

Case Officer: Lewis Knox

Applicant: E5 Commercial (Higham Way) Ltd

Proposal: Development of 10 speculative commercial units and associated car parking/yard areas planning use classes B2, B8, Eg(i), Eg(ii), Eg(iii)

Ward: Banbury Grimsbury And Hightown

Councillors: Councillor Rebecca Biegel, Councillor Dom Vaitkus

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

Expiry Date: 21 March 2025

Committee Date: 10 April 2025

SUMMARY RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS

MAIN REPORT

1. APPLICATION SITE AND LOCALITY

1.1. The application site is located off the southern end of Higham Way within Banbury.

The site is a vacant plot of land which has been cleared of its previous use and is now largely flat land and rubble. The site was allocated for housing in the Cherwell Local Plan 2011-2031 Part 1 (CLP 2015) but no such development has come forward. The site is currently surrounded by other commercial uses and adjacent residential apartments and other dwellings.

2. CONSTRAINTS

2.1. The application site is within on an area of potentially contaminated land.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

3.1. The applicant seeks planning permission for 10 commercial units with associated car parking and yard areas. The units will be formed from 3 separate blocks, two located in the northern part of the site, with a third; larger, block sited along the southern boundary.

3.2. The units will be for B2, B8, Eg(i), Eg(ii) and Eg(iii) uses.

4. RELEVANT PLANNING HISTORY

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

Application: 16/00472/OUT

Application
Withdrawn

21 November 2024

Proposed residential redevelopment for approximately 200 units.

5. PRE-APPLICATION DISCUSSIONS

5.1. The following pre-application discussions have taken place with regard to this proposal:

24/01011/PREAPP –

5.2. “In principle the LPA is aware that the Draft 2040 Local Plan acknowledges this site to be better utilised for employment uses. This suggests the principle of development for employment use is acceptable in the future; however, it would be contrary to the current Cherwell Local Plan. Given the planning history and site constraints a good scheme could be positively supported. However, the scheme presented as part of this pre-application submission is not and needs to be re-considered.

5.3. The number of units should be reduced to remove the impact of new development on the neighbouring occupiers to the north whilst still considering those to the east. The design and scale of the units will also be an important factor. We discussed single storey mono pitched units, which is not dissimilar in design to the neighbouring buildings. However, as a priority the scale, proximity and design need to consider neighbour amenity.

5.4. The loss of the mature tree and the potential to mitigate against lost biodiversity is also a concern. Whilst there is not much on site, the proposed block plan offers very little in return. This too needs further consideration.

5.5. The site is in Flood Zone 2 and in an area of potentially contaminated land. Early discussion with the Environment Agency is advised prior to formal submission of an application.

5.6. There are some reservations around the intensification the development would bring to an already congested junction and the ability to park and manoeuvre the larger vehicles on this site is questioned.

5.7. For the reasons set out above this scheme would not achieve the support of officers and it is strongly advised further work is carried out prior to formal submission.”

6. RESPONSE TO PUBLICITY

6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records (amend as appropriate). The final date for comments was **11 January 2025**, although comments received after this date and before finalising this report have also been taken into account.

6.2. The comments raised by third parties are summarised as follows:

- Concerns raised regarding noise
- Loss of light
- Loss of view
- Property value

- Traffic/Parking issues
- Concerns over operational hours
- Pollution
- Loss of privacy
- Impact on landscape

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

7. RESPONSE TO CONSULTATION

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

7.2. BANBURY TOWN COUNCIL: **object** on the grounds of impact on residential amenity of neighbouring flats in terms of proximity, scale and possible nuisance from associated uses. Premature and should wait for the outcome of the emerging local plan

7.3. OCC HIGHWAYS: **no objections** subject to conditions and S106 contributions. Original objections regarding the link road connecting Higham Way to Banbury Policy 6 not being achievable in conjunction with the site and lack of transport statement were removed following the submission of further details.

7.4. LEAD LOCAL FLOOD AUTHORITY: **no objections**, subject to conditions

7.5. ENVIRONMENT AGENCY: Raised no comments on this application

7.6. CDC ECOLOGY: **No objections** in principle, further details required justifying the on-site habitat choices and outlining how the obligations will be met.

7.7. CDC PLANNING POLICY: **No objections**, this proposal is generally consistent with the overall objectives of the adopted Cherwell Local Plan and a previously developed site. Proposed for employment development within the emerging plan.

