1. **APPLICATION SITE AND LOCALITY** 
   1. The application relates to an area of former agricultural land south of Blackwood Place and Molyneux Drive and north-west of Cotefield Farm, previously granted consent for residential development for 82 dwellings. An outline application (11/00617/OUT) was recommended for refusal and subsequently refused by Planning Committee on the 12 August 2011. However, following a public enquiry an appeal was allowed and development granted outline consent by the Planning Inspectorate on 26 March 2012. There have been subsequent approvals of reserved matters (12/01802/REM), clearance of conditions and non-material amendment applications (detailed below) and a further full planning permission sitting alongside the main consent (16/01599/F) allowing a further four dwellings to be constructed on site. Construction works have commenced on site.
   2. The site is bordered by the rear gardens of residential properties to the north, a garden centre and nursery to the east, and a woodland belt to the west. A group of buildings in commercial use exist to the south-east. Access is off the A4260 Oxford Road to the east.
2. **DESCRIPTION OF PROPOSED DEVELOPMENT**
   1. The current application has been submitted under Section 73 of the Town and Country Planning Act and seeks permission for the variation of the wording of Condition 5 (Drainage) of 11/00617/OUT, to allow for a revised drainage strategy and associated Flood-risk Assessment (FRA) to be implemented and serve the proposed residential development. An associated application 17/01225/F for planning permission for engineering operations for the creation of the drainage outfall to a new reed bed to the south of the site has been submitted and is considered acceptable in terms of its detail and planning merits.
   2. Originally a scheme for an alternative drainage strategy including an attenuation pond on land directly adjacent and to the south of the site was submitted; however details were subsequently amended to the current format following the Council’s refusal of the associated planning application (1700316/F) for the creation of the proposed attenuation pond and associated bunding.
   3. Unfortunately this resulted in the application going beyond its original statutory determination target date as a result of the need for revised and additional information to be submitted and duly considered and the need for the completion of an appropriate Deed of Variation to a S106 legal agreement attached to the original permission 11/00617/OUT. The Council has worked with the applicant and their agent to reach a mutually acceptable scheme and subsequently agreed an extension to the determination period of the application.
3. **RELEVANT PLANNING HISTORY**
4. There is no planning history directly relevant to the proposal.

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| Application Ref. | Proposal | Decision |
| 11/00617/OUT | Outline application for residential development of 82 No. dwellings | Application Refused. Allowed at public enquiry. |
| 12/01802/REM | Reserved Matters Application - (Outline Application 11/00617/OUT) - Layout, appearance, scale and landscaping of a scheme of 82 dwellings | Application Permitted |
| 13/01767/OBL | Submission of details to address Clause 13.1 of first schedule of S106 dated 27 February 2012 - Landscape Management Plan from App ref 11/00617/OUT | Application Permitted |
| 13/00357/DISC | Discharge of conditions 4, 5, 6, 8, 9, 10 and 11 of 11/00617/OUT | Application Permitted |
| 13/00358/DISC | Discharge of Conditions 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17 & 18 of 12/01802/REM | Application Permitted |
| 13/00105/NMA | Non Material Amendment to 12/01802/REM - To remove and/or reduce the height of planting where there is planting within the vision splays in order to improve both driver and pedestrian safety | Application Permitted |
| 16/00048/NMA | Elevation changes to plots 32, 33, 37, 38, 40, 41, 54, 61, 70, 71, 72 and 73 (proposed non-material amendments to 11/00617/OUT and 12/01802/REM) | Application Permitted |
| 16/01599/F | Amendments to planning permission reference 11/00617/OUT (and reserved matters approval 12/01802/REM) to create an additional 4 dwellings and replacing a number of the existing approved dwellings with new house types. | Application Permitted |
| 16/00107/NMA | Elevational changes to plots 62, 63, 69, 74, 81 and 82 (Proposed Non-Material Amendment to application 11/00617/OUT and 12/01802/REM) | Application Permitted |
| 17/00316/F | Application for engineering operations to include the creation of pond through associated bunding to serve consented residential development (ref. 11/00617/OUT, 12/01802/REM) | Application Refused |
| 17/00247/DISC | Discharge of condition 10 (surface treatment and street lighting) of 12/01802/REM | Application Permitted |
| 17/01225/F | Application for engineering operations including drainage outfall to reed bed to serve consented residential development (Ref. 11/00617/OUT, 12/01802/REM) | Pending Decision  (Recommendation of approval) |

1. Application 17/00316/F was refused on the grounds of the proposed engineering operations, and in particular the scale, prominent siting and artificial appearance of the attenuation pond, representing unjustified sporadic development within the open countryside, resulting in the introduction of an unnatural landscape feature that would not be sympathetic to the rural context, disrupting the existing topography, to the detriment of the visual amenities of the area and the existing character and appearance of the valued rural landscape.
2. **PRE-APPLICATION DISCUSSIONS**
3. No pre-application discussions have taken place with regard to this proposal*.*
4. **RESPONSE TO PUBLICITY**
   1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was 06.07.2017.
   2. No comments have been raised by third parties.
5. **RESPONSE TO CONSULTATION**
   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

* 1. BODICOTE PARISH COUNCIL: **No objections**.

