

**TOWN AND COUNTRY PLANNING ACT 1990  
SECTION 78 APPEAL**

**BY**

**WATES DEVELOPMENTS LTD**

***LAND SOUTH OF GREEN LANE, CHESTERTON***

**OUTLINE PLANNING APPLICATION FOR UP TO 147 HOMES, PUBLIC OPEN SPACE, FLEXIBLE RECREATIONAL PLAYING FIELD AREA AND SPORTS PITCHES WITH ASSOCIATED CAR PARKING, ALONGSIDE LANDSCAPING, ECOLOGICAL ENHANCEMENTS, SUDS, GREEN / BLUE AND HARD INFRASTRUCTURE, WITH VEHICULAR AND PEDESTRIAN/CYCLE ACCESSES, AND ALL ASSOCIATED WORKS (ALL MATTERS RESERVED EXCEPT FOR MEANS OF ACCESS)”**

**PINS REF.: APP/C3105/W/23/3331122  
LPA REF.: 23/00173/OUT AND 23/00103/REF**

**PROOF OF EVIDENCE APPENDICIES  
OF  
CHRISTOPHER ROBERTS**

**JANUARY 2024**

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# **APPENDIX 1 – DISPUTED SITES DETAILED ASSESSMENT**

# 1. BANBURY SITES (ALLOCATED)

## Site 1 – ‘Banbury 1 - Banbury Canalside (Caravan Site)’

1.1 This site is allocated for development in the Local Plan Part 1. It does not currently benefit from extant planning permission.

### **Council Evidence (set out in the AMR 2023)**

*“Outline permission for 63 dwellings expired in June 2022. A new outline application for 63 dwellings (22/01564/OUT) at Station Road was approved in July 2023 subject to signing of a section 106 agreement. Site is part of a wider allocation in the adopted Cherwell Local Plan and the wider site is proposed to be allocated for mixed use development in the draft Local Plan Review 2040. Projection allows sufficient time (circa 3 years) for reserve matters submission and determination.”*

### **Appellant Position**

1.2 The previous Outline planning permission (Ref. 18/00293/OUT) lapsed in June 2022. The site does not presently benefit from any extant planning permission. An Outline application (for 63 dwellings) (Ref. 22/01564/OUT) was submitted in June 2022 and benefits from a resolution to grant planning permission as of July 2023. The Section 106 Agreement has yet to be concluded after some six months.

1.3 It is notable that the applicant appears to be the landowner. As the Planning Statement for the new application states;

*“Since the outline planning permission (18/00293/OUT) was granted in 2019 – see Appendix 1 - following the completion of a s106 obligation, the Applicant [and his father] has been active in acquiring adjacent land but the Covid-19 pandemic, lockdowns and related economic impacts have delayed progress on the proposal and the development of the site. This application therefore seeks to renew the permission ideally before the three-year period to submit reserved matters expires”*

1.4 This is a site that has struggled to come forward previously, and it is unclear what (if any) developer interest there is in bringing it forward now. The Council have not presented any clear (agreed) position statement for when the S106 Agreement is expected to be completed, when the site will be marketed for developers, and when the reserved matter(s) application(s) are intended to be submitted, or when conditions will be discharged.

1.5 This is a Category B site, and the onus is on the Council to provide clear evidence of a realistic prospect of delivery. They have not done so. The site is, therefore, not deliverable, as per the NPPF definition. It is removed from the claimed 5-year supply (**63 units removed**).

Council 5-Year Trajectory					Appellant 5-Year Trajectory				
2023/24	2024/25	2025/26	2026/27	2027/28	2023/24	2024/25	2025/26	2026/27	2027/28
0	0	0	33	30	0	0	0	0	0
<b>Total 63</b>					<b>Total 0</b>				

**Site 2 – ‘Banbury 4, Bankside Phase 2 (Land North East of Oxford Road, West of Oxford Canal)’**

1.6 The site is allocated for development in Local Plan Part 1. It does not benefit from planning permission.

**Council Evidence set out in the AMR 2023**

*“Planning application for 700 dwellings (17/01408/OUT) was received in June 2017. A new application (19/01047/OUT) for a residential development of up to 825 dwellings was approved subject to legal agreement in July 2021. It is assumed that 2 housebuilders will be on site at a peak of 50 homes per year per developer. The expected delivery rates allow sufficient lead-in time for Outline and Reserved Matters approvals and construction time. Five years from the base date is considered sufficient time for the first dwellings to come forward”*

**Appellant Position**

- 1.7 Outline planning application Ref. 17/01408/OUT (submitted by land promoter Hallam Land) for 700 dwellings was never determined. The decision is listed as ‘not proceeded with’ on the Council’s planning register.
- 1.8 A new Outline planning application (Ref. 19/01047/OUT) was submitted in March 2021 (again by Hallam Land), proposing up to 825 dwellings. A resolution to grant permission was made in July 2021.
- 1.9 Some 2.5 years later, the Section 106 Agreement has yet to be signed. At the time of writing, the latest publicly available correspondence from the agent is dated 05 December 2023 (**Appendix 3**). This agrees a further extension of time to 12 January 2024. The email chain indicates successive extensions having been agreed to allow for discussions regarding the S106.
- 1.10 The Council has not explained why the Section 106 Agreement is taking so long to conclude, and the AMR does not provide an estimation of progress or anticipated timing for its conclusion. This may suggest challenges relating to viability and infrastructure delivery. The Council has not provided any evidence on this matter, despite this being a salient consideration for many strategic scale sites. Indeed, this is more so the case on a site where a previous Outline planning application for some 700 dwellings was simply not determined.
- 1.11 The AMR does not reference evidence of an agreement with the land promoter regarding expected delivery rates or when Reserve Matters submissions might follow the grant of an Outline consent (if this is eventually forthcoming). As such, there is no clear evidence of progression towards the submission of Reserved Matters applications, nor what these applications would comprise.
- 1.12 This is a Category B site, and the Council have not provided clear evidence of a realistic prospect of completions within five years. The site is, therefore, not deliverable, as per the NPPF definition. It is removed from the claimed 5-year supply (**50 units removed**).

Council 5-Year Trajectory					Appellant 5-Year Trajectory				
2023/24	2024/25	2025/26	2026/27	2027/28	2023/24	2024/25	2025/26	2026/27	2027/28
0	0	0	0	50	0	0	0	0	0
<b>Total 50</b>					<b>Total 0</b>				

### **Site 3 – ‘Banbury 17, South of Salt Way, East’**

- 1.13 The site forms part of Banbury 17. The site benefits from Outline planning permission (Ref. 14/01932/OUT), granted on 19 December 2019, for;

*“Development of up to 1,000 dwellings together with a mixed use local centre [including A1 retail up to 1,000 m2, financial services (A2), restaurants, pubs and takeaways (A3, A4, A5), community uses (D1)]; primary school and safeguarded additional primary school land; secondary school playing field land; green infrastructure including formal (including playing fields) and informal open space, landscape and amenity space; changing and sports facilities (including D2); sustainable drainage systems; highway, cycle and pedestrian routes; car parking; infrastructure (including utilities); engineering works including ground remodelling; demolition, site reclamation and removal of structures. Formation of a new roundabout access from the A361 together with associated alterations to alignment of Bloxham Road and provision of a section of link road through the site up to its eastern-most boundary.”*

#### **Council Evidence set out in the AMR 2023**

*“Outline permission for the 1000 homes is secured. This covers the remaining area of the site which is the majority of the strategic allocation. Reserved matters for two of the development parcels (22/02068/REM) were permitted in April 2023 for 237 dwellings. Reserved matters has also been granted for a spine road (20/03702/REM) and link road (20/03724/REM) serving the school and a foul water pumping station (21/03950/REM). No known delays in developers starting on site, conditions discharged, S106 obligations varied to allow early road construction to facilitate speedier development (21/00653/M106), ground works in place. Infrastructure will be delivered based on the number of occupations meaning that there will be no significant delays in delivering the homes permitted.*

*Persimmon homes are developing the 237 homes in Phases 1 & 3. Discussions are underway on reserve applications for further phases. Charles Church is currently preparing an application (anticipated Dec. '23) for the Phase 2 land (south of Phases 1 & 3 – zoned for 110-122 dwellings). Projection is consistent with build rates on this site and in Banbury generally in recent years. There are two house builders on site. A significant proportion of the site is forecast to be completed within the 5 year period. Developer has indicated that development is likely to be delivered in line with the projection.”*

#### **Appellant Position**

- 1.14 This is a large site allocated in Local Plan Part 1 in 2015. The Outline planning application was submitted in November 2014 and finally approved in December 2019.
- 1.15 I do not dispute that there is evidence of deliverability in relation to the development of 237 homes. Reserved Matters consent is in place for this, and conditions have been discharged for this parcel.
- 1.16 Nonetheless, I do not agree that the trajectory presented in the AMR is realistic. When phoned, the sales office for this site confirmed that only the show home and perhaps a handful of other dwellings were likely to be complete by April 2024. The Council's trajectory needs to be adjusted to reflect this, as it currently expects 50 dwellings to be complete by 31 March 2024, which is not feasible.
- 1.17 Secondly, Persimmon is the only housebuilder for Reserved Matters consent Ref. 22/02068/REM, and Persimmon is the only brand that will build the 237 approved dwellings. This is confirmed in their online sales platform for this site<sup>1</sup>. It is incorrect to assume that two outlets will be delivering the 237 homes under Reserved

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<sup>1</sup> The link to Persimmon's online sales platform for this site is here: <https://www.persimmonhomes.com/new-homes/south-midlands/wykhams-park>. This confirms that Persimmon is the only housebuilder for Ref. 22/02068/REM.

Matters Ref. 22/02068/REM.

- 1.18 In the HLSS 2023, the Council’s entry for this site assumed 50 units annually per developer, which appears reasonable. However, at the time of writing, the expected Reserved Matters application(s) from Charles Church has not materialised. So, it can only be said that there is one housebuilder on site currently. This suggests there is no basis for assuming delivery rates of over 50 dwellings until a new party is in place to deliver them.
- 1.19 Overall, I agree that Reserved Matters approval is in place for 237 dwellings, which Persimmon is going to build as the single current housebuilder operating at the site. However, Persimmon only expects a handful of completions prior to 31 March 2024.
- 1.20 There are no consents in place for later phases, but I consider it reasonable to assume that future phases will follow. Nonetheless, the referenced Charles Church Reserved Matters application has yet to be submitted. This suggests that there will be a greater lead-in time than expected by the Council.
- 1.21 Accordingly, I identify an alternative trajectory below, pushing back the first year of significant completions to 2024/25 (but allowing for a ‘handful’ in 2023/24) and also indicating that completions are not achieved via a second outlet (i.e., Charles Church) until 2026/27. **(120 units removed)**.

