RE: OS PARCEL 1570 LAND ADJOINING AND WEST OF CHILGROVE DRIVE AND ADJOINING AND NORTH OF CAMP ROAD, HEYFORD PARK

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. This is an appeal against the refusal of outline planning permission, against officer recommendation, for up to 230 dwellings, creation of new vehicular access from Camp Road and all associated works with all matters reserved apart from access ("the scheme").

2. The application was refused for two reasons. The second RfR related to the provision of appropriate infrastructure contributions and has fallen away with the agreement of a S106. At the start of the inquiry, the Council's extant substantive objection to the scheme is found in the first RfR and relates to the effect on landscape and local character, the effect on the RAF Upper Heyford Conservation Area ("the Conservation Area"), and the principle of development.

3. We say at the start of the inquiry, because in cross examination, Mr. Bateson conceded that:

   (a) The principle of development was acceptable; and
   (b) The effect on landscape and local character was acceptable and policy compliant.

On the evidence, the issue between the principal parties should, therefore, simply relate to the effect of the proposal on the Conservation Area.

4. Notwithstanding the Council's concessions in evidence, these Closing Submissions are structured around the Inspector's Main Issues:

   i. Whether the appeal site forms a suitable location for development having regard to national and local planning policies.

   ii. The effect of the proposal on the landscape and local character, with particular regard to the form and character of Heyford Park.

   iii. The effect of the proposed development on heritage assets.

   iv. Whether the development makes appropriate provision for infrastructure and transport mitigation to ensure a sustainable development and make the development acceptable in planning terms.

v. Whether a five-year supply of deliverable housing land can be demonstrated.

vi. The overall planning balance.

Whether the appeal site forms a suitable location for development having regard to national and local planning policies.

5. It is accepted that the proposal is an unallocated site falling outwith the PV5 allocation, and that is within the open countryside in policy terms. Saved policy H18 of the 1996 Plan is a policy that seeks to resist all development in the open countryside. It is, and always has been, accepted that there is conflict with this policy. However, it does not follow that the proposal is necessarily unacceptable, as Mr. Hutchison for the R6 party ("DH") at one point appeared to indicate[1]. Consideration needs to be given to the *weight* that should be accorded to the policy and policy conflict, and the planning balance applied (to which we return below).

6. Here, no amount of dancing around the wording of the policies engaged can deflect from a fundamental point: Mr. Bateson for the LPA ("AB") has expressly confirmed in paragraph 1.3 of his rebuttal proof of evidence that *"the LPA does not oppose this development proposal on spatial strategy grounds".* Mr. Bateson confirmed in xx that this was a judgment reached having regard to the *lack of harm* that would be caused to the spatial objectives of the Plan. That the proposal should not be opposed on spatial strategy grounds is a judgment, and not a question of interpretation of policy, and there is no ambiguity about the judgment reached. The comment also expressly records the position of the LPA, who did not refuse the proposal on the basis that there would be harm to the spatial strategy of the Plan[2].

7. Mr. Bateson, and the LPA, were plainly right to so conclude.

8. First, and as accepted by Mr. Bateson, the proposal will not harm, but will assist in delivering, the Council's growth aspirations in respect of the delivery of housing to a sustainable location that is appropriate for growth in principle.

9. Policy BSC1 of the Local Plan is the Policy for the Council's District Wide Housing Distribution. It requires the Council to deliver a wide choice of high-quality homes by providing for some 22,840 dwellings between April 2011 and 2031. This includes the delivery

[1] xx
[2] See RfR1, CD C10.

of 5,392 homes outside Banbury and Bicester. Mr. Bateson accepted that although the Council falls back on LHN for the purpose of calculating its five-year land supply in accordance with NPPF74, it continues to accord *"significant weight"* to the housing requirement and distribution strategy within this policy. This is because the housing numbers within it reflect and respond to the Council's economic growth objectives[3]. Seeking to provide homes to match the anticipated jobs growth to 2031 is a core planning principle and remains a key objective of the Council. The figures in BSC1 also continue to reflect the Council's objectives of meeting its affordable housing needs[4]. Mr. Bateson's (written) evidence is that, therefore,

