



**Cherwell**

DISTRICT COUNCIL  
NORTH OXFORDSHIRE

**CHERWELL DISTRICT COUNCIL**

**TOWN & COUNTRY PLANNING ACT 1990**

**RULE 6 STATEMENT OF CASE**

**Appeal by Greystoke CB against the failure of Cherwell District Council to determine an outline planning application for construction of up to 140,000m<sup>2</sup> of logistics employment floorspace (use class B8 with ancillary offices and facilities) and servicing and infrastructure including new site accesses to the A361, internal roads and footpaths, landscaping including earthworks to create development platforms and bunds, drainage features and other associated works including demolition of the existing farmhouse at OS Parcel 5616, southwest of Huscote Farm, east of the A361 Daventry Road and northeast of Junction 11 on the M40, east of Banbury, Oxfordshire, OX16 3JS**

**CDC Application Ref: 22/01488/OUT**

**PINS Appeal Ref: APP/C3105/W/22/3311992**

Council witnesses to be called by Anthony Gill of Kings Chambers:

Andrew Bateson – CDC Development Management Team Leader  
Christopher Wentworth – CDC Principal Planning Officer  
Trevor Dixon – CDC Environmental Protection & Enforcement Manager  
Dr Charlotte Watkins – CDC Ecology Officer  
TBC – CDC Landscape  
Joy White – OCC Principal Transport Planner  
Roger Platter – OCC Transport Planner  
Kabier Salam – OCC Lead Local Flood Authority  
Victoria Green – OCC Archaeology

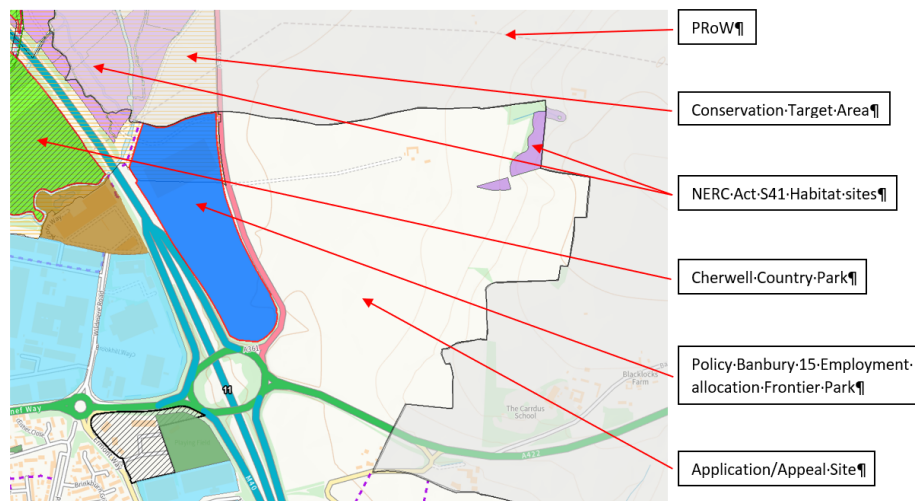
# 1. SITE LOCATION & PROPOSAL

## Site Location

- 1.1. The appeal site is located on land northeast of Junction 11 of the M40, east of the A422 Daventry Road and north of the A422 Brackley Road. It lies opposite and east of the new Frontier Park development and east of the built-up area of Banbury, which lies primarily west of the M40. The site would be accessed from two points on the A361 Daventry Road, which in turn provides direct access to Junction 11 of the M40.



- 1.2. The site extends to 66.15ha of greenfield agricultural land, comprising nineteen field parcels that are defined by mature hedgerows and trees. The fields comprise a mixture of arable and pastoral land (of Grade 3a and 3b quality).
- 1.3. The site is bounded by the A422 Brackley Road to the south, and the A361 Daventry Road to the west. It adjoins open countryside to the north and east. Carrdus School, an independent day preparatory school, lies c.180m east of the site, separated by a dense woodland copse. To the west of the A361 and opposite the site is the recent commercial development of Frontier Park, which comprises a mix of B1, B2 and B8 employment uses on an area of land allocated for employment development (Policy Banbury 15) in the Cherwell Local Plan Part 1 2011-2031 (2015).



- 1.4. There are no footpaths (Public Right of Way, PRow) within the site, although there are several within the wider vicinity.
- 1.5. The site is not covered by any national or local landscape designations. With one small exception, most of the site is not in, or adjacent to, an environmentally sensitive area (i.e., sites designated as Sites of Special Scientific Interest (SSSI), National Parks, World Heritage Sites, Scheduled Monuments, Area of Outstanding Natural Beauty, or sites covered by international conservation designations), and therefore does not represent an environmentally sensitive location, as defined by Regulation 2(1) of the EIA Regulations.
- 1.6. The one exception is a woodland copse in the northeast corner of the site, which is listed under S41 of the Natural Environment and Rural Communities Act 2006 as a habitat of principal importance for the conservation of biodiversity. In addition to this copse, there are another forty-two individual trees spread throughout the site that are protected by Tree Preservation Order (TPO).

