



Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

NOTICE OF DECISION

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

Name and Address of Agent/Applicant:

Miss Victoria Bennion
Rapleys
66 St James's Street
London
SW1A 1NE
07795672154

Full Planning Determination

Date Registered: 15th December 2021

Proposal: Re-development of part of existing car park to provide a drive-thru cafe; together with associated car parking, servicing and access; landscaping and all associated works

Location: Jacobs Douwe Edberts, Ruscote Avenue, Banbury, OX16 2QU

Parish(es): Banbury

PERMISSION FOR DEVELOPMENT SUBJECT TO CONDITIONS

Cherwell District Council, as Local Planning Authority, hereby **GRANTS** planning permission for the development described in the above-mentioned application, the accompanying plans and drawings and any clarifying or amending information, **SUBJECT TO THE CONDITIONS SET OUT IN THE ATTACHED SCHEDULE.**

The reason for the imposition of each of the conditions is also set out in the schedule.

Cherwell District Council
Bodicote House
Bodicote
BANBURY
OX15 4AA

David Peckford

Assistant Director – Planning and Development

Checked by: Nathanael Stock

Date of Decision: 15th July 2022

SCHEDULE OF CONDITIONS

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.

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application form documents submitted with the application and the following plans:
 - Drawing Nos: 16061 01 S3 S 000 PI1, 16061 01 S3 S 001 PI2, 16061 03 S3 S 002 PI7, 16061 01 P3 S 003 PI1, 16061 03 S3 S 001 PI7, 16061 03 S3 E 001 PI3, 16061 03 S3 P 0g0 PI5, B3428 E 500 A, 63364 101 P3, 02 C, 04 D, 07 K

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.

3. No development shall commence above slab level until specification details/samples of the materials and finishes for the external walls and roof of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved schedule and shall be retained as such thereafter.

Reason - To safeguard the character and appearance of the area 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.

4. Before the development is first occupied details of covered cycle parking areas, including dimensions and means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle parking shall be provided prior to the first occupation of the development and thereafter the areas shall be retained solely for the purpose of the parking of cycles.

Reason – In the interests of sustainability and to ensure a satisfactory form of development, in accordance with the Government guidance contained within the National Planning Policy Framework.

5. Prior to the first occupation of the development a Travel Plan, prepared in accordance with the Department of Transport's Best Practice Guidance Note "Using the Planning Process to Secure Travel Plans" and its subsequent amendments and a Travel Plan Statement setting out how this phase will contribute to the overall site Travel Plan, shall be submitted to and approved by the Local Planning Authority. Thereafter, the approved Travel Plan shall be implemented and operated in accordance with the approved details.

Reason - In the interests of sustainability, in order to promote sustainable modes of travel and to comply with Policies SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

6. No development shall commence unless and until a Construction Traffic Management Plan prepared in accordance with Oxfordshire County Council's checklist has been submitted to and approved in writing by the local planning authority. The construction works must be carried out in accordance with the details approved in the Construction Traffic Management Plan.

Reason - In the interests of highway safety and the residential amenities of neighbouring occupiers 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.

7. The approved drainage system shall be implemented in accordance with the approved Detailed Design prior to the use of the building commencing:
- a. Document Foul and surface water drainage strategy Ref: 63364 Issue: 12 November 2021
 - b. Document Maintenance and action schedule for surface water drainage Issue: August 2021
 - c. Drawing Impermeable area and overland flow arrows. Drawing No: 63364-103, P2
 - d. Drawing Drainage Layout Drawing No: 63364-101, P3
 - e. Drawing Drainage Construction Details Drawing No: 63364-101, P1
 - f. All relevant Hydraulic calculations produced via Microdrainage Date 11/04/2022 File 63364 - SW NETWORK REV 2 NO P...

Reason – To ensure that the principles of sustainable drainage are incorporated into this proposal and to accord with Policies ESD6 and ESD7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

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

Reason – To ensure that the principles of sustainable drainage are incorporated into this proposal and to accord with Policies ESD6 and ESD7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

9. No deliveries, loading/unloading or collections (including refuse collections) shall be made to the site outside the hours of 07.00 to 18.00 Monday to Friday or 08.00 to 15.00 on Saturdays or 08.00 to 12:30 on Sundays, Bank and Public Holidays.

Reason: In order to safeguard the amenities of the area and to comply with Policy ESD 15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policies C31 and ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

10. Prior to the installation of any mechanical plant, full details of the same shall be submitted to and approved in writing by the Local Planning Authority. If required by the local planning authority a noise report to BS4142:2014+A1:2019 (or latest update) shall be provided to the local planning authority. Thereafter, and prior to the first occupation of the building, the mechanical plant shall be installed, brought into use in accordance with the approved details and shall be retained as such thereafter.

Reason: To protect the amenity of the area from noise and odour in accordance with Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

11. 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. The development must not be carried out other than in accordance with approved CEMP.

