



***Cherwell***

DISTRICT COUNCIL  
NORTH OXFORDSHIRE

**CHERWELL DISTRICT COUNCIL**

**TOWN & COUNTRY PLANNING ACT 1990**

**RULE 6 STATEMENT OF CASE**

**Appeal by Churchill Retirement Living Limited against the failure of Cherwell District Council to determine a planning application for redevelopment of the Buzz Bingo site at the junction of Bolton Road, Castle Street and North Bar Street in Banbury for 80 [now 78] Retirement Living Apartments including Communal Facilities, Car Parking and Landscaping and a separate listed building application for remedial works to the external elevations of Trelawn House at 34 North Bar Street following the demolition of the Buzz Bingo building, all at and adjoining the former Buzz Bingo site, Bolton Road, Banbury, Oxfordshire, OX16 0TH (Council Refs: 21/04202/F and 22/04179/LB) Appeal Refs: APP/C3105/W/22/3296229 and APP/C3105/W/22/3298661**

## **1. SITE LOCATION & PROPOSAL**

### **Site Location**

- 1.1. The application site is located on the junction of Castle Street, North Bar Street, Southam Road and Warwick Road. Bolton Road abuts the eastern boundary of the site and provides vehicular access. The site comprises the former Buzz Bingo Hall and its associated surface car park and a few small offices.
- 1.2. Buzz Bingo closed in March 2020, and it was formally confirmed in July 2020 that it was not reopening.
- 1.3. The redevelopment site (21/04202/F) envelops but does not include Trelawn House, which is a Grade II Listed building. This building would be retained, with remedial works (21/04179/LB). The application site excludes the land and tyre service building, which is located to the rear adjacent to Bolton Road.
- 1.4. The application site is partially within the Banbury Conservation Area and is surrounded by several listed buildings, including Trelawn House which is enveloped by the existing buildings. The site is also within an area of archaeological importance. The site constraints have also identified the presence of Swifts within the vicinity of the site – an Oxfordshire Protected and Notable Species; Neithrop Cutting SSSI is nearby, and the land is potentially contaminated.

### **Proposed Development**

- 1.5. The 21/04202/F planning appeal proposes the demolition of the existing Buzz Bingo buildings and redevelopment of the cleared site with 80 [now 78] elderly persons apartments and associated facilities, plus remedial works to Trelawn House (21/04179/LB). The submissions propose a new building of 3-4 storeys in height under a pitched roof fronting Castle Street and North Bar. Vehicular and pedestrian access to the site would be from Bolton Road to the rear of the site. A new landscaped square is proposed on the junction of Castle Street/Southam Road to provide an area of public open space with an element of public art.
- 1.6. The planning application was publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council was been able to identify from its records. The final date for comments was 16 February 2022. There were two objections, no submissions of support and one general comment raised by third parties.
- 1.7. The comments raised by third parties are summarised as follows:

Given the modern eyesore that it would replace, the re-development was welcome. However, the proposed frontages look out of place when compared to the other side of Castle Street and the juxtaposition of Trelawn House against the new design is too different and not reflective of 'old Banbury'. The respondent suggested that Banbury did not need another Merisham Court/Peoples Place frontage. The suggested design was considered far too dark and tall. However, the Huntingdon example referenced in the application Design & Access Statement was considered more in keeping and would have been favoured.

Another respondent suggested there were already too many flats and retirement places in Banbury.

A question posed by another respondent was: Why not do something for the people/kids of Banbury? The respondent suggested the bingo hall would make a great ice rink, trampoline hall or roller skate hall.