### **Proposed Development**

- 1.7. The 22/01488/OUT planning appeal (Ref: APP/C3105/W/22/3311992) proposes the construction of up to 140,000sqm (1,500,000sqft) of B8 employment logistics floorspace (with ancillary offices and facilities) together with two new site accesses to the A361 Daventry Road, internal roads and footpaths, landscaped open space including earthworks to create development platforms and bunds, plus drainage features and other associated works including demolition of the existing Huscote Farm farmhouse.
- 1.8. Notwithstanding a holding direction from National Highways (last dated 21<sup>st</sup> December 2022 and currently lasting until 21<sup>st</sup> March 2023) stipulating that no decision be taken on the application without reference to the Secretary of State whilst National Highways consider the likely transport impacts of the development proposals on the strategic highway network, the applicant appealed non-determination of the application.

### **Consultations & Representations**

- 1.9. The planning application was publicised by way of site notices displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was 1<sup>st</sup> December 2022. In response to that publicity, there were 208 objection representations, 3 submissions of support and 8 general comments raised by third parties.
- 1.10. The comments raised by third parties are summarised as follows:

#### **Support**

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

#### **Objections/Comments**

- This will devastate the countryside. Given that HS2 is already doing this it is unacceptable.
- The plan to convert yet more farmland to warehousing will ruin more wildlife habitats. Many species of birds have lost habitats in wetlands and around the motorway area.

- We have many vacant buildings around the town that could be utilised and converted for warehouse solutions without building more.
- The area and motorway are already highly packed with large vehicles and lorries making the surrounding roads slow particularly around the area of the proposed warehouses.
- The jobs generated by construction of and the ongoing employment in the facility would not benefit the local area.
- Automation and the very nature of warehouses mean staffing and jobs are low skilled and do not add to the local economy.
- It would dominate the landscape, which is attractive.
- If the land is levelled there is an increased risk of subsidence on the hill behind it that has residential homes atop – would this make the escarpment unstable?
- Lack of existing road capacity on A361 and M40 J11.
- No public consultation has taken place, which should have been paramount and comprehensive for a development of this size.
- The proposal was previously dismissed by the Local Plan Inspector in 2015.
- Further erosion of rural land, that creates natural habitats for wildlife and an attractive screening from the M40 traffic, noise, and pollution for local homes and villages. This destruction of a rural aspect would be detrimental to all the surrounding area.
- It is dangerously close to the Northamptonshire County boundary line [which it adjoins].
- The area will become a concrete jungle.
- At a time of climate crisis, when Government is working hard on Nature Recovery Strategies, it seems abhorrent that any consideration would be given to destroy what we already have in this area.
- The site is not allocated within the adopted Local Plan.
- We note that the application contains only a narrow selection of viewpoint images.
- The Oxfordshire Historic Landscape Characterisation Project, Capacity for Change, shows the landscape in the location of the application to be Level 5: High Sensitivity to Urban Development.
- Building in open countryside destroys the value of local heritage assets to the authority and local community, and in some cases, nationally. The fields in the site are medieval ridge and furrow landform. The ridge and furrow is well-preserved and therefore it is unlikely that the ground has been disturbed significantly since the medieval times, making it impossible to have any detailed knowledge of what lies beneath or what the land may have been previously used for.
- The loss of biodiversity that would occur in the event of the proposed development would lead to the loss of much natural habitat for wildlife and birds.
- 42 TPOs on trees across the site, many of which overlap the proposed location of units within the proposals.
- Such large-scale commercial development gives no consideration for residents in nearby areas and would bring unreasonable disturbances from units such as alarms, machinery and HGV movements.
- Planning Statement states that pedestrian and cycle linkages are designed into the site to improve connectivity with Banbury. Without significant infrastructure changes in the surrounding areas, there is no safe route to facilitate this.
- It is not expected that B8 units in this area would create the volume of jobs suggested by the applicant [1,900], in fact, the recently approved, Frontier Park, used the argument of low FTE job creation in mitigation of concerns surrounding traffic generation.

