

**CHERWELL DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990**

Appeals by Churchill Retirement Living against a failure by Cherwell District Council to determine two applications that sought consent for: 1) a site redevelopment to allow construction of 80 [now 78] retirement living apartments including communal facilities, access, car parking and access (21/04202/F); and 2) associated remedial works to the external elevations of Trelawn House following the demolition of the Buzz Bingo building (21/04179/LB) all at the former Buzz Bingo site, Bolton Road, Banbury OX16 5UL and neighbouring Trelawn House, 34 North Bar Street, Banbury, OX16 0TH

Appellant	:	Churchill Retirement Living
Appeal Site	:	Former Buzz Bingo site, Bolton Road, Banbury, OX16 0TH
Appellant's Agent	:	Planning Issues
LPA References	:	21/04202/F & 21/04179/LB
Planning Inspectorate Appeal References	:	APP/C3105/W/22/3296229 APP/C3105/W/22/3298661

PROOF OF EVIDENCE

of

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1. INTRODUCTION

- 1.1 My name is Andrew Kevin Bateson. I hold a BSc (Hons) degree in Town and Regional Planning, and I have been a full Member of The Royal Town Planning Institute since October 1998. I am employed by Cherwell District Council as Development Management Team Leader, with particular responsibility for major developments, and I have been in this post since November 2020.
- 1.2 Prior to my appointment at Cherwell District Council, I worked in the private sector for seventeen years, where I was Planning Partner at West Waddy ADP between 20017-2020, I ran my own AB Planning & Development consultancy for six years before that and I worked in various Directorial roles at RPS for nine years between 2002 and 2011. My first eighteen years as a professional planner were in the public sector, where I worked for the Property Services Agency, York City Council, Richmondshire District Council and Aylesbury Vale District Council, in a variety of development control and planning policy roles.
- 1.3 I am familiar with the appeal site and planning policy and guidance as it relates to the appeal site and the development proposals the subject of these non-determination appeals.

2. PURPOSE AND SCOPE OF PROOF

- 2.1 In this proof of evidence, I deal with the general planning and sustainability considerations that arise in this appeal. I explain why the proposal does not accord with Development Plan or national planning policy, with a focus on the weight of planning policies that the Council seeks to rely on, as well as providing a contextual view of other relevant planning decisions. I conclude by setting out why I and the Council consider the appeal proposals to be unacceptable and the adverse impacts of development would significantly and demonstrably outweigh benefits.
- 2.2 Although I mention the heritage impacts and viability issues associated with the proposals in general terms as part of my 'planning balance' consideration, detailed evidence on heritage issues is provided by Samantha Pace, a heritage architect at Essex County Council; and viability matters are otherwise addressed in the Statement of Common Ground.
- 2.3 Oxfordshire County Council confirmed that they did not wish to pursue objections to the appeal proposals and are satisfied that highway and drainage matters for which they are responsible can be appropriately addressed by condition(s), in the event that the appeals are allowed, and planning permission and listed building consent are granted. The District Council does not wish to challenge the Appellant's viability evidence, so my comments in this regard are simply addressed in respect to the planning balance of harmful and beneficial impacts and the weight to be afforded to those impacts.
- 2.4 This Proof therefore focusses on the planning policy, urban design and 'planning balance' considerations in respect to suggested Refusal Reasons 1 and 3 [now 2] – but with heritage impacts and the lack of any s.106 planning obligation agreement concerning mitigation measures/benefits considered as part of the planning balance.
- 2.5 Other matters have been addressed through the Statement of Common Ground(s).

3. APPEAL SITE LOCATION AND PROPOSAL

Appeal Site Location

- 3.1 The appeal site extends to 0.49 hectares (4,900m²) and is located to the southeast of the junction of Castle Street and North Bar Street, with Bolton Road abutting the eastern and part of the southern boundary of the site. The site comprises the former Buzz Bingo Hall and its associated surface car park and a few offices that front onto North Bar Street. The planning application site envelops but does not include Trelawn House which is a Grade II Listed building. This building would be retained and is the subject of the associated listed building appeal for remediation works. The appeal site excludes the land and tyre service building, which is located to the rear adjacent to Bolton Road and past which vehicular access to the appeal site would be secured.
- 3.2 Trelawn House and the offices immediately to the south fronting North Bar Street lie within the Banbury Conservation Area. The bulk of the appeal site is located outside the Conservation Area but immediately alongside and thereby affecting the setting of neighbouring properties in North Bar Street, Castle Street and Bolton Road that are within the Conservation Area.
- 3.3 The appeal site is also within an area of archaeological importance, which used to be the location of the original North Gate (or Bar) entrance to Banbury town centre.
- 3.4 The Council's constraint information also identified the presence of Swifts within the vicinity of the site – an Oxfordshire Protected and Notable Species; Neithrop Cutting Site of Special Scientific Interest (SSSI) is nearby, and the land is also identified as being potentially contaminated. The site and surroundings is shown on the annotated aerial location plan drawing attached at Appendix A and in the photographs contained in the separate Appendix D.
- 3.5 Two passageways provide pedestrian access to the south side of the appeal site from North Bar Street although neither is identified as a formal public right of way. Both routes appear to be privately owned. Given their long-established nature, they might be considered permissive routes linking the car parks in Bolton Road with Banbury town centre.

The Appeal Proposal

- 3.6 The appeal proposes the demolition of the existing Buzz Bingo buildings and the offices in North Bar Street (which would be a positive benefit) and redevelopment of the previously developed 'brownfield' site (another positive benefit) with 80 [now 78] elderly persons apartments and associated facilities for which there is a clear need (and which again would represent a positive benefit). The submission proposes a new building of 3-4 storeys in height under pitched roofs fronting Castle Street and North Bar. Vehicular and pedestrian access to the site is from Bolton Road to the rear of the site, alongside the Tyre Depot. A new landscaped strip is proposed on the south side of Castle Street between the road and proposed redevelopment widening towards the signalised junction with

North Bar Street, Southam Road and Warwick Road to provide a small area of public open space alongside the restored northern flank gable of Trelawn House with an element of public art.

- 3.7 The Appellant submitted viability evidence at the application stage suggesting that the proposed development could not afford to make any affordable housing contribution or any other community or transport benefit, other than the proposed area of landscaped space alongside Castle Street/Trelawn House. The Council will not be challenging that viability evidence.
- 3.8 Based on the Council's lack of a demonstrable 5-year housing land supply (currently 3.5-years), the Appellant is suggesting engagement of NPPF paragraph 11 d) with a 'tiled balance' presumption in favour of residential development and a reduced weight afforded to adopted Development Plan policies. Whether and to what degree the appeal proposals satisfy the criteria listed at NPPF paragraph 11 d) i) and 11 d) ii) and associated Footnote will be the subject of debate at this Inquiry and the Council's case in this regard is set out later in this Proof. It should be noted that the Appellant has not thus far given any indication that in the event of planning permission being granted when development might start on site.
- 3.9 The Council's Planning Committee report of 19th May 2022, together with the Written Update report and the official Minute of its resolution [Appendix B] provide further summarised detail of the proposals.

4. RELEVANT PLANNING HISTORY

- 4.1 There is no specific planning history on the appeal site that is relevant to the current appeal proposals.
- 4.2 There were however, two pre-application submissions – one from the site owners and a second from the Appellant’s agents submitted in 2021, immediately prior to submission of the applications that are now the subject of these appeals.

21/01879/PREAPP – Redevelopment of the appeal site for a 94-bed care home and 22 residential units with some retail/dining to North Bar Street.

21/02881/PREAPP – Redevelopment of the site for elderly accommodation and a retail element to North Bar Street.

- 4.3 Officers advised that overall, whilst the principle of redeveloping the site was considered acceptable and supported by the Local Plan, it was not considered that either draft proposal would be acceptable to come forward in the forms shown or in the absence of the adjacent tyre depot being included within the proposed red-edge redevelopment site. Officers advised that evidence of active engagement with landowners in respect of the remainder of the allocation should be provided. It was also considered that the submissions were not acceptable in their submitted form in terms of scale and form, resulting in an over-development of the site and likely harm to the heritage assets of Trelawn House and Banbury Conservation Area. In the absence of evidence that the proposed piecemeal delivery of the site would not prejudice delivery of the key objectives sought under Banbury Policy 8 and the Banbury Vision and Masterplan SPD, Officers advised that the proposals would not be considered to accord with those policies and the Development Plan accordingly.

