NWBA - CLOSING STATEMENT – up to 1 hour max. duration.

**1 / INTRODUCTION:**

In the Opening Statement, the NWBA stated our reasons for requesting to be a Rule 6 party in this planning inquiry: because we submit that the proposed development of 530 homes, as it currently stands, would have a significantly adverse effect on the future of the NW Bicester Ecotown,ramifications far beyond it, and a severe impact on the surrounding area caused by traffic congestion.

We have continued to work faithfully, constructively and diligently, throughout this Inquiry, as we have done since the start of the Firethorn application process.

The purpose of our involvement has been to highlight the critical issues which have remained unanswered from the beginning of the planning process to the end and remain unanswered by the Appellant’s own evidence in this appeal.

We submit these issues remain crucial to the success of the proposed development and the whole Ecotown vision, upon which the NW Bicester local plan was based.

The failings of the present application remain, and the critical elements which remain unaddressed either properly or at all are:

a) the proposed designs for Highways and Access,

b) Degradation of Ecotown requirements and principles; and

c) Future Impacts.

**2 / HIGHWAYS AND ACCESS:**

Starting with the most significant topic of Highways and Access. We have focused on 2 aspects of the Appellant’s designs for modifications that arise from the plans to add 207 new homes onto the end of the pre-existing road Charlotte Avenue.

*2.1 TRAFFIC IMPACT ASSESSMENT:*

**Regarding the first of these,** repeated errors occur in both application & appeal drawings, given in evidence but not rebutted. It is submitted that this appeal can draw conclusions regarding the severe impacts caused by traffic congestion & pollution caused by the plans as they remain on this appeal, and the increased risk to the safety of cyclists and pedestrians, especially pupils travelling to Gagle Brook Primary School.

We submitted on several occasions up to and including the 9th of March planning committee meeting that there were design errors with the proposed modifications to the Phase 1 bridge, i.e. that they were flawed. We included these in our evidence. The Appellant did not rebut this part of Mr Mason’s evidence, but left it until the Inquiry to discuss.

We submit that these design errors have now been shown to be flawed: Mr Kirby has admitted 3.5 metres not enough – and stated only that the 2.0 metres minimum, which would render the scheme definitely not viable, was up to OCC Highways – who have never acknowledged the issue, despite it being raised prior to this Inquiry.

In fact, there is a highly important theme here. Throughout the cross-examinations this morning, Mr Kirby relied again and again on “but OCC Highways must have considered this, or they wouldn’t have removed their Objections”.

I noted in my opening statement that I am currently very focussed in my work on computational epistemology, which is the modelling of knowledge provenance, and data accuracy.

Benjamin Franklin said: “To err is human, to persist devilish, to repent divine.”

The Appellant has continued to rely on the removal of objections by OCC Highways, despite many points – in fact a LIST OF THINGS MISSED - BY OCC HIGHWAYS, showing that like any human, they made errors in their appraisal of the proposed highways and access designs:

In their first Objection, July 2021, they asked Mr Kirby to respond to all ETPG and BBUG points raised in our initial objections; yet most were never answered, and others answered inadequately, such that we are still asking them this week. This wholly incomplete response was not resolved, and forgotten.

They also challenged the arbitrary assignment of pedestrians re the new design drawing 029, in CD2.3.7, 4.3.8: Mr Turner noted in his evidence: that in their second Objection, CD5.2, page 5, they noted that “no proposals had been brought forward” to resolve this. This was then forgotten about.

They accepted the proposal including the tree removal, and refused to change position despite it being pointed out that this went against their own tree policy.

They missed the error for the Phase 1 bridge; they missed the requirement that LTN 1/20 should be complied with; they missed that the bridge was noted as a key constraint by Mr Kirby; but also that the bridge is only part of the much longer road requiring compliance, as noted by Mr Turner.

They have, according to Mr Kirby’s assumption, determined that at a 2016 baseline transport model, predicting the future traffic levels, could have been validated for that area of the model’s traffic predictions - for a scheme which had not yet had a single home occupied…is impossible.

Mr Kirby stated that OCC told him to use the BTM only. We have seen nothing in evidence to confirm this. In any case, this ignores their own policies, in the Oxfordshire Local Transport and Connectivity Plan – all the text surrounding policies 45 and 46 confirms that models need validation against real survey data.

We submit that these errors, and more, are completely human. We leave it to your judgement, Madam Inspector, regarding each individual point, and as to how or whether Mr Kirby’s assumptions may or may not be in evidence anywhere.

Mr Kirby admitted that he and Mr Moss never discussed the remainder of Charlotte Avenue – indeed, it appears from Mr Kirby’s response in cross-examination that both he and Mr Moss had not read Reason for Referral 2 correctly, where it clearly applies to all of Charlotte Avenue, as was stated on the 9th of March 2023 at the planning committee meeting.

