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APP/5/A  
Section 78 Appeal

Land at North West Bicester, Charlotte  
Avenue, Bicester, OX27 8BP

Proof of Evidence of  
Hannah Leary BA(Hons) DiP TP MRTPI

Appeal Reference: APP/C3105/W/23/3315849

LPA Ref: 21/01630/OUT

Prepared on behalf of Firethorn Developments Limited

May 2023

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78**

**APPEAL AGAINST THE NON-DETERMINATION OF PLANNING APPLICATION FOR:**

**“OUTLINE PLANNING APPLICATION FOR UP TO 530 RESIDENTIAL DEVELOPMENT DWELLINGS (WITHIN USE CLASS C3), OPEN SPACE PROVISION, ACCESS, DRAINAGE AND ALL ASSOCIATED WORKS AND OPERATIONS INCLUDING BUT NOT LIMITED TO DEMOLITION, EARTHWORKS, AND ENGINEERING OPERATIONS, WITH THE DETAILS OF APPEARANCE, LANDSCAPING, LAYOUT, AND SCALE RESERVED FOR LATER DETERMINATION.”**

**Land at North West Bicester, Charlotte Avenue, Bicester, OX27 8BP**

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Prepared on behalf of Firethorn Developments Limited

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Ref: 31036/A5/HL/sl  
Date: 09 May 2023

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## **APPENDICES (APP/5/B-D - BOUND SEPARATELY)**

### **APPENDIX APP/5/B**

**HL1** : **Heritage Impact Assessment, from Mr Sutton of Cotswold Archaeology**

### **APPENDIX APP/5/C**

**HL2** : **Representations in respect of the CDC Community Involvement Paper (2020)**

### **APPENDIX APP/5/D**

**HL3** : **Representations in respect of the CDC Development Options Paper (2021)**

## 1.0 QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Hannah Kate Leary.
- 1.2 I am the holder of a Bachelor of Arts degree with Honours and a Post Graduate Diploma in Planning from Oxford Brookes University. I am a member of The Royal Town Planning Institute. I am a Director of Barton Willmore now Stantec, a leading practice of Chartered Town Planners, with offices in London, Bristol, Birmingham, Cambridge, Cardiff, Edinburgh, Glasgow, Leeds, Manchester, Newcastle, Reading, Southampton, and West Malling.
- 1.3 I have over 20 years' professional town planning experience, dealing with a broad range of land use planning issues and commercial property types, including residential development, sustainable urban extensions, and mixed-use schemes and Major Developed Sites in the Green Belt, and other land uses.
- 1.4 I currently act for a number of major developers and landowners and regularly advise on a wide range of planning matters including planning policy implications, site suitability as well as planning matters generally.
- 1.5 I am familiar with the Site, and the surrounding area.
- 1.6 My Evidence focuses on the main planning issues and supplements the Evidence provided by other witnesses on other detailed matters; namely:
- i. Viability: Mr Nick Fell of Rapleys;
  - ii. Zero carbon and sustainable construction: Mr Jonathan Riggall of Aether;
  - iii. Highways: Mr Mark Kirby of Velocity; and
  - iv. 5YHLS: Mr Nick Paterson-Neild of Barton Willmore now Stantec.
- 1.7 In addition, contained at **Appendix HL1** of my Proof is a Heritage Impact Assessment prepared by Mr Robert Sutton of Cotswold Archaeology.
- 1.8 In relation to my Evidence, this is structured as follows. Section 2.0 sets out a brief description of the Site, the planning background to the Appeal proposal and a summary of the relevant planning history of the Site and surrounding area.

- 1.9 Section 3.0 considers the Appeal Scheme in the context of the development plan, whilst Section 4.0 addresses the other material considerations including national planning policy and the benefits of the Appeal Scheme.
- 1.10 Section 5.0 sets out my overall planning assessment, including whether the Proposed Development represents sustainable development.
- 1.11 The appendices to my Evidence are bound separately.
- 1.12 The Evidence which I provide for this appeal in this Proof of Evidence has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true and professional opinions.

## 2.0 BACKGROUND AND APPEAL SCHEME

### Appeal Site

- 2.1 The Appeal Site is described in the Planning Statement of Common Ground (SoCG) (**CD 10.2**) (the 'Site'). The Site is located, as the name suggests, to the north west of the centre of Bicester, and forms part of the strategic allocation for 6,000 dwellings at North West Bicester. It is 2.5km to the north west of Bicester Town Centre, south east of the village of Bucknell and north west of Caversfield. The land and boundaries of the Site comprise Banbury Road (B4100) and the ongoing construction works associated with first phase of the North West Bicester allocation (known as the Exemplar site or Elmsbrook); completed housing associated with the same development; and fields, hedgerows, and trees to the north, north west, and west. Further to the south lie fields running up to Lords Lane (A4095) which is approximately 550m to the south and forms the northern edge of Bicester.
- 2.2 The land separating the two parcels of the Site comprises the first phase of the North West Bicester allocation is part complete and part under construction. The new development includes housing and a primary school (Gagle Brook). An estate road, Charlotte Avenue, travels north of the new housing development, in between the two parcels of land comprising the Site becoming Braeburn Avenue before joining Banbury Road.
- 2.3 The Site comprises three parcels of land, with a total area of 23.97ha, made up of an eastern, central and western parcel. The land is predominantly grassland with fields bounded by hedges with some large trees, woodland, and plantation. The land is classified as good to moderate value (primarily Grade 3b) under the Agricultural Land Classification system.
- 2.4 The west of the Site contains two distinct areas of woodland, and the most northern area of woodland contains a dry pond. There is a historic hedgerow which runs along the north eastern border of the Site and is a drainage feature running through the south of the Site. The Site is relatively flat rising gradually to the north west.
- 2.5 Further I note that the Site:
- i. Is allocated as part of a mixed-use strategic development area within the adopted Local Plan;

- ii. Is not located within a Conservation Area;
- iii. Has two listed buildings in close proximity to the Site - beyond Banbury Road to the east is the Church of St Laurence Grade II\* Listed Building, and Home Farmhouse Grade II Listed Building is located approximately 85m to the south east at the closest point to the Site; and
- iv. Is in Flood Zone 2 and 3 – part of the southern area only.

### **Planning History**

- 2.6 A full overview of the Appeal Site's previous planning history is set out in the agreed planning SOCG.
- 2.7 In summary, the Site forms part of the wider North West Bicester Supplementary Planning Document (NWB SPD) (**CD 4.5**) allocation, with up to 6,000 homes (along with employment uses, schools, green space, and strategic infrastructure) proposed across the 400 hectares identified. The Site was allocated for development in 2016, and as the SPD sets out, the allocation was made against the backdrop of the identification in Planning Policy Statement 1 ('PPS') of the potential for the wider North West Bicester area to be an eco-town location, which Cherwell District Council ('CDC') then promoted (resulting in Policy **Bicester 1** and the SPD adoption).
- 2.8 Bicester was awarded Garden Town status in 2014. Despite the Government announcing in a Ministerial Statement in March 2015 that the Eco Towns PPS was cancelled, North West Bicester retained its eco-town status until an up-to-date Local Plan was in place, as CDC Local Plan was going through examination at the time of the announcement (with the SPD site area identified as a proposed eco-town allocation).
- 2.9 The SPD took on board and enshrined within it the principles established through the PPS, and the document provides detailed guidance for the development of the Site, including the vision and objectives, and the development principles and requirements.

- 2.10 As referred to above, development has already been approved within the wider SPD allocation area, with residential units already having been constructed and occupied on the Exemplar site adjacent to the Site. Part of the Site has been the subject of a previous planning application (CDC ref. 18/00484/OUT) for the site known as 'Land north and adjoining Home Farm' for up to 75 homes. This application was withdrawn.

### **Appeal Scheme**

- 2.11 My Evidence relates to an application for outline planning permission (reference 21/01630/OUT), validated on 6<sup>th</sup> May 2021 (**CD 8.1.3**) (the 'Planning Application').
- 2.12 The Planning Application was submitted to CDC following positive and detailed pre-application discussions in 2019 and 2020. In addition to that, a 'virtual' public consultation was undertaken in Spring 2021 over a three-week period, along with meetings with key local stakeholders including Bicester Town Council and Caversfield Parish Council. The application was submitted in outline with all matters reserved and was accompanied by a full suite of technical documents including an Environmental Statement (**CD 1.26 and 1.27**), as detailed in the Core Documents List).
- 2.13 The description of development is as follows:

*"Outline planning application for up to 530 residential dwellings (within Use Class C3), open space provision, access, drainage and all associated works and operations including but not limited to demolition, earthworks, and engineering operations, with the details of appearance, landscaping, layout and scale reserved for later determination."*<sup>1</sup> (the 'Appeal Scheme' or 'Proposed Development')

- 2.14 The Planning Application was submitted in May 2021 and sought permission for the redevelopment of the Site to deliver up to 530 homes, via an outline planning application, based on a set of parameters which defined the 'rules' in respect of the maximum built envelope, maximum building heights, extent of green space, and site access points/connection zones (the 'Development Parameters'). The Development Parameters Schedule and Plans (**CD 2.23**) also contain the description of development as set out above. This provided a sound base for the Environmental

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<sup>1</sup> This is the agreed description of development as amended in March 2022 (**CD 2.15**).



Impact Assessment (EIA) and a mechanism for the Council to control development by imposing a condition to ensure that any reserved matters applications made in respect of the Proposed Development will comply with the Development Parameters.

- 2.15 The Appeal Scheme would broadly comprise three development parcels – west, central, and east – with the central and eastern parcels being separated by Charlotte Avenue. The Proposed Development would consist of a residential scheme, with development mostly being a maximum of 12m in height, with a limited area being up to 14m. Significant areas of the Site will be preserved within hedgerow and woodland buffers and bat corridors, with areas of multi-functional green space also identified on the Parameter Plans. Access points to the surrounding highways network are also identified on the Parameters Plans, with connections to both the existing adopted network and emerging unadopted network within the Exemplar site (which will ultimately be adopted upon completion). Construction access points are also identified. All access points have been assessed as part of the EIA and have been the subject of a Transport Assessment.
- 2.16 The Planning Application was accompanied by an Illustrative Masterplan (**CD 1.13**) which demonstrated how a future residential scheme could come forward, in accordance with the Development Parameters.
- 2.17 Following discussions with Officers at CDC, and feedback from statutory consultees, the Planning Application was amended (**CD 2.1 and 2.22**) as follows during the determination period:
- i. In November 2021 – the Appellant reduced the proposed maximum heights from up to 16m to a maximum of 14m in a limited area immediately adjacent to the Charlotte Avenue access in the central area of the Site, and in addition added the location of the construction access to the Parameter Plans; and
  - ii. In December 2022 – the built envelope was adjusted to draw it back from the boundaries of the Site, where CDC considered there to be overlap which 'caused confusion', removing any overlap with the hedgerow and woodland buffers, or multi-functional green space.
- 2.18 The Appeal Scheme seeks approval of the following documents:

- a. Amended Development Parameter Schedule and Plans (December 2022) (**CD 2.23**) including the following Plans:
- i. Site Location Plan (drawing ref. 1192-001 Rev.J) (**CD 2.3**)
  - ii. Plan 1 - Maximum Building Heights and Footprint (drawing ref. 1192-003 Rev. N) (**CD 2.25**);
  - iii. Plan 2 - Green Space (drawing ref. 1192-003 Rev. N) (**CD 2.26**);
  - iv. Plan 3 - Access and Movement (drawing ref. 1192-003 Rev. M) (**CD 2.27**); and
- b. Highways drawings as follows (November 2021):
- i. Proposed Pedestrian Crossing to the Church (drawing ref. 4600-1100-T-004 Rev D) (**CD 2.4**);
  - ii. Site access A – Access to Eastern Parcel (4600-1100-T-040 Rev A) (**CD 2.18**);
  - iii. Site accesses A&B – Access to Eastern Parcel and Western Parcel (south) (4600-1100-T-041 Rev A) (**CD 2.19**);
  - iv. Site access C – Access to Western Parcel (north) (4600-1100-T-042 Rev A) (**CD 2.20**);
  - v. Site Access D (drawing ref. 4600-1100-T-010 Rev B) (**CD 2.6**);
  - vi. Site Access E – Proposed Construction Access (drawing ref. 4600-1100-T-011 Rev F) (**CD 2.17**); and
  - vii. Construction Access (Western Parcel) (drawing ref. 4600-1100-T-027 Rev B) (**CD 2.8**).

2.19 The description of development, and the matters for which approval is sought through the Planning Application, are agreed between parties.

### **Determination Process**

2.20 At their Planning Committee on 12<sup>th</sup> January 2023, the CDC Officers recommended that the Planning Application be granted permission, subject to the expiry of a consultation period, and the negotiation of planning conditions and a S106 Agreement (to be delegated to Officers). Members voted to defer consideration of the Planning Application to a later meeting, with no new date proposed, on the basis that they had not had sufficient time to review the contents of the Late Sheets that has been issued earlier that day. The Appellant submitted their Appeal, on the

grounds of the failure of the Council to determine the application, following the January 2023 Committee Meeting.

2.21 Following the submission of this Appeal, the Council prepared a detailed Report (**CD 3.4**) that was taken to the Council's Planning Committee on 9th March 2023. The Report recommended that whilst the Council was no longer able to determine the application, had they been in a position to do so they would have recommended that Members resolved to approve the application subject to:

- i. The completion of viability discussions;
- ii. The completion of a S106 Agreement; and
- iii. A set of planning conditions.

