

Case Officer: Lewis Knox

Applicant: E5 Commercial (Higham Way) Ltd

Proposal: Commercial development (Use Classes B8, Eg(i), Eg(ii), and Eg(iii)) along with car parking/yard areas and all associated development

Ward: Banbury Grimsbury And Hightown

Councillors: Councillor Rebecca Biegel, Councillor Dr Henry Elugwu, Councillor Dom Vaitkus

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

Expiry Date: 5 June 2026

Committee Date: 4 June 2026

SUMMARY RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS AND S106 LEGAL AGREEMENT

MAIN REPORT

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is located off the southern end of Higham Way within Banbury.
- 1.2. The site is a vacant plot of land which has been cleared of its previous use as part of the Grundon Waste Depot 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 land is now proposed to revert to its former commercial use in the draft Review Local Plan 2042. The site is currently surrounded by other commercial uses and adjacent residential apartments and other dwellings.

2. CONSTRAINTS

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

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The applicant seeks planning permission for 9 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 B8 (storage and distribution), and Eg(i), Eg(ii), and Eg(iii) (office and light industrial) 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Application: 16/00472/OUT	Application Withdrawn	21 November 2024
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Proposed residential redevelopment for approximately 200 units.

Application: 24/02661/F	Refused	12 May 2025
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Development of 10 speculative commercial units and associated car parking/yard areas planning use classes B2, B8, Eg(i), Eg(ii), Eg(iii)

4.2. Application 24/02661/F was refused by committee on 12th May 2025 for the following reasons:

1. The proposed development, most particularly the four northern units (Units 7-8 and 9-10), by virtue of its siting, form, scale, massing and use, would fail to safeguard the living conditions of neighbouring residents and result in an imposing and overbearing form of development. The development also has the potential to cause excessive and harmful levels of noise disturbance in respect of the flats at 122-136 Marshall Road, if used for B2 purposes. In addition, the proposed employment development is contrary to Policy Banbury 19 of the Cherwell Local Plan 2011-2031 which currently allocates the land for housing. Accordingly, the proposed development is contrary to saved Policies C28 and ENV1 of the Cherwell Local Plan 1996, Policies Banbury 19 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
2. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement, the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a direct consequence of the development, and necessary to make the impacts of development acceptable in planning terms. As such, the proposal is contrary to Policy INF1 of the Cherwell Local Plan 2011-2031, Cherwell District Council's Developer Contributions SPD 2018 and Government guidance contained within the National Planning Policy Framework.

5. PRE-APPLICATION DISCUSSIONS

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

6. RESPONSE TO PUBLICITY

6.1. This application has been publicised by way of a site notice displayed near the site 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 **17 December 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: **Comments** There has been a clear improvement in terms of impact on residential amenity, concerns regarding potential issue of noise pollution remain.

7.3. OCC HIGHWAYS: **No objections** following the confirmation that the proposed development would not cause harm to the potential link road coming forward. Conditions and S106 contributions requested.

7.4. LLFA: **No objections** subject to conditions.

7.5. OCC ARCHAEOLOGY: **No objections.**

7.6. ENVIRONMENTAL PROTECTION: **No objections** subject to conditions.

7.7. CDC BUILDING CONTROL: **No objections.**

7.8. CDC ECOLOGY: **No objections** subject to conditions.

7.9. THAMES VALLEY POLICE: **Objection**, comments regarding building safety, parking, bin and cycle stores, postal deliveries, and lighting.

7.10. CDC ECONOMIC GROWTH: No comments received.

7.11. CDC PLANNING POLICY: No comments received.

7.12. *Officer comment: - Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the 1990 Act (as amended) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.*

7.13. *In this particular instance, the above financial payments are not considered to be material to the decision as they would not make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority and hence the*

above response from the Council's Finance department is therefore provided on an information basis only.