Council 5-Year Trajectory					Appellant 5-Year Trajectory				
2023/24	2024/25	2025/26	2026/27	2027/28	2023/24	2024/25	2025/26	2026/27	2027/28
50	75	75	100	100	5	50	50	75	100
<b>Total 400</b>					<b>Total 280</b>				

- 1.22 Note, the Inspector for the Milcombe Appeal considered this matter recently, stating at paragraph 41 of their Decision (CD4.19) that;

*“The Council project that a further 113 dwellings will come forward within the 5 years. The trajectory is based on 5 developers being on site but currently there is only one. There is no clear evidence to support the delivery of the additional 113 dwellings and so this should be deducted from the supply.”*

- 1.23 The Inspector was considering the previous trajectory presented in the HLSS 2023. However, my reasoning for discounting the Council’s claimed supply is the same – there is still currently only one developer in place.

## 2. BANBURY SITES (UNALLOCATED)

### Site 4 – ‘Land Opposite Hanwell Fields Recreation (adjacent to Dukes Meadow Drive, Banbury)’

2.1 This is an unallocated site. It does not benefit from planning permission.

#### Council Evidence set out in the AMR 2023

*“Outline planning application (21/03426/OUT) for up to 78 dwellings and associated open space was approved subject to legal agreement in April 2022. The application was submitted on behalf of a housebuilder, Manor Oak Homes, who will be developing the site. Signing of section 106 agreement is imminent. Projection is consistent with build rates in Banbury generally in recent years.”*

#### Appellant Position

- 2.2 A resolution to grant planning permission (for Outline application Ref. 21/03426/OUT) was confirmed in April 2022 (i.e. 18 months ago at the time of writing). The AMR states that the signing of the Section 106 Agreement is ‘imminent’, although there does not appear to be any publicly available correspondence relating to this on the Council’s online planning register. As evidenced by this site (and by other sites considered in my Proof of Evidence), a resolution to grant planning permission does not equate to the timely conclusion of the required S106 Agreement. The Council has not explained why the S106 Agreement for this site is taking such a long time to conclude.
- 2.3 In any case, the future grant of Outline planning permission, at an unspecified point following the conclusion of the legal agreement (which has been outstanding now for 18 months), does not (in and of itself) provide clear evidence of progress towards the required Reserved Matters submissions and the discharge of conditions to bring forward development. It remains a Category B site.
- 2.4 The AMR does not provide evidence of an agreement with the applicant that commits them to a specific anticipated timeline for completing the required S106 Agreement, nor has the Council provided any specific evidence of when a Reserved Matters application(s) would be forthcoming (or progress toward the preparation of such). Rather, it appears the Council has made an assumption based on general build rates in Banbury. This suggests a lack of site-specific evidence to inform the AMR trajectory.
- 2.5 As such, there is no clear evidence that housing completions will commence within five years, and the site does not meet the NPPF definition of deliverable (**78 units removed**).

Council 5-Year Trajectory					Appellant 5-Year Trajectory				
2023/24	2024/25	2025/26	2026/27	2027/28	2023/24	2024/25	2025/26	2026/27	2027/28
0	0	0	28	50	0	0	0	0	0
<b>Total 78</b>					<b>Total 0</b>				



**Site 5 – ‘Land Adjoining Withycombe Farmhouse Stratford Road A422 Drayton’**

2.6 The site is unallocated and does not benefit from planning permission.

**Council Evidence set out in the AMR 2023**

*“Outline planning application for a residential development comprising up to 250 dwellings was permitted in February 2023 subject to the signing of a section 106 agreement which is expected imminently. Developer (Bloor Homes) anticipates delivery of homes within the next 5 years, and reserve matters application to be submitted imminently. Site is identified in the draft Local Plan Review 2040. Projection is consistent with build rates in Banbury generally in recent years.”*

**Appellant Position**

- 2.7 Firstly, it is notable that the Council's evidence of deliverability includes its identification in the Draft Local Plan Review 2040, a status which is also relevant to the Land at Green Lane, Chesterton (i.e., the appeal site).
- 2.8 A resolution to grant Outline planning permission for Ref. 22/02101/OUT (up to 250 dwellings) was secured in February 2023, subject to the conclusion of a Section 106 Agreement. The Council contends that this Section 106 Agreement is to be signed ‘imminently’ and that a Reserved Matters application(s) will also be submitted ‘imminently’.
- 2.9 However, there does not appear to be any publicly available correspondence relating to this on the Council's online planning register, and at the time of writing, Outline permission has not been granted, and the ‘imminent’ Reserved Matters application has not been submitted. Indeed, a Reserved Matters application would not, in any case, be expected prior to the grant of the Outline consent.
- 2.10 As I have indicated previously, a resolution to grant planning permission does not necessarily equate to the timely conclusion of the required S106 Agreement. Indeed, in the case of this site, it has been some ten months since the resolution to grant was conferred. The Council provides no evidence to explain why the signing of the S106 is now expected imminently after this delay (or why it was delayed in the first place).
- 2.11 Moreover, the future grant of Outline planning permission, at an unspecified point following the conclusion of the legal Agreement, does not (in and of itself) provide clear evidence of progress towards the required Reserved Matters submissions and the discharge of conditions to bring forward the site. This remains a Category B site and requires appropriate evidence for its inclusion accordingly.
- 2.12 It is noted (by the Council) that a Reserved Matters application(s) is expected imminently and the AMR entry for this site suggests that Bloor Homes (the developer) expects completions within five years. However, the Sonning Common appeal decision (referenced previously) cautions that *“Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward”*.
- 2.13 The Council makes reference to general build rates in Banbury and explains that this has informed its projection. However, in the absence of a signed S106 Agreement, there is no Outline planning permission, and this remains an unallocated site. The Council says that an application is expected imminently, but this is not firm evidence of progress towards Reserved Matters submissions.
- 2.14 There is no clear evidence that housing completions will commence within five years, and the site does not meet the NPPF definition of deliverable (**50 units removed**).

Council 5-Year Trajectory					Appellant 5-Year Trajectory				
2023/24	2024/25	2025/26	2026/27	2027/28	2023/24	2024/25	2025/26	2026/27	2027/28
0	0	0	0	50	0	0	0	0	0
<b>Total 50</b>					<b>Total 0</b>				

### 3. OTHER AREAS (ALLOCATED)

#### Site 6 – ‘Villages 5 - Former RAF Upper Heyford (15/01357/FUL)’

- 3.1 The site is allocated in Local Plan Part 1 and benefits from Full planning permission Ref. 15/01357/FUL for 89 dwellings.
- 3.2 It should be noted that a new planning application (Ref. 22/03063/F, for 126 dwellings) has been submitted across this site and the adjoining land, which benefits from a separate Outline permission (Ref 21/03523/OUT for up to 31 dwellings). This is further explained below

#### **Council Evidence set out in the AMR 2023**

*“A full application for 89 homes on a greenfield site within the strategic allocation by Pye Homes was approved subject to legal agreement in January 2022. Application permitted in September 2023 with the section 106 signed. Application (22/03063/F) now submitted by David Wilson Homes resulting in additional dwellings and expected to be determined shortly. Anticipated legal agreement in line with existing agreement. Further developer interest indicates delivery within the 5 year period.”*

#### **Appellant Position**

- 3.3 It is clear (from the AMR) that David Wilson Homes (as the new developer) is not going to deliver Ref. 15/01357/FUL. The new planning submission (Ref. 22/03063/F, for 126 dwellings) applies to both this site and the adjoining land. It is explained in the Planning Statement for Ref. 22/03063/F that DWH is acquiring both parcels and is now seeking to develop them holistically. It is my understanding, however, that David Wilson Homes does not yet own the combined sites.
- 3.4 The new planning application has yet to be determined. Objections have been raised by the Berkshire & Buckinghamshire Wildlife Trust (as a consultee) regarding the loss of habitat units. Their latest response (01 November 2023) states;

*“...as no details have been given as to how this net gain is to be provided we remain concerned that the application does not provide evidence of a net gain in biodiversity. We have not found any additional information which addresses our other concerns in relation to this application and we therefore stand by the objections set out in our original application dated 16th November 2022 which is appended to this letter.”*

- 3.5 Additionally, Thames Valley Police’s Crime Prevention Design Officer raised several detailed concerns in consultee responses dated 16 November 2022 and 16 October 2023.
- 3.6 The Landscape Officer’s latest response, 10 November 2023, states that they stand by their comments of 25 November 2022, namely;

*“...my concern is the increased housing density, compared to the previous proposals, at the expense of minimum area of informal public open space required under Policy BSC11....Essential informal public open space that is required to mitigate what would otherwise be an overly developed site...”*

- 3.7 From the nature of the consultee comments provided, it is understood that the new developer is seeking to increase the density of the scheme. This appears to conflict with landscape and ecology requirements and general expectations of high-quality design. Indeed, it is notable that the proposed 126 dwellings exceed the combined 120 houses that form part of approvals ref. 15/01357/F (89 dwellings) and ref. 21/03523/OUT (‘up to’ 31 homes).
- 3.8 Overall, based on the current proposals, it is not clear that the Council will grant planning permission for this

new application, and (as indicated) the new developer has indicated that they will not deliver ref. 15/01357/F.

3.9 In addition, I note the letter (dated 06 December 2023) provided by David Hutchison MRTPI (Executive Director of planning consultancy Pegasus) (**CR Appendix 4**), submitted on behalf of Dorchester Living (an adjoining landowner). This argues that that application Ref. 22/03063/F should not be approved until a pedestrian link is provided to Larsen Drive to ensure that;

*"...this phase of the new settlement is properly integrated as required by Policy Villages 5".*

3.10 It is further stated that;

*"We are mindful that the land that is required to deliver the full link to Larsen Road is not in the control of the applicant. Dorchester Living is, however one of the landowners. My client can confirm that they are willing to enter discussions with the Applicant so they can assist in overcoming and landownership constraints..."*

3.11 The letter further recommends that a Grampian condition be imposed to secure the above.

3.12 The Council's position on the relevance of the above representation (as a planning matter concerning Local Plan Policy Villages 5) is unknown.

3.13 Nonetheless, the letter suggests that there may be land ownership constraints to be addressed prior to the implementation of planning permission (if granted). Indeed, the inference from the above quote is that there may be a ransom position. That is relevant when considering deliverability.

3.14 As a separate concern, the Council's evidence in the AMR states, "*Anticipated legal agreement in line with the existing agreement*". In other words, the Council believes the S106 Agreement will be concluded in a timely way. However, it is notable that the S106 Agreement between the Council and Pye Homes (for Ref. 15/01357/F) took nearly two years to conclude (following the resolution to grant). Likewise, the previous HLSS (2023) entry for this same site stated;

*"A full application for 89 homes on a greenfield site within the strategic allocation by Pye Homes was approved subject to legal agreement on 13 January 2022 discussions are ongoing and are likely to be resolved, allowing the site to come forward."* (My emphasis).