- 1.8. Banbury Town Council commented that they agree with the principle of redevelopment in this location but raised concerns about the scale and siting of the blocks nearest to Trelawn House and suggested a greater set back from the listed building be explored, with reduced block sizes/heights near to the listed building.
- 1.9. Oxfordshire County Council as Local Highway Authority raised no objection subject to issues being resolved in respect of the car park layout and manoeuvring within it, cycle parking, access details, a travel plan, CTMP, delivery service plan and transport modal details. I note that a request for visibility splays at the access be provided, however there is no suggestion to me that they would be insufficient, and it is recognised that there would be a reduction in vehicle movements relative to the extant land use. Likewise, in terms of the on-site manoeuvring the main concern is the refuse vehicle, the revised submitted drawing 536.0037.003 Rev D shows that the movement could be done in theory albeit that the vehicle would effectively be touching some of the boundaries and would likely be very difficult in reality. I think this could be overcome by dropping the end of the footway (and access gate) back slightly. This would have the added benefit of allowing the adjacent 1.8m fence to be lowered or removed to provide visibility of pedestrians entering the car park area. This would be one example, but I am sure there are other minor amendments that could be made to accommodate it. In terms of the off-site works these only extend to some works to provide dropped kerb crossing points on the pedestrian desire lines and I am satisfied that the details of these could be provided under a planning condition.
- 1.10. Oxfordshire County Council as Local Lead Flood Authority raised an objection due to insufficient drainage information and details.
- 1.11. Oxfordshire County Council's Archaeologist commented that the site is in an area of archaeological importance and therefore recommended that prior to the determination of the application, an archaeological field evaluation should be carried out.
- 1.12. Oxfordshire County Fire Service commented that the works would need to be the subject of a full Building Regulations application and assessment.
- 1.13. The District Council's Environmental Health Officer raised no objection subject to conditions relating to contamination and electric vehicle charging points.
- 1.14. The District Council's Strategic Housing Officer commented that in accordance with Policy BSC3, 30% affordable housing provision would be required, with a 70:30 - social rent: intermediate tenure split. The Officer recognised that affordable housing provision on site would not be practical due to the nature of the suggested redevelopment, but if viable, would require an off-site affordable housing contribution in lieu of on-site provision.
- 1.15. The District Council's Ecologist raised no objection but commented there is no issue here with regard to protected species or habitats and any nesting birds in the buildings could be dealt with by condition. Redevelopment would deliver a good level of biodiversity enhancement as no real ecological value exists on site presently. No issues with the planting plan, which would provide limited resources for invertebrates and birds. It was recommended that a biodiversity enhancement plan should be conditioned.

- 1.16. The District Council's Land Drainage team raised no objection to the proposals.
- 1.17. The District Council's Conservation Officer objected to the proposals as submitted on the grounds that the scale and form of the redevelopment so close to Trelawn House and the Castle Street/North Bar Street frontages would have a detrimental impact on the heritage setting of the listed building and would fail to preserve or enhance the character and appearance of the Conservation Area. It was suggested that design and layout modifications be sought to overcome the objection, but none were forthcoming before the appeal was submitted.
- 1.18. Thames Water raised no objection in respect to waste/foul water and surface water network infrastructure capacity and surface water drainage were both deemed acceptable. However, it was suggested that there was an inability in the existing water network infrastructure to accommodate the development and therefore a condition was recommended to be attached to any approval.

## **2. RELEVANT PLANNING HISTORY**

- 2.1. The appeal site has not been the subject of any planning application history that is relevant to this proposal.
- 2.2. However, the following Pre-Application guidance was sought by the Appellant in 2021:  
  
21/01870/PREAPP - Redevelopment of the site for a 94-bed care home and 22 residential units, with some retail/dining to North Bar; and  
  
21/02881/PREAPP - Redevelopment of the site for elderly accommodation and a retail element to North Bar.
- 2.3. The advice given by Council Officers was, overall, whilst the principle of re-developing the site was considered acceptable and supported by the Local Plan, it was not considered that it would be acceptable to come forward in the forms shown or in the absence of the adjacent tyre depot site being included in any redevelopment and in the absence of evidence of active engagement with neighbouring landowners in respect of the remainder of the Local Plan allocation.
- 2.4. It was also considered that the submissions were not acceptable in their submitted form both in terms of scale and form, resulting in an over-development of the site. In the absence of evidence that the delivery of the site in the manner proposed would not prejudice the delivery of the key objectives sought under Banbury Policy 8 and the Banbury Vision and Masterplan SPD, the proposal would not be considered to accord with those policies and the development plan accordingly.