Mr Kirby admitted that the Phase 1 bridge design would make it less safe for cyclists and pedestrians – with no proposed mitigations, only a contribution to future upgrades. That he acknowledged it would not be LTN1/20 compliant: not suitable, not coherent, not direct, not attractive to cyclists or pedestrians, and that any solution he can think of would be too expensive to be feasible.

Yet Mr Kirby stated that he is confident OCC judged the contribution amount correctly for the scheme he cannot think of, and which we have no evidence OCC have thought of, which would be needed to bring the whole of Charlotte Avenue up to LTN1/20 standards. Yet, in her address to you last week, Madam Inspector, Ms White of OCC Highways stated that the Appellant had provided the schemes for Areas 1 and 2 – the narrowings and the bridge – and proposed the costs for them: and she had accepted the amounts based on those schemes proposed at the time.

OCC Highways clearly do not have some higher grand scheme, as Mr Kirby suggests, which they have been comparing against, which would therefore enable the length of Charlotte Avenue to be modified to support the extra 207 homes and meet national and local policy requirements: *NPPF 110b,d,*

Ms White has not had chance to review things in light of the admissions that the scheme does not meet these policies, and to speak to the Inquiry regarding this.

Mr Kirby claims there is no onus on him to demonstrate a viable solution here; yet he has spent significant time to try to address the issue north of the school; but not east of it – and we submit that both OCC Highways and Mr Moss have not considered the latter issues.

Mr Kirby’s set of assumptions and decisions here do not seem consistent or supportable. He stated: “I must have confidence in OCC Highways” – admitting he did not know how it was possible.

Mr Turner submitted that OCC Highways decision regarding how to spend the money has to come AFTER this Appeal decision. With no proof in evidence of a possible solution. Yet, in the evidence of Mr Mason yesterday, he noted that OCC Highways might not be able to spend the money from the S106 contribution in the future – if an affordable scheme, including this £100,000 contribution the Appellant has proposed, turns out to be impossible.

The facts are simple for all of these points; and thus the highways and access design submitted to the Planning Committee WAS INDEED unsustainable, a position which has been aggravated by neither the Appellant nor OCC Highways acknowledging the issue exists, let alone seeking to mitigate the problem.

In particular, the evidence of Mr Mason and the Gagle Brook School statement have shown that the Appellant’s arguments are completely flawed regarding the future school demographic in terms of pupil / residence locations and proportion of trips by vehicle reducing not to hopefully 20-25%, but to an unsubstantiated significantly lower proportion. We have shown in our evidence that this is unrealistic; we leave this for you to review and come to your conclusions, Madam Inspector.

This appeal, and you yourself Madam Inspector, have been able to witness the current situation at Gagle Brook Primary School, at a morning peak hour, and the impact that currently has been 8.15am and 8.45am – i.e. within the time period where the queue to the B4100-A4095 ring road junction extends beyond Charlotte Avenue.

Now consider that the school is only just over 50% capacity, and the demographic has already shifted a long way, and won’t shift much further. And consider that the Appellant’s targets would require 6 buses an hour at this peak time of day to even become remotely achievable.

The period for which Charlotte Avenue will comprise of one-way flow with several passing points will be a significant proportion of the peak hour. All of the Appellant’s simulations – including the one remaining relevant to the proposals, with 50% travel by car – assume two-way flow for the entire length of Charlotte Avenue, and as Mr Mason noted, build on a 2016 baseline with negative flows.

The Appellant has therefore not done a single simulation which robustly and reliably assesses the impact of these plans. They cannot therefore say with any degree of confidence that the Degree of Saturation values at the B4100-Charlotte Avenue junction would be within the acceptable limits, because they have simply not taken all these different factors into account and DEMONSTRATED it.

Re the negative flow numbers: Mr Kirby has acknowledged that these were not discussed with OCC Highways. As we pointed these out prior to the Inquiry, they could have been addressed by him at any time, in evidence, rebuttal to Mr Mason even. Yet he chose to wait until his Evidence in Chief this morning, when he submitted that they are an anomaly of subtracting the future Firethorn development, in order to give us the 2016 Baseline only including the Exemplar Phase.

As a data modelling engineer, sitting on the National Data Strategy, this makes no sense. The 2016 baseline shows flows to Elmsbrook Phase 1 homes which had not yet been built and occupied. Removing his own future homes’ traffic, he would have to take the model in a reverse-time direction. This is not the way future prediction models work. We see no reason to change the conclusions of Mr Mason, that this anomaly – and that noted for the Braeburn Avenue trips vs homes proportionality anomaly, and several more pointed out in our first Objection of June 2021 – that the reliability and robustness of the model results presented cannot be trusted.

We submit also, regarding the wide impacts: IF the Appellant is wrong about the severity of the B4100 junction with Charlotte Avenue, then there is also no proof regarding wider impacts, e.g. A4095 junction.

