

**Case Officer:** Bob Neville

**Recommendation:** Refusal

**Applicant:** Mr B Edwards

**Proposal:** Demolition of existing dwelling. Erection of 6 no. 2 x bed flats over 2 storeys with new access road, vehicle turning and parking spaces.

**Expiry Date:** 9 June 2021

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

- 1.1. The application relates to the site of an existing vacant two storey detached dwelling to the east of, and previously associated with Wykham Park Academy (a secondary and sixth form school) within Banbury. To the north/north-east of the site there are residential properties with the school and its associated grounds wrapping around the site to the south/west and north.
- 1.2. The existing property of brick construction under a tiled roof sits within a substantial plot back-land set back from the existing highway (Ruskin Road) from which access is taken, via an existing over-grown access road.
- 1.3. The building is in a poor state of repair with the effects of significant vandalism evident. At the time of the site visit the site was over-grown. There are a number of significant trees both within the site and on adjacent land.
- 1.4. In terms of site constraints, the site is not within a conservation area and there are no listed buildings within the vicinity of the site. The site is within an area known to be at risk (medium) of surface water flooding and the geology in the area is known to be affected by Radon Gas. A Public Right of Way (ref. footpath 120/40/10) runs along the north-eastern boundary of the site. There records of protect and notable species (Pipistrelle Bat, Swifts and West European Hedgehog) being present within the vicinity of the site.

## **2. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 2.1. The application seeks planning permission for the demolition of the existing and development of 6 no. 2 x bed flats over 2 storeys with new access road, vehicle turning and parking spaces. The proposed flats would be of brick finish under a tiled roof. The proposed flats would be served by an access road (~90m in length x 4m wide) with turning head and 12 no. parking spaces angled directly off the access road.
- 2.2. Unfortunately, due to a delay in the posting of appropriate site notice, the application has gone beyond its original target date for determination, due to the need for the statutory consultation period to be observed prior to the issuing of any decision. The applicant's agent has been made aware of these delays, but no extension of the determination period has been agreed.

## **3. RELEVANT PLANNING HISTORY**

- 3.1. There is no recent planning history directly relevant to the proposal

## **4. PRE-APPLICATION DISCUSSIONS**

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

## 5. RESPONSE TO PUBLICITY

- 5.1. This application has been publicised by way of a site notice displayed near the site and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **18 June 2021**.
- 5.2. Three letters of objection have been received during the application. The comments raised by third parties are summarised as follows:
- Detrimental impacts on residential amenity, through potential over-looking.
  - Highway safety; increased traffic would exacerbate existing issues in relation between pedestrian and vehicle movements within the area and inappropriate on-street parking.
  - Concerns raised with regards to drainage; given existing issues relating to ground conditions noticeable on adjacent footpath.
- 5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## 6. RESPONSE TO CONSULTATION

- 6.1. 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

- 6.2. BANBURY TOWN COUNCIL: **Objects**, on the following grounds:
- 1) The proposal is considered to be a contrived form of overdevelopment of a back-land site that will cause harm to the living environment of houses in Wykham Place by reason of overlooking and disturbance from vehicles using the proposed access way;
  - 2) The access and parking arrangements are considered inadequate given the length and width of the access way and are likely to create difficult turning and passing manoeuvres, including for waste freighters;
  - 3) Lack of appropriate flood risk assessment.

### OTHER CONSULTEES

- 6.3. ARBORICULTURE: No comments received.
- 6.4. ARCHAEOLOGY (OCC): **No objections subject to conditions**; noting that the site lies within an area of archaeological interest to the north of an area where later Prehistoric and Roman features have been recorded. If planning permission were to be granted conditions would be required in respect of applicant being responsible for ensuring the implementation of an archaeological monitoring and recording action (watching brief) to be maintained during the period of construction.
- 6.5. BUILDING CONTROL: **No objections**. Proposals will require a separate building regulations approval.
- 6.6. CDC LAND DRAINAGE: **Objects**. There is known to be a medium/high risk of surface water flooding on this site. A Flood Risk Assessment is needed including in particular a surface water management strategy that will prevent the proposed development from flooding and not pass risk elsewhere. The local geology is not likely to be conducive to soakaways as suggested within the supporting Design and Access Statement. Appropriate soakage tests (to BRE 365 or equivalent) required to support any such surface water management strategy.
- 6.7. ECOLOGY: No comments received.