- Flood risk is a huge concern. Development of the area would create an increased risk of flooding by removing permeable surfaces, nearby areas have required much work against natural flooding and the lower grazing land is already prone to flooding.
- Despite the flood risk, it does not appear that ongoing future management of water levels have been considered in any depth.
- Sets a precedence to allow further building right into Nethercote and up the hill into Middleton Cheney, destroying the hamlet and village characters.
- A small market town does not have the services to support such a large development with doctors already oversubscribed.
- Potential for light pollution.
- The M40 acts as a natural eastern boundary to Banbury's expansion into the green belt. [The land is not designated Green Belt]
- Banbury already has sufficient levels of warehousing.
- Schemes such as these cannot work unless there is equivalent investment in infrastructure. CILs need to be collected from this and other new warehouse owners to construct an M40 junction 10a.
- Loss of good quality farmland.
- No faith that the developers, if given permission in any form would stick to their proposals.
- The proposed development both in the building process and thereafter would be a significant detriment to the air quality of the locality.
- Detrimental to town's image.
- It meets none of the aspirations of the CDC Local Plan.
- We are disappointed to see that the applicant has not made public the information related to badgers.
- We are concerned that the proposed site has no connection to the existing sewerage system, and that foul water would be treated at a new plant on the site and then discharged into the surface water network.
- We believe it would be irresponsible to permit a development that is solely reliant on road vehicle movements for its operation and construction and has no realistic possibility of any connection to the rail freight network.
- There is a major safety issue to consider and that is the addition of a roundabout so close to a very sharp bend in the road as you come off the M40 J11 roundabout onto the A361.
- The scale and height of the proposed commercial development would be ruinous to this part of the countryside and rural community.
- There are several references to Frontier Park, suggesting that precedents with this development have been set which are to be used in the current application.

1.11. Banbury Town Council objected to the proposal on the following grounds:

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

would cause unacceptable harm to the visual amenity of the area and the local landscape.

- The development would worsen air pollution issues on Hennef Way.
- The type of development is restricted to warehousing which is unacceptable.

1.12. West Northamptonshire Council placed an initial holding objection to the application with the following comments and objections subsequently provided:

- Environmental Protection comments: If permission is granted then the following conditions should be imposed:
  - Condition – Noise assessment
  - Condition – Extract ventilation system
  - Condition – External lighting
  - Condition – Land contamination remediation
  - Condition – Construction Management Plan
  - Condition – Air quality assessment and mitigation.
- Heritage Comments.
  - The report acknowledges and addresses the difference in assessment of heritage assets between the NPPF and EIA. The report identifies the site has potential to impact two nearby heritage assets, the Grade II designated C17 Seals Farm farmhouse, which is located to the northeast of the proposed development site and Overthorpe Hall, to the southeast of the proposed development site, a non-designated heritage asset. I am satisfied that the significance of each asset has been appropriately considered and reasonable conclusions formed as to the potential impact of the proposed development on the setting / significance of the assets.
- Highway Comments – Objection.
  - This application for outline permission for a 140,000sqm logistics warehouse park cannot be supported without thorough assessment of the A422 to Brackley and A361 to the M1 at Daventry;
  - The Transport Assessment has identified the major role these two routes play in light and heavy traffic, therefore WNC's own strategic planning and transport policy must also be considered, and due process followed as if the site was within the WNC area;
  - There would be a need to secure bus improvements to serve Brackley which has been totally overlooked and depending on results of further assessment in the WNC areas, highway mitigations may be required.

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

1.14. The Bourtons Parish Council have objected to the proposal on the following grounds:

- The size of the proposed development across a significant and visually important area of countryside.

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

1.15. Chacombe Parish Council have objected to the proposal on the following grounds:

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

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

1.17. Wardington Parish Council have objected to the proposal on the following grounds:

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

1.18. CPRE objected to the application on the following grounds:

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

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

- The site is in an unsustainable location for walking and cycling.
- The proximity of the access roundabout to M40 Junction 11 is likely to lead to severe congestion and potential safety issues arising from queuing on the M40 off slip.
- Any further development around Junction 11 of the M40 would add to the severe congestion and air quality problems on the A422, particularly along Hennef Way. This development does not demonstrate how it would mitigate its impact on these issues through adequate sustainable travel connections or by highway improvements.
- Safe and suitable operation of affected highway junctions has not been demonstrated by the use of a suitable analysis tool. [The LPA is aware that the scope for microsimulation modelling using VISSIM model testing of the M40 J11 junction has recently been agreed between OCC, National Highways and the Appellant's transport consultant to accurately represent the flow of vehicles at all primary local junctions and the interaction between them. However, no results from that work have yet been provided or assessed]. Junction 11 has been analysed using LinSig but the results are inconclusive as: a) the model does not entirely correspond to the proposed layout drawing; b) traffic flows associated with a nearby development proposal (21/02467/F) have been erroneously included; and c) LinSig is considered to have limitations that mean it is not suitable to predict the future operation of the local network with sufficient confidence. Also, proposed modifications to Junction 11 would involve extensive civil engineering works (realigning/widening the A361 entry onto the gyratory and widening of the southern overbridge to accommodate an additional lane) and it has not been demonstrated that those works are feasible.
- It has not been demonstrated that a signalised crossing of the A361 for pedestrians and cyclists may be incorporated at a safe and suitable location, and the associated access into the site has not been indicated.

1.20. Oxfordshire County Council as Local Lead Flood Authority objected to the proposal on grounds that the applicant had failed to demonstrate through its FRA and a Surface Water Management Plan that the proposals would not increase the risk of surface water flooding.