In conclusion, therefore, the Appellant cannot demonstrate that the highways impact would be *“less than severe*”. Mr Mason has stated that it in fact indicates the contrary. We would submit that at best it is merely cognitively biased guesswork – and if that were acceptable as proof to meet NPPF Paragraph 111, then no applicant would ever need to bother with any form traffic simulations or modelling !

This concludes our analysis of reason for referral 3, which we submit remains well founded.

**[NPPF P111]**

*2.2 SAFETY AND POLLUTION:*

***Turning to the submissions in relation to the safety and pollution aspects*** of the access choice, and proposed highways modifications, with particular regard to cyclists and pedestrians.

Clearly, at the 8-9am peak hour, this affects all pupils arriving by foot, bikes and scooters to Gagle Brook Primary School, and all cyclists leaving Elmsbrook to commute elsewhere, or coming from elsewhere to work at the Eco Business Centre.

Mr Turner and Mr Mason both provided evidence regarding the applicability of LTN1/20, the wording of which goes in direct contrast to what the Appellant had stated. By adding 207 homes to Charlotte Avenue, it is required to make it LTN1/20 compliant. Yet there is no submitted design achieving this.

Due to the significant increase in traffic levels which the proposed additional 207 homes would create – and the fact that there are other solutions – we submit that the following submission remains accurate: that the addition of these extra proposed homes is not mitigated by the proposed changes to Charlotte Avenue, and that overall, the health and safety risk to cyclists, pedestrians and very young pupils WILL BE significantly increased by the proposed scheme. This goes against NPPF paragraphs 106 d, and 110 b, c and d.

**[NPPF P106, P110]**

Furthermore, because this by definition is a road traffic scheme to increase capacity for cars, it is going completely against the hierarchy of NPPF paragraph 112 (a), and O-LTCP policy 1, i.e. that pedestrians and cyclists are prioritised over cars. As Mr Turner noted, it also goes against NPPF paragraph 112 (c) regarding minimising scope for conflict between cars, cyclists, pedestrians.

**[NPPF P112] [O-LTCP policy 1]**

***Turning to the second aspect we have focussed on,*** and the further errors in the application and appeal drawings in evidence but not rebutted, regarding an alternative access solution which the Appellant could use instead - which would very likely remove all of the Highways and Access issues.

This is Access E, which the Appellant had claimed since spring 2021 was ‘not allowed’, which then became a claim that it was ‘not feasible’. In our evidence, we have shown that the visibility play and land ownership arguments made by the Appellant are both incorrect, and that with overdue hedge trimming, visibility splays of more than 120 metres in both directions are possible from Access E, meaning that it could become a permanent access for the Eastern Parcel. Drawings 075/76/77 RevA, from the 30th of March 2023, are not correct. There is an entirely viable and feasible alternative to putting 207 homes’ worth of traffic along Charlotte Avenue.

In our evidence and following cross-examination, this appeal heard evidence of the potentially severe and harmful of traffic congestion: its effects upon: i) journey delays ii) pollution and iii) the effect on emergency vehicle access, caused by an access solution with much longer distances between the external main road to the development – the B4100 – and any house on the development.

Since this is supposed to be an Ecotown and adhere to Ecotown planning principles, it is unthinkable that an unproven and very probably unviable solution (Charlotte Avenue) could be chosen over a viable solution which would have such dramatically reduced pollution creation, and risk to life and limb.

There is also policy guidance which stipulates this. The OCC Highways stated reason for not insisting on exploration of other options by the Appellant has to date been: that they can only assess what the Appellant proposes, and nothing else.

At the planning committee on the 9th of March 2023, we discussed Oxfordshire’s Local Transport and Connectivity Plan, Policy 36, and we would like to draw your attention to it again here, Madam Inspector, as explaining why OCC Highways were mistaken in their response: because this policy also infers an onus on *them* to inform developers of this clause, if a road capacity scheme is proposed such as for Charlotte Avenue. Unfortunately, they did not do so, and the Appellant did not comply with it either.

**[O-LTCP policy 36]**

We submit that this policy cannot and should not have been simply ignored, and that it compliments the logic of other policies regarding pollution reduction and indeed residential development design to minimise the distance and journey times to and from the main roads outside of this proposed development; optimising the latter in turn reduces pollution and safety risks.