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

#### **The Development Plan**

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

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

- SLE1 – Employment development
- SLE2 – Securing dynamic town centres
- SLE4 – Transport
- BSC2 – Effective and efficient use of land
- BSC3 – Affordable housing
- BSC4 – Housing Mix
- BSC10 – Open space, outdoor sport and recreation provision
- BSC11 – Local Standards of Provision – outdoor recreation
- BSC12 – Indoor sport, recreation and community facilities
- ESD1 – Climate change
- ESD2 – Energy hierarchy
- ESD3 – Sustainable construction
- ESD4 – Decentralised systems
- ESD5 – Renewable energy
- ESD6 – Sustainable flood risk
- ESD7 – SuDS
- ESD15 – Built and historic environment
- Policy Banbury 7 – Strengthening the town centre

- Policy Banbury 8 – Bolton Road
- INF1 – Infrastructure

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

- TR1 – Transportation funding
- C18 – listed buildings
- C23 – Conservation area
- C28 – Design
- C30 – Design
- C32 – Access for Disabled People
- C34 – Views of St Marys Church
- ENV12 - Contamination

#### Other Material Planning Considerations

National Planning Policy Framework (NPPF) (2021);

Planning Practice Guidance;

The Planning (Listed Buildings and Conservation Areas) Act 1990;

Banbury Conservation Area Appraisal 2018;

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

Cherwell DC's Residential Design Guide SPD 2018;

Oxfordshire CC's Street Design Guide 2021; and

Cherwell DC's Developer Contributions SPD February 2018.

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

#### **4. THE COUNCIL'S CASE**

- 4.1. Application 21/04202/F was submitted on 23 December 2021 and the determination deadline was 24 March 2022. The non-determination appeal was lodged on 4 April 2022 and a 'start date' letter for the appeal was issued by The Planning Inspectorate on 19 April 2022.
- 4.2. The associated listed building application for remedial works to Trelawn House 21/04179/LB was submitted on 16 December 2021 and the determination deadline was 10 February 2022. The non-determination appeal was lodged on 11 May 2022 and a 'start date' letter for the appeal was issued by The Planning Inspectorate on 17 May 2022.
- 4.3. The non-determination appeals were submitted before the District Council could make any determination on the proposals. Nevertheless, the Council's Planning Committee resolved on 19<sup>th</sup> May 2022 that had it been in a position to determine the planning application it would have refused the application for the following four reasons:
  1. The development proposed, by virtue of its scale, form and design in relation to Trelawn House adjacent and the Banbury Conservation Area is considered to have a detrimental impact (less than substantial) upon the character and appearance, historical integrity and setting of this grade II Listed building and would fail to preserve and enhance the character and appearance of the Banbury Conservation Area. Furthermore, the development by virtue of its form and design fails to provide the bespoke landmark building as required by Policy Banbury 8 and the Banbury Vision and Masterplan SPD 2016. The benefit of bringing the site back into use and making efficient use of the land would not outweigh the harm caused to the heritage assets. The proposals are therefore contrary to saved Policy C18 of the adopted Cherwell Local Plan 1996, Policies Banbury 8 and ESD15 of the adopted Cherwell Local Plan 2015 and Government guidance within paragraphs 199, 202 and 206 of the National Planning Policy Framework.
  2. The proposal lacks detail and information relating to the drainage of the site and is therefore contrary to Oxfordshire County Council's published guidance "Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire" and Policies ESD6 and ESD7 of the adopted Cherwell Local Plan 2015 and Government guidance within the National Planning Policy Framework.
  3. The application proposal which seeks permission on only part of the Policy Banbury 8 allocation, and more crucially fails to include the adjacent tyre depot fails to provide a coherent and integrated development on this part of Policy Banbury 8 site, resulting in an inappropriate and potentially harmful piecemeal development. As such the application is not in accordance with Policy Banbury 8 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.
  4. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a result of the development and necessary to make the impacts of the development acceptable in planning terms, to the detriment of both existing and proposed residents and contrary to Policies BSC3, BSC10, BSC11 and INF 1 of the Cherwell

Local Plan 2015 and Planning Obligations SPD 2018 and Government guidance within the National Planning Policy Framework.