- 6.8. HOUSING STANDARDS: No comments received.
- 6.9. LEGAL SERVICES RIGHTS OF WAY (CDC): **No objections** subject to the applicant being reminded that the adjacent public footpath numbered 120/40 must remain clear and accessible at all times.
- 6.10. LOCAL HIGHWAYS AUTHORITY (LHA): **Objects**. The LHA advises that:

*The proposed access does not meet highway land. The highway terminates where it meets Public Right of Way 120/40/10. This is at a point immediately to the north of where the application red line terminates. There is therefore a piece of land between the application site and the highway over which access must be gained but which does not appear to be within the control of either the applicant or the County. Unfettered access to the application site cannot therefore be guaranteed. **Reason for objection.** The area in question would need to be included within the redline, with notice served on the relevant parties. Precise details of the extent of adopted highway in this location can be obtained from the County's Highways Records office. Contact email: [highways.records@oxfordshire.gov.uk](mailto:highways.records@oxfordshire.gov.uk).*

*Further to the above concern, there is insufficient detail in the application documents regarding the adequacy of the access and internal vehicle circulation provisions. The County would need to see a detailed access drawing demonstrating that visibility splays compliant with the Manual for Streets are achievable, and these can overcome the presence of on-street parking on Ruskin Road. The County would also need to see internal vehicle swept path analysis demonstrating that the access, internal driveway, turning head and parking spaces are suitable for the vehicles that are likely to use them. In this connection it is not clear whether the applicant proposes that refuse vehicles access the site in order to collect refuse from the refuse store located next to the turning head. This would need to be clarified and vehicle swept path provided to demonstrate that proposed arrangements are acceptable. **Reason for objection.***

*The location and design of parking on internal driveway is far from ideal. It is not certain that cars will drive to the top of the site, use the turning-head, then egress the site in a forward driving gear. There is no measure to prevent occupiers from reversing out from the site directly onto Ruskin Rd and into oncoming traffic accessing or egressing Wykham Park Academy. Furthermore, parking bays appear to be only 2.3m in width. The County requires parking bays to have minimum dimensions of 2.5m x 5.0m as set out in para 7.20 of Oxfordshire County Council's Residential Road Design Guide. For echelon parking, the length of the bays needs to be longer based on either 45 or 60 degree angle, as also set out in the design guide. **Reason for objection.***

*Also of concern is the likely conflict of peak hour traffic from the application site with the immediately adjacent Wykham Park Academy main vehicular and pedestrian access and with the immediately adjacent Public Right of Way footpath No.120/40/10. This is of greatest concern during the Academy's attendance and dispersal peaks.*

- 6.11. OPEN SPACES SOCIETY: No comments received.
- 6.12. RAMBLERS ASSOCIATION: No comments received.
- 6.13. RIGHTS OF WAY (OCC): **No objections** subject to proposals not being to the detriment of the existing public right of way or encroaching on the authorised route.

## **7. RELEVANT PLANNING POLICY AND GUIDANCE**

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

- 7.2. 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
- BSC1: District Wide Housing Distribution
- ESD1: Mitigating and Adapting to Climate Change
- ESD3: Sustainable Construction
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDS)
- 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
- ENV1: Environmental pollution

- 7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell Residential Design Guide (2018) (CRDG)
- National Design Guide (2019) (NDG)

## **8. APPRAISAL**

- 8.1. 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 and Flood-risk
- Ecology & Biodiversity

Principle of development:

