



Planning Statement

Location: 2-6 Waterperry Court, Banbury, OX16 4QG
Proposal: S73 Application
Prepared for: Waterperry Court Development Ltd
Date: October 2022

Prepared by:	Miriam Owen MA (Hons), MSc, MRTPI	Project Ref:	3345
Checked by:	Associate/Director	Issue:	Submission
Authorised by:	David Russell	LPA:	Cherwell District Council



Contents

1	Introduction	3
2	Site and Surrounding Area.....	4
3	Proposed Development	6
4	Planning History.....	8
5	Planning Policy	9
6	Planning Considerations	10
7	Conclusions.....	15



1 Introduction

1.1 This *Planning* Statement has been prepared by Edgars on behalf of our client, Waterperry Court Development Ltd, in respect of a Section 73 application seeking the *removal of condition 11 of CHN.546/89* at 2-6 Waterperry Court, Banbury, OX16 4QG.

1.2 Application CHN.546/89 sought consent for:

Six office units in terrace formation with undercroft and surface parking to provide a total 59 car spaces. New access.

1.3 Condition 11 of CHN.546/89 states:

That the building shall be used only for the purpose of B1(a) and B1(b) and for no other purpose whatsoever, including any other purpose in class B1 of the schedule to the Town and Country Planning (Use Classes) Order 1987.

Reason: In order to maintain the character of the area and safeguard the amenities of the occupants of the nearby residential properties.

1.4 As well as this statement, the application is supported by:

- Application forms
- Location & Site Plan
- Commercial Report & Marketing Report (White Commercial)
- Viability Appraisal Report (Whitmarsh Lockhart)

1.5 This Statement contains a description of the site and surrounding area and the proposed development and sets out the relevant planning history and planning policy. It then assesses the proposed development against the key planning considerations.

1.6 Based on changes to the wider national planning policy and legislative context, together with the current economic outlook for commercial and business development in Banbury and more widely, it is evident that the condition – which is over 30 years old – is no longer relevant, reasonable or necessary. Its proposed removal would facilitate the reuse of a building which could make a positive contribution to the economic vitality of Banbury town centre but which has been vacant for sometime owing to the presence of this condition and associated restrictions on finding a commercially viable use for it.

1.7 In the absence of any material considerations to indicate otherwise, and in accordance with NPPF para 11(d) and Local Plan Policy PSD1, it is respectfully requested that this application is granted without delay.



2 Site and Surrounding Area

- 2.1 Waterperry Court is located on the junction of Bridge Street, Middleton Road and Merton Street, Banbury (Figure 1). The building was constructed in 1989, and originally comprised five terraced self-contained office buildings which have been vacant since early 2020.



Figure 1: Site location (Source: Google Earth, April 2021)

- 2.2 The offices and associated parking occupy a site of circa .64 acres. The site is accessed from Merton Street and benefits from 52 car parking spaces (of which 18 undercroft) which are located to the rear of the property, separated from the adjacent railway line which borders the west of the site by a mature leylandii hedge. To the south of the property is the Royal Mail Group Sorting office. To the north and east there are a range of residential properties and some local shops/services, although these are separated from the site by the intervening roads.
- 2.3 The site occupies a prominent corner position at the busy junction of Bridge Street, Middleton Road and Merton Street. There is direct pedestrian access to the building from Merton Street, which is set back from the pavement by a narrow concrete apron and some low-level planting. The building itself comprises three and four storeys at the front (Figure 2) and four/five to the rear, with the eastern and western-most blocks stepping down a storey to break up the façade and accommodate the site's topography which slopes down from north-west to south-east. The existing building is finished in contrasting buff/red brick with distinctive red window frames/doors and pitched tile roof.
- 2.4 The site adjoins the Grimsbury Conservation Area (Figure 3) and is partially located within Flood Zones 2 & 3 (Figure 4).



Figure 2: Front and rear elevations of Waterperry Court (bottom row shows with Brethertons signage recently removed)