- 4.4. The Council's evidence will support the suggested reasons set out in paragraph 4.2 above, to demonstrate that the proposed development is not in accordance with the Development Plan or the Framework and that there are no other material considerations that warrant granting permission.
- 4.5. In support of its case, the Council will call witnesses at the Inquiry to present Planning and Heritage evidence and, if not previously resolved through an agreed Statement of Common Ground, Drainage evidence.

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

- 4.6. The site is partially within the Banbury Conservation Area and there are a number of key listed buildings immediately adjacent and within the vicinity of the site, including St Marys Church and Trelawn House. Saved Policy C34 of the adopted Cherwell Local Plan 1996 seeks to protect the views of St Marys Church. There are also a number of local heritage assets / non-designated heritage assets on North Bar Street, Warwick Road and Castle Street.
- 4.7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*
- 4.8. Likewise, Section 66 of the same Act states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Therefore, significant weight must be given to these matters in the assessment of this proposal.
- 4.9. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 199 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2015 echoes this guidance.
- 4.10. The Banbury Conservation Area was designated in 1969 and last reviewed in September 2018. The Conservation Area Appraisal identifies the application site is bounded by the Main Route/Calthorpe/Medieval and Castle Street Character Areas.
- 4.11. Banbury is a rural market town with an intact medieval street pattern within its central core, surrounded by 18<sup>th</sup> and 19<sup>th</sup> century suburbs. The significant urban fabric and grain of the town must be understood and respected in order to inform future development.
- 4.12. The site forms part of an important urban block at a key crossroads in the centre of Banbury, lying within and adjacent to the Banbury Conservation Area. Whilst there are several important listed buildings and non-designated heritage assets, with key views and focal points, the quality of the street scene has suffered due to a lack of vision in the late 20<sup>th</sup> century and early part of 21<sup>st</sup> century. A concurrent application 21/04179/LB deals with the demolition of the Buzz Bingo buildings which currently envelop 3 sides of the Grade II Listed Trelawn House.

- 4.13. The Banbury Conservation Area is a designated heritage asset and comprises mainly traditional buildings forming strong frontages on burgage plots using a limited palate of materials, form and scale. The designation aims to manage and protect the special architectural and historic interest of the urban grain of the town and features that make it unique. Any new development should preserve or enhance the character or appearance of the conservation area, *'the special architectural or historic interest of which it is desirable to conserve or enhance'*.
- 4.14. The proposed development lies adjacent to the site of Banbury's historic North Bar, south of Cuttle Brook and Back Lane (now known as Castle Street). There was a strong traditional frontage to North Bar Street/Southam Road with long rear linear development stretching to the east. A multi storey car park to the north of the site has recently been demolished and currently provides a surface car park. The visual analysis of the Main Route Character Area identifies the bingo site as a negative landmark and crossroads where the North Bar stood as a point of 'disorientation'.
- 4.15. The Banbury Vision and Masterplan 2016 SPD and Policy Banbury 8 both reiterate the importance of this site within Banbury town centre and its historic core in respect of the redevelopment of the area. Whilst the Banbury Vision and Masterplan SPD 2016 identifies a potential for 3-4 storey development on the site, there are conservation and urban design concerns with 4-storey development immediately adjacent to and behind the 2-storey listed building. The historic curtilage of Trelawn House extended eastward into the application site.
- 4.16. The proposal under the concurrent application 21/04179/LB looks to expose the northern gable of Trelawn House and this application does not take up the challenge of rebuilding on the corner of the site. This will make the intersection between the four streets less defined. The opportunity to create a piece of architecture worthy of corner status, adjacent to the grade II listed Trelawn House and the Three Pigeons Pub was encouraged during pre-application discussions, although the alternative option of the public art celebrating the history of North Bar was also discussed. The absence of a building on this corner also creates more pressure for higher density to Castle Street and Bolton Road. If the open space is to be the key feature on this prominent corner, it is also important that the public art also makes a positive statement to the streetscape. The north elevation of Trelawn House is blank and was not designed to be exposed to view. It is therefore considered that the current building form and area of open space as shown does not create the landmark statement building/development envisaged by the development plan nor the Banbury Vision and Masterplan.
- 4.17. The proposed development aligns with Trelawn House creating a green wedge to Castle Street with the building line set back. It runs parallel with the north wall of Trelawn House in the western part, and then breaks forward, parallel with Castle Street. The Conservation Officer has commented that she is not convinced that Trelawn House with its blank north elevation, should dictate this move away from a strongly defined building line addressing Castle Street and North Bar as illustrated in the Banbury 8 masterplan, particularly having regard to making the best use of land. This also creates difficulty at the change in angle of the buildings which has not been resolved in the proposals and is therefore currently unacceptable.
- 4.18. In terms of the Castle Street elevation, it is considered by the Conservation Officer that the 3-storey block which is set slightly above pavement level should be reduced to 2-storey beside Trelawn House and the space between the two also requires further consideration. As the roof is continuous and there is a stone band separating the second and third floor it looks quite monolithic as it lacks the usual plot width of traditional