3.15 This infers potential issues concerning the planning obligations associated with the site/development. Yet, the Council have not provided evidence to support their suggestion that the new S106 Agreement will simply be concluded in line with the existing agreement. Indeed, I question how the new S106 Agreement could be 'in line' with the existing Agreement when the new application is for 126 homes, compared to the 89 dwellings approved under Ref. 15/01357/FUL.

3.16 Notwithstanding the above, I still consider it realistic to expect some completions on this site within five years. This is on the basis that the current Full planning application (or a future resubmission) will eventually be granted planning permission (which I consider likely, on what is an allocated site).

3.17 However, the Council's trajectory (in the AMR 2023) is overly optimistic, given the unresolved consultee responses noted above. If the new Full planning application does secure a resolution to grant, prior experience infers the S106 Agreement may thereafter take a long time to conclude, and there may be land ownership constraints if offsite pedestrian connectivity is required in land controlled by third parties.

3.18 To account for these identified risks and expected delays, I propose a revised trajectory overleaf, which allows for first housing completions in 2026/27. **(40 units removed)**.

Council 5-Year Trajectory					Appellant 5-Year Trajectory				
2023/24	2024/25	2025/26	2026/27	2027/28	2023/24	2024/25	2025/26	2026/27	2027/28
0	19	30	40	0	0	0	0	19	30
<b>Total 89</b>					<b>Total 49</b>				

- 3.19 In addition, it is notable that the Inspector for the recent Milcombe appeal made deductions to the supply identified for Upper Heyford in the previous HLSS 2023. At paragraph 42 of their Decision, it is indicated that
- “The allocated site has extant planning permission although this is unlikely to be implemented following the submission of a separate planning application for David Wilson Homes which has not yet been granted with unresolved objections related to biodiversity net gain. The Council expect the planning application to go to committee before the end of 2023 with David Wilson starting on site in early 2024. However, David Wilson do not currently own the site and so I consider this timescale to be ambitious given the processes involved in completing the acquisition. I consequently deduct 30 of the projected dwellings for 2024-2025.”*
- 3.20 The Inspector, therefore, had concerns regarding this site, and their Appeal Decision does not have regard to the latest (very recently published) Draft AMR and the further concerns raised in relation to David Wilson Home’s new planning application. I consider that the Milcombe Inspector’s conclusions add weight to my own assessment.
- 3.21 I further add that my revised trajectory, commencing in 2026/27, is consistent with the Council’s own trajectory for site Villages 5 Former RAF Upper Heyford (21/03523/OUT) (Land at Heyford Grange Letchmere Farm Camp Road Heyford Park), where first completions are also expected in 2026/27 (as presented in the most recent AMR). This is the other parcel of land included within the scope of David Wilson Home’s current Full planning application (22/03063/F). It is logical that two sites grouped under one Full planning permission (if consent is forthcoming) have the same commencement year.

## 4. OTHER AREAS (UNALLOCATED, 10 OR MORE DWELLINGS)

### Site 7 - Land at Deerfields Farm, Canal Lane, Bodicote

- 4.1 This unallocated site benefits from Outline planning permission (Ref. 19/02350/OUT), as granted on 18 November 2022, for up to 26 dwellings.

#### Council Evidence set out in the AMR 2023

*“Outline permission was granted in November 2022 for up to 26 dwellings. The expected delivery rates allow sufficient lead-in time for Outline and Reserved Matters approvals and construction time.”*

#### Appellant Position

- 4.2 The site benefits from Outline planning permission granted more than 1 year ago. A review of the Council's online planning register shows no indication of planning conditions being discharged or Reserved Matters applications being submitted. It is notable that Ref. 19/02350/OUT was submitted on behalf of a Mr Morris, who appears to be the landowner.
- 4.3 The Council (in the AMR) provide no evidence to suggest that there has been any progress towards the submission of Reserved Matters, nor is it clear whether a housebuilder is in place to take forward the site, or whether it is being actively and effectively marketed. The timing and content of any future applications are, therefore, unknown. If and when a Reserved Matters submission is made, it is unclear whether this will be acceptable or how long the application will take to determine.
- 4.4 The Council's generalised comments about expected delivery rates and lead-in times do not represent clear evidence that housing completions will begin on-site within five years. The site is not deliverable, as per the NPPF definition and is removed from the claimed 5-year supply (**26 units removed**).

Council 5-Year Trajectory					Appellant 5-Year Trajectory				
2023/24	2024/25	2025/26	2026/27	2027/28	2023/24	2024/25	2025/26	2026/27	2027/28
0	0	0	0	26	0	0	0	0	0
<b>Total 26</b>					<b>Total 0</b>				

**Site 8 - OS Parcel 3489 Adjoining and South West of B4011, Ambrosden**

4.5 The site is unallocated and does not benefit from planning permission.

**Council Evidence set out in the AMR 2023**

*“Outline application for 75 homes permitted in February 2023 subject to section 106. With permission granted over 9 months ago, the section 106 is expected to be signed shortly.”*

**Appellant Position**

- 4.6 As noted by the Council, this site secured a resolution to grant some 10 months ago (Ref. 22/01976/OUT). At the point of writing, the S106 Agreement has yet to be concluded.
- 4.7 There is no information on the Council’s online planning register that provides an indication of progress. Nor is there any explanation concerning why the S106 Agreement has not been signed. Indeed, no documents have been published on the online public register for this application since January 2023. As evidenced by some of the other sites I have considered, a resolution to grant planning permission does not equate to the timely conclusion of the required S106 Agreement.
- 4.8 Regardless, the future granting of Outline planning permission, at an unspecified point, does not (in and of itself) provide clear evidence of progress towards the required Reserved Matters submissions and the discharge of conditions to bring forward the site. The AMR does not provide evidence of an agreement with the applicant that commits them to a specific timeline for implementation, nor has the Council provided specific evidence of when a Reserved Matters application(s) would be forthcoming and what this would comprise. Indeed, at this stage, no housebuilder would appear to be engaged to deliver the site, so there is no party to commit to an agreed position on commencement dates and delivery rates.
- 4.9 Overall, this unallocated (Category B) site does not benefit from Outline planning permission, as a Section 106 Agreement has yet to be concluded. The timescales for this are not known. The Council has not provided clear evidence of when future Reserved Matters applications will be submitted or what they will comprise. As such, there is no clear evidence that housing completions will commence within five years, and the site does not meet the NPPF definition of deliverable (**60 units removed**).

Council 5-Year Trajectory					Appellant 5-Year Trajectory				
2023/24	2024/25	2025/26	2026/27	2027/28	2023/24	2024/25	2025/26	2026/27	2027/28
0	0	0	25	35	0	0	0	0	0
<b>Total 60</b>					<b>Total 0</b>				

**Site 9 - Land North of Railway House, Station Road, Hook Norton**

4.10 This is an unallocated site that benefits from Outline planning permission Ref. 21/00500/OUT for up to 43 homes. This was granted at appeal on 18 August 2022.

**Council Evidence set out in the AMR 2023**

*“Outline application approved following appeal for 43 homes in August 2022. Section 106 is agreed.”*

**Appellant Position**

4.11 The site benefits from Outline planning permission granted nearly 18 months ago. A review of the Council's online planning register shows no indication of planning conditions being discharged or Reserved Matters applications being submitted. The Council has not provided clear evidence of when future Reserved Matters applications will be submitted or what they will comprise. Indeed, it is not clear if a housebuilder has been engaged to deliver the site, and there is no evidence of an agreement that sets out key stages towards implementation.

4.12 Overall, the Council's AMR provides no evidence to suggest why this Category B site should be considered deliverable, per the NPPF definition. In the absence of any compelling evidence, it cannot be said that there is a realistic prospect of completions within five years (**43 units removed**).

Council 5-Year Trajectory					Appellant 5-Year Trajectory				
2023/24	2024/25	2025/26	2026/27	2027/28	2023/24	2024/25	2025/26	2026/27	2027/28
0	0	0	25	18	0	0	0	0	0
<b>Total 43</b>					<b>Total 0</b>				



**Site 10 - Kidlington Garage, 1 Bicester Road, Kidlington**

4.13 This is an unallocated site that does not benefit from planning permission.

**Council Evidence set out in the AMR 2023**

*“Application for 15 flats was granted planning permission in March 2023 subject to the signing of a section 106 agreement. Sweetcroft Homes are the developer. This is a full application and expected to be built out well within the five year period.”*

**Appellant Position**

4.14 An application for Full planning permission (Ref. 22/00017/F) was submitted in January 2022 and benefits from a resolution to grant as of March 2023. The application previously benefitted from an earlier resolution to grant. This followed its consideration by the Planning Committee in July 2022, after which the Section 106 Agreement was supposed to have been concluded.

4.15 However, in February 2023, the applicant submitted a Viability Appraisal to the Council. This indicated that the development could not viably sustain a financial payment towards the provision of off-site affordable housing. The Council commissioned a third party to review the Appraisal, who agreed with that assessment.

4.16 Officers presented a revised report to the Planning Committee on 09 March 2023. The Committee voted in line with the recommendation for approval, delegating authority for the S106 to be concluded.

4.17 Overall, it is apparent that viability concerns are clearly relevant to this brownfield site. In this context, it is notable that the S106 Agreement has yet to be agreed some nine months after the Planning Committee resolution in March 2023 (and some 18 months after the first July 2022 resolution). I note also from the officer’s report for the meeting of the Committee (in July 2022) (**CR Appendix 5**), that there was some doubt about the ownership of parts of the site. The Officer’s Report dealt with this as follows in paragraph 6.96 of their report;

*“Should planning permission be granted, a S106 agreement would be required to be signed by all parties who have an interest on the land. At this point, land registry plans are checked in relation to agreeing the S106 obligations. Should a land owner be identified that has not been served the correct notice, appropriate action would at this point be taken”*

4.18 In the context of the above issues, it is notable that the Council’s evidence (in the AMR) provides no information regarding the delayed signing of the S106 Agreement. Additionally, the applicant submitted new technical details (in August 2023) and proposed revisions to the scheme. This triggered a requirement for re-consultation, which infers these changes are ‘material’. This suggests that that application may need to (again) be put before the Planning Committee, whose decision cannot be known.

4.19 Overall, the Council provides no clear evidence to demonstrate that homes will be delivered at this Category B site (which does not benefit from planning permission) within five years. The site is, therefore, not deliverable, as per the NPPF definition. It is removed from the claimed 5-year supply (**15 units removed**).

Council 5-Year Trajectory					Appellant 5-Year Trajectory				
2023/24	2024/25	2025/26	2026/27	2027/28	2023/24	2024/25	2025/26	2026/27	2027/28
0	0	0	15	0	0	0	0	0	0
<b>Total 15</b>					<b>Total 0</b>				

## APPENDIX 2 HOUSING LAND SUPPLY CALCULATIONS

This Appendix contains alternative scenarios to demonstrate outcomes that could be relevant to this appeal.

### Scenario 1 – Appellant’s Case (5YHLS)

This scenario depicts what I consider is the correct 5YHLS figure (2.82 years). This is based on a single / combined housing requirement of 6,330 and a supply of 3,573 dwellings (i.e., 3,493 + 80). Additionally, this calculation assumes that a 5YHLS is required to be demonstrated (rather than a 4YHLS).