> *"Policy BSC1 is generally consistent with the NPPF and its objectives in paragraph 60 of significantly boosting the supply of homes and ensuring that sufficient land comes forward in sustainable locations where it is needed. Therefore, significant weight should be attached[5]."*

10. DH suggested that policy BSC1 needed review. However, it remains part of the adopted development plan, and a review will take place through the eLP process, which is agreed to be at an early stage, and can be given little weight at this stage. Nonetheless, the Council's evidence base continues to support the proposition that an uplift for economic growth and affordable housing will continue to be necessary. The eLP records that,

    "The assessment concludes that its evidence points to an overall scale of housing need above the minimum level of need arising from the Standard Method. It states that the Standard Method underestimates housing need by not capturing demographic data post 2014 and not allowing for sufficient housing to match the level of job creation expected to 2040".

    The precise figure for the eLP will, of course, be determined through the Local Plan process, but there is no evidence before the inquiry to suggest that it would now be appropriate for the Council to plan to deliver a lower figure over <u>this</u> plan period[6]. This is not the position of the Council, who agree that it is important that the requirements of BSC1, which remains an adopted policy of the development plan, should be met to continue to

[3] The figure was uplifted from demographic projections to account for economic growth and the delivery of affordable housing objectives – See SHMA 2014, page 23 CD I5
[4] SHMA 2014 – as above
[5] AB Proof, para 5.13
[6] See xx of DH

give effect to its aspirations for growth, pending the progression of the new Plan[7], and to ensure that a "significant boost" is given to the supply of housing in accordance with the core requirements of the NPPF. There should, self – evidently, not be a race to the bottom simply because the Plan is more than five years old.

11. However, the Council is failing, and will continue to fail, to deliver the homes required by its own Plan, and which are accepted to be necessary to facilitate its economic growth and affordable housing objectives. To date, there is a 1,392-home shortfall against the BSC1 figure. To the end of the Plan period, the shortfall is anticipated to increase to a staggering 3,416 homes[8].

12. The reason that there is a chronic failure to deliver the homes required is because the Council's strategic allocations at Bicester, Banbury, and Upper Heyford are not delivering: The Council's own AMR indicates that there is a shortfall of some 5,913 homes at the planned allocations to 2031[9]. This includes, at Upper Heyford, which along with Banbury and Bicester is identified as a major growth location in the Plan[10], where the Council anticipates that there will be a shortfall of some 236 homes to 2031[11]

13. It matters that there is a shortfall at Upper Heyford.

14. First, the shortfall at Upper Heyford is a component of the very substantial shortfall in homes across the district that will occur across the Plan period (3,416 homes), and that is driven by the failure of the Council's planned allocations (including at Upper Heyford) (5,913 homes).

15. In this respect, it is of note that Policy BSC1 depends on the delivery of 2,361 homes at Upper Heyford as part of the delivery of the overarching housing requirement for the district. The total to be delivered at UH pursuant to policy BSC1 comprises 2,361 homes: 1600 homes in the "allocations" row (for "Rest of District")[12], and 761 in the "permissions" row (for "Rest of

[7] Agreed AB xx
[8] See Ben Pycroft ("BP") Supplemental Proof, page 8
[9] See table 3.2 BP Supplemental PE, page 11
[10] Para A11, page 29
[11] See BP Supplementary Proof page 11, table 3.2 and the AMR Appendix 10 which shows total completions of 2093 to Upper Heyford. 2,361 – 2093 = 236 shortfall.
[12] The total is 2,350. 1600 of this is homes to be delivered at Upper Heyford, and 750 of this is homes to be delivered at the PV2 villages.

District)[13]. The 2,361 homes allocated to Upper Heyford are therefore a component of the Council's delivery requirement, and Policy PV5[14] should be read in that context. To 2031 there will be a substantial failure to deliver the Council's housing requirement, and the shortfall of delivery at Upper Heyford is part of that.