STATUTORY CONSULTEES

* 1. THAMES WATER: **No objections**.
  2. OXFORDSHIRE COUNTY COUNCIL (Including Transport and Drainage): **No objections**, subject to conditions and completion of a linking agreement to secure the obligations agreed in the existing S106 for the site.

NON-STATUTORY CONSULTEES

* 1. None undertaken.

1. **RELEVANT PLANNING POLICY AND GUIDANCE**
2. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
3. 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:

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

* PSD1: Presumption in Favour of Sustainable Development
* BSC1: District Wide Housing distribution
* BSC2: The Effective and Efficient Use of Land
* BSC3: Affordable Housing
* BSC4: Housing Mix
* ESD 1: Mitigating and Adapting to Climate Change
* ESD 3: Sustainable Construction
* ESD 6: Sustainable Flood Risk Management
* ESD 7: Sustainable Drainage Systems (SuDS)
* ESD 8: Water Resources
* ESD 10: Protection and Enhancement of Biodiversity and the Natural Environment
* ESD 13: Local Landscape Protection and Enhancement
* ESD 15: The Character of the built and historic environment
* Villages 1: Village Categorisation
* Villages 2: Distributing Growth Across the Rural Areas

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

* TR1: Transport funding
* H18: Dwellings in the countryside
* C28: Layout, design and external appearance of new development
* C30: Design control

Other Material Planning Considerations

* National Planning Policy Framework (NPPF)
* Planning Practice Guidance (PPG)

1. **APPRAISAL**
2. The National Planning Policy Practice Guidance (PPG) advises:

*In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question. (Paragraph: 031, Reference ID: 21a-031-20140306)*

1. As such, the assessment in this case is limited to considering the merits of the applicant’s request for the revision of condition 5 of 11/00617/OUT, to be varied to allow for a revised Flood Risk Assessment (FRA) and alternative surface water drainage strategy to be implemented; having regard to the reason this condition was imposed.

Drainage and Floodrisk:

1. Policy ESD 1 demonstrates the Council’s commitment to tackling issues relating to climate change within the district and includes provisions for development to minimise the risk of flooding and make use of sustainable drainage methods.
2. Policy ESD 6 further requires that development should be safe and remain operational (where necessary) and proposals should demonstrate that surface water will be managed effectively on site and that the development will not increase flood risk elsewhere, including sewer flooding.
3. Whilst the application site is not within an area of high flood-risk, the discharge point and reed-bed (the subject of a separate application 17/01225/F) sits within an area of higher flood-risk (Flood Zones 2 & 3) associated with the Sor Brook watercourse, and a detailed Flood Risk Assessment (FRA) has been submitted in support of the application. No comments have been received from the Environment Agency in response to the consultation undertaken on the application, but as surface water from the housing development site naturally drains to the Sor Brook in any case, the key issue is considered to be the need to ensure a suitable drainage scheme is in place to attenuate and properly manage the surface water flows so that they are not materially different to pre-development greenfield runoff rates.
4. A surface water drainage strategy has previously been approved at the site under application 13/00357/DISC, and this current application seeks approval for an amended scheme incorporating both infiltration measures and below ground attenuation storage with discharge into the Sor Brook to the south of the site. The engineering operations required for the discharge pipe network and a proposed reed-bed are considered under a separate application 17/01225/F, with officers generally supportive of the proposals on their planning merits. This application is supported by a FRA and detailed plans showing both the proposed layout of the residential development, onsite drainage proposals and also the associated pipe network to the proposed reed-bed and discharge point into Sor Brook.
5. The County Council as local drainage authority has again assessed the proposals and they raise no objections to the principle of development or the approach being taken (subject to the development being carried in accordance with the submitted details and mitigation measures detailed within the FRA). Further information in terms of SuDs management going forward was submitted during the application to ensure that the SuDs proposals were properly managed/maintained and that flood routing and flood storage areas were appropriately identified within the development to ensure that any flood waters are safely managed. These details were also considered acceptable by the Drainage Authority and negate the need for any conditions to be attached to any such permission, in this respect.
6. The proposals pass the sequential and exception tests as set out at Section 10 of the NPPF, in that the proposals are essential infrastructure required to serve an approved housing development, and the proposals are accompanied by a site specific flood risk assessment which is considered acceptable.
7. The proposals would not significantly impact on the general layout or appearance of the residential scheme as previously approved, other than in surface water drainage matters, and would not introduce any significant further considerations above those previously assessed and considered acceptable. It is considered that the proposals are unlikely to exacerbate the potential for flood risk either on site or elsewhere, whilst providing appropriate surface water drainage for the adjacent residential development and therefore are considered acceptable in this regard.

