



## **Proof of Evidence of Nigel Simkin MRICS MRTPI**

**Appeal Reference: APP/C3105/W/23/3315849  
Planning Application Reference No: 21/01630/OUT**

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

**6 May 2023**

## Contents

1.	Introduction .....	1
2.	The Parties’ Respective Viability Positions .....	5
3.	Updated Viability Evidence and Outstanding Area of Difference .....	12
4.	Updated Viability Analysis .....	22
5.	Summary and Conclusions.....	28
6.	Statement of Truth and Declaration.....	31

## Appendices

Appendix NS1 – Email from Rapleys 29 March 2023

Appendix NS2 – Agreed Sales Values

Appendix NS3 – Agreed Mix and Sales Values for 30% Affordable Housing

Appendix NS4 – HLD Updated Sales Value Research

Appendix NS5 – MGAC Updated Cost Plan

Appendix NS6 – MGAC Build Cost Summary

Appendix NS7 – Updated Baseline Appraisal of Appeal Scheme

Appendix NS8 – Sensitivity Test – Cost and Values

Appendix NS9 – Agreed Mix and Sales Values for 10% Affordable Housing

Appendix NS10 – Sensitivity Test – 10% Affordable Housing

**[www.hld-uk.com](http://www.hld-uk.com)**

0121 740 0500 [info@hld-uk.com](mailto:info@hld-uk.com)

Cornwall Buildings, Newhall Street, Birmingham, B3 QR

# 1. Introduction

## Credentials

- 1.1 I am Nigel Thomas Alexander Simkin. I am a Director of Highgate Land and Development Consultancy Limited (HLD) in Birmingham. I qualified as a Member of the Royal Institution of Chartered Surveyors (RICS) in **2008**, and as a Member of the Royal Town Planning Institute (RTPI) (through the Experienced Practitioner route) in **2020**. I am an RICS Registered Valuer, and HLD is an RICS Regulated Firm.
- 1.2 I established HLD with Co-Directors Adrian Willet FRICS and Richard Roberts MRICS in **2018**. Prior to HLD, I was a Director in Jones Lang LaSalle's (JLL's) Planning and Development Team, based in Birmingham. I joined JLL (formerly King Sturge LLP) as a Senior Surveyor in **January 2011**, having previously worked for GVA Grimley (now Avison Young) in Birmingham since **2006**.
- 1.3 I studied a Masters in European Real Estate (Immobilia) at Kingston University, London in **2005-2006**, gaining a Distinction. I studied Jurisprudence (Law) at Mansfield College, Oxford University from **2001** to **2004**, gaining a 2:2 Honours Degree.
- 1.4 I specialise in providing planning and development viability advice, acting for both public and private sector clients throughout the United Kingdom. I have acted for Local Planning Authorities including Oxford City Council, Birmingham City Council, Dudley Metropolitan Borough Council, Coventry City Council, Melton Borough Council, and Warwick District Council. I also advise a wide range of private sector clients, such as Bellway Homes, Countryside Partnerships, Persimmon, Barratt, and St Modwen.
- 1.5 I advised Oxford City Council on the viability of the Applicant's proposals for Oxford North, a 26.71 hectare (66 acre) site being promoted for approximately 500 houses and 90,000 sq m (968,751 sq ft) of office floor space. I have also previously advised Cherwell District Council (CDC) on the development viability of part of North-West Bicester Eco-Town, reviewing the Applicant's viability assessment for a 3,500 dwelling scheme on CDC's behalf in **2018** (with respect of Planning Application **Reference Numbers 14/01384/OUT; 14/01641/OUT; and 14/01968/F**).
- 1.6 I am currently advising Bellway Homes on the review of the viability of their proposals for an 800 dwelling urban extension in Derby. I have also advised St Modwen Developments on various sites throughout the former Rover Car Plant at Longbridge, including the West Longbridge Site (which is set to provide approximately 350 dwellings).

### Scope of this Proof of Evidence

- 1.7 I was instructed by CDC (The Local Planning Authority) herein referred to as ‘The Authority’ on the **17 March 2023** to give evidence at this Inquiry. I am aware that in providing expert evidence to the Inquiry, that my duty is to the Inspector to provide my professional view, irrespective of by whom I am instructed.
- 1.8 I have signed a Statement of Truth at the end of this Proof of Evidence, in line with the requirements set out by the ‘RICS Professional Guidance, UK: Surveyors acting as expert witnesses’ (4<sup>th</sup> Edition, amended **February 2023**).
- 1.9 The purpose of this Proof of Evidence is to address matters in terms of the development viability of the proposals put forward by the Appellant.

### Information Relied Upon to Inform this Proof of Evidence

- 1.10 The following information has been relied upon to produce this Proof of Evidence:
- **Illustrative Masterplan** – Drawing Reference Number **SK004 Rev C** prepared by Mosaic, Urban Design and Master Planners, the Appellant’s Architects.
  - **Schedule of Areas** - Proposed by the Appellant’s viability advisors, Rapleys, as contained and discussed in **Section 3** of my **November 2022** FVA.
  - **Cost Advice** – an updated Cost Plan prepared by MGAC (formerly RLF) who prepared the original Cost Plan which supported my FVA appraisal in **November 2022**.
  - **Sales Values** – An updated Sales Value Pricing Exercise prepared by Green & Co Estate Agents on behalf of the Appellant, along with sales value information for competing development sites, which I have reviewed and assessed. I have also updated my market research and received comparable sales data from housebuilders in Bicester during **March** and **April 2023**.

### Context and The Putative Reasons for Refusal

#### *Context*

- 1.11 The Appellant submitted an outline planning application (**Planning Application Reference Number 21/01630/OUT**) which was received and validated by the Authority on the **6 May 2021**.
- 1.12 The description of development which I understand is now agreed between the parties for this Appeal 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’.*

#### ***The Putative Reasons for Refusal***

- 1.13 CDC Officers reported the planning application to Planning Committee on the **9 March 2023**. They recommended to Members that, should the application have remained with them for determination (had it not already been appealed on non- determination grounds), then planning permission should be granted.
- 1.14 Planning Committee Members, in passing their observation, recommended that should the application have remained with them for determination, then they would have refused planning permission for a range of reasons, including Zero Carbon requirements, access/highways, inadequate affordable housing provision, and the development’s failure to mitigate its own impacts on the local infrastructure.
- 1.15 This Proof of Evidence considers the following putative Reasons for Refusal:

#### ***Putative Reason for Refusal 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’.*

#### ***Putative Reason for Refusal 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.’*

*Putative Reason for Refusal 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’.*

- 1.16 A Financial Viability Assessment (FVA) was submitted as a supporting document to the Planning Application by the Appellant’s viability advisors, Rapleys, in **October 2021**. This was reviewed by MGAC (then RLF) and HLD on behalf of the Authority. There were significant discussions/negotiations regarding the inputs to the viability appraisal during **2022**. My final FVA Report is dated **November 2022** and is included as **Core Document CD8.4.1**.
- 1.17 The next section sets out the initial viability positions of the parties. It also provides an overview of the area of difference that remains, and where agreement has now been reached between the Appellant and the Authority.