16. Second, as the SCG with the Council agrees, Heyford Park is *"one of the four main strategic locations for accommodating future growth needs".* This is confirmed in paragraph A11 of the Plan[15], which confirms that *"away from the two towns (of Banbury and Bicester) the single major location for growth will be at the former RAF Upper Heyford base which will deliver 2,361 homes".* This contrasts with growth across the rest of the district, which will be more limited, and will focus on meeting local needs[16]. This is then reflected in subsequent policies of the Plan (PV1, PV2, PV3, PV5[17]), which set out different requirements for development depending on the location of a settlement in the spatial hierarchy. Both the LPA[18] and DH[19] accept that there is a separate policy for UH, which should not therefore be lumped together with the rest of the district (where different policies apply), as Paul Tucker KC ("PT KC") sought to suggest in xx of Mr. Bainbridge ("DB"). The fact that there has been overprovision lower down the settlement hierarchy does not, and cannot, detract from the importance of delivering planned growth at a strategic allocation, which is further up the settlement hierarchy, and which is a focus for growth in the Plan. This is particularly the case in light of the chronic failure of the Plan to deliver the homes needed in accordance with Policy BSC1 and the Council's stated priorities and at the planned allocations (above).

17. And it is not only significant housing growth that is to be directed to Upper Heyford. Policy PV5 sets out that, along with the 2,361 homes to be delivered, significant employment development to deliver some 1500 jobs will be provided at the allocation. As AB and DB agreed, balancing homes and jobs is a core principle of sustainable planning. It is important that the homes anticipated by the Policy come forward within the Plan period to match the jobs growth provided over the same period.

[13] See page 249, which explains that 761 of the 1760 figure is for planning permissions granted at UH.
[14] "Approximately 1600 dwellings (in addition to 761 dwellings (net) already permitted)
[15] Page 29 Plan
[16] Bullet 3 on page 29 Plan
[17] See pages 243 – 249 Plan
[18] E7 Overarching SoCG – at 8.17
[19] Xx and in DB PoE 4.9 & 4.38.

18. We pause to note that, in xx of DB, Mr. Grant (GG) asked (and DB agreed) that the wording of a policy seeks to give effect to its objectives and is therefore an expression of its objectives. Here, the wording of the relevant policies require delivery of 22,840 homes across the district (BSC1), including 2361 homes at Upper Heyford (PV5) across the Plan period. There will be an undisputed substantial shortfall against those requirements, and, therefore, a failure to deliver the strategic objectives of the Plan. Mr. Bateson was plainly right that the appeal proposals would not harm but would in fact assist in the delivery of the Council's strategic growth objectives in these circumstances[20]. These are matters of planning judgment, and Mr. Bateson was plainly right to so concede.

19. Added to this, there is no dispute between the principal parties as to the sustainability credentials of the site. It is a matter of agreement that the existing settlement benefits from a number of existing facilities (including community centre, two shops, pharmacy, restaurant, bowling alley, pub, hotel, schools), and that many of these are within walking and cycling distance of the appeal site. Additional facilities will come forward as part of the Heyford Park allocation scheme. The Council agrees that the scheme complies with NPPF105. This provides that the planning system should actively manage patterns of growth in support of sustainable transport objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. We return to matters of accessibility and sustainability in more detail below, but Mr. Bateson was plainly right to agree that the appeal site is a suitable location for growth in principle, subject only to the acceptability of its development impacts (see further below).

20. In the Appellant's submission, it is also the case that the proposal complies with policy ESD1 in these circumstances. Policy ESD1 seeks to mitigate and adapt to climate change. It distributes growth *"to the most sustainable locations as defined in the local plan"*. It does not refer to, or confine itself to, the identified allocations within the plan. The SCG agrees that PV5 identifies that this is a sustainable location in the district, and indeed is *"one of the four main strategic locations for accommodating growth needs"*. It is therefore one of the most sustainable locations as defined in the local plan, and there is compliance with Policy ESD1. Mr. Grant attempted to take a different approach to his own witness in the xx of Mr. Bainbridge. However, even if Mr. Grant's interpretation of ESD1 is accepted (which it is not), as Mr. Bainbridge explained, very limited weight can be attributed to that conflict. This is because it is a matter of agreement with the LPA that this is a sustainable location for growth in principle,

[20] XX AB

and that the proposal complies with NPPF105[21]. There is, therefore, no conflict with the objectives of the Policy (or indeed with the remainder of the Policy itself), which seeks to mitigate and adapt to climate change by (amongst other things) directing development to sustainable locations within the district. It is of note that for all GG's points as to policy wording, the LPA's witness did not identify any relevant harm, having regard to the objectives of the policy.