This equates to a requirement of 2,780 homes / 556 dpa over five years (the calculation is set out in AMR 2023, CD 3.14).

Appellant Assessment (5YHLS)				
	Requirement	Cherwell LPP1	Partial Review Sites	Combined
A	Annual Requirement	710	420 <sup>1</sup>	1,130
B	Five year requirement (A x 5)	3,550	2,100	5,650
C	Shortfall to be added	0	680	680
D	Total Requirement + Shortfall (B+C)	3,550	2,780	6,330
E	Annual Requirement + Shortfall (D/5)	710	556	1,266
	<b>Supply</b>			
F	Claimed Supply	3,493	80	3,573
G	Supply in Years (F/E)	<b>4.92</b>	<b>0.14</b>	<b>2.82</b>
H	Over / undersupply (F - D)	-57	-2,700	-2,757

### Scenario 2 – Appellant’s Case (4YHLS)

The following alternative scenario sets out my calculations, including my assessment of the deliverable supply (3,573 dwellings (i.e., 3,493 + 80)), in the event that the Inspector concludes that only a 4YHLS must be demonstrated. The determinative issue would then become whether the Inspector concludes that there should be separate or a single calculation.

Appellant Assessment (4YHLS)				
	Requirement	Cherwell LPP1	Partial Review Sites	Combined
A	Annual Requirement	710	420	1,130
B	Four year requirement (A x 4)	2,840	1,680	4,520
C	Shortfall to be added	0	680	680
D	Total Requirement + Shortfall (B+C)	2,840	2,360	5,200
E	Annual Requirement + Shortfall (D/4)	710	590	1,300
	<b>Supply</b>			
F	Claimed Supply	3,493	80	3,573
G	Supply in Years (F/E)	<b>4.92</b>	<b>0.14</b>	<b>2.75</b>
H	Over / undersupply (F - D)	653	-2,280	-1,627

<sup>1</sup> For the period 2021/22 to 2025/26 the Partial Review requirement is 340 dpa and for the period 2026/27 to 2030/31, the annual requirement is 540 dpa. As such, the base requirement for the 5YHLS period 2022/23 to 2027/28 is 2,100 (340 x 3) + (540 x 2), this averages at 420 dpa. To this figure must be added the accrued shortfall arising in 2021/22 and 2022/23. As indicated, the Partial Review requirement for these years is 340 dpa, which means the shortfall is 680 dwellings.

### Scenario 3 – Council’s Case (4YHLS)

The following scenario represents my understanding of the Council’s position (noting that at the time of writing the HLS SoCG has yet to be fully concluded), which is that it is only required to demonstrate a 4YHLS and that there should be separate calculations for Cherwell and the Partial Review sites. For ease of reference, I have included a combined figure, although the Council’s case is that this is not pertinent. It would however become relevant if the Inspector agreed with the appellant’s position, which is that a single calculation is required.

SoCG Council Assessment (4YHLS)				
	Requirement	Cherwell LPP1	Partial Review Sites	Combined
A	Annual Requirement	710	420	1,130
B	Four year requirement (A x 4)	2,840	1,680	4,520
C	Shortfall to be added	0	680	680
D	Total Four Year Requirement + Shortfall (B+C)	2,840	2,360	5,200
E	Annual Requirement + Shortfall (D/4)	710	590	1,300
	<b>Supply</b>			
F	Claimed Supply	4,038	80	4,118
G	Supply in Years (F/E)	<b>5.69</b>	<b>0.14</b>	<b>3.16</b>
H	Over / undersupply (F - D)	1,198	-2,280	-1,082

### Scenario 4 – Council’s Case (5YHLS)

This final scenario is a variant of the Council’s position, as would apply if it were required to demonstrate a 5YHLS, rather than a 4YHLS. This is derived from the HLS SoCG. Again, for ease of reference, I have included a combined figure.

SoCG Council Assessment (5YHLS)				
	Requirement	Cherwell LPP1	Partial Review Sites	Combined
A	Annual Requirement	710	420	1,130
B	Five year requirement (A x 5)	3,550	2,100	5,650
C	Shortfall to be added	0	680	680
D	Total Requirement + Shortfall (B+C)	3,550	2,780	6,330
E	Annual Requirement + Shortfall (D/5)	710	556	1,266
	<b>Supply</b>			
F	Claimed Supply	4,038	80	4,118
G	Supply in Years (F/E)	<b>5.69</b>	<b>0.14</b>	<b>3.25</b>
H	Over / undersupply (F - D)	488	-2,700	-2,212

**APPENDIX THREE – BANKSIDE PHASE 2 EMAIL  
FROM AGENT**

## Christopher Roberts

---

**From:** Andy Bateson  
**Sent:** 05 December 2023 11:31  
**To:** Louise Steele  
**Subject:** RE: 03 07 Bankside: Planning ref: 19/01047/OUT

Yes of course Louise. Thank you for this confirmation.

We will amend of records accordingly.

**Andy Bateson, BSc (Hons), MRTPI**  
**Development Management Team Leader**

Development Management Division  
Communities Directorate  
Cherwell District Council  
Bodicote House  
Bodicote  
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Email: [andy.bateson@cherwell-dc.gov.uk](mailto:andy.bateson@cherwell-dc.gov.uk)  
Web: [www.cherwell.gov.uk](http://www.cherwell.gov.uk)  
Facebook: [www.facebook.com/cherwelldistrictcouncil](https://www.facebook.com/cherwelldistrictcouncil)  
Twitter: @cherwellcouncil

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Building Control - [building.control@cherwell-dc.gov.uk](mailto:building.control@cherwell-dc.gov.uk);  
Conservation - [design.conservation@cherwell-dc.gov.uk](mailto:design.conservation@cherwell-dc.gov.uk).  
For the latest information on Planning and Development please visit [www.cherwell.gov.uk](http://www.cherwell.gov.uk)

---

**From:** Louise Steele <Louise.Steele@framptons-planning.com>  
**Sent:** Tuesday, December 5, 2023 11:03 AM  
**To:** Andy Bateson <Andy.Bateson@cherwell-dc.gov.uk>  
**Cc:** Lawrence Dungworth <LDungworth@hallamland.co.uk>  
**Subject:** RE: 03 07 Bankside: Planning ref: 19/01047/OUT

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Dear Andy

Please can we agree a further extension of time until 12.1.2024.

With thanks

Louise

With kind regards,  
Louise Steele BA(Hons) MTPL MRTPI

Planning Director



Oriel House  
42 North Bar  
Banbury  
Oxfordshire  
OX16 0TH

**Tel:** 01295 672310 **Fax:** 01295 275606  
**Mobile:** 07738 891 427  
**Email:** [louise.steele@framptons-planning.com](mailto:louise.steele@framptons-planning.com)

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**From:** Andy Bateson <[Andy.Bateson@cherwell-dc.gov.uk](mailto:Andy.Bateson@cherwell-dc.gov.uk)>  
**Sent:** 01 November 2023 14:43  
**To:** Louise Steele <[Louise.Steele@framptons-planning.com](mailto:Louise.Steele@framptons-planning.com)>  
**Cc:** Lawrence Dungworth <[LDungworth@hallamland.co.uk](mailto:LDungworth@hallamland.co.uk)>  
**Subject:** RE: 03 07 Bankside: Planning ref: 19/01047/OUT

OK Louise.

Thankyou.

**Andy Bateson, BSc (Hons), MRTPI**  
**Development Management Team Leader**  
Development Management Division  
Communities Directorate  
Cherwell District Council  
Bodicote House  
Bodicote  
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Facebook: [www.facebook.com/cherwelldistrictcouncil](https://www.facebook.com/cherwelldistrictcouncil)  
Twitter: @cherwellcouncil

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Building Control - [building.control@cherwell-dc.gov.uk](mailto:building.control@cherwell-dc.gov.uk);  
Conservation - [design.conservaion@cherwell-dc.gov.uk](mailto:design.conservaion@cherwell-dc.gov.uk).  
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---

**From:** Louise Steele <[Louise.Steele@framptons-planning.com](mailto:Louise.Steele@framptons-planning.com)>  
**Sent:** Wednesday, November 1, 2023 12:33 PM  
**To:** Andy Bateson <[Andy.Bateson@cherwell-dc.gov.uk](mailto:Andy.Bateson@cherwell-dc.gov.uk)>  
**Cc:** Lawrence Dungworth <[LDungworth@hallamland.co.uk](mailto:LDungworth@hallamland.co.uk)>  
**Subject:** RE: 03 07 Bankside: Planning ref: 19/01047/OUT

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Dear Andy

I understand that the last Extension of time was agreed until 31<sup>st</sup> October 2023 for the application - - please can we agree another extension until 1 December 2023?

With thanks

Louise

With kind regards,  
Louise Steele BA(Hons) MTPL MRTPI

**Planning Director**



Oriel House  
42 North Bar  
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Oxfordshire  
OX16 0TH

**Tel: 01295 672310 Fax: 01295 275606**  
**Mobile: 07738 891 427**  
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**From:** Andy Bateson <[Andy.Bateson@cherwell-dc.gov.uk](mailto:Andy.Bateson@cherwell-dc.gov.uk)>  
**Sent:** 03 July 2023 12:33  
**To:** Debbie Jones <[Debbie.Jones@framptons-planning.com](mailto:Debbie.Jones@framptons-planning.com)>  
**Subject:** RE: 03 07 Bankside: Planning ref: 19/01047/OUT

OK Debbie, EoT agreed until 31 August.

Kind regards,

**Andy Bateson, BSc (Hons), MRTPI**  
**Development Management Team Leader**  
Development Management Division  
Communities Directorate  
Cherwell District Council  
Bodicote House  
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Email: [andy.bateson@cherwell-dc.gov.uk](mailto:andy.bateson@cherwell-dc.gov.uk)  
Web: [www.cherwell.gov.uk](http://www.cherwell.gov.uk)

Facebook: [www.facebook.com/cherwelldistrictcouncil](http://www.facebook.com/cherwelldistrictcouncil)  
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---

**From:** Debbie Jones <[Debbie.Jones@framptons-planning.com](mailto:Debbie.Jones@framptons-planning.com)>  
**Sent:** Monday, July 3, 2023 11:37 AM  
**To:** Andy Bateson <[Andy.Bateson@cherwell-dc.gov.uk](mailto:Andy.Bateson@cherwell-dc.gov.uk)>  
**Subject:** 03 07 Bankside: Planning ref: 19/01047/OUT

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Dear Andy,

**Re: Bankside: Planning ref: 19/01047/OUT**

I hope you are well.

Please could we agree an EOT until the 31<sup>st</sup> August 2023 to allow for further discussions regarding the S106?