Reason - To ensure the environment is protected during construction in accordance with saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

12. Any contamination that is found during the course of construction of the approved development

that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

Reason – To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

13. The development hereby permitted shall not be occupied until it has been provided with EV charge points to 25% of the proposed parking spaces and ducting to the remainder of the parking spaces to allow for the easy expansion of the EV charging system to meet future demand for EV charge points by staff and visitors.

Reason – To comply with policies SLE 4, ESD 1, ESD 3 and ESD 5 of the adopted Cherwell Local Plan 2011-2031 Part 1 and to maximise opportunities for sustainable transport modes in accordance with paragraph 110(e) of the National Planning Policy Framework

14. Prior to the installation of any commercial kitchen exhaust system to be installed to serve hot food takeaway uses within the approved development a noise and odour impact assessment shall be submitted for the prior written approval of the local planning authority. The noise (where appropriate) and odour assessment shall include details of a scheme for minimising emissions of noise and of cooking odour/grease from the proposed kitchen exhaust system. The noise assessment shall be undertaken in accordance with BS 4142:2014:+A1:2019 Method for Rating and Assessing Industrial and Commercial Sound whilst the cooking fume odour/grease assessment will be undertaken in accordance with the EMAQ Update to the 2014 report on Control of Odour and Noise from Commercial Kitchen Exhaust Systems prepared by NETCEN for the Department for Environment Food and Rural Affairs The scheme shall be implemented in strict accordance with the approved details and shall thereafter be retained, serviced and maintained as such.

Reason: To protect the amenity of the area from noise and odour in accordance with Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance in the National Planning Policy Framework.

15. Prior to the first use of the development hereby approved details of the external 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. The lighting for the development must be installed in accordance with the approved details prior to the first use of the development hereby approved and shall be operated in accordance with the approved scheme at all times thereafter.

Reason – In the interests of visual amenity, to ensure it has no adverse impact on nearby residential properties 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 advice in the National Planning Policy Framework.

16. a) No retained tree shall be cut down, uprooted, damaged or destroyed, nor shall any retained tree be pruned in any manner, be it branches, stems or roots, other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. All tree works shall be carried out in accordance with BS3998: Recommendations for Tree Works.
b) If any retained tree is cut down, uprooted, destroyed or dies, another tree shall be planted in the same place in the next planting season following the removal of that tree, full details of which shall be firstly submitted to and approved in writing by the Local Planning Authority. In this condition a "retained tree" is an existing tree which shall be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) shall have effect until the expiration of five years from the date of the permission.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the 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.

17. The development hereby approved shall be carried out strictly in accordance with the recommendations and specifications set out in the Arboricultural Report, Arboricultural Method Statement (AMS) and the Tree Retention and Tree Protection Plan prepared by BB Trees Ltd in July 2021.

Reason - In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

18. The soft landscaping for the development shall be carried out in accordance with the approved details as shown on drawing number 07 K. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the buildings or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting 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 current/next planting season with others of similar size and species.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD13 and ESD 15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

19. Notwithstanding condition 2 (plans), no development shall take place above slab level until details of the hard landscaping for the development have been submitted to and approved in writing by the local planning authority. The scheme shall include:

- 1) Details of the hard surface areas including vehicular pavements, pedestrian footways and other areas, crossing points and steps;
- 2) Details of position and appearance of litter bins to be provided.

The development shall be carried out in full accordance with the approved details prior to the first occupation of the building and shall be retained as such thereafter.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD13 and ESD 15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

20. The development hereby permitted shall only be used as a drive thru cafe (sui generis use) and no other purpose whatsoever.

Reason: To control the use of the building and protect the viability and vitality of the town centre in accordance with Policy SLE2 of the Cherwell Local Plan 2011-2031 and Government guidance contained within the National Planning Policy Framework.

PLANNING NOTES

1. **Conditions** – the applicant’s attention is drawn to the need to comply with all conditions imposed on this permission. Failure to do so could result in the council serving a breach of condition notice against which there is no right of appeal.

Under the Town and Country Planning (Fees for Applications, Deemed Application, Requests and Site Visits) (England) Regulation 2012 there is a fee payable each time you make a request to discharge any of the conditions attached to this permission. You can apply to discharge more than one condition at the same time. At the time of this decision the fee is £116 per request. The fee may be more when you come to apply for the discharge of condition if the Regulations have been amended. The fee is payable when you submit the details to discharge the condition(s). The Council has '1app' forms for such applications, but their use is not mandatory.

The Council has eight weeks to respond to applications to discharge conditions, so you will need to make your application in good time before commencing development.

2. **Material Samples** – please note that where any of the above conditions require the approval of materials, material samples are no longer accepted at the Council offices and should in the first instance be left on the application site for the relevant case officer to view and assess in context with its surroundings. Material samples and sample panels should be placed/erected on the site before an application to discharge that condition(s) is submitted.

Should leaving samples on site be impractical then arrangements should be made with the relevant case officer to view samples on site.

3. **Advertisement consent** – The applicant is advised that a separate advertisement consent application will be required to be submitted and approved prior to the installation of any signs or adverts.

