

Case Officer: Imogen Hopkin

Recommendation: Refuse

Applicant: Mr B Edwards

Proposal: Demolition of existing house. Erection of 6no two bedroom apartments, new access road, parking spaces and refuse/recycling storage

Expiry Date: 25 April 2023

Extension of Time:

1. APPLICATION SITE AND LOCALITY

- 1.1. The application relates to the site of an existing vacant two storey detached dwelling to the east of, and previously associated with Wykham Park Academy (a secondary and sixth form school) within Banbury. To the north/north-east of the site there are residential properties with the school and its associated grounds wrapping around the site to the south/west and north.
- 1.2. The existing property of brick construction under a tiled roof sits within a substantial plot back-land set back from the existing highway (Ruskin Road) from which access is taken, via an existing over-grown access road.
- 1.3. The building is in a poor state of repair with the effects of significant vandalism evident. At the time of the site visit the site was over-grown. There are a number of significant trees both within the site and on adjacent land.
- 1.4. In terms of site constraints, the site is not within a conservation area and there are no listed buildings within the vicinity of the site. The site is within an area known to be at risk (medium) of surface water flooding and the geology in the area is known to be affected by Radon Gas. A Public Right of Way (ref. footpath 120/40/10) runs along the north-eastern boundary of the site. There records of protect and notable species (Pipistrelle Bat, Swifts and West European Hedgehog) being present within the vicinity of the site.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. The application follows a refused application, 21/01300/F, which seeks permission for the demolition of the existing building for the development of 6 no. 2 x bedroom flats over 2 storeys with new access road, vehicle turning and parking spaces. The access road is the same as previously proposed, which is around 90m in length and 4m wide, with 12 parking spaces angled directly off the access road.
- 2.2. The proposed building would be brick with a tiled roof. The design of the proposal, in relation to bulk, massing and character, has not changed since the previous approval. The proposed balconies have been replaced for Juliet balconies.
- 2.3. No drainage or ecology information has been provided with this submission.
- 2.4. Unfortunately, due to a delay in issuing the consultation letters, the application has gone beyond its original target date for determination, due to the need for the statutory consultation period to be observed prior to the issuing of any decision. The applicant's agent has been made aware of these delays, but no extension of the determination period has been agreed.

3. RELEVANT PLANNING HISTORY

3.1. The following planning history is considered relevant to the current proposal:

Application: 21/01300/F	Refused	23 June 2021
Demolition of existing dwelling. Erection of 6 no. 2 x bed flats over 2 storeys with new access road, vehicle turning and parking spaces.		

3.2. The previous application was refused for the following reasons:

- 1. By virtue of its scale, back-land siting, design and associated parking the proposed development would result in a more intensive use of the site that would fail to reflect or reinforce the existing pattern or form of development within the immediate area and the established character, which would also detrimentally impact on the outdoor living environment levels of amenity currently enjoyed by neighbouring properties within Wykham Place, contrary to the provisions and aims of ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance on requiring good design and amenity expressed within the National Planning Policy Framework.*
- 2. The applicant has failed to demonstrate that safe and suitable access and appropriate parking provision can be achieved to serve the development. Vehicular movements generated as a product of this proposal will unacceptably increase the risk to the safety of users of the local highway network as a result of the substandard access and parking arrangements which would likely result in unsafe vehicular manoeuvres into and out of the site and also lead to an increase in demand for on-street parking. The proposal is therefore contrary to Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.*
- 3. By virtue of a lack of supporting information to enable an appropriate technical assessment the applicant has failed to demonstrate that an appropriate sustainable drainage strategy for the site utilising sustainable drainage systems (SuDS) can be delivered. As such the proposal is contrary to Policy ESD7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.*
- 4. By virtue of a lack of supporting ecological information to enable an appropriate assessment the applicant has failed to demonstrate that the proposed development would not cause unacceptable harm to protected species or their habitats. The development is therefore contrary to Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.*

3.3. The previous application was not appealed to the Planning Inspectorate.

4. PRE-APPLICATION DISCUSSIONS

4.1. No pre-application discussions have taken place with regard to this proposal.

5. RESPONSE TO PUBLICITY

5.1. This application has been publicised by way of a Site Notice displayed near the site, expiring **21 March 2023**, by advertisement in the local newspaper expiring **30 March 2023** and by letters sent to properties adjoining the application site that the Council has been able to identify from its records. The overall final date for comments was **25 April 2023**.