Figure 3: Grimsby Conservation Area

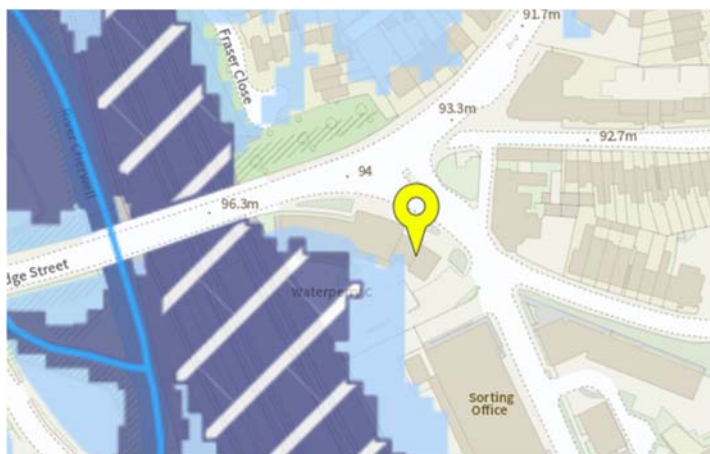


Figure 4: Flood risk



3 Proposed Development

3.1 This Section 73 application seeks the removal of condition 11 of CHN.546/89 to allow for the flexible use within Use Class E of the existing offices at 2-6 Waterperry Court, Banbury.

3.2 Application CHN.546/89 sought consent for:

Six office units in terrace formation with undercroft and surface parking to provide a total 59 car spaces. New access.

3.3 Condition 11 of CHN.546/89 states:

That the building shall be used only for the purpose of B1(a) and B1(b) and for no other purpose whatsoever, including any other purpose in class B1 of the schedule to the Town and Country Planning (Use Classes) Order 1987.

Reason: In order to maintain the character of the area and safeguard the amenities of the occupants of the nearby residential properties.

3.4 Condition 11 restricts use of the building to what was then use B1(a) offices and B1(b) (R&D). Changes to the Use Class Order¹ (UCO) which were introduced in September 2020 combined these uses into a new Use Class E - Commercial, Business and Service, which includes a range of uses as summarised in Figure 5.

3.5 In its July 2020 letter to Chief Panners, MHCLG described the new Class E as ‘*a new broad category of “commercial, business and service” uses which will allow commercial, retail and leisure uses greater freedom to adapt to changing circumstances and respond to the needs of their local communities*’. Condition 11 of the 1989 consent is inconsistent with recent changes to the UCO and the purpose for which Class E was introduced. Indeed, the fact that the offices at Waterperry Court have been vacant since 2020 owing to issues over market demand and commercial viability demonstrates exactly why this flexibility is required and the lifting of this condition will allow a viable alternative commercial/business use to be found for the building.

¹ Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

**Use Class E – Commercial, Business & Service**

Use, or part use, for all or any of the following purposes:

- a) Shop other than for the sale of hot food
- b) Food and drink which is mostly consumed on the premises
- c) the following kinds of services principally to visiting members of the public
 - i. financial services
 - ii. professional services (other than medical services)
 - iii. any other services which it is appropriate to provide in a commercial, business or service locality
- d) Indoor sport and recreation (not swimming pools, ice rinks or motorised vehicles or firearms)
- e) Medical services not attached to the residence of the practitioner
- f) Non-residential creche, day centre or nursery
- g) i) office ii) the research and development of products or processes or iii) any industrial process, (which can be carried out in any residential area without causing detriment to the amenity of the area)

Figure 5: Use Class E



4 Planning History

4.1 The relevant planning history for the site is listed in Table 1.

Reference	Description	Decision	Date
21/03918/F	2-6 Waterperry Court Conversion to a hotel (Use Class C1) including eastern extension, associated car parking, landscaping and ancillary works	Approved	29/04/2022
21/00303/F	2-4 Waterperry Court Removal of Condition 11 (use of building) of 89/00546/N	Withdrawn	17/03/2021
20/03558/O56	2-4 Waterperry Court Prior Approval for the change of use from office (Use Class B1a) to residential (Use Class C3) to create 30 self-contained flats	Refused	05/02/2021
20/02817/O56	2-4 Waterperry Court Prior Approval for the Change of Use from office (B1a) to residential (C3) to create 30 self-contained flats	Withdrawn	03/12/2020
18/01785/F	5-6 Waterperry Court (Chiltern House) Change of use from office use (B1) to driving centre (sui generis)	Withdrawn	
04/02191/F	Unit 4 Waterperry Court Change of use of ground floor and part first floor to recruitment agency class A2 use (Unit 4)	Approved	24/11/2004
CHN.546/89	Six office units in terrace formation with undercroft and surface parking to provide a total 59 car spaces. New access.	Approved	10/08/1989

4.2 A S73 application to remove Condition 11 of the 1989 consent was previously submitted and withdrawn in 2021 (ref 21/00303/F). At that time the Council's Economic Growth Services department resisted the loss of the offices on the grounds of perceived weaknesses in the marketing exercise, lack of evidence of non-viability, the need to protect office stock in Banbury and the contribution that Waterperry Court made to office supply in the town. These were subsequently comprehensively addressed as part of an application to convert the building to a hotel (C1 use, application ref 21/03918/F) which was approved in April 2022. In response to this application, the Economic Growth Services officer commented that: *'the proposed redevelopment... would contribute towards the vitality of the town centre and complement the economic development aims of the Council.'* In making this response and subsequently approving the application, Officers indicated that the loss of office accommodation would be acceptable where the alternative use still makes some contribution to the economic and commercial vitality of the town in line with the Council's Economic Development Strategy.