2.22 Contrary to the recommendation, Members resolved that they would have refused planning permission for five reasons, as follows:

1. The development, when set against the viability of the scheme, would not go far enough in trying to achieve the True Zero Carbon requirements for NW Bicester, as set out by Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031. This would undermine the Council's strategy for achieving an Exemplary Eco Town development at NW Bicester which sets this site apart from others and where the Council has declared a Climate Emergency. The development would therefore conflict with Policy Bicester 1 and Policies ESD1-5 of the Cherwell Local Plan Part 1 2011-2031 and the North West Bicester SPD 2016.

*Note to Appellant: This reason for refusal is capable of being addressed.*

2. The access arrangements to the Site would be unsatisfactory as there would be an inability to provide for suitable pedestrian and cycle facilities along Charlotte Avenue. Any localised proposals to the road have not been proven to be possible, and are likely to raise safety concerns relating to users of the highway within proximity to Gagle Brook School, and would result in the loss of street trees and would impact on the character of the existing Eco Town. The proposal would not meet the requirements of LTN1/20 and would conflict with Oxfordshire County Council's 'Local Transport and Connectivity Plan' Policies 1, 2b, 8, 9, 11, 35, 45 and 46b, Oxfordshire County Council's 'Tree Policy for Oxfordshire' Policies 11, 18, 19 and 20, Policies SLE4 and Bicester 1 of the Cherwell Local Plan Part 1 2011-2031 and the North West Bicester SPD 2016.

3. The Proposed Development would result in congestion at the junction of Charlotte Avenue with the B4100, particularly during the peak period. This would result in a severe transport impact and the development would therefore conflict with Government guidance contained within the National Planning Policy Framework and Policies SLE4 and Bicester 1 of the Cherwell Local Plan Part 1 2011-2031.
4. The Proposed Development, when set against the financial viability of the scheme, would fail to provide an adequate level of affordable housing provision. The proposal is therefore contrary to Policy BSC3 and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031, the North West Bicester SPD 2016, CDC's Developer Contributions SPD 2018 and Government guidance contained within the National Planning Policy Framework.

*Note to Appellant: This reason for refusal is capable of being addressed.*

5. In the absence of a satisfactory unilateral undertaking or other form of S106 legal agreement, the Local Planning Authority is not satisfied that the Proposed Development provides for appropriate infrastructure contributions required as a result of the development and necessary to make the impacts of the development acceptable in planning terms. This would be to the detriment of both existing and proposed residents and would be contrary to Policies INF1, BSC3, BSC7, BSC8, BSC10, BSC11, BSC12 and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031, the North West Bicester SPD 2016, CDC's Developer Contributions SPD 2018 and Government guidance contained within the National Planning Policy Framework.

*Note to Appellant: This reason for refusal is capable of being addressed.*

- 2.23 I will refer later in my Evidence to the Officers Report to the Planning Committee **(CD 3.4)**.

### **Other Background Relevant to the Appeal Scheme**

- 2.24 I would like to draw your attention to two appeal decisions, given in respect of land at Howes Lane – land within the North West Bicester site allocation – with both appeals made by Albion Land against the decision by CDC to refuse planning permission. The appeal references are APP/C3105/W/16/3163551 and APP/C3105/W/22/3304021, respectively. Copies of each of these appeal decisions

are contained in the Core Documents (**CD 7.1 and 7.2**). For ease of reference, I will refer to them as the 2017 Appeal and the 2023 Appeal.

2.25 In summary, both appeals relate to the provision of employment use on the North West Bicester site allocation, with the 2017 Appeal also including the provision of 4.5 hectares of residential land. Both appeals are located within the North West Bicester site which is referred to under Policy **Bicester 1** of the adopted Local Plan, with this policy being supported by the North West Bicester Supplementary Planning Document (2016) (**CD 4.5**). Both appeals were allowed.

2.26 I would like to draw your attention to the following points from each appeal, which I believe should be noted in the context of my consideration of the relevant planning matters in Section 4.0, and in the context of the Evidence of Mr Fell and Mr Riggall:

i. 2017 Appeal:

- a. At paragraph 21 (page 9), it is observed that the future provision of affordable housing will be dealt with through a legal agreement, and subject to a viability assessment. The Inspector notes that this complies with the provisions of Policy **Bicester 1** and Policy **BSC 3** of the adopted Local Plan (**CD 4.1**) (both of which I will come on to address in Section 3.0), and on this basis it is concluded that the proposals make adequate provision for affordable housing;
- b. In relation to the zero carbon requirements for the North West Bicester site allocation, the Inspector agrees at paragraph 128 that the identification of a set of measures which will result in zero carbon development, and their implementation through planning conditions, is an appropriate approach. This is acknowledged again at paragraph 186 of this decision.
- c. At paragraph 183 (page 39), the Inspector notes that the CDC's consultant (Bioregional) has raised concerns about a perceived lack of commitment to a true zero carbon development. The Inspector notes that the Council's Committee Report states that it is the achievement of zero carbon across the overall North West Bicester site allocation which is the key. I will come back to this point later in my Evidence, and Mr Riggall will also address this point, but at paragraph 184 (page 39) the

Inspector makes 'particular note' of this distinction and the use of the words 'as a whole'. The Inspector notes that this infers '*that it is not necessary for every individual development within the eco-town to be zero carbon so long as deficiencies on one site are made up by better performance on another site*'; and

ii. 2023 Appeal;

- a. There are two key points to highlight in respect of this Appeal. The first is the Inspectors observation at paragraph 25 (page 3) that, in the context of the viability deficit highlighted by the Appellant in respect of a previously-consented residential scheme on the Site, that CDC accepted during the Hearing that there is a need to be more flexible with policy requirements in respect of affordable housing, environmental requirements and eco-town build standards; and
- b. In the context of the fact that the funding for the Strategic Link Road which forms part of the masterplan for the North West Bicester site allocation within the Supplementary Planning Document (SPD) is now uncertain, and that this calls into question the deliverability of the road, the weight to be attributed to the SPD is reduced (paragraphs 20 and 21, page 3), and the masterplan within that SPD also carries comparatively reduced weight (paragraph 18, page 3).

### 3.0 THE DEVELOPMENT PLAN

- 3.1 Section 38(6) of the Planning and Compulsory Purchase 2004 states that '*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*' (my emphasis). To this end, accordance with the development plan should be the primary test in coming to a determination in respect of the Appeal Scheme.
- 3.2 I highlight below the development plan policies most relevant to the consideration of the Appeal Scheme, and the extent to which the proposals accord (or otherwise) with those policies, and why. I note here and at the outset that the Council do not take issue with the principle of the Proposed Development and that no statutory consultees object to the Appeal Scheme.
- 3.3 I then go on in Section 4.0 of my Evidence to consider the other material considerations, including the NPPF (**CD 8.1.1**) and PPG (**CD 8.1.2**), and the benefits of the Appeal Scheme.
- 3.4 Further, the Evidence of Mr Fell, Mr Riggall, and Mr Kirby deal specifically with those policies referred to in the reasons for refusal. My assessment therefore focusses on the 'key' policies as I see them and those that offer support for the Appeal Scheme. I draw my conclusions on all policy matters and whether the Appeal Scheme accords and is consistent with the development plan in an overall assessment in Section 5.0.

#### **The Development Plan**

- 3.5 The Development Plan for the consideration of the Appeal Scheme comprises the following documents:
- i. Cherwell Local Plan 2011-2031, Part 1 (adopted July 2015);
  - ii. The Cherwell Local Plan 2011-2031 (Part 1) Partial Review - Oxford's Unmet Housing Need (September 2020); and
  - iii. Cherwell Local Plan 1996, Saved Policies (adopted September 2007).

3.6 The Cherwell Local Plan 2011-2031 (Part 1) Partial Review - Oxford's Unmet Housing Need (the 'Partial Review') was formally adopted as part of the statutory Development Plan by the Council on 7 September 2020, and sets out the site allocations required to provide Cherwell District's share of the unmet housing needs of Oxford to 2031. Whilst I do not consider it to be relevant in respect of the proposed development, the Partial Review is relevant in respect of the Council's position on housing delivery as a whole, as set out in the Evidence of Mr Paterson-Neild, and in particular in Section 5.0 of his Evidence in respect of the housing requirement.

3.7 The Policies Map that accompanies the Development Plan confirms the Site is allocated for strategic mixed use (houses and employment).

*Cherwell Local Plan 2011-2031 (July 2015)*

3.8 I set out below a summary of the Cherwell Local Plan policies I consider relevant to this appeal, full details of which are contained within **CD 4.1**, and the extent to which the Appeal Scheme accords with those policies.

Sustainable Development

3.9 Policy **PSD 1** (Presumption in Favour of Sustainable Development) (page 36) echoes the NPPF's presumption in favour of sustainable development for 'decision taking' (NPPF (**CD 8.1.1**) paragraph 11). It states that '*Planning applications that accord with the policies in this Local Plan (or part of the Statutory Development Plan) will be approved without delay unless material considerations indicate otherwise*'. This is clearly important in understanding and determining whether the Appeal Scheme constitutes sustainable development and accords with the Local Plan. I will return to this in the conclusions of my overall assessment at Section 5.0 of my Evidence.

Highways

3.10 Policy **SLE 4** (Improved Transport and Connections) (page 55) sets out the Council's approach to achieving a modal shift away from an over reliance on the car, albeit '*recognising the importance of the car in a rural District*' (Paragraph B.70). All new development is required to provide financial and/or in-kind contributions to mitigate the transport impact of development. In addition, '*all development, where reasonable to do so, should facilitate the use of sustainable modes of transport to*



*make the fullest possible use of public transport, walking and cycling'. The Council will not support development which is not suitable for the roads that serve the development, and which have a severe traffic impact.*

3.11 Paragraph 7.13 (Page 71) of the March Committee Report (**CD 3.4**) sets out the OCC Highways position as regards the suitability of the Appeal Scheme for the roads that serve the development, and its position in respect of the traffic impact of the proposals. It states that *'although the impact of the development may be felt for many years, it is likely to be temporary, if long-term temporary. As a result I can remove our highway objection on the basis that the traffic impact would not be considered severe, subject to planning obligations and conditions as previously set out (contributions sought towards: improvements to junction of B4100/ Charlotte Avenue, to the junction of B4100/A4095, to the cycle route between the site and town centre/ stations, the improvement of bus services and infrastructure at NW Bicester, to monitoring the travel plan over its life, to new public rights of way and improvements to public rights of way in the vicinity of the site, to local road improvements, to enable the provision of a pedestrian/ cycle bridge over the watercourse into the adjacent site to the west, to the major infrastructure costs (primarily the strategic link road/ A4095 diversion through the NW Bicester allocation), to off site highway works, to enable access arrangements to be secured, to the shared value requirements of Network Rail). Conditions suggested to require a construction traffic management plan, to secure cycle parking, to require travel information packs and a travel plan and to place a restriction on the number of dwellings to be accessed from accesses A and B)' (my emphasis). In other words, the statutory Highways Authority do not consider the Appeal Scheme to have a severe traffic impact on the roads that serve the development, or its suitability for the roads that serve the development, subject to the package of contributions and obligations identified.*

3.12 To emphasise this, the Committee Report (**CD 3.4**) goes on to say, also at Paragraph 7.13 (Page 71) that with regard to the access arrangements and the provision for cyclists and pedestrians, OCC Highways has no objections subject to a S106 Agreement to secure transport mitigation and planning conditions. I will come on to discuss the S106 Agreement in Sections 3.0 and 4.0, but it should be noted that the Appellant is working with CDC and OCC to finalise and agree the package of contributions and obligations referred to above, alongside a set of appropriately worded planning conditions.

- 3.13 Mr Kirby, on behalf of the Appellant, provides Evidence in respect of highways matters. His Evidence addresses putative Reasons for Refusal 2 and 3, which I refer to in Section 2.0 of my Evidence. Reason 2 relates to both the suitability of Charlotte Avenue as part of the proposed access arrangement, and in particular for use by cyclists and pedestrians. Reason 3 relates the potential for congestion at the Charlotte Avenue and B4100 junction, and a severe impact at this junction which would be contrary to Policy **SLE 4** (page 55), and to Policy **Bicester 1** (page 140) (which I will refer to later in this Section of my Evidence). Mr Kirby demonstrates, through his Evidence, that Charlotte Avenue is suitable as an access, and for the use of cyclists and pedestrians, and that the junction of Charlotte Avenue and the B4100 has been considered in full and no severe impacts have been identified. This accords with the conclusions of OCC Highways as set out in the March Committee Report (**CD 3.4**) and referred to above.
- 3.14 On the basis of the conclusions of OCC Highways in respect of severity, and the Evidence presented by Mr Kirby, it is my view that the Appeal Scheme accords with Policy **SLE 4** (page 55) on the basis that the proposals have been demonstrated to be suitable for the roads that serve the development, and they are not considered to result in a severe traffic impact.