terraces, normally divided by chimneys and doors. Omitting the stone band and dividing the façade into typical 2-bay burgage plots would be more reflective of the north side of Castle Street. Juliet balconies are discouraged fronting the highway. The widths of the doors and windows look too wide and the band of masonry between ground and first floors too thin. The proportions of the white block are too squat and together with the width and colour detracts from the scheme. The depth of the roof slope east of the white block creates a roof slope that is too big (compared with the lower 3-storey roof) and makes the development look contrived. A lower block might be better on this corner with Bolton Road but the Appellant was not prepared to negotiate on this suggestion.

- 4.19. The proposed development along North Bar is 3-storey. North Bar rises in a southerly direction and adjoins a modest 3-storey development with a higher eaves line. It is considered that here there might be an opportunity to have modest 3-storeys fronting the car park with slightly higher eaves aligning with the adjacent 3-storeys, stepping down to 2-storeys towards Trelawn House. In terms of detailing, the Conservation Officer also raises concerns with respect of materials, eaves, window proportions and door/porch detail.
- 4.20. Having regard to the above comments, it is considered that the proposals are currently unacceptable in terms of impact upon heritage assets primarily Trelawn House, properties in North Bar and the Banbury Conservation Area and as such would be contrary to the Development Plan, and Government advice within the NPPF.
- 4.21. The site is also located in an area of archaeological interest within the medieval core of the town, immediately southeast of the site of North Bar, originally built around the C13th and one of the five gates around the town. The Medieval settlement is recorded in the Domesday Survey of 1086, and it is likely that the centre is what forms the historic core today.
- 4.22. An archaeological evaluation 50m to the west of the site of the redevelopment of the Warwick Road car park, archaeological deposits were recorded relating to a post-medieval brewery. An archaeological watching brief took place 85m to the west of the development area at Warwick Road found that though the area had been heavily truncated by earlier development, an undated pit and gully were recorded. An archaeological investigation c. 138m to the east of the development site recorded late Saxon ditches which were likely property boundaries, an 11th Century pit, a stone lined pit and gullies dated to the 13/14th Centuries.
- 4.23. The development site also lies 160m southwest of the site of Banbury castle, where an archaeological evaluation recorded pre-Conquest activity that pre-dated the castle. Also recorded were a large ditch and a causeway constructed across the silty marshes. The evaluation took place on a site which has been subject to development and truncation, though this is likely less than seen on the proposal site, it suggests that the development has the potential to impact on archaeological remains associated with the Medieval and early post Medieval development of the town.
- 4.24. Having regard to the above, County Archaeologist advised that an archaeological desk-based assessment, in line with the Chartered Institute for Archaeologists standards and guidance, including the submission of an appropriate Written Scheme of Investigation (WSI) to agree the scope of the assessment should have been submitted with the application in line with paragraph 194 of the NPPF. The Appellant has since been in further discussion with the County Archaeologist regarding this matter who has since advised that *'it seems that predetermination work will be difficult to carry out whilst the*