DEVELOPMENT MONITORING

The Council has identified the development hereby approved as one that it considers appropriate to monitor during construction. We would therefore be grateful if you could let us know of your intention to start the development at least 14 days prior to the commencement of work on site. You can do this by emailing the Council on: monitoring@cherwell-dc.gov.uk and providing us with the following information: application number; application address; and the date you intend to start the development. During the monitoring period, we will be assessing the development against the approved plans, and compliance with any conditions imposed on the permission. It is in your interest to comply with this request as it will help to avoid any unnecessary, and possibly expensive, corrective works.

STATEMENT OF ENGAGEMENT

In accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) and paragraph 38 of the National Planning Policy Framework, the Council has worked positively, creatively and proactively to determine this application within the agreed timescales, having worked with the applicant/agent where necessary and possible within the scope of the application (as set on in the case officer's report) to resolve any concerns that have arisen, in the interests of achieving more appropriate and sustainable development proposals. Consent has been granted accordingly.

The case officer's report and recommendation in respect of this application provides a detailed assessment of the merits of the application when considered against current planning policy and guidance, including consideration of the issues raised by the comments received from consultees and members of the public. This report is available to view online at: <http://www.cherwell.gov.uk/viewplanningapp>.



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NOTES TO THE APPLICANT

TIME LIMITS FOR APPLICATIONS

By virtue of Sections 91-96 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, planning permissions are subject to time limits. If a condition imposing a time limit has been expressly included as part of the permission, then that condition must be observed. Otherwise, the development must be begun not later than the expiration of 3 years from the date on which permission was granted.

OTHER NECESSARY CONSENTS

This document only conveys permission or approval for the proposed development under Part III of the Town and Country Planning Act 1990 and you must also comply with all the bye-laws, regulations and statutory provisions in force in the District and secure such other approvals and permissions as may be necessary under other parts of the Town and Country Planning Act 1990 (as amended), or other legislation.

In particular you are reminded of the following matters:

- The need in appropriate cases to obtain approval under the Building Regulations. **The Building Regulations may be applicable to this proposal. The Building Regulations may be applicable to this proposal. You are therefore advised to contact the District Council's Building Control Manager before starting work on site - Telephone: 01295 227006. Email: Building.Control@Cherwell-dc.gov.uk**
- The need to obtain an appropriate Order if the proposal involves the stopping up or diversion of a public footpath.
- Data supplied by the National Radiological Protection Board (NRPB) and the British Geological Survey (BGS) suggests that the site of this application falls within an area which is potentially at risk from radon. This may require protective measures in order to comply with the Building Regulations if your consent relates to a new dwelling or house extension. Further advice on whether protective measures are required under the Building Regulations can be obtained by contacting the Building Control Manager on 01295 227006 or E-mail at building.control@cherwell-dc.gov.uk
- The need to obtain a separate "Listed Building Consent" for the demolition, alteration or extension of any listed building of architectural or historic interest from the Local Planning Authority.
- The need to make any appropriate arrangements under the Highways Act in respect of any works within the limits of a public highway. The address of the Highway Authority is Oxfordshire County Council, Speedwell House, Speedwell Street, Oxford, OX1 1NE.
- It is the responsibility of the applicant to ascertain whether their development affects any public right of way, highway or listed building.

APPEALS TO THE SECRETARY OF STATE

If you are aggrieved by the decision of the Local Planning Authority to refuse to grant planning permission or grant planning permission subject to conditions, you can appeal to the Secretary of State in accordance with Section 78(1) of the Town and Country Planning Act 1990.

If you wish to appeal, then;

- For **Householder** applications you must do so within **12 weeks** of the date of the decision
- For **Minor Commercial** applications you must do so within **12 weeks** of the date of the decision
- For **all other types** of planning applications, you must do so within **6 Months** of the date of the decision

Unless;

- The decision on the application relates to the same or substantially the same land and the development is already the **subject of an enforcement notice** then you must appeal within **28 days** of the date of the Local Planning Authority's decision on the planning application.
- If an **enforcement notice is served** relating to the same or substantially the same land and development as in your application and if you want to appeal the decision, then you must do so within **28 days** of the service of the enforcement notice, or 6 months (12 weeks for householder and minor commercial) of the date of this decision whichever is the sooner

Forms can be obtained from the **Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Tel (0303 444 5000) Or online at www.planningportal.gov.uk/pcs**. The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to them that permission or approval for the proposed development could not have been so granted otherwise than subject to the conditions imposed by the Local Planning Authority, having regard to the statutory requirements, to the provisions of the development order and to any directions given under the order.

In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by them.

PURCHASE NOTICES

If either the Local Planning Authority or the First Secretary of State grants permission or approval for the development of land subject to conditions, the owner may claim that they can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances the owner may serve a purchase notice on the District Council. This notice will require the District Council to purchase their interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

COMPENSATION

In certain circumstances compensation may be claimed from the Local Planning Authority if permission is granted subject to conditions by the Secretary of State on appeal or on reference of the application to them.

These circumstances are set out in the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.