#### Housing

- 3.15 Policy **BSC 1** (District Wide Housing Distribution) (page 61) identifies that 10,129 dwellings are to be delivered in Bicester across the Plan period, with 3,293 dwellings to be delivered at the North West Bicester Eco Town (of which the Appeal Scheme is a part) by 2031 (Table 4, Executive Summary, page 13), with further homes to be delivered at the North West Bicester site allocation beyond 2031 '*but the Plan does not preclude earlier or faster delivery*' (paragraph B.99).
- 3.16 Mr Paterson-Neild, on behalf of the Appellant, in his Evidence in respect of five-year housing land supply, has considered the housing requirement, along with the deliverability of sites which are contributing to achieving that need target within the District.

- 3.17 In respect of Policy **BSC 1** (page 61), Mr Paterson-Neild highlights that the Council's February 2023 review of the housing supply position concluded that the adopted requirement was out of date, and therefore that local housing need should be used to recalculate the five-year housing land supply. On this basis, Policy **BSC 1** is considered to be out of date. However, Mr Paterson-Neild goes on in his Evidence to analyse the requirement within Cherwell and in respect of Oxford's unmet housing need and considers that the annual requirement is higher than that assumed by the Council (Section 5.0 of his Evidence). In addition to this, Mr Paterson-Neild, on concluding an analysis of the component sites within the Council's housing land supply (Section 6.0 of his Evidence), concludes that even when the Council's case on housing requirement is applied to his assessment of the deliverable supply position, the Council can only demonstrate a 4.76 year housing land supply. Whilst Policy **BSC 1** is considered to be out of date, the Evidence of Mr Paterson-Neild suggests that the Council need to deliver additional homes in the District – both to address their own need and that of Oxford's unmet need – to the degree that the number of homes required to be delivered within the Plan period, and the number of homes to be delivered within the North West Bicester allocation site, will need to be increased to address those higher targets. To this end, I conclude that whilst Policy **BSC 1** is out of date in respect of the number of homes identified as required to be delivered, Mr Paterson-Neild's Evidence suggests that this number will need to increase, and therefore the homes proposed for the Appeal Site continue to be required, are an essential part of the Council's housing numbers, and will therefore contribute to achieving the aim of delivering housing in accordance with Policy **BSC 1**.
- 3.18 Policy **BSC 3** (Affordable Housing) (page 64) expects developments of 11 or more dwellings at Bicester to provide at least 30% of new housing as affordable homes on site, with 70% of those affordable homes being delivered as affordable/social rented dwellings and 30% as other forms of intermediate affordable homes. Where development is demonstrated to be unviable in respect of these requirements, further negotiation will take place including consideration of *'the mix and type of housing, the split between social rented and intermediate housing, the availability of social housing grant/funding and the percentage of affordable housing to be provided'*. Policy **BSC 4** (Housing Mix) (page 67) emphasises that new residential development will be required to provide a mix of homes in the interests of meeting housing need, and that this should be based on up-to-date Evidence on housing need, from developers and based on local market conditions.

- 3.19 Mr Fell deals specifically with these policies in the context of the financial viability assessment that has been undertaken by the Appellant, in his Evidence.
- 3.20 The proposals for the provision of affordable housing within the Appeal Scheme, as set out in Mr Fell's Evidence, do not at this stage deliver 30% affordable housing as set out in Policy **BSC 3** (page 64) because the Appeal Scheme is not viable in the context of the wider requirements in respect of addressing the zero carbon requirements (which I will come on to consider below) and the associated build costs and additional S106 obligations. The March Committee Report (**CD 3.4**) states that whilst the range of affordable housing provision proposed is short of the level set out in Policy **BSC 3**, the Council '*are also mindful that where a viability gap is proven and accepted, that a solution must be reached and that this must consider all matters*' (Paragraph 9.250, Page 122). The Report went on to say that if Members wished to secure additional affordable housing, then the S106 costs would need to be varied further and/or a lower build cost standard achieved (which would in turn have an impact on the degree to which zero carbon measures could be delivered).
- 3.21 Mr Fell sets out within his Evidence the reasons why he has been able to demonstrate through the viability modelling that it is not actually viable to deliver any affordable housing whilst also delivering on the Council's zero carbon and sustainability policies. The viability modelling process included the consideration of housing mix and the application of up-to-date evidence on housing need and market conditions (and draws on the Evidence of Mr Riggall in respect of the measures required at detailed design stage to achieve a zero-carbon scheme). This process of undertaking a financial viability assessment in respect of the ability of a proposal to deliver affordable housing accords with both Policy **BSC 3** (page 64) and Policy **BSC 4** (page 67).
- 3.22 Notwithstanding the fact that the viability testing confirms that the delivery of any affordable housing, in the context of the inputs into that testing process, is not viable, Mr Fell sets out in his Evidence that the Appellant is willing to commit to delivering a minimum level of 10% affordable housing in respect of the Appeal Scheme. He goes on to set out, in the context of Policy **BSC 3** (page 64), the proposed structure for a viability review mechanism to be secured via a S106 Agreement, and which will seek to secure additional affordable housing within the Appeal Scheme, up to the 30% specified within the policy.

- 3.23 In terms of the infrastructure required to be delivered in respect of new residential development, there are several policies which address this within the Development Plan. Policy **BSC 7** (Meeting Educational Needs) (page 71) identifies that *'the Council will work with partners to ensure the provision of pre-school, school, community learning and other facilities which provide for education and the development of skills'*, with new schools to be in sustainable locations. The provision of schools, or contributions towards expanding existing provision, will be sought. In relation to health, Policy **BSC 8** (Securing Health and Well-Being) (page 72) expresses the Council's support for the provision of health facilities in sustainable locations, with an identified requirement for more GP provision in Bicester in sustainable locations on the edge of within the built-up area of the town (paragraph B.149).
- 3.24 Whilst the Council's punitive Reason for Refusal 5 cited a failure to secure a Section 106 Agreement, the contributions and obligations to be secured via a S106 Agreement is being discussed between the parties at the time of the preparation of this Evidence, and further information in respect of the justification for the contributions being sought (in order to comply with the CIL Regulation 122 tests) has been requested from both the Council and the County Council. The S106 Agreement seeks to secure:
- i. The provision of a minimum of 10% affordable housing;
  - ii. Review mechanisms in relation to the provision of affordable housing;
  - iii. Carbon offsetting contribution;
  - iv. Education contributions;
  - v. Highways contributions including pedestrian and cycle links to Elmsbrook and the wider North West Bicester site allocation, unallocated parking bays, improvements to the junction of the B4100/A4095 and the B4100 and Charlotte Avenue, public transport services and infrastructure, rights of way, a pedestrian and cycle bridge, the future delivery of the strategic link road, and the Network Rail shared contribution;
  - vi. Community facilities contributions including health facilities, waste recycling, community buildings, sports pavilion and sports pitch maintenance, police, leisure centre, libraries, and a burial ground; and
  - vii. Employment, Skills, and Training for the construction phase of the development.

- 3.25 As a result, this matter should have been addressed and resolved by the time of the Inquiry, and as such, I consider that this accords with the provisions of Policies **BSC 7** and **BSC 8** (pages 71 and 72).

#### Sport and Recreation

- 3.26 Policy **BSC 10** (Open Space, Outdoor Sport and Recreation Provision) (page 75) and Policy **BSC 12** (Indoor Sport, Recreation and Community Facilities) (page 82) encourages partnership working to ensure that sufficient quantity and quality of, and convenient access to open space, sport and recreation provision is secured. Measures to deliver this include ensuring that proposals for new development contribute to open space, sport, and recreation provision commensurate to the need generated by the proposals.
- 3.27 There are several ways in which the Appeal Scheme accords with the provisions of Policies **BSC 10** and **BSC 12** (pages 75 and 82). Most notably, the Development Parameters (**CD 2.23**) which form the basis of the Appeal Scheme make a commitment (in accordance with Policy **Bicester 1**, which I will refer to in this Section) to the provision of a minimum of 40% of the Site area being provided as green space when the development is complete, with at least half of that green space being public. This is a significant commitment to the provision of green within the Appeal Scheme, and as set out in the Design and Access Statement (DAS) (**CD 1.15**) which accompanied the planning submission. The DAS highlights the variety of green spaces that could be delivered through the detailed design proposals for the Site, drawing on the Development Principles for the North West Bicester site allocation (as set out in the Supplementary Planning Document (**CD 4.5**) pages 15 to 48), and including edible landscapes, trim trails, woodland areas, children's play areas and areas with seating for gathering.
- 3.28 The March Committee Report (**CD 3.4**) stated at Paragraph 9.185 that '*the proposed level and range of Green Infrastructure could be considered to be acceptable and in accordance with the aims of the wider masterplan as set out in Policy Bicester 1 and the associated North West Bicester SPD.*' The Report acknowledged (at Paragraph 9.183) that the detailed design and assessment, the principles for which are set out in the Design and Access Statement (**CD 1.15**), would be secured through the Reserved Matters submissions, and this will be secured through the planning conditions agreed with the Council. Furthermore, and as referred to above in respect of the S106 Agreement, contributions will be made

towards the provision and maintenance of sports pitches, pavilions and pitch maintenance across the North West Bicester site allocation. It is my view that this addresses the requirements of Policy **BSC 10** and **BSC 12** (pages 75 and 82), and I consider that the Appeal Scheme accords with these policies.

### Energy

- 3.29 There are a series of policies within the Development Plan which together set out the Council's approach to carbon emissions reduction through an energy hierarchy and consider how sustainable construction and energy systems can contribute to achieving that goal. I will consider these together below, and the degree to which the Appeal Scheme accords with those policies.
- 3.30 Policy **ESD 1** (Mitigating and Adapting to Climate Change) (page 85) sets out the measures to mitigate the impact of development on climate change which includes, *inter alia*: directing growth to the most sustainable locations; delivering development which seeks to reduce the need to travel and encourages sustainable travel options; and designing developments to reduce carbon emissions and use resources more efficiently.
- 3.31 Policy **ESD 2** (Energy Hierarchy and Allowable Solutions) (page 87) promotes an energy hierarchy in seeking to achieve carbon emission reductions, as follows:
- Reducing energy use, in particular by the use of sustainable design and construction measures;
  - Supplying energy efficiently and giving priority to decentralised energy supply;
  - Making use of renewable energy; and
  - Making use of allowable solutions.
- 3.32 Policy **ESD 3** (Sustainable Construction) (page 88) sets out the expectations in respect of sustainable construction, albeit it is noted that these will be applied flexibly, with the onus on the developer to demonstrate why the requirements cannot be met, including where those measures may not be financially viable (paragraph B. 191). The policy requires that all new residential development will incorporate sustainable design and construction technology to achieve zero carbon development through '*fabric energy efficiency, carbon compliance and allowable solutions in line with Government policy*' with the strategic sites (of which the Appeal Scheme is a part at North West Bicester) being expected to provide

contributions to carbon emissions reductions and to wider sustainability. Policy **ESD 3** identifies a suite of methods from which development proposals can incorporate but makes clear that should these requirements make a development unviable, this should be assessed on an 'open book' basis.

- 3.33 Policy **ESD 4** (Decentralised Energy Systems) (page 91) encourages all new developments – including those of 100 dwellings or more – and where feasibility assessments demonstrate that decentralised energy systems are deliverable and viable (my emphasis) they will be required unless an alternative would deliver the same or more benefit. Policy **ESD 5** (Renewable Energy) (page 93) supports the provision of renewable and low carbon energy provision where there are environmental, economic and community benefits, and states that such renewable energy schemes will be material considerations in determining planning applications – and a requirement for developments of more than 100 dwellings where viable.
- 3.34 Both Mr Riggall and Mr Fell deal with the sustainable construction methods applied in respect of the Appeal Scheme, and the impacts of those measures on viability, in their Evidence. Mr Riggall provides Evidence on the background in terms of carbon reduction planning policies, a comprehensive assessment of the Outline Energy Statement (**CD 1.18**) submitted in support of the Appeal Scheme and how the zero carbon energy requirements have been addressed, how the viability assessment responds to the zero carbon requirements, and how other sites within the North West Bicester allocation have dealt with the zero carbon requirements.
- 3.35 Mr Riggall explains that the key test in respect of the delivery of zero carbon at North West Bicester is in respect of the allocation site as a whole, as stated in Policy **Bicester 1** (page 140) (which I will come on to consider later in this Section), and the Howes Lane/Middleton Stoney Road appeal decision as referred to in Section 2.0 of my Evidence. Mr Riggall notes that Policy **ESD 2** (page 87) defines the options for achieving zero carbon as potentially including fabric efficiency measures to reduce energy demand, connection to a decentralised energy supply (discussed further below in response to the matters raised by NWBA), and the use of renewable energy and 'allowable solutions' – carbon offsetting. Mr Riggall also highlights the benefit of the aspect of the land at North West Bicester to provide the potential to deliver large-scale renewable energy generation from solar arrays on roofs (NWB SPD (**CD 4.5**), paragraph 2.31) – a significant contribution.