Many thanks.

kind regards

Debbie Jones  
BSc(Hons) MSc MRTPI

**Associate Planner**



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42 North Bar  
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Oxfordshire  
OX16 0TH

**Tel: 01295 672310 Fax: 01295 275606 Mob: 07595 863 949**  
**Email: [Debbie.Jones@framptons-planning.com](mailto:Debbie.Jones@framptons-planning.com)**

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**APPENDIX FOUR – DORCHESTER LIVING  
OBJECTION TO RAF UPPER HEYFORD  
APPLICATION**

Our ref: P23-2074  
LPA Ref: 22/03063/F

6<sup>th</sup> December 2023

Major Projects Team  
Planning Services  
Cherwell District Council  
Bodicote Housing  
Bodicote  
Banbury  
Oxfordshire  
OX15 4AA

Dear Sir/Madam

**Planning Application for Erection of 126 dwellings with access from Camp Road, provision of public open space and associated infrastructure  
Land East of Larsen Road Heyford Park**

I write on behalf of my client Dorchester Living.

My client wishes to make additional representations following those that were made on 27<sup>th</sup> October 2022 by the company's Planning Manager Neil Cottrell.

These latest representations are made following the recent submission of revised plans and also the decisions of the LPA to grant the earlier Pye Homes planning applications on the same land (LPA ref 21/03523/OUT for 31 dwellings and LPA ref.15/01357/F). It appears that the Applicant is unlikely to build out either of those planning permissions and they are now looking to secure a single permission for all of the land.

Policy Villages 5 (PV5) identifies key site-specific design and place shaping principles for new development at Heyford Park. It states inter alia that:-

- "- Layouts should enable a high degree of integration with development areas within the 'Policy Villages 5' allocation, with connectivity between new and existing communities**
- Development should accord with Policy ESD 15 and include layouts that maximise the potential for walkable neighbourhoods with a legible hierarchy of routes."**

It is self-evident that the policy seeks to encourage travel by means other than private car as far as possible and thus it is important that every effort is made to deliver high levels of integration so that opportunities for walking are maximised.

Pegasus House, Querns Business Centre, Whitworth Road, Cirencester, GL7 1RT  
T 01285 641717 E [Cirencester@pegasusgroup.co.uk](mailto:Cirencester@pegasusgroup.co.uk)  
Offices throughout the UK and Ireland.

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It is noted that the revised Planning Layout Plan ref. 0778-102B now includes a pedestrian link to adjoining PV5 land in the north western corner of the site, to the front of plot 37. The principle of creating this link is welcomed given the policy context outlined above. It also reflects that which was secured through condition 4 of the Pye Homes planning permission (LPA ref 21/03523/OUT).

In order to meet the objectives of Policy PV5 it is important that a link is provided all the way to Larsen Drive. Given that this involves land beyond the red line boundary it will (as before) be necessary to impose a Grampian condition. The previous condition was however poorly drafted. We consider that the following wording would be more appropriate:-

**“No development hereby permitted shall be begun until details of a scheme of access for pedestrians and cyclists is submitted to and approved in writing by the Local Planning Authority to secure a link from Larsen Road to connect with the proposed pedestrian link shown to the front of plot 37 on drawing ref. 0778-102B.**

**No dwelling on the plots 31 to 85 inclusive shall be occupied until the link from Larsen Road has been completed in accordance with the approved details.**

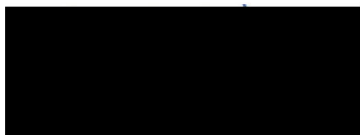
The reason for the condition would be the same as that on the Pye Homes outline permission. That is:-

**“To achieve a comprehensive integrated form of development in compliance with Policy Villages 5 of the adopted Cherwell Local Plan and to comply with Government guidance contained within the National Planning Policy Framework.”**

If the link is not provided, we consider that the application should be refused. The condition is necessary to make the proposals acceptable in policy terms.

We are mindful that the land that is required to deliver the full link to Larsen Road is not in the control of the Applicant. Dorchester Living is however one of the landowners. My client can confirm that they are willing to enter discussions with the Applicant so that they can assist in overcoming any landownership constraints and ensure that this phase of the new settlement is properly integrated as required by Policy Villages 5.

Yours sincerely



**David Hutchison  
Executive Director**

Email: [David.Hutchison@pegasusgroup.co.uk](mailto:David.Hutchison@pegasusgroup.co.uk)

**APPENDIX FIVE – COMMITTEE REPORT FOR  
KIDLINGTON GARAGE**

# Appendix

**Kidlington Garage 1 Bicester Road Kidlington OX5 2LA**

**22/00017/F**

**Case Officer:** Samantha Taylor

**Applicant:** Sweetcroft Homes

**Proposal:** Demolition of existing vehicle showroom and associated garages. Erection of 2 new housing blocks containing total of 15 flats including car parking and ancillary supporting uses with landscaping

**Ward:** Kidlington East

**Councillors:** Cllr Billington, Cllr Mawson, and Cllr Middleton

**Reason for Referral:** Ten or more dwellings

**Expiry Date:** 11 April 2022

**Committee Date:** 14 July 2022

---

## **SUMMARY OF RECOMMENDATION: DELEGATE POWERS TO GRANT PERMISSION, SUBJECT TO CONDITIONS AND SECTION 106 LEGAL AGREEMENT**

### **1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is located fairly centrally, within the residential area of Kidlington. The site and its context is formed of relatively modern buildings with residential properties, outbuildings and garages forming the character of the area. There are some smaller areas of commercial buildings within the local area. Building heights vary in this location, with some more recent developments adjacent measuring 3 storeys in height.
- 1.2. The application site was most recently used as a commercial car sales garage. There are two single storey buildings which exist on the site. One is located at the centre of the site and was used as an office and showroom with the other building located at the rear of the site used for storage.

### **2. CONSTRAINTS**

- 2.1. The application site is within the largely residential area of Kidlington. The site is in an area of potentially contaminated land. A public footpath runs immediately to the west of the site (FP265/5/10).

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The application seeks full planning permission for the demolition of the existing garage and the erection of two apartment blocks comprising 15 units, with associated landscaping, parking and other infrastructure.

#### **4. RELEVANT PLANNING HISTORY**

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

CHS.725/92

Continuance of use to allow car sales and display from the whole site area.

Approved.

11/0149/OUT

Demolition of existing dwelling and construction of building containing 7 apartments and parking, access and ancillary works.

Approved.

12/00149/REM

Reserved matters pursuant to application 11/01419/OUT

Approved.

18/01388/F

Demolition of existing vacant workshop and show room buildings. Erection of two and three storey building to provide 10no. dwellings (8x 2-bed and 2x-1 bed). Provision of off-street car parking, secure cycle storage and covered refuse/recycling store – resubmission of 18/00130/F

Approved.

18/00130/F

Demolition of existing vacant workshop and show room buildings. Erection of two and three storey building to provide 10no. dwellings (8x 2-bed and 2x-1 bed). Provision of off-street car parking, secure cycle storage and covered refuse/recycling store

Withdrawn.

#### **5. PRE-APPLICATION DISCUSSIONS**

5.1. 20/02874/PREAPP – Pre-Application Enquiry - Demolition of existing vehicle showroom and construction of new flat blocks providing 20 no. units. Acceptable in principle subject to massing and detailed design.

#### **6. RESPONSE TO PUBLICITY**

6.1. This application has been publicised by way of advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records (amend as appropriate). The final date for comments was **3 February 2022**.

6.2. Objections have been raised from 7 addresses. The comments raised by third parties are summarised as follows:

6.3. Materially relevant comments which can be considered when determining the application:

- An unacceptable loss of privacy to adjacent residential properties as a result of the creation of window openings and potential overlooking;
- The height of Block A is significantly higher than adjacent properties;
- The design fails to break the massing of the building due to the size and external appearance of the building, which is harmful to the local context;
- Insufficient parking leading to congestion and traffic issues;
- Appropriate contributions towards traffic improvements should be secured;

- Appropriate provision for the charging of elective cars should be made;
- An acceptable location for the air source heat pump should be used to ensure that there is not harm arising from noise or visual harm on the amenity of adjacent residents;
- Insufficient details regarding the fence/boundary treatment to be provided;
- Request that an energy plan for renewable sources should be required;
- A suitable landscaping scheme should be provided in conjunction with ecological improvements;
- Loss of light would have an unacceptable impact on the amenity of adjacent residents;
- Unacceptable impact on traffic and travel implications;
- Potential for birds on site;

6.4. Comments which are not materially relevant and cannot be considered when determine the application:

- Request for comments to be read in conjunction with comments made on a different application;
- Land ownership disputes – an amended site location and block plan has been received, notice has been served on other landowners as the applicant has identified and detailed on the application form. Should any issues arise regarding land ownership, these would be identified through the S106 process and appropriate amendments south if required.
- Potential for asbestos to be present on site;

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

## 7. RESPONSE TO CONSULTATION

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

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. KIDLINGTON PARISH COUNCIL: **Objects**, agree with comments made by neighbours particularly in regard to parking. In addition, the Parish Council raises concerns in regards to land ownership disputes;

*Officer Comments: Noted, as outlined above, land ownership disputes are not a material consideration of the planning application. The applicant has amended the site location and block plans to include land within their ownership. Notice has also been served on the site owners identified as detailed on the application. Should any issues arise regarding land ownership, these would be identified through the S106 process and appropriate amendments sought if required.*

### CONSULTEES

7.3. OCC HIGHWAYS: **No objections** subject to S106 contributions sought in regards to a Traffic Regulation Order, recommended planning conditions and informative.



- 7.4. OCC Highways confirm that the use of the existing access is suitable with acceptable visibility. The site is within walking distance of Kidlington village centre and its local services and Oxford Parkway station is accessible by foot, cycle or bus, which also serves Oxford City Centre and Headington Hospitals.
- 7.5. The Highways Officer notes that the car parking provision is less than optimum however, this quantum has been widely accepted in many similar developments in Kidlington due to the high sustainability of the location in transport terms. Whilst there may be some overspill parking on to the local highway network, the highways officer has confirmed that a contribution to a Traffic Regulation Order to secure double yellow lines would overcome this concern.
- 7.6. All parking spaces provided should have EV charging infrastructure, in accordance with the Oxfordshire Electric Vehicle Infrastructure Strategy, a condition is requested. Some concerns regarding the acceptability of the access road for refuse collection is noted. The Highways Officer confirms that the 15 flat will generate less traffic than the existing approved car showroom and garage use.
- 7.7. Conditions have been requested in relation to the provision of cycle parking, delivery of car parking, estate accesses, driveways and turning areas plans and electric vehicle charging points.
- 7.8. LOCAL LEAD FLOOD AUTHORITY: **Objection**, a flood risk assessment has not been conducted for the site and a detailed drainage scheme has not been provided.

*Officer comments: due to the size of the application site being under 1 hectare (site measures 0.225 ha) and the location with flood zone 1 a flood risk assessment is not required in support of the application. Full drainage details can be secured by way of appropriate planning condition.*

- 7.9. OCC EDUCATION: Contributions are not being sought from this development.
- 7.10. ARCHAEOLOGY: There appears to be no invasive impact upon any known archaeological sites or features.