21. As set out above, it is accepted that the appeal proposal is located outwith the PV5 allocation and is in the open countryside in policy terms, and that there is conflict with Policy H18 on this basis. However, this does not detract from the conclusion that this is a sustainable location and suitable location for growth in principle.

22. Policy H18 is contained in a Plan adopted in 1996, and which pre-dates any iteration of the NPPF. In accordance with now defunct national policy, it seeks to protect the countryside from its own sake and imposes a "blanket restriction" on development in the open countryside. The planning witnesses (AB, DB and DH) all agree that to this extent it is inconsistent with the provisions of the NPPF that post – date it. As recognised by the Court in the *Telford* case[22], the NPPF is different. The requirement in NPPF 174 is to *"recognise"* not to *"protect"* the countryside for its own sake. The policy is therefore inconsistent with national policy, and Mr. Bateson accepted that the conflict with it should be given limited weight in the circumstances. That conclusion is supported by the recent decision at Land off Fulwell Road, Finmere[23].

23. Mr. Bateson noted that the policy did have some landscape objectives that remain relevant. However, he also accepted that these now find expression in Policy ESD13 of the Cherwell Local Plan. This is a post NPPF Plan, and instead of imposing a blanket restriction on development in the open countryside, it calls for a judgment as to the acceptability of the landscape and visual impacts of a scheme. This is consistent with NPPF174. Mr. Bateson therefore accepted that it was to ESD13, and not H18, that the decision maker should turn to understand whether a greenfield proposal is acceptable, and further, that if there is compliance with ESD13, the proposal should not be refused based on a conflict with the more restrictive, non NPPF compliant, Policy H18.

[21] SCG 8.10 – 8.16
[22] *Telford and Wrekin BC v SSCLG [2016] EWHC 3073 (Admin)*
[23] CD M20 see [12] and [14].

24. We will return to the landscape and visual impacts of the scheme further below, but the key point here is that Mr. Bateson accepted that, even taking the Council's evidence at its highest, there is compliance with Policy ESD13 of the Plan. DH for the R6 party expressly did not present separate evidence on this point and relied on the LPA[24]. There is therefore, now, no extant evidence to the contrary.

25. Further, it is also of note that the NP turns to the policies of the Cherwell LP to determine whether development outside the settlement areas, and in the open countryside, is acceptable (see 3.2.3[25]). The policies upon which the NP relies are ESD13, BSC2, saved Policy C15. There is also reference to Policy PD5 of the NP itself. The LPA has never alleged conflict with BSC2, C15 or PD5, and now accepts compliance with ESD13. In any event, an attempt to "read in" a restriction in development in the countryside into the policies of the Cherwell Local Plan would be inconsistent with both the wording of the Plan, and also with the NPPF, as the Inspector in the Merton Road appeal accepted[26]. Again, this was agreed by AB (xx).

26. The proposal is therefore plainly acceptable, notwithstanding its location in the open countryside, having regard to the policies in the adopted Plan and NPPF, as AB accepted (xx).

27. The tension between policy H18 and ESD13 is also relevant to the question of whether, notwithstanding the conflict with policy H18, there is compliance with the development plan as a whole. S38(5) PCPA provides that if, to any extent, a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan. Mr. Bateson recognised that there is a conflict between policy H18 of the development plan, which restricts all development in the open countryside, and policy ESD13, which permits the same subject to a judgment that the scheme impacts are acceptable. The conflict should be resolved in favour of the later policy, policy ESD13. This supports DB's conclusion, to which we return below, that the proposal is in compliance with the development plan as a whole, notwithstanding the conflict with Policy H18.