5. PRELIMINARY POLICY CONSIDERATIONS

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”), states that applications for development must be determined in accordance with the Development Plan unless material considerations indicate otherwise. This is also reflected in paragraph 11 of the National Planning Policy Framework (“NPPF”) [CD-47]. 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.
- 5.2 The Development Plan consists of The Cherwell Local Plan 2011-2031 - Part 1 [CD-52], which was formally adopted by Cherwell District Council on 20 July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced numerous previously ‘saved’ policies in the adopted Cherwell Local Plan 1996 [CD-53], though many of its policies are retained and remain part of the Development Plan. On the 7th September 2020, the Council adopted The Cherwell Local Plan 2011-2031 (Part 1) Partial Review – Oxford’s Unmet Housing Need and it too now forms part of the Development Plan. However, the partial review plan only provides policy guidance and development allocations for parts of southern Cherwell around Oxford city, which are irrelevant to these appeal proposals at Banbury. The Development Plan policies that are relevant to this appeal are detailed in section 3 of the Council’s Rule 6 Statement but are repeated below for ease of reference.

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

The weight that can be attributed to saved but aged policies from the 1996 Local Plan depends on their consistency with the NPPF, in accordance with paragraph 215. The consistency of those policies with the statutes and NPPF policy and the weight that should be afforded to them in my opinion is explained further throughout this Proof.

Given the current lack of a 5-year land supply in Cherwell District, the ‘tilted balance’ introduced through NPPF paragraph 11 d) is relevant and the weight that can be attributed to the more up-to-date policies in the 2015 Local Plan also depends upon their consistency with the NPPF, in accordance with paragraph 215. The consistency of those further policies with the statutes and NPPF is also explained further throughout this Proof.

- 5.3 At the end of July 2020, the Council published a Community Involvement Consultation Paper as the first stage in its review of the Local Plan, in preparation for a new Local Plan to 2040. The Council also made a ‘call for sites’ and invited comments on a Sustainability Appraisal Scoping Report. The Paper did not contain any proposals or policy options but highlighted needs and issues to stimulate discussion. The consultation marked the commencement of a likely 3-4-year process with further stages of consultation to follow where the Council will review the policies in the existing adopted Local Plan, the relationship to the emerging Oxfordshire Plan 2050 and the replacement of the remaining saved policies of the 1996 Local Plan.
- 5.4 Given delays in the advancement of the draft Oxfordshire Plan 2050, the District Council’s Reg.18 consultation on the 2040 review Local Plan is not now scheduled until November 2022. Since this new plan is only at a preliminary stage in its evolution, it carries no material weight in the determination of this appeal but is nevertheless referenced for completeness.
- 5.5 A key issue for consideration in this case is the impact of development on the historic significance and setting of the Grade II listed building of Trelawn House and upon the character and appearance of Banbury’s Conservation Area.
- 5.6 The Conservation Area includes Trelawn House and the neighbouring offices on its south side that front onto North Bar Street and which form part of the appeal site. The Conservation Area extends around much of the surrounding land to the

north, west and south, including properties on the north side of Castle Street, both sides of North Bar Street, and the south side of Bolton Road.

- 5.7 Section 16(2) of The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that: *“In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State 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.”* Further, under Section 72(1) of the same Act the Local Planning Authority has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
- 5.8 Listed Buildings and Conservation Areas are designated heritage assets, and Paragraph 195 of the NPPF states that: *“Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise.”*
- 5.9 Paragraph 199 of the NPPF directs 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 2031 Part 1 echoes this guidance from Section 16 of the NPPF in the fifth and sixth bullet points.
- 5.9 All policies referred to in my Proof are listed in Appendix C and available in Core documents CD-52 and CD-53.
- 5.10 Both the NPPF (National Planning Policy Framework) [CD-47] and PPG (Planning Practice Guidance) [CD-48] form National guidance and carry full weight as material considerations in the assessment of these appeals.

6. LPA'S SUGGESTED REASONS FOR REFUSAL

6.1 The Council's Planning Committee resolved on 19th May 2022 that had it been in a position to determine the applications then it would have sought to refuse planning permission for application 21/04202/F for the following reasons. No particular reasons for refusing the listed building remediation works necessary to Trelawn House in the event of the planning appeal being allowed were advanced (application 21/04179/LB), as they would only be consequential works. The reasons for refusal suggested by the Council's Planning Committee Members were as follows:

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 the 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.

- 6.2 Another suggested highway reason for refusal, which was included in the original Committee report was withdrawn at the meeting in light of updated plans and a confirmation provided from Oxfordshire County Council as Highway Authority that their original concerns had been overcome and they were satisfied that the matters could be satisfactorily addressed through compliance with appropriate condition.
- 6.3 The third suggested reason for refusal was not included in the original Committee report but was subsequently added as an Officer recommendation in a Written Update report and accepted by Committee Members in their Minuted resolution.
- 6.4 The Council's suggested second reason for refusal – Drainage – has been subsequently withdrawn since Oxfordshire County Council as Local Lead Flood Authority confirmed that those matters could be resolved by adherence to appropriate conditions of approval.
- 6.5 Subsequently, the District Council has decided not to pursue its fourth reason for refusal – Viability.
- 6.6 Accordingly, therefore, only the first and third suggested reasons for refusal will be contended, which relate to planning policy, heritage and design matters, piecemeal development plus the overall 'planning balance' consideration.

7. THE COUNCIL'S CASE

- 7.1 Whilst I deal primarily with planning matters, it is necessary to refer to all aspects of the deemed reasons for refusal in this Proof due to the need to assess all matters in the round as part of the 'planning balance' consideration.

ISSUE 1 – THE EFFECT ON THE SIGNIFICANCE OF DESIGNATED HERITAGE ASSETS (INCLUDING THEIR SETTING)

Whether the proposals are contrary to saved 1996 Local Plan policy C18, policies Banbury 8 and ESD15 of the 2015 Local Plan and Government guidance within paragraphs 199, 202 and 206 of the NPPF – Deemed Refusal Reason 1 – and the relevant weight to be attached to those Development Plan policies

- 7.2 Saved 1996 Local Plan policy C18 states that: *“In determining an application for Listed Building consent, the Council will have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. The Council will normally only approve internal and external alterations or extensions to a listed building which are minor and sympathetic to the architectural and historic character of the building.”* The policy wording is consistent with Sections 16(2) and 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) and paragraphs 197, 199, 202 and 206 of the NPPF. Therefore, notwithstanding the considerable age of the policy, such consistency with national policy and guidance affords full weight to the policy.
- 7.3 Adopted 2015 Local Plan policy ESD15, which deals with the character of the built and historic environment states inter alia that: *“...New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design...Where development is in the vicinity of any of the District’s distinctive natural or historic assets, delivering high quality design that complements the asset will be essential.”* The criteria specified in the policy for the assessment of development proposal goes on to state inter alia that developments should: *“...conserve, sustain and enhance designated and non designated ‘heritage assets’...respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings...”* Once again, the policy wording is consistent with Sections 16(2) and 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) and paragraphs 197, 199, 202 and 206 of the NPPF. Therefore, such consistency with national policy and guidance affords full weight to the policy.
- 7.4 The Council acknowledge that the existing 2-storey Buzz Bingo building fails to either preserve or enhance the setting of Trelawn House or the character and appearance of Banbury’s Conservation Area and its removal would represent an enhancement. However, the substantial height and massing of the proposed 3 and 4-storey development which would immediately abut Trelawn House on its east and south sides would reintroduce further detriment to the appearance and setting of that important heritage asset and, given its scale and massing in such close proximity to the listed building, the level of harm would be increased.

Removing development on the northern flank of Trelawn House would help mitigate the extent of any harm to a 'less than substantial' degree, but the massing of the 3-storey development alongside to the south would dominate the listed building and harm would undoubtedly result. Similarly, the increased 3-storey scale of development proposed along North Bar Street adjacent to Trelawn House, which is an important and prominent frontage in Banbury's Conservation Area, would fail to preserve or enhance the character or appearance of the conservation area. Instead, the scale and design of the proposals would result in additional 'less than substantial' but direct harm to the conservation area, in my opinion.

- 7.5 The 3 and 4-storey proportion of development proposed along the elevated Castle Street frontage would dominate the 2-storey terraced cottages opposite, which lie within the conservation area, causing less than substantial detriment to their setting, character, appearance and outlook, in my opinion.
- 7.6 The appeal site is within the vicinity of St Mary's Church, which lies just to the south in North Bar Street, and saved 1996 Local Plan policy C34 seeks to protect views of St Mary's Church. Although not especially prominent, views currently afforded from Castle Street across the appeal site feature the bell tower to St Mary's Church and those views would inevitably be lost through this development. The resultant harm would be less than substantial, in my opinion.
- 7.7 The appeal site is 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, which was one of the five gate entrances to 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. Substantial archaeological evidence of earlier developments has been found all around the appeal site and it is expected that any redevelopment would likely reveal more such evidence.
- 7.8 NPPF paragraph 199 emphasises that "*great weight*" should be given to the conservation of heritage assets irrespective to the level of harm to the significance of the asset. Far greater evidence in this regard is given in the heritage evidence provided on the Council's behalf by Samantha Pace but it is worth recording here in advance of any planning balance consideration that numerous less than substantial detrimental heritage impacts would result from these appeal proposals.

