

Case Officer: Chris Wentworth

Recommendation: Decline to
Determine

Applicant: Greystoke CB

Proposal: The construction of up to 140,000 sqm of employment floorspace (Use Class B8 with ancillary offices and facilities) and servicing and infrastructure including new site accesses, internal roads and footpaths, landscaping including earthworks to create development platforms and bunds, drainage features and other associated works including demolition of the existing farmhouse - All Matters Reserved - re-submission of 22/01488/OUT

Expiry Date: 6 June 2023

Extension of Time:

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is located on land northeast of Junction 11 of the M40, east of the A422 Daventry Road and north of the A422 Brackley Road. It lies opposite and east of the new Frontier Park development and east of the built-up area of Banbury, which lies primarily west of the M40. The site would be accessed from two points on the A361 Daventry Road, which in turn provides direct access to Junction 11 of the M40.
- 1.2. The site extends to 66.15ha of greenfield agricultural land, comprising nineteen field parcels that are defined by mature hedgerows and trees. The fields comprise a mixture of arable and pastoral land (of Grade 3a and 3b quality).
- 1.3. The site is bounded by the A422 Brackley Road to the south, and the A361 Daventry Road to the west. It adjoins open countryside to the north and east. Carrdus School, an independent day preparatory school, lies c.180m east of the site, separated by a dense woodland copse. To the west of the A361 and opposite the site is the recent commercial development of Frontier Park, which comprises a mix of B1, B2 and B8 employment uses on an area of land allocated for employment development (Policy Banbury 15) in the Cherwell Local Plan Part 1 2011-2031 (2015).

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. The application is a duplicate resubmission of 22/01488/OUT, which is currently the subject of an undetermined planning appeal (Ref: APP/C3105/W/22/3311992). It proposes the construction of up to 140,000sqm (1,500,000sqft) of B8 employment logistics floorspace (with ancillary offices and facilities) together with two new site accesses to the A361 Daventry Road, internal roads and footpaths, landscaped open space including earthworks to create development platforms and bunds, plus drainage features and other associated works including demolition of the existing Huscote Farm farmhouse. All matters are reserved.

3. RELEVANT PLANNING HISTORY

- 3.1. As mentioned above in paragraph 2.1, the site was the subject of an identical application last year, Ref: 22/01488/OUT, which has been appealed for non-determination. A Public Inquiry is scheduled to start on 11th April 2023 to hear that appeal (PINS appeal Ref: APP/C3105/W/22/3311992). The Council's Planning Committee resolved on 9th February 2023 that had it been a position to have been able to determine the application, then permission would have been refused for fifteen putative reasons.
- 3.2. The land was previously proposed for logistics employment development as part of the last Local Plan review, but the Local Plan Inspector did not support the suggested allocation of the land for development.
- 3.3. Prior to submitting application 22/01488/OUT, the applicant submitted a pre-application enquiry in 2021 (Ref: 21/04026/PREAPP) and a Screening Opinion request in 2022 (Ref: 22/00385/SO) requesting guidance on the draft proposals and an opinion as to whether or not any subsequent application would require an accompanying Environmental Statement under the terms of the EIA Regulations. Given the scale of the site proposed to be developed and that significant environmental effects were likely to result when considered against the EIA Regulations, Officers concluded that the proposal did constitute EIA Development and the screening opinion, issued on 3rd March 2022, confirmed this. The subsequent application was accompanied by an Environmental Statement (ES).

4. RELEVANT PLANNING POLICY AND GUIDANCE

- 4.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 4.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th 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:
- 4.3. The full list of relevant planning policies in Cherwell District's statutory Development Plan is as follows:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- PSD1 – Presumption in favour of Sustainable Development
- SLE1 – Employment development
- SLE2 – Securing dynamic Town Centres
- SLE4 – Improved Transport & Connections
- ESD1 – Mitigating & Adapting to Climate change
- ESD3 – Sustainable construction
- ESD6 – Sustainable flood risk management
- ESD7 – SuDS
- ESD10 – Protection & Enhancement of Biodiversity & the Natural Environment
- ESD13 – Local landscape protection and enhancement
- ESD15 – The Character of the Built and Historic Environment
- INF1 – Infrastructure

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- TR1 – Transportation funding
- C1 – Protection of sites of Nature Conservation Value
- C2 – Development affecting Protected Species
- C7 – Landscape Conservation
- C8 – Sporadic development in the open countryside
- EMP4 – Employment generating development in the Rural Areas
- ENV1 – Development likely to cause detrimental levels of pollution
- EN7 – Development affecting water quality

4.4. Other Material Planning Considerations:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell DC's Banbury Vision and Masterplan Supplementary Planning Document (SPD)
- Cherwell DC's Developer Contributions SPD February 2018
- EU Habitats Directive
- Human Rights Act 1998 ("HRA")
- Equalities Act 2010 ("EA")

5. APPRAISAL

5.1. The application is a resubmission of previous non-determined application 22/01488/OUT, which is currently the subject of an appeal that is due to be heard at Public Inquiry starting on 11th April 2023.

5.2. Section 70B of the Town and Country Planning Act 1990 (as amended) grants LPAs the power to decline to determine overlapping applications in certain prescribed situations. Sub-section (3) to Section 70B stipulates that:

“(3) The condition is that a similar application is under consideration by the Secretary of State in pursuance of section 62A, 76A or 77 or on an appeal under section 78 and the Secretary of State has not issued his decision.”

5.3. This application is by the same applicant, on the same land and proposes the same development, with all matters reserved. The extant planning appeal has yet to be determined, so the circumstances set out in section 70B (3) of the Act are applicable and the LPA is empowered to decline to determine this new application.

6. PLANNING BALANCE AND CONCLUSION

6.1. In accordance with powers afforded to the LPA under section 70B of the Town and Country Planning Act 1990 (as amended), specifically in respect to subsection (3), the LPA declines to determine this application by virtue of the fact that the same development proposal is currently the subject an appeal under section 78 and the Secretary of State has not issued his decision on that appeal.

7. RECOMMENDATION

That the LPA declines to determine this overlapping application using powers under section 70B (3) of the Town and Country Planning Act 1990 (as amended).

Case Officer: Chris Wentworth

DATE: 24 February 2023

Checked By: Andy Bateson

DATE: 24th February 2023