## 2. The Parties' Respective Viability Positions

- 2.1 This section provides an overview of the Appeal Scheme. It then provides an overview of the initial viability positions of the Appellant and the Authority, and, following the Appellant's appeal for the non-determination of the outline planning application, how the viability appraisal has been updated to reflect updated market conditions.
- 2.2 It also provides an overview of how the remaining areas of difference between the Appellant and the Authority on development viability (mainly sales values and build costs) have been the subject of additional discussions and exchange of evidence in **2023** (in order to update the viability appraisal of the Appeal Scheme). It also highlights where further agreement has been reached with the Appellant regarding the inputs to the viability appraisal (which are now set out in the agreed Statement of Common Ground on Viability (**Core Document CD10.4**)).
- 2.3 I consider the following:
- **The Appeal Scheme** – and given that the proposals are in outline, the assumptions that have been made to inform the development viability testing;
  - **The Original Viability Positions of the Parties;**
  - **The Viability Evidence Exchanged to date between the parties;** and
  - **The Remaining Area of Difference.**

### The Appeal Scheme

- 2.4 The Appeal Scheme was submitted in outline only, with all matters reserved except for access.
- 2.5 A copy of an Illustrative Masterplan was provided to us by the Appellant (**Drawing Reference Number SK004 Rev C**) which was prepared by the Appellant's master planners, Mosaic . However, this masterplan does not have a schedule of accommodation attached, and the precise nature of the residential accommodation that could come forward at the reserved matters stage (and how this is reflected in the viability appraisal) has been a matter of debate between the Appellant and the Authority throughout **2022**.
- 2.6 A summary of the mix of residential development assumed for viability testing is set out in **Table 2.1** overleaf.

**Table 2.1 – Summary of Assumed Accommodation Schedule**

Dwelling Type	No. of Dwellings	% of Residential Mix
One bedroom flats	31	5.85%
Two bedroom flats (including Flats Over Garages, FOGs)	50	9.43%
Two bed houses	149	28.11%
Three bed houses	196	36.98%
Four bed houses	102	19.25%
Bungalows	2	0.38%
<b>Total</b>	<b>530</b>	<b>100.00%</b>

Source: HLD FVA (November 2022) Table 3.1; HLD Analysis (May 2023)

- 2.7 However, there is further detail behind the above mix which has informed the viability testing (for example, there are a range of dwelling types and sizes that have been assumed within each of the dwelling types set out above). I provide further detail on these assumptions and the assumed Schedule of Accommodation later in this Proof of Evidence.
- 2.8 I raised several reservations about the residential development mix proposed by the Appellant to inform the development viability testing during **2022**, such as:
- The small size of the two-bedroom houses proposed for private market sale (i.e. the 590 sq ft (54.81 sq m) two-bedroom dwellings);
  - The three-bedroom dwellings for private market sale are also smaller than I would anticipate that developers/house builders in the market would seek to deliver, and are typically smaller than their affordable counterparts in the Appellant’s assumed mix; and
  - The absence of any five-bedroom dwellings in the assumed residential development mix.
- 2.9 These issues (and the potential impact on the sales values and hence viability) have been discussed at length with the Appellant between **March** and **September 2022**. I sensitivity tested an alternative residential development mix (including increased dwelling sizes) in my **November 2022 FVA**. This analysis suggested that if such an alternative development mix could be achieved, this could improve development viability.
- 2.10 I have continued to assume the residential development mix and dwelling sizes proposed by the Appellant to inform my viability testing. This is on the basis that there will be a review of



development viability during the life of the scheme which will better capture the actual residential development mix bought forward at the reserved matters stage(s), and hence the impact on Gross Development Value (GDV) and viability.

- 2.11 The need for a viability review in the Section 106 Agreement is now agreed between the Appellant and the Authority (as set out in the Statement of Common Ground on Viability – **Core Document CD10.4**).

*The Initial Viability Positions of the Appellant and the Authority*

*Overview of the Appellant’s Viability Position (October 2021)*

- 2.12 The Appellant’s original viability position was set out in Rapleys’ FVA Report dated **October 2021 - (Core Document CD2.46)**. Rapleys viability tested a ‘tiered’ level of construction costs which considered:

- The traditional house building standards (i.e. the ‘base’ build costs);
- The additional anticipated costs to meet the Future Home Standard (FHS) 2025; and
- The additional costs over and above the FHS of achieving a ‘True’ Zero Carbon Scheme (‘TZC’).

- 2.13 **Paragraph 3.14** of Rapleys’ FVA sets out their analysis regarding the viability of the scheme at that time. Of the 12 scenarios viability tested, only three scenarios were anticipated to be viable. These were as follows:

- **Scenario 1** - 30% affordable housing provision, of which approximately 70% was Affordable Rented (AR) and 30% was Shared Ownership (SO), with traditional house building costs only (i.e. no additional costs to reflect either FHS 2025 or TZC requirements).
- **Scenario 7** - 30% affordable housing (all of which was Shared Ownership, with no Affordable/Social Rented included), and only traditional housing building costs (i.e. no additional costs for either FHS 2025 or TZC).
- **Scenario 10** – 0% affordable housing, and only traditional housing building costs (i.e. no additional costs for either FHS 2025 or TZC).

- 2.14 At **Paragraph 16.2** of their conclusions Rapleys stated that:

*‘We have established the scheme could deliver 30% affordable housing (70% AR/30% SO) if it were constructed based on what we are calling ‘North West Bicester Traditional House Building Costs’. These are house building costs that are fully compliant with current building regulations but do not incur additional ‘extra over’ costs of meeting FHS or TZC’.*

2.15 **Paragraph 16.3** continues that:

*‘Our financial modelling demonstrates that it is the cost of building to FHS and then additionally to TZC requirements that is challenging to deliver and not the delivery of affordable housing’.*

*HLD Viability Position November 2022*

- 2.16 My first draft development appraisal in **March 2022** anticipated that a policy compliant scheme providing 30% affordable housing (and assuming a ‘True’ Zero Carbon (TZC) scheme as interpreted by the Appellant) would generate a viability gap. Hence, either affordable housing and/or some of the other requirements of the scheme may need to be ‘flexed’ in order to assist the viability of the scheme.
- 2.17 My first draft position was shared with the Appellant and their viability advisors in **March 2022**. There were then discussions/negotiations with the Appellant and their advisors regarding the inputs to the development viability appraisal between **March 2022** and **September 2022**.
- 2.18 The viability appraisals in my **November 2022** FVA Report broadly reconfirmed my initial findings in **March 2022**. My baseline development viability appraisal generated a Residual Land Value (RLV) of approximately **£2.5 million**. As my Benchmark Land Value (BLV) is **£8.85 million**, this generated a project ‘viability gap’ of approximately **£6.35 million** where 30% affordable housing is assumed (along with ‘TZC’ costs in line with those interpreted by the Appellant and approximately £18.76 million of Section 106 contributions as assumed by the Appellant at that time). This is set out in **Table 7.1** of my **November 2022** FVA report, which is replicated overleaf.