ISSUE 2 – EFFECT ON THE CHARACTER & APPEARANCE OF THE AREA

Whether the appeal proposals would have a harmful effect on the character and appearance of the local surroundings by virtue of its scale, form and design, contrary to 2015 Local Plan policies Banbury 8 and ESD15 and Government guidance within the NPPF – Deemed Refusal Reason 1 – and the relevant weight to be attached to that Development Plan policy

- 7.9 Policy Banbury 8 requires a high-quality landmark mixed-use development to support regeneration of the area and its integration into Banbury's town centre. The policy requires a design that respects and enhances the surrounding conservation area and in particular, the heritage setting of the Grade II listed Trelawn House. The basis for this requirement stems from the site forming part of an important and visually prominent urban block in the centre of Banbury, at the northern gateway to its historic core, which lies partially within and adjacent to and largely surrounded by the Banbury Conservation Area.
- 7.10 Policy Banbury 8 also sets out site-specific design and place-shaping principles relating to the development opportunities of this site. One of these is that any redevelopment should comply with Policy ESD15 of the 2015 Local Plan, which advises that the design standards for new development, whether housing or commercial are equally important. It also provides a framework for considering the quality of the built environment, to ensure that we achieve locally distinctive design that reflects the context within which it sits. This policy also advises that the design of all new developments should 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 appeal proposals were accompanied by a Design and Access Statement which generally assessed only the immediate context of the site but did not assess more widely the historic core. This document includes several photos of the existing area and site. Several precedent development photos were included on page 10 of the DAS, but it was not clear how they related specifically to Banbury, and they were not locally distinctive in their design.
- 7.11 The 2016 Banbury Vision and Masterplan SPD (CD-55) and Policy Banbury 8 both highlight the importance of the appeal site within Banbury town centre and its historic core. Whilst the SPD identifies a potential for 3 and 4-storey development on the site, there are conservation and urban design concerns with 3 and 4-storey development immediately adjacent to and behind the 2-storey listed building. The historic curtilage to Trelawn House originally extended east into the appeal site and these proposals have not sought to re-provide any element of that curtilage, which could have potentially provided some degree of enhancement to its setting. Instead, the appeal proposals under the associated listed building application 21/04179/LB sought to reveal the northern flank elevation to Trelawn House behind a small, landscaped strip facing out towards the Castle Street/North Bar Street/Southam Road/Warwick Road junction.

- 7.12 Policy Banbury 8 and the Banbury Vision and Masterplan SPD require the provision of a 7m landscape buffer fronting Castle Street, which the appeal proposals fail to deliver. The Appellant's plans indicate small, paved areas for each unit opening out onto Castle Street at ground level within a grassed area behind a hedge, with just a narrow landscape buffer between the proposed hedge and Castle Street. Those small patio areas, which would be north facing and overshadowed by the 3 and 4-storey buildings behind would provide little amenity value in themselves and would suffer road traffic noise from Castle Street. The remaining public open space or landscape buffer to Castle Street varies in width from a maximum of 9m at the western end beside Trelawn House to only 4m at the Bolton Road end, which is not in accordance with Policy Banbury 8 or the SPD.
- 7.13 The opportunity to create an architecturally distinctive and landmark feature at what is a prominent corner junction, adjacent to the grade II listed Trelawn House and opposite the grade II listed Three Pigeons Pub has not been taken up by the Appellant, despite Officer encouragement during pre-application discussions. If the proposed open space is to be the key feature on this prominent corner, it is important that the public art also makes a positive statement to the streetscape. However, the backdrop to the space created, which would be just 126m² in area, would be the blank northern flank elevation of Trelawn House, which was never designed to be exposed to view.
- 7.14 The proposed 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. The Council's Conservation Officer commented at the time that she was not convinced that Trelawn House, with its proposed blank north elevation revealed, should dictate a design move away from a strongly defined building line addressing Castle Street and North Bar Street, as illustrated in the Banbury 8 Masterplan, particularly having regard to making best use of land. The Officer considered that the proposed change in angle of the buildings would create urban design and heritage setting difficulties that the appeal proposals had not been able to satisfactorily resolve.
- 7.15 With respect to North Bar Street, the proposed replacement of the existing 2-storey offices, which are of similar scale to Trelawn House, with 3-storey buildings would not afford any stepped-change transition between Trelawn House to the north and the 3-storey offices further south along North Bar Street. Rather than complement and respect the heritage setting of the neighbouring buildings either side, the proposed building would dominate them and would fail to provide high-quality design to what is an important street scene.
- 7.16 With respect to the Tyre Depot immediately to the south/southeast, it would remain alongside the appeal proposals on an elevated plot, which would dominate the private amenity space of future residents in apartments at the east end of the site. The outlook from all future residents facing south would be dominated by the Tyre Depot building and the activities taking place on the site. The proposed open space amenity areas available to residents on the south side of the building would be narrow at just 2m - 10m in depth and would face out onto a much larger area of car parking extending up to the access road and Tyre Depot.

7.17 Accordingly, the piecemeal nature of this development proposal would result in a poor quality residential environment for future residents, which a more comprehensive development that included the Tyre Depot site would not have encountered.

ISSUE 3 – WHETHER THE PROPOSAL WOULD RESULT IN ANY HARM TO THE COMPREHENSIVE REDEVELOPMENT OF THE AREA

Whether the appeal proposals fail to provide a coherent and integrated development on part of Policy Banbury 8 site, resulting in inappropriate and harmful piecemeal development, contrary to 2015 Local Plan policy Banbury 8 and Government guidance within the NPPF – Deemed Refusal Reason 3 – and the relevant weight to be attached to that Development Plan policy

- 7.18 The proposed development specifically excluded the adjacent tyre depot from the site despite clear pre-application guidance issued to the Appellant (and the landowner before that) that the tyre depot site ought to be included within any redevelopment. Policy Banbury 8 of the 2015 Local Plan aims to develop the site in a comprehensive manner, so the piecemeal nature of the proposals represents a clear conflict with the policy. The vision for Policy Banbury 8 requires positive engagement with adjoining occupiers and landowners to be clearly evidenced. If a comprehensive re-development proposal cannot be achieved, as is the case here, then the policy requires a comprehensive masterplan as part of any submission to show how proposed development would not prejudice acceptable and viable redevelopment of the remainder of the site. This would ensure that the adjacent land, and in particular the tyre depot site, could be fully integrated, including a single vehicular access point with suitable pedestrian connectivity. The indicative plan provided by the Appellant within their Design and Access Statement shows separate accesses and boundary enclosures that would not deliver an integrated site.
- 7.19 Whilst the Appellant is seeking to argue a reduced weight afforded to the policy by virtue of the Council's current 5-year land supply position, national planning policy and guidance stresses the need for 'high quality' design to ensure that development proposals are sustainable. In this instance, failure to include the tyre depot site within the redevelopment proposals would retain an alien and uncomplimentary use that would undoubtedly impact detrimentally upon the residential amenities of future occupants of the scheme. The southern elevation of the proposed development would face out across the only private amenity space for residents across a car park and directly towards the tyre depot, which stands on elevated ground. That proposed southern elevation would be as close as just 8.25m from the northern flank to the tyre depot in some parts. All vehicular access to the appeal site would be via Bolton Road, off Castle Street and would pass the retained tyre depot. The layout proposed alongside the retained tyre depot would not represent high quality development. Rather, it would represent inappropriate and harmful piecemeal development, which would not be sustainable.
- 7.20 Paragraph 134 of the NPPF sets out that development which is not well designed should be refused, especially where it fails to reflect local design policies and Government guidance on design, taking into account any local design guidance and SPD such as design guides and codes. By failing to integrate properly into its immediate and wider surroundings physically, socially and visually, the appeal proposals conflict with sections C1/C2 of the National Design Guide (CD-49).

- 7.21 In such circumstances, irrespective of the current housing land supply position, full weight ought to be afforded to policies that are reflective of national guidance and the clear conflict that these proposals represent to the Development Plan should carry great weight.
- 7.22 Paragraph 7 of the NPPF explains that there are three dimensions (economic, social and environmental) to sustainable development. The three roles are stated as: Economic – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure; Social – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and Environmental - contributing to protecting and enhancing our natural, built; and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.
- 7.23 Paragraph 8 of the NPPF states these roles should not be undertaken in isolation, because they are mutually dependent; *“to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system”*.
- 7.24 In terms of economic sustainability, the appeal proposals would represent economic investment into the town, would generate new jobs and additional expenditure within the local economy, which are clear benefits of the proposals. However, the development proposals are accompanied by a Viability report that demonstrates that the proposals are unable to sustain what would normally be expected by way of community and transport infrastructure contribution to mitigate the detrimental impacts of development. That is a clear disbenefit of the proposals.
- 7.25 With respect to social sustainability, the appeal proposals would provide 78 elderly person apartments which are undoubtedly needed and would provide those new residential units in a sustainable town centre location, which is a significant benefit. However, the appeal proposals provide no mix of tenure types and no affordable housing because it would render the scheme unviable. Whilst the viability evidence is accepted, it nonetheless renders the development proposals contrary to Development Plan policy requirements in that regard, which is a clear disbenefit. The poor quality residential environment afforded to future residents caused by the piecemeal nature of development and retention of the Tyre Depot represents a further disbenefit.
- 7.26 Environmentally, the appeal proposals would introduce less than substantial but nevertheless numerous instances of detrimental impacts on heritage assets, particularly Trelawn House and the conservation area as well as limited views towards St Mary’s Church bell tower.