## **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 (CLP 2015) was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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
- Villages 1 – Village Categorisation
- BSC1 – District Wide Housing Distribution
- BSC2 – The Effective and Efficient Use of land – Brownfield Land and Housing Density
- BSC3 – Affordable Housing
- BSC4 – Housing Mix

- SLE4 – Improved Transport and Connections
- ESD1 – Mitigating and Adapting to Climate Change
- ESD2 – Energy Hierarchy and Allowable Solutions
- ESD3 – Sustainable Construction
- ESD4 – Decentralised Energy Systems
- ESD5 – Renewable Energy
- ESD6 – Sustainable Flood Risk Management
- ESD7 – Sustainable Drainage Systems
- ESD10 – Protection and Enhancement and the Natural Environment
- ESD15 - The Character of the Built and Historic Environment

#### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- C30 – Design of New Residential Development

#### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell Residential Design Guide (SPD) 2018
- Developer Contributions (SPD) 2017
- Kidlington Framework Masterplan 2016
- Conservation of Habitats and Species Regulations 2017

### **9. APPRAISAL**

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

- Principle of development
- Design, and impact on the character of the area
- Residential amenity
- Highway Safety
- Drainage
- Landscaping
- Ecology impact
- Planning Obligations
- Other Matters

#### Principle of Development

9.2. The principle of residential development in Kidlington is assessed against Policy Villages 1 in the CLP 2015, with Kidlington being recognised as a Category A village, one of the most sustainable settlements in the District's rural areas and having physical characteristics and a range of services to enable it to accommodate some limited extra housing growth. Within Category A villages, residential development will be restricted to the conversion of non-residential buildings, infilling and minor development comprising small groups of dwellings on sites within the built-up area of the settlement.

9.3. The application site is located in an established residential area within Kidlington and contains two detached single storey buildings used for care sales and garage. The application seeks planning permission for the demolition of these buildings and their replacement with two blocks comprising 15no. apartments.

9.4. In determining the acceptability of the principle of new dwellings regard is paid to Government guidance contained within the NPPF. This explains that the purpose of

the planning system is to contribute to the achievement of sustainable development. This is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

9.5. Paragraph 10 of the NPPF states that, so sustainable development is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development. Paragraph 11 states that applying the presumption to decision-making means:

- approving development proposals that accord with up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (this includes, for applications involving the provision of housing, situations where the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites), granting permission unless:
  - i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed;
  - ii. or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

9.6. The position in which the most important policies are considered to be out-of-date because of the absence of a five-year housing land supply is often referred to as the 'tilted balance'. Cherwell's position on five-year housing land supply is set out in the 2021 Annual Monitoring Report (AMR). The AMR presents a 3.5 year supply position for 2022-2027. According to the AMR, an additional 2,255 homes would need to be shown to be deliverable within the current 2022-2027 five-year period to achieve a five year supply as required by the NPPF.

9.7. However, paragraph 12 of the NPPF advises that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. In February 2021, the primacy of development plans in the planning system was reaffirmed by a Court of Appeal ruling on two appeals by land promoter Gladman, which emphasised that, where a council lacks the required five-year housing land supply, this may tilt the balance in favour of proposed residential schemes but it does not render grants of planning permission automatic.

9.8. The provision of additional housing within an existing residential area located in a sustainable Category A village weighs in favour of this proposal which has the potential of increasing the District's housing supply and therefore helps to address the current shortfall, albeit one providing one additional dwelling in this instance. However, any development proposal would need to be assessed against the other policies of the Development Plan.

9.9. The proposed development can therefore be considered acceptable in principle, with overall acceptability subject to compliance with the relevant Development Plan policies and the NPPF.

#### Design, and impact on the character of the area

##### *Policy Context*

9.10. Guidance contained within paragraph 126 of the NPPF covering good design states that *good design is a key aspect of sustainable development, is indivisible from good*

*planning, and should contribute positively to making places better for people. Further, permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.*

9.11. Saved Policy C28 of the CLP 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.

9.12. Policy ESD15 of the CLP 2015 provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. It seeks to secure development that would complement and enhance the character of its context through sensitive siting, layout and ensuring a high-quality design.

9.13. Paragraph 130 of the NPPF states that planning decisions should ensure that developments:

*a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*

*b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*

*c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*

*d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*

*e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*

*f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

9.14. Section 6.4 of the Cherwell Residential Design Guide (SPD) 2018 relates to Scale. It advises the building scale should respond to local context and proposed character. As a principle for scale, it states "*Taller buildings may be appropriate in town centre locations, but individual buildings should be designed to fit comfortably with the general urban form*".

#### *Assessment*

9.15. In terms of the design of the buildings, concerns were raised through the pre-application process in regard to the height, massing and scale of the proposal. In response the number of units for which permission is sought has been reduced from 20 units to 15 units.

9.16. It is acknowledged that public representatives are concerned with the overall height of the buildings and the impact this would have on the street scene. Concerns have also been raised in regard to the design and external materials to be used, within the local context.

- 9.17. Block A is proposed to be a three storey apartment building. This block is the larger of the two and is situated towards the front of the site facing Bicester Road. Across the three levels are 12 no. units, with 4 no. flats on each floor.
- 9.18. Block B is a single storey block comprising 3no. units, adjacent to the northern boundary at the rear of the site. Given the context of this building with surrounding residential gardens and properties, this block has a more diminutive form.
- 9.19. Both apartment blocks use a contemporary flat roof design, with materials and design details used to minimise the massing and form of the building, whilst creating visual interest. This is achieved through creating steps in the form, use of different brickwork colours and large openings/balconies where appropriate.
- 9.20. Block A is situated adjacent to properties along Bicester Road at the front of the site. The building would be slightly taller (9.5 metres height) than the adjacent buildings at Wheeler Court and Mulberry Court, but not to an extent that would be out-of-keeping with the adjacent developments at Wheeler Court and Mulberry Court. Both of these developments are relatively recently constructed.
- 9.21. Block B is a single storey building situated on part of the site that contains an existing single storey storage building. The design is consistent with the approach to Block A, uses contemporary design details including a flat roof. This approach is consistent with the character of properties adjacent to the site.
- 9.22. The contemporary design of the buildings accords with the style of the adjacent buildings at Wheeler Court and Mulberry Court, which utilise similar changes in materials to break-up the built form, balconies and contemporary design features.

### *Summary*

- 9.23. Overall, Officers consider that the design of the proposed buildings would be in-keeping with the surrounding streetscene and would not result in harm to the visual amenities of the area, thus complying with Saved Policies C28 and C30 of the CLP 1996 and Policy ESD15 of the CLP 2015.

### Residential amenity

#### *Policy context*

- 9.24. Saved Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. Policy ESD15 of the CLP 2015 highlights, amongst other things, that new development should *consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space.*
- 9.25. The Cherwell Residential Design Guide (2017) states that a minimum distance of 22m back to back, between properties must be maintained and a minimum of 14m distance is required from rear elevation to two storey side gable. First floor habitable room windows must not be within 7m of neighbouring property.

#### *Assessment*

#### *Relationship and Impacts with Existing Residential Properties*

- 9.26. Several of the public representations received have objected on the basis of the proposal causing unacceptable harm to their amenity through a loss of privacy by way of overlooking and loss of light.

- 9.27. On the eastern elevation, Block A contains secondary windows to the living room and kitchen space on the first and second floor of the properties. As outlined in the Cherwell Residential Design Guide, first floor habitable rooms must not be within 7m of a neighbouring property. There is a separation distance of 9.3m. However, there is a potential for overlooking as the floor plans for Mulberry Court show that the windows at the front of building adjacent to the boundary with Block A serve habitable bedrooms. As such, it is considered reasonable and necessary to impose a condition requiring the windows in the side elevation facing Mulberry Court to be obscurely glazed. This retains the reasonable amenity for new occupants of Block A by retaining the secondary window and limits the loss of privacy to existing residents at Mulberry Court.
- 9.28. In regard to the west elevation of Block A, the building has been designed such that there are no windows on this side of the building, and therefore no potential for overlooking along this side of the property. However, the building is situated approximately 5.5 to 6 m away from the east elevation of Wheeler Court which does contain windows which face on to the west elevation of Block A. Whilst this is not ideal, the floor plans approved for Wheeler Court show that, at the centre point of the building where there are windows, these serve a bathroom which is not a habitable room. At the front of the site, there are windows on the first and second floor at Wheeler Court which serve the habitable open plan living space. However, these rooms contain several windows, with two on the front, one of which leads to balcony. Each side elevation of this room at Wheeler Court contains at least 1 window. As such, there are at least 4 windows serving the open plan living space. As such, Officers consider that whilst there would be some harm caused through a loss of light, this would not be so substantial to warrant a refusal given the number of windows serving the space and the opportunity for daylight.
- 9.29. It is noted that concerns have been raised with the potential for overlooking between properties along Blenheim Road and Block A due to the three storey height of the building and habitable windows on the rear elevation. However, the separation exceeds the design guide requirements, measuring in excess of 50 metres to the closest rear elevation and without a direct relationship. As such, Officers consider there would not be harm to the privacy of residents along Blenheim Road as a result of windows on the rear elevation of Block A.
- 9.30. Block B is a single storey building located at the rear of the site, in the position of an existing single storey storage building. There are windows at the rear of the block which serve habitable bedrooms and bathroom spaces. There is a separation of approximately 1.2m before the boundary is reached with the garden of no.1 Blenheim Road. There are no surrounding residential properties that have a direct outlook on to the rear of Block B. As such, there is not potential for harm arising due to overlooking between habitable rooms. It is acknowledged that residents have raised concerns with regards to the possible removal of the boundary treatment between the rear of Block B and the garden of no. 1 Blenheim Road. Whilst the details of boundary treatments have not been provided, a condition securing the submission of these details is recommended. A standard 1.8m high close boarded boundary treatment would be sufficient in order to mitigate any harm

#### *Future Occupants and Outdoor Amenity Space*

- 9.31. Concerns have also been raised regarding the adequacy of the proposed provision of outdoor amenity space. An area of approximately 125m<sup>2</sup> of amenity space is to be provided at the rear of the site, adjacent to Block B. In addition, the apartments which front Bicester Road benefit from an enclosed balcony space. Whilst the amenity space is limited in scale and balconies have not been provided for all of the apartments, it is considered that an acceptable provision of amenity space has been provided. That said, there are parks within Kidlington that are accessible to the public and the lack of

such space is not considered to result in such a poor quality living environment that would warrant the refusal of the application.