1.21. Oxfordshire County Council's Archaeologist commented that the site is in an area of archaeological importance and potential with records of Roman, Romano-British, Neolithic and Bronze Age artefacts having been discovered locally. Therefore, recommended that prior to any determination of the application, an archaeological field evaluation should first be carried out. [The LPA notes that evaluation works are currently underway on site but has not seen nor approved any WSI or the evaluated results of such investigations].

1.22. National Highways objected to the proposal and placed a holding objection based upon reviewing the most recently submitted information contained within the Transport Assessment to allow further consideration of the scheme. The holding objection is currently in place until 21<sup>st</sup> March 2023.

1.23. Banbury Civic Society objected to the proposal on the basis that the proposal is contrary to the following policies:

- Cherwell Local Plan Policy ESD 13 - Local Landscape Protection and Enhancement.



- Cherwell Local Plan Policy ESD 15 - The Character of the Built and Historic Environment.
- NPPF Paragraph 195: “Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise”.
- NPPF Paragraph 199. “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”
- NPPF Paragraph 203. “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

1.24. Berkshire, Buckinghamshire & Oxfordshire Wildlife Trust (BBOWT) have objected to the proposal on the following grounds:

- Application does not provide adequate evidence of a net gain in biodiversity.
- The importance of a net gain in biodiversity being in perpetuity.
- Loss of or damage to hedgerow priority habitat contrary to the NPPF and Cherwell Local Plan.
- Loss of ridge and furrow grassland.
- Buffer zones and management of hedgerows required in order to achieve biodiversity net gain.
- Insufficient evidence that populations of farmland bird species (42 species noted, including two red-data species) would be maintained, contrary to the NPPF, Cherwell Local Plan, and the Conservation of Habitats and Species Regulations 2017 (as amended).

1.25. The District Council’s Environmental Health Officer commented as follows:

Air Quality (Chapter 10)

The methodology and findings of the assessment are accepted.

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

Noise (Chapter 11)

The methodology and findings of the assessment are generally accepted, although further clarification/assessment is required.

Operational Phase

Potential noise sources are considered in Appendix 11.6, however it is not clear if all potential noise sources associated with B8 use have been considered, for example reversing beepers as the site will operate 24/7. The last paragraph on page 3 of Appendix 11.6 references Tables 7.6-2 through Table 7.6-4, I’m assuming this is a typo and should read 11-6.4?

## Construction Phase

The control of noise and dust to be in accordance with an approved Construction Environmental Management Plan (CEMP). It is recommended that the following condition (or similar wording) be attached to any consent granted:

*Condition 1 - 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 properties on, adjacent to or surrounding the site together with details of the consultation and communication to be carried out with local residents 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*

## Land Contamination

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

### *Condition 2 - Land Contamination Intrusive Investigation*

*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.*

### *Condition 3 - Land Contamination Remediation Scheme*

*If contamination is found by undertaking the work carried out under condition [\*\*], 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.*

### *Condition 4- Land Contamination Remediation Works*

*If remedial works have been identified in condition [\*\*], the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition [\*\*]. 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.*

### *Condition 5 - Unexpected Land Contamination*

*Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing*

*by the Local Planning Authority. These approved schemes shall be carried out before the relevant phase of development is resumed or continued.*

#### Light

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

#### Supplementary Information

There are no comments regarding the additional supplementary environmental (biodiversity) and transportation information submitted.

- 1.26. At the time of writing, the District Council Ecologist's formal comment on the proposals was still awaited. It will be made available upon receipt.
- 1.27. Oxfordshire Newt Officer (NatureSpace) placed a holding objection onto the application and stated that they were not satisfied that the applicant had adequately demonstrated that there would be no impact to great crested newts and/or their habitat as a result of the development being approved.
- 1.28. The Environment Agency commented on the proposal and have stated that whilst they had no objections to the principal of the proposal, connection to mains foul drainage was not feasible. They advised that Government guidance contained within the National Planning Practice Guidance (Water supply, wastewater and water quality – considerations for planning applications, paragraph 020) sets out a hierarchy of drainage options that must be considered and discounted in the following order:
  1. Connection to the public sewer.
  2. Package sewage treatment plant (adopted in due course by the sewerage company or owned and operated under a new appointment or variation).
  3. Septic Tank.
- 1.29. The District Council's Land Drainage Officer commented as follows:
  - The proposed development would create significant impermeable areas on a site located to the east of M40 J11 and north of the A422. An outline Flood Risk Assessment and Surface Water Management Plan is included in Chapter 9 of the Environmental Statement.
  - This is a Major Application so will also require consideration by the LLFA. The site contains a number of ditches which generally flow in a westerly direction. These do not flow continuously and remain dry for the majority of the time.
  - The superficial geology in this locality is generally impermeable clay and known not to be suitable for infiltration.
  - Foul drainage is proposed to be to a private sewage treatment plant located on the site with the treated effluent being discharged to the ditch system. This would require the consents of both the Council as Land Drainage Authority and the Environment Agency.
  - Normally, an Environment Agency consent/permit would only be issued if the receiving watercourse is continuously flowing. The applicant should seek guidance about this from the Environment Agency.
  - The Surface Water Management Plan envisages attenuated discharges to the system of ditches.
  - There are no objections in principle to this subject to the details being agreed with Cherwell as Land Drainage Authority and the LLFA. The layout of the development should be such that all ditches remain readily accessible for maintenance.