8. RELEVANT PLANNING POLICY AND GUIDANCE

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

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

CHERWELL LOCAL PLAN 2011-2031 PART 1 (CLP 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 commercial 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 nine employment units covering 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 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 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 regard 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 by other built development, much of which is relatively functional in appearance with the use of simplistic materials, including the industrial style buildings at Grondon 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 9 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 9 new commercial units (1 less than previously refused application) 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. The previously refused application, as well as the originally submitted plans on this application showed two units in the northern corner of the site which would have come in close proximity to the block of flats which abut the shared boundary to this side. A further set of two units were proposed perpendicular to these flats with a break between them which contains space for a turning head and parking.
- 9.38. It was determined that the proposed units in the northern end of the site which would have been located closest to the neighbouring flats would clearly result in a harmful impact on the residential amenity of the occupants of the closest flats, which face southwards onto the proposed development, this would have come in the form of some loss of light and some loss of outlook, overbearing and dominating effects. The application was refused on this basis.
- 9.39. Amended plans were submitted during the lifetime of this application which removed Unit 8 from the plans, which was the northern most unit within the site and that which would have been situated closest to the neighbouring flats. The removal of this unit is considered to remove the potential harm to the flats in terms of loss of light, some loss of outlook, overbearing, and dominating.
- 9.40. The two units to the western side of the site have also been pulled away from the shared boundary which would also reduce the potential impact on the neighbouring flats.
- 9.41. The units as proposed are now considered to be of an appropriate scale for this site and would be lower in height than the neighbouring block of flats. 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 additional harm given the removal of the closest unit and the separation that would result.
- 9.42. 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.
- 9.43. 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.

- 9.44. 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.
- 9.45. Concerns have been raised by commenters on the application regarding noise and other nuisances arising from the potential uses at the commercial units. Since the previous application, the applicants have removed the proposed B2 uses from the site, which could have included heavy manufacturing, assembly, and repairs. The removal of these potentially more harmful uses close to a residential area is considered to be a further improvement beyond the previously refused application. The proposed B8 and E class uses are all ones generally considered to be acceptable alongside residential properties.
- 9.46. 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 significantly greater than the existing situation in the locality.
- 9.47. 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.
- 9.48. 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.

Contaminated Land

- 9.49. 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

- 9.50. 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.
- 9.51. 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.
- 9.52. 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.

9.53. 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.

9.54. 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

9.55. 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.

9.56. 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.

9.57. 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.

9.58. 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.

- 9.59. 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.
- 9.60. 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.
- 9.61. 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

- 9.62. 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')
- 9.63. 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.
- 9.64. 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.
- 9.65. 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.

- 9.66. 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. Whilst some on site habitat is proposed, the site will ultimately achieve a net gain through the purchase of off site units from a third party provider. This is generally acceptable if permission is granted.

Conclusion

- 9.67. 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

- 9.68. 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

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

Conclusion

- 9.70. 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

- 9.71. 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.
- 9.72. 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

- 9.73. 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.
- 9.74. 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.

- 9.75. 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

- 9.76. 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 not have any significant impact on the amenity of the occupiers of the flats to the north of the site, any harm identified 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 - PLANNING TO GRANT PERMISSION, SUBJECT TO

- i) THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY) AND**
- ii) THE COMPLETION OF A PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS SUBSTITUTED BY THE PLANNING AND COMPENSATION ACT 1991, TO SECURE THE FOLLOWING (AND ANY AMENDMENTS AS**

DEEMED NECESSARY):

- **Highway Works – Towards the implementation of the eastern active travel corridor scheme - £103,302**

FURTHER RECOMMENDATION: THE STATUTORY DETERMINATION PERIOD FOR THIS APPLICATION EXPIRES ON 5th June 2026 IF THE SECTION 106 AGREEMENT/UNDERTAKING IS NOT COMPLETED AND THE PERMISSION IS NOT ABLE TO BE ISSUED BY THIS DATE AND NO EXTENSION OF TIME HAS BEEN AGREED BETWEEN THE PARTIES, IT IS FURTHER RECOMMENDED THAT THE ASSISTANT DIRECTOR - PLANNING IS GIVEN DELEGATED AUTHORITY TO REFUSE THE APPLICATION FOR THE FOLLOWING REASON:

1. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not satisfied that the proposed development provides for appropriate sustainable travel connectivity 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 Policies SLE 4, ESD 1, ESD 3 and ESD 5 of the adopted Cherwell Local Plan 2011-2031 Part 1, paragraph 110(e) of the National Planning Policy Framework and Oxfordshire County Council's Local Transport and Connectivity Plan 2022-2050.

CONDITIONS

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:

- 3414/08 – Proposed Site Plan
- 3414/05 – Units 1-6 Plan and elevations
- 3415/10 – Unit 7 Plan and elevations
- 3415/11 – Units 8-9 Plan and elevations

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 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.

