

**Case Officer:** Chris Wentworth

**Recommendation:** Approve

**Applicant:** Orbit Homes (2022) Ltd

**Proposal:** Discharge of Conditions 6 (contamination), 10 (surface water drainage scheme), 11 (means of access (Phase I v Phase II), 15 (northern footpath link), 16 (Construction Environmental Management Plan) and 21 (External Lighting Strategy) of 21/03644/OUT

**Expiry Date:** 24<sup>th</sup> November 2023

**Extension of Time:** 8<sup>th</sup> February 2024

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## **1. APPLICATION SITE AND DESCRIPTION OF APPROVED DEVELOPMENT**

- 1.1. The original outline approval (21/03644/OUT) was granted consent for the erection of up to 49 no. dwellings, associated open space, sustainable urban drainage systems, and access from Balmoral Avenue (south).
- 1.2. The site comprises 3.11 hectares. Arable farmland lies to the northwest, west and south of the site. Residential development lies to the north (Thornbury Rise) and a residential development to the east of the site was granted planning permission at appeal (reference 20/01643/OUT). A public right of way crosses the site along the northern boundary (120/24/10). Broughton Road bounds the southernmost part of the site.

## **2. CONDITIONS PROPOSED TO BE DISCHARGED**

- 2.1. Discharge of Conditions 6 (Land Contamination), 10 Surface Water Drainage Scheme), 11 (Means of Access (Phase I v Phase II), 15 (Northern Footpath Link), 16 (Construction Environmental Management Plan) and 21 (External Lighting Strategy) of planning permission reference 21/03644/OUT.

## **3. RELEVANT PLANNING HISTORY**

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

23/02713/DISC – Discharge of Conditions 6 (contamination), 10 (surface water drainage scheme), 11 (means of access (Phase I v Phase II), 15 (northern footpath link), 16 (Construction Environmental Management Plan), and 21 (External Lighting Strategy) of 21/03644/OUT.

21/03644/OUT – The erection of up to 49 no. dwellings, associated open space, sustainable urban drainage systems, and access from Balmoral Avenue.

23/00667/REM – Reserved matters application, pursuant to the outline planning permission granted under reference 21/03644/OUT for the erection of up to 49 dwellings.

#### 4. RESPONSE TO CONSULTATION

4.1 *CDC Environmental Health* – No objection to discharge of conditions 6, 17 and 21.

4.2 *CDC Landscape Services* – The PRow General Arrangement is concerning because of the excavations within the root protection area of existing retained trees and hedgerow putting them at risk, reducing their amenity, and their screening potential for visual receptors. All works must be reconsidered in accordance with BS5837: 2012 Trees in relation to design, demolition and construction – Recommendations. A qualified arboriculturist must assess the proposals and provide the most appropriate solution to this matter, whether a raised surface solution or mown or mulched path.

4.3 *OCC Highways* – Following comments received:

- No objection in principle to the discharge of conditions 11 and 15.
- Condition 12 – Objection – The following point must be addressed before the condition can be discharged:
  - Details of times for construction traffic and delivery vehicles, which must be outside network peak and school peak hours. Deliveries must avoid the times of 07:30-09:00 15:00-16:00 and 16:30-18:00.

The applicant has subsequently provided details to address this point.

- Condition 13 – Objection
  - Information about cycle parking provision within residential boundaries must be included.
  - Any community transport schemes which would benefit residents must be added.
  - The last page refers to 'TPC details' on page 2, These have not been included within the document.
  - Is the developer/ applicant providing any incentives to encourage residents to trial a sustainable, active mode? If so, how do residents' access these?

The applicant has subsequently provided details to address all these points.

4.4 *OCC Arboriculture* – Objection on following points:

Condition 10 (surface water drainage) from an arboricultural perspective:

- It is recommended that the trees to the South of the balancing pond are surveyed by an arboriculturist, and all works associated with the balancing pond, including the outfall, be designed to avoid the root protection areas (RPA) of the adjacent trees. Currently some of the drainage in this area appears to conflict with the location of trees.
- The Arboricultural Report and Tree Condition Survey submitted with application 21/03644/OUT doesn't appear to have surveyed the trees located within the hedgerow to the South of the balancing pond.