- 8.2. The CLP 2015 states that housing growth will be directed towards the urban areas of Banbury and Bicester. Paragraph B.88 states: *'By focussing development in and around the towns of Bicester and Banbury we aim to ensure that the housing growth which the District needs only takes place in the locations that are most sustainable and most capable of absorbing this new growth'.*
- 8.3. Policy BSC 1 of the CLP 2015 sets out the distribution of housing growth throughout the Cherwell District Council area up to 2031, stating 22,840 homes are to be delivered during the plan period, with 7,319 of those to be delivered within Banbury.
- 8.4. The NPPF's key objective is to support the achievement of sustainable development through the planning system; recognising the need to secure gains in the overarching objectives (economic, social and environmental). In respect of new residential development there is a requirement for the provision of new housing of the right type in the right location at the right time, and that development should also

contribute to protecting and enhancing our natural, built and historic environment, as well as fostering a well-designed and safe built environment (Para. 8). These aims are echoed within the policies of the CLP 2015 which looks to support sustainable development.

- 8.5. The site is within the built up limits of Banbury, and it is considered that the principle of new development may be considered acceptable in general sustainability terms of the location, with overall acceptability dependent on other material considerations including visual amenity, residential amenity, highway safety, flood-risk and ecological issues, discussed further below.

Design, and impact on the character of the area:

- 8.6. The Government attaches great importance to the design of the built environment within the NPPF. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. These aims are also echoed within Policy ESD15 of the CLP 2015 which looks to promote and support development of a high standard which contribute positively to an area's character and identity by creating or reinforcing local distinctiveness.
- 8.7. Saved Policy C28 of the CLP 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the context of that development. Further, saved Policy C30 of CLP 1996 states control will be exercised to ensure that all new housing development is compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.
- 8.8. The site is located to the rear of the properties along Wykham Place, a residential road characterised by a uniformed pattern of development (of semi-detached and terraces of 4). Whilst having some variation in design and use of materials, there is a distinct character to the street scene which is enhanced by the regular spacing of the dwellings and a strong building line. A secondary school is situated to the south and east of the site, with the tennis courts and playing field being situated to the north and west of the site.
- 8.9. The site is not within a designated conservation area and the locality is not particularly sensitive, and there is not one particular architectural style that is preferred in this location. The site is, however, visible from the public domain and the public right of way which runs along the north eastern boundary of the site, and views would be experienced from this route and surrounding properties.
- 8.10. The proposed two storey scale and proposed palette of materials would not be inconsistent with local vernacular. Whilst architectural detailing is limited at this stage the general design approach appears relatively simple. However, the interlinking elements do result in a somewhat complicated roof plan, and the three first floor balconies wrapping around corners of the building are also not a design feature particularly sympathetic to the context or a prominent feature within the immediate area.
- 8.11. Officers consider the proposed development fails to respect the existing pattern of development in the area, which is characterised by a strong building line with large gardens to the rear. The proposal would have no significant presence within the street-scene sitting at the end a long private driveway which would be dominated by car parking. Both national (NDG) and local design guidance (CRDG) highlights the importance of appropriate car parking provision and the contribution it can have on the sense of place. In this respect the proposed access road would be dominated by car parking which would serve as a visually cluttered entrance to the site, and is an arrangement is generally out of keeping with the prevailing pattern of development in the locality.

- 8.12. It is acknowledged that the site is currently occupied by a single two storey detached dwelling, and this is at odds with the development on Wykham Place. However, it is understood that this dwelling is related to the school and historically would have served the school as a caretaker's house. Replacing this house, which has a relationship to the school, with a noticeably more intensive form of residential development, that bears no relationship to the school, would amount to undesirable back-land development that would fail to integrate with the existing pattern of development in the area.
- 8.13. There are several trees both on the site and on adjacent land that are considered to be significant contributors to the general visual amenities of the area. No significant consideration appears to have been given to the potential impacts of the proposed development on existing trees and vice versa, within the submission to ensure the continued health and well-being of existing tree coverage; the loss of such would further compound the visual harm discussed above.
- 8.14. Having regard to all of the above, the proposal amounts to an inappropriate form of development that is not in keeping with the existing pattern of the development. Furthermore, the quantum of development and the parking layout indicated would result in a proliferation of parking along the access road to the front of the property, which would be detrimental to the visual amenities of the area. The proposal would, therefore, be detrimental to the character and appearance of the street scene and would thus be contrary to saved Policy C28 and C30 of the CLP 1996, Policy ESD15 of the CLP 2015 and Government guidance contained within the NPPF having regard to 'Achieving well-designed places'.