7.8. OCC ARCHAEOLOGY: **No Objections**, there are no archaeological constraints to this scheme.

7.9. CDC BUILDING CONTROL: The proposed development will require a Full Plans Building Regulations application

7.10. CDC ENVIRONMENTAL PROTECTION: **no objections**, subject to conditions

7.11. THAMES WATER: **no objections**, subject to conditions

7.12. BANBURY CIVIC SOCIETY: welcome developments such as this but regard should be had to the future extension of Higham Way and link road.

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 2015)

- PSD1 – Presumption in Favour of Sustainable Development
- SLE1 – Employment Development
- SLE4 – Improved Transport and Connections
- BSC9 – Public Services and Utilities
- ESD1 – Mitigating and Adapting to Climate Change
- ESD2 – Energy Hierarchy and Allowable Solutions
- ESD3 – Sustainable Construction
- Policy ESD 5 - Renewable Energy
- Policy ESD 6 - Sustainable Flood Risk Management
- ESD7 – Sustainable Drainage Systems (SuDS)
- Policy ESD 8 - Water Resources
- ESD10 - Protection and Enhancement of Biodiversity and the Natural Environment
- Policy ESD 13 - Local Landscape Protection and Enhancement
- Policy ESD 15 - The Character of the Built and Historic Environment
- Policy Banbury 19 - Land at Higham Way

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- Policy TR10 - Heavy Goods Vehicles
- Policy C7 - Landscape conservation
- Policy C28 - Layout, design and external appearance of new development
- Policy C30 - Design Control
- EMP1 - Allocation of sites for employment generating development.
- ENV1 – Development likely to cause detrimental levels of pollution.
- ENV12 – Development on Contaminated Land.

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

9. APPRAISAL

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

- Principle of development
- Transport and Highway Impact
- Design, and impact on the character of the area
- Residential amenity
- Contaminated Land

- Ecology impact
- Flood Risk and Drainage
- Energy Efficiency and Sustainability

Principle of Development

Policy Context

Assessment

- 9.2. The site is a previously developed site within the built up area of Banbury. The site is bounded by residential development to the north and east and to the south by Grondon waste management and to the west by industrial buildings. The railway station lies to the west. The site itself is currently concreted over with no physical buildings present. This is a brownfield site close to the town centre which would benefit from being brought back into use. It measures approximately 0.3 hectares in size.
- 9.3. This is a full planning application for the creation of ten employment units covering B2, B8 and E (g) uses. The application is accompanied by illustrative plans and technical reports including a Planning Statement, Design and Access Statement, Heritage Statement, FRA and traffic note.

Adopted Cherwell Local Plan

- 9.4. The adopted 2015 Local Plan has an urban focus with the bulk of the District's strategic growth to 2031 directed to Banbury and Bicester.
- 9.5. The principle of employment development is generally assessed against Policy SLE1, though this site also falls within a Local Plan allocation Policy Banbury 19: Land at Higham Way. The adopted Local Plan allocates this site and additional land at Higham Way for residential development. (Prior to this it was allocated for mixed use development).
- 9.6. There was a planning application submitted in 2016 for the development of 200 dwellings on the wider allocation site, though this was subsequently withdrawn.
- 9.7. It is also the case that whilst not a confirmed allocation, it is a proposed allocation for employment in the emerging Local Plan. It has been identified in earlier stages of the Local Plan Review 2042 and remains in the version of the Plan that is expected to be submitted for examination later this year. It is clear from the allocation history of this site that the Council is keen to see this land be redeveloped.
- 9.8. This proposed development also forms part of a much wider allocation and it is not clear how the development of this part of the site in isolation would impact the wider redevelopment of the whole site. This application site is 0.3 hectares within a 3 hectare allocation.
- 9.9. A strategic objective of the adopted local plan (SO 1) is to facilitate economic growth and employment and a more diverse local economy with an emphasis on attracting and developing higher technology industries.
- 9.10. Paragraph B.30 of the plan explains that that the aim is to secure:
- business-friendly and well-functioning towns
 - an eco-innovation hub along the Oxford – Cambridge technology corridor

- internationally connected and export driven economic growth
- investment in people to grow skills and the local workforce
- vibrant, creative and attractive market towns
- family housing
- measures to reclaim commuters where possible
- measures to increase labour productivity.

