



# Summary 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**

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## 1. Summary Proof of Evidence

### 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 specialise in providing planning and development viability advice, acting for both public and private sector clients throughout the United Kingdom. Further details regarding my qualifications and experience are included in **Section 1** of my Proof of Evidence.

### Scope of this Proof of Evidence

- 1.3 I was instructed by Cherwell District Council (CDC) 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. I have signed a Statement of Truth and Declaration at **Section 6** of my Proof of Evidence.

### Context and The Putative Reasons for Refusal

- 1.4 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**.
- 1.5 The description of development is as follows:

*‘Outline planning application for up to 530 residential dwellings (within Use Class C3), open space provision, access, drainage and all associated works and operations including but not limited to demolition, earthworks, and engineering operations, with the details of appearance, landscaping, layout and scale reserved for later determination’.*

### The Putative Reasons for Refusal

- 1.6 Following the Appellant’s appeal against the non-determination of the outline planning application, my Proof of Evidence focusses on **Putative Reasons for Refusal 1, 4 and 5**.
- 1.7 My Proof of Evidence therefore 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).

### **The Appeal Scheme**

1.8 The Appeal Scheme was submitted in outline only, with all matters reserved except for access.

1.9 Although I have raised some reservations regarding the residential dwelling mix assumed by the Appellant for viability testing, and the sizes of some of the dwellings assumed, I have continued to utilise the residential development mix and dwelling sizes proposed by the Appellant. 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).

1.10 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**

1.11 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’).

1.12 At **Paragraph 16.3** of their conclusions, Rapleys stated that their financial modelling demonstrated that it is the cost of building to FHS and then additionally to TZC that is challenging to deliver, and not the delivery of affordable housing.

1.13 The development viability appraisal in my **November 2022** FVA Report (**Core Document CD8.4.1**) 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).

- 1.14 I also considered how the viability gap might be reduced, by sensitivity testing a ‘Value Engineered’ (VE) scheme considered by the Authority’s Cost Consultants, MGAC, in consultation with CDC Officers. The VE scheme assumed that rainwater harvesting/greywater harvesting for each dwelling was removed from the scheme; that there was no requirement for lifts in the apartment buildings; and a fruit tree would not be required in the garden of each dwelling.
- 1.15 My sensitivity analysis suggested that removing these items from the Appellant’s assumed ‘TZC’ scheme would significantly increase the RLV and hence help to reduce the viability gap. I also undertook a range of other sensitivity testing in my **November 2022** FVA Report.

#### **Viability Evidence Exchanged During 2022**

- 1.16 Following providing my initial first draft viability appraisal findings in **March 2022** to the Authority and the Appellant, a significant amount of discussions, negotiations and an exchange of further evidence took place between **March** and **September 2022** between the Appellant and the Authority. This is summarised in **Section 4** of my **November 2022** FVA Report. This process narrowed down the areas of difference regarding the inputs to the appraisal between the Authority and the Appellant.

#### **Updated Viability Evidence 2023**

- 1.17 Following the Appellant’s appeal for the non-determination of the outline 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, Gardiner and Theobald (G&T). This updated information was provided on the **29 March 2023** and **28 March 2023** respectively.
- 1.18 I have reviewed the updated information provided on sales values to inform my Proof of Evidence, and the costs have been reviewed by Mr Ian Tarbet of MGAC, as detailed in **Section 3** of my Proof of Evidence and discussed further in the Proof of Evidence of Mr Ian Tarbet. The Appellant confirmed that they were in agreement with MGAC’s updated assessment of the 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 my Proof of Evidence, the only outstanding area of difference with the Appellant in relation to the inputs to the development viability appraisal is the level (and triggers/timing) of the Section 106 Contributions that should be assumed.

### **Outstanding Area of Difference**

- 1.19 The level and timing of Section 106 contributions were the subject of continued discussions between the Appellant and the Authority at the time of writing my Proof of Evidence. My understanding of the Authority’s assessment of the Section 106 contributions (as at **12 April 2023**) is summarised in **Section 3** of my Proof of Evidence.
- 1.20 A ‘working assumption’ for the Section 106 contributions to be included in the viability appraisal analysis has been agreed between the Appellant and the Authority in the Statement of Common Ground on Viability, which is in line with the Authority’s Section 106 contribution requests which total approximately **£22.86 million**. I understand that at the point of writing my Proof of Evidence, 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.
- 1.21 However, at the time of writing, it is recognised between the Appellant and the Authority in the agreed Statement of Common Ground on Viability that the ‘working assumption’ for Section 106 contributions in the viability appraisal may need to be updated leading up to the Inquiry, to ensure that it reflects the latest discussions regarding the extent and timing of Section 106 contributions between the Appellant and the Authority.

### **Updated Viability Analysis and Sensitivity Testing**

- 1.22 I have updated my viability testing to assess 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**.
- 1.23 To confirm, I have updated my development viability appraisal to reflect my updated sales values analysis for **Q2 2023**. I have also reflected the updated costs prepared by MGAC based on **Q2 2023** prices. Both of these updated inputs to the viability appraisal are now agreed between the Appellant and the Authority.
- 1.24 My updated development viability appraisal analysis demonstrates that for the Baseline assessment of the Appeal Scheme, a negative Residual Land Value (RLV) is produced of approximately **-£11.20 million**.
- 1.25 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). This has increased the viability gap by almost **£14 million** (i.e. from **£6.35 million** to **£20.05 million**). Whilst my assessment of sales

values has increased since my previous assessment as at **Q1 2022** sales values, the increase in sales values has been outweighed by significant cost increases in both the level of assumed Section 106 contributions and increases in construction costs over the period.

- 1.26 I have also undertaken a sensitivity test of the updated baseline appraisal assuming a reduced level of affordable housing of 10%, to assess the impact on viability. This is in light of the 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.
- 1.27 I have continued to assume the Appellant’s interpretation of a ‘TZC’ scheme along with the ‘working assumption’ for the Section 106 contributions, to inform this sensitivity test.
- 1.28 My sensitivity test demonstrates that whilst a reduction in affordable housing to approximately 10% provision improves development 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**.
- 1.29 Therefore, a reduced level of affordable housing of 10% still generates a viability gap based upon my updated development viability appraisal (and assuming that the Section 106 contributions remain at approximately **£22.86 million** and a ‘TZC’ scheme as interpreted by the Appellant).

#### **Review Mechanism**

- 1.30 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)’. Although at the time of writing my Proof of Evidence the provisions of the Review Mechanism in the Section 106 were not drafted, 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**.
- 1.31 A review of development viability is important and welcomed, in light of my reservations regarding the Appellant’s assumed development mix for viability testing. It will provide the opportunity for viability to be reviewed over the life of the development. The requirement for a review of development viability is also in line with the Planning Practice Guidance (PPG) which at **Paragraph: 009 Reference ID: 10-009-20190509** states that review mechanisms are not a tool to protect a return to the developer, but are to strengthen local authorities’ ability to seek compliance with relevant policies over the lifetime of the project’.

## Enquiries

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