Other matters:

1. The original consent 11/00617/OUT is subject to a Section 106 legal agreement which secures infrastructure contributions relating to:

* Provision, laying out and long-term management and maintenance of on-site amenity and play areas;
* Affordable Housing;
* Transport;
* County Council infrastructure (education, libraries etc).

1. This agreement was varied in March 2017 as part of application 16/01599/F. A further ‘Deed of Variation’ has been agreed with the applicant during this S73 application to link any new permission to the terms and requirements of the original legal agreement (as amended by 16/01599/F).
2. As this application is a S73 application, it is necessary to repeat all conditions attached to the original permission, as amended, as the result of the approval of this application would be a new planning permission. The PPG makes it clear that: *“where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and un-amended”.* The conditions have been updated to reflect the variation to the drainage condition (condition 5) that is the subject of this application (including revised drainage strategy and associated FRA), and those that have been previously addressed through the submission of reserved matters application 12/01802/REM and approval of clearance of condition application 13/00357/DISC.
3. **CONCLUSION**
4. The principle of development and detail of such has previously been considered acceptable with the granting of the original permission 11/00617/OUT and subsequent reserve matters application 12/01802/REM, and all matters aside from the proposed surface water drainage strategy remain as previously approved. Given the above assessment it is considered that the proposed amended drainage strategy and associated FRA would provide an appropriate method of surface water drainage and introduce no further impacts above those which have previously been assessed and considered acceptable, with the approval of previous consents, and the application is therefore recommended for approval as set out below