9.11. The NPPF will be a material consideration in the determination of this proposal, particularly NPPF requirements for planning policies and decisions to:

'...help create the conditions in which business can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.' (NPPF Paragraph 85); and

'Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. (NPPF paragraph 89)

Uses

- 9.12. The uses proposed on the site comprise a mix of B2, B8, Eg(i), Eg(ii), Eg(iii) uses and careful consideration should be given to the potential impact on neighbouring residential amenity, particularly the abutting block of flats. It would be preferable to see office uses rather than B2/B8 uses at this location.
- 9.13. Policy SLE 4 seeks to deliver key transport connections, supports a modal shift towards more sustainable modes of transport and supports employment growth in more sustainable locations.

Conclusion

- 9.14. This proposal is generally consistent with the overall objectives of the adopted Cherwell Local Plan and a previously developed site. The site also falls within an adopted and retained/amended Local plan allocation for residential development. It is acknowledged that the emerging Local Plan now proposes the same allocation for employment land, and whilst the emerging Local Plan should be given limited weight, it is clear that a residential use has not been developed and the site would be more appropriately developed for employment purposes.
- 9.15. The application site forms a much smaller part of the wider site allocation and it is not clear that this isolated development would not prejudice the redevelopment of the site as a whole. The application is not clear on this point.
- 9.16. The NPPF is generally supportive of this type of proposal. The proposal is reasonably related in scale to its adjacent employment land use on a site that would be best suited for this type of land use.
- 9.17. Whilst not strictly in line with the adopted allocation, the proposal does satisfy the other criteria set out in Policy SLE1.

Transport and Highway Impact

Policy Context

- 9.18. Policy SLE4 of the CLP 2031 Part 1 requires that new developments maximise opportunities for access to sustainable modes of travel and seeks improvements to the highway network to mitigate significant adverse impact of traffic generation resulting from new development

Assessment

- 9.19. The site is located at the southern end of Higham Way and would be accessed using an existing access fork leading from Higham Way, as such there are no substantial works proposed to the existing highway network in terms of upgrades to facilitate this development. It is noted that the Existing Grundon Waste Management depo is located just to the south of the application site and is also accessed using Higham Way, and as such it is considered that the local road network and access is acceptable for use of heavy goods vehicles.
- 9.20. Oxfordshire County Council Highways Officers originally commented that the applicant must demonstrate on a plan that there is sufficient land available to provide a road corridor between Higham Way and the allocated employment site to the east. The road must be wide enough for a suitable carriageway and a shared footway / cycleway. It was also requested that the applicant demonstrates how the development site's access will form a junction with the future road. This road should not be an intended through route for HGV traffic, in order to reduce the number of HGVs within the residential areas of Higham Way.
- 9.21. Following these comments from OCC Highways further information was submitted in order to address the issues raised. It is now considered that the applicant has demonstrated that there would be suitable land provision for a road corridor between Higham Way and the allocated employment site to the east. This road would be adequately wide enough to accommodate a carriageway and a shared footway and cycleway. As such OCC Highways removed their objection in regards to this issue.
- 9.22. Conditions are suggested to ensure that the parking and turning area, means of access, cycle parking provision and ev charging provision are all adequate on the site but they are considered to be acceptable in principle based on the information currently provided.

Design, and Impact on the Character of the Area

Policy Context

- 9.23. Policy ESD15 of the CLP 2031 Part 1 requires new development to respect its context and take the opportunities available to improve the character and appearance of the area and the way it functions. These development plan policies are consistent with national planning policy in the NPPF which places great weight on the importance of good design achieving sustainable development.
- 9.24. Saved Policy C28 of the Cherwell Local Plan 1996 exercises control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context.