*building and car park are still in use, so I would ask for a staged programme of archaeological investigation to be part of the conditions, if permission is granted'.*

- 4.25. Policy Banbury 8 requires a high quality landmark mixed use development that will support the regeneration of this area and its integration into the wider town centre. The policy also requires a design which respects and enhances the conservation area and the historical grain of adjoining area and in particular, the Grade II Listed building Trelawn House to the west of the site. There is great opportunity here to enhance this part of Banbury, providing a rich grain of streetscape and urban housing development which draws on the architectural and historical context of the site and conservation area as a whole.
- 4.26. The site forms part of an important and visually prominent urban block within the centre of Banbury which lies within and adjacent to the Banbury Conservation Area. It is accepted that the quality of the street scene here has suffered in recent past, but the re-development of this site gives a great opportunity to improve this busy and prominent junction with high quality, well-designed landmark buildings which respect the historic core and adjacent heritage assets in terms of scale, massing, design and choice of materials. It should also be mindful of the setting of listed buildings and the heritage views as discussed above.
- 4.27. Policy Banbury 8 also sets out a number of site-specific design and place shaping principles relating to the development of the site. One of these is that the development should comply with Policy ESD15 of the CLP 2015. Policy ESD15 advises that the design standards for new development, whether housing or commercial are equally important, and seeks to provide a framework for considering the quality of the built environment, to ensure that we achieve locally distinctive design which reflects the context within which it sits. This policy also advises that the design of all new developments will need to be informed by an analysis of the context, together with an explanation and justification of the design principles that have informed the design rationale which should be demonstrated in a Design and Access Statement. The application was accompanied by a Design and Access Statement which generally assesses only the immediate context of the site and does not assess more widely the historic core. The document includes several photos of the existing area and site. A number of precedent development photos are included on page 10 of the document, but it is unclear how these relate specifically to Banbury and are not locally distinctive in their design.
- 4.28. It is essential from an urban design perspective to understand the visual impacts of the heights proposed along key vistas around the site as well as the setting of adjacent listed buildings, views of St Mary's Church and the impact upon the character and appearance of the Banbury Conservation Area. The proposed heights are of particular importance when seen in the context of Grade II Listed Trelawn House.
- 4.29. Design is not only about the physical appearance of a development but how it works, functions and fits together, both in terms of itself and with that around it. The masterplan and layout plan must be robust having derived from a full understanding of both the site's constraints and opportunities and its setting, resulting in a new development that sits comfortably with its location and surroundings.
- 4.30. Paragraph 130 of the NPPF states that planning decisions should ensure that developments: function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; are visually attractive as a result of good architecture, layout and appearance and effective landscaping; and are

sympathetic to the local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.