**Table 2.3 – Findings from HLD FVA November 2022 (Table 7.1)**

Scenario	Residual Land Value (RLV)	Benchmark Land Value (BLV)	Viability Gap (£)
<b>Baseline Scenario</b> – HLD appraisal with approximately 30% affordable housing (69% Affordable Rented, 31% Shared Ownership, TZC costs interpreted by the Appellant and assessed in line with RLF (now MGAC's) Cost Plan; and Section 106 obligations in line with that assessed by the Appellant in their <b>October 2021</b> FVA of £19.015 million (but reduced to approximately <b>£18.76 million</b> in later appraisals).	£2,496,302  (say £2.5 Million)	£8.85 million	£6.35 million

Source: Table 7.1 of HLD FVA November 2022; HLD Analysis (May 2023)

- 2.19 The above project viability gap was based upon a policy compliant level of affordable housing of 30%, and assuming a 'True' Zero Carbon scheme, as interpreted by the Appellant (but costed by the Authority's Cost Consultants, RLF (now MGAC)). It also assumed the Section 106 obligations that were assessed in the Appellant's **October 2021** FVA – but subsequently adjusted slightly to approximately **£18.76 million**.
- 2.20 I also considered how the viability gap might be reduced, by sensitivity testing a 'Value Engineered' (VE) scheme considered by MGAC, in consultation with CDC Officers, which assumed:
- That rainwater harvesting/greywater harvesting for each dwelling was removed from the Scheme;
  - There was no requirement for lifts in the apartment buildings; and
  - A fruit tree would not be required in the garden of each dwelling.
- 2.21 My sensitivity analysis suggested that removing these items from the Appellant's assumed 'TZC' scheme would significantly increase the RLV and hence help reduce the viability gap. I also undertook a range of other sensitivity testing, such as:
- An alternative residential development mix/dwelling sizes.
  - The potential impact of updated market conditions, sensitivity testing anticipated changes to both sales values and costs from **Quarter 1 (Q1) 2022** to **Q4 2022**.
- 2.22 My sensitivity testing also indicated that it would be important for there to be a viability review mechanism in the Section 106 Agreement. The need for a viability review mechanism is now agreed

between the Appellant and the Authority in the Statement of Common Ground on Viability (**Core Document CD 10.4**)

#### *Viability Evidence Exchanged to Date*

2.23 Following providing my initial first draft viability appraisal findings in **March 2022** to the Authority and the Appellant, a significant amount of discussions and exchange of further evidence took place between **March** and **September 2022**. This is summarised in **Section 4** of my **November 2022** FVA Report.

#### *Areas of Difference*

- 2.24 Following my final FVA Report in **November 2022**, a meeting was held with the Appellant at CDC's Offices on the **14 December 2022**. There was a discussion at this meeting regarding the various areas of difference in the development appraisal, and how the appraisal should be updated to reflect current values/costs. Following this meeting, the only outstanding area of difference anticipated was how the sales values in HLD's development viability appraisal should be updated to reflect **Q4 2022** values.
- 2.25 However, following the Appellant's appeal for the non-determination of the planning application, the Appellant and their viability advisors indicated on the **8 March 2023** that they intended to provide an updated sales value pricing exercise of the scheme and also an updated Cost Plan from their cost advisors, and Gardiner and Theobald (G&T). The Appellant indicated that they would target providing these by **Friday 17 March 2023**. They were provided to us on the **29 March 2023** and **28 March 2023** respectively.
- 2.26 I have reviewed the updated information provided on sales values to inform this Proof of Evidence, and the costs have been reviewed by MGAC, as detailed later in this Proof of Evidence. My initial review of the sales values was discussed with the Appellant and their viability advisors on the **13 April 2023**, and MGAC's updated assessment of the construction costs was provided to the Appellant on the **26 April 2023**.
- 2.27 The Appellant subsequently confirmed that they were in agreement with MGAC's assessment of the updated construction costs and my updated assessment of the sales values. This is now confirmed in the Statement of Common Ground on Viability (**Core Document CD10.4**). Therefore, at the time of writing this Proof of Evidence, the only outstanding area of difference with the Appellant in relation to the inputs to the development viability appraisal is as follows:

- The level (and triggers/timing) of the Section 106 Contributions that should be assumed in the development viability appraisal (as these are the subject of continued discussion between the Appellant and the Authority).

2.28 The remainder of this Proof of Evidence therefore provides an overview of:

- The ‘working assumption’ for the Section 106 contributions (which is the only outstanding area of difference between the parties regarding the inputs to the viability appraisal); and
- The updated sales values and costs positions (as at **Q2 2023**) which have now been agreed between the Appellant and the Authority.

2.29 Finally, it updates the development viability appraisal analysis to reflect the now agreed inputs on sales values and construction/build costs between the Appellant and the Authority (as at **Q2 2023** values and costs).

### 3. Updated Viability Evidence and Outstanding Area of Difference

3.1 This section provides an overview of:

- The recently updated sales value and construction cost analysis (which are now agreed inputs to the viability appraisal between the Appellant and the Authority); and
- The final remaining area of difference (the level and timing of Section 106 contributions).

3.2 This informs the updated viability appraisal analysis I have undertaken, which is set out in **Section 4** of this Proof of Evidence.

#### Updated Viability Evidence

##### *Sales Values*

3.3 The sales values of the completed dwellings have been the subject of significant debate between the Appellant and the Authority during **2022**. In my view, reaching agreement on the sales values has also been complicated by:

- **The mix of residential development proposed by the Appellant to inform the viability testing (particularly for the market dwellings)** - meaning that there are limited directly comparable dwellings from nearby new build developments to guide the assessment of values for the Appeal Scheme (particularly for the market housing dwelling types in the assumed Appeal Scheme).
- **Changing Market Conditions** - Market conditions have changed significantly since the Appellant's initial market research was undertaken in **2021**. This has made it more difficult to analyse and agree the sales values during **2022**.

3.4 During the negotiations with the Appellant on sales values during **2022**, it was agreed with the Appellant and their viability advisors that the base date for the negotiation on sales values (and costs) would be **Q1 2022**, and that costs and values could be updated at the point that negotiations on the inputs to the viability appraisal were concluded.

3.5 I adopted the majority of the Appellant's proposed 'compromise' position on the Sales Values for each dwelling type in my **November 2022** FVA Report, other than:

- The values of the small two-bedroom dwellings of 54.81 sq m (590 sq ft); and
- The sales values applied to some of the four-bedroom dwellings.

- 3.6 Following the Appellant’s appeal for the non-determination of the planning application, the Appellant advised on a Microsoft Teams meeting on the **8 March 2023** that they would be providing an updated sales value pricing exercise for the Appeal Scheme, as well as an updated Cost Plan prepared by Gardiner & Theobald (G&T).
- 3.7 A copy of the Appellant’s updated sales value pricing exercise was provided by Rapleys on the **29 March 2023**. This included an updated pricing exercise from Green & Co Estate Agents, which is based upon **January 2023** sales prices and dated **20 February 2023**. It also attached a spreadsheet setting out updated market evidence from Green & Co for three comparable new build developments in Bicester, as follows:
- **Hemins Place (South-West Bicester)** – by David Wilson Homes (DWH);
  - **Kingsmere (South-West Bicester)** – by Cala Homes; and
  - **Elmsbrook (North-West Bicester)** – by Fabrica/Crest Nicholson.
- 3.8 The above information was provided on the **29 March 2023** in advance of a meeting to discuss sales values and build costs scheduled for the **13 April 2023**. A copy of this Email is attached at **Appendix NS1**.
- 3.9 The updated information sets out the available properties at these developments, the asking prices, and also the dwellings that have sold. It also estimates the ‘net achieved’ sales prices of the sold dwellings, Green & Co having assumed percentage deductions to the asking prices. We anticipate that this is to allow for both negotiation on the asking prices and also sales incentives, in order to arrive at assumed net sales prices for the dwellings sold.
- 3.10 I have reviewed this information and also updated my research on sales values at nearby competing new build development in **April 2023** to inform this Proof of Evidence. I discussed my initial research and proposed updated pricing with the Appellant (including Rapleys and a representative from Green & Co) on the Microsoft Teams Meeting on the **13 April 2023**.
- 3.11 I have researched and assessed the same comparable new build residential developments provided by Green & Co, and have also obtained additional evidence from Barratt Homes in respect of their development at ‘The Chimes’ at South-West Bicester. In addition, I have also had regard to the availability of apartment dwellings currently on the market at Graven Hill (just to the south-east of Bicester).
- 3.12 Each developer has provided me with comparable sales information. Where possible, the information provided are net achieved sales prices (i.e. take into account negotiations on the asking price and also sales incentives offered). Where developers did not provide net achieved prices, they

gave me an indication of the percentage deduction that should be made to the gross prices quoted in order to arrive at the net prices.