- The surface water drainage that extends from the site into the balancing pond appears to encroach into the RPA of an Oak tree shown as T79 within the Arboricultural Report submitted with application 21/03644/OUT. This tree has been categorised as having high arboricultural quality in accordance with BS 5837. The drainage should be relocated further East to avoid the trees RPA.
- Tree Protection measures in the form of an Arboricultural Method Statement and Tree Protection Plan, in accordance with BS 5837:2012 will be required to ensure the satisfactory protection of retained trees during construction works.

Condition 12 (Construction traffic management plan) and Condition 16 (Construction environmental management plan) from an arboricultural perspective:

- In relation to Section 1.12 (Enabling Works Prior to Commencement) of the submitted Construction Traffic & Environmental Management Plan, the tree, hedge, root protection plan (point 6) should be implemented prior to the commencement of all other works and before any machinery or materials enter the site. This is essential to ensure that all retained trees are satisfactory protected, in accordance with BS 5837:2012. An Arboricultural Method
- Statement and Tree Protection Plan setting out all tree protection measures will be required to be agreed before works commence.
- The location of the tree protection fencing shown on the Proposed Layout and Logistics of Build Figure 2: Extract Site Compound and site Traffic Management Plan found on page 6 and the Construction Traffic & Environmental Management Plan on page 15, is not acceptable from an arboricultural perspective and is contrary to BS 5837:2012. It does not protect the RPAs of trees to be retained and would lead to adverse impacts to trees to be retained. As set out above, an Arboricultural Method Statement and Tree Protection Plan in accordance with BS 5837:2012, to be completed by an arboriculturist, is required.

Condition 15 (northern footpath link) from an arboricultural perspective:

- The submitted PRow General Arrangement plan shows a bound gravel footway construction proposed adjacent to the North boundary. The plan also shows cross sections and levels plans that appear to show excavation of the existing levels to construct the proposed path.
- As shown within the Arboricultural Report submitted with application 21/03644/OUT, a large number of trees are located within this area. Where the works are proposed are within the RPAs of a large number of trees and excavation to construct the path will have significant adverse impacts to these trees and is not acceptable from an arboricultural perspective.
- From the information submitted it has not been possible to determine if the existing Public Right of Way is surfaced. Could the path remain as existing, retaining the existing levels? If a surfaced path is required, then an Arboricultural Impact Assessment in accordance with BS 5837:2012 will be required to be completed by an arboriculturist to accurately assess the proposed works and provide details of suitable mitigation. The design will also be required to comply with section 7.4 of BS 5837:2012 and also

Arboricultural Association's Guidance Note 12, implementing a No Dig Cellular Confinement System methodology.

- An Arboricultural Method Statement and Tree Protection Plan will also need to be agreed, setting out adequate tree protection measures and sufficient installation methodology to ensure the protection of the adjacent retained trees.

Condition 21 (External Lighting Strategy) from an arboricultural perspective:

- The site layout shown on the S38 Street Lighting Layout plan appears different to the layout shown on the Tree Removals Plan within the Arboricultural Report submitted with application 21/03644/OUT.
- On the Lighting Layout plan there appears to be a swale which is located within the RPA of a moderate quality Sycamore shown as T62 within the Arboricultural Report. This swale will need to be relocated to avoid the RPA of this and other trees.

4.5 *CDC Drainage* – Refer to OCC LLFA for comment.

4.6 *OCC LLFA* – No objection.

## **5. APPRAISAL**

- 5.1. Condition 6 seeks to discharge the land contamination assessment details associated with outline planning permission reference 21/03644/OUT. The applicant has submitted a Ground Investigation Review Report (Ref: Balmoral Avenue, Banbury (Phase 2) for the Discharge of Planning Conditions August 2023 Ref: 27526 -GEO-0401) that outlines the previous works and reports that have been undertaken on the site (and the adjacent site) in relation to ground investigation works. The report also clarifies the radon classification of the site, following updates to the guidance by the UK Health Security Agency (UKHSA) in December 2022.
- 5.2. CDC Environmental Health has assessed the submission and has raised no objection to its contents. As such, it is considered that such information has been provided for the LPA to adequately assess the proposal within the limits of the condition wording and the LPA is content to recommend approval.
- 5.3. Condition 10 seeks to discharge the surface water drainage details associated with outline planning permission reference 21/03644/OUT.
- 5.4. The applicant has submitted a SUDS Management Strategy (Ref: Balmoral Avenue, Banbury (Phase 2) SUDS Management Strategy September 2023 REPORT REF: 27526-CIVL-0202) that outlines discharge rates; discharge volumes; SUDS (Permeable Paving, Soakaways, Tanks); Maintenance and Management of SUDS; Infiltration; Detailed Drainage Layout; Network Drainage Calculations and Flood Flow Routing in Exceedance Conditions.
- 5.5. It is noted that the authorities Arboricultural Officer recommended that the trees to the south of the balancing pond are surveyed by an arboriculturist and that all works associated with the balancing pond, including the outfall, be designed to avoid the root protection areas (RPA) of the adjacent trees. Currently some of the drainage in this area appears to conflict with the location of trees. However, an indicative drainage strategy was submitted with the outline planning application which shows the location of the pond and its route from the developable area to the north. Also, a