We submit that any doubts regarding the impact on safety for children should be dispelled in particular by statements made by the Head of School, Principal and Chair of Governors for Gagle Brook Primary School. The following quotes, from our evidence ET-9, speak to this absolutely:

*“Every morning, before and after school, we feel like we need to be out there on the roads, monitoring it – but we need to be inside the school, for the children.”*

*“How is the significant increase in traffic coming passed the school supposed to encourage people, especially our children, to cycle or walk to school? – it will “feel” less safe, and parents fearing for their children’s safety will feel like they have to drive – the opposite to what we want to encourage.”*

*“How are emergency vehicles going to reach us quickly, and without more chaos and risks? - when the traffic from so many cars is flowing both ways on Charlotte Avenue, not just the school/business centre, but also people leaving by cars to go to work, school, etc.  (The proposed application increases traffic from beyond the school by 5 times!!!)”*

*“We are hugely concerned about the risks of accidents and causing issues for residents that it distracts us from the events themselves: we should be able to have such events for the children and families in school, and shouldn’t have to worry: we know this is exactly the same worry for the Eco Business Centre.”*

*“Is it really going to take for something horrific to happen, before someone actually does something?  Local councillors, planning and highways have all told us they understand how serious the problem is – for the past 4 years – yet nothing is being done – and the new development proposals will make things MUCH worse – rather than helping to solve things.”*

*“Keeping our Pupils (and their families) safe is THE MAIN THING.  These are young people’s lives, in a brand new, growing community.”*

We note that Ms Leary confirmed during our cross-examination of her, that the Appellant has not ***"worked with"*** Gagle Brook Primary School, regarding critical concerns and highways/H&S issues; in fact, these have simply been ignored. There has been no further contact between the Appellant and the School. This goes against NPPF Policy 95 regarding the need to “work with” the school, and NPPF policy 104 regarding ignoring the critical issues.

**[NPPF P95, P104]**

Finally, we have also shown how extrapolation from survey and monitoring data can and should act *in combination* with simulations, to verify accuracy, as intended by the surrounding explanation and wording of Oxfordshire’s Local Transport and Connectivity Plan, Policies 45 and 46b.

**[O-LTCP policies 45 and 46b]**

*2.3 HIGHWAYS AND ACCESS CONCLUSIONS:*

In summary, we submit that, from our original list of 6 NPPF policies being contravened by the proposed highways and access designs, only 1 of them has been dealt with by the Appellant’s case, and this thanks to the LPA’s consultant Mr Moss for pointing out that a solution for the narrowings to the north of Gagle Brook School IS possible. The remaining list i.e. policies 104, 106 d, 110 b, c and d, 111 and 112 have simply not been addressed adequately or at all by the Appellant either during the planning process or during this Appeal, nor has it been addressed by the evidence of Mr Moss.

We also note that the evidence of Mr Moss, upon which the LPA removed their reasons for refusal nos. 2 and 3, ignored several critical parts of the proposed designs, plus never sought to address the evidence of Mr Mason and ETPG.

We submit that, from our original list of 11 other national and 12 local policies, only 2 and 3 of these respectively have been removed, again thanks to Mr Moss for saving the trees, and the permeability issue being resolved by A2’s Deed of Easement, pointed out by Mr Fell. However, the other 9 national and 9 local policies have not been adequately addressed. These also cover safety, and errors in the reading of policies.

In our Opening Statement, we submitted that a set of national and local policies dictate that there is a much better access option, which should be used instead, that we would conclude that Reasons for Referral numbers 2 and 3 are well founded, and that for these reasons alone, it would be necessary for this Appeal to be refused.

Madam Inspector, you have heard all the evidence on this. The conclusions of Mr Mason and submissions and evidence of myself, that Reasons for Referral numbers 2 and 3 are indeed well founded, have not been changed at all following this week’s Highways and Access sessions.

The impact severity and safety NPPF policies weigh very significantly, we would submit to cause outright refusal; but in any case, the combination of different factors should lead to the same end. Regarding also the alternative access solution which Oxfordshire’s Local Transport and Connectivity Plan Policy 36 directs us to need to consider, and in comparison, the alternative option provides reduction in contravention of NPPF plus other national and local policies – by increasing safety and reducing congestion and pollution issues. This is why we have continued to submit that the access designs must be changed, to this much better solution.

This better solution is Access E. If the sole issue is a drainage ditch – which Mr Mason has noted predates the 2001 Home Farm access being consented – then there is a simple solution: pay for modification of this ditch drainage solution, and replace it with a simple modern solution which enables Access E to be made permanent – as Ms White of OCC Highways stated to me in September 2021, and I related on to Mr Kirby, the emails of which appear in evidence document CD16.29.

**3 / DEGRADATION OF ECOTOWN REQUIREMENTS:**

Regarding degradation of Ecotown requirement and principles; we start by noting that our Opening Statement was written BEFORE we had written confirmation of the 11th hour promise by the Appellant to build to Zero Carbon, confirmed by the hybrid S106 and planning conditions.

*3.1 / ZERO CARBON AND VIABILITY:*

Firstly, in relation to the Viability and Zero Carbon requirements and building costs. We submit that, due to the way the Appellant has responded on these issues, they should be considered together.

With respect to Viability, we submit that the Appellant has never properly answered some of our critical points regarding disagreement. The answer of “*we used the standard method*” should more correctly be stated as “w*e used the standard method for a non-Ecotown development.”*

We were unable, late in the day, to introduce an expert witness on viability (or a few other topics, because we did not know we might need to until the day before the Inquiry started) - which in itself speaks volumes about how the Appellant has approached the planning process, and has failed to provide proper thought-through plans which have been properly consulted upon, rather than introducing new untested proposals as late as the Appeal hearings.