3.13 My updated sales value pricing exercise is set out in a spreadsheet which is attached at **Appendix NS2**. This spreadsheet sets out:

- All of the dwelling types and sizes assumed in the Appellant’s Appeal Scheme; and
- My proposed market sales values for each dwelling (based upon the updated evidence from each developer) as at **Q2 2023**.

3.14 The Appellant confirmed at a further meeting on sales values on the **26 April 2023** that they agreed with my updated analysis of the sales values. Hence, **Appendix NS2** also now forms Annex 3 of the Statement of Common Ground on Viability – **Core Document CD10.4**).

3.15 I have applied my updated sales prices to the Appellant’s proposed development mix (assuming 30% affordable housing provision) and discussed my updated analysis with the Appellant to inform the Statement of Common Ground on Viability.

3.16 Some minor changes to the development mix have been agreed with the Appellant to ensure that it accurately reflects a 30% affordable housing provision (with a tenure mix of approximately 70% Affordable Rented and 30% Shared Ownership).

3.17 A copy of this spreadsheet (which also forms Annex 1 of the Statement of Common Ground on Viability) is attached at **Appendix NS3**.

3.18 For completeness, I have also included a version of this spreadsheet which includes my updated market research (and comparable analysis) for the sales values of each dwelling at **Appendix NS4**.

#### ***Build/Construction Costs***

3.19 The Appellant advised on the Microsoft Teams Meeting on the **8 March 2023** that they would be providing an updated Cost Plan prepared by G&T to support their updated viability assessment of the Appeal Scheme.

3.20 It was indicated on this call that the updated Cost Plan would be provided on or around **Friday 17 March 2023**. The Cost Plan was provided by G&T to MGAC (the Authority’s cost advisors) on the **28 March 2023**, prior to an initial meeting on the revised costs on the morning of the **29 March 2023**.

3.21 The Appellant’s updated Cost Plan is based upon **Q1 2023** cost prices and is dated **22 February 2023**. Hence, it is anticipated that it factors in significant cost inflation since G&T undertook their original Cost Plan (which was based upon **Q3 2021** cost prices) and was provided as part of Rapleys’ FVA submission in **October 2021**.



- 3.22 G&T's Cost Plan now anticipates construction costs of **£123,640,000**. G&T's Executive Summary states that their previous **Q1 2022** Cost Plan anticipated a total cost of **£111,259,000**. Hence, G&T anticipate that the costs have increased by approximately 11.1% since **Q3 2021**. It should be noted that in their most recent Cost Plan, G&T have assessed a 'True' Zero Carbon (TZC) scheme only (i.e. they have not costed the 'value engineered' scheme that was also costed by RLF (now MGAC) and subsequently discussed between the Appellant and the Authority.
- 3.23 MGAC have reviewed G&T's updated Cost Plan, and have updated their previous Cost Plan for the 'TZC' scheme (as interpreted by the Appellant). MGAC's Cost Plan for the TZC scheme now totals **£122,042,000** based upon **Q2 2023** prices. MGAC previously anticipated a total cost in Feasibility Cost Estimate No. 2 Rev 1 (**October 2022**) was **£104,690,000** as at **Q1 2022** (albeit that MGAC also advised that in order to update the Cost Plan to reflect **Q4 2022** prices, a further allowance for inflation of approximately **£6.6 million** was already anticipated at that point, as discussed at **Paragraph 6.17** of my **November 2022** FVA).
- 3.24 Further detail on MGAC's updated Cost Plan is provided by the Proof of Evidence of Mr Ian Tarbet of MGAC.
- 3.25 A copy of MGAC's updated **Feasibility Cost Estimate No. 3 Rev 0** dated **April 2023** is attached at **Appendix NS5**. This updated Cost Plan has now been agreed between the parties and hence also forms Annex 4 of the agreed Statement of Common Ground on Viability.
- 3.26 I have therefore utilised MGAC's Cost Plan to provide my updated assessment of the viability of the Appeal Scheme later on in this Proof of Evidence. I have also had regard to a 'Build Cost Summary' provided by MGAC which has assisted me in updating my development viability appraisal. I have attached a copy of this summary at **Appendix NS6**.
- 3.27 Finally, it should be noted that the gross areas assessed by both G&T and MGAC are slightly inconsistent with the areas assumed in the Statement of Common Ground on Viability (when the apartment areas are 'grossed up' to allow for the circulation space). I have reviewed this with MGAC and it is anticipated that these differences are due to rounding in each Cost Plan, and also rounding in the Argus Developer appraisal software model that both the Appellant and I have used to undertake our assessment of development viability. I do not anticipate that these rounding issues will have a material impact on my viability analysis.

#### **Outstanding Area of Difference**

- 3.28 In light of the above, the only remaining area of difference between the Authority and the Appellant on the inputs to the development viability appraisal is the level of Section 106 contributions that should be assumed (as well as the trigger points/phasing of Section 106

payments). At the time of writing this Proof of Evidence, the level and timing of Section 106 contributions are the subject of continued discussion between the parties. My understanding of the Authority’s current assessment of the Section 106 contributions (as at **12 April 2023**) is summarised in the Paragraphs that follow.

### *Section 106 Contributions*

3.29 The Section 106 contributions have been confirmed to the Appellant and me in an email from CDC Planning Officers on the **12 April 2023**. I understand that these were subsequently discussed at a meeting on the **27 April 2023**. The Authority’s assessment of the Section 106 costs has therefore been updated since those assumed by the Appellant’s advisors in their **October 2021** FVA (which I adopted to inform the viability analysis in my **November 2022** FVA Report) subject to minor adjustments that the Appellant made in their appraisals during **2022**.

3.30 I have therefore set out the contributions requested by both Cherwell District Council (CDC) and Oxfordshire County Council (OCC) as at **12 April 2023**, in **Tables 3.1** and **3.2** respectively below.