28. We briefly note, in this context, two subsidiary points raised by the R6 Party.

[24] As he confirmed in XX.
[25] CD G4.
[26] CD M6 Merton Road appeal decision at [34].

29. The first point raised by DH was that Policy H18 has a strategic as well as a landscape function. We can deal with that shortly. The strategy of the 1996 Plan is plainly out of date. It was based on top-down targets as opposed to an objective assessment of needs, its policies – including those that sought to meet housing needs- are time expired, and is based upon a completely different strategy to that contained in the Cherwell Local Plan and Partial Review, which post-date it. If there is a strategic element to policy H18, that is plainly out of date too, is inconsistent with the parts of the development plan that post-date it, and it does not and cannot increase the weight to be attributed to the conflict with this policy.

30. Second, DH sought to argue that there is conflict with policy C8 of the 1996 Plan. Policy C8 is only engaged if a judgment is reached that the development is "sporadic" development in the open countryside. The Oxford dictionary definition of "sporadic" is *"occurring at irregular intervals or only in a few places; scattered or isolated"*. The appeal proposal is not irregular, scattered or isolated development because, as explained by DB[27], it is well located to the existing settlement[28]. AB also accepted that this was not "isolated" development in the open countryside. But even if the Inspector reaches a different view, this does not take the Rule 6 Party anywhere. This is because if C8 does apply in the manner contended for by the R6 Party, it is a restrictive policy that goes further than the NPPF. The same points raised in relation to Policy H18 also, therefore, apply in relation to this policy.

31. The LPA also alleges, in its reason for refusal, that the proposal is contrary to PV5. This is why, in assessing whether the proposal complies with the development plan as a whole, DB has assessed this policy[29]. In any event, the agreed position of the witnesses is now that the Policy does not strictly apply to the appeal scheme, because the appeal scheme is located outside the allocation. However, it is also agreed that the design and place shaping principles within it are relevant to understanding whether the proposal can integrate effectively with the allocation proposed.

32. It plainly can.

---

[27] In Re-x.

[28] See ***Bramshill v SSHCLG*** *[2021] EWCA Civ 320* at [32]. In determining whether a particular proposal is for "isolated homes in the countryside", the decision-maker must consider "whether [the development] would be physically isolated, in the sense of being isolated from a settlement". What is a "settlement" and whether the development would be "isolated" from a settlement are both matters of planning judgment for the decision-maker on the facts of the particular case.

[29] XX and Re- X DB

33. Turning first to the Council. Mr. Bateson accepted, following cross examination, that he only alleged tension with bullet points (4) and (16). This is because (AB said) the proposal would *"compromise the … conservation of heritage interest of the wider site"* (bullet 4) and would not *"achieve views to the site"* that are important in heritage terms (bullet 16). It is not agreed that bullet 16 is relevant (it is referring to improving views by removing structures that do not make a contribution to the special character of the area – which included the unsightly HAS). In any event, however, AB accepted that even on his interpretation, the engagement of the principles in these bullet points did not add anything to the test that is to be applied in respect of development in the setting of any CA (ESD15, PD4 LP, and NPPF202). For the reasons set out below, this proposal is acceptable in heritage terms and complies with policies ESD15, PD4 and NPPF202. As AB accepted, it would also follow that it was in accordance with the design and place shaping principles in Policy PV5.

34. The Rule 6 party say that there are additional tensions with PV5 based on consideration of bullet points (5) (6) (8) (10) and (14). This is not a position with which the HA or the LPA agree, and nor does the Appellant. This is a sustainable development proposal, that can integrate well with the other development proposed pursuant to PV5. We return to this issue further below.

35. The Council now accepts that there is compliance with Policy C30 of the 1996 Plan, because positive design can be secured at reserved matters stage.

36. The R6 party makes the point that this is not "planned development". However, this point takes the R6 party nowhere.

37. Taking a step back, this is a positive, beneficial development, which will deliver much needed housing on a site directly adjacent to an allocation that is identified as a major location for growth in the Council's own Plan. It is greenfield development, but the Council accepts that the countryside should not be protected for its own sake, and that the landscape effects will be acceptable and policy compliant. The proposal is sandwiched between the existing allocation and the infrastructure that will be upgraded to accommodate it and will integrate with the allocation that is coming forward at Upper Heyford. It is exactly the type of scheme that the Council should always have welcomed with open arms.