- 7.27 In addition, the design proposals in terms of its layout, scale, height and massing does not represent high quality design, which should be expected on such a prominent town centre and gateway site surrounded by heritage assets. Such poor quality design is not reflective of local Development Plan policy and SPD guidance, nor reflective of national planning policy and design guidance.
- 7.28 Accordingly, the appeal proposals would represent environmentally damaging development and, overall, the scheme would not represent sustainable development.

8. OVERALL PLANNING BALANCE & SUSTAINABLE DEVELOPMENT

- 8.1 Section 38(6) of the Planning and 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 it does not change the statutory status of the development plan as the starting point for decision making. Nevertheless, the NPPF and its associated PPG are significant material considerations.
- 8.2 As previously referenced, the Development Plan for Cherwell District includes the Cherwell Local Plan 2011-2031 (adopted in July 2015) and saved policies from the Cherwell Local Plan 1996. The appeal site forms part of a Local Plan allocation for mixed town centre development in the Development Plan. Also, it is previously developed land within Banbury's town centre and as such represents a sustainable location for the type of development proposed and the principal of such redevelopment is therefore acceptable.
- 8.3 The Council's evidence in this planning Proof and in the accompanying heritage Proof of Samantha Pace demonstrate numerous instances of less than substantial harm to the setting of a listed building and the character and appearance of Banbury's conservation area. In the Bramshill judgement - Bramshill [2021] EWCA Civ 320 - Sir Keith Lindblom, the Senior President of Tribunals and Lord Justices Phillips and Arnold emphasised the Section 66(1) duty under the Listed Building Act for special regard to be had to the preservation of listed buildings and their setting, which is reiterated in Section 16 of the NPPF and is also fully reflected in local Development Plan policies. The Justices highlighted in their judgement that the NPPF recognises heritage assets as an "*irreplaceable resource*" and where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, that harm "*should be weighed against the public benefits of the proposal*" including, where appropriate, securing its optimum viable use and that "*great weight*" should be afforded to the conservation of the heritage asset. In paragraph 79 of the Judgement, the Justices emphasise that the balancing exercise undertaken under the policies in the NPPF is not the whole decision-making process, only part of it. The whole process must be carried out within the parameters set by the statutory scheme, including those under section 38(6) of the 2004 Act and section 70(2) of the 1990 Act, as well as the duty under section 66(1) of the Listed Building Act. In that broader balancing exercise, every element of harm and benefit must be given due weight by the decision maker as material considerations, and the decision made in accordance with the development plan unless material considerations indicate otherwise. In concluding on the differences in wording between Development Plan policies (in that instance in Hart District) and the wording in the NPPF and the Acts, the Justices concluded that the differences did not put them into conflict with one another. Development Plan policies do not preclude a balancing exercise as part of the decision-making process, whenever such an exercise is appropriate, as it is in this instance. The policies are directed to the same basic objective of preservation.
- 8.4 In this instance, substantial weight should be afforded to the provision of 78 elderly persons apartments in a sustainable, previously developed town centre

location, where there is clear evidence of general housing need and elderly person accommodation needs and that would represent a significant social benefit.

- 8.5 Significant weight should also be afforded to the economic benefits associated with development, which will bring life back to an otherwise largely redundant site, bringing with it new temporary and permanent jobs during construction and once completed and occupied and additional expenditure within the local economy. The significant economic benefits should be tempered slightly by the fact that the schemes poor viability renders it unable to provide any affordable housing and no other contributions to mitigate impacts and fund enhancements to local community and transport infrastructure, which are moderate disbenefits.
- 8.6 Removal of the existing Buzz Bingo building, which has a negative impact on the setting of Trelawn House as a listed building and the character and appearance of the Banbury Conservation Area is also a substantial benefit of the proposals to which great weight should be attached. The provision of a narrow landscape strip along the Castle Street frontage would represent a limited benefit and the provision of a small landscaped open space containing a public art feature alongside Trelawn House could also represent a moderate benefit to which some limited weight could be afforded.
- 8.7 On the other hand, increasing the height, scale and massing of development on the redeveloped site in such close proximity to Trelawn House and within part and adjacent other more substantive parts of the conservation area would cause numerous instances of less than substantial harm that would fail to accord with statutory Acts, national planning policy guidance and local Development Plan policy and SPD design guidance to which great weight should be attached. By virtue of the increased scale of development proposed relative to what currently exists, the scale of detriment caused would outweigh any benefit derived from the removal of the Buzz Bingo building. Given the current lack of a 5-year housing land supply, the weight that might normally be afforded to such Development Plan conflict could potentially be reduced somewhat. However, the statutory duties remain, as does national policy guidance and the Development Plan policy is fully reflective of the Acts, the NPPF and PPGs. Accordingly, therefore I contend that full weight should still be afforded to Development Plan policies C18 and ESD15 and the harms caused to heritage assets would be substantial.
- 8.8 By excluding the adjacent Tyre Depot building and site from the appeal proposals, the resultant scheme represents a piecemeal development of just part of the wider town centre development allocation, which is in direct conflict with Development Plan policy, which is a significant disbenefit to which significant weight should normally be afforded. The design and layout of the appeal proposals would not afford future residents of the scheme with a particularly attractive environment, given the limited scope for private amenity space and the proximity of Castle Street, Bolton Road and the Tyre Depot to the main elevations of the building. Residential amenities for the nearest residents to the Tyre Depot would be particularly compromised. Whilst landscape and noise attenuation measures could ameliorate impacts and such mitigation could be controlled by condition(s) nevertheless, the likely harm to residential impacts should be afforded moderate weight.

- 8.9 Overall, in my opinion, the weight of harmful impacts resulting from development would significantly and demonstrably outweigh the benefits associated with such a development.
- 8.10 Accordingly, I respectfully urge the Inspector to dismiss these appeals and not grant planning permission and listed building consent.

APPENDIX A – ANNOTATED AERIAL IMAGE OF APPEAL SITE & SURROUNDS



APPENDIX B

Copy extracts of 19th May CDC Planning Committee report (published on 12th May), the Written Update report (published on 18th May), and the Minute of the meeting (published on 9th June and formally approved by Members at their following meeting on 16th June 2022)

Committee: Planning Committee

Date: Thursday 19 May 2022

Time: 4.00 pm

Venue: Bodicote House, Bodicote, Banbury, Oxon OX15 4AA

Membership: Membership will be confirmed at the Annual Council Meeting on 18 May 2022

Substitutes: Substitutes will be confirmed at the Annual Council Meeting on 18 May 2022

12. Former Buzz Bingo, Bolton Road, Banbury, OX16 5UL (Pages 138 - 160) 21/04202/F

SUMMARY OF RECOMMENDATION: THAT THE COMMITTEE CONFIRM THAT THEY WOULD HAVE REFUSED THE APPLICATION

1. APPLICATION SITE AND LOCALITY

- 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. The site comprises the former Buzz Bingo Hall and its associated surface car park and a few small offices. Buzz Bingo closed in March 2020 and it was formally confirmed that it was not reopening in July 2020.
- 1.2 The site envelops but does not include Trelawn House which is a Grade II Listed building. This building would be retained. The application site also excludes the land and tyre service building which is located to the rear adjacent to Bolton Road.

2. CONSTRAINTS

- 2.1 The application site is partially within the Banbury Conservation Area and is surrounded by a number of 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 Oxon Protected and Notable Species; Neithrop Cutting SSSI is nearby and the land is potentially contaminated.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1 The application proposes the demolition of the existing Buzz Bingo buildings and the redevelopment of the site with 80 elderly persons apartments and associated facilities. The submission proposes 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 is 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.
- 3.2 *Timescales for Delivery:* The applicant has not given any indication that in the event of planning permission being granted when development might start on site.

4. RELEVANT PLANNING HISTORY

4.1 There is no planning history directly relevant to the proposal.

5. PRE-APPLICATION DISCUSSIONS

5.1 The following pre-application discussions have taken place with regard to this proposal:

21/01879/PREAPP - Redevelopment of the site for 94 bed care home and 22 residential units with some retail/dining to North Bar

21/02881/PREAPP – Redevelopment of the site for elderly accommodation and retail element to North Bar

5.2 Overall, whilst the principle of the re-development of 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 form shown or in the absence of the adjacent tyre depot and evidence of active engagement with landowners in respect of the remainder of the allocation. It was also considered that the submission was not acceptable in its 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 will 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.