**Table 3.1 – Summary of Updated Section 106 Contributions Requested by Cherwell District Council (CDC) as at 12 April 2023**

Assumed Section 106 Contribution	Total Assumed Section 106 Contribution (£) as at Q2 2023	Source	Comments and Assumed Trigger/Timing (taken from Rapleys’ FVA October 2021 unless otherwise stated)
<b>Healthcare Contribution</b>	£572,586	CDC Email to Appellant 12 April 2023	4 equal payments of 25% each (assumed on occupation of 93 <sup>rd</sup> , 186 <sup>th</sup> , 279 <sup>th</sup> , and 372 <sup>nd</sup> dwellings).
<b>Neighbourhood Police</b>	£96,645	CDC Email to Appellant 12 April 2023	4 equal payments of 25% each (assumed on occupation of 93 <sup>rd</sup> , 186 <sup>th</sup> , 279 <sup>th</sup> , and 372 <sup>nd</sup> dwellings).
<b>Community Building Provision</b>	£560,047	CDC Email to Appellant 12 April 2023	3 payments assumed on occupation of 93 <sup>rd</sup> (30%); 186 <sup>th</sup> (30%) 280 <sup>th</sup> (40%) dwellings.
<b>Community Building Maintenance</b>	£87,943	CDC Email to Appellant	Assume 4 equal payments of 25% each

		12 April 2023	(assumed on the occupation of the 93 <sup>rd</sup> , 186 <sup>th</sup> , 279 <sup>th</sup> , and 372 <sup>nd</sup> dwellings) in line with Rapleys' previous assumption for 'Community Facilities Maintenance'.
<b>Community Development Worker(s)</b>	£226,209	CDC Email to Appellant 12 April 2023	Seven payments, the first at 1 <sup>st</sup> occupation (5%), then 62 <sup>nd</sup> (5%); 124 <sup>th</sup> (20%) 186 <sup>th</sup> (20%); 248 <sup>th</sup> (20%) 310 <sup>th</sup> (20%); then 372 <sup>nd</sup> (10%).
<b>Community Development Fund</b>	£29,297	CDC Email to Appellant 12 April 2023	Assumed on implementation.
<b>Sports Pitches and Maintenance</b>	£1,288,403	CDC Email to Appellant 12 April 2023	4 payments, 10% on implementation; 93 <sup>rd</sup> dwelling (25%); 171 <sup>st</sup> (35%); and 30% on 280 <sup>th</sup> occupation).
<b>Burial Ground</b>	£6,426	CDC Email to Appellant 12 April 2023	Assumed on the Occupation of the 78 <sup>th</sup> dwelling.
<b>Play Area Maintenance</b>	£1	CDC Email to Appellant 12 April 2023	Not yet known – hence 'nominal' amount assumed in appraisal.
<b>Amenity Space Maintenance</b>	£1	CDC Email to Appellant 12 April 2023	Not yet known – hence 'nominal' amount assumed in appraisal.
<b>Allotment Maintenance</b>	£1	CDC Email to Appellant 12 April 2023	Not yet known – hence 'nominal' amount assumed in appraisal.
<b>Community Management Organisation</b>	£905,707	CDC Email to Appellant 12 April 2023	Timing is not yet known – Assumed payable on Implementation
<b>Waste</b>	£70,903	CDC Email to Appellant 12 April 2023	On occupation of 78 <sup>th</sup> dwelling.

<b>Bicester Leisure Centre Contribution</b>	£339,989	CDC Email to Appellant 12 April 2023	4 equal payments of 25% each (assumed on occupation of 93 <sup>rd</sup> , 186 <sup>th</sup> , 279 <sup>th</sup> , and 372 <sup>nd</sup> dwellings).
<b>Biodiversity</b>	£38,976	CDC Email to Appellant 12 April 2023	Unknown timing – Assumed payable on implementation.
<b>Section 106 Monitoring</b>	£10,000	CDC Email to Appellant 12 April 2023	Unknown timing – Assumed payable on implementation.
<b>Zero Carbon Strategy</b>	£655,153	CDC Email to Appellant 12 April 2023	Unknown timing. Assumed during the life of the construction period.
<b>Open Space Maintenance</b>	£1	CDC Email to Appellant 12 April 2023	Unknown. Assumed £1 until amount is confirmed (phased over the construction period).
<b>Total</b>	<b>£4,888,288</b>		<b>NB. The total includes the nominal allowances of £1 for yet to be confirmed items.</b>

Source: CDC Officer's Email 12 April 2023; HLD Analysis (May 2023)

3.31 **Table 2.1** sets out the contributions requested by CDC, based upon information they provided to the Appellant on the **12 April 2023**, which total **£4,888,288** (based upon indexation to **Q2 2023** prices).

3.32 **Table 2.2** overleaf sets out the Section 106 contributions requested by OCC as follows:

**Table 2.2 – Summary of Updated Section 106 Contributions Requested by Oxfordshire County Council (OCC)**

Assumed Section 106 Contribution	Total Assumed Section 106 Contribution (£) at Q2 2023 Prices	Source	Comments and assumed Timing (taken from Rapleys' FVA October 2021 unless otherwise stated)
<b>Road Crossing to Caversfield Church</b>	£1	No Section 106 cost is assumed (as the cost of provision is included in MGAC's Updated Cost Plan).	Included in MGAC's assessment of 'up-front' infrastructure costs hence assumed prior to the construction of houses.
<b>Primary &amp; Nursery Education</b>	£6,551,072	CDC Email to Appellant 12 April 2023	Assumed 10% on first implementation; 20% before occupation of 78 <sup>th</sup> dwelling; 23.5% on occupation of 78 <sup>th</sup> dwelling; 23.5% 6 months after the occupation of the 78 <sup>th</sup> dwelling and 23% 18 months after occupation of 78 <sup>th</sup> dwelling.
<b>Secondary Education Contribution</b>	£4,076,869	CDC Email to Appellant 12 April 2023	10% on first occupation, then 20% on the 109 <sup>th</sup> occupation and 70% on the 187 <sup>th</sup> occupation.
<b>Secondary School Land Contribution</b>	£427,273	CDC Email to Appellant 12 April 2023	Assumed prior to the implementation of development.
<b>Special Education Needs (SEN) Contribution</b>	£304,022	CDC Email to Appellant 12 April 2023 (albeit that I understand there is a miscalculation in this figure and it should be <b>£327,610</b> ).	Assumed 30% payable on 93 <sup>rd</sup> occupation; 70% on 265 <sup>th</sup> occupation.
<b>Household Waste Recycling Contribution</b>	£58,175	CDC Email to Appellant 12 April 2023	Assumed 100% on 78 <sup>th</sup> occupation.
<b>Library Contribution</b>	£33,320	CDC Email to Appellant 12 April 2023	Assumed 100% on implementation.