38. And all of this before we even get to a discussion about the Council's five year supply position. For the reasons set out below, the Appellant will say that it is manifestly apparent that there is a shortfall, and a substantial one. The consequence of this is that the policies most important for determining the application are out of date[30]. There is plainly a need for additional land to come forward so that the acute shortfall can be addressed, and limited weight should be accorded to policies of restriction in these circumstances. A site located adjacent to an identified major location for growth, in a sustainable location, with limited development impacts, is exactly the type of site that the Council desperately needs.

39. For all those reasons, this is very clearly a sustainable location having regard to national and local policies.

40. The development impacts of the scheme are also plainly acceptable. To those development plan impacts we now turn.

(ii) <u>The effect of the proposal on the landscape and local character, with particular regard to the form and character of Heyford Park.</u>

41. The Council's case in relation to landscape matters is unsupported by evidence, and was always unsupportable. As set out above, the NPPF does not seek to protect the landscape for its own sake, but instead to "respect" or "recognise" what is important about it. Policy ESD13[31] reflects this and calls for a substantive assessment as to the acceptability of landscape effects. The proposals are plainly acceptable, having regard to Policy ESD13 of the Cherwell Plan, and NPPF174, and Mr. Bateson has now <u>expressly accepted</u> the same in cross -examination.

42. First, is a matter of agreement in this case that the landscape and visual effects of the scheme would be <u>highly localised</u>:

    (a) The LPA does not take any issue with the effects on the wider landscape[32].

[30] DB re-x. See NPPF 11 and FN8
[31] CD G1 Cherwell Local Plan 2011- 2031 (Part 1) at hardcopy p.111 and pdf p. 113.
[32] CD E10 LSoCG, para 2.5

(b) The Council is only concerned about the effects on views in relation to the two routes immediately adjacent to the appeal site (Chilgrove Drive to the East, and Camp Road to the South)[33].

(c) As the Site visit will readily confirm that from Chilgrove Drive and Camp Road there is already extensive screening in these locations and limited places from which to obtain views.

43. Second, even at this extremely localised scale, the Council's case at its highest is that the landscape and visual effects be no more than minor adverse[34], and that there will be no more than minor adverse or negligible visual effects at Y15[35]. These effects are right at the bottom of the scale of materiality[36]. Further, AB confirmed in the RT that this assessment had not even taken into account the impact of future development. We deal with this issue further below, but when the very significant consented development is taken into account, it is even more apparent that the landscape and visual effects of the scheme are wholly acceptable.

44. This is a common place agricultural landscape, influenced by existing development. The site itself partly comprises a wetland area, which has been in in an amenity use since the 1960s. The remainder is agricultural land, and there is nothing particularly notable or distinctive about it[37]:

(a) It is a matter of agreement that the site does not form part of valued landscape for the purposes of the NPPF[38].

(b) The 2022 Landscape Sensitivity Assessment[39] confirms that there are no known viewpoints in the OS, tourist books or guidebooks across the appeal site[40].

(c) Policy PD4 of the Mid Cherwell Neighbourhood Plan[41] seeks to identify important views and vistas within the local area, including those identified in the Upper Heyford Conservation Area. It is agreed that none would be adversely affected by the appeal scheme[42], and no conflict with this policy.

---

[33] Mr. Bateson RT
[34] CD E10 LSoCG, Section 3: Areas of Disagreement: table "Magnitude and Level of Landscape Effects (CD A15 Appendix 9)"
[35] See CD E10 LSoCG Agreed tables, and Section 3: Areas of Disagreement: "Magnitude and Level of Visual Effects (CDA15 Appendix 10)"
[36] In accordance with the LVIA methodology, which is not disputed – Wendy Lancaster RT.
[37] As confirmed by CD J10, the 2014 LCSA, which describes it as 'average'.
[38] see CD E10 LSoCG at para.2.2
[39] CD H8
[40] CD H8, hardcopy p.306
[41] CD G4 Mid- Cherwell Neighbourhood Plan. Policy PD4 is at hardcopy p.33 or pdf p. 38.
[42] See CD E10 Landscape SoCG at para. 2.17.