Residential amenity:

- 8.15. Para. 180 of the NPPF advises of the need for planning policies and to 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.
- 8.16. Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2015 which states that: *'new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space'*.
- 8.17. The proposed dwelling units, whilst somewhat contrived in its design would provide an acceptable standard of internal living environment that would meet potential future occupant day to day needs; and would provide outdoor amenity space; and in this respect could be considered acceptable.
- 8.18. Concerns have been raised by local residents in Wykham Place, to the north east and which back on to the site, in terms of detrimental impacts on their residential amenity. There is obviously an existing dwelling on the site, which includes first floor windows in the north-east elevation which look out toward properties in Wykham Place; and whilst vacant at this time could be brought back into residential use without the need for planning permission.
- 8.19. The properties within Wykham Place benefit long rear gardens with vegetation along the route of the PRow providing natural screening restricting views from the footpath. Existing vegetation within the site further obscures views between the existing dwelling in the site and properties in Wykham place. The proposals would sit in excess of 30m off the rear elevations of properties within Wykham Place. This would be in accordance with separation distances advised within the CRDG, to avoid situations of loss of privacy, light and outlook between existing and proposed elevations.

- 8.20. However, the development would result in the built form coming much closer to the boundary of the site sitting at a distance of approximately 5m from the rear boundaries of residential properties in Wykham Place. With balconies and windows proposed in the north-eastern elevation these would directly overlook the private rear gardens; whilst this would not directly preclude the use of the rear gardens it would result in both actual and a greater perception of being over-looked. This is considered an unacceptable relationship detrimentally impacting on current levels of amenity enjoyed by these properties.
- 8.21. Whilst officers consider that the proposed dwelling units by virtue of their siting and design would provide appropriate separation between the proposed and existing neighbouring dwellings, not resulting in significant loss of light, outlook or privacy of existing dwellings, given the scale, design and proximity of the proposed dwelling units to the boundaries of properties within Wykham Place, the proposals would result in significant and demonstrable harm to the outdoor living environment and levels of amenity currently enjoyed by the occupants of these properties; contrary to the provisions and aims of saved policies C28 and C30 of the CLP 1996, ESD15 of the CLP 2015 and Government guidance within the NPPF in 'Achieving well-designed places'.

Highway safety:

- 8.22. The NPPF (Para. 108) advises 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.
- 8.23. The NPPF further states 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'.*
- 8.24. Both Policies ESD15 and SLE4 of the CLP 2015 reflect the provisions and aims of the NPPF. Policy ESD15 of the CLP 2015 states that: *"New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work"*; whilst Policy SLE4 states that: *"All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported"*.
- 8.25. The LHA has assessed the application and raises significant concerns in relation to the proposals to the extent that they object to the application on highway safety grounds; this echoes officers concerns in this respect.
- 8.26. The site sits adjacent to the main access to Wykham Park Academy, which generates significant pedestrian and vehicular movements at peak school times. There is also significant on-street parking within the vicinity of the site. Third party comments further highlight instances of inappropriate parking and disregard to existing parking restrictions currently in place on the south-eastern side of Ruskin Road.
- 8.27. The proposed application site red line boundary does not extend to the adopted highway and it is unclear as to whether unfettered access to the application site can be guaranteed, and further that appropriate visibility could be achieved and controlled at the access point onto Ruskin Road; to ensure that the safety of users of the adjacent PRow and footpaths would be maintained. Notwithstanding the

concerns with regards the extent of the site boundary, whilst it is acknowledged that there is an existing point of access which could be brought back into use, the proposals are for a more intensive use than the single dwelling currently and is likely to result in additional vehicular movements to and from the site.