- 3.36 Mr Riggall sets out in Appendix A of his Evidence how the Statement (**CD 1.18**) submitted in support of the Appeal Scheme demonstrates how the proposals meet each planning policy requirement in respect of decarbonisation and net zero. However, because of the detailed nature of some of those measures – fabric energy efficiency being the most significant example – the degree to which such measures contribute proportionately can only be defined at detailed design stage (in other words when a Reserved Matters application is prepared and submitted). Mr Riggall refers in his Evidence to the Outline Energy Statement (**CD 1.18**), and the conclusion at Section 7, paragraphs 7.3.2 and 7.3.3 that there is a suite of building specific technologies that can be deployed to achieve zero carbon across the Appeal Scheme, with different contributions to that aim, rated low, medium, and high. In addition to this, at paragraph 7.1.2 Mr Riggall makes clear that the detailed site layouts will also need to carefully consider orientation to increase the benefits of the application of the suite of renewable technologies identified.
- 3.37 It is my view that, based on Mr Riggall’s Evidence, the Appeal Scheme addresses the requirements in respect of the delivery of zero carbon requirements for the North West Bicester site as a whole (my emphasis), which is the relevant test in terms of the provisions of Policy **Bicester 1** (page 140), along with the requirements of Policies **ESD2, ESD 3, ESD 4 and ESD 5** (pages 87 to 93).
- 3.38 The Appeal Scheme will deliver zero carbon and sustainability measures (addressing the climate change adaptation requirement of Policy **Bicester 1** (page 140)) as part of a wider suite of net zero measures which will contribute positively to the zero-carbon target for the wider North West Bicester site allocation. The measures proposed accord with the requirements of the NPPF (**CD 8.1.1**) (paragraph 153) which highlights the need for appropriate measures to be applied to address climate change impacts and ensure future resilience.
- 3.39 As Mr Riggall sets out in his Evidence, the energy hierarchy identified at Policy **ESD 2** (page 87) for carbon emission reductions has been considered in putting together the proposed suite of measures set out in Section 7 of the Outline Energy Statement (**CD 1.18**). An assessment of the viability of this suite of measures, and other measures which have been considered, has been undertaken in accordance with the provisions of Policy **ESD 3** (page 89), and some measures discounted. It is important to emphasise that the measures which remain all accord with the energy hierarchy in Policy **ESD 2**, and therefore I conclude therefore that the zero carbon measures proposed do meet the requirements, and accord with, the Development

Plan (**CD 4.1**). I would add that the Appellant has agreed a set of planning conditions with the Council which include conditions securing a requirement to provide further information on how carbon emissions will be minimised for each phase of development.

- 3.40 In respect of the requirements of Policy **ESD 1** (page 85), it is my view that, when considered as a whole, the Appeal Scheme accords with this policy by delivering development in a sustainable location, with a package of measures which seek to reduce the need to travel and support sustainable travel options for the Site and the wider North West Bicester allocation, and (as set out in Mr Riggall's Evidence) identifying a suite of measures which can be applied to a detailed design to achieve carbon reduction and reduce emissions.

#### Heritage

- 3.41 Policy **ESD 15** (The Character of the Built and Historic Environment) (page 117) provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. Development proposals are expected to complement and enhance the character of its context through sensitive siting, layout and high-quality design meeting high design standards and complementing heritage assets within its vicinity. New development that positively contributes to the character of its local environment is of key importance (paragraph B.268). The Heritage Assessment Note prepared by Mr Sutton of Cotswold Archaeology, and appended to my Evidence at **Appendix HL1**, deals with the Appellant's assessment of the impacts of the Appeal Scheme on local heritage assets in more detail.
- 3.42 Section 66 of the Listed Buildings and Conservation Areas Act sets out the statutory duty of the decision maker in respect of development proposals which affect a listed building or its setting, and shall *'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'*. The NPPF (**CD 8.1.1**) at Paragraph 202 echoes this and states that where a proposal *'will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use'*. These provisions are reflected in Policy **ESD 15** (page 117) of the Development Plan.

3.43 The matter of heritage impact was considered in the March Committee Report (**CD 3.4**), Paragraphs 9.125 to 9.135, with the Council applying the relevant tests as set out above and concluded as follows:

- i. The impact to St Laurence Church is considered significant, but the harm would be considered to be less than substantial;
- ii. The public benefit of providing improved access to the church building (through the provision of a pedestrian crossing secured by a financial obligation within the S106 Agreement) would lead to greater use of the building;
- iii. Whilst Home Farmhouse is impacted by the reduced green space within the Eastern Parcel, and this would have a significant impact on the setting of the Farmhouse, this impact is considered to be less than substantial; and
- iv. Finally (at Paragraph 9.135) it is concluded that *'the proposals would be in accordance with Policy ESD 15 of the Local Plan and guidance contained in the National Planning Policy Framework, the identified harm would be outweighed by the public benefits arising from the development which includes the provision of housing on an allocated site.'*

3.44 In his Assessment contained at **Appendix HL1** of my Evidence, Mr Sutton concurs with the view set out in the March Committee Report (**CD 3.4**) and as revisited above. I would concur with this view and to this end, and taking into account the benefits of the Appeal Scheme as set out in Section 5.0 of my Evidence below, it is my view that the proposals accord with Policy **ESD 15** (page 117) of the Development Plan.

#### Bicester – Strategic Role

3.45 Section C of the Local Plan deals more specifically with Cherwell's Places. It indicates that the Council made a conscious decision to concentrate growth at Bicester in order to secure economic benefits, and on the basis that this is a sustainable location for growth (paragraph C.4). By 2031 the Plan envisages that over 10,000 new homes, including a substantial number of affordable homes, will have been constructed in Bicester, with the North West Bicester Eco-Town development entering its final phases. The North West Bicester development is expected to play a part in contributing to the town's profile through the delivery of pioneering development, being an economic driver and bring forward environmental benefits (paragraph C.30).

3.46 The Appeal Scheme sits within the Policy **Bicester 1** (North West Bicester Eco-Town) strategic development area (page 140). As set out in Section 2.0 of my Evidence, this followed the identification of the wider allocation site as one of four PPS Eco-Towns. It was expected that the entire Eco-Town scheme would be built out within the Plan period, but this was reviewed, and the development trajectory amended, with 3,293 homes to be delivered within the Plan period – of a total of 6,000 homes. Paragraph C.39 sets out the key requirements of proposals within the Policy **Bicester 1** allocation, including:

- i. zero-carbon development;
- ii. the delivery of a high quality development;
- iii. climate change adaptation measures;
- iv. Level 5 of the Code for Sustainable Homes;
- v. 50% of trips originating from the development to be by means other than the car;
- vi. Provision of local services and facilities; and
- vii. Green infrastructure and biodiversity.

3.47 It should be noted that the Code for Sustainable Homes was withdrawn by the Government in April 2015. On this basis the Appeal Scheme cannot comply with this element of the Policy **Bicester 1** (page 140) requirements. Mr Riggall deals with the definition of zero-carbon and how that is being achieved within the Appeal Scheme in his Evidence, but it should be noted here that Policy **Bicester 1** defines zero-carbon in eco-towns by stating that *'over a year the net carbon dioxide emissions from all energy use within the buildings on the eco-town development as a whole are zero or below'* (my emphasis). As set out above in respect of the energy policies within the Development Plan (**ESD 1 – ESD 5** (pages 85 to 93)), and in reference to points i., and iii. above, it is my view that the Appeal Scheme accords with the requirements of Policy **Bicester 1** in respect of the carbon reduction measures proposed and to be secured at detailed design stage pursuant to the planning conditions agreed with the Council.

3.48 In reference to ii. above, the Design and Access Statement (**CD 1.15**) sets out the approach to the design and delivery of the Appeal Scheme, and the principles established within that document will be taken forward into the Design Code which will be prepared pursuant to the agreed Design Code planning condition and submitted and approved pre-commencement of the Proposed Development and in

parallel to the submission and approval of the Reserved Matters application. Whilst detailed design is not a consideration in respect of the Appeal Scheme due to the outline nature of the planning application, the Design and Access Statement (**CD 1.15**) nonetheless highlights the importance of the Cherwell Residential Design Guide as well as the North West Bicester SPD (**CD 4.5**) as well as the broader design guidance contained within the National Design Guide and the work of the Building Better, Building Beautiful Commission.

3.49 In relation to v., above, the Evidence of Mr Kirby demonstrates how the Appeal Scheme addresses this requirement, alongside the provision of a S106 Agreement which includes contributions and obligations which help to secure the allocation-wide target specified. In the same way, the S106 Agreement will also include contributions towards the provision of local services and facilities across the Site and the wider allocation including additional school places for primary and secondary school children, a community building, a community management structure, playing pitches and sports pavilions, plus contributions towards the improvement of existing healthcare facilities in Bicester, and a contribution to a new leisure centre. In this way, the Appeal Scheme is addressing the requirement of vi. above. I have already dealt with the matter of the provision of green infrastructure in this Section of my Evidence.

3.50 Policy **Bicester 1** (page 140) is a detailed policy which I will not seek to replicate here. The policy is contained in **CD 4.1**– Pages 140 to 143 (inclusive). However, in addition to the points that I have drawn out above in respect of this policy, I would like to add the following which I consider to be relevant in respect of the Appeal Scheme:

- i. Applications for planning permission are to meet the following requirements:
  - a. 30% affordable housing;
  - b. Have real time energy monitoring systems and public transport information, plus superfast Broadband access;
  - c. Sufficient school places on site to meet projected needs, with a maximum of 800m walking distance from homes to the nearest primary school;
  - d. A 7 GP surgery to the south of the site, and a dental surgery;
  - e. 40% of the gross site area to be green space – including pitches and play areas – with at least half being publicly accessible;

- f. Changes and improvements to Howes Lane and Lords Lane to facilitate integration with the town;
- g. Community facilities to be available via local centre hubs, proportionate to the communities that they serve (each being for approx. 1,000 houses);
- h. Proposals to support the setting up of a Local Management Organisation for long-term ownership and management in perpetuity;
- i. Provision of utilities and infrastructure which allow for zero carbon and water neutrality on the site; and
- j. Provision of facilities to reduce waste including at least 1 'bring' site per 1,000 homes in an accessible location.

3.51 in respect of the relevant matters set out above, I have already set out my views in respect of the accordence of the Appeal Scheme with the Development Plan policies in respect of affordable housing, school place provision, green infrastructure, community facilities and zero carbon provision.

3.52 In relation to the remainder of the requirements for planning applications within the allocation, I respond as follows:

- b. Real time energy monitoring/public transport information, plus superfast Broadband access – the planning conditions which have been agreed with the Council include a requirement for this to be provided in every home prior to occupation;
- d. A 7 GP surgery to the south of the site, and a dental surgery –further to our recent discussions with the Council and County Council, they have advised that whilst ultimately it is the aim to deliver such facilities within the allocation as a whole, that the priority in terms of the additional demand generated by the Appeal Scheme is for the refurbishment of existing health facilities in Bicester which would serve this Site. At the time of writing my Evidence we are awaiting further information to that effect. To this end it is intended that a contribution will be included within the S106 Agreement to address this need, subject to receipt of further information and justification from the Council;
- f. Changes and improvements to Howes Lane and Lords Lane to facilitate integration with the town – a contribution towards the future strategic link road works has been included in the package of S106 measures agreed with the Council;

- h. Proposals to support the setting up of a Local Management Organisation – at the time of preparing my Evidence two options in respect of the long-term management of the Site have been discussed with the Council. The first option is for the Appeal Scheme to form part of the wider management arrangement within the allocation, with a second option of the provision of separate management regime for the Site, with appropriate step-in rights for the Council if required. It is expected that both options will be included in the S106 Agreement, with a mechanism to elect which is chosen;
- j. Provision of facilities to reduce waste – in respect of the management of waste for the Appeal Scheme, there is both a planning condition agreed to deal with the site wide management of construction waste, and the provision of a contribution within the S106 Agreement towards the delivery of a 'bring' site for the wider allocation.

3.53 Policy **Bicester 1** (page 140) also includes a series of key site-specific design and place shaping principles. Due to the outline nature of the Appeal Scheme, I do not consider these to be relevant at this stage. However, it should be noted that the principles set out in Policy **Bicester 1**, in respect of detailed design, have been reflected in the Design and Access Statement (**CD 1.15**) which accompanies the Appeal Scheme, and will be addressed through a series of appropriately worded planning conditions.

3.54 It is my view that, taking the requirements of Policy **Bicester 1** (page 140) into account, and the Evidence set out above as regards the ways in which the Appeal Scheme has responded to those requirements, that the proposals accord with the requirements of Policy **Bicester 1**.

3.55 In order to ensure that the right infrastructure is delivered to support the growth identified in the Plan, including North West Bicester, a detailed schedule of infrastructure requirements is set out in the Infrastructure Delivery Plan (Paragraph D.16) (**CD 4.1**, Appendix 8). Policy **INF 1** (Infrastructure) (page 265) states that the Council's approach to infrastructure planning is to identify the infrastructure required to meet the District's growth, to support the strategic site allocations and to ensure delivery by identifying the needs and the associated costs, completing a Developer Contribution SPD (**CD 4.6**), and working with partners to provide this infrastructure. Development proposals will be required to demonstrate that the infrastructure requirements can be met.