6. RESPONSE TO PUBLICITY

6.1 This application has been 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 has been able to identify from its records. The final date for comments was **16 February 2022**. There were 2 objections, no submissions of support and 1 comment raised by third parties.

6.2 The comments raised by third parties are summarised as follows:

- Given the modern eyesore, the re-development is welcome. The proposed frontages however look out of place when compared to the other side of Castle Street and the juxtaposition of Trelawn House against the new design is still too different and are not 'old Banbury'.do not need another Merisham Court/Peoples Place frontage. Far too dark and tall. The Huntingdon example in the DAS is more in keeping
- Too many flats and retirement places in this town, why not do something for the people/kids of Banbury, the bingo hall would make a great ice rink, trampoline hall or roller skate hall.

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

7. RESPONSE TO CONSULTATION

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

TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2 **BANBURY TOWN COUNCIL:** **Comment** that they agree with the principle of this from of development in this location but raise concerns about the scale and siting of the blocks nearest to Trelawn House and suggest a greater set back from the listed building be explored with reduced block sizes/heights near to the listed building.

CONSULTEES

- 7.3 OCC HIGHWAYS: **No objections** subject to issues being resolved in respect of car park layout, cycle parking, access details, travel plan, CTMP, delivery service plan and modal details
- 7.4 OCC DRAINAGE: **Objection** due to insufficient information and details
- 7.5 OCC ARCHAEOLOGY: **Comment** the site is in an area of archaeological importance and therefore recommend that prior to the determination of the application that an archaeological field evaluation is carried out.
- 7.6 OCC FIRE SERVICE: **Comment** that the works will be subject to full building regulations
- 7.7 CDC CONSERVATION OFFICER: **Refuse** as submitted. The very detailed comments can be read in full on the application file and are discussed in the appraisal below.
- 7.8 CDC ENVIRONMENTAL HEALTH: **No Objection** subject to conditions relating to contamination and electric charging points
- 7.9 CDC STRATEGIC HOUSING: **Comment:** in accordance with Policy BSC3 require 30% affordable housing provision with 70:30 tenure split. Recognise that affordable housing provision on site would not be practical due to the nature of the development, but if viable, require an off-site affordable housing contribution in lieu of on-site.
- 7.10 CDC ECOLOGY: **No objection** as there is no issue here regards protected species or habitats and any nesting birds in the buildings can be dealt with by condition. It will deliver a good level of biodiversity enhancement as no real ecological value on site. No issues with the planting plan which will provide limited resources for invertebrates and birds. A biodiversity enhancement plan should be conditioned.
- 7.11 CDC POLICY: **No comments**
- 7.12 CDC LANDSCAPE OFFICER: No comments received
- 7.13 CDC LAND DRAINAGE: **No objection**
- 7.14 THAMES WATER: **No objection** in terms of waste - foul, surface water network infrastructure capacity and surface water drainage are acceptable, **but** there is an inability in the existing water network infrastructure to accommodate the development and therefore a condition is recommended.

8. RELEVANT PLANNING POLICY AND GUIDANCE

- 8.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council in July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 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)

- 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)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- Banbury Vision and Masterplan SPD 2016
- Banbury Conservation area Appraisal 2018
- CDC Residential Design Guide SPD 2018
- OCC Street Design Guide 2021

9. APPRAISAL

9.1 The key issues for consideration in this case are:

- Principle of development
- Quantum of Development and Need
- Heritage impact
- Layout, Design, Open Space and Landscaping
- Highways
- Flood Risk and Drainage
- Land Contamination, Noise, Odour and Air Quality
- Sustainable Construction and Sustainability
- Health and Well-Being
- Viability
- Planning Obligations

Principle of Development

9.2 The site forms part of a larger allocated site in the adopted Cherwell Local Plan 2011-2031 ('CLP 2015') under Policy Banbury 8: Bolton Road. Policy Banbury 8 seeks to regenerate this part of the town and provide a mixed use development of employment uses and housing comprising retail, hotel, leisure, ancillary residential, car parking and 200 dwellings in conjunction with the wider retail and leisure proposals. The application site is located at the western end of the allocation occupying a prominent corner position and is bounded by North Bar to the west, Castle Street to the north and Bolton Road to the east. The policy requires a high quality landmark mixed use development that will

support the regeneration of this area and its integration with the wider town centre with pedestrian and cycle linkages through Parsons Street and Castle Quay Shopping centre. Policy SLE2: Securing Dynamic Town Centres seeks to direct 'Main Town Centre Uses' towards the town centres of Banbury and Bicester.

- 9.3 Policy Banbury 8 also states that the development proposals will be expected to be in accordance with an SPD for the site and also come forward in a comprehensive approach for the redevelopment of the whole site accompanied by a detailed masterplan to ensure a fully integrated and comprehensive development of the site rather than piecemeal. In terms of the SPD this has not been progressed to date and is unlikely to be produced in conjunction with this development plan. The Banbury Vision and Masterplan SPD 2016, however, remains a material consideration.
- 9.4 The site is partly within the Banbury Conservation Area and is in Banbury Town Centre within the shopping Area (as defined on the Local Plan Map – Policy Banbury 7). This policy seeks to strengthen the town centre and supports shopping, leisure and other main town centre uses within it and residential development in appropriate locations except where it will lead to the loss of retail or other main centre uses. Policy Banbury 7 goes on to say however, that the change of use of sites for residential development will normally be permitted if proposals contribute significantly to the regeneration of the town centre. It is therefore considered that the redevelopment of the site for elderly residential accommodation can be considered to accord with Policies Banbury 7 and Banbury 8 in principle.
- 9.5 Notwithstanding the above, the NPPF defines bingo halls and offices as town centre uses. Paragraph B.48 of the CLP 2015 explains that the loss of jobs in any use class will be a consideration in determining a planning application. The application proposal is therefore inconsistent with Policy 7 in this regard as it would lead to the loss of main town centre uses in the town centre. The Banbury Vision and Masterplan SPD 2016 also advises that should this part of Policy Banbury 8 come forward for redevelopment that existing uses and occupiers could remain on site. It is also relevant to consider however, that the main bingo building has been vacant for some time and that the proposal will provide potential for regeneration of this area albeit only a part of the whole allocation.
- 9.6 In respect of new commercial use on the site, Churchill initially considered at pre-application an element of retail on the site fronting onto North Bar. However, Churchill advise that there is a covenant across the majority of the site restricting the sale of liquor which may prevent any café or restaurant taking the premises. Further the applicant advises that following enquiries there was little or no interest from food retailers. Whilst this is regrettable, having regard to the location of the site, the proposed residential use, distance from the main central shopping area and the recent changes in shopping habits, this position is accepted.
- 9.7 In Cherwell a five year housing land supply does not presently exist. The Council's latest Annual Monitoring Report (AMR 2021), prepared in accordance with the NPPF guidance identifies only a 3.8 year housing land supply for the period 2021-2026 and a 3.5 year housing land supply for the period 2022-2027 (commencing on 1 April 2022). As the Council cannot demonstrate a five year housing land supply, in accordance with the NPPF, any assessment of residential proposals will need to apply the 'tilted balance'. The 'tilted balance' states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the adopted CLP 2015 and the NPPF taken as a whole. The proposal will contribute towards the council's 5 year housing land supply. It is considered that the proposal is consistent with Policy Banbury 8 in terms of providing new homes, however, it falls short on the number set out in the policy and does not provide market or much needed affordable family housing.