<b>Highways Works 1 – Improvements to junction of Charlotte Avenue/B4100</b>	£56,331	CDC Email to Appellant 12 April 2023	4 equal payments of 25% each (assumed on occupation of 93 <sup>rd</sup> , 186 <sup>th</sup> , 279 <sup>th</sup> , and 372 <sup>nd</sup> dwellings).
<b>Highways Works 2 – Improvements to junction of B4100/A4095</b>	£331,547	CDC Email to Appellant 12 April 2023	4 equal payments of 25% each (assumed on occupation of 93 <sup>rd</sup> , 186 <sup>th</sup> , 279 <sup>th</sup> , and 372 <sup>nd</sup> dwellings).
<b>Local Road Improvements</b>	£233,614	CDC Email to Appellant 12 April 2023	4 equal payments of 25% each (assumed on occupation of 93 <sup>rd</sup> , 186 <sup>th</sup> , 279 <sup>th</sup> , and 372 <sup>nd</sup> dwellings).
<b>Pedestrian/Cycle Infrastructure</b>	£431,768	CDC Email to Appellant 12 April 2023	£31,206 on 1 <sup>st</sup> occupation; balance on 50 <sup>th</sup> occupation.
<b>Public Transport Services and Infrastructure</b>	£840,739	CDC Email to Appellant 12 April 2023	Assumed same as Rapleys' previous assumptions for 'Bus Provision' (i.e. 50% on 1 <sup>st</sup> occupation; 50% on 93 <sup>rd</sup> occupation).
<b>Travel Plan Monitoring</b>	£3,435	CDC Email to Appellant 12 April 2023	Assumed prior to 1 <sup>st</sup> occupation.
<b>Public Rights of Way</b>	£60,175	CDC Email to Appellant 12 April 2023	Assumed payable on 32 <sup>nd</sup> dwelling occupation.
<b>Ped/Cycle Bridge</b>	£17,523	CDC Email to Appellant 12 April 2023	Unknown – therefore I have assumed payable on 1 <sup>st</sup> occupation.
<b>Strategic Highway Contribution</b>	£3,642,034	CDC Email to Appellant 12 April 2023	4 payments as follows: 30% on 1 <sup>st</sup> occupation; 40% on 156 <sup>th</sup> ; 15% on 311 <sup>th</sup> ; and 15% on 374 <sup>th</sup> occupations.
<b>Network Rail Shared Value Contribution</b>	£884,287	CDC Email to Appellant 12 April 2023	Timing unknown – therefore I have assumed over the duration of the construction period.
<b>OCC Admin Fee</b>	£22,000	CDC Email to Appellant 12 April 2023	Unknown – therefore I have assumed prior to 1 <sup>st</sup> occupation.

<b>Total</b>	<b>£17,974,185</b>	NB. Includes nominal allowance of £1 where items unknown or already included in the Cost Plan.	
--------------	--------------------	--	--

Source: CDC Officer's Email to Appellant 12 April 2023; HLD Analysis (May 2023)

- 3.33 **Table 2.2** above demonstrates that there are approximately **£17,974,185** of contributions requested by OCC. This gives a combined Section 106 contribution of **£22,862,473** (say **£22.86 million**).
- 3.34 I understand that OCC have updated the above figures to reflect **Q2 2023** prices where possible (albeit that where the Baxter Index is used, OCC have applied the latest index available which reflects **January 2023** prices).
- 3.35 I understand that OCC's calculations are based upon a different mix of residential dwellings (which also assumes 10% affordable housing provision rather than 30% affordable provision). I understand that this is also the subject of discussion between the Appellant and the Authority. For the purposes of the viability testing undertaken in this Proof of Evidence, I have assumed that the above figures provided by OCC would not materially change if a lower level of affordable housing and/or an alternative mix of development is brought forward.
- 3.36 I understand that the Appellant does not agree with the above requested contributions. This is addressed further in the Proof of Evidence of Mr Thomas Webster for the Authority. However, it is recognised between the Appellant and the Authority in the agreed Statement of Common Ground on Viability that the viability appraisals may need to be updated leading up to the Inquiry, to ensure that the viability analysis reflects the latest discussions regarding the extent and timing of Section 106 contributions between the Appellant and the Authority.
- 3.37 The next section sets out my updated viability appraisal analysis, based upon the updated sales values and costs that are now agreed inputs between the Appellant and the Authority.

## 4. Updated Viability Analysis

### Overview

- 4.1 This section sets out the findings of my updated Development Viability Appraisal analysis that I have undertaken, based upon the agreed inputs to the viability appraisal which are agreed between the Appellant and the Authority.
- 4.2 I have viability tested the following scenarios:
- **The Baseline** – The Appeal Scheme assuming approximately 30% affordable housing (with an affordable housing tenure split of approximately 70% Affordable Rented (AR) and 30% Shared Ownership (SO)); ‘True’ Zero Carbon (TZC) build costs as interpreted by the Appellant and assessed in MGAC’s Cost Plan; along with the Authority’s assessment of the Section 106 contributions at approximately **£22.86 million**.
  - **A Sensitivity Test of a Reduced Affordable Housing Provision of 10%** - in line with that referred to in the Planning Officer’s Committee Report(s). To confirm, this scenario also assumes a ‘True’ Zero Carbon scheme as interpreted by the Appellant (and costed by MGAC), and the assumed Section 106 contributions at approximately **£22.86 million**.
- 4.3 To confirm, I have updated my development viability appraisal to reflect the updated sales values that I have researched and assessed in **April 2023** which are now agreed between the Appellant and the Authority. I have also reflected the updated costs prepared by MGAC based on **Q2 2023** prices in my updated development viability appraisal (again which are also now agreed between the Appellant and the Authority).
- 4.4 I have not sensitivity tested the implications of a ‘Value Engineered’ scheme to inform this Proof of Evidence, nor have I re-sensitivity tested the alternative mix of residential development and dwelling sizes which I sensitivity tested in my **November 2022** FVA.
- 4.5 It is recognised that additional viability appraisals may need to be undertaken in advance of the Inquiry to reflect the positions reached between the Authority and the Appellant on matters such as the Appellant’s interpretation of the requirements of a TZC scheme and Section 106 contributions (etc.). This should assist the Inquiry by ensuring that the viability appraisal analysis is updated to reflect the most recent position between the Appellant and the Authority on the outstanding areas of difference.
- 4.6 I set out my updated development viability analysis below.



## Updated Appraisal Findings

### *The Baseline Scheme*

4.7 The results of my updated development viability appraisal are set out in **Table 4.1** below.

**Table 4.1 – Updated Findings**

Scenario	Residual Land Value (RLV)	Benchmark Land Value (BLV)	Viability Gap (£)
<i><b>The Baseline</b> – Updated appraisal of the Appeal Scheme assuming 30% Affordable Housing (approximately 70% Affordable Rented, 30% Shared Ownership tenures), ‘TZC’ scheme as interpreted by the Appellant in line with MGAC’s updated Cost Plan; and Section 106 contributions in line with those requested by CDC of approximately <b>£22.86 million</b>).</i>	-£11,201,358  (say -£11.20 million)	£8.85 million	£20.05 million (Approx.)
<i><b>Previous Baseline Scenario (for comparison purposes).</b> HLD November 2022 appraisal with 30% affordable housing (69% Affordable Rented, 31% Shared Ownership), costs in line with RLF’s Cost Plan (now MGAC) for the ‘TZC’ scheme interpreted by the Appellant, and Section 106 obligations in line with those previously assessed by the Applicant in their FVA (as subsequently adjusted) of approximately <b>£18.76 million</b> – based upon <b>Q1 2022 Values and Costs</b></i>	+£2,496,302  (say +£2.5 million)	£8.85 million	£6.35 million

Source: HLD Updated Viability Analysis (May 2023)

4.8 **Table 4.1** sets out my updated viability analysis, and compares it with the outcome of my development viability appraisal in my **November 2022** FVA Report for my previous baseline scenario (which was based upon **Q1 2022** costs/values), for comparison purposes.

4.9 My updated development viability appraisal analysis demonstrates that for the Baseline assessment of the Appeal Scheme (which assumes a policy compliant level of affordable housing of 30%; a ‘TZC’ scheme as interpreted by the Appellant (but costed by MGAC), and the increased Section 106 contributions requested by the Authority of approximately **£22.86 million**), a negative Residual Land Value (RLV) is produced of approximately **-£11.20 million**.