- 3.56 As referred to elsewhere in my Evidence, and in respect of the provisions of Policy **Bicester 1** (page 140), the Appellant has been in discussion with the Council regarding the infrastructure necessary to deliver the Appeal Scheme. This has included a review of the Development Contributions Supplementary Planning Document (**CD 4.6**) (DC SPD) which I will come on to consider further below, and the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (**CD 8.1.10**), namely that obligations should be:
- a. Necessary to make the Appeal Scheme acceptable;
  - b. Directly related to the Proposed Development; and
  - c. Fairly and reasonably related in scale and in kind.
- 3.57 Both the County Council and the District Council have provided the Appellant with details of the contributions which they believe are required in respect of the Appeal Scheme. This information was included in the March Committee Report (**CD 3.4**) on Pages 116-122 and in Appendix 1, and since that time the Appellant has been in discussion with the Council's to seek to ensure that the obligations identified comply with the Regulation 122 tests. The County Council has provided the Appellant with a Compliance Statement to this effect (**CD 11.2**), which will be updated further to reflect our discussions with the County Council, but at the time of writing this Evidence we are yet to receive the Compliance Statement from the District Council.
- 3.58 The following are matters on which we are seeking further evidence as regards the justification for the contribution being sought, and its compliance with the Regulation 122 tests:
- i. Transport and highways contributions – bus services, strategic highways, Network Rail works, and Junction B4100/A4095 improvements;
  - ii. Community and health contributions – health centre, policing, community facilities building, community development worker;
  - iii. Sport, recreation and open space contributions – pitch provision and maintenance, play area and amenity space management, biodiversity, and farmland birds;
  - iv. Management – community management organisation;
  - v. Education – primary and secondary school contributions, and secondary school land contribution.



- 3.59 The Viability SoCG (**CD 10.4**) which has been agreed between the Council and the Appellant has made an assumption that, whilst the total cost of the contributions has not yet been agreed to by the Appellant, the development viability appraisals reflect the latest position in terms of S106 contributions. This is set out in the SoCG on the basis that this represents the current position under discussion between the Appellant and the Council's, and should that position change through negotiation, the appraisals will be update accordingly. As the discussions in respect of the S106 Agreement are ongoing, and we have yet to receive the Compliance Statement from the Council or the updated Compliance Statement from the County Council, I cannot conclude here in my Evidence as regards whether the S106 package will comply with the Regulation 122 tests, but anticipate that all parties will be in a position to confirm their view on this by the time the Inquiry commences.
- 3.60 Policy **INF 1** (page 265) requires that the Council identify the infrastructure necessary to deliver development, and that it is demonstrated that such infrastructure is being delivered, where it meets the Regulation 122 tests. As set out above, both the Council and County Council have identified the infrastructure requirements, and are currently engaged in discussion with the Appellant to understand the justification for that infrastructure provision. All parties are working towards being in a position to agree the suite of contributions required by the time that the Inquiry opens, and indeed the Appellant has provided the Council with a draft S106 Agreement for their consideration and comment (with comments awaited at the time of preparing this Proof). Subject to agreeing and finalising a S106 Agreement in advance of the start of the Inquiry, I am satisfied that the requirements of Policy **INF 1** will be addressed.

*Saved Policies of Local Plan 1996 (saved September 2007)*

- 3.61 Whilst the Council referred to saved policies within their Report to Committee (March 2023) (**CD 3.4**), the reasons for refusal do not refer to those saved policies, and on this basis, I do not consider them to be relevant to the Appeal Scheme.

**Development Plan Policy - Conclusions**

- 3.62 It is evident to me that the adopted Development Plan provides clear support for the form of development proposed.

- 3.63 The policy position as set out in the Development Plan establishes a number of clear principles. These include:
1. The Site falls within the North West Bicester site allocation in which residential development will be supported in principle (Policy **Bicester 1**, page 140)).
  2. The Site can make a significant contribution to delivering the housing requirements for the North West Bicester site allocation within the Plan period (Policy **BSC 1**, page 61), particularly in the context of the assessment of housing need as set out in Mr Paterson-Neild's Evidence.
  3. The Site can deliver much needed affordable housing, subject to the appropriate viability tests (Policy **BSC 3**, page 64)).
  4. The Site can deliver a zero carbon development which accords with the energy hierarchy within the Development Plan (Policies **ESD 1** to **ESD 5** (pages 85 to 93), and Policy **Bicester 1** (page 140)).
  5. The delivery of development at the Site will not have a severe traffic impact (Policy **SLE 4**, page 55).
- 3.64 On the basis of the above there is, in my view, clear planning policy support for the principle of the Appeal Scheme subject to the careful consideration of a number of detailed development management considerations, and the provision of a set of appropriately worded planning conditions and a S106 Agreement. In my judgement, the Appeal Scheme accords with the Development Plan.

## 4.0 OTHER MATERIAL CONSIDERATIONS

4.1 I now turn to assess the Appeal Scheme against the other material considerations, including national planning policy and supplementary planning documents, to demonstrate its acceptability.

### National Policy

4.2 At the national level, the current version of the NPPF (**CD 8.1.1**) was published in July 2021. It is a material consideration in the determination of the Appeal Scheme. Key sections of relevance to the Appeal Scheme and my Evidence, are summarised below.

4.3 Paragraph 8 sets out the three dimensions of sustainable development: economic, social, and environmental. Paragraph 10 sets out the presumption in favour of sustainable development and Paragraph 11 states that this should apply in plan-making and decision-taking. For decision taking this means:

- “(c) approving development proposals that accord with an up-to-date development plan without delay; or**
- (d) where there are no relevant development plan policies, or the policies which are most important for determining the application area out-of-date, granting planning permission unless:**
  - (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or**
  - (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”**

4.4 Footnote 8 clarifies that ‘out-of-date’ in respect of Paragraph 11d) includes the situation in which a local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in Paragraph 74). It is my view that, based on the Evidence set out by Mr Paterson-Neild for the Appellant, and my conclusion that the Appeal Scheme is in compliance with the Development Plan (in Section 3.0 above), that this site meets the tests of paragraph 11(d) when engaged (as it is in respect of the Appeal Scheme).

- 4.5 Paragraph 34 states that development plans should set out the contributions required from development, including the type and levels of affordable housing along with other infrastructure such as that needed for education, health, transport, the management of water and green and digital infrastructure. It goes on to make clear that *'Such policies should not undermine the deliverability of the plan'*. As set out in the context of the Development Plan in Section 3.0, and in respect of Mr Fell' and Mr Riggall's Evidence in respect of viability, affordable housing, and zero carbon costs, and my conclusions in respect of the S106 obligations, it is my view that the contributions required have been carefully considered in the context of the viability challenges of the Appeal Scheme.
- 4.6 Paragraph 55 makes clear that planning obligations 'should only be used where it is not possible to address unacceptable impacts through a planning condition'. Paragraph 57 sets out the key tests in relation to planning obligations, making clear that they should be necessary, directly related to the development proposed, and fairly and reasonably related in scale/kind. Paragraph 58 goes on to set out that it is up to the Applicant (or Appellant) to demonstrate where circumstances justify the need for a viability assessment, and that where such a viability assessment is required it should *'reflect the recommended approach on national planning guidance, including standardised inputs, and should be made publicly available'*. As set out in Section 3.0 above, the planning obligations being sought have been tested against Regulation 122 to ensure that they meet each of the three tests identified.
- 4.7 Paragraph 60 identifies that one of the governments objectives is to *'significantly'* boost the supply of homes and that it is important that a sufficient amount and variety of land can come forward where it is needed. Paragraph 61 goes on to state that within this context local authorities should determine *'the minimum number of homes needed'*. Mr Paterson-Neild's Evidence in respect of five-year housing land supply sets out in detail the housing requirements within the District, in the context of the delivery of up to 530 homes at the Site. It is Mr Paterson-Neild's considered view that the Council cannot demonstrate a five-year housing land supply. I concur with that view. The Appeal Scheme will provide much needed housing on an allocated site, and in accordance with the Development Plan.

- 4.8 Paragraph 74 of the Framework requires LPA's to provide a minimum of 5 years' worth of housing (with a buffer of either 5% to ensure choice and competition; 10% where an LPA publishes an annual position statement; or 20% where there has been significant under delivery of housing over the previous three years) against their local housing need where their strategic policies are more than five years old. In such circumstances, the starting point for calculating the 5-year land supply is the local housing need using the standard method. This matter is dealt with by Mr Paterson-Neild in his Evidence, in which he concludes that even without the application of a 5% buffer, and using the Council's position in respect of housing requirement and his assessment of the deliverability of the supply sites, the Council can only demonstrate a 4.76 year housing land supply.
- 4.9 Paragraph 92 sets out that decisions should aim to achieve healthy, inclusive, and safe places which allow for easy pedestrian and cycle connections within and between neighbourhoods; and have active street frontages, and are safe and accessible, with clear and legible pedestrian routes and high-quality public space to encourage the active and communal use of public areas for improved social interaction. The Appeal Scheme has been submitted in outline form, so at this stage there is no detailed design scheme. However as set out in Section 3.0 above, the Appeal Scheme will be delivering a series of provisions which will seek to ensure that the final form of development (once a detailed design is worked-up) meets the requirements of Paragraph 92. This includes the submission and approval of a Design Code (secured through a planning condition), a minimum of 40% of the Site being green space (including a mixture of recreational experiences), and in addition to that the provision of S106 contributions to create safe routes to and through the Site (as set out in Mr Kirby's Evidence).
- 4.10 Paragraph 111 states that development should only be 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.*" Within that context paragraph 112 advises that applications for development should give priority to pedestrian and cycle movements first, and to facilitate access to high quality public transport, as well as minimising the scope for conflict between pedestrians, cyclists, and vehicles. I have already addressed this point above in respect of Policy **SLE 4** (page 55) of the Development Plan, and Mr Kirby has also covered this in his Evidence. It is my view that the Appeal Scheme would not create a severe impact, and in accordance with the views of Mr Kirby, that the proposals adequately and safely accommodate pedestrians and cyclists.

- 4.11 Paragraph 126 states that good design is a key aspect of sustainable development and creates better places in which to live and work. Paragraph 126 also states that being clear about design expectations and how these will be tested, is essential for achieving this, along with effective engagement between applicants, communities, local planning authorities and other interests throughout the process. As advised above, a planning condition has been agreed with the Council which will require the submission and approval of a Design Code alongside or in advance of the submission of Reserved Matters in respect of the Appeal Scheme. This Code will have to adhere to the 'rules' for the Proposed Development as set out in the Development Parameters document (**CD 2.23**) which forms the basis of the Appeal Scheme.
- 4.12 Paragraph 130 sets out design guidance for development including a requirement for all development to add to the overall quality of the area for the lifetime of the development. Part (c) states that planning policies and decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities). I would refer you to my observations above in respect of Paragraph 126 of the NPPF (**CD 8.1.1**) and the requirement for the submission of a Design Code.
- 4.13 In relation to climate change, and the mitigation of long-term impacts, Paragraph 153 states that policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, including providing space for physical protection measures. The Appeal Scheme accords with Policies **ESD 1** to **ESD 5** (pages 85 to 93) of the Development Plan which require development within Cherwell to have consideration to the requirements to reduce carbon emissions through the energy hierarchy identified at Policy **ESD 2**. Mr Riggall in his Evidence identifies a suite of zero carbon measures which address the requirements of Paragraph 153.
- 4.14 Paragraph 174 outlines that decisions should contribute to and enhance the natural and local environment, including by minimising impacts on and providing net gains for biodiversity. Development should, wherever possible, help to improve local environmental conditions such as water quality. The Appellant has confirmed to the Council that they will deliver a minimum of 10% biodiversity net gain in respect of the Appeal Scheme within the Site (**CD 1.26**), and a planning condition has been agreed which secures a requirement for a Strategy to be submitted to the Council

which sets out how this will be achieved once a detailed design scheme for the Site is available.

- 4.15 Paragraph 194 states that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.
- 4.16 Paragraph 199 goes on to state that of the NPPF states that when considering the impact of a Proposed Development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 4.17 Where a development is considered to result in less than substantial harm to the significance of a designated heritage asset, Paragraph 202 states that this harm should be weighed against the public benefits of the proposal.
- 4.18 The Evidence of Mr Sutton, as contained at **Appendix HL1** of this Proof, which builds upon the relevant assessments submitted as part of the Planning Application, addresses the question of the impact of the Appeal Scheme on the relevant heritage assets, and gives weight to that impact. Mr Sutton concludes that in respect of the loss of agricultural hinterland to the Church of St Laurence, and the character of the wider and associated agricultural setting of Home Farmhouse, the impact of the Appeal Scheme would result in less than substantial harm (at the lowest end of the scale).
- 4.19 Paragraph 202 of the NPPF (**CD 8.1.1**) is clear that where a proposed development *'will lead to less than substantial harm to the significance of a designated heritage asset'*, that this harm should be weighed against the public benefits of the proposals. Mr Sutton has concluded that there is a low level of less than substantial harm arising as a result of the proposed development. I come on to consider the public benefits of the Appeal Scheme in Section 5.0 below.

4.20 Paragraph 11 of the NPPF (**CD 8.1.1**) advises that there should be a presumption in favour of sustainable development when making decisions in respect of proposed development. Where the policies which are important for determining an application or Appeal are considered to be out-of-date, in this case in respect of a housing proposal and a Council which cannot demonstrate a five year housing land supply (Paragraph 11d), Footnote 8) as set out in the Evidence of Mr Paterson-Neild, the tests at Paragraph 11d)(i) and (ii). (**CD 8.1.1**) should be applied. The test at 11(d)(i) is that permission should be granted unless, when the policies in the NPPF (**CD 8.1.1**) which protect assets of particular importance are applied, there is a clear reason for refusing the proposed development. On the basis of the conclusions of Mr Sutton in relation to the level of harm (being at the lowest end of less than substantial), and my conclusions in respect of the significant weight to be applied to the public benefits (as I will come on to set out in Section 5.0), it is my view that (a) the scheme's public benefits outweigh any heritage harm for the purposes of Paragraph 202 of the NPPF (**CD 8.1.1**), and in consequence, (b) there is no clear reason to refuse the proposed development within the meaning of Paragraph 11(d)(i). In consequence, in my planning balance section below, I consider the scheme in the context of the "tilted balance" at Paragraph 11(d)(ii).