- 8.28. As noted above the proposals include a long access road with turning head and parking angle directly off the road. The proposed parking bays are not considered to meet OCC's minimum standards. The layout is also restricted and there would be limited manoeuvrability within the site, which would potentially result in appropriate manoeuvring out onto Ruskin Road and potentially an increased demand for on-street parking with Ruskin Road.
- 8.29. There are further concerns that the proposed access road would not be able to accommodate larger vehicles attending the site e.g. refuse vehicles.
- 8.30. It is considered that there is a significant lack of satisfactory information to demonstrate that the proposals can achieve appropriate access, parking and manoeuvrability within the site. The proposed development is likely to result in inappropriate vehicular movements and an increased demand for on-street parking, in an area that is under existing pressure, which would be to the significant detriment of the safety and convenience of other highway users; contrary to the provisions and aims of the policies identified above and are therefore considered unacceptable in terms of highway safety.

#### Drainage and Flood-risk:

- 8.31. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.
- 8.32. Policy ESD 7 sets out the Council's approach to Sustainable Drainage Systems (SuDS). Managing drainage more sustainably can ensure that developments are better adapted to the predicted impacts of climate change which include more intense rainfall events. To ensure that the development does not have any adverse offsite impacts and increase flood risk elsewhere it is necessary to demonstrate that the sustainable drainage of surface water and foul drainage from the proposed development can be achieved.
- 8.33. There is known to be a medium risk of surface water flooding on this site. Policy ESD 6 of the CLP 2015 requires a Flood Risk Assessment to be undertaken to support proposals in such circumstances.
- 8.34. The Council's Drainage Engineer (DE) notes the lack of any assessment of potential flood risk or any detailed drainage proposals; in particular any surface water management strategy that will prevent the proposed development from flooding and not pass risk elsewhere.
- 8.35. The Design and Access Statement accompanying the application alludes to surface water being disposed of via soakaways. In this respect, the DE further advises that the local geology is not likely to be conducive to soakaways. In the absence of any appropriate assessment or testing of the geology of the area it is considered that insufficient information has been provided to enable a technical assessment of the proposal in order to ensure a sustainable drainage strategy for the site can be delivered.
- 8.36. Officers consider that the proposals have failed to demonstrate that appropriate surface water drainage scheme for the site, based on sustainable drainage principles, can be achieved; the proposals are therefore not considered to be in accordance with the Development Plan policies identified above and are not acceptable in terms of flood-risk and drainage.



## Ecology & Biodiversity:

- 8.37. 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.
- 8.38. 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.
- 8.39. 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.
- 8.40. 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.
- 8.41. 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, pipelines, transport and works, and environmental controls (including discharge consents under water pollution legislation).
- 8.42. 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.
- 8.43. Paragraph 175 states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should

be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

- 8.44. 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.
- 8.45. 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.
- 8.46. 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.
- 8.47. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.
- 8.48. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development
- 8.49. It also states that LPAs can also ask for:
- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
  - an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')
- 8.50. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains a derelict building with a number of openings that could allow access to the internal environment and roof structure and there are a number of mature trees and hedgerows within and adjacent the site. Further as noted above there are records of notable and protected species within the vicinity of the site. The site therefore has the potential to be suitable habitat for bats and breeding birds.
- 8.51. In order for the local planning authority to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, LPAs must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England (NE) would be likely to grant a licence for the

development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.