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

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

## **2. RELEVANT PLANNING HISTORY**

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

### **3. PLANNING POLICY CONSIDERATIONS**

#### **The Development Plan**

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

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

- PSD1 – Presumption in favour of Sustainable Development
- SLE1 – Employment development
- SLE2 – Securing dynamic town centres
- SLE4 – Improved Transport & Connections
- ESD1 – Mitigating & Adapting to Climate change
- ESD3 – Sustainable construction
- ESD6 – Sustainable flood risk management
- ESD7 – SuDS
- ESD10 – Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13 – Local landscape protection and enhancement
- ESD15 – The Character of the Built and Historic Environment
- INF1 – Infrastructure

#### **Cherwell Local Plan 1996 Saved Policies (CLP 1996)**

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

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

#### Other Material Planning Considerations

National Planning Policy Framework (NPPF) (2021);

Planning Practice Guidance;

Cherwell DC's Banbury Vision and Masterplan Supplementary Planning Document (SPD); and

Cherwell DC's Developer Contributions SPD February 2018.

3.4. The Council may also refer to other documents in support of its case.

#### 4. THE COUNCIL'S CASE

- 4.1. Application 22/01488/OUT was submitted on 19<sup>th</sup> May 2022 and the determination deadline was 30<sup>th</sup> September 2022. The non-determination appeal was lodged on 14<sup>th</sup> December 2022 and a 'start date' letter for the appeal was issued by The Planning Inspectorate on 21<sup>st</sup> December 2022.
- 4.2. Whilst the appellant notified the Council of its likely intention to appeal in September 2022, the non-determination appeal was submitted before the District Council could realistically make any determination on the proposals given the holding directions issued by National Highways. The Council's Planning Committee are due to assess the planning application at the Planning Committee meeting of 9<sup>th</sup> February 2023. The Authority's committee report outlining the assessment of the application is contained within Appendix A and had the Local Planning Authority been in a position to have been able to determine the application, Officers would have recommended refusal of the application for the following reasons, which form the basis of the LPA case.
  1. The proposal is located on an unallocated site and development would represent an urbanising form of development which by reason of its location and proposed land use would result in a cluster of large warehouse buildings poorly related to Banbury that would result in a harmful visual intrusion of development into the landscape and open countryside and would therefore result in harm to the rural character, appearance and quality of the area. This identified harm would significantly and demonstrably outweigh the benefits of the proposal. Development would therefore fail to accord with Cherwell Local Plan 2011-2031 Part 1 policies ESD10, ESD13 and ESD15 and Cherwell Local Plan 1996 saved policies C7, C8 and EMP4, and with national policy guidance given in the National Planning Policy Framework (NPPF) (2021).
  2. The proposed development would be sited in a geographically unsustainable location with poor access to services and facilities and therefore future employees would be highly reliant on the private car to access their workplace, which would not reduce the need to travel and would result in increased car journeys and hence carbon emissions. The proposed development would therefore conflict with policies PSD1, SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework. This identified harm would significantly and demonstrably outweigh the benefits associated with the proposed development and therefore the development does not constitute sustainable development when assessed against the National Planning Policy Framework as a whole.
  3. The appeal site is located in an unsustainable location for cycling and walking. The proposal is therefore contrary to policies SLE1 and SLE4 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
  4. The proximity of the access roundabout to M40 Junction 11 is likely to lead to severe congestion and potential safety issues arising from queuing on the M40 off slip. The proposal is therefore contrary to policies SLE1 and SLE4 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.