### *Summary*

- 9.32. Overall, Officers acknowledge that the relationship of the west elevation of Block A in relation to the windows serving the eastern side elevation of Wheeler Court is not ideal. However, given the provision of alternate windows in the habitable living space of Wheeler Court, Officers consider that it would not be reasonable to refuse the application on amenity grounds in this aspect.
- 9.33. Subject to obscure glazing to the front eastern elevation windows serving the living spaces of the proposed apartments within Block A and a conditions securing suitable boundary treatments to the rear of the site, Officers consider that the proposal would not give rise to unacceptable to harm to residential amenity. Therefore, the proposal would comply with policy ESD15 of the Cherwell Local Plan and saved policy CLP30 of the 1996 Local Plan and advice with the Cherwell Residential Design Guide.

### Highway Safety

#### *Policy context*

- 9.34. Policy ESD15 of the CLP 2015 states, amongst other matters, that new development proposals should: be designed to deliver high quality safe places to live and work in.
- 9.35. Paragraph 108 of the NPPF states that in assessing specific applications for development, it should be ensured that:
- *appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
  - *safe and suitable access to the site can be achieved for all users; and*
  - *any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*
- 9.36. In addition, paragraph 109 highlights that *development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*

#### *Assessment*

- 9.37. Several concerns have been raised with regards to the parking provision proposed at the site, and the potential impact on highway safety. One parking space is to be provided per property plus three visitor spaces one of which is a disabled space. Whilst this is below OCC's standards, the Local Highway Authority (LHA) has confirmed this approach has been used in numerous occasions within developments based in Kidlington due to the high transport sustainability of the site and has therefore raised no objection to the parking proposed. Further to this, the LHA has raised no objections to the proposals, with the Highways Officers recommended conditions included as part of the recommendation on the application.
- 9.38. Furthermore, the LHA has requested a financial contribution towards additional double yellow line provision, in the form of a Traffic Regulation Order. This is considered reasonable and necessary to make the development acceptable to reduce unacceptable parking on the street.
- 9.39. The site is in a highly sustainable location, with frequent bus services within close proximity to the site. Further to this, there are a number of nearby amenities close to the site, and there are good levels of cycling infrastructure nearby. The application

includes suitable cycle parking provision, subject to additional details required by condition relating to the specific stand details. This would further promote the use of sustainable forms of travel and can be secured by an appropriately worded condition.

- 9.40. The LHA request for an electrical charging condition has not been imposed due to changes to Building Regulations.
- 9.41. Given the above, it is therefore considered the proposals comply with Policy ESD15 of the CLP 2015 and Government guidance contained within the NPPF and would therefore be acceptable in highway safety terms.

### Drainage

#### *Policy Context*

- 9.42. The NPPF states at paragraph 163 that when determining applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood risk assessment.
- 9.43. Policies ESD 6 and ESD 7 of the CLP 2015 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*

- 9.44. It is acknowledged by Officers that there are objections due to the lack of drainage information in support of the application. The site lies within Flood Zone 1 the area at lowest risk of flooding, and therefore a Flood Risk Assessment was not required in support of the application. The applicant's Design and Access statement acknowledges that a SuDS compliant drainage scheme will be required to serve the proposal; however, it is considered that this could be secured by way of a suitably worded condition attached to any permission granted.
- 9.45. Having regard to the above, and that the site contains an existing building, it is considered that sufficient drainage details could be secured by way of a suitably worded condition and therefore the proposed development is considered acceptable in drainage terms and in accord with Policies: ESD6 and ESD7 of the CLP 2015.

### Landscaping

- 9.46. The application includes areas of amenity space and landscaping. However, details of the specific landscaping to be provided have not been submitted as part of the application. As such, it is considered reasonable and necessary to provide details of the landscaping and its management to ensure that the proposals are suitable in the context of the site. These details could be secured by way of a suitably worded condition and therefore the proposed development is considered acceptable in drainage terms and in accord with Policy ESD15 of the CLP 2015.

### Ecology Impact

#### *Legislative context*

- 9.47. 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.

- 9.48. 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.
- 9.49. 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.
- 9.50. 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.
- 9.51. 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*

- 9.52. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 9.53. Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) 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.

- 9.54. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 9.55. Policy ESD10 of the CLP 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.
- 9.56. 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.
- 9.57. 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.
- 9.58. 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 LPAs 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*

- 9.59. Given the site's context within a built residential area of Kidlington and the existing garage/showroom there is limited potential for protected species on site. However, Policy ESD10 of the Local Plan requires new developments within the District should achieve a net gain in biodiversity through the protection, enhancement or creation of new biodiversity measures on site.
- 9.60. Accordingly, it is reasonable and necessary to include a condition requiring the submission of a biodiversity enhancement scheme.
- 9.61. In addition, it is noted that public comments have raised concerns with the presence of nesting birds on or in close proximity to the site. As such, a condition is recommended which restricts the clearance of the site during nesting season unless other provisions are agreed with the Local Planning Authority.

#### Planning Obligations

- 9.62. A S106 Legal agreement will be required to be entered into to secure mitigation resulting from the impact of the development both on and off site. This would ensure that the requirements of Policy INF1 of the CLP 2015 can be met, which seeks to ensure that the impacts of development upon infrastructure including transport, education, health, social and community facilities can be mitigated. The Authority is also required to ensure that any contributions sought meet the following legislative

tests, set out at Regulation 122 of the Community Infrastructure Regulations 2011 (as amended):

- Necessary to make the development acceptable in planning terms;
- Directly relate to the development; and
- Fairly and reasonable related in scale and kind to the development

9.63. The table at Appendix 1 sets out the required Heads of Terms and the justification for those requests.

### Other Matters

#### *Land Ownership Dispute*

9.64. It is noted that many of the representations received related to concerns regarding the ownership of the amenity space to be provided at the rear of the site. Following these comments, the applicant has advised they have taken advice from a solicitor and amended their site location plan accordingly to now show the correct land ownership for the site.

9.65. Whilst land ownership disputes are not materially relevant to the consideration of the application, there are procedural matters that are associated with land ownership that must be adhered to, in order for the application to be valid.

9.66. The role of the Local Planning Authority in land ownership is to ensure that where the applicant does not own all of the land within the red-edged site location plan, appropriate notices are served on any landowners. Accordingly, the applicant has signed Certificate B of the application forms, stating that they are not the sole owner of the land and have listed the other parties that have been notified of the planning application. This list amounts to four additional interested parties, with notice having been served on 8 December 2021.

9.67. The amended plans show that an area of land between the rear of Mulberry House and the proposed amenity space has been removed from the red edged site location and block plans, therefore, is no longer included within the proposed development site. There is an area of land which remains to eastern side of the proposed Block A and the rear of Mulberry House and its curtilage that is proposed to remain as amenity space serving the development. This is considered sufficient, in combination with the balconies and other areas of amenity space on the site, to serve thr needs of future residents. ....

9.68. From the information provided from the applicant and the public representatives, the area of amenity space to be included appears to fall within the ownership of one of the parties which have been served notice. Therefore, appropriate notice has been served on the interest parties and the Authority is satisfied that there is a reasonable opportunity for the development to come forward as proposed.

9.69. Should planning permission be granted, a S106 agreement would be required to be signed by all parties who have an interest on the land. At this point, land registry plans are checked in relation to agreeing the S106 obligations. Should a land owner been identified that has not been served the correct notice, appropriate action would at this point be taken.

## 10. PLANNING BALANCE AND CONCLUSION

- 10.1. The proposal complies with the relevant Development Plan policies and guidance listed at section 8 of this report, and so is considered to be sustainable development. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.
- 10.2. The delivery of housing is high on the Government and District Council's agendas. Having regard to the above, the proposal will secure additional housing provision, in particular having regard to the Council's lack of a five-year housing land supply and other material planning consideration, the proposal is on balance considered acceptable.

## 11. RECOMMENDATION

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

S106 Head of Terms:

As set out in the table at Appendix 1.

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 following plans and documents:

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.

**Landscaping**

3. A scheme for landscaping the site shall be provided to and approved in writing by the Local Planning Authority which shall include:-
  - (a) 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),

(b) 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,

(c) details of the hard landscaping including hard surface areas, pavements, pedestrian areas and steps.

(d) Full details of all means of enclosures

Such details shall be provided prior to the development progressing above slab level or such alternative time frame as agreed in writing by the developer and the Local Planning Authority. The development shall be carried out in accordance with the approved details and the hard landscape elements shall be carried out prior to the first occupation of the development and shall be retained as such thereafter.

All planting, seeding or turfing comprised 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 that any trees and 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, unless the Local Planning Authority gives written consent for any variation.

Reason: To ensure that a satisfactory landscape scheme is provided in the interest of well planned development and visual amenity and to accord 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.

#### **Materials Details**

4. No development shall commence above slab level unless and until full details of the materials to be used in the construction of the external walls and roof of the building (including samples) as well as how these materials are to be applied on building have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details and shall be retained as such thereafter.

Reason: In the interests of the visual amenities of the area, to ensure and retain 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.

#### **Door and Window Details**

5. No development shall commence above slab level except for demolition unless and until full details of the doors and windows hereby approved, at a scale of 1:20 including a cross section, cill, lintel and recess detail and colour/finish, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the doors and windows shall be installed within the building in accordance with the approved details and shall be retained as such thereafter.

Reason: In the interests of the visual amenities of the area, to ensure and retain 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.

### **Vehicular Access Details**

6. No development shall commence except for demolition unless and until full specification details of the vehicular accesses, driveways and turning areas to serve the dwellings, which shall include construction, layout, surfacing, lighting and drainage, have been submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of any of the dwellings, the access, driveways and turning areas shall be constructed in accordance with the approved details.

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.

### **Parking Space Provision**

7. No dwelling shall be occupied until car parking space to serve that dwelling has been provided according to details that have been submitted to and agreed in writing by the Local Planning Authority. All car parking shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times thereafter, unless otherwise agreed in writing beforehand by the local planning authority.

Reason: To ensure appropriate levels of car parking are available at all times to serve the development, and to comply with Government guidance contained within the National Planning Policy Framework.

### **Surface Water Drainage Details**

8. No development shall commence except for demolition unless and until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall also include:
  - Discharge Rates
  - Discharge Volumes
  - Maintenance and management of SUDS features
  - Sizing of features - attenuation volume
  - Infiltration in accordance with BRE365
  - Detailed drainage layout with pipe numbers
  - SUDS - (in a treatment train approach to improve water quality)
  - Network drainage calculations
  - Phasing
  - Flood routes in exceedance

Reason: To ensure satisfactory drainage of the site in the interests of public health, to avoid flooding of adjacent land and property and to comply with Policies ESD6 and ESD7 of the Cherwell Local Plan (2011-2031) Part 1 and Government guidance contained within the National Planning Policy Framework.

### **Site Contamination**

9. Further contamination risk assessment is required in accordance with paragraph 10.3.2 of the submitted Geo-Environmental Site Investigation, BRD3473-OR2-A report. Prior to the commencement of the development hereby permitted, the further assessment recommended at paragraph 10.3.2 shall be undertaken to inform the remediation strategy proposals. This shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

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

10. If contamination is found by undertaking the work carried out under condition 9, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

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

11. If remedial works have been identified in condition 11, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 11. 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 risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with saved Policy ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

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

### **Cycle Storage**

13. Prior to the first occupation of the dwellings hereby approved, full design details of the cycle storage area, including elevations and materials, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved cycle storage area shall be erected in accordance with the approved details, prior to the first occupation of those dwellings.