5.2. No comments have been raised by third parties

6. RESPONSE TO CONSULTATION

6.1. 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.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

6.2. Banbury Town Council: **Objects** on the grounds that –

1) Proposal is a contrived form of overdevelopment of a back-land site, that will cause harm to the amenity of houses in Wykham Place (overlooking and vehicular disturbance)

2) Access and parking arrangements are inadequate

The Town Council would consider some redevelopment of the site, but would have to be a substantial reduction in units and have an appropriate parking solution.

CONSULTEES

6.3. CDC Public Rights of Way Officer: **No objections**, as there would be no diversions to the Public Rights of Way Network. Suggested condition to ensure no public rights of ways are blocked during construction.

6.4. OCC Public Rights of Way Officer: **Holding objection**, subject to clarification of determination of boundary treatments. Conditions suggested.

6.5. Fire Service: Works would be subject to a Building Regulations application and subsequent consultation with the fire service would ensure compliance with the functional requirements of Oxfordshire Fire and Rescue.

6.6. CDC Environmental Health: **No objections**, subject to conditions.

6.7. Thames Water: No comments to make.

6.8. CDC Housing Standards: No comments received.

6.9. CDC Waste and Recycling: No comments received.

6.10. OCC Highways Authority: **Objects**, due to the detrimental impact on highway in terms of safety and convenience, due to the long driveway which does not have a sufficient width for passing cars.

6.11. Thames Valley Police: **Concerns** with parking arrangement could result in crime, anti-social behaviour, which is not helped by the lack of surveillance. The proposal does not comply with Secured by Design principles. Appropriate cycle storage, landscaping, boundaries and lighting should be provided in accordance with Secured by Design.

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. The Cherwell Local Plan 2011-2031 - Part 1 (CLP 2015) was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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)

- PSD1 – Presumption in Favour of Sustainable Development
- BSC1 – District Wide Housing Distribution
- ESD1 – Mitigating and Adapting to Climate Change
- ESD3 – Sustainable Construction
- ESD6 – Sustainable Flood Risk Management
- ESD7 – Sustainable Drainage Systems (SuDS)
- ESD15 – The Character of the Built and Historic Environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- C30 – Design of new residential development
- ENV1 – Environmental pollution

7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell Residential Design Guide (2018)
- National Design Guide (2019)
- Nationally Described Space Standards (2015)

8. APPRAISAL

8.1. The key issues for consideration in this case are:

- Principle of development
- Design, and impact on the character of the area
- Residential amenity
- Highway safety
- Drainage and Flood risk
- Ecology and Biodiversity

Principle of Development

- 8.2. The CLP 2015 states that housing growth will be directed towards the urban areas of Banbury and Bicester. Paragraph B.88 states: *'By focussing development in and around the towns of Bicester and Banbury we aim to ensure that the housing growth*

which the District needs only takes place in the locations that are most sustainable and most capable of absorbing this new growth’.

- 8.3. Policy BSC 1 of the CLP 2015 sets out the distribution of housing growth throughout the Cherwell District Council area up to 2031, stating 22,840 homes are to be delivered during the plan period, with 7,319 of those to be delivered within Banbury.
- 8.4. The NPPF’s key objective is to support the achievement of sustainable development through the planning system; recognising the need to secure gains in the overarching objectives (economic, social and environmental). In respect of new residential development there is a requirement for the provision of new housing of the right type in the right location at the right time, and that development should also contribute to protecting and enhancing our natural, built and historic environment, as well as fostering a well-designed and safe built environment (Para. 8). These aims are echoed within the policies of the CLP 2015 which looks to support sustainable development.
- 8.5. The site is within the built up limits of Banbury, and the principle of new development may thus be considered acceptable in general sustainability terms of the location, with overall acceptability dependent on other material considerations including visual amenity, residential amenity, highway safety, flood-risk and ecological issues, discussed further below.

Design, and impact on the character of the area

- 8.6. The Government attaches great importance to the design of the built environment within the NPPF. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. These aims are also echoed within Policy ESD15 of the CLP 2015 which looks to promote and support development of a high standard which contribute positively to an area’s character and identity by creating or reinforcing local distinctiveness.
- 8.7. Saved Policy C28 of the CLP 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the context of that development. Further, saved Policy C30 of CLP 1996 states control will be exercised to ensure that all new housing development is compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.
- 8.8. The application site is located to the rear of the properties along Wykham Place, a residential road characterised by a uniformed pattern of development, comprising semi-detached dwellings and terraces of 4. Whilst having some variation in design and use of materials, there is a distinct character to the street scene which is enhanced by the regular spacing of the dwellings and a strong building line. A secondary school is situated to the south and east of the site, with the tennis courts and playing field being situated to the north and west of the site.
- 8.9. The design of the proposal is similar in siting and appearance to the previously refused application, 21/01300/F, which was determined on 18th June 2021. The officer’s report for that application generally agreed that the scale of a two-storey property constructed from brick would, in principle, be consistent with the local vernacular. However, points that were highlighted as issues will be further explained below.
- 8.10. Paragraph 8.10 of the previous officer’s report highlights the complicated roof plan due to the interlinking elements of the proposal. It was considered to result in a poor, convoluted design. This has not been addressed within this application, as the roof form remains the same. The balconies that formed part of the previous proposal have been removed.