5 Planning Policy

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. This is echoed in paragraph 2 of the National Planning Policy Framework (NPPF), published in February 2021, which is itself a material consideration.
- 5.2 The Development Plan comprises Cherwell Local Plan 2011-2031 (Part 1) (CLP 2015) and the saved policies of Cherwell Local Plan 1996 (CLP 1996). Also relevant is the Banbury Vision and Masterplan SPD, which was adopted in 2016.
- 5.3 Cherwell District Council is also in the process of undertaking its Local Plan Review 2040 and published its Community Involvement Paper 2: Developing Our Options in September 2021.

National Planning Policy Framework

- 5.4 The relevant chapters and paragraph numbers are listed in Table 1.

Table 1: NPPF policies	
Chapter	Paragraph Numbers
2. Achieving sustainable development	7, 8 & 11
4. Decision-making	38
6. Building a strong, competitive economy	81
7. Ensuring the vitality of town centres	86 & 87
11 Making effective use of land	119, 120, 121, 122 & 123

Cherwell Local Plan

- 5.5 The Local Plan policies relevant to this application are listed in Table 2.

Table 2: Relevant Local Plan policies	
Policy Number	Policy Title
<i>Cherwell Local Plan 2011-2036</i>	
PSD1	Presumption in Favour of Sustainable Development
SLE1	Employment Development
SLE2	Securing Dynamic Town Centres
ESD15	Character of Built and Historic Environment
<i>Saved policies of Cherwell Local Plan 1996</i>	
C31	Compatibility of proposals in residential areas



6 Planning Considerations

6.1 Having regard to the proposed development, together with the site context, relevant planning history and planning policy, the key planning considerations for this proposal are:

- Principle of Development
- Design & Heritage
- Neighbouring Amenity

6.2 These matters are considered in turn below.

Principle of Development

6.3 CLP 2015 Policy SLE1 states that employment uses should be retained except where the applicant can demonstrate that:

- an employment use should not be retained, including showing the site has been marketed and has been vacant in the long term;
- there are valid reasons why the use of the site for the existing or another employment use is not economically viable;
- the proposal would not have the effect of limiting the amount of land available for employment.

6.4 Supporting text (para B.38) makes reference to land and buildings specifically in B class uses. Adopted in 2015 this policy clearly predates changes to the use class order made in September 2020. The policy is therefore considered to be out of date²; indeed it was noted by an Inspector (appeal ref APP/V5570/W/19/3243073) when considering an application for a change of use that was in conflict with the development plan but in accordance with Class E that *'the changes to the use classes order outweigh the conflict with the development plan'*³. In respect of national policy on economic development, the NPPF is clear that significant weight should be placed on the need to support economic growth and productivity (para 81).

6.5 Furthermore, consent was granted in April 2022 for conversion of Waterperry Court to a hotel (C1 use class) where Officers accepted the loss of a B class use. In determining the application, Officers

² The District Council is currently undertaking a view of its Local Plan, but there is no clear indication of the content of future planning policies. The Community Involvement Paper 2 (published in September 2021) acknowledges changes to the Use Class Order in respect of Class E and invited comments on whether the associated permitted development rights associated both with the conversion of town centre properties to residential and the range of uses now allowed in Class E should be restricted in respect of Banbury specifically. National Planning Guidance is however clear that Article 4 directions must apply to the smallest geographical area possible and be limited to situations where it is necessary to protect local amenity or the well-being of the area. Potential harm must be clearly identified, and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area or an area extending beyond the essential core of a primary shopping area.

³ <https://acp.planninginspectorate.gov.uk/ViewCase.aspx?Caseid=3243073>



had regard to the Commercial Report provided by White Commercial and the Viability Appraisal undertaken by Whitmarsh Lockhart LLP (copies of which are provided with this application) which specifically addressed the expectations of Policy SLE1 in respect of the duration that the site was marketed, the non-viability of offices and the wider availability of employment land within the town. The Officer's Report concludes, at para 8.6, that *'It is considered that a case has been demonstrated that the continued use of the building as an office is not viable currently'*. In preparing this S73 application, the views of White Commercial and Whitmarsh Lockhart have been sought in order to confirm whether their previous conclusions are still up to date. Both have confirmed that the viability and commercial situation remains largely the same. Supply and demand for office space in Banbury has not changed significantly in the last 12 months while viability has potentially worsened due increased construction costs and current economic uncertainty across the UK. Indeed, in making this application, the site's owner is seeking to maximise options for the site's redevelopment in the context of challenging economic circumstances and rising construction costs.