Reason: To encourage sustainable modes of transport, to ensure the satisfactory appearance of the completed development and to comply with Policies ESD1 and ESD 15 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.

### **Waste Management**

14. Prior to the occupation of the development hereby approved, a waste management strategy including details of how waste would be collected from the site, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out and maintained in accordance with the approved details.

Reason: In order that proper arrangements are made for the disposal of waste, in the interests of highway safety and in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

### **Biodiversity Enhancement**

15. No development shall commence, including any demolition, and any works of site clearance, unless and until a method statement for enhancing the biodiversity on the site has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.

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

### **Boundary Treatments**

16. No development shall commence above slab level except for demolition unless until details of the boundary treatments have been submitted to and approved in writing by the Local Planning Authority. Thereafter, boundary treatments shall be implemented prior to the occupation of any unit on the site and retained in accordance with the approved details.

Reason: In order that proper arrangements are made for the disposal of waste, in the interests of highway safety and in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.



### **Site Clearance outside of Nesting Season**

17. All site clearance (including the removal of any vegetation or works to hedgerows) should be timed so as to avoid the bird nesting season, this being during the months of March until July inclusive unless alternative provisions have been previously agreed in writing by the Local Planning Authority

Reason : To ensure that the development will conserve and enhance the natural environment and will not cause significant harm to any protected species or its habitat in accordance with the Government's aim to achieve sustainable development as set out in Section 15 of the National Planning Policy Framework.

### **Noise Levels to Habitable Rooms**

18. Prior to the development commencing, except for demolition, a report should be provided and approved in writing by the local planning authority that shows that all habitable rooms within the dwelling will achieve the noise levels specified in BS8233:2014 (Guidance on sound insulation and noise reduction for buildings) for indoor and external noise levels (if required then the methods for rating the noise in BS4142:2014 should be used, such as for noise from industrial sources). Thereafter, and prior to the first occupation of the dwellings affected by this condition, the dwellings shall be insulated and maintained in accordance with the approved details.

Reason: In the interests of the residential amenities of the area 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.

### **Construction Environment Management Plan**

19. No development shall commence unless and until 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 has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with approved CEMP

Reason: In the interests of the residential amenities of the area, to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework

### **External Lighting**

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

Reason: In the interests of the residential amenities of the area, to ensure and retain the satisfactory appearance of the completed development 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.

### **Obscure Glazing to Eastern Windows of Block A**

21. The windows at ground floor, first floor and second floor level in the eastern side elevation that serve the habitable living areas of flats 1, 5 and 9 as shown on the Sketch Units – Block A Plans 18112-PP-002-A shall be permanently retained with

purpose made obscure glazing and shall be top opening only at 1.7m above the floor level of the room in which the window is installed.

Reason: To safeguard the amenity of the occupiers at Mulberry Court, former 3 Bicester Road, to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

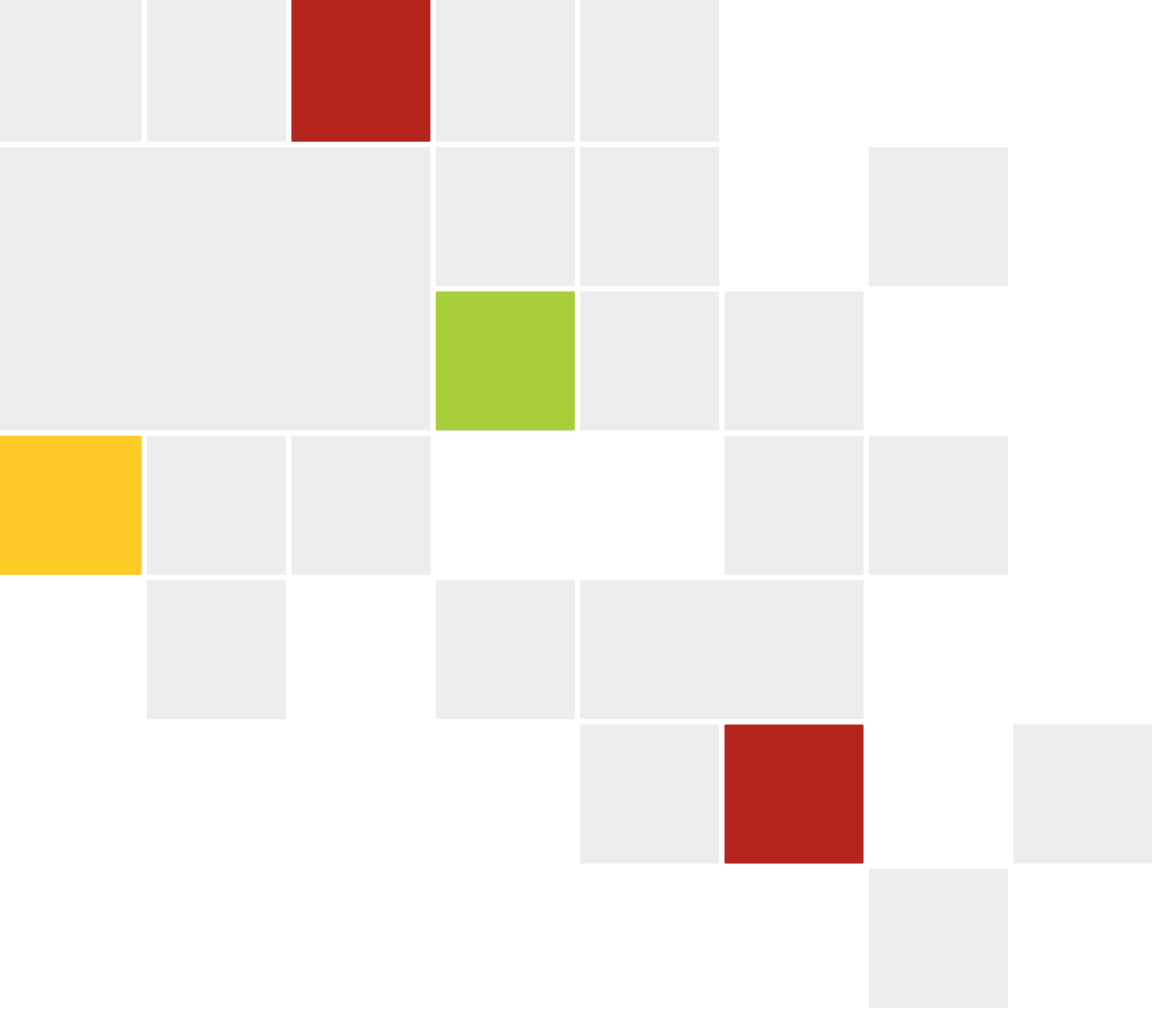
## APPENDIX 1 – Heads of Terms for Section 106 Agreement/Undertaking

Planning Obligation			
Detail	Amounts (all to be index linked)	Trigger Points	Regulation 122 Assessment
Off-site Affordable housing	Tbc but would be equivalent to the cost of providing 5 affordable units on site which is 35% of the total, to be delegated to Officers	Tbc but likely prior to the occupation of any unit on site to be delegated to Officers	<p><b>Necessary</b> – as would provide housing for those who are not able to rent or buy on the open market pursuant to Policy BSC3 of the Cherwell Local Plan</p> <p><b>Directly Related</b> – the affordable housing would be provided off-site due to relatively small-scale of the proposal and requirements for registered providers to take on affordable housing on site. The requirement is directly generated from the proposal, above the affordable housing threshold set out in Policy BSC3.</p> <p><b>Fairly and reasonably related in scale and kind</b> – the contribution will be based upon the Cherwell Local Plan requirement for the percentage of affordable housing and the associated cost of providing this off-site.</p>
Off-site outdoor sports facilities provision at Stratfield Brake	£5,557.76	Prior to the occupation of any unit on site	<b>Necessary</b> - the proposed development will lead to an increase in demand and pressure on existing

Off-site indoor sports facilities provision at Kidlington and Gosford Leisure Centre	£3160.56	Prior to the occupation of any unit on site	services and facilities in the locality as a direct result of population growth associated with the development in accordance with Policy BSC12, INF1 and advice in the Developer Contribution SPD.
Community Hall Facilities	£11,128.00	Prior to the occupation of any unit on site	<p><b>Directly Related</b> – the future occupiers will place additional demand on existing facilities.</p> <p><b>Fairly and reasonably related in scale and kind</b> – calculations have been based on the final mix of housing proposed and the likely number of occupants as set out in the Developer Contributions SPD.</p>
Waste and Recycling Facilities	£1,665	Prior to the occupation of any unit on site	<p><b>Necessary</b> – the dwellings will require adequate recycling facilities and waste collections for future occupants and in accordance with the advice in the Developer Contributions SPD.</p> <p><b>Directly Related</b> – the need for these comes from the provision of new residential accommodation</p> <p><b>Fairly and reasonably related in scale and kind</b> – costs in accordance with the advice in the Developer Contribution SPD.</p>
Traffic Regulation Order	£6,255	Likely prior to the occupation of any unit on site, to be delegated to Officers	<b>Necessary</b> – the proposal will place an additional demand on street parking and further management through the provision of double yellow rules around

			<p>Oxford Road/Bicester Road are required to mitigate any harm from off-site parking</p> <p><b>Directly Related</b> – the need for this arises from the provision of new residential accommodation and a reduction in on-site parking below OCCs standards.</p> <p><b>Fairly and reasonably related in scale and kind</b> – the costing of this TRO is directly related to the scale of additional yellow lines that required as a result of the scale of the proposed development and reduction in parking below the standard required.</p>
Requirement to monitor the development through the construction and post occupancy stages	N/A	The requirement to agree a scheme prior to implementation and then ongoing timescales to monitor the development	<p><b>Necessary</b> – in order to ensure that the development is meeting the high standards sought across the district.</p> <p><b>Directly related</b> – the monitoring is directly related to the development itself</p> <p><b>Fairly and reasonably related in scale and kind</b> – the monitoring to be undertaken would be proportionate to the development itself and therefore is fairly and reasonably related in scale and kind to the development.</p>
CDC and OCC Monitoring Fees	CDC - £1,500	On completion of S106	The CDC charge is based upon its recently agreed Fees and Charges Schedule which set

	OCC- TBC		<p>out that for developments of 10-100 dwellings that a bespoke charge will be based upon the number of obligations and triggers with a minimum charge of £1,000. A registration charge of £500 is also applicable. As the development has relatively few obligations and triggers for CDC, the minimum charge plus the registration charge is required. The need for a monitoring fee is to ensure that it can appropriately monitor that the development is complying with its S106 including the high standards sought at the site and taking into account the context of the site.</p>
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# Boyer

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