- 9.8 Policy Banbury 8 also states that, in order to achieve continuity in design and delivery of the vision, a small scale, piecemeal approach would not be appropriate. The policy explains that a comprehensive approach is preferred but that a phased approach may be permitted provided that, proposals will contribute towards the creation of a single integrated community and coherent development. The application submission relates to only part of the site and more crucially does not include the tyre depot or Trelawn House adjacent. As such the application is not in accordance with Policy Banbury 8 and may therefore not achieve the policy objectives. Whilst the application submission advises that the tyre depot occupiers are not currently interested in developing the site comprehensively due to their long lease, no written statement has been included from the tyre depot occupiers to confirm this. Further, the scheme does not appear to have been designed with the possible re-development of the tyre depot site in mind with the potential to incorporate it into this development as an extension to the facility, family housing or other appropriate town centre use in the future.
- 9.9 It is vital that in order to deliver the vision for Policy Banbury 8 that positive engagement with adjoining occupiers and landowners is clearly evidenced. If a comprehensive re-development proposal cannot be achieved, the policy requires a comprehensive masterplan as part of any submission to show how the proposed development would not prejudice the acceptable and viable re-development of the remainder of the site. This would ensure that the adjacent land, and in particular the tyre depot site, could be fully integrated, including a single vehicular access point with suitable pedestrian connectivity. The indicative plan within the Design and Access Statement as shown with separate accesses and boundary enclosures would not deliver an integrated site.
- 9.10 The Banbury Vision and masterplan SPD which was adopted in 2016 is also relevant in the consideration of the application which identifies the site as a potential area for re-development for town centre uses and car parking. The SPD contains objectives which seek to create a vibrant, attractive town centre and environment and high quality housing development.
- 9.11 The proposal must also be considered against and be consistent with housing policies within the CLP 2015. The proposals are consistent with Policy BSC2 which states that the council will encourage the re-use of previously developed land. The site is in an extremely sustainable location. In terms of Policy BSC3 Affordable housing and BSC4 Housing Mix, the proposal does not seek to provide on-site affordable housing provision and has submitted a viability appraisal which advises that an off-site affordable housing contribution would not be viable. This is considered further below.
- 9.12 Having regard to the above, it is considered that the re-development of the site for residential purposes is supported, however, there are reservations given the piecemeal nature of the submission which has not been fully justified and clarified by the applicant, particularly in respect of the Tyre Depot, which is excluded, which consequently is not in accordance with Policy Banbury 8 in this respect.

Quantum of Development and Need

- 9.13 Policy Banbury 8 envisages that in conjunction with the wider retail and leisure proposals for this area that approximately 200 new dwellings will also be delivered. The application site relates to approximately 0.48ha of the wider 2 hectares site. The submission which includes the demolition of the former bingo building and existing office premises, proposes that the re-development of the site would be occupied by a retirement complex of 80 apartments and community facilities to serve those residents. The submission does not provide for market family housing or affordable housing or other town centre uses.
- 9.14 In support of the application, the applicant has provided information on the need for the provision of elderly retirement accommodation of this type as life expectancy increases

and the aging population continues to rise. The recently prepared Oxfordshire Growth Needs assessment Report (July 2021) shows that in comparison to all other Oxfordshire Districts, Cherwell has seen the greatest increase in the proportion of the population aged 65+ between 2011-2018. The Oxfordshire SHMA (2014) also indicates a significant increase in Cherwell's aging population 2011-2031 and acknowledges the need to provide housing for older people. Policy BSC4 of the CLP 2015 also states that '*opportunities for the provision of extra care, specialist housing for older and/or disabled people and those with mental health needs and other supported housing for those with specific living needs will be encouraged in suitable locations close to services and facilities. All proposals will be expected to provide affordable housing in accordance with Policy BSC3: Affordable Housing*'. The submission in principle would therefore be in accordance with Policy BSC4 as stated above.

- 9.15 Whilst it is accepted that a residential retirement scheme on this part of the Banbury 8 site may be acceptable in principle, and that the remainder of the Bolton Road redevelopment area may be better suited to retail, leisure, car parking and hotel uses as required by Policy Banbury 8, due to its proximity and relationship with the town centre itself, the redevelopment of this part of the site in isolation for residential use only must not prejudice the viable and timely delivery of either the total number of dwellings (200) for the overall site or the delivery of the remainder of the site; including the design and place shaping principles, improved links to the town centre and improved public realm accordingly as required by the policy and SPD.
- 9.16 Notwithstanding the above, it is considered that on balance, the re-development of this part of the Bolton Road redevelopment site for elderly living accommodation might be acceptable in principle having regard to its sustainable location and proximity to the town centre, local amenities and public transport connections. The current application submission however, is not currently considered acceptable as it does not provide sufficient parking and manoeuvring space within the development to OCC standards and it is therefore not clear that the site can be developed appropriately for 80 apartments appropriately.

Heritage Impact

- 9.17 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. 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.
- 9.18 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.*
- 9.19 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 planning application.
- 9.20 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.

- 9.21 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.
- 9.22 Banbury is a rural market town with an intact medieval street pattern within its central core, surrounded by 18th and 19th century suburbs. The significant urban fabric and grain of the town must be understood and respected in order to inform future development.
- 9.23 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 20th century and early part of 21st 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.
- 9.24 The Banbury Conservation Area is a designated heritage asset and comprises mainly traditional buildings forming strong frontages on burgage plots using a limited palette 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'*.
- 9.25 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'.
- 9.26 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.
- 9.27 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.

- 9.28 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.
- 9.29 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 (compare with the lower 3-storey roof) and makes the development look contrived. A lower block might be better on this corner with Bolton Road.
- 9.30 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.
- 9.31 Having regard to the above comments, it is considered that the proposals are currently not acceptable 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 in this regard and would therefore warrant a reason for refusal.
- 9.32 The site is also located in an area of archaeological interest within the medieval core of the town, immediately south east 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.
- 9.33 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.
- 9.34 The development site also lies 160m south west 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.

- 9.35 Having regard to the above, County Archaeologist advises 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 to agree the scope of the assessment should have been submitted with the application in line with paragraph 194 of the NPPF. The applicant 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'*.

Layout, Design, Open Space and Landscaping

- 9.36 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.
- 9.37 As previously stated, 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. This site can also 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 has therefore been encouraged through pre-application discussions.
- 9.38 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 is accompanied by a Design and Access Statement accordingly which generally assesses only the immediate context of the site and does not assess more widely the historic core. This 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.
- 9.39 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 and these are discussed above and by the Conservation Officer.

- 9.40 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.
- 9.41 Paragraph 130 of the NPPF states that planning decisions should ensure that developments:
- Will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development
 - Are visually attractive as a result of good architecture, layout and appearance and effective landscaping
 - 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
- 9.42 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.
- 9.43 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.
- 9.44 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.

- 9.45 Following pre-application discussions, whilst the applicant has sought to address concerns raised previously in terms of the building height in respect of Castle Street and Trelawn House, the building remains clearly visible behind Trelawn House and remains 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 applicant has 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.
- 9.46 In terms of window details, it is unclear from the plans what from these will take. The buildings are designed to replicate traditional townhouses where sliding sash are the traditional window style. It is understood from discussions with the applicant 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 applicant should give further thought to the use of sliding sash to the main front elevations.
- 9.47 Local traditional vernacular are simple flat fronted buildings with minimal detail. The proliferation of long narrow projecting rear gables are therefore not appropriate and do 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.
- 9.48 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. Concerns raised by the Conservation Officer in terms of the design of the building are discussed in more detail above.
- 9.49 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.
- 9.50 In terms of the public open space to the corner of the site and to the side of Trelawn House, this indicates a small area enclosed by metal railings of only approximately 126m² (scaled from the submitted site plan). It is not clear from the submission how this small area can 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.

- 9.51 Having regard to the above, it is considered that the proposal as currently submitted is not acceptable and is therefore contrary to the development plan and Government guidance within the NPPF in this respect and would warrant a reason for refusal.

Highways

- 9.52 The application has been assessed by OCC as Highway Authority. The site is in a sustainable location with abundance of amenities situated within walking and cycling distances, for example, Castle Quay shopping centre, Market Place and Parsons Street shopping areas. Footways exist on Bolton Road flanking the western side of the internal access measuring 1.5m approximately and on both the northern and southern sides immediately outside the site access and towards the Castle Street junction. A pedestrian refuge island is located 100m northeast of the site (at the Bolton Road/Castle Street junction). There is also a signalised pedestrian crossing at the junctions of Castle Street/Warwick Road/Southam Road/North Bar Street. In addition to the footways along the local highway network, the site is situated within proximity of a number of Public Rights of Way.
- 9.53 The submitted Transport Assessment (TA) shows the TRICS based trip generation estimates for the existing bingo hall, with no AM peak, 23 PM peak hour trips and a 12hour daily trips of 313 trips. In comparison, the proposed development shows a modest increase of 8 AM peak hour trips, a reduction of 12 trips during PM peak hour, with 12hour daily 139 trips in total. An estimated reduction of 174 daily trips for the retirement accommodation when compared to for the extant permission. There is an even greater reduction when the present permission daily trips is compared to that of Churchill Independent Research Retirement living sites trip forecast (a 194 trip 12hour period total trip reduction). OCC have questioned however, why no details of generated developments multimodal trips data for residents, staff and visitors and anticipated trip movements and staff shift patterns etc are absent from the submitted TA document. The applicant subsequently responded to this but further comments from OCC have confirmed that the requested information has not been submitted, instead a pie chart showing modal split percentages has been submitted. Clarification on this matter therefore remains outstanding at the time of writing the report.
- 9.54 In terms of vehicle access and pedestrian and cycle route connectivity, OCC advise that given that the application site is to be accessed via the existing access that the proposed bellmouth junction access drawing should be provided showing the access visibility splays for vehicles and pedestrians at the junction. This is awaited. The TA has provided drawings that seeks improvements to pedestrian and cycle connectivity with the local road network, public footway and pedestrian and cycle networks between Bolton Road, Castle Street and North Bar street requested in pre-application comments.
- 9.55 In terms of public transport, the closest bus stop to the site is the 'Bolton Road' bus stop located on Castle Street, 170m northeast of the site (a 2minute walking distance). The bus stop is served by 6 bus routes. Banbury Railway Station, southeast of the site is about a 4 minute cycle ride and 11 minute walk away.
- 9.56 In the absence of OCC's and Cherwell Design Parking Standards for retirement homes, 27 parking space arrangement is proposed for the development (at a ratio of 0.33 per unit). Vehicular tracking drawings have been provided demonstrating access and egress, manoeuvres associated with the site and proposed car parking. Independent research of the existing Churchill Retirement Homes confirms an average parking demand of 0.28 spaces per unit which amounts to 22 spaces for the proposed 80 units. Based on the proposed car parking provision, the applicant asserts that overspill parking should not occur, however in the unlikely event that this should arise, the nearby 58 Bolton Road car park is available. This statement however, is made without providing any detail substantive support on the availability of parking spaces to accommodate the demand.