- 8.52. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that NE will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether NE will grant the licence then the Council may grant planning permission.
- 8.53. Having regard to the LPA's duty under the Conservation of Habitats and Species Regulations 2017, the lack of a suitable protected species/ecological survey and proposed mitigation strategy means that it has not been demonstrated that the proposal will not cause harm to any protected species or its habitat which is reasonably likely to be present and affected by the development. The proposal is therefore contrary to Policy ESD10 of the CLP 2015, advice contained in the PPG and NE's Standing Advice, and section 15 of the NPPF.
- 8.54. Consequently, it is considered that permission should be refused because there is insufficient information to enable the LPA to assess the impact on protected species and to conclude that protected species would not be unacceptably harmed by the proposed development.
- 8.55. As noted above both national and local policy guidance requires new development to look to provide net gains for biodiversity. Whilst not included within the detail of the current application, officers consider that there is potential for the proposals to include biodiversity enhancements, such as bat and bird nesting opportunities and additional landscaping within the detailed design. It is considered that the lack of this detail is not sufficient to warrant a reason to refuse the application on these grounds alone, but that such appropriate details could be secured through an appropriate planning condition had the Council been minded to approve the application; to ensure that that the proposed development would provide a net gain in biodiversity, in accordance with the provisions of Policy ESD10 of the CLP 2015 and Government guidance within the NPPF, regarding the importance of conserving and enhancing the natural environment.

## **9. PLANNING BALANCE AND CONCLUSION**

- 9.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.
- 9.2. The decision maker needs to undertake a balancing exercise to examine whether any adverse impacts of a development would be outweighed by the benefits such that, notwithstanding the harm, it could be considered sustainable development within the meaning given in the NPPF. In carrying out the balancing exercise it is, therefore, necessary to take into account policies in the development plan as well as those in the NPPF. It is also necessary to recognise that Section 38 of the Act continues to require decisions to be made in accordance with the development plan and the NPPF highlights the importance of the plan led system as a whole.
- 9.3. As set out in this report, it is considered that by virtue of their siting, scale and design the proposals would represent an inappropriate form of over-development of an existing residential site, which would cause harm to the character and appearance of the local area, also detrimentally impact on the levels of amenity currently enjoyed by neighbouring properties. Further by virtue of a lack of appropriate supporting information the proposals have failed to demonstrate that they would not be to the detriment of highway safety, could achieve an appropriate drainage strategy or not be to the detriment of ecology and biodiversity at the site.

- 9.4. The proposals would make a contribution to the District's housing supply, to which significant weight should be given, though this contribution would be minor, and further some short term economic benefits during construction.
- 9.5. Overall, it is considered that the proposal's benefits would be significantly and demonstrably outweighed by the identified harm to the character of the area, residential amenity, highway safety and environmental harm as identified above. The proposals are therefore not considered to represent a sustainable form of development being contrary to the above-mentioned policies; as such the application is therefore recommended for refusal for the reasons set out below.

## **10. RECOMMENDATION**

That permission is refused, for the following reasons:

1. By virtue of its scale, back-land siting, design and associated parking the proposed development would result in a more intensive use of the site that would fail to reflect or reinforce the existing pattern or form of development within the immediate area and the established character, which would also detrimentally impact on the outdoor living environment levels of amenity currently enjoyed by neighbouring properties within Wykham Place, contrary to the provisions and aims of ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.
2. The applicant has failed to demonstrate that safe and suitable access and appropriate parking provision can be achieved to serve the development. Vehicular movements generated as a product of this proposal will unacceptably increase the risk to the safety of users of the local highway network as a result of the substandard access and parking arrangements which would likely result in unsafe vehicular manoeuvres into and out of the site and also lead to an increase in demand for on-street parking. The proposal is therefore contrary to Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
3. By virtue of a lack of supporting information to enable an appropriate technical assessment the applicant has failed to demonstrate that an appropriate sustainable drainage strategy for the site utilising sustainable drainage systems (SuDS) can be delivered. As such the proposal is contrary to Policy ESD7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
4. By virtue of a lack of supporting ecological information to enable an appropriate assessment the applicant has failed to demonstrate that the proposed development would not cause unacceptable harm to protected species or their habitats. The development is therefore contrary to Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

Case Officer: Bob Neville

DATE: 18/06/2021

Checked By: Nathanael Stock

DATE: 18/06/2021

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