Assessment

- 9.25. The application site is largely flat having been cleared of previous development and is not within a sensitive landscape. The site is largely surrounded on all sides its by other built development, much of which is relatively functional in appearance with the use of simplistic materials, including the industrial style buildings at Grundon Waste Management and the Banbury Rail station Multi-storey carpark. The north and east of the site are more residential style areas with large flats on the northern edge with dwellings to the east.
- 9.26. The development comprises three rectangular buildings which would be divided into 10 separate units, two smaller would be situated along the northern edge of the site with the largest of the three buildings along the southern boundary. The buildings would be sited perpendicular to the southern end of Higham Road. The buildings are sited either side of a central access road with parking and turning areas surrounding.
- 9.27. The design of the buildings is consistent and typical of a modern commercial development comprising large areas of glazing with grey and black panelling in varying shades. The buildings are designed to be constructed with a mono pitched roof.
- 9.28. In terms of scale, the buildings would single storey in height and would be consistent with the scale of buildings already in existence within the locality most notably the other industrial style buildings within the proximity of the site.
- 9.29. The layout, scale and appearance of the proposed buildings are considered acceptable in the context.
- 9.30. The site is relatively constrained and as such the proposed landscape scheme for the site is minimal however some buffers are proposed along the main access road to shield some views from the flats to the north. The landscape scheme is considered to be consistent with the principles established within the residential development to the north with some trees and green spaces breaking up the developed parts of the site. Full details will be required by condition.
- 9.31. Boundary treatment information has not been submitted with the application and will also need to be conditioned.
- 9.32. Areas for cycle parking are shown along the access but details of the appearance of these areas (structures/boundary treatment) has not been submitted and will need to be conditioned.
- 9.33. The proposals are considered to be in accordance with policies ESD15 of the CLP 2031 Part 1 and C28 of the CLP 1996 as well as national planning policy set out within the NPPF in this regard.

Residential Amenity

Policy Context

- 9.34. Policy ESD15 of the CLP 2031 Part 1 states that new development proposals should consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space.
- 9.35. Saved Policy ENV1 of the Cherwell Local Plan 1996 states that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke other types of environmental pollution will not normally be permitted.

Assessment

- 9.36. The new commercial units would be located close to an existing residential area which extends to the north and east of the application site. The most potential for impact on residential amenity would be on 122-136 Marshall Road which is the southern most block of flats within the neighbouring residential area.
- 9.37. It is noted that the smaller two units which are proposed in this development would come in close proximity to the block of flats with one situated just to the south-east and one south west with a break between them which contains space for a turning head and parking.
- 9.38. Officers consider that there clearly would be some impact on the residential amenity of the occupants of the closest flats which face southwards onto the proposed development, this would come in the form of some loss of light and some loss of outlook. However, the units as proposed are considered to be of an appropriate scale for this site and would be lower in height than the neighbouring block of flats. The most impacted flats would be those situated on the ground and first floors, it is noted that the existing boundary treatments already reduce light and outlook to these properties and it is not considered that the erection of the proposed units would cause substantially greater harm sufficient to warrant refusal of the application on this basis.
- 9.39. Having regard to the floor plan of the existing flats, the flats on the corner of the block have dual aspect living areas and whilst some light would be blocked from one window, sufficient light would still be able to reach the accommodation via the other windows and as such there would not be significant impact in this regard. Some of the other facing windows on the southern elevation of the flats serve bedrooms and some light would be blocked reaching these windows but it is not considered that the industrial units would cause impact to the main living areas of these properties.
- 9.40. The design of the buildings has had regard for the amenity of neighbouring properties with a mono pitched roof meaning the units would be lower at the back which would face towards Marshall Road and thus would reduce their impact in terms of scale and overbearing. At their nearest point, the proposed units would be approximately 10m away from the adjacent flats which would also reduce any impact felt and would provide an appropriate buffer between residential and commercial uses.
- 9.41. Concerns have been raised by commenters on the application regarding noise and other nuisances arising from the potential uses at the commercial units. CDC Environmental Officers have been consulted on the application and raised no objections to the scheme. Regard was had to the fact that the locality is already a mixed use area with existing industrial uses at Grundon as well as the neighbouring train station. They considered that as the units would face inwards towards the site and away from neighbouring residential uses that any harm caused would not be substantially greater than the existing situation in the locality.
- 9.42. Conditions have also been suggested which would restrict the operational hours of any intrusive uses at the site to minimise impact on the neighbouring occupants.
- 9.43. Given the lack of objections, it is considered that the development would not cause significant levels of harm to the amenity of nearby occupiers in terms of Noise, Light, Air Quality or Odour and would be acceptable in this respect subject to conditions.

Conclusion

- 9.44. The proposals are considered to be in accordance with policies ESD15 of the CLP 2031 Part 1 and ENV1 of the CLP 1996 as well as national planning policy set out within the NPPF in this regard.