4.10 The RLV has therefore significantly reduced from that assessed in my **November 2022** FVA Report of **£2.5 million** (which was based upon **Q1 2022** costs/values, although the potential impact of movements in both costs and values over the period was sensitivity tested at **Paragraph 6.16**

onwards of my FVA). This has increased the viability gap by almost **£14 million** (i.e. from **£6.35 million to £20.05 million**).

4.11 The key drivers of this are that, whilst the agreed assessment of the Gross Development Value (GDV)/sales values has increased by approximately **£5.74 million** (approximately 3.4% since **Q1 2022**) for the 30% affordable housing scheme, this is offset in the appraisal by the following cost increases:

- **Section 106** - The increase in the Section 106 contributions requested by CDC from the previously assumed **£18.76 million** to the now requested **£22.86 million** (an increase of approximately 21.9% (approximately **£4.1 million**); and
- **Construction/Build Costs** - The significant increases in the anticipated construction costs which are crystallised in MGAC's updated Cost Plan which have risen from approximately **£104.69 million** to **£122.04 million** (an increase of approximately 16.6%).

4.12 A copy of my updated 'baseline' development viability appraisal of the Appeal Scheme is attached at **Appendix NS7**.

### *Sensitivity Testing*

#### *Impact of Changes to Sales Values and Construction Costs*

4.13 The first sensitivity test that I have undertaken is a strategic sensitivity test which tests percentage changes to both construction costs (i.e. housing and apartment construction costs only) and sales values. The sensitivity test assesses increases/decreases in both sales values and costs at 5% increments.

4.14 A copy of my sensitivity test is attached at **Appendix NS8**.

4.15 My sensitivity test indicates that a 10% decrease in construction costs (base house/apartment build costs only) and a 10% increase in sales values would generate a RLV of circa **+£6.12 million**. Therefore, whilst such changes to both values and costs would improve development viability, the RLV produced would still be below the agreed BLV of **+£8.85 million**).

#### *Sensitivity Test of 10% Affordable Housing*

4.16 The second sensitivity test of the baseline scheme that I have undertaken is of a reduced level of affordable housing of 10%, to assess the impact on viability. I have sensitivity tested a reduced affordable provision of 10% in light of CDC Planning Officer's Committee Reports which suggested

that a minimum level of affordable housing could be provided of 10%, based upon discussions with the Appellant.

- 4.17 In order to undertake this sensitivity test, I have utilised the sales values that I have researched and assessed in **April 2023**, along with MGAC’s updated Cost Plan. An assumed residential mix and assessment of the Gross Development Value (GDV) for the Appeal Scheme where 10% affordable housing is assumed to be provided has also been agreed between the Appellant and the Authority, which is included at Annex 2 of the agreed Statement on Common Ground on Viability (and is attached at **Appendix NS9** of this Proof of Evidence for completeness).
- 4.18 I have continued to assumed the Appellant’s interpretation of a ‘TZC’ scheme along with the Section 106 contributions requested by the Authority as set out earlier in this Proof of Evidence, to inform my sensitivity test.
- 4.19 **Table 4.2** below sets out the results of my sensitivity test.

**Table 4.2 – Sensitivity Test of 10% Affordable Housing Provision**

Scenario	Residual Land Value (RLV)	Benchmark Land Value (BLV)	Viability Gap (£)
<b>Sensitivity Test of 10% Affordable Housing</b> <i>(Assuming approximately 70% Affordable Rented, 30% Shared Ownership; Appellant’s interpretation of a ‘TZC’ scheme but in line with MGAC’s Updated Cost Plan, and Section 106 obligations in line with those requested by CDC of <b>£22.86 million</b>).</i>	-£4,048,302 (say -£4.05 million).	£8.85 million	£12.9 million

Source: HLD Updated Viability Analysis (May 2023)

- 4.20 **Table 4.2** above demonstrates that whilst a reduction in affordable housing to approximately 10% provision improves viability (and hence reduces the viability gap), a negative RLV of **-£4.05 million**, is generated which does not exceed the BLV of **£8.85 million**.
- 4.21 Therefore, a reduced level of affordable housing of 10% still generates a viability gap based upon the updated appraisal assumptions. This assumes that the Appellant’s interpretation of a ‘TZC’ scheme is delivered (in line with MGAC’s assessment of the costs) and the Section 106 contributions as requested by the Authority are **£22.86 million**.
- 4.22 A copy of this sensitivity test is attached at **Appendix NS10**.
- 4.23 The Appellant has proposed that there is a viability review mechanism within the Section 106 Agreement whereby development viability is reviewed in line with the principles set out for

‘viability tested route’ schemes in the Mayor of London’s Supplementary Planning Guidance (SPG) ‘Homes for Londoners: Affordable Housing and Viability (August 2017)’. This approach is now agreed between the Appellant and the Authority as set out in the Statement of Common Ground on Viability. The Mayor of London’s SPG is **Core Document 8.4.4**.

4.24 A review of development viability is important in light of the reservations I expressed in my **November 2022** FVA regarding the Appellant’s assumed scheme for viability testing (as my sensitivity testing indicated that there may be the potential to enhance the viability of the scheme through the detailed design process).

4.25 The requirement for a review of development viability is also in line with the Planning Practice Guidance (PPG) which states in the section entitled: ‘How should viability be reviewed during the lifetime of a project?’ at **Paragraph: 009 Reference ID: 10-009-20190509** that:

*‘Plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles. Policy compliant means development which fully complies with up to date plan policies. A decision maker can give appropriate weight to emerging policies.*

*Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities’ ability to seek compliance with relevant policies over the lifetime of the project’.*

4.26 Whilst the precise terms of the review mechanism in the Section 106 Agreement have yet to be drafted at the time of writing this Proof of Evidence, it is understood from our discussions with the Appellant on the **13 April 2023** that they will enter into an ‘early stage’ review (if sufficient progress is not made on implementing the planning approval after a set period), along with a ‘late stage’ review. In addition, if no ‘early stage’ review is triggered, there would be both a ‘mid-stage’ review and a ‘late stage’ review. The reviews would be undertaken in line with the principles set out in the Mayor of London’s SPG.

4.27 Agreement regarding the principle of including a viability review mechanism in the Section 106 Agreement is welcomed, as it will provide further opportunity for development viability to be reviewed throughout the life of the development, so that the cost/values can be reviewed and if

appropriate, an additional contribution to affordable housing can be made (either on site or as an off-site contribution) should viability improve over the life of the development.