#### **National Planning Practice Guidance (PPG)**

- 4.21 The PPG (**CD 8.1.2**) was first published in March 2014 and is an online resource updated in accordance with legislation and policy updates and provides guidance to support the NPPF.
- 4.22 Of relevance to the Appeal Scheme, guidance is provided in respect of sustainability and zero carbon buildings, with local standards forming part of a Local Plan which *'will need to be based on robust and credible evidence and pay careful attention to viability'* (ID: 6-009-20150327).
- 4.23 The PPG reinforces the importance of understanding the significance of heritage assets and their setting, in order to *'help to inform the development of proposals which avoid or minimise harm'*. The PPG also reinforces the value of early appraisals to enable the identification of alternative development options including *'more sensitive designs or different orientations, that will both conserve the heritage assets and deliver public benefits in a more sustainable and appropriate way'* (ID: 18a-008-20190723). In relation to the setting of heritage assets, the PPG



makes clear that setting and curtilage are two different things, but that in considering setting, that *'views of or from an asset will play an important part in the assessment of impacts on setting, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust, smell and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places'*, and that the *'contribution that setting makes to the significance of the heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting. The contribution may vary over time'* (ID: 18a-013-20190723).

- 4.24 In respect of housing need, the PPG confirms that *'Assessing housing need is the first step in the process of deciding how many homes need to be planned for. It should be undertaken separately from assessing land availability, establishing a housing requirement figure and preparing policies to address this such as site allocations'* (ID: 2a-001-20190220). The PPG reinforces the importance placed by the NPPF on the need for a 5-year supply of housing land to be identified with sufficient specific deliverable sites set against a housing requirement from adopted strategic policies or against a local housing need figure using the standard method (ID: 68-002-20190722). The purpose of this is *'to provide an indication of whether there are sufficient sites available to meet the housing requirement set out in adopted strategic policies for the next 5 years'* (ID: 68-003-20190722). As the Evidence of Mr Paterson-Neild demonstrates, it is our view that the Council cannot demonstrate a five-year housing land supply.
- 4.25 The Viability section of the PPG sets out that where a viability assessment is submitted as part of a planning application, this should refer back to the viability assessment that informed the Plan, and evidence of what has changed since that time (ID: 10-008-20190509). The PPG highlights the fact that the use of Review Mechanisms is not a tool to protect profit, rather to *'strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project'* and to seek optimal public benefits (ID: 10-009-20190509). Paragraph ID: 10-010-20180724 sets out the key principles for carrying out a viability assessment, including the need for appropriate available evidence, transparent data, and the balancing out of developer risk versus securing *'maximum benefits in the public interest through the granting of planning permission'* (ID: 10-010-20180724).
- 4.26 It is my view that the Appeal Scheme accords with the provisions of the PPG.

### Emerging Local Plan

- 4.27 CDC is currently in the process of preparing a review of the Local Plan to 2040. This is in the preliminary stages of preparation, with the Council only having consulted upon an initial 'Community Involvement Paper' (including a Call for Sites) and a 'Developing Options' paper (in 2020 and 2021 respectively).
- 4.28 At this stage of preparation, the emerging Local Plan can only be afforded very limited weight in my opinion. However, I was instructed by the Appellant to submit representations to the Community Involvement Paper and the associated Call for Sites exercise, and the Developing Options consultation. A copy of these representations is contained at **Appendix HL2 and HL3**.

### Other Relevant Policy Documents

- 4.29 There are two Supplementary Planning Documents (SPD's) which are relevant in respect of the Appeal Scheme, and I come on to consider these in turn below. SPD's are non-statutory documents which give additional guidance on some of the policies within the Development Plan, where this is needed. The content of an SPD does not have the same status as the policies in the Development Plan, albeit that they have been subject to public consultation and are taken into account as material considerations in dealing with planning applications. The SPD's must accord with the policies within the Development Plan, and to this end, there should be an assumption that where a proposal accords with the Development Plan, it should also accord with an SPD.

#### *North West Bicester Supplementary Planning Document (NWB SPD)*

- 4.30 The NWB SPD (**CD 4.5**), including a masterplan (Figure 10), was adopted by the Council in February 2016 as supplementary guidance, and in accordance with the provisions of Policy **Bicester 1** (page 140). As set out in my Evidence above, it is my view that the Appeal Scheme accords with the provisions of Policy **Bicester 1**. The purpose of the SPD was to set out the minimum standards to be achieved by development within the North West Bicester site allocation (Paragraph 1.7). The SPD is to be read in conjunction with the Local Plan policies (Paragraph 1.17). The key elements of the NWB SPD are as follows (Paragraph 1.8):

- i. The masterplan;
  - ii. Development and design principles;
  - iii. Requirements for addressing sustainable design;
  - iv. Requirements for delivery and implementation; and
  - v. Requirements to be met at detailed planning application stage.
- 4.31 Section 2 of the SPD sets out the site context. I would like to draw out the following points from this section:
- i. The land immediately to the south east of the SPD allocation is characterised by modern housing estates (paragraph 2.2);
  - ii. Both Bucknell Road and the main London to Birmingham railway line run through the centre of the allocation (paragraphs 2.9 and 2.10);
  - iii. Existing field boundaries form a strong framework of hedgerows;
  - iv. Both Home Farm farmhouse and St Laurence's Church are Grade II listed – (the latter being II\*) (paragraph 2.22);
  - v. The Site's aspect provides the potential for large-scale renewable energy generation from roof mounted solar photovoltaic panels (paragraph 2.31); and
  - vi. Bicester is very accessible on foot and by bike (paragraph 2.33).
- 4.32 The NWB SPD is based around a set of 14 development principles, which are to be considered in the preparation of planning applications and Design and Access Statements. These development principles are set out in Section 4 of the SPD. I would draw your attention to the fact that the 14 development principles were considered in detail in the Design and Access Statement submitted with the Appeal Scheme (**CD 1.15**). As required at paragraph 4.4, the Appellant responded to these principles in the Design and Access Statement in order to demonstrate how a detailed design scheme would respond to those principles. I refer below to the development principles which are of particular relevance to the Appeal Scheme:
- i. Development Principle 1 – Masterplanning and comprehensive development  
The masterplan indicates the key development components. In order to ensure a comprehensive development all planning applications will be required to be in accordance with the SPD masterplan. Paragraph 4.10 states that '*planning applications should be consistent with, and mindful of, the masterplan requirements*';

ii. Development Principle 2 – ‘True’ zero carbon development

In accordance with the Local Plan the definition of true zero carbon is that over a year the net carbon dioxide emissions from all energy use within buildings on the eco-town development as a whole are zero or below (albeit that it should be noted that the Policy **Bicester 1** does not refer to ‘true’) and all applications are to be supported by an Energy Strategy (paragraphs 4.23 and 4.25). Maximising the fabric efficiency of buildings will be encouraged (paragraph 4.28). Where a heat network is included, it will have to be demonstrated that it is a robust long-term solution (paragraph 4.30);

iii. Development Principle 3 – Climate Change Adaptation

Planning applications will be required to incorporate best practice on tackling overheating, incorporate orientation and passive design principles, meet minimum fabric energy efficiency standards, and achieve Level 5 (Code for Sustainable Homes<sup>2</sup>)(paragraph 4.42);

iv. Development Principle 4 – Homes

Proposals will include details of 30% affordable housing (paragraph 4.59), with design and sustainable technology which achieves zero carbon development (paragraph 4.61) and be accompanied by a Design and Access Statement which responds the eco-town principles (paragraph 4.63);

v. Development Principle 6 – Transport, Movement and Access

This principle is broken down into sub-sets which include modal share, electric and low emission vehicles, the strategic link road and highway realignments, and public transport. These will be considered in more detail by Mr Kirby in his Evidence, and I will therefore cover the overarching principles in respect of transport, movement and access here. The principles in the SPD seek to achieve a higher priority for pedestrians and cyclists, with the principles of ‘walkable neighbourhoods’ and ‘filtered permeability’ being applied (paragraphs 4.86 and 4.88). Development proposals should demonstrate that they enhance existing access and connections, and seek to remove barriers to movement (paragraph 4.89); and

vi. Development Principle 8 – Local Services

*‘Planning applications should include a good level of provision of services within North West Bicester eco-town site that is proportionate to the size of the development’* (paragraph 4.167).

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<sup>2</sup> This document was withdrawn by Government in April 2015.

- 4.33 Section 5 of the NWB SPD relates to design and space shaping principles, which are addressed in the Design and Access Statement (**CD 1.15**) for the Appeal Scheme. As such, I do not propose to deal with these matters in greater detail as they are not matters of contention, and can be addressed through the imposition of appropriately worded planning conditions. However, I would highlight that, at paragraph 5.28, the importance of the setting of St Laurence's Church and Home Farm are identified as key considerations, with appropriate buffers and views to the Church tower being key considerations as well as the use of public open space to retain the setting of the historic farm complexes.
- 4.34 In relation to delivery and the provision of infrastructure within the North West Bicester site allocation, paragraph 6.4 identifies the following as required to deliver the eco-town proposals whilst being compliant with CIL Regulation 122:
- i. School provision;
  - ii. District energy network;
  - iii. Green infrastructure – 40% green space;
  - iv. Local services and facilities/community facilities;
  - v. Railway crossing(s);
  - vi. Strategic highway improvements; and
  - vii. Sustainable transport provision.
- 4.35 It is my view that the Appeal Scheme accords with the guiding principles set out in the NWB SPD.

*Development Contributions Supplementary Planning Document (DC SPD)*

- 4.36 The DC SPD (**CD 4.6**) was adopted by the Council in February 2018 to set out the approach to securing S106 planning obligations in the absence of a CIL charging schedule.
- 4.37 Paragraph 3.13 states that the Council will ensure that the combined total impact of contributions sought does not threaten the viability of the sites and scale of development in the Plan, and that where *'an applicant is able to demonstrate to the satisfaction of the LPA that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning*

*obligations'* (paragraph 3.14). The SPD makes clear that contributions towards affordable housing – often the most significant contribution - should not be sought without regard to individual scheme viability (paragraph 3.14). At paragraph 3.16 the Council acknowledges that financial viability is a material consideration.

4.38 In respect of affordable housing, the SPD makes clear that where the Council's affordable housing requirements give rise to development viability issues they should fully justify the reasons (paragraph 4.19). Section 4 of the SPD gives specific guidance by type of planning obligation. I would highlight the following point of relevance to the Appeal Scheme:

- All residential developments should contribute towards the provision of educational infrastructure where there is not enough spare capacity in existing appropriate schools to meet the needs generated by the development (paragraph 4.76).

4.39 Appendix 1 of the SPD sets out the population figures which are the assumed rates per dwelling for Oxfordshire applied in respect of the planning obligations identified in the Plan. The average occupancy rate per dwelling is 2.49 – based on the 2014 Strategic Housing Market Assessment. I note that this is higher than the more recent Housing and Economic Needs Assessment (HENA) (**CD 8.1.9**) published in December 2022 and jointly commissioned by Oxford City Council and Cherwell District Council. The HENA assumes a figure of 2.36 for the average ratio of population to household for the period 2020-2040 (Table 7.6).

4.40 The Appellants discussions with the Council to date in respect of the provision of S106 contributions in relation to the Appeal Scheme have taken on board not only the need to provide a full justification for such contributions and to demonstrate compliance with the Regulation 122 tests, but as set out in the Evidence of Mr Fell, the interaction of the proposed S106 contributions with the wider requirements in respect of affordable housing and zero carbon measures and crucially, their impact on viability. The Council has indicated that some of the S106 contributions identified to date may not be pursued on the basis that they cannot be justified in the context of the viability of the Appeal Scheme. At the time of preparing this Evidence, this Council has not yet confirmed the contributions to which this may apply.

4.41 As I set out in Section 3.0 of my Evidence above, the discussions in respect of the S106 Agreement are ongoing, and we have yet to receive the Compliance Statement from the Council or the updated Compliance Statement from the County Council. Therefore, I cannot conclude here in my Evidence as regards whether the S106 package will comply with the Regulation 122 tests, but anticipate that all parties will be in a position to confirm their view on this by the time the Inquiry commences. All parties are working towards being in a position to agree the suite of contributions required by the time that the Inquiry opens, and indeed the Appellant has provided the Council with a draft S106 Agreement for their consideration and comment (with comments awaited at the time of preparing this Evidence). Subject to agreeing and finalising a S106 Agreement in advance of the start of the Inquiry, I am satisfied that the requirements of the DC SPD will be addressed.

#### **Further Material Considerations**

4.42 In January 2023, the Officers Report to the Planning Committee (**CD 3.1**) recommended that Members of the Committee should delegate to the Officers the power to grant planning permission in respect of the Appeal Scheme subject to the completion of a S106 Agreement (including any further negotiation and testing in respect of viability that was required) and agreement on a set of planning conditions. This recommendation was supported by the Officers conclusion that when taking all the material considerations into account as set out in that Report, that the Appeal Scheme represents an acceptable development proposal (Paragraph 10.16).