Contaminated Land

- 9.45. CDC Environmental Officers raised no objections in principle with regards to contaminated land though conditions are required to ensure any contamination is identified and remedial works undertaken prior to the commencement of the development.

Ecology Impact

Legislative context

- 9.46. 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.
- 9.47. 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.
- 9.48. 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.
- 9.49. 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.
- 9.50. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain

exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

Policy Context

- 9.51. Paragraph 180 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.
- 9.52. Paragraph 186 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.
- 9.53. Paragraph 191 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.
- 9.54. Policy ESD10 of the Cherwell Local Plan 2015 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 9.55. 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.
- 9.56. 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.
- 9.57. 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

9.58. 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')

9.59. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site has been cleared and currently consists of rubble piles. There are a number of trees close by and in the boundary of the site which would not be affected by proposals. There are no buildings to be removed or altered due to the proposed development.

9.60. Having considered Natural England's Standing Advice and taking account of the site constraints it is considered that the site has limited potential to contain protected species and any species present are unlikely to be adversely affected by the proposed development. As such no formal survey is required and in the absence of which this does not result in a reason to withhold permission. An informative reminding the applicant of their duty to protected species shall be included on the decision notice and is considered sufficient to address the risk of any residual harm.

9.61. CDC Ecology Officers were consulted on the application and whilst they had no objections in principle conditions were suggested to ensure that construction does not cause harm to any existing species or biodiversity within the site. Ecology Officers were generally satisfied with the inclusion of new trees and grassland areas within the development to count towards BNG.

9.62. It is also noted that the application would be subject to the statutory BNG Condition which will need to be discharged prior to the commencement of the development.

Conclusion

9.63. The proposals are considered to be satisfactory in this regard, in accordance with the requirements of policy ESD10 and ESD11 of the CLP 2031 Part 1 subject to further details being approved through conditions.

Flood Risk and Drainage

Policy Context

9.64. Policies ESD 6 and ESD 7 of the CLP 2031 Part 1 together resist new development where it would increase flood risk or be unduly vulnerable to flooding. They also seek to ensure that the proposals incorporate sustainable drainage systems in order to prevent increased risk of flooding.

Assessment

- 9.65. No objections were raised to the current application by the LLFA or Thames Water. Conditions are recommended to ensure that the development is carried out to the satisfaction of the LLFA.

Conclusion

- 9.66. The proposals are considered to be satisfactory in this regard, in accordance with the requirements of policy ESD6 and ESD7 of the CLP 2031 Part 1.

Energy Efficiency and Sustainability

Policy Context

- 9.67. Policy ESD 5 of the CLP 2031 Part 1 requires new commercial development of over 1,000sqm floorspace to provide for significant on-site renewable energy provision unless robustly demonstrated to be undeliverable or unviable. Policy ESD 4 of the CLP 2031 Part 1 also requires a feasibility assessment to be carried out for such developments to determine whether Combined Heat and Power (CHP) could be incorporated.
- 9.68. Policy ESD 3 of the CLP 2031 Part 1 also requires that all new non-residential development shall meet at least BREEAM 'Very Good' standard.

Assessment

- 9.69. The application does not include an Energy or Sustainability Statement to address how the development will seek to comply with Building Regulations and Policies ESD1 – 5 of the CLP 2031 Part 1 and the achievement of BREEAM 'Very Good' standard.
- 9.70. Given the type of development proposed and limited constraints on the site, it is considered that there would be reasonable opportunities for the development to incorporate improvements to the building fabric and the installation of high efficiency equipment to secure environmental improvements to the built form in addition to the utilisation of renewable energy sources such as solar panels and Air Source Heat Pumps.
- 9.71. A condition will be imposed to secure the submission of an Energy Strategy for the proposed buildings and the achievement of BREEAM 'Very Good' standard.

Conclusion

- 9.72. Subject to the imposition of suitable conditions requiring the submission of an Energy Strategy, Planning Officers are satisfied that the proposed development will be able to be designed to achieve sustainability through construction in accordance with the requirements of policies ESD 3, ESD 4 and ESD 5 of the CLP 2031 Part 1.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. The overall purpose of the planning system is to seek to achieve sustainable development as set out in the NPPF. The three dimensions of sustainable development must be considered in order to balance the benefits against the harm. Section 38(6) of the Planning and Compulsory Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise.
- 10.2. Whilst the site was originally allocated for housing, no such proposals have been forthcoming since a withdrawn application in 2016. The site itself generally

consistent with the overall objectives of the adopted Cherwell Local Plan and a previously developed site. The emerging local plan does allocate the site for employment development.