- 8.11. The previous refusal noted the length, position and arrangement of the parking provision, which is a long private driveway comprising spaces sited at an angle along the driveway. Paragraph 8.11 of the previous officer's report highlights the dominance of the car parking, which would result in a visually cluttered entrance to the site, and would be an arrangement which is out of keeping with the local pattern of development. No changes have been made to this element, which therefore remains unacceptable. Since the previous refusal, Thames Valley Police has reviewed the proposal and has advised that the proposed parking arrangement could encourage anti-social behaviour, due to a lack of natural surveillance.
- 8.12. The presence of the existing dwelling on site is noted, as it would have likely been associated with the school as a caretaker's house. The previous application noted that the replacement of the house with this proposal results in a noticeably more intensive form of development, with no relationship to the school, which would be an undesirable back-land development that fails to integrate to the existing pattern of development in the area.
- 8.13. The updated proposal does not account for the existing trees on site, and the impact that the proposal would have on the visual amenity of the surrounding area, especially due to the adjacent Public Right of Way. The proposal does not supply any further information about trees, to understand the mutual impact of the development.
- 8.14. Having regard to the above, the proposal amounts to an inappropriate form of development that is not in keeping with the existing pattern of the development. The excessive level of the development would significantly alter the character of the site, and detrimentally impact the visual amenity of the surrounding area, along with being out of character with the neighbouring properties. The design of the main building appears contrived, which is exacerbated by the convoluted roof design. The parking layout indicated would result in a proliferation of parking along the access road to the front of the property, which results in a detrimental impact to the visual amenity of the area. The proposal would, therefore, be detrimental to the character and appearance of the street scene and would thus be contrary to saved Policy C28 and C30 of the CLP 1996, Policy ESD15 of the CLP 2015, Cherwell's Residential Design Guide 2018 and Government guidance contained within the NPPF.

Residential amenity

- 8.15. Government guidance contained within the NPPF requires development to create places that are safe, inclusive and accessible, promoting health and well-being, and with a high standard of amenity for existing and future users. Policy ESD 15 of the CLP 2015 requires all development to consider the amenity of both existing and future development. Saved Policy C30 of the CLP 1996 seeks standards of amenity and privacy acceptable to the Local Planning Authority. Saved Policy ENV1 of the CLP 1996 seeks to ensure that the amenities of the environment, and in particular the amenities of residential properties, are not unduly affected by development proposals which may cause environmental pollution, including that caused by traffic generation.
- 8.16. The previous officer's report noted that the proposed internal space for the dwellings was contrived in design but provided an acceptable standard of internal living space. It is agreed that this is the case, in that the amount of accommodation provided per flat is in accordance with the Nationally Described Space Standards.
- 8.17. There is an existing, derelict dwelling on the site that includes first floor windows to the north-east elevation, which look toward properties in Wykham Place. Although

the dwelling is derelict, it can be brought back into its lawful residential use without the need for planning permission.

- 8.18. The previous refusal included external balconies, which would have resulted in direct, prolonged overlooking and the perception of overlooking to the private rear gardens along Wykham Place. The balconies have been removed in the current proposal, which is the key improvement of these proposals over the refused scheme. There is a kitchen window on the north-east elevation which is located around 5m from the rear boundary of properties along Wykham Place. This arrangement could be considered acceptable, on balance, as the arrangement would not result in a prolonged level of overlooking, or loss of private amenity to the dwellings along Wykham Place. Should a revised scheme be submitted, this window should be re-located in order to secure a comfortable level of privacy for the rear gardens along Wykham Place.
- 8.19. The proposal secures an appropriate separation between the windows of proposed and existing neighbouring dwellings, which would not result in a significant loss of light, outlook or privacy of existing dwellings. The removal of the balconies from the previous refusal is considered to considerably improve the impact on residential amenity, due to the reduction of potential perceived and prolonged overlooking. The proposal as submitted could be considered acceptable in terms of neighbouring amenity, on balance, as the window in close proximity to the residential gardens at Wykham Place is a kitchen, which would not result in a sufficient loss of privacy to refuse the application on this basis. As such, on balance, subject to conditions re the matters stated above, the application could be acceptable with respect to the neighbouring and occupier amenity elements of Policy ESD 15 of the CLP 2015, saved Policies C28 and C30 of the CLP 1996, and Government guidance contained within the NPPF.

