

Cherwell District Council
Planning & Development Services
Bodicote House White Post Road
Bodicote
Banbury
OX15 4AA

Our ref: WA/2021/129037/01-L01
Your ref: 21/01119/OUT
Date: 21 May 2021

Dear Sir/Madam

Outline planning application for the re-development of the banbury oil depot to include the demolition/removal of buildings and other structures associated with the oil depot use and the erection of up to 143 apartments and up to 166m2 of community and/or retail and/or commercial space (class use E and/or F2) with all matters (relating to appearance landscaping, scale and layout) reserved except for access off tramway road

Q8 Fuelcare, Tramway Road, Banbury, OX16 5TD

Thank you for consulting us on the above application on 19 April 2021.

Environment Agency position

In accordance with paragraph(s) 165 and 170 of the National Planning Policy Framework (NPPF), we **object** to the proposed development due to its unacceptable risk to the environment. We recommend that planning permission is refused for the following reasons:

Reason 1 – flood risk

The site lies within Flood Zones 2 and 3 as shown on the Environment Agency flood map for planning and a flood risk assessment to demonstrate how the development will be safe without increasing flood risk elsewhere is required.

In the absence of an acceptable Flood Risk Assessment (FRA) we **object** to this application and recommend that planning permission is refused.

The submitted FRA does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the planning practice guidance. The FRA does not therefore adequately assess the development's flood risks.

The proposal is contrary to Local Plan Policy ESD 1 and ESD 6.

In particular, the FRA fails to:

- Consider how a range of flooding events (including extreme events) will affect the

Cont/d..

site, people and property, based on up to date baseline data

- Take the impacts of climate change into account as there is no assessment of the impact of climate change using appropriate allowances in accordance with government guidance.
- Fails to identify mitigation measures for any loss of flood storage during a 1% climate change event as a result of the development
- Consider how people will be kept safe from flood hazards
- Fails to identify suitable finished floor levels for the development, in particular the residential dwellings

Overcoming this objection

To overcome our objection, the applicant should submit a revised FRA which addresses the points highlighted above.

If this cannot be achieved, we are likely to maintain our objection. Please consult us on any revised FRA and we will respond within 21 days of receiving it.

The baseline evidence used within the FRA to identify the risk of flooding on site is out of date. The conclusion that the site is entirely within Flood Zone 2 is incorrect. Parts of the site along the river corridor and land identified for residential use is currently shown to be within Flood Zone 3 according to our flood map for planning.

The applicant should contact us to obtain the most current data for inclusion within the FRA.

The applicant should note that residential development within flood zone 3 will need to demonstrate that it meets the requirements of the flood risk exception test.

The FRA should map the expected extents and depths of a range of critical flood events up to and including a 1% annual probability event with an appropriate allowance for climate change in accordance with the following guidance : ['Flood risk assessments: climate change allowances'](#). More Vulnerable development in flood zones 2 or 3 should use the higher central and upper end allowances. Flood extents should be mapped in accordance with a detailed topographical survey of the site.

In this instance the available Environment Agency data for this area only includes a 20% allowance for climate change which is not sufficient for use within the FRA. The applicant may need to undertake revised fluvial modelling to establish the climate change flood levels for the FRA.

For any potential loss of flood storage based on the illustrative masterplan for the site, direct replacement of flood storage should be provided through floodplain compensation. This is necessary to ensure that the site can accommodate the amount of development being proposed without increasing flood risk elsewhere and that sufficient space for flood storage is protected.

Level for level flood storage compensation is the preferred method of mitigation. This method is the matching of lost flood storage volume, with new flood storage volume gained through the reduction of ground levels. Compensatory volume must be provided at the same level as the lost storage so an equal volume of flood storage is created to

that lost through the development. This equal volume must apply at all levels between the lowest point on the site and the design flood level (1% climate change).

For this to be achievable it requires land to be available to the applicant on the edge of the flood plain and above the 1% plus climate change flood level. Comparing the flood level with a topographical survey will show the availability of suitable land.

Calculations should be submitted to demonstrate this. Ideally we would like to see this presented in a table showing the volume of flood plain storage lost (fill) and the volume of flood plain storage gained (cut) at 0.2 metre intervals.

Part of the site is shown to receive some protection from a local flood defence. The level of protection must be included within the FRA and an assessment undertaken of the potential impact should the defence fail or does not protect the site up to the appropriate climate change level.

Finished floor levels should be set as high as possible above the 1% climate change flood level. Raising finished floor levels is the most robust way of ensuring the development is safe from the risk of flooding. Using flood resistant or resilient construction measures is considered an additional benefit but should not be relied upon alone to prevent internal flooding.