5. Any further development around Junction 11 of the M40 will add to the severe congestion and air quality problems on the A422, particularly along Hennef Way. This development does not demonstrate how it would mitigate its impact on these issues through adequate sustainable travel connections or by highway improvements. The proposal is therefore contrary to policies SLE1 and SLE4 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policies TR1 and ENV7 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
6. Safe and suitable operation of affected highway junctions has not been demonstrated by the use of a suitable analysis tool. It has been agreed with the Appellant's transport consultant and National Highways that microsimulation modelling (such as VISSIM) is required to accurately represent the flow of vehicles at all primary local junctions and the interaction between them. Without such analysis and resultant appropriate mitigation, the proposal is contrary to policies SLE1, SLE4 and INF1 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
7. It has not been demonstrated that a signalised crossing of the A361 Daventry Road for pedestrians and cyclists may be incorporated at a safe and suitable location, and the associated access into the site has not been indicated. The proposal is therefore contrary to policies SLE1 and SLE4 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
8. The appeal site is located immediately west of an existing Air Quality Management Zone and the proposal fails to adequately assess or mitigate against air quality matters as a result of increased vehicle movements associated with the development. The proposal is therefore contrary to policies SLE1, SLE4 and ESD1 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policies TR1 and ENV7 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
9. The proposal fails to assess the economic impacts upon Banbury, specifically the attractiveness, vitality and viability of Banbury town centre and the edge of town retail and employment centres as a result of additional traffic and congestion on the strategic and local highway network. The proposal is therefore contrary to policies SLE1 and SLE2 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1), saved policy TR1 contained within the Cherwell Local Plan 1996 (CLP 1996) and Government guidance within the National Planning Policy Framework.
10. The proposal lacks detail and information relating to the drainage of the site and is therefore contrary to Oxfordshire County Council's published guidance "Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire" and policies ESD6 and ESD7 of the adopted Cherwell Local Plan 2015 and Government guidance within the National Planning Policy Framework.
11. The application has failed to demonstrate through the lack of submission of a Landscape and Visual Impact Assessment that the proposals on this prominent site would not cause substantial landscape harm to the undeveloped rural character and appearance of the site when viewed from Public Rights of Way in the surrounding

countryside. As such, the proposal is contrary to policies ESD10, ESD13 and ESD15 contained within the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031 Part 1) and Government guidance within the National Planning Policy Framework.

12. The proposal has failed to adequately assess the site's archaeology and consequently the development may cause harm to significant archaeological remains and in the absence of any evaluation it is not possible for the Council to reach an informed decision on this issue. The proposal is therefore contrary to policy ESD 15 of the Cherwell Local Plan 2011-2031, ~~Policy EN47 of the Non-Statutory Cherwell Local Plan 2014~~ and paragraph 128 of the National Planning Policy Framework.
  13. The proposal has failed to adequately demonstrate that development would not harm existing flora and fauna and ecological mitigation would successfully deliver a 10% net gain in biodiversity or protection, enhancement and connectivity with the local green infrastructure network. As such the proposal fails to accord with policies ESD10 and ESD17 of the Cherwell Local Plan 2011-2031, saved policies C1 and C2 within the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.
  14. In the absence of an appropriate protected species survey, the welfare of protected species has not been adequately addressed in accordance with article 12(1) of the EC Habitats Directive. The Local Planning Authority cannot therefore be satisfied that protected species will not be harmed by the development and as such the proposal does not accord with policy ESD10 of the Cherwell Local Plan 2011-2031, saved policies C1 and C2 within the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.
  15. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement, the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a result of the development and necessary to make the impacts of the development acceptable in planning terms, to the detriment of both existing and proposed residents and workers and contrary to policy INF 1 of the Cherwell Local Plan 2015, CDC's ~~and~~ Planning Obligations SPD 2018 and Government guidance within the National Planning Policy Framework.
- 4.3. The Council's evidence will support the suggested reasons set out in paragraph 4.2 above, to demonstrate that the proposed development is not in accordance with the Development Plan or the Framework and that there are no other material considerations that would outweigh the substantial harmful impacts to warrant granting permission.

#### **Suggested Refusal Reason No.1**

- 4.4. Non-compliance with Local Plan policies in Cherwell District and with national policy guidance given in the National Planning Policy Framework (NPPF) (2021).
- 4.5. Development is proposed on a large area of unallocated agricultural land beyond the built form of Banbury town in open countryside. It would represent an urbanising form of development which by reason of its location, size, form and proposed land use would result in a cluster of large warehouse buildings poorly related to Banbury that would result in a harmful visual intrusion of development into the landscape and open countryside and would therefore result in harm to the rural character, appearance and quality of the area.

### **Suggested Refusal Reason No.2**

- 4.6. The appeal site is located approximately 2 miles northeast of Banbury town centre in an open countryside location separated from the town and its services and facilities by the M40 motorway. It is poorly served by public transport, cycling and walking and represents a geographically unsustainable location. Employees on the developed site would be left with little realistic option other than to rely on the private car to both access the site and to access other facilities.

### **Suggested Refusal Reason No.3**

- 4.7. Transport matters – Oxfordshire County Council Transport described the site as an unsustainable location for cycling and walking; with the M40 motorway forming a substantive barrier to connectivity between the site and the services and facilities in Banbury. The Junction 11 gyratory over the motorway would represent the most direct connectivity route to the town but would not be a safe or attractive route for either cyclists or pedestrians to use. The only safe route would be via the bridleway route to the north, beside the river and beneath the motorway but that would add significantly to distance and journey times and there is currently no safe crossing point on the A361 Daventry Road.