detailed Arboricultural Report and Tree Survey were also submitted and approved at outline stage. Any request for further information/detail should have been assessed and/or secured at that stage. On the basis that such a request was not made the LPA considered that this was acceptable, and it would be unreasonable now to revisit matters already considered as part of this application.

- 5.6. The Arboricultural Officer states that The Arboricultural Report and Tree Condition Survey submitted with application 21/03644/OUT doesn't appear to have surveyed the trees located within the hedgerow to the south of the balancing pond. However, attention is drawn to the key on drawing TRP—01 Rev 2 of that report which confirms that these trees were not surveyed as individual trees but included within hedgerows or other groups.
- 5.7. Furthermore, the officer states that Tree Protection measures in the form of an Arboricultural Method Statement and Tree Protection Plan, in accordance with BS 5837:2012 will be required to ensure the satisfactory protection of retained trees during construction works. However, the current application is seeking to discharge details associated with an existing planning consent. The outline permission does not include a condition requiring any further details to be submitted in this regard and therefore no further details can be secured in this application. The applicant has stated that all works that might impact on trees **will** however be carried out in accordance with BS 5837:2012.
- 5.8. CDC Land Drainage has requested that the matter be assessed by the Lead Local Flood Authority (LLFA) which has assessed the submission and has raised no objection to its contents. As such, it is considered that such information has been provided for the LPA to adequately assess the proposal within the limits of the condition wording and the LPA is content to recommend approval.
- 5.9. Condition 11 seeks to discharge the Means of Access (Phase I v Phase II) details associated with planning permission reference 21/03644/OUT.
- 5.10. The applicant has submitted a Highway Tie-In Plan (Ref: Drawing 27526\_03\_020\_01 - Highways Tie-In Plan) which shows that hard surfacing and kerb line details at the site boundary.
- 5.11. OCC as County Highway Authority has assessed the submission and has raised no objections to its content.
- 5.12. As such, it is considered that such information has been provided for the LPA to adequately assess the proposal within the limits of the condition wording and the LPA is content to recommend approval.
- 5.13. Condition 15 seeks to discharge the Northern Footpath Link details associated with outline planning permission reference 21/03644/OUT.
- 5.14. The applicant has submitted a layout plan that shows the position of a northern footpath link (Ref: Drawing 27526\_02\_020\_08\_A - PROW General Arrangement) along with the surfacing details, gradient and boundary details.
- 5.15. OCC as County Highway Authority has assessed the submission and has raised no objections.
- 5.16. CDC Arboricultural Officer has also assessed the details and has stated that the submitted PROW General Arrangement plan shows a bound gravel footway construction proposed adjacent to the North boundary. The plan also shows cross sections and levels plans that appear to show excavation of the existing levels to

construct the proposed path. However, this is consistent with the details shown for the path within Phase I (the adjacent site to which it connects).