Guidance on how to prepare a flood risk assessment can be found at <https://www.gov.uk/guidance/flood-risk-assessment-for-planning-applications>

and;

<https://www.gov.uk/guidance/flood-risk-and-coastal-change#site-specific-flood-risk-assessment-all>

Reason 2 – biodiversity protection and enhancement

The development site is adjacent to the river Cherwell, a designated main river. Insufficient information has been provided to assess the risks posed by this development and there is a lack of provision to ensure the development will protect and enhance the river corridor for nature conservation value and how biodiversity net gain will be achieved.

We therefore **object** to the proposed development and recommend that planning permission is refused as the application does not meet the requirements of Local Plan Policy ESD 10 and ESD 17.

Overcoming the objection

To overcome our objection, the applicant should submit revised details which address the points highlighted above.

If this cannot be achieved, we are likely to maintain our objection.

The applicant will need to demonstrate that sufficient space for quality Green Infrastructure which benefits both people and wildlife is identified to inform future design stages of this development. Principles of how biodiversity net gain can be delivered should be established, and areas currently benefiting wildlife should be protected.

Although the ecological appraisal describes the river corridor as currently being unattractive and negatively impacting on the local area, the current vegetation

composition offers an undisturbed reach of river bank which is very rare as the river flows through Banbury. It's value as an undisturbed area along a UK priority habitat should not be underestimated. It offers screening along the river, and the current land use means that there is minimal disturbance to this area. The proposals will introduce high levels of disturbance to the river corridor and this has not been adequately addressed in the ecological appraisal.

The river corridor is currently dominated by unmanaged scrub and trees which offers a rare section of undisturbed and unmanaged habitat along an otherwise urbanised reach of the Cherwell. When considering the impact of the development, the applicant will need to take into account the introduction of the residents, dogs, vehicle movement close by, and lighting and demonstrate how these impacts will be mitigated.

We are also concerned that an otter survey has not been carried out along the bank of the river as the relatively undisturbed nature of the site and the current vegetation composition gives shelter along an otherwise open and high disturbed stretch of the river. It is one of the few reaches of river in Banbury which offers seclusion and therefore lying up sites.

While landscaping is a reserved matter and details of planting and management regimes can be dealt with later, the principals of protecting and enhancing the sites value for biodiversity need to be established to inform future design phases. The illustrative masterplan and landscape plan show significant development in the form of parking, amenity space, footpaths and raised platforms adjacent to the river. We will object to this design if pursued. The vegetation cannot be retained and managed for biodiversity value if these features fall within it. An 8 – 10 metre biodiversity zone should be provided which is designed and managed to improve the ecological value of the development.

Environmental permit - advice to applicant

The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

Advice to planning authority

Land contamination

In addition to flood risk and biodiversity matters, we have also assessed the application in relation to land contamination and groundwater quality based on the previous use of the site. Development presents a risk of mobilising contaminants during construction which may pollute controlled waters. We have found that submitted preliminary land quality assessment confirms that it will be possible to manage this risk and should our objections be resolved, we will ask for additional and more detailed assessments and remediation strategies through suitably worded planning conditions.

Exception test

In accordance with the National Planning Policy Framework, the proposed development is appropriate provided that the site meets the requirements of the exception test. Our comments on the proposals relate to the part of the exception test that demonstrates the development is safe. The local planning authority must decide whether or not the proposal provides wider sustainability benefits to the community that outweigh flood risk.

The following issues are not within our direct remit or expertise, but nevertheless are important considerations for managing flood risk for this development. Prior to deciding this application we recommend that consideration is given to the issues below. Where necessary, the advice of relevant experts should be sought.

- Adequacy of rescue or evacuation arrangements
- Details and adequacy of an emergency plan
- Provision of and adequacy of a temporary refuge
- Details and adequacy of flood proofing and other building level resistance and resilience measures
- Details and calculations relating to the structural stability of buildings during a flood
- Whether insurance can be gained or not
- Provision of an adequate means of surface water disposal such that flood risk on and off-site isn't increased

Closing comments

If you are minded to approve the application contrary to this advice, please contact us to allow further discussion and/or representations from us in line with the Town and Country Planning (Consultation) (England) Direction 2009.

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me on the number below.

Yours faithfully

Miss Sarah Green
Sustainable Places - Planning Advisor

Direct dial 0208 474 9253

Direct e-mail planning_THM@environment-agency.gov.uk