### **Suggested Refusal Reason No.4**

- 4.8. The proposed southern access route off the A361 into the appeal site would be only about 170m north of the J11 gyratory junction and only about 260m from the M40 south bound off slip on the gyratory. The additional traffic seeking to access the appeal site, particularly during peak periods, would likely result in increased queuing traffic on the slip road tailing back from the junction onto the motorway, some 400m to the north.

### **Suggested Refusal Reason No.5**

- 4.9. There is already severe traffic congestion leading into the M40 Junction 11 gyratory along the A422 at Hennef Way from Banbury town centre and across the Wildmere Road/Ermont Way roundabout junction, some 300m west of the gyratory. The congestion is so severe and regular that Hennef Way has been designated an Air Quality Management Zone such is the poor air quality in the area. The proposed development would only add to traffic volumes and congestion in the locality and would therefore likely exacerbate air quality problems.
- 4.10. The Appellant has thus far failed to demonstrate how such detrimental impacts could be satisfactorily mitigated.

### **Suggested Refusal Reason No.6**

- 4.11. National Highways, OCC as Local Highway Authority and the Appellant's transport consultant all agree that microsimulation modelling in the form of VISSIM is required to accurately represent the flow of vehicles at all the primary local junctions and the interaction between them. However, analysis using VISSIM has not yet started. M40 Junction 11 has been analysed by the Appellant using LinSig but its results have been inconclusive because the model does not entirely correspond to the proposed layout drawings; traffic flows associated with nearby Frontier Park have been erroneously included; and LinSig is considered to have limitations that mean it is not suitable to predict the future operation of the local network with sufficient confidence.

- 4.12. The Appellant's suggested civil engineering works to the gyratory and A361 to mitigate impacts, which would involve realigning and widening the A361 entry onto the gyratory and widening of the southern overbridge to accommodate an additional lane have thus far not been demonstrated to be feasible. The works would entail significant tree removal, the build up and retaining of embankments and possibly even the replacement of the entire bridge.

**Suggested Refusal Reason No.7**

- 4.13. It has not been demonstrated that the Appellant's suggested signalised crossing of the A361 Daventry Road at its proposed northern access for pedestrians and cyclists could be incorporated at a safe location relative to the associated access into the appeal site, the access into Frontier Park opposite and the nearby new bus stop serving the 200 Stagecoach service.

**Suggested Refusal Reason No.8**

- 4.14. Environmental matters – Oxfordshire County Council Transport and Cherwell District Council Environmental Protection both commented that the A422 at Hennef Way immediately west of M40 Junction 11 was an Air Quality Management Zone with one of the poorest air qualities in Oxfordshire. Any increased traffic congestion in the area would likely exacerbate poor air quality and the application fails to provide any mitigation proposals in this respect.

**Suggested Refusal Reason No.9**

- 4.15. Economic matters – If development results in severe traffic congestion on the M40, A422 and A361 at and around Junction 11 on the M40 as envisaged by the local highway authority and National Highways, it could potentially have a detrimental effect on the attractiveness of Banbury town centre and its edge of town retail and employment centres such as Banbury Gateway Shopping Park and the Thorpe Way and Frontier Park commercial areas rendering it less sustainable. The application fails to provide any assessment of economic impact in this regard.

**Suggested Refusal Reason No.10**

- 4.16. The site is in Flood Zone 1 with a low risk of flooding, so a detailed Flood Risk Assessment was therefore not submitted although the application was accompanied by a Flood Risk and Drainage Technical Note as part of the ES.
- 4.17. OCC as Local Lead Flood Authority (LLFA) have assessed the submission and have objected. LLFA advise that with numerous ponds and brooks within, alongside and around the site and with a natural clay geology with limited permeability and high ground water table, the risk of surface water flooding resulting from a massive increase in impermeable surfacing is significant. A far more detailed FRA and Surface Water Management Plan is therefore deemed necessary in order to assess the likely impacts of development and determine the extent and viability of drainage mitigation proposals. The LLFA suggest that any drainage strategy drawings should show invert and cover levels for all proposed drainage infrastructure and SuDS features. A surface water catchment plan is required to demonstrate how the site would drain and to which drainage features. The existing and proposed areas must be clearly shown. A surface water exceedance plan should also be provided to demonstrate how the site would drain in an event where the surface network fails. All surface water should be kept away from structures and within the site boundary. Technical approval from the sewer undertaker would be required in order to make drainage connections. Having regard to the above,

it is considered that the application fails to comply with Policies ESD6 and ESD10 of the CLP 2015 and Government guidance within the National Planning Policy Framework and therefore warrants a refusal of planning permission.

- 4.18. The Environment Agency have also assessed the submission and advise that no objections are raised in respect of works but advised that no foul water waste connections are available. Conditions would need to be imposed should the development be approved.