4.43 In addition to this, and of relevance in respect of my consideration of the Reasons for Refusal cited by Members in the Minutes pursuant to the March 2023 Planning Committee meeting (**CD 3.4**), the January 2023 Officers Report also concluded that whilst the viability challenges relating to the Appeal Scheme are difficult, there was considered to be a satisfactory way forward which mitigated any impacts (Paragraph 10.14), and in respect of highways that OCC has accepted that any transport impact would not be severe, and that they have no objections on that basis (Paragraph 10.15).

- 4.44 The Reasons for Refusal were set out in Section 2.0 of my Evidence above. My consideration of the degree to which the Appeal Scheme accords with the Development Plan in Section 3.0 above has already dealt with putative Reasons for Refusal 1 (zero carbon), 4 (affordable housing) and 5 (S106 agreement). I do not therefore propose to revisit those Reasons here. I have set out my position on the remaining putative Reasons for Refusal below, along with the other matters raised by the Rule 6 Parties, and any other matters I consider relevant to the consideration of the Appeal Scheme. In Section 5.0 I draw together my conclusions on whether the Appeal Scheme constitutes sustainable development under the terms of the NPPF.
- 4.45 The Rule 6 parties submitted Statements of Case (**CD 9.3 and 9.4**) in respect of the Appeal Scheme, setting out their respective positions in relation to the Appellants Statement of Case. The Appellant has been engaged in discussion with both the NWBA and BBUG in respect of a series of Statements of Common Ground, and these have been submitted to the Inspector in advance of the start of the Inquiry. The Appellant will continue to engage with the Rule 6 parties in order to try and agree further common ground in advance of the Inquiry. My Evidence therefore deals with all matters raised in their Statements of Case, which are not covered in respect of my Evidence in Section 3.0 as regards the Development Plan, and these matters are set out below.
- 4.46 At the time of writing, the following matters constitute areas of common ground between the Appellant and the Council. Should this position change, I will respond on these matters in further Evidence, and with the assistance of technical specialists should that be required:
- i. The principle of development;
  - ii. Design and impact on the character of the area;
  - iii. Heritage and archaeology;
  - iv. Ecology;
  - v. Green infrastructure; and
  - vi. Drainage and flood risk.
- 4.47 I will deal with the remaining material considerations in the following order:



- i. Highways;
  - a. Access arrangements along Charlotte Avenue, and impacts on street trees (Reason for Refusal 2, NWBA, and BBUG);
  - b. Congestion at the Charlotte Avenue and B4100 junction (Reason for Refusal 3, NWBA, and BBUG);
- ii. 'Masterplan creep' (NWBA);
- iii. Filing for appeal under non-determination (NWBA);
- iv. Linking to the District Heating System (NWBA);
- v. Proposed building heights (NWBA);
- vi. Use of the 'MUGA' on the Elmsbrook site (NWBA);
- vii. Permeability into Elmsbrook for cycling and pedestrian access (NWBA); and
- viii. Provision of bus routes and bus stops (NWBA).

### **Highways (Reasons for Refusal 2 and 3)**

4.48 Mr Kirby provides Evidence in respect of highways matters. Before we address his consideration of these putative Reasons for Refusal, it is important to highlight the fact that OCC Highways, as the statutory highways consultee in respect of the Appeal Scheme, did not object to the proposals. It is also important to note my conclusions above in respect of Policy **SLE 4** (page 55) of the Development Plan and the Appeal Scheme's accordance with that policy.

#### *Charlotte Avenue – Pedestrians, Cyclists, Street Trees*

4.49 Mr Kirby reviews this in his Evidence in respect of two distinct areas: Area 1 - the area around Gagle Brook School; and Area 2 - the 'bridge'. In respect of Area 1, Mr Kirby concludes that both the pedestrian and cyclist infrastructure is sufficient, and no mitigation is required. In relation to Area 2, Mr Kirby concludes that whilst the infrastructure for pedestrians is acceptable, some mitigation is required in respect of cyclists. A mitigation scheme has been proposed and agreed with the County Council and a financial contribution has been agreed to enable the County Council, as Highways' Authority, to deliver this mitigation scheme. In respect of street trees, Mr Kirby makes clear in his Evidence that any loss of street trees could be mitigated elsewhere within the Site.

*Charlotte Avenue and B4100 Junction*

- 4.50 In his Evidence, Mr Kirby concludes in respect of this putative Reason for Refusal that the residual cumulative impacts of the Appeal Scheme on the existing priority junction of Charlotte Avenue with the B4100 are not “severe”, and that the introduction of the traffic signal arrangement (to be funded by the Appellant) would improve the amenity and crossing provisions for non-motorised users, thus addressing any concerns in relation to highway safety.
- 4.51 I therefore conclude that, based on the Evidence of Mr Kirby, that the Appeal Scheme accords with the Development Plan, and furthermore, does not result in a severe impact, and does deliver suitable pedestrian and cycle access facilities along Charlotte Avenue, which do not need to result in the loss of street trees.

**‘Masterplan creep’**

- 4.52 I turn to address this matter, as raised by NWBA in their Statement of Case (**CD 9.3**) dated 23<sup>rd</sup> March 2023. Paragraph 3.6 of the NWBA Statement of Case sets out what they define as being ‘masterplan creep’ as follows:
- De-prioritisation of pedestrian footways and cycleways;
  - Removal of street trees to achieve the de-prioritisation referred to above; and
  - The provision of homes which are not zero carbon builds.
- 4.53 It is my view that these matters replicate those matters dealt with in respect of Reasons for Refusal 1 and 2, which are addressed in the Evidence of Mr Kirby, Mr Riggall, and Mr Fell, and in my Evidence above. I do not therefore propose to address these matters again here.

**Appeal for Non-Determination**

- 4.54 I will deal with this matter very briefly. NWBA has suggested in their Statement of Case (**CD 9.3**) at Paragraph 3.10 that the Appellant has been inaccurate and misleading in suggesting that the Council had failed to make a determination in respect of the Appeal Scheme at the point at which the Appellant submitted their appeal on the grounds of non-determination. By its very nature, the appeal could

not have been submitted on the grounds of non-determination had the Council determined in respect of the Appeal Scheme.

- 4.55 I note the comments made by NWBA in respect of the proceedings around the time of the January 2023 Committee Meeting but have no further comments to make in this respect.

### **District Heating System**

- 4.56 Mr Riggall provides Evidence in respect of the energy centre and district heat network which have been established at North West Bicester – as part of the Elmsbrook scheme – and which is managed by SSE Enterprise. This Evidence is set out in Section 4 of his Proof and should, importantly, be read in the context of the provisions of Policy **ESD 4** (page 91) of the Local Plan (**CD 4.1**). As set out in Section 3.0 of my Evidence above in relation to the Development Plan, Policy **ESD 4** states that where *'feasibility assessments demonstrate that decentralised energy systems are deliverable and viable, such systems will be required as part of the development unless an alternative solution would deliver the same or increased benefit'*. In other words where such a system is not deliverable or viable, an alternative solution should be sought which delivers the same/increased benefit.
- 4.57 Mr Riggall highlights in his Evidence at Paragraph 4.2.3 that at the time of the submission of the Appeal Scheme in outline planning application form to the Council, the Government proposed changes to Part L of the Building Regulations. These changes related to permitted CO<sub>2</sub> emissions and carbon emission factors of natural gas-based heat networks that are already built or are in the latter stages of development. Mr Riggall advises that this would mean that new homes which connected to existing or new district heat networks would struggle to pass the 2022 Part L Building Regulations standard in relation to CO<sub>2</sub> and primary energy. It is my view that a failure to pass Part L of the Building Regulations would represent a real impact on the deliverability of the Appeal Scheme.

- 4.58 Paragraph 153 of the NPPF (**CD 8.1.1**) makes clear that in relation to the long-term impacts of climate change, policies should support appropriate measures to ensure the future resilience of communities and infrastructure to address climate change impacts (my emphasis). The application of measures which would result in a failure to achieve Building Regulations approval cannot in my view be considered to be appropriate.
- 4.59 It is my view that, based on the Evidence set out by Mr Riggall, and the provisions of Paragraph 153 of the NPPF, and Policy **ESD 4** (page 91) of the Plan, that the Appeal Scheme cannot and should not 'link up' with the existing district heat network within the Elmsbrook site. My view is acknowledged and supported by Officers of the Council at Paragraphs 9.27 and 9.31 of the March 2023 Report to Planning Committee in respect of the Appeal Scheme (**CD 3.4**).

### **Building Heights**

- 4.60 Paragraph 3.13 of the NWBA Statement of Case (**CD 9.3**) states that the Appeal Scheme *'contains an area adjacent to the current northern end of Elmsbrook Phase 2 where they propose to build homes above 12 metres tall, and up to 14 metres tall. This is contrary to the height requirements of the NW Bicester SPD, clause 5.12'*.
- 4.61 Before considering this matter further, it would be helpful for me to add some context. The Development Parameters document which was submitted in May 2021 (**CD 1.5**) and which formed part of the outline planning application for what is now the Appeal Scheme included a series of Parameter Plans, one of which was a Maximum Building Heights and Footprint plan (drawing 1192-003C-Rev.H). This plan showed a 16 metre built form zone in the Central Development Parcel, adjacent to the Spine Road. The Design and Access Statement (**CD 1.15**) submitted in support of the Appeal Scheme in May 2021 referred to this smaller 16m height zone located along the public transport route of Braeburn Avenue in the context of the framework masterplan in which a slight increase in density through the addition of some landmark buildings would help to meet the requirements of a mixture of occupiers within the Appeal Scheme.

- 4.62 On 21<sup>st</sup> September 2021, the Council wrote to the Appellant (**CD 6.3**) with some initial comments regarding the proposals for the Site. These comments included, under the heading 'Design and Heritage', concerns regarding the 16m height proposed in the context of the location of this 'height zone' and its context in terms of the surrounding development. The Officers recommendation was that the maximum height in that location should be 14m. In response to those comments, the Appellant submitted an amended version of the Maximum Building Heights and Footprint plan (drawing 1192-003-Rev.N) (**CD 2.2**) on 23<sup>rd</sup> November 2021 with a maximum height of 14m in the Central Development Parcel adjacent to the Spine Road. The NWBA Statement of Case (**CD 9.3**) highlights the provisions of the NWB SPD (**CD 4.5**) paragraph 5.12, which is also referred to in the Design and Access Statement (**CD 1.15**) submitted in support of the Appeal Scheme, and which states that generally (my emphasis) development proposals within the North West Bicester site allocation will be suburban in scale and up to 12m in height. However, it goes on to state that along the strategic route through the Site – of which the Spine Road is a part – taller buildings of up to 20m could be considered. It is my view that 20m high buildings adjacent to the Spine Road within the Appeal Scheme would not be appropriate given the surrounding context of the Elmsbrook development. However, it is my view that homes of up to 14m in this location can be considered to be acceptable.
- 4.63 This is a position supported by the Officers. The March 2023 Report to Planning Committee (**CD 3.4**) in concluding in respect of 'Design and Impact on the Character of the Area' stated at paragraph 9.61 that Officers '*are generally content that the information included on the proposed parameter plans alongside the ES information and to be secured through condition provide a sufficient basis for future development at the site*'. I concur, and conclude that the heights proposed are acceptable in the context of the wider masterplan for North West Bicester, and are in accordance with the guidance in the NWB SPD (**CD 4.5**).

#### **Elmsbrook 'MUGA' – Use**

- 4.64 I will deal with this issue briefly. NWBA has stated at paragraph 3.14 of its Statement of Case (**CD 9.3**) that, in respect of the MUGA on the Elmsbrook site, the '*use of communal land by those who do not contribute anything toward it would be unequitable and it would therefore be a mistake to proceed on the basis of Sport England's view*' – which as stated in paragraph 3.14 is that residents of the Appeal

Scheme are allowed to access that MUGA. It is noted that at paragraph 7.25 of the March 2023 Committee Report (**CD 3.4**), Officers advise that Sport England are supportive of the Appeal Scheme and do not raise any objections to the granting of planning permission.

- 4.65 I do not consider the matter of access to the Elmsbrook MUGA to be relevant to the Appeal Scheme and will therefore move on to consider further matters.

### **Pedestrian and Cycle Permeability with Elmsbrook**

- 4.66 Mr Kirby provides Evidence in respect of pedestrian and cycle permeability, and I concur with his view that the Appeal Scheme, through the provisions of opportunities to create new access points into the Elmsbrook scheme around the boundaries of the Site as shown on the Development Parameter plans (**CD 2.23**), and the access arrangements on Charlotte Avenue as discussed above in this Section, will deliver adequate pedestrian and cycle permeability.

### **Provision of Bus Routes and Bus Stops**

- 4.67 Paragraphs 7.12 to 7.16 of Mr Kirby's Evidence set out the Appellants position in respect of public transport provision at the Site and addresses the views of the Rule 6 parties in this respect. I concur with the view of Mr Kirby that the public transport connectivity has been fully accounted for and considered as part of the Appeal Scheme and is not a valid ground for objection in highway terms.