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| 1. **RECOMMENDATION**   That permission is granted, subject to the following conditions:   1. The development hereby approved shall be carried out in accordance with the following approved plans; site location plan Rev A and PL.01 Rev F submitted with the original application (ref: 11/00617/OUT), but only in respect of those matters not reserved for later approval.   Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with Government guidance contained within the National Planning Policy Framework.   1. The development hereby approved shall be carried out in accordance with the details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") approved under application 12/01802/REM and subsequent clearance of conditions and non-material amendment applications 13/00358/DISC, 13/00105/NMA, 16/00048/NMA and 16/00107/NMA.   Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).   1. The development hereby approved shall not be occupied until works for the disposal of sewage has been provided in accordance with the details for the disposal of sewage as approved under application 13/00357/DISC; unless otherwise agreed in writing by the Local Planning Authority.   Reason: To ensure satisfactory drainage of the site, in the interests of public health, highway safety and flood prevention and to comply with Policies ESD6, ESD7, ESD8 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.   1. The development hereby approved shall not be occupied until drainage works have been carried out in accordance with the surface water drainage strategy to serve the development as shown on the following plans and documents submitted with this application: Application forms; Flood Risk Assessment, Ref. 15031 FRA-v1, prepared by Banners Gate dated May 2017; Drainage Management Plan, prepared by Banners Gate dated 7th August 2017; Ecological Walk-over Survey undertaken by ACD Environmental dated 11th July 2017; Construction Environmental Management Plan, Ref. BAN18397\_CEMP Rev. A, prepared by ACD Environmental dated 28/09/2017; Arboricultural Impact Assessment, dated 5 June 2017; Arboricultural Method Statement, dated 29 June 2017; Archaeological Watching Brief Ref. 17e172wb, prepared by Thames Valley Archaeological Services, dated 19th September 2017; and drawings numbered: 15031-100S38K, CFB\_FUL\_PLN\_210A, 15031-100S104(i)L, 15031-100S104(ii)K, 15031/106H, 15031/107G, 15031/108F, 15031/109G, 15031/110J, 15031-200F, 15031-201F, 15031-202H, 15031-203H, 15031-204F, 15031-205G, 15031-206, 15031-210H, 15031-211G, 15031-310A, 15031/311C, 15031-312A, 15031-313A, 15031-314A, 15031-315E, 15031-316B and CALA18397-12A.   Reason: To ensure satisfactory drainage of the site, in the interests of highway safety and flood prevention and to comply with Policies ESD6, ESD7 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 Government guidance contained within the National Planning Policy Framework.   1. The development shall be carried out in accordance with the approved water supply details approved under application 13/00357/DISC; unless otherwise agreed in writing by the Local Planning Authority.   Reason: To ensure the water supply infrastructure has sufficient capacity to accommodate the additional demand in accordance with Policy ESD8 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.   1. None of the dwellings hereby approved shall be occupied until vision splays have been laid out and constructed at the site access in accordance with the details approved under reserved matters application 12/01802/REM and subsequent non-material amendment application 13/00105/NMA. The approved vision splays shall thereafter be kept free of any obstruction above a height of 0.6 metres above carriageway level; unless otherwise agreed in writing by the Local Planning Authority.   Reason: In the interests of highway safety and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.   1. The development shall be carried out in accordance with the construction phase travel plan approved under application 13/00357/DISC which shall be adhered to throughout the construction period; unless otherwise agreed in writing by the Local Planning Authority.   Reason: In the interests of highway safety during the construction period and to comply with Saved Policy ENV1 of the Cherwell Local Plan 1996, Policy ESD 15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.   1. The development shall be carried out in accordance with the travel plan approved under application 13/00357/DISC. The provisions of the approved travel plan shall be adhered to thereafter; unless otherwise agreed in writing by the Local Planning Authority.   Reason: In the interests of sustainability, to ensure a satisfactory form of development and to comply with Policies SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.   1. The proposed footpath link to Molyneux Drive shall be in accordance with the details approved under application 13/00357/DISC. The footpath shall be provided prior to the first occupation of any approved dwelling and shall be retained in its approved form thereafter; unless otherwise agreed in writing by the Local Planning Authority.   Reason: In the interests of highway safety, to ensure a proper standard of development and pedestrian accessibility, and to comply with Policies SLE4 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.   1. The development shall proceed in accordance with the programme of archaeological work within the written scheme of investigation approved under application 13/00357/DISC; unless otherwise agreed in writing by the Local Planning Authority.   Reason: To safeguard the recording and inspection of matters of archaeological importance on the site in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.  PLANNING NOTES:   1. Attention is drawn to a Legal Agreement related to this development or land dated 3rd October 2017 which has been made pursuant to Section 106 of the Town and Country Planning Act 1990, Sections 111 and 139 of the Local Government Act 1972 and/or other enabling powers. 2. Planning permission only means that in planning terms a proposal is acceptable to the Local Planning Authority. Just because you have obtained planning permission, this does not mean you always have the right to carry out the development. Planning permission gives no additional rights to carry out the work, where that work is on someone else's land, or the work will affect someone else's rights in respect of the land. For example there may be a leaseholder or tenant, or someone who has a right of way over the land, or another owner. Their rights are still valid and you are therefore advised that you should seek legal advice before carrying out the planning permission where any other person's rights are involved. 3. The applicant's and/or the developer's attention is drawn to the requirements of the Control of Pollution Act 1974, the Environmental Protection Act 1990 and the Clean Air Act 1993, which relate to the control of any nuisance arising from construction sites. The applicant/developer is encouraged to undertake the proposed building operations in such a manner as to avoid causing any undue nuisance or disturbance to neighbouring residents. Under Section 61 of the Control of Pollution Act 1974, contractors may apply to the Council for 'prior consent' to carry out works, which would establish hours of operation, noise levels and methods of working. Please contact the Council's Anti-Social Behaviour Manager on 01295 221623 for further advice on this matter. 4. Your attention is drawn to the need to have regard to the requirements of UK and European legislation relating to the protection of certain wild plants and animals. Approval under that legislation will be required and a licence may be necessary if protected species or habitats are affected by the development. If protected species are discovered you must be aware that to proceed with the development without seeking advice from Natural England could result in prosecution. For further information or to obtain approval contact Natural England on 0300 060 3900. 5. Birds and their nests are fully protected under the Wildlife and Countryside Act 1981 (as amended), which makes it an offence to intentionally take, damage or destroy the eggs, young or nest of a bird whilst it is being built or in use. Disturbance to nesting birds can be avoided by carrying out vegetation removal or building work outside the breeding season, which is March to August inclusive. |

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| Case Officer: | Bob Neville | DATE: 03/10/2017 |
| Checked By: | Alex Keen | DATE: 06/10/2017 |