**Suggested Refusal Reason No.11**

- 4.19. Landscape matters – Cherwell District Council Landscape and the Oxfordshire branch of the Council for Protection of Rural England (CPRE) commented that the application failed to provide sufficient evidence to demonstrate via a robust Landscape and Visual Impact Assessment that the proposals would not cause substantial landscape harm to the undeveloped rural character and appearance of the site when viewed from Public Rights of Way in the surrounding countryside.
- 4.20. The land is particularly prominent when viewed from the A422 west of the school and from the PRow to the north. The land is also visible in views from the Country Park to the northwest and from numerous elevated locations further to the west over the rooftops across the town.

**Suggested Refusal Reason No.12**

- 4.21. Heritage matters – the site is in an area of archaeological interest and potential, with Romano-British remains having previously been recorded on land immediately to the west and with Neolithic, Roman and Bronze Age finds recorded on other sites nearby. The site also contains extensive areas of medieval ridge and furrow field systems. The County Archaeologist therefore recommended that the site should be subject to a trenched archaeological evaluation prior to the determination of any planning application in order to determine the extent of any heritage finds, what constraints they may impose and ascertain the need for any mitigation measures.
- 4.22. The LPA is aware of extensive archaeological trench evaluation across the site since the submission of the appeal. However, the LPA is unaware of any submission or approval of an archaeological Written Scheme of Investigation (WSI) and the evaluated results of such investigation are unknown at the time of writing.
- 4.23. Upon receipt of such findings, it may potentially be possible (dependent upon results) to agree through the Statement of Common Ground appropriate mitigation and condition(s) in the event that permission was ultimately granted.

**Suggested Refusal Reasons Nos.13 & 14**

- 4.24. Ecological/Biodiversity matters – Many respondents, including NatureSpace and Berkshire, Buckinghamshire & Oxfordshire Wildlife Trust (BBOWT) commented that the application had failed to adequately demonstrate the protection of existing ecological features and that development mitigation could successfully deliver 10% biodiversity net gain.
- 4.25. In particular, respondents noted that the application failed to provide sufficient evidence to demonstrate that there would be no harmful impact to great crested newts and/or their habitat, no harmful impact on a wide variety of farmland birds species that use the site, including some that are internationally rare and the illustrative site layout plans showing

how the scale of development proposed could potentially be accommodated suggested significant loss of hedgerows and trees protected by TPO across the site.

**Suggested Refusal Reason No.15**

- 4.26. As the planning application was refused before any satisfactory legal agreement could be drafted, there could be no certainty that the Appellant (and any other parties with an interest in the land) would have committed to the necessary covenants to secure the infrastructure required.
- 4.27. The Council will submit a statement with its Proofs of Evidence setting out the justification for the commitments expected to be made within any planning obligation, having regard to the statutory tests in Regulation 122 of the CIL Regulations 2010 (as amended).
- 4.28. The Council will demonstrate that the lack of a satisfactory S106 obligation to secure the necessary infrastructure and contributions would result in a proposal which would fail to mitigate adequately the likely impact of the development and as such would result in an unsustainable form of development contrary to Development Plan policies and the NPPF.
- 4.29. It is anticipated that the Appellant may wish to enter into a unilateral legal agreement to secure any necessary mitigation identified. The Council will maintain this reason for refusal pending the submission of an acceptable obligation(s), which it is anticipated could then be referenced in an agreed Statement of Common Ground.

## **5. CONCLUSION**

- 5.1. The Council will consider the weight to be applied to various policies and will demonstrate that the relevant policies of the Development Plan remain up to date and compliant with the NPPF and relevant PPG. The Development Plan should be the starting point for consideration of the proposals in accordance with S38 of the Planning and Compulsory Purchase Act 2004 unless material considerations demonstrate otherwise.
- 5.2. In this context and taking into account the reasons for refusal, the Council will demonstrate that the development proposed conflicts with the Development Plan, considered as a whole, and that no material planning considerations are such that planning permission should, notwithstanding, be granted.
- 5.3. The Council's evidence will demonstrate that the planning balance of the environmental, landscape, ecological, drainage, flooding, archaeological, highway, social and economic impacts of the Appellant's proposals are overtly harmful, not sustainable and could not be adequately mitigated.
- 5.4. For the reasons set out above, the Council will respectfully ask for the appeal to be dismissed.

## **6. OTHER DOCUMENTS TO WHICH THE COUNCIL MAY REFER**

- 6.1. Officer report to the Council's Planning Committee, written updates and minutes of the Planning Committee meeting of 9<sup>th</sup> February 2023.
- 6.2. Site location plan showing appeal site and surroundings.
- 6.3. Plans and other application documentation.
- 6.4. Copies of correspondence between the Council's planning case officers and the application agent.
- 6.5. Copies of representations received on the applications from statutory consultees and interested third parties.
- 6.6. Policy documents referred to throughout the Statement.
- 6.7. Site history documentation.
- 6.8. The Council reserves the right to refer to any other documents as is necessary in its Proofs of Evidence to supplement the issues identified in this statement of Case.
- 6.9. The Council will work proactively to progress a Statement of Common Ground with the Appellant following the submission of this Statement of Case.