- 9.57 Further, no provision has been made for designated staff, visitor parking, residents and disabled parking bays nor EVCP bays in compliance with OCC's standards within the parking facility. OCC will expect the provision of 7 EVCP bays, with one EVCP allocated to a disabled parking bay. Neither is a parking/standing area for Taxi or Emergency Vehicle evident in the car park. A scaled and dimensioned layout plan capable of accommodating the manoeuvres and swept paths of all vehicle types including a Fire Tender and Pentechion is therefore required to be submitted to ensure that the site works appropriately. Further to these comments, the applicant submitted a revised plan which has been further assessed by OCC, however, none of the submitted plans in support of the application show ECPCs for any of the parking bays, neither designated parking space for Taxis, Ambulances, Refuse and Service vehicles and this should be addressed. Further, due to the nature of the residential development, a single disabled parking bay is considered to be inadequate.
- 9.58 Regarding the vehicle swept path drawings, the manoeuvres would be tight and just manageable within the parking area. The receipt of the updated plan, reference number PA01 C which includes a hardstanding in front of the refuse store to accommodate car parking manoeuvres is acknowledged, however, the revised drawing superimposed with the swept manoeuvres of refuse vehicles to and from the designated collection point is also required.
- 9.59 In terms of cycle parking, the application states that a secure cycle facility will be located within the mobility scooter store for the retirement living apartments. No details, however, of drawings of the cycle storage facility for residents, staff and visitors has been provided and neither has any information been submitted on how the parking would be managed in a safe and secure manner. Given the age profile of residents, the sustainable location of the site and the average cycle per development (0.75) based on other Churchill Retirement surveys. Whilst it is accepted that cycling is unlikely to be highly utilised by residents, opportunities to promote cycling within the vicinity of the site for visitors and staff should be promoted. These details have now been submitted for consideration.
- 9.60 In terms of personal injury accidents, the most recent data (2016-2021) confirmed 3 accidents occurred within proximity of the site, two were slight and one was serious. The serious accident however was unrelated to the proposed access junction or highway safety design issues.
- 9.61 In terms of refuse and servicing, the application proposes that this is collected on-site with the appropriately sized vehicle able to access the site, turn and leave in a forward gear. The footway leading into the site should be 2m wide, however, the existing fence may prevent this and OCC do not recommend that the carriageway is narrowed to accommodate a wider path. OCC advise that the Refuse Strategy is not ideal as the refuse vehicle appears to narrowly pass the parking gate entrance area, with a 10.6m long refuse vehicle used in the swept path drawing, but a 11.6m long refuse vehicle is normally required and neither is it clear where refuse vehicles will park for collection.
- 9.62 OCC also advise that dropped kerbs and tactile pavements should be installed where possible to allow pedestrians to safely walk down Bolton Road from the site in the south and northeast and in vicinity of the uncontrolled crossing at the Bolton Road/Castle Street junction. These off-site works will need to be designed in accordance with Design Manual for Roads and Bridges (DMRB) and junctions and visibility splays will need to comply with the OCC Street Design Guide and dedicated to OCC if they fall out of the existing highway boundary. A Stage 1 Road Safety Audit in accordance with GG119 (5.46.1) may be required in advance of planning permission being granted as the findings may result in the red line boundary having to change due to road safety remedial measures being required. To date details of off-site works, including suggested dropped

kerbs as requested have not been addressed. Additional information requested on the travel Plan is also awaited.

- 9.63 Having regard to the above, the application currently remains unacceptable in terms of Transport Development Control and is therefore contrary to Government guidance within the NPPF Section 9 'Promoting Sustainable Transport' and would warrant a reason for refusal.

Flood Risk and Drainage

- 9.64 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 is accompanied by a Flood Risk and Drainage Technical Note.
- 9.65 OCC as Local Lead Flood Authority (LLFA) have assessed the submission and have objected.
- 9.66 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.
- 9.67 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.
- 9.68 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.
- 9.69 A detailed maintenance schedule is required for all proposed drainage infrastructure and SuDS features and all maintenance requirements need to be clearly identified.
- 9.70 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.
- 9.71 Technical approval from the sewer undertaker will be required in order to make drainage connections.
- 9.72 The Ground Investigation Report states that infiltration is not feasible, however, the infiltration testing results, and location of testing have not been provided.
- 9.73 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 would warrant a reason for refusal.
- 9.74 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.

Land Contamination, Noise and Air Quality

- 9.75 The application is accompanied by an Acoustic Report, Air Quality Report and Ground Investigation Report which have been assessed by the Environmental Health team.
- 9.76 In terms of noise, where there is a need for background ventilation to achieve the desired noise levels, an overheating assessment should be carried out and any necessary mitigation put in place prior to first occupation. An overheating risk assessment has subsequently been submitted which addresses any issues and is acceptable. Whilst the external areas on Castle Street will have noise levels above 55dB, provided all residents

have access to the communal patio area for relaxing then this is not a reason for objection. However, there is concern that relying on the gate to be closed is not the best way to maintain a good noise environment on the patio area.

- 9.77 In terms of contamination, the content and findings of the report is accepted and therefore a condition is recommended regarding any contamination not previously identified be found.
- 9.78 In terms of air quality, the air quality report contents and its findings are acceptable. A condition is recommended regarding the provision of EV charging points for 25% of the car parking spaces.

Sustainable Construction and Sustainability

- 9.79 Section 14 of the NPPF 'Meeting the challenge of Climate Change, Flooding and Coastal Change' is relevant to this proposal, and in particular Paragraphs 154 and 155.
- 9.80 Policy ESD1 of the CLP 2015 'Mitigating and Adapting to Climate Change' and includes a criteria for considering applications, including the requirement that new development will incorporate suitable adaption measures to ensure that the development is more resilient to climate change impacts.
- 9.81 Policy ESD2 of the CLP 2015 'Energy Hierarchy and Allowable Solutions' seeks to achieve carbon emissions reductions, particularly in respect of sustainable design and construction measures, making use of renewable energy and giving priority to decentralised energy systems.
- 9.82 Policy ESD3 'Sustainable Construction' states amongst other things that '*All new residential development will be expected to incorporate sustainable design and construction technology to achieve zero carbon development through a combination of fabric energy efficiency, carbon compliance and allowable solutions in line with Government policy*'. The policy also goes on to say that '*Cherwell District is in an area of water stress and as such the Council will seek a higher level of water efficiency than required in the Building Regulations, with developments achieving a limit of 110 litres/person/day*'.
- 9.83 The application is accompanied by a sustainability statement which has assessed the development in terms of Policies ESD1, 2 and 3. The key conclusions advise that:
- The buildings will be constructed to a specification which incorporates insulation levels and fixings achieving u-values significantly beyond the benchmarks in Part L
 - The energy efficiency measures proposed will achieve a 10.90% saving over the Building Regulations Target Fabric Energy Efficiency metric
 - A PV array capable of generating 43,647.94Wh/year of electricity and off-setting 22,260.45kg/year cO2 will be installed on the roof of the building
 - Each home will achieve a water consumption rate less than 110 litres person/day or less
 - An ethical timber procurement policy will operate at the application site
- 9.84 Officers are satisfied that the proposed development would comply with the requirements of the Policy and that the development would be sustainable in terms of energy use.

Health and Well-Being

- 9.85 Health and well-being is high on both the Government's and this council's agenda, particularly in the light of the recent pandemic and impact it has had on the population, emphasising the need for access to good quality public open space as well as the benefit of private outdoor space. The applicant was therefore advised at pre-application that a Health Impact Assessment should be carried out in connection with the development.

This was submitted accordingly and has been assessed by the Healthy Place Shaping Team who raise no objection to the submission.