Highway Safety

- 8.20. Paragraph 111 of the NPPF advises that in assessing applications for development, it should be ensured that:
- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
 - safe and suitable access to the site can be achieved for all users;
 - the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and
 - any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 8.21. The NPPF further states that: *‘Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe’.*
- 8.22. Both Policies ESD15 and SLE4 of the CLP 2015 reflect the provisions and aims of the NPPF. Policy ESD15 of the CLP 2015 states that: *“New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work”*; whilst Policy SLE4 states that: *“All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported”.*

- 8.23. The site sits adjacent to the main access to Wykham Park Academy, which generates significant pedestrian and vehicular movements at peak school times. There is also significant on-street parking within the vicinity of the site. The parking arrangement comprises a 90m driveway with a turning head, with 12 parking spaces angled off the access road.
- 8.24. The local highway authority (LHA) assessed the application and raised concerns to the proposals and object to the application on highway safety grounds, which echoes officers' concerns in this respect. The parking arrangement was a reason for refusal for the previous application, and the parking has not changed since this application.
- 8.25. The previous refusal considered bringing the existing driveway that serves the dwelling back into use, which may be acceptable for a smaller amount of dwellings. However, the intensification of the site to propose 6 dwellings results in additional vehicular movement within, to and from the site.
- 8.26. The LHA advises the proposed driveway is not an acceptable width to allow for two passing cars, which could present manoeuvring issues, and has maintained its objection to the proposal on the basis that the parking layout has not changed, and would result in a detrimental impact on the highway in terms of safety or convenience.
- 8.27. It is considered that there is a significant lack of satisfactory information to demonstrate that the proposals can achieve appropriate access, parking and manoeuvrability within the site. The proposed development is likely to result in inappropriate vehicular movements and an increased demand for on-street parking, in an area that is under existing pressure, which would be to the significant detriment of the safety and convenience of other highway users; contrary to the provisions and aims of the policies identified above and are therefore considered unacceptable in terms of highway safety.

Drainage and Flood Risk

- 8.28. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.
- 8.29. Policy ESD 7 sets out the Council's approach to Sustainable Drainage Systems (SuDS). Managing drainage more sustainably can ensure that developments are better adapted to the predicted impacts of climate change which include more intense rainfall events. To ensure that the development does not have any adverse offsite impacts and increase flood risk elsewhere it is necessary to demonstrate that the sustainable drainage of surface water and foul drainage from the proposed development can be achieved.
- 8.30. There is known to be a medium risk of surface water flooding on this site. Policy ESD 6 of the CLP 2015 requires a Flood Risk Assessment to be undertaken to support proposals in such circumstances.
- 8.31. The Council's Drainage Engineer did not respond to the application, although in the previous refusal included a reason based on drainage, due to the lack of supporting information to demonstrate an appropriate drainage strategy or sustainable drainage systems (SuDS) within the site.
- 8.32. This application does not include any technical details of a drainage or SuDS strategy. The absence of any appropriate assessment or testing of the geology of

the area it is considered that insufficient information has been provided to enable a technical assessment of the proposal in order to ensure a sustainable drainage strategy for the site can be delivered.

- 8.33. Officers consider that it has not been demonstrated that an appropriate surface water drainage scheme for the site, based on sustainable drainage principles, can be achieved; the proposals are therefore not considered to be in accordance with the Development Plan policies identified above and are not acceptable in terms of flood-risk and drainage.

Ecology and Biodiversity

- 8.34. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.
- 8.35. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 8.36. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 8.37. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
- 1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
 - 2) That there is no satisfactory alternative.
 - 3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 8.38. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipelines, transport and works, and environmental controls (including discharge consents under water pollution legislation).
- 8.39. Paragraph 174 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a)

protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

- 8.40. Paragraph 180 states that when determining planning applications, local planning authorities (LPAs) should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 8.41. Paragraph 185 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 8.42. Policy ESD10 of the CLP 2015 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 8.43. These policies are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 8.44. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that LPAs should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.
- 8.45. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development
- 8.46. It also states that LPAs can also ask for:
- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
 - an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')
- 8.47. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains a derelict building with a number of openings that could allow access to the internal environment and roof structure and there are a number of mature trees and hedgerows within and adjacent the site. Further as noted above there are records of notable and protected species within

the vicinity of the site. The site therefore has the potential to be suitable habitat for bats and breeding birds.