- 10.3. It is considered that the proposal would demonstrate a sustainable development with the proposed application site being located close to sites of a similar nature. The development would not cause harm to the local highway network, wider landscape or flood risk. It is considered that the proposal would have some limited impact on the amenity of the occupiers of the flats to the north of the site, but this harm would not be so sufficient to warrant a refusal of the application on this basis and can be mitigated through appropriately worded conditions and so not outweigh the benefits of the proposal. Commercial developments of this kind are located close to the most sustainable locations within the district and Banbury has many other examples of similar developments within the locality and as such can accommodate a development of this size.
- 10.4. The plans demonstrate the site can accommodate the level of development suggested within the application and would be appropriately designed to respond to the existing character and appearance of the area.

11. RECOMMENDATION

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

CONDITIONS/REASONS FOR REFUSAL

Time Limit

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

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

Compliance with Plans

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the form and following approved plans TBC

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

Highways

3. No development shall commence unless and until full specification details (including construction, layout, surfacing and drainage) of the turning area and 21 parking spaces within the curtilage of the site, arranged so that motor vehicles may enter, turn round and leave in a forward direction and vehicles may park off the highway, have been submitted to and approved in writing by the Local Planning Authority. The turning area and car parking spaces shall be constructed in accordance with the approved details prior to the first occupation

of the development shall be retained as such for the parking and manoeuvring of vehicles at all times thereafter.

Reason - In the interests of highway safety and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

4. No development shall commence unless and until full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays have been submitted to and approved in writing by the Local Planning Authority. The means of access shall be constructed in strict accordance with the approved details and shall be retained and maintained as such thereafter. Agreed vision splays shall be kept clear of obstructions higher than 0.6m at all times.

Reason - In the interests of highway safety and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

5. Prior to the first use or occupation of the development hereby permitted, covered cycle parking facilities shall be provided on the site in accordance with details which shall be firstly submitted to and approved in writing by the Local Planning Authority. Thereafter, the covered cycle parking facilities shall be permanently retained and maintained for the parking of cycles in connection with the development.

Reason - In the interests of sustainability, to ensure a satisfactory form of development and to comply with Government guidance contained within the National Planning Policy Framework.

6. Prior to the first occupation of the development, a scheme for the provision of vehicular electric charging points to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The vehicular electric charging points shall be provided in accordance with the approved details prior to the first occupation of the unit they serve, and retained as such thereafter.

Reason - To comply with Policies SLE 4, ESD 1, ESD 3 and ESD 5 of the adopted Cherwell Local Plan 2011-2031 Part 1 and to maximise opportunities for sustainable transport modes in accordance with paragraph 110(e) of the National Planning Policy Framework

7. Prior to commencement of the development hereby approved, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved CTMP.

Reason - In the interests of highway safety and the residential amenities of neighbouring occupiers and to comply with Government guidance contained within the National Planning Policy Framework.

Ecology

8. No development shall commence (including demolition, ground works, vegetation clearance) unless and until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include as a minimum:

- Risk assessment and mitigation of potentially damaging construction activities
- Identification of 'Biodiversity Protection Zones'
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements)
- The location and timing of sensitive works to avoid harm to biodiversity features
- The times during construction when specialist ecologists need to be present on site to oversee works
- Responsible persons and lines of communication
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person
- Use of protective fences, exclusion barriers and warning signs

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance contained within the National Planning Policy Framework.

9. No development shall commence until a Habitat Management and Monitoring Plan (HMMP), prepared in accordance with an approved Biodiversity Gain Plan, has been submitted to and approved in writing by the local planning authority. The HMMP shall include:

- a non-technical summary
- the roles and responsibilities of the people or organisation(s) delivering the HMMP
- the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan
- the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the approved completion date of the development
- the monitoring methodology and frequency in respect of the created or enhanced habitat

Notice in writing shall be given to the local planning authority when the:

- HMMP has been implemented
- habitat creation and enhancement work as set out in the HMMP have been completed.

The created and/or enhanced habitat specified in the approved HMMP shall be managed and maintained in accordance with the approved HMMP or such amendments as agreed in writing by the local planning authority.