- 6.6 Policy SLE1 also states that consideration will be given to whether there are other planning objectives that would outweigh the value of retaining the site in employment use. The introduction of Use Class E – the primary objective of which was to encourage the continued prosperity of the UK's town centres by making it easier for all of the uses within Class E to seamlessly change without needing planning permission – is considered to be such a planning objective that would outweigh the site's retention for B1/B2 uses as required by Condition 11. Indeed, NPPF para 54 directs Local Planning Authorities that *'planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so'*. The PPG goes on to say that *'Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity'*. Consequently, Council decisions seeking to limit Class E uses through condition where there is no clear justification have been overruled by the Planning Inspectorate⁴.
- 6.7 The removal of Condition 11 is also considered to accord with the Council's objectives for Banbury town centre, as set out in its Economic Development Strategy and Town Centre SPD in that it will facilitate the reuse of a vacant building that has a strong physical connection to the town centre, being located at the edge of the town centre according to the CLP 2015 proposals map but referenced as being within the town centre by Officers in their delegated report for application ref 21/03918/F⁵. As recognised by the Economic Growth Department Officer in their response to the previous application to convert the building to a hotel: *"The vacant Waterperry Court premises represent both a risk and opportunity for the town centre...[its redevelopment presents]...an opportunity for refurbishment to meet the future needs of both the town and the owners of the premises. A risk is that, without investment and occupancy, the premises would continue to be vacant and to not serve the town whilst the fabric would deteriorate and detract from plans to redevelop the wider Canalside area."* Allowing the building to be converted to Class E uses in accordance with market demand and viability will also contribute to the objectives of the District's Economic Development Strategy and Community Plan, namely promoting and supporting business

⁴ e.g., change of use to form hand car wash, construction of additional storey on existing tanning salon to provide tanning salon to first floor, disputed condition 5, <https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3263803>

⁵ See para 9.2 of Officers report for application 21/03918/F *'This site represents an existing commercial use within the confines of Banbury Town Centre'*



diversification by growing local services and businesses; supporting town centres to be attractive economic hubs for the District; and creating additional local employment opportunities. As such, facilitating the conversion of Waterperry Court to Class E uses by removing Condition 11 is considered to accord with Local Plan Policy SLE2 which seeks to encourage dynamic town centres by directing 'main town centre uses' (including those specified in Class E) towards the District's town centres, and NPPF para 86 which directs local planning authorities to support the role that town centres play by taking a positive approach to their growth, management and adaptation.

- 6.8 In conclusion, while CLP 2015 Policy SLE1 seeks to retain sites in B use classes, this policy is considered to be out of date and changes to the use class since its introduction are considered to outweigh this conflict. Furthermore, Officers have previously accepted the loss of B class uses on the site in approving an application for its conversion to a hotel earlier in 2022. In determining that application, Officers accepted evidence of its marketing and non-viability for office use, as required by SLE1. Economic conditions remain the same (or in fact worse) at the time of this S73 application and as such the marketing and viability evidence is considered to continue to satisfy the expectations of SLE1 in releasing the site from B uses. The removal of Condition 11 will therefore facilitate the reuse of a building within the town centre that might otherwise remain vacant for uses which will make a positive contribution to the ongoing vibrancy and economic activity of Banbury Town Centre, as set out in Local Plan Policy SLE2, the Banbury Vision and Masterplan SPD and Cherwell's Community Plan and Economic Development Strategy.

Design & Heritage

- 6.9 The reason attached to Condition 11 states that it was required '*In order to maintain the character of the area...*'. CLP 2015 Policy ESD15 sets out the Council's expectations for development that it should respect and enhance the character of its context. The permitted development rights that would be conferred by removal of Condition 11 and the opportunity to reuse the building for Class E uses would not facilitate any significant external alterations to the existing building – other than its general renovation and refurbishment. As such, it is not anticipated that there will be any visual impact on the character of the local area or the adjoining Conservation Area – except an improvement by bringing a vacant building whose fabric is deteriorating – back into use.
- 6.10 In terms of the activities that would be permitted, these are considered to be appropriate to the site's town centre location and compatible with the character of the local area, which already supports a number of small business and services in close proximity to the site on Middleton Road and Merton Street (Figure 6).