- 4.31. The Council's adopted Residential Design Guide SPD 2018 also seeks to ensure that new development responds to the traditional settlement pattern and character of a town. It advises in Section 3 that in assessing the townscape it is important to question '*how might the scheme reflect locally distinctive relationships between buildings and the public realm*', such as building forms, groupings, heights, rooflines and architectural details, wall and surface materials.
- 4.32. In addition to Policy ESD15 of the CLP 2015, The Banbury Vision and masterplan SPD also contains development principles and aspirations for the re-development of the site which must be considered. As previously discussed in the pre-application guidance, whilst the Banbury Vision and Masterplan envisages that 3 to 4-storey development might be acceptable on the site, regard must also be given to the surrounding older Victorian and Georgian development to Castle Street, which is a mix of 2 and 3-storey dwellings and North Bar. Whilst North Bar comprises 3-storey buildings they are generally smaller in scale to that now proposed, and this is exacerbated by the land levels on the site relative to the adjacent Grade II Listed Building Trelawn House. It is considered that the overall scale and bulk of the building could be improved by proposing a mix of 2, 2.5, 3 and 4-storey building heights rising from west to east across the site rather than the substantial 3 and 4-storey block proposed. The overall visual impact of the development could be further reduced by reducing the ground levels on site to those that would have originally related to the site. The scale of the proposed 4-storey building on this corner with its high eaves and hipped roof arrangement in relation to the existing Castle Street properties is demonstrated by the section shown on drawing number 10116BB-PA10. As discussed above, it is considered that the scheme would benefit from a lower building here.
- 4.33. In terms of the views of the building down North Bar, the blank gable ends at ground floor level are unfortunate. Further consideration must be given to providing fenestration here and therefore natural surveillance to North Bar and the adjacent footpath link which currently runs down the side of buildings along North Bar to Bolton Road. This is one of the key pedestrian links which must be improved as part of the Banbury 8 re-development proposals in order to increase connectivity to and integration with the town centre for the general public. It is not clear from the submission how this aspiration is achieved to create a safe and inviting pedestrian link between the buildings and adjacent car park separated by retaining wall and railings from North Bar through to Bolton Road and the town centre.
- 4.34. Following pre-application discussions, whilst the Appellant sought to address concerns raised previously in terms of the building height in respect of Castle Street and Trelawn House, the building would remain clearly visible behind Trelawn House and remain overly dominant in this respect. Whilst the existing Buzz Bingo building is of no architectural merit, it currently sits behind Trelawn House and is not visible behind. The Appellant had been requested to consider reducing the height of the building immediately to the rear and side of Trelawn house to 2 or 2.5 storey. This was previously discussed at pre-app but has not been addressed by this submission.
- 4.35. In terms of window details, it is unclear from the plans what form these would take. The buildings are designed to replicate traditional townhouses where sliding sash are the traditional window style. It is understood from discussions with the Appellant that elderly persons may not easily be able to open sliding sash, however, it is considered that if the

buildings are to retain their 'Georgian' appearance, that the Appellant should give further thought to the use of sliding sash to the main front elevations.

- 4.36. Local traditional vernacular are simple flat fronted buildings with minimal detail. The proliferation of long narrow projecting rear gables is therefore not appropriate and would not respect the local traditional vernacular and historic buildings within the proximity of the site and the Conservation Area. Proposed dormer windows should be of traditional proportions and constructed in appropriate materials. It is noted that the plans state grey UPVC, but these would not be in keeping with the local traditional vernacular nor the traditional style of building proposed.
- 4.37. Policy Banbury 8 is quite clear in its aspirations that this important crossroads requires a bespoke landmark design solution, and it is considered that this proposal does not provide that. A landmark building must provide interest, draw attention and focus, creating a sense of arrival into Banbury town centre that reflects its character, historical integrity and local distinctiveness as well as having regard to its context. It was previously discussed with the applicant at pre-application that a more modern architectural solution which reinforces local vernacular in terms of proportions, fenestration and materials might be more appropriate here, rather than a modern pastiche as proposed.
- 4.38. Policy Banbury 8 and the Banbury Vision and Masterplan SPD 2016 require the inclusion of a 7m landscape buffer fronting Castle Street. It is considered that the submitted application fails to deliver either the strategic landscape buffer as required by the SPD or the distinct landscape setting for Trelawn House or this prominent corner as envisaged through the design and access statement submitted with the application. The plans indicate small paved areas for each unit opening out on to Castle street at ground floor level within a grassed area behind a hedge with the landscape buffer between this hedge and Castle Street. The first issue to consider here is the amenity value of these small patio areas which are north facing and overshadowed by the 3 and 4 storey buildings themselves as well as suffering road traffic noise. The second issue is that the remaining public open space or strategic landscape buffer varies in width from 9m at the western end to only 4m at the Bolton Road end. This is not in accordance with Policy Banbury 8 or the Banbury vision and Masterplan SPD 2016.
- 4.39. In terms of the public open space to the corner of the site and to the side of Trelawn House, the proposals indicate a small area enclosed by metal railings of only approximately 126m<sup>2</sup> (scaled from the submitted site plan). It is not clear from the submission how this small area could provide that distinct landscape setting and gateway entrance to Banbury town centre. Furthermore, it is considered that the landscaped corner as shown, together with the exposed gable end of Trelawn House fails to provide the bespoke landmark design solution required here.
- 4.40. Having regard to the above, it is considered that the proposal as submitted is not acceptable and is therefore contrary to the development plan and Government guidance within the NPPF in this respect.