However, we submit that if the “standard method” included aspects such as 40% green space guaranteed, all the eco features that go towards lower bills etc, then the Appellant’s experts would simply have stated this – either in their evidence, in any rebuttal of M. Toutain’s evidence, or verbally last Tuesday when these specific points were discussed. They did not do so.

Turning next to Zero Carbon requirements, we are very grateful to Mr Webster and colleagues at CDC for their work in persuading the Appellant to change their stated position from just 3 weeks earlier. We note that prior to this 11th hour progress, the Appellant’s plan involved 31% of total Co2 per annum, in one single carbon balance provided in evidence, to be done by offsetting. Prior to the Appeal evidence, we had no idea at all how much offsetting might be proposed.

Even if Policy ESD2 were to be taken as cutting across the Policy Bicester 1 Ecotown-specific wording regarding the definition of ZC, the Appellant’s earlier proposals would in any case have provided a solution to a lower standard than as set by the Exemplar scheme – and this is not allowed under the wording of the NWBSPD, which as part of Policy Bicester, is accorded the highest importance weighting, in the views of both the LPA and NWBA.

We are also sincerely grateful to the Appellant, for agreeing to make the wording of the hybrid conditions for Zero Carbon equivalent to that for the Exemplar scheme, such that this is very clearly enforceable by the LPA. This gives us much more confidence, in the case of consent being given, that if or when Crest Nicholson and consultants do the Detailed Design work, there is a greater chance that the Ecotown will be able to continue to act as our required “beacon” to hopefully pull the entire UK construction industry towards Net Zero 2050, rather than continuing to pull away from it.

However: unfortunately, when consideration is given to the Zero Carbon strategy in combination with the Viability analysis, there is one key concern which remains unanswered by the Appellant.

The Appellant’s Outline Energy Statement effectively states: ‘we don’t know what technologies we’re going to use, here’s a list of them as they are in 2021’. The Appellant’s evidence and witness responses basically said: ‘we have to do the rest at Detailed Design, because it changes so fast’.

We made the point, during the roundtable, regarding the 2 years elapsed since the Energy Statement analysis was done – and that it has not been updated. There are new technologies it doesn’t mention or consider; and if the Detailed Design is to be done now, ready for an early 2024 start to the build, there’s not a lot to “build on” here. The Appellant has confirmed they already have a sale agreed to another developer; that developer will start from scratch, due to the lack of up-to-date assessment in the strategy; rendering it almost pointless, for one thing…

But most crucially: if the new developer is starting from scratch; and the Appellant has admitted they don’t know what technology would be used…this begs the question: how have they arrived at a cost estimate for the “eco” aspects of the build costs? And how can this appeal be sure they are reasonable estimates, since…the people that wrote them admit they don’t know what they’re putting in?

The only source of knowledge which remains for the appeal here, is the evidence of Mr Sheldon, of BioRegional, submitted by the LPA on the 9th of May [2023]. Madam Inspector, this is the evidence we would urge that you read carefully, when considering whether the “case for the accuracy of the build costs” is actually closed – or still open, regarding the “eco” aspects. Comparing the costs Mr Sheldon notes in the latter part of his evidence, even if a much smaller difference were subtracted from the build costs shown in the final Viability update, received during this Inquiry, we submit that it is trivial maths to show that the viability review mechanism is in fact not needed.

*3.2 WATER RECYCLING/REDUCTION:*

We are also grateful to the Appellant for including the Rainwater Harvesting, which provides some vital water recycling and thus reduction, needed particularly because Bicester is an area of serious water stress. We hope that no future “value engineering” at Detailed Design would remove this.

We submit that there is unfortunately still the potential for this to occur, however. This is because the wording of the condition regarding water usage targets [document IQ10, Condition #38] uses the wider Cherwell District target of 110l/p/d, NOT the Ecotown standard– of 80l/p/d, as is stated in clause 4.235 of the NWBSPD.

We continue to disagree with the Appellant that this somehow can’t be applied to their development phase, for 3 reasons:

Firstly, the clause wording point the Appellant has made regarding the WCS document is irrelevant: the target is still set as 80l/p/d by the SPD, and this IS a relevant development plan component.

Secondly, this clause is part of the Ecotown Masterplan – there is no logical reason it would apply to one phase and not to all others.

Thirdly, this lower target was used and achieved by the Exemplar phase design stages – and as the SPD also states that subsequent phases have to ***“meet this or better it***” with respect to the Masterplan and Exemplar targets, then this applies to all future ecotown phases.

We therefore ask that the Inspector would consider the impact of this condition not meeting the development plan; and the future impact of not changing the target specified here to 80l/p/d.

