavilion.
- A safe exceedance route which will not cause risk to the pavilion or other existing development must be shown.

9.90. Comments in respect of the submission have also been received from Thames Water who advise that from the information submitted they are unable to determine the Foul water infrastructure needs of the development and has identified an inability of the existing water network infrastructure to accommodate the needs of the development proposal. Thames water have contacted the applicant in an attempt to obtain this information accordingly. Should the issues not be resolved, conditions are recommended to be attached to any planning consent.

Conclusion

9.91. To date the applicant has not responded to the LLFA's objection. Although this is an outline application with all matters other than access reserved, the issue of drainage is a material consideration particularly as the applicant seeks to use existing drainage ditches. As such, unless the applicant provides additional information the proposal is considered to conflict with Policies ESD6 and ESD7 of the CLP 2015 and advice contained within the National Planning Policy Framework.

Sustainability

- 9.92. Section 14 of the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. Policies ESD1-5 of the adopted Cherwell Local Plan address this.
- 9.93. Policy ESD1 of the CLP 2015 deals with the issue of Mitigating and Adapting to climate change and includes criteria under which applications for new development will be considered, such as the requirement that development will incorporate suitable adaption measures to ensure that development is more resilient to climate change impacts by proposing sustainable drainage methods and increased green infrastructure provision.
- 9.94. Policy ESD2 considers Energy Hierarchy and Allowable Solutions and seeks to achieve carbon emissions reductions where the council will promote an 'energy hierarchy' as follows: *reducing energy use, in particular by the use of sustainable design and construction measures; supplying energy efficiently and giving priority to decentralised energy supply; making use of renewable energy and making use of allowable solutions*. Any new development will be expected to consider these and address the energy needs of the development.
- 9.95. Policy ESD3 considers Sustainable Construction and states that '*all new residential development will be expected to incorporate sustainable design and construction technology to achieve zero carbon development through a combination of fabric energy efficiency, carbon compliance and allowable solutions in line with government policy*'. Cherwell is also in an area of water stress and therefore requires all new development to achieve a limit of 110 litres/person/day.
- 9.96. Policy ESD4 considers the use of decentralised energy systems and requires a feasibility assessment to be submitted with a relevant application which includes developments of 100 dwellings or more.
- 9.97. Policy ESD5 considers renewable energy and requires that all residential developments of 100 dwellings or more are accompanied by a feasibility assessment of the potential for significant on-site renewable energy provision, above that required to meet national building standards.

Assessment

- 9.98. The application is accompanied by an energy and sustainability report. This report confirms that the development proposed will adopt the following:
- Use of passive solar design for heating and cooling;
 - Use of SuDS drainage;
 - Sustainable and active modes of transport;
 - Electric vehicle charging;
 - Water efficient fittings to reduce water consumption to 110 litres per person per day;
 - Tree lined streets to assist in temperature reduction;
 - Use of recycled and energy efficient materials and locally sourced materials;
 - Maximise natural daylight and ventilation;
 - An all-electric heating strategy.

Conclusion

9.99. The details submitted are considered to comply with the requirements of the policies above in respect of sustainability.

Planning Obligations

9.100. In order to ensure that the development is acceptable in planning terms, a number of the impacts of the development need to be mitigated and/or controlled through covenants in a legal agreement. All section 106 requirements are subject to statutory tests and in order to be taken into account in deciding to grant planning permission they need to be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind.

Assessment

9.101. It is considered that should planning consent be forthcoming that the following additional items/contributions should be secured as part of the permission relating to the new dwellings (and any amendments deemed necessary).

9.102. CDC Obligations:

- 30% affordable housing to NDSS and CDC requirements and standards;
- £201,215.74 contribution towards the provision or enhanced facilities at Hanwell Fields;
- £354,997.28 contribution towards outdoor sport provision at Hanwell Fields Recreation Ground and/or North Oxfordshire Community use site;
- £146,950.64 contribution towards indoor sport, - Banbury indoor tennis centre and/or improvements to the leisure centre;
- £17,631.94 contribution for community development worker to help integrate residents into the wider community;
- £7,920.00 contribution towards initiatives to support groups for residents;
- £39,424.00 contribution towards public art within the vicinity;
- £5,000 monitoring fee.