4. 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.

5. 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

6. 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.

Sustainable Drainage

7. The approved drainage system shall be implemented in accordance with the approved documents prior to the use of the building commencing:
 - Floor Risk Assessment and Drainage Strategy
 - Ref: FRA SUDS SBK-24-220-P01: September 2024
 - Appendix 1 – Location Plan and Aerial View
 - Appendix 2 – Topographical Survey
 - Appendix 3 – Masterplan
 - Appendix 4 – Sewer Records and Thames Water Correspondence
 - Appendix 5 – Planning Policy
 - Appendix 6 – Drainage Strategy Drawings
 - Appendix 7 – Hydraulic Calculations
 - Appendix 8 - EA Product 4 Data

Reason: To ensure that the principles of sustainable drainage are incorporated

into this proposal.

8. Prior to first occupation, a record of the installed SuDS and site wide drainage scheme shall be submitted to and approved in writing by the Local Planning Authority for deposit with the Lead Local Flood Authority Asset Register. The details shall include:
 - a) As built plans in both .pdf and .shp file format;
 - b) Photographs to document each key stage of the drainage system when installed on site;
 - c) Photographs to document the completed installation of the drainage structures on site;
 - d) The name and contact details of any appointed management company information

Ecology

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.

10. No development shall commence above slab level until a method statement for enhancing bats, birds, invertebrates, and mammals has been submitted to and approved in writing by the local planning authority. The biodiversity enhancement measures approved shall be carried out prior to occupation and shall thereafter be retained in full 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

Environmental Protection

11. The development shall not be occupied until the remedial works have been carried out in accordance with the approved remediation strategy. 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.

12. If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.

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. 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.

14. 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.

15. 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.

16. No deliveries or collections shall be made to the site outside the following times:

- Monday - Saturday: 23:00hours to 07:00 hours the following day.
- 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 erection, installation, fixing, placement, and/or operation of any external lighting on the site (including on the buildings itself), details of such external lighting shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include the equipment and supporting structures, positions, sizes, heights, type, luminance/light intensity, direction, and cowling of all external lights to the building(s)] and other parts of the application site and the hours at which such lighting is to be operated. This scheme shall ensure that light trespass into the windows of any light sensitive premises shall not have a Vertical Illuminance greater than 10 Lux pre-curfew, and 2 Lux post-curfew (in accordance with the Institution of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light GN01/2011).

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.

18. Prior to the commencement of the development, a Construction Environment Management Plan (CEMP), which shall include details of the measures to be taken to ensure construction works do not adversely affect residential or other sensitive properties on, adjacent to or surrounding the site together with details of the consultation and communication to be carried out with the occupiers of those properties shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with approved CEMP.

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.

Efficiency

19. 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.

Landscaping

20. No development shall commence above slab level until a scheme for landscaping the site has been submitted to and approved in writing by the Local planning authority. The scheme shall include:

- details of the proposed tree and shrub planting including their species, number, sizes, and positions, together with grass seeded/turfed areas and written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch, etc.),
- details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each
- tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
- details of the hard landscaping including hard surface areas, pavements, pedestrian areas, and steps.

The development shall be carried out in strict accordance with the approved landscaping scheme and the hard landscape elements shall be carried out prior to the first occupation or use of the development and shall be retained as such thereafter.

All planting, seeding, or turfing included in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) [or on the completion of the development, whichever is the sooner,] and shall be maintained for a period of 5 years from the completion of the development. Any trees and/or shrubs which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The approved hard landscaping and boundary treatments shall be completed prior to the first occupation of the development and shall be retained as such thereafter.

Reason: To ensure that a satisfactory landscape scheme is provided in the interest of visual amenity of the area and to comply with Policies ESD13 and 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

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.

Use Class Restriction

22. The premises shall be used for Use Classes B8, Eg(i), Eg(ii) and Eg(iii) and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: To safeguard the visual amenities of the area and protect the amenities of nearby residents in accordance with Policy ESD15 of the Cherwell Local Plan

2011-2031 Part 1, saved Policies C28 and C31 of the Cherwell Local Plan 1996 and government guidance contained within the National Planning Policy Framework.

CASE OFFICER: Lewis Knox