*3.3 OTHER PLANNING AND POLICY ISSUES:*

During the cross-examination of the Appellant’s witness on Planning and Policy issues, Ms Leary, it was confirmed from the Appellant’s side that, between the first round of consultations – which it is submitted amounted to little more than a PR campaign – in 2021, up until the very late stages of this appeal, the Appellant has made no attempts to respond to or work with not just Gagle Brook Primary School, as discussed earlier, but also the Elmsbrook Community Organisation, Eco Business Centre, ETPG and BBUG.

The Appellant has systematically failed to work with the local community regarding any of the issues – and simply 'doubled down' on their position, via more documents. This goes against NPPF paragraph 132, and as noted earlier, it goes against other NPPF and local policies regarding the school and the traffic impact issues.

**[NPPF P132]**

Residents specifically objected about the proposed building heights opposite them, in excess of the maximum 12 metres height which the Exemplar Phase kept to. Under questioning, Ms Leary identified that the Spine Road is in fact not part of the Strategic Route through the Ecotown – as her proof of evidence had actually stated.

Although Mr Simons, in his re-examination, highlighted the word “Generally…” at the start of the clause in question, namely the NW Bicester SPD [CD4.5], paragraph 5.12. We submit however that careful reading of this clause indicates that the “Generally” in the first sentence connects to the “alternatives allowed” listed in the second sentence: it does not create any wider scope than this. The second sentence limits anything higher than 12 metres to *“the local centres and along the strategic route through the site” –* neither if which apply to the area of the site which the Appellant has marked out as up to 14 metres height.

While this is a relatively small point, it is one example of many smaller points, listed in our evidence XL2 [CD16.14] where the Appellant is ignoring other elements of the NWBSPD; this is simply one example of many other areas where the Appellant refuses to adhere to NWBPD and shows that the opposition to these plans and the errors within them goes beyond simply being about the issues of highways safety and ecotown clauses.

Finally, there remains the question of the fairness and suitability of the S106 bus provision in terms of funding. We have no issue with the methodology applied by OCC Highways to calculate this – namely by designing a future route also including Hawkwell Village, and then scaling “per home” in the totality, accordingly. However, our concern is two-fold here.

Firstly, due to the strategic road link funding being cut, it is highly uncertain whether the Hawkwell Village development can be started until this road link is completed; thus there is significant uncertainty regarding this wider route existing anytime soon. There is therefore a significant risk: that the Appellant’s development is built soon, but Hawkwell Village is not; the bus contribution from the S106 as currently proposed or drafted in document IQ4 would be tiny compared to the Hawkwell Village contribution – 3,100 homes for the latter, vs 530 for the former. In that scenario, the new bus route becomes the E1 route again, also catering for the Appellant’s proposed 530 homes – but the funding would only last perhaps 2 years, and then the OCC pot runs out again.

Secondly, there remains the question of fairness, per phase. What if the phase after Hawkwell Village then needs to support the entire proposed southern bus loop for the Ecotown, and ends up paying much more again, even 2.5 times higher, as the Exemplar phase developer has?

*3.4 HERITAGE AND ARCHAEOLOGY:*

We heard from Rev’d Peter Wright, on Day 1 of this Inquiry. We’re very pleased to see that the promised archaeological excavation clause(s) and the S106 contribution to the crossing are included in to the conditions.

However, we noted during discussions that the crossing does not provide a permanent solution without the previously promised car park. The Church would not be asking for such a car park if it was not necessary towards their future survival – and this is a Church which has seen significant growth in numbers in recent years; and thus the requirement to have a car park for events on days other than Sundays – the only day they are allowed to use the Home Farm ‘pebble’ car park and access drive for parking – such as for funerals on week days. The continued growth of such things is what will enable the church to continue to thrive in the future. Yet, the Appellant has ignored the previous promises, and would not even consider it when we raised it.

We also remain concerned that the amount of green buffer has been eroded and eroded – from 2014’s masterplan, to the 2016 SPD masterplan layout update, to the 75-home proposal of 2018, to the 138-home proposal of present. And this is part of a future impact issue discussed at length in our evidence ET-5, CD16.9, which we hope you will also review and consider in your deliberations, Madam Inspector. We’ve referred to this concept as…

*3.5 MASTERPLAN CREEP:*

While Ms Leary mentions it in a list in her Proof of Evidence, she does not then address it; and there has been no rebuttal at all to it – we suspect because it is does apply specifically to the critical points in this Appeal – but it does, regarding the future impacts, were this appeal to be allowed. In fact, we have seen examples of ‘masterplan creep’ occurring during the evidence hearings. For example:

Mr Simons highlighted SPD paragraph 4.105, re the Masterplan layout being designed to maximise containment – a critical part of the policies aiming to reduce car use. But, the current proposed development would seek to modify this layout. So, by the emphasis Mr Simons used, it seeks to modify a critical part of the policies aiming to reduce car use – which we all agree is very important.