Monitoring reports shall be submitted to the local planning authority in writing for approval in accordance with the methodology and frequency specified in the approved HMMP.

Reason: To ensure the development delivers a biodiversity net gain on site in accordance with Schedule 7A of the Town and Country Planning Act 1990.

Environmental Protection

10. No development shall commence until a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model has been carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and has been submitted to and approved in writing by the local planning authority. No development shall take place until the local planning authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with saved Policy ENV12 of the Cherwell Local Plan 1996 and government guidance contained within the National Planning Policy Framework

11. If a potential risk from contamination is identified as a result of the work carried out under condition 10, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the local planning authority. No development shall take place unless the local planning authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

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

12. If contamination is found by undertaking the work carried out under condition 11, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the local planning authority. No development shall take place until the local planning authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

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

13. If remedial works have been identified in condition 12, the development shall not

be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 12. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the local planning authority.

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

14. For each individual unit all plant, machinery and equipment to be used by reason of the granting of this permission shall be so installed, maintained and operated so as to ensure that the rating noise level from the equipment shall be at least 10dBA below the pre-existing background noise level (dBLA90) when measured at the nearest noise sensitive premises/site boundary. Measurements and rating of noise for the purpose of this condition shall be in accordance with BS 4142:2014:+A1:2019 Method for Rating and Assessing Industrial and Commercial Sound (or subsequent updates).

Reason: To protect the amenities of nearby residents and to comply with saved Policy ENV1 of the Cherwell Local Plan 1996 and government guidance contained within the National Planning Policy Framework.

15. No vehicle repairs or other activity connected with the use hereby permitted except loading/unloading shall be carried out other than within the building(s) unless otherwise previously approved in writing by the Local Planning Authority.

Reason: To protect the amenities of nearby residents and to comply with saved Policy ENV1 of the Cherwell Local Plan 1996 and government guidance contained within the National Planning Policy Framework.

16. The operational use of the premises shall be restricted to the following times:

- Monday - Friday: 07:00hrs – 18:00hrs
- Saturdays: 08:30hrs - 17:00hrs
- Sundays, Bank and Public Holidays: No time.

Reason: To protect the amenities of nearby residents and to comply with saved Policy ENV1 of the Cherwell Local Plan 1996 and government guidance contained within the National Planning Policy Framework.

17. Prior to the first use of the development hereby approved details of the external lighting/security lighting/floodlighting including the design, position, orientation and any screening of the lighting shall be submitted to and approved in writing by the Local Planning Authority. Prior to the first use of the development hereby approved the lighting shall be installed and operated in accordance with the approved scheme at all times thereafter.

Reason: To protect the amenities of nearby residents and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policies C28 and ENV1 of the Cherwell Local Plan 1996 and government guidance contained within the National Planning Policy Framework.

Flood Risk and Drainage

18. No development shall commence until a scheme for the disposal of surface

water by means of a sustainable drainage system in has been submitted to and approved in writing by the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- include a timetable for its implementation; and
- provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason: To ensure that the development is served by sustainable arrangements for the disposal of surface water, to comply with Policy ESD6 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy ENV1 of the Cherwell Local Plan 1996 and government guidance contained within the National Planning Policy Framework.

19. No development shall be occupied until confirmation has been provided that either:

- all water network upgrades required to accommodate the additional demand to serve the development have been completed; or –
- a development and infrastructure phasing plan has been agreed with Thames Water to allow development to be occupied.

Where a development and infrastructure phasing plan is agreed no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan.

Reason - The development may lead to no / low water pressure and network reinforcement works are anticipated to be necessary to ensure that sufficient capacity is made available to accommodate additional demand anticipated from the new development”

Efficiency

20. The development hereby permitted shall be constructed to at least a BREEAM Very Good standard.

Reason: To ensure energy and resource efficiency practices are incorporated into the development in accordance with government guidance contained within the National Planning Policy Framework.

Boundary treatments

21. Full details of the enclosures along all boundaries of the site shall be submitted to and approved in writing by the Local Planning Authority before the first occupation of the development hereby approved. Thereafter, the development shall be carried out in strict accordance with the approved plans.

Reason: To ensure the satisfactory appearance of the completed development, and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

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CASE OFFICER: Lewis Knox