- 8.48. In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, LPAs must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England (NE) would be likely to grant a licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.
- 8.49. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that NE will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether NE will grant the licence then the Council may grant planning permission.
- 8.50. Having regard to the LPA's duty under the Conservation of Habitats and Species Regulations 2017, the lack of a suitable protected species/ecological survey and proposed mitigation strategy means that it has not been demonstrated that the proposal will not cause harm to any protected species or its habitat which is reasonably likely to be present and affected by the development. The proposal is therefore contrary to Policy ESD10 of the CLP 2015, advice contained in the PPG and NE's Standing Advice, and section 15 of the NPPF.
- 8.51. Consequently, and considering the previously refused application, it is considered that permission should be refused because there is insufficient information to enable the LPA to assess the impact on protected species and to conclude that protected species would not be unacceptably harmed by the proposed development.
- 8.52. As noted above both national and local policy guidance requires new development to look to provide net gains for biodiversity. Whilst not included within the detail of the current application, officers consider that there is potential for the proposals to include biodiversity enhancements, such as bat and bird nesting opportunities and additional landscaping within the detailed design. It is considered that the lack of this detail is not sufficient to warrant a reason to refuse the application on these grounds alone, but that such appropriate details could be secured through an appropriate planning condition had the Council been minded to approve the application; to ensure that that the proposed development would provide a net gain in biodiversity, in accordance with the provisions of Policy ESD10 of the CLP 2015 and Government guidance within the NPPF, regarding the importance of conserving and enhancing the natural environment.

9. PLANNING BALANCE AND CONCLUSION

- 9.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.
- 9.2. The decision maker needs to undertake a balancing exercise to examine whether any adverse impacts of a development would be outweighed by the benefits such that, notwithstanding the harm, it could be considered sustainable development within the meaning given in the NPPF. In carrying out the balancing exercise it is, therefore, necessary to take into account policies in the development plan as well as those in the NPPF. It is also necessary to recognise that Section 38 of the Act continues to require decisions to be made in accordance with the development plan and the NPPF highlights the importance of the plan led system as a whole.
- 9.3. Considering the previous refusal and the current proposal, the application by virtue of its siting, scale and design would represent an inappropriate form of over-

development of an existing residential site, which would cause harm to the character and appearance of the local area. On balance, the proposal would not result in a harmful impact on neighbouring residential properties. Further by virtue of a lack of appropriate supporting information the proposals have failed to demonstrate that they would not be to the detriment of highway safety, could achieve an appropriate drainage strategy or not be to the detriment of ecology and biodiversity at the site.

- 9.4. The proposals would make a contribution to the District's housing supply, to which significant weight should be given, though this contribution would be minor, and further some short term economic benefits during construction.
- 9.5. Overall, it is considered that the proposal's benefits would be significantly and demonstrably outweighed by the identified harm to the character of the area, residential amenity, highway safety and environmental harm as identified above. The proposals are therefore not considered to represent a sustainable form of development being contrary to the above-mentioned policies; as such the application is therefore recommended for refusal for the reasons set out below.

10. RECOMMENDATION

That permission is refused, for the following reason(s):

1. By virtue of its scale, back-land siting, poor design and associated parking the proposed development would result in a more intensive use of the site that would fail to reflect or reinforce the existing pattern or form of development within the immediate area and the established character and would adversely affect the character and appearance of the area and the amenities of the locality. The proposal is therefore contrary to Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance on requiring good design and amenity expressed within the National Planning Policy Framework.
2. The applicant has failed to demonstrate that safe and suitable access and appropriate parking provision can be achieved to serve the development. Vehicular movements generated as a product of this proposal would unacceptably increase the risk to the safety of users of the local highway network as a result of the substandard access and parking arrangements which would likely result in unsafe vehicular manoeuvres into and out of the site and also lead to an increase in demand for on-street parking. The proposal is therefore contrary to Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
3. By virtue of a lack of supporting information to enable an appropriate technical assessment the applicant has failed to demonstrate that an appropriate sustainable drainage strategy for the site utilising sustainable drainage systems (SuDS) can be delivered. The proposal is therefore contrary to Policy ESD7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
4. By virtue of a lack of supporting ecological information to enable an appropriate assessment the applicant has failed to demonstrate that the proposed development would not cause unacceptable harm to protected species or their habitats. The proposal is therefore contrary to Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

Case Officer: Imogen Hopkin

DATE: 27th April 2023

Checked By: Nathanael Stock

DATE: 28.04.2023