Other examples are included within the approach the Appellant has used, for example: reducing the level of combined option analysis within the Zero Carbon strategy; and increasing the water usage target from 80 to 110 litres per person per day. Each little fought case here is a further weakening of the specifications, not just the intentions, of the NW Bicester Ecotown Masterplan.

*3.6 CONSTRUCTION FEASIBILITY:*

Mr Kirby confirmed that the temporary TRO would only last 18 months, including all pre-works, advanced infrastructure, drainage etc. At 138 homes in 18 months, this is several times to build out rate of Elmsbrook, averaging 36 homes per year, more than half of which predates any of the construction industry slow-down and materials issues which continue in 2023. We submit that the likelihood of the 138 homes being finished within the TRO timescale are negligible. And Mr Kirby has noted that a permanent one would be risky.

*3.7 ECOTOWN DEGRADATION SUMMARY:*

In conclusion, there has been much progress, late in the day, regarding some significant areas of the proposals which looked to degrade the ecotown requirements and principles.

Originally, regarding energy supply, viability and affordable housing, we had noted NPPF paragraphs 157, 58 and 63 respectively, as potentially being contravened.

We submit our concerns regarding the lack of information re the energy supply solution going forwards to Detailed Design: they would basically be starting from scratch. Therefore, compliance with the local plan wording, in particular as noted by Mr Sheldon’s evidence, re “demonstrating” a Zero Carbon strategy – not just promising one and listing some technologies – is critical; this we can only leave to you, Madam Inspector, to determine the impact on NPPF paragraph 157.

Meanwhile, Viability and Affordable Housing go hand in hand here: the review mechanism design is clearly a good one, IF it is needed. It sets a precedent, and doing so goes against the wishes of the CDC Planning Committee, and of the Housing Portfolio Committee also. It would be a fair precedent, analysed per development, for each that uses a Viability assessment in their application process. But the act of setting this precedent NOW risks future overall loss of Affordable Housing, rather than overall gain, and in a scenario where the need for it has not, we submit, been adequately proven.

**4 / FUTURE IMPACTS AND OVERALL CONCLUSIONS:**

*4.1 NET ZERO 2050:*

This risk to the LPA’s affordable housing supply is just one Future Impact.

We are very pleased that the Appellant has now promised, and enshrined in clauses, meeting Zero Carbon without planning resort to vast amounts offsetting. This saves the need for a long discourse regarding how offsetting doesn’t really work; about why NW Bicester HAS to keep pushing in the direction of Net Zero 2050, rather than slightly away for it – that we would have *no hope at all* of meeting our legal obligations under the Climate Change Act 2008, and internationally connecting back to Article 4 of the Paris Agreement. [We had a lot of material prepared for this, but, in any case – you have all been spared a reminder of many reasons why Climate Change IS a Crisis.]

*4.2 LOCAL IMPACTS:*

Coming to more localised effects, we note that some of the public speakers, yesterday morning, described a wide range of ways in which the Appellant’s proposed Highways and Access strategy would have significant future impacts beyond the immediately obvious.

Ms Grear’s speech yesterday highlighted the sheer number of outdoor activities which the current Elmsbrook community engages in – and which we would want our neighbouring future phases of homes to join in too! – including Forest School sessions for all, Santa, walkaround carol concert, picnics, kids playing in the parks, and the Community Fridge: all these would be impacted by traffic increases, because people won’t feel as safe.

This was echoed by Ms Nolan, who noted that removing the safe crossing points and reducing pavement sizes affects pedestrians and the safety of kids going to the park to play – but they also act as a speed deterrent on a road that runs downhill straight to a tight bend in front of the school.

Mr Troop noted in his speech yesterday: that Charlotte Avenue would become a “clot” in the safe cycling network, preventing many from feeling safe coming in through the main entrance to this first part of the ecotown! He noted that in fact, as a Primary Route, Charlotte Avenue should have a segregated cycle lane: how this was missed in the design sign off, we don’t know. But it implies any capacity modification to Charlotte Avenue should seek to include this; but no solution has yet been proposed to do so.

Mr Torrent spoke on behalf of wheelchair and pram users, noting already the significant issues with school parking at roadsides, by dropped kerbs, and the increased traffic again affecting safety – as Mrs Bennett also noted, regarding learner cyclists especially children: to feel safe to cycle to school.

We also had many other points raised: by the Cherwell District bikeability Director, who stated: “I never thought I’d be asking: How can cyclists be safe WITHIN Elmsbrook?” – by an NHS nurse who travels by bike, noting that she needs to be able to access all estates safely; noting that if people feel less confident in cycling along Charlotte Avenue, where the increased traffic level from the proposed development would exacerbate this, people will default to travelling by car – the exact opposite of what we want to and need to encourage.