9.103. OCC Obligations:

- £157,948.71 – strategic highway works;
- £284,768 – public transport;
- £1,558 – travel plan monitoring;
- £22,564.10 – public rights of way;
- £1,395,954 – secondary education;
- £139,986 – secondary land contribution;
- £98,715 – special education;
- £16,537 – household waste and recycling centres.

9.104. Other obligations – TBC.

PLANNING BALANCE AND CONCLUSION

- 10.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise. The NPPF supports this position and adds that proposals that accord with an up-to-date development plan should be approved and those that do not be normally refused unless outweighed by other material consideration.
- 10.2. In respect of this application, it is not considered that the principle of development can be supported being an unallocated site beyond the built-up limits of Banbury and in an inappropriate location threatening coalescence with nearby Hanwell village, contrary to Policies PSD1 and BSC1 of the adopted Cherwell Local Plan and saved Policies C8 and H18 of the adopted Cherwell Local Plan 1996.
- 10.3. In terms of landscape impact, the application has failed to demonstrate through the submission that the proposals would not cause substantial harm to the undeveloped rural character and appearance of the site when viewed from Public Rights of Way in the surrounding countryside and the surrounding area, and in particular from the north and east of the town and Dukes Meadow Drive. As such the proposal is contrary to Policies ESD10, ESD13 and ESD15 of the adopted Cherwell Local Plan 2015 and Government guidance within the National Planning Policy Framework.
- 10.4. 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.
- 10.5. In terms of impact upon ecology and habitats, having regard to the concerns raised by BBOWT which have not yet been addressed by the applicant, the Local Planning Authority cannot be satisfied that protected species and habitats will not be harmed by the development and as such the proposal fails to accord with Policy ESD10 of the CLP 2015 and Government guidance contained within the National Planning Policy Framework.
- 10.6. Further to the negative impacts of the development above, in terms of the positive benefits of the proposal, the development would contribute to the Council's Supply of Housing in the short term, would create construction jobs and also support facilities and employment in businesses, shops and services within the district. The proposals would also provide affordable housing for those in need and provide a social benefit in terms of on-site recreation and play facilities which would be expected by policy and also provide a community benefit to existing residents.
- 10.7. It is considered however, that the positive benefits above do not outweigh the significant harm which would be caused by the development and therefore the proposals are considered to be conflict with the development plan and in accordance with the development plan the proposed development is considered to represent unsustainable development which should be refused as set out above.
- 10.8. In terms of planning obligations, a section 106 has not yet been agreed or drafted. A reason for refusal relating to the lack of a completed Section 106 agreement is therefore also recommended.

10. RECOMMENDATION

REFUSAL FOR THE REASONS SET OUT BELOW:

- 1.** The site is located in the open countryside between Banbury town and Hanwell village. By reason of its location and proposed scale of development, the proposal would have a poor and incongruous relationship with the existing development, appearing unduly prominent and divorced and threaten coalescence between the two settlements. The development proposed would therefore have an adverse impact on the character and appearance of the area. In addition, the Council is able to demonstrate a 5-year housing land supply and therefore housing strategies in the Development Plan are up to date. Furthermore, the development would constitute residential development in the open countryside beyond the built-up limits of Banbury. The proposal is therefore contrary to Policies PSD1, BSC1, ESD13 and ESD15 of the adopted Cherwell Local Plan 2011-2031 and saved Policies C8 and H18 of the adopted Cherwell Local Plan 1996 and Government guidance within the National Planning Policy Framework.
- 2.** The proposal lacks detail and information relating to 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 2011-2031 and Government guidance within the National Planning Policy Framework.
- 3.** 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 adopted Cherwell Local Plan 2011-2031 and saved Policies C1 and C2 of the adopted Cherwell Local Plan 1996 and Government guidance within the National Planning Policy Framework
- 4.** In the absence of a satisfactory unilateral undertaking or 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 adopted Cherwell Local Plan 2011-2031, CDC Planning Obligations SPD 2018 and Government guidance within the National Planning policy Framework.
- 5.** The application proposal due to the topography and open, elevated position of the site within the landscape, beyond the built-up limits of Banbury and in open countryside would result in an unduly prominent development causing significant visual harm and landscape impact, which will breach Banbury's countryside environmental setting and erode landscape features that define Banbury as a historic market town, contrary to Policies ESD10, ESD13 and ESD15 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

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