Affordable Housing and Viability

- 9.86 The application submission does not propose affordable housing within the development due to the specialist nature of the development, stating that the management regime and high service charges associated with retirement schemes render it problematic to mix open market and affordable tenures.
- 9.87 The usual policy requirement set out in Policy BSC3 of the CLP 2015 would be for the provision of 30% affordable housing on all developments of 11 or more dwellings with a 70:30 tenure split between rented and intermediate tenures. However, it is recognised that with proposals such as this for open market retirement apartments in a block, on-site affordable housing provision would not be practicable and therefore accept the reasoning above put forward by the applicant. In such circumstances an off-site contribution would ordinarily be sought through a Section 106 Agreement and the amount payable would be based on estimated sales values with an overage clause included to secure commuted sum payments in the future if the developer achieves a higher profit margin than anticipated in the viability assessment.
- 9.88 A viability statement has also been submitted with the application advising that the provision of an off-site affordable contribution in lieu of on-site provision would not be viable. The viability statement has been reviewed by an independent assessor on behalf of the District council.
- 9.89 The findings of the independent assessor advises that the site is sufficiently viable to make a policy compliant contribution towards the provision of Affordable Housing. A copy of the report has been forwarded to the applicant for information and comment, but to date no response has been received. The provision of an appropriate affordable housing off-site contribution will therefore be sought through the Section 106 Agreement accordingly.

Planning Obligations

- 9.90 In order to ensure that the development is acceptable in planning terms, a number of the impacts of the development need to be mitigated and/or controlled through covenants in a legal agreement. All section 106 requirements are subject to statutory tests and in order to be taken into account in deciding to grant planning permission they need to be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind.
- 9.91 Policy INF1 of the CLP 2015 advises that development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities. The Council's Developer Contributions SPD 2018 offers guidance in respect of infrastructure requirements and provision and is a material consideration.
- 9.92 It is considered that the following additional items/contributions should be secured as part of any permission relating to the development (and any amendments deemed necessary)
- 9.93 **CDC Obligations**
- Off-site affordable housing contribution in lieu of 30% on site
 - Community facilities enhancement within the vicinity of the site of £47,009.08
 - Outdoor sports provision of £82,949.60
 - Indoor Sports provision of £34,336.77
 - Monitoring fee of £1000

9.94 OCC Obligations

- Monitoring fee of £1,446 (RPIx Dec 2020)

9.95 Other Obligations

- OCCG - £69,120 towards doctors surgeries in Banbury to provide the additional health care necessary to serve the increased population

10. PLANNING BALANCE AND CONCLUSION

- 10.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise. The NPPF supports this position and adds that proposals that accord with an up-to-date development plan should be approved and those which do not normally refused unless outweighed by other material consideration.
- 10.2 In terms of this application, the principle of the redevelopment of the site for residential elderly persons accommodation is considered acceptable in principle. The application as submitted however, is not considered appropriate in terms of the overall scale and height of the proposed buildings in relation to the Grade II Listed Trelawn House adjacent and in terms of its detail of design, and its function as a key landmark building at this main road junction. The proposal is therefore contrary to Policy ESD15 of the CLP 2015 and saved policies C18, C23, C28 and C30 of the adopted CLP 1996 and Government guidance within the NPPF relating to design and heritage impact.
- 10.3 In terms of the piecemeal nature of the development which has specifically excluded the adjacent tyre depot from the site, the application is also considered to be contrary to Policy Banbury 8 of the CLP 2015 which aims to develop the site in a comprehensive manner.
- 10.4 The development is also not currently considered acceptable in terms of highways who have raised objections to the current submission and would therefore fail to provide safe access to the site and fails to comply with Policy ESD15 of the CLP 2015 and Government guidance within the NPPF.
- 10.5 In terms of flood risk and drainage, the site lies in Flood Zone 1 and is therefore at low risk of flooding. OCC as Local Lead Flood Authority have objected to the proposal on the grounds of lack of detail and information. To date this objection has not been resolved and therefore the proposal is contrary to policy ESD6 and ESD10 of the CLP 2015 and Government guidance within the National Planning Policy Framework.
- 10.6 In terms of Planning Obligations, a section 106 has not yet been agreed and drafted, and the issue of the viability of the development in terms of an off-site affordable housing has not yet been resolved. A reason for refusal relating to the lack of a completed Section 106 is therefore also recommended.

11. RECOMMENDATION

THAT THE COMMITTEE RESOLVE TO CONFIRM THAT, HAD THE POWER TO DETERMINE THE APPLICATION HAD CONTINUED TO REST WITH THEM, THEY WOULD HAVE REFUSED THE APPLICATION FOR THE REASONS SET OUT BELOW:

REASONS FOR REFUSAL

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 proposal does not provide for safe and adequate access, parking and manoeuvring within the site to the detriment of pedestrian and highway safety contrary to Oxfordshire's County Council's guidance Residential Road Design Guide (2003) - Second Edition (2015) Also, the off-site works will need to be designed in accordance with DMRB and the junction and forward visibility splays and dimensions must be in accordance with the OCC Street Design Guide November 2021 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.

**CHERWELL DISTRICT COUNCIL
PLANNING COMMITTEE**

19 May 2022

WRITTEN UPDATES

Agenda Item 12

21/04202/F

Former Buzz Bingo site, Bolton Road, Banbury, OX16 5UL

Additional representations received

The County Highways authority wrote this morning to confirm that as a result of recent discussions with the applicant/appellant, OCC no longer wish to support a highway reason for refusal, and they are happy that their previous concerns can be addressed through an appropriate condition(s).

"In terms of the primary reason for refusal of safe and suitable access I am not confident that this could be sufficiently evidenced and recommend that it is not taken forward. 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 can be done in theory albeit that the vehicle is effectively 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. For the other matters that are flagged in the report these identify some potentially negative elements of the proposals/submission however agree that they would not materially change the assessment. For the related appeal we are intending on providing a statement that covers the points that we think are in need of a planning condition and explaining the rationale/reasoning for those conditions along with an indication of what we would consider suitable to satisfy the conditions where needed."

Officer comments:

The officer report at paragraph 9.8 makes reference to inappropriate piecemeal development that failed to include the adjacent tyre depot site, but this was not reflected in the suggested reasons for refusal. Accordingly therefore, an additional reason for refusal is now proposed.

In light of the County Council's latest highway guidance, the suggested highway reason for refusal should be deleted and a condition(s) should be added to any approval in the event that the appeal is allowed and planning permission granted.

Recommendation

As per the published agenda report except for removal of the highway reason and the following additional refusal reason:

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.

Cherwell District Council Planning Committee

Minutes of a meeting of the Planning Committee held at Bodicote House, Bodicote, Banbury, Oxon OX15 4AA, on 19 May 2022 at 4.00 pm

Present:

Councillor George Reynolds (Chairman)
Councillor Maurice Billington (Vice-Chairman)
Councillor Andrew Beere
Councillor Rebecca Biegel
Councillor John Broad
Councillor Hugo Brown
Councillor Fiona Mawson
Councillor Richard Mould
Councillor Lynn Pratt
Councillor Les Sibley
Councillor Dorothy Walker
Councillor Barry Wood

Substitute Members:

Councillor Matt Hodgson (In place of Councillor Sean Woodcock)

Apologies for absence:

Councillor Jean Conway
Councillor Ian Corkin
Councillor Ian Harwood
Councillor Simon Holland
Councillor Amanda Watkins
Councillor Sean Woodcock

Officers:

Alex Chrusciak, Senior Manager - Development Management
Andy Bateson, Team Leader – Major Developments
Rebekah Morgan, Principal Planning Officer
James Kirkham, Principal Planning Officer
David Mytton, Solicitor
Lesley Farrell, Democratic and Elections Officer
Aaron Hetherington, Democratic and Elections Team Leader

13 Former Buzz Bingo, Bolton Road, Banbury, OX16 5UL

The Committee considered application 21/04202/F for a redevelopment for 80 retirement living apartments including communal facilities, access, car parking and landscaping at Former Buzz Bingo, Bolton Road, Banbury, OX16 5UL for Churchill Retirement Living.

In reaching its decision the committee considered the officers' report and presentation and the written updates.

Resolved

(1) That the committee resolved to confirm that, had the power to determine application 21/04202/F continued to rest with them, application 21/04202/F would be refused for the following 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. 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. 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 the 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.

APPENDIX C - KEY DEVELOPMENT PLAN POLICIES REFERENCED IN THIS PROOF

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

- SLE2 – Securing dynamic town centres
- BSC2 – Effective and efficient use of land
- BSC3 – Affordable housing
- BSC4 – Housing Mix
- 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)

- C18 – Listed buildings
- C23 – Conservation area
- C28 – Design
- C30 – Design
- C34 – Views of St Marys Church
- ENV12 – Contamination

APPENDIX D – PHOTOGRAPHIC IMAGES OF THE APPEAL SITE & ITS SURROUNDS

[Separate document]