Finally, other speakers noted the success and community feel of the “active travel lifestyle” – we do have fun runs, running club, cycling club, outdoor gyms, etc. It was noted that Active Travel is encouraged when a person “doesn’t have to THINK about conflicts” – i.e. I want to exercise and go by bike, but am I going to be safe, maybe I should go by car…etc. And that there is an obesity epidemic, helped by Active Travel. But the proposed development makes the Active choice IMPOSSIBLE.

*4.3 THE REASONS FOR REFUSAL, OF THE 9TH OF MARCH 2023:*

In his opening statement, Mr Simons stated in point 9, regarding the Planning Committee’s reasons for refusal, that:

“…the intervening months have shown that was a bad decision taken for bad reasons. As the evidence to support the Appellant’s case at this inquiry has been produced, the Council’s resistance has fallen away.”

We submit that this is somewhat of a false narrative. For all the Highways and Access reasons we have discussed, and connected back to many outstanding NPPF and other national and local policy contraventions, it is clear, as Mr Mason stated, that the reasons for refusal numbers 2 and 3 were and remain well founded. They were therefore good decisions, taken for very good reasons.

Regarding Zero Carbon: we note that the Appellant did not change their position, or documentation, between spring 2021 and the start of the Appeal process. From the proof of evidence of Mr Riggall, we still had confirmation of their PLAN being for 31% CO2 per annum to be offset. Yet their position has now changed, via a planning condition worded as for the Exemplar Phase, to plan for 0% and use offsetting only as a last resort.

So the Council’s resistance did not “fall away” due to the Appellant’s evidence being produced. The Appellant, realising that building Zero carbon homes on an Ecotown, as per its own definition, is a good idea, moved *their* position. This is a good thing. But again, the committee’s decision to include this as a reason for refusal was a good one, taken for very good reasons: if the Appellant had not shifted their position, and the Appeal were allowed, we would no longer have an Ecotown. We do!

The Viability and Section 106 negotiations were both left as capable of being addressed, in the planning office’s minutes; our views on these have been shared, and the rest is in your hands, Ma’am.

*4.4 CONCLUSIONS:*

However, our conclusion is that the proposed development under Appeal, as proposed, is not in accordance with the development plan, because it contravenes too many national and local policies, especially regarding highway and access – and therefore it contravenes NPPF paragraphs 2 and 134.

We note that the Appellant has accepted the council’s position regarding the 5.4 year Housing Land Supply, leaving their evidence for further consideration.

Keeping with this position, coming to the planning balance, NPPF paragraph 11: we note that footnote 8 of 11(d) does not apply. We have already noted that too many policies are contravened, and so proposals are not in accord with the development plan, so 11 (c) does not apply either. Regarding the rest of paragraph 11, including 11 (d), there are, we submit, clear reasons for refusing the development proposed – these are adverse impacts: from NPPF paragraphs 104, 106, 110, 11, 112 in particular.

We submit that the most significant of these involve creating additional pollution, risk to life and limb due to emergency vehicle delays and traffic congestion, plus the safety of cyclists and pedestrians, especially young children. At the very least, ignoring these would significantly and demonstrably outweigh the benefits, i.e. of building a few hundred homes, in Bicester – the fastest growing town in Europe.

We conclude this section by considering other clauses which speak directly to whether this proposed development should be approved or refused.

LTN 1/20 [CD8.2.8], paragraph 14.3.12 states:

“Developments that do not adequately make provision for cycling in their transport proposals should not be approved. This may include some off-site improvements along existing highways that serve the development.”

We have already concluded that adequate provision, under LTN 1/20, has indeed not been provided by the Appellant’s submitted designs.

NWBSPD [CD4.5], paragraph ET20.2 from original PPS1, states:

“There should be a presumption in favour of the original; that is the first permitted masterplan. Any subsequent planning applications that would materially alter and negatively impact on the integrity of the original masterplan should be refused consent.”

We submit that the road capacity scheme for Charlotte Avenue *would* materially alter *and* negatively impact on the integrity of the original masterplan.

*4.5 FINAL THOUGHTS:*

I just want to finish by repeating a few brief quotes from the school statement [ET-9, IQ3], to provide a few succinct reminders emphasising the safety angle:

*“Every morning, before and after school, we feel like we need to be out there on the roads…”*

*“How are emergency vehicles going to reach us quickly, and without more chaos and risks?...”*

*“Is it really going to take for something horrific to happen, before someone actually does something?*

The head of school has said to me personally: we are so fearful every single school day.

Similarly, residents have spoken regarding their own fears of the impacts of increased traffic levels in critical parts of the existing Exemplar Phase.

These fears can be taken away, in fact all of the issues can be resolved to the best possible solution, greatly improved by a redesign using the proposed alternative solution, of a permanent Access E or sharing of the Home Farm access. But this requires amending the application, and refusal of this Appeal.

Madam Inspector, for all the above reasons, national and local policy-wise, and for safety aspects in particular, we ask that you consider our arguments, and refuse this Appeal.

**Thank you.**