### **Conclusion on Other Material Considerations**

- 4.68 On the basis of the above, I am of the firm view that the Appeal Scheme when considered against the relevant national policy, and in the context of the other material considerations set out above, should benefit from planning permission.
- 4.69 There is clear planning policy support for the Appeal Scheme Site for the proposed uses, which will provide much needed additional market and affordable housing, along with a suite of measures to secure a zero-carbon scheme. I am therefore of the firm view that the Appeal Scheme accords with the provisions of the NPPF (**CD 8.1.1**).

4.70 In addition, I believe there are a number of significant benefits that will arise as a result of the scheme. I turn to consider these in Section 5.0 of my Evidence.

## 5.0 OVERALL ASSESSMENT

5.1 The Appeal Scheme will give rise to a number of substantial economic, social, and environmental benefits. Whilst the Council and the Rule 6 parties acknowledge some of these benefits, they have in my view ignored a number of benefits and underplayed the significance of the benefits that will be delivered. In my view, the benefits delivered by the scheme should be given considerable weight in the determination of the Appeal Scheme.

### **Economic & Social Benefits**

5.2 The economic and social benefits arising from the Appeal Scheme are significant, and I summarise these below.

#### *Much Needed Housing in a Highly Sustainable Location*

5.3 It is not in dispute that the provision of up to 530 new homes, will make a significant contribution to addressing housing need within the District, and this was acknowledged by Officers in their Report to Planning Committee in March 2023 (**CD 3.4**) where (setting aside the question of housing land supply position for a moment), the Council stated that *'the proposed development forms part of an allocated site. Continued development on allocated sites will be important to ensure the ongoing delivery of housing'* (paragraph 9.16).

5.4 It is the Governments priority to significantly boost the supply of new housing. Policy **BSC 1** (page 61) identifies the need for 10,129 homes to be delivered in Bicester in the Plan period – with 3,293 of these to be delivered at North West Bicester. The Appeal Scheme proposes the delivery of up to 530 homes on the Site. This, added to the 393 homes now being delivered on the adjacent Elmsbrook site (CDC ref. 10/01780/HYBRID), and the 1,700 homes approved at Himley Village (CDC ref. 14/02121/OUT) – a planning permission granted in January 2020 but not yet being delivered - would contribute just under 80% of the homes that are required to meet the requirements within the Plan period, leaving a shortfall of up to 670 homes still to be delivered within the allocation by 2031.



- 5.5 The Council's current Local Plan target is to deliver an average of 1,140 dwellings per annum across the plan period (to 2031). The Appeal Scheme will provide nearly half of a full years' supply requirement. Taking this into account, along with the potential shortfall in the delivery of homes at North West Bicester within the Plan period as highlighted above, the delivery of homes at the Site is therefore of strategic importance, whilst contributing to achieving the aims of Development Principle 4 from the NWB SPD (**CD 4.5**)
- 5.6 Therefore, and notwithstanding the fact that the Council believe that they can demonstrate a 5-year housing land supply – which Mr Paterson-Neild has robustly challenged through his Evidence - I believe the Site has the potential to accommodate a significant number of much needed new homes in a highly sustainable location which should be afforded significant weight in the planning balance.
- 5.7 In addition to this, the provision of up to 530 new homes could also lead to additional New Homes Bonus payments and will bring increased Council Tax receipts.

*Provision of Affordable Homes*

- 5.8 Finally, and whilst the current viability of the Appeal Scheme does not support the provision of any affordable housing at this time for the reasons given in the Evidence of Mr Fell (albeit that the Appellant has agreed to provide a minimum of 10% affordable housing), the S106 Agreement has been drafted to incorporate review mechanisms aimed at maximising the provision of affordable housing on-site, should scheme viability improve during the development phases.

*S106 Contributions*

- 5.9 The Appeal Scheme will make a significant contribution towards infrastructure provision in the immediate and wider area through a S106 Agreement. As I set out in Sections 3.0 and 4.0 of my Evidence, this includes contributions towards education, sustainable transport measures and highways improvements, health and community facilities, and the provision and management of recreation facilities.
- 5.10 These contributions in themselves are not insignificant and should weigh in favour of the Appeal Scheme, in the context of the conclusions of the viability assessment undertaken.

## Environmental Benefits

- 5.11 The Appeal Scheme will bring several environmental benefits, including the provision of measures within the fabric of the homes that are delivered at the Site to reduce carbon emissions, the provision of 40% of the Appeal Scheme as green space, biodiversity net gain benefits of at least 10%, and increased connectivity through the Site and into the surrounding pedestrian and cycle network.
- 5.12 The public realm and highways improvements will provide further pedestrian and cycle linkages to the surrounding and wider town networks, enhance the permeability and cycle linkages within and to the emerging North West Bicester site allocation and to the wider town, and will enhance the overall accessibility of the Site to modes other than the private car – linking in to the established bus route through the Elmsbrook site. Despite the assertions of the Rule 6 parties to the contrary, the Appeal Scheme will undoubtedly provide safe pedestrian and cycle accessibility into and through the Site and satisfy the NPPF requirement to promote sustainable transport. This contributes to achieving the aims of Development Principle 6 from the NWB SPD (**CD 4.5**).
- 5.13 The North West Bicester site allocation has eco-town status, with the achievement of zero carbon across the allocation as a whole being a key aim of the provisions of Policy **Bicester 1** (page 140). The Appeal Scheme, through delivery from a suite of appropriate measures to reduce emissions of carbon dioxide from energy use, can contribute to the achievement of the allocation-wide aim. This contributes to achieving the aims of Development Principles 2 and 3 from the NWB SPD (**CD 4.5**).
- 5.14 More than 40% of the Site will be green space and will provide a variety of types of green space and play areas, alongside the existing natural wooded areas and hedgerow buffer areas. This will create a new network of publicly accessible spaces and extend this network further into the North West Bicester area. The Appeal Scheme will deliver a biodiversity net gain over and above the minimum requirements, alongside the delivery of new landscaping within the Site. This contributes to achieving the aims of Development Principle 8 from the NWB SPD (**CD 4.5**).

### **Conclusion on Benefits**

- 5.15 I am firmly of the view that the scheme's benefits identified above are real, significant and should weigh strongly in favour of the Appeal Scheme.
- 5.16 The position as regards the contractual arrangement that the Appellant has in respect of the sale of the Site to Crest Nicholson should also be considered positively here, in respect of the deliverability of the Site. Crest Nicholson has already engaged with the Council in pre-application discussion about future reserved matters submissions at the Site, and with their continuing role in delivering homes at the Elmsbrook site, they are already geared up to be able to make a quick start to delivering at the Site, subject to further planning approvals. I consider this to be a strength in terms of the deliverability of the Appeal Scheme.

### **The Planning Balance**

- 5.17 Having identified the significant benefits that will arise from the development of the Appeal Scheme, I turn to consider the planning balance and whether the scheme should benefit from planning permission. It also acts as a summary and conclusions for my Proof of Evidence.
- 5.18 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the Development Plan for the purpose of a determination, then that determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 5.19 The NPPF (**CD 8.1.1**) should be applied to decision taking as set out in Paragraph 11. This means that, as Case law indicates, that if a proposed development accords with Paragraph 11, it is by definition sustainable development. As such Paragraph 11 sets out that there is a presumption in favour of sustainable development.
- 5.20 For decision making this 'presumption in favour' means approving development proposals that accord with an up-to-date Development Plan without delay (Paragraph 11c)). As set out in the Evidence of Mr Paterson-Neild, in light of the fact that the Council cannot in our view demonstrate a five year housing land supply of deliverable housing (as set out in Footnote 8 to Paragraph 11d) of the NPPF (**CD 8.1.1**)), it is my view that the Paragraph 11c) should not be applied in respect of the Appeal Scheme (i.e. because the Local Plan in this case is out-of-date).

Instead, it is my view that Paragraph 11d) should be the appropriate test applied here.

5.21 I have set out in my Evidence above at Section 4.0 my consideration of the test within Paragraph 11d) (i), i.e., that the scheme's public benefits outweigh any heritage harm under Paragraph 202 of NPPF (**CD 8.1.1**), so there is no clear reason to refuse the appeal under Paragraph 11(d)(i).

5.22 The next test to be applied is that of Paragraph 11d)ii. -the tilted balance - which states that permission should be granted unless '*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework as a whole*' (reference to the NPPF (**CD 8.1.1**)). I have set out above my consideration of the benefits of the Appeal Scheme, namely:

- i. The delivery of much needed housing, in accordance with the aims of policy BSC 1, in an area in which the Council cannot demonstrate a 5-year housing land supply, and on a site allocated in the Development Plan for up to 6,000 homes;
- ii. Provision of affordable homes, with a review mechanism secured via a S106 Agreement which could maximise the delivery of affordable housing, subject to scheme viability;
- iii. A significant suite of S106 contributions;
- iv. a proposed development delivered in accordance with the Development Plan in respect of achieving zero carbon emissions, and sustainable construction;
- v. a minimum of 40% green space being delivered across the Site;
- vi. at least 10% biodiversity net gain; and
- vii. a package of public realm and highways improvements which increase connectivity through and beyond the Site, including enhanced bus services and pedestrian and cycle links.

5.23 It is my view that there are no adverse impacts which significantly or demonstrably outweigh the benefits of the Appeal Scheme, in the context of the NPPF (**CD 8.1.1**) policies, which I have considered above in Section 4.0.

5.24 As I have set out in Sections 3.0 and 4.0 of my Evidence, I believe that the Appeal Scheme accords both with the Development Plan and with national planning policy. As a result, it should be approved without delay.

- 5.25 Mr Riggall has demonstrated that through the application of a suite of measures which seek to minimise emissions, and accord with energy hierarchy as set out at Policy **ESD 2** (page 87), the Appeal Scheme provides sufficient security to the Council that a zero carbon scheme will be delivered through subsequent reserved matters applications, which contributes to the achievement of net carbon dioxide emissions from all energy use across the whole of the North West Bicester site allocation.
- 5.26 Mr Kirby has demonstrated that, in respect of the impacts on the highways network, the Appeal Scheme does not have a severe impact, and can be delivered safely and with considerable benefits in respect of increased connectivity for the Site with the immediate pedestrian and cycle network as well as the wider Bicester network.
- 5.27 Mr Fell has undertaken a detailed and carefully considered viability assessment, supported by the Evidence from Gardiner and Theobald in respect of build costs, in response to Reason for Refusal 4. This assessment has considered both the impact of the zero carbon requirements at North West Bicester on viability, and the consequent ability of the scheme to deliver affordable housing, pursuant to the provisions of Policy **BSC 3** (page 64). Mr Fell has set out his reasoned conclusions as regards the provision of affordable housing within the Appeal Scheme. As stated above in my analysis of the benefits of the Appeal Scheme, whilst the NPPF compliant minimum of 10% of the homes to be delivered will be affordable, a review mechanism will be secured through the S106 Agreement in order to maximise the amount of additional affordable housing that can be delivered on-site within the requirements as set out in Policy **BSC 3**.
- 5.28 Mr Paterson-Neild, in respect of five year housing land supply, concludes that the Council only has 2.92 years supply of deliverable housing sites, and even without the 5% buffer being applied (should the NPPF be changed as proposed by the recent consultation proposal) the Council would require 1,158 dwellings per annum (5,790 over 5 years), which would equate to a supply of 3.06 years. He also concludes that where the Council has failed to bring forward an up-to-date NPPF compliant policy for the supply and delivery of new homes by delaying the progress of its new Local Plan, it is for the Council to provide that clear evidence of a realistic prospect of delivery for outline planning permissions and allocated sites without planning permission. So far it has failed to do so. I concur with his view that the magnitude of the Council's shortfall is significant and serious and will

require an increase to the number of homes to be delivered, over and above that indicated in Policy **BSC 1**.

- 5.29 Mr Sutton has re-assessed, in his Note appended to my Evidence (**Appendix HL1**), the impact of the Appeal proposals on the significance of nearby listed buildings. He concludes that in his view there would be a low order of less than substantial harm to the setting of the Grade II\* listed St Laurence Church, and to the Grade II listed Home Farmhouse. In any event this low level of harm should be weighed against the public benefits of the Appeal Scheme (in accordance with the Paragraph 202 tests (NPPF)). As I set out above, I believe there are significant public benefits that arise from the Appeal Scheme that would outweigh the limited harm to the setting of the adjacent heritage assets.
- 5.30 There are no highways grounds or any detailed technical grounds of objection that would render the Appeal Scheme unacceptable.
- 5.31 The Appeal Scheme will moreover give rise to a number of substantial social, environmental, and economic benefits which are supported by the NPPF policies and therefore contribute to the Scheme being a sustainable development.
- 5.32 It must therefore follow that the Appeal Scheme should benefit from the presumption in favour of sustainable development, and on the basis that the Appeal Scheme passes the Paragraph 11d) tests, that the Appeal should be allowed and planning permission granted.
- 5.33 I concur with the conclusions of the Officers in their March 2023 Report to Planning Committee (**CD 3.4**) when they state that taking all material considerations into account, the scheme represents an acceptable development proposal, and planning permission should be granted (Paragraph 10.18).
- 5.34 However, if it is concluded (contrary to my view) that a decision to approve the Appeal Scheme would not be in accordance with the Development Plan when read as a whole, I believe that the substantial public benefits of the proposal which I have identified in accordance with the tilted balance test (Paragraph 11d)ii.) would readily outweigh whatever is concluded to be the lack of accordance with the Development Plan, so as to indicate that the Appeal should be allowed, and planning permission granted.