- 5.17. The Officer also states that the Arboricultural Report submitted with application 21/03644/OUT, outlines that a large number of trees are located within this area and that works are proposed are within the RPAs of a large number of trees and excavation to construct the path will have significant adverse impacts to these trees and is not acceptable from an arboricultural perspective. However, such matters were addressed in the outline consent and that all works that might impact on trees will be undertaken in accordance with BS 5837:2012 along with the approved Arboricultural Report and Tree Survey.
- 5.18. The Officer has also queried whether the existing Public Right of Way is surfaced and whether the path remain as existing, retaining the existing levels. However, the path is not currently surfaced and has been designed to enhance it as per the request of the authority at outline stage planning stage and is also consistent with the path falling within the adjacent Phase I land.
- 5.19. Finally, the Officer has requested an Arboricultural Method Statement and Tree Protection Plan. However, there is nothing within the outline permission which requires this and falls outside the scope of the current condition approval request.
- 5.20. As such, it is considered that such information has been provided for the LPA to adequately assess the proposal within the limits of the condition wording and the LPA is content to recommend approval.
- 5.21. Condition 16 seeks to discharge the Construction Environmental Management Plan associated with outline planning permission reference 21/03644/OUT.
- 5.22. The applicant has submitted a Construction Traffic Management Plan (CTMP) which sets out the commitments and measures to be implemented by Orbit Homes during the construction stage of the development to minimise or eliminate any adverse impacts on the environment, the local highway network, and neighbouring residents.
- 5.23. OCC as County Highway Authority has assessed the originally submitted document and requested that details of times for construction traffic and delivery vehicles, must be outside network peak and school peak hours. Deliveries must avoid the times of 07:30-09:00 15:00-16:00 and 16:30-18:00.
- 5.24. The applicant has subsequently submitted an updated CTMP to address this query and mirrors the hours specified in the phase 1 development site (to which this site is accessed through).
- 5.25. CDC Environmental Protection has also assessed the submission and has raised no objection.
- 5.26. The authorities Arboricultural Officer states that the tree, hedge, root protection plan (point 6) should be implemented prior to the commencement of all other works and before any machinery or materials enter the site. There is a commitment made within the submitted report and the applicant has indicated that this would be actioned accordingly.
- 5.27. The Officer goes onto state that the location of the tree protection fencing shown on the Proposed Layout and Logistics of Build Figure 2, is not acceptable from an arboricultural perspective and is contrary to BS 5837:2012 as it does not protect the RPAs of trees to be retained and would lead to adverse impacts to trees to be retained. The applicant has indicated that this will be addressed but that the location

of the fencing is restricted by the boundary and the developable area therefore while some improvement might be possible, this is not likely to be significant.

- 5.28. As such, it is considered that such information has been provided for the LPA to adequately assess the proposal within the limits of the condition wording and the LPA is content to recommend approval.
- 5.29. Condition 21 seeks to discharge the External Lighting Strategy associated with outline planning permission reference 21/03644/OUT.
- 5.30. The applicant has submitted an external lighting strategy document and plan (Ref: Drawing 27526\_02\_100\_01 - S38 Street Lighting Layout) that outlines the proposed external lighting columns, the total number (16 no.) and their positions across the site.
- 5.31. It is noted that the authorities arboricultural officer has stated that the site layout shown on the S38 Street Lighting Layout plan appears different to the layout shown on the Tree Removals Plan within the Arboricultural Report submitted with application 21/03644/OUT and that the Lighting Layout plan there appears to be a swale which is located within the RPA of a moderate quality Sycamore shown as T62 within the Arboricultural Report. They go on to state that this swale will need to be relocated to avoid the RPA of this and other trees.
- 5.32. However, it is noted that the layout plan referred to at outline stage was indicative subject to detailed design which has subsequently been submitted and approved. Furthermore, the tree referenced in the swale comment above does not impact upon the proposed lighting and is therefore not relevant to condition 21.
- 5.33. CDC Environmental Health has assessed the submission and has raised no objection to its contents. As such, it is considered that such information has been provided for the LPA to adequately assess the proposal within the limits of the condition wording and the LPA is content to recommend approval.

## **6. RECOMMENDATION**

That Planning Conditions 6, 10, 11, 15, 16 and 21 of 20/036 be discharged based upon the following:

### Condition 6

- Ref: Balmoral Avenue, Banbury (Phase 2) for the Discharge of Planning Conditions August 2023 Ref: 27526 -GEO-0401.

### Condition 10

- Ref: Balmoral Avenue, Banbury (Phase 2) SUDS Management Strategy September 2023 REPORT REF: 27526-CIVL-0202).

### Condition 11

- Drawing 27526\_03\_020\_01 - Highways Tie-In Plan

### Condition 15

- Drawing 27526\_02\_020\_08\_A - PROW General Arrangement

Condition 16

- Construction Traffic & Environmental Management Plan - Rev B January 2024

Condition 21

- Drawing 27526\_02\_100\_01 - S38 Street Lighting Layout

Case Officer: Chris Wentworth

DATE: 5<sup>th</sup> February 2024

Checked By: Andy Bateson

DATE: 8<sup>th</sup> February 2024

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