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

- 4.41. The site is in Flood Zone 1 with a low risk of flooding and is less than 1 hectare in size and a detailed Flood Risk Assessment has therefore not been submitted although the application was accompanied by a Flood Risk and Drainage Technical Note.
- 4.42. OCC as Local Lead Flood Authority (LLFA) have assessed the submission and have objected. LLFA advise that as part of a full application, drawings and calculations are

expected to be detailed. The drainage strategy drawing should show invert and cover levels for all proposed drainage infrastructure and SuDS features. All surface water pipes need to be numbered and sized which should correlate with the Micro-drainage calculations. Calculations are required for the whole surface water network. The existing drainage must be shown on the drainage strategy drawings and existing pipes that are to be retained clearly identified. Further, all the maintenance requirements for the existing retained pipes need to be identified on the plan drawings. A surface water catchment plan is required to demonstrate how the site will drain and to which drainage features. The existing and proposed areas must be clearly shown. A detailed maintenance schedule is required for all proposed drainage infrastructure and SuDS features and all maintenance requirements need to be clearly identified. A surface water exceedance plan must be provided to demonstrate how the site will drain in an event where the surface network fails. All surface water should be kept away from structures and within the site boundary. Technical approval from the sewer undertaker will be required in order to make drainage connections. The Ground Investigation Report states that infiltration is not feasible, however, the infiltration testing results, and location of testing have not been provided. Having regard to the above, it is considered that the application fails to comply with Policies ESD6 and ESD10 of the CLP 2015 and Government guidance within the National Planning Policy Framework and therefore warrants a refusal of planning permission.

- 4.43. Thames Water have also assessed the submission and advise that no objections are raised in respect of waste, but in respect of water have identified an inability of the existing water network infrastructure to accommodate the needs of the development proposal. They have suggested a condition is imposed should the development be approved.

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

- 4.44. This site can potentially act as an important catalyst for the remainder of Policy Banbury 8 being brought forward for development accordingly, although it should be noted that Policy Banbury 8 recommends that the whole site is developed as one rather than piecemeal as is the case here and the inclusion of the Tyre Depot within any redevelopment scheme was therefore encouraged through pre-application discussions. Failure to at least include the Tyre Depot within the application site, which is immediately alongside where occupants of the proposed development would gain vehicular access and where their external amenity space would be adjacent to and overlook, would fail to provide a coherent and integrated development.

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

- 4.45. As the planning application was refused before any satisfactory legal agreement could be drafted, there could be no certainty that the Appellant (and any other parties with an interest in the land) would have committed to the necessary covenants to secure the infrastructure required.
- 4.46. The Council will submit a statement with its proofs of evidence setting out the justification for the commitments expected to be made within any planning obligation, having regard to the statutory tests in Regulation 122 of the CIL Regulations 2010 (as amended).
- 4.47. The Council will demonstrate that the lack of a satisfactory S106 obligation to secure the necessary infrastructure and contributions would result in a proposal which would fail to mitigate adequately the likely impact of the development and as such results in an unsustainable form of development contrary to Development Plan policies and the NPPF.

4.48. It is anticipated that the Appellant may wish to enter into a legal agreement to secure the mitigation identified. The Council will maintain this reason for refusal pending the submission of an acceptable obligation, which it is anticipated could then be referenced in an agreed Statement of Common Ground.

## **5. CONCLUSION**

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

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

- 6.1. Officer report to the Council's Planning Committee, written updates and minutes of the Planning Committee meeting of 19<sup>th</sup> May 2022.
- 6.2. Site location plan showing appeal site and surroundings.
- 6.3. Plans and other application documentation.
- 6.4. Copies of correspondence between the Council's planning case officer and the application agent.
- 6.5. Copies of representations received on the applications from statutory consultees and interested third parties.
- 6.6. Policy documents referred to throughout the Statement.
- 6.7. Site history documentation.
- 6.8. The Council reserves the right to refer to any other documents as is necessary in its Proofs of Evidence.
- 6.9. The Council will work proactively to progress a Statement of Common Ground with the Appellant following the submission of this Statement of Case.