Figure 6: Examples of Commercial, Business and Service uses in proximity to the site

Residential Amenity

- 6.11 The reason attached to Condition 11 also referred to '*safeguard[ing] the amenities of the occupants of the nearby residential properties*'. Saved CLP 1996 Policy C30 requires that a development must provide acceptable standards of amenity and privacy while CLP2015 Policy ESD15 states that proposals should consider the amenity of existing and future development in respect of privacy, outlook, natural lighting, ventilation and in door/outdoor space.
- 6.12 The ability to move between uses specified with Class E without planning permission infers that all such uses would have a similar level of impact in respect of considerations such as residential amenity, the implications of which were considered as part of the introduction of the changes to the UCO and range of uses permitted under Class E. As referenced above, use of a condition to restrict such uses would therefore need very clear justification in respect of potential impacts such as neighbouring amenity.
- 6.13 Removal of Condition 11 would have no impact on the existing level of amenity of nearby residential properties in respect of privacy, outlook and light as it would not facilitate any external changes to the building except those minor physical alterations that can already be carried out under permitted development rights. Indeed, by bringing the building back into use this is expected to have a positive impact on the outlook from neighbouring properties by halting its current neglect and decline. The nature of the activities that could be undertaken in the building via Use Class E are considered to be compatible with mixed use/residential areas in edge of centre locations such as this. The site's location on a busy road junction (which separates it from the closest residential properties) and in proximity to the Royal Mail Sorting Office and Rail Station is considered to further reduce any potential impact on the nearest residential properties in respect of any increase in activity or noise relative to existing levels.



- 6.14 Officers have also previously considered that the level of impact on neighbouring amenity associated with the site's conversion to a hotel was acceptable in resolving to grant planning permission for its change of use; the uses allowed under Class E would have no greater impact.



7 Conclusions

7.1 This Planning Statement has been prepared in support of a S73 application for the *removal of condition 11 of CHN.546/89 to allow for flexible Class E use at 2-6 Waterperry Court, Banbury, OX16 4QG.*

7.2 Application CHN.546/89 sought consent for:

Six office units in terrace formation with undercroft and surface parking to provide a total 59 car spaces. New access.

7.3 Condition 11 of CHN.546/89 states:

That the building shall be used only for the purpose of B1(a) and B1(b) and for no other purpose whatsoever, including any other purpose in class B1 of the schedule to the Town and Country Planning (Use Classes) Order 1987.

Reason: In order to maintain the character of the area and safeguard the amenities of the occupants of the nearby residential properties.

7.4 Policy SLE1 seeks to protect sites in B use classes across the District. However, this policy is considered to be out of date as it predates changes to the Use Class Order and introduction of Class E in September 2020. In relevant appeal decisions Inspectors have made it clear that changes to the use classes order should outweigh the conflict with the development plan, while conditions seeking to restrict them should not be used unless there is clear justification to do so, otherwise they would fail the tests of reasonableness and necessity.

7.5 Officers have previously accepted the loss of offices at Waterperry Court when they granted consent for its conversion to a hotel in April 2022. In considering this application Officers accepted the marketing and viability evidence submitted at that time which demonstrated that its continued use as offices was not viable. This evidence remains applicable and relevant to this application, which seeks to facilitate the site's reuse and conversion in the context of increasingly challenging economic circumstances and construction costs. The removal of Condition 11 is also considered to be in accordance with the objectives of the NPPF in respect of promoting economic growth and taking a positive approach to the growth and adaptation of town centres, and local Policy SLE2 which specifically seeks to promote the vitality and economic prosperity of the District's town centres.

7.6 CLP 2015 Policy PSD1 and NPPF para 11(c) set out the presumption in favour of sustainable development for decision-taking. Where policies which are most important for determining the application are out-of-date (in this case CLP2015 SLE1), local planning authorities are directed to grant consent unless there is a clear reason for refusing the development or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. As acknowledged by the Economic Development Services Officer, there are clear benefits to Banbury town centre in bringing the building at Waterperry Court back into use in a way that meets the needs and complements the vision and objectives for Banbury town centre.

7.7 The original reason for Condition 11 relates to protecting the character of the area and amenity of occupants of nearby residential properties. As this Statement has demonstrated, the uses that would be permissible under Class E are considered to be compatible with the existing character of the area,



which includes a mix of residential and commercial activity. There would be no detrimental impact on the amenity of nearby residential properties while the opportunity to bring the building back into use would have a positive visual impact by preventing further physical deterioration. As such, and in accordance with the NPPF, there are no clear reasons for refusing consent and in the absence of significant adverse impacts that would outweigh the economic benefits of doing so, it is respectfully requested that this application is granted without delay.