4.28 The next section sets out my summary and conclusions.

## 5. Summary and Conclusions

- 5.1 This Proof of Evidence focusses on **Putative Reasons for Refusal 1, 4 and 5** in relation to the Appellant's appeal against the non-determination of planning application **Reference Number: 21/01630/OUT**. Hence, this Proof of Evidence considers the viability of the Appeal Scheme and its ability to provide affordable housing on the site (along with the other Section 106 contributions requested by the Authority, and the requirement to deliver a 'True' Zero Carbon (TZC) scheme as interpreted by the Appellant).
- 5.2 The Appellant's viability advisors, Rapleys, submitted a Financial Viability Assessment (FVA) dated **October 2021** to support the outline planning application which was received and validated by the Authority in **May 2021**. The Appellant's FVA included a Cost Plan undertaken by the Appellant's cost advisors, Gardiner & Theobald (G&T). Highgate Land and Development (HLD), with support from the Authority's cost consultants, RLF (now MGAC), reviewed the Appellant's Cost Plan and viability analysis, and provided an initial draft of the viability analysis to the Appellant in **March 2022** for discussion.
- 5.3 My initial analysis identified that a scheme providing a policy compliant level of 30% affordable housing (comprising approximately 70% Affordable Rented and 30% Shared Ownership tenure) along with a 'True' Zero Carbon (TZC) scheme as interpreted by the Appellant, and Section 106 contributions estimated by the Appellant at that time of approximately **£18.76 million**, would generate a viability gap, but not to the extent anticipated by the Appellant's viability analysis.
- 5.4 There were then significant discussions and negotiations throughout **2022**, up until approximately **September 2022**, regarding a range of differences between HLD's draft viability analysis and the Appellant's, along with an exchange of evidence. This process narrowed down the areas of difference regarding the inputs to the viability appraisal, and agreement was reached on a range of inputs to the viability appraisal.
- 5.5 During the negotiations, both parties acknowledged that market conditions (both in terms of cost and values) were changing over the course of **2022**. Therefore, for the purpose of the negotiations, the inputs to the appraisal were kept in line with **Q1 2022** values and costs, both parties anticipating that at the conclusion of the negotiations, appropriate sensitivity tests/updates could be undertaken to update both costs and values to reflect movements in market conditions.
- 5.6 Following issuing my final FVA Report in **November 2022**, there were then subsequent discussions between the Appellant and the Authority, which led to Planning Officers to recommend to Planning Committee that the outline application should be approved with a minimum of 10% affordable housing.

- 5.7 Following the appeal for the non-determination of the planning application, the Appellant advised on the **8 March 2023** that they would be updating their Cost Plan and sales value analysis to inform their development viability appraisal analysis for this appeal. The Appellant's updated Cost Plan was provided to MGAC on the **28 March 2023**, and the Appellant's updated market research and sales value analysis was provided to me on the **29 March 2023**.
- 5.8 I have reviewed the Appellant's updated sales values analysis, and updated my market research of new build residential developments in Bicester. A review of the updated costs has been undertaken by Mr Ian Tarbet of MGAC. A copy of this Cost Plan is attached to this Proof of Evidence (but is discussed further in the Proof of Evidence of Mr Ian Tarbet).
- 5.9 My updated sales values were discussed with the Appellant on the **13 April 2023** and MGAC's updated Cost Plan was provided to the Appellant on the **26 April 2023**, in advance of a further call to discuss sales values on that day. The Appellant has now subsequently agreed with the MGAC's updated Cost Plan and my updated Sales Value assessment. Hence, both the sales values and costs are now agreed areas and a Statement of Common Ground on Viability that has been agreed between the Appellant and the Authority (**Core Document CD10.4**).
- 5.10 The only remaining area of difference between the parties regarding the inputs to the development viability appraisal is therefore now as follows:
- The extent of Section 106 contributions (and their phasing/timing) to be included in the viability appraisal.
- 5.11 At the time of writing this Proof of Evidence, the level of Section 106 contributions is subject to continued discussion between the Appellant and the Authority. For the purpose of updating the development viability analysis, I have assumed Section 106 contributions in line with the Authority's most recent request on **12 April 2023** at approximately **£22.86 million**. However, it is also recognised and agreed between the Appellant and the Authority in the Statement of Common Ground on Viability that the viability analysis may need to be updated to reflect ongoing discussions regarding the level of Section 106 contributions leading up to the Inquiry.

#### **Updated Viability Analysis**

- 5.12 My updated development viability analysis indicates that, whilst sales values have increased since my original assessment based upon **Q1 2022** values, construction costs have also increased significantly. In addition, the level of Section 106 contributions requested by the Authority (and assumed in the development viability appraisal) has also increased from approximately **£18.76 million** originally estimated by the Appellant, to approximately **£22.86 million**.

- 5.13 Consequently, my updated development viability appraisal analysis indicates that the viability gap has increased from **£6.35 million** in my **November 2022** FVA (based upon **Q1 2022** costs and values) to approximately **£20.05 million**. This assumes a policy compliant scheme of 30% affordable housing, and a ‘TZC’ scheme as interpreted by the Appellant (as costed by MGAC).
- 5.14 I have also undertaken a sensitivity test of a reduced level of affordable housing provision of 10% (assuming a ‘True’ Zero Carbon (TZC) scheme as interpreted by the Appellant; a tenure split of approximately 70% Affordable Rented and 30% Shared Ownership; along with the assumed Section 106 contributions of approximately **£22.86 million**), to test the impact on development viability. This is in light of the Planning Officer’s Planning Committee Reports which indicated that a minimum of 10% affordable housing could be provided, based upon discussions with the Appellant.
- 5.15 This sensitivity test indicates that, whilst the reduced level of affordable housing provision of 10% improves development viability, the Residual Land Value (RLV) produced does not exceed the Benchmark Land Value (BLV). This assumes that the Section 106 contributions remain at approximately **£22.86 million**, and a TZC scheme as interpreted by the Appellant.
- 5.16 The Appellant has also proposed a review mechanism in the Section 106 whereby development viability is reviewed in line with the principles set out in the Mayor of London’s Supplemental Planning Guidance (SPG) **August 2017**, and the need for a viability review mechanism is now agreed between the Appellant and the Authority as set out in the Statement of Common Ground on Viability (**Core Document CD 10.4**).
- 5.17 The inclusion of a viability review mechanism is welcomed, particularly given my reservations regarding the Appellant’s residential development mix and dwelling sizes which has been utilised to inform the viability testing undertaken by both parties (and that this could be enhanced to improve development viability through the detailed design process).
- 5.18 The inclusion of a viability review mechanism within the Section 106 Agreement is also in line with the requirements of the Planning Practice Guidance (PPG) on viability, which states at **Paragraph: 009 Reference ID: 10-009-20190509** that:
- ‘Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities’ ability to seek compliance with relevant policies over the lifetime of the project.’*
- 5.19 Whilst the detailed provisions of the Review Mechanism in the Section 106 are yet to be drafted and agreed at the time of writing this Proof of Evidence, the approach of following the principles set out in the Mayor of London’s SPG is agreed between the parties (as confirmed in the agreed Statement of Common Ground on Viability – reference **Core Document CD10.4**).



## 6. Statement of Truth and Declaration

### Statement of Truth

- 6.1 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true.
- 6.2 The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
- 6.3 I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

### Declaration

- 6.4 I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 6.5 I confirm that I understand and have complied with my duty to the Inspector as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 6.6 I confirm that I am not instructed under any conditional or other success-based fee arrangement.
- 6.7 I confirm that I have no conflicts of interest.
- 6.8 I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Planning Inspectorate.
- 6.9 I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS Practice Statement ‘Surveyors acting as expert witnesses’.



**Nigel Simkin MRICS MRTPI**  
**RICS Registered Valuer**  
**6 May 2023**

## Enquiries

Nigel Simkin MRICS MRTPI

M: 07854 836811

T: 0121 740 0591

E: [nigel.simkin@hld-uk.com](mailto:nigel.simkin@hld-uk.com)