(d) Policy PD3 of the NP has expressly considered *"aspects of landscape character that could be adversely affected by the encroachment of further development extending the current boundary of Heyford Park"* and has identified "zones of non-coalescence" where development should not take place adjacent to Heyford Park. The factors considered in identifying these "zones" include "*visual intrusion into the open countryside, loss of tranquillity, harm to the historic…context of the countryside…local public footpaths (some of which provide walks with excellent views across the Cherwell Valley of its open landscape...harm to the setting and character of settlements, including adverse impact on Conservation Areas and listed buildings. Some areas of settlement close to Heyford Park do not benefit from being located in village Conservation Areas"*. The appeal site is expressly not identified as a protected area, taking into account these factors, and it is agreed that there is no conflict with PD3 NP[43].

(e) AB also conceded in cross examination that there would be no conflict with Policy C33 of the 1996 Plan, as no "recognised" views would be affected by the appeal scheme.

45. The Site is also negatively influenced by the former RAF Air Base in Upper Heyford, and the HAS in particular. The negative impact of the HAS in landscape and visual terms has been recognised extensively in numerous documents adopted by the Council, which have been subject to extensive consultation (including with relevant experts)[44], and also in appeal decisions. Indeed, the HAS were initially proposed for demolition based on the *"adverse visual impact"* that they exerted on the area[45]. Whilst, subsequently, they have been proposed for retention on the basis of their heritage interest, that does not negate from the negative impact that they continue to exert on the landscape and visual amenity[46]. As Ms. Lancaster noted in the RT, it is important not to conflate heritage and landscape issues, as Mr Bateson appeared to do.

[43] Mid- Cherwell Neighbourhood Plan CD G4 para. 3.2.20, hardcopy p.31-32 and pdf p. 36-37 and CD E7 Overarching SoCG para 8.45.

[44] See CD H8 Landscape Sensitivity Study at p.304 on the influence of the hangars, CD J13 1995 Character Assessment at p.20 2.1(v) which explains that the air base is large and prominent situated on a plateau, CD N1 the NOC Application Appeal Notice refers to a "scarred landscape" and "highly visible and prominent features". The planning brief CD H1 makes multiple references to the negative impact of the HAS in the wider landscape (see 7.22, for example).

[45] See Planning Brief 2007 CDN2 Para 3.29

[46] See CD J10 LCSA 2014 at paras. 4.3.12 and 4.3.11

46. The HAS have always been noted as meriting *heritage* interest, nevertheless, the wealth of documentation before the inquiry *also* and *simultaneously* refers to the HAS as exerting a negative impact in visual terms and on the local landscape. For example, they have variously been described as *"intrusive and menacing"*, *"regarded as an eyesore by some of the local community"*, and a *"scar"* on the landscape[47]. The part of the CA proximate to the appeal site also exhibits a *"rather down – at heel"* appearance, a point recognised in the CAA[48]. Mr. Bateson's RT comment that "things have moved on" in respect of how these structures, and this part of the CA, are perceived was wholly unsupported by evidence, or indeed by reference to any document – to the contrary, the Council's 2007 SPD is extant, is referred to in the adopted Plan[49], and its continued relevance has been confirmed by the very recent consultation version of the emerging LP[50]. These are plainly <u>not</u> positive features in landscape or visual terms. On the evidence, the converse is patently the case.

47. In any event, the Council's case at its highest is that the value of both the wider character area and the site- specific landscape character is <u>medium- low</u>[51]. Again, it is therefore a matter of express agreement that the value of the local landscape, and the appeal site that forms part of it, is <u>towards the bottom end</u> of the scale.

48. In respect of the impact of the appeal scheme, Mr. Bateson's evidence did not get much further than alleging that what is now an open green field would be developed[52]. It is of course accepted that the appeal site will no longer comprise an undeveloped green field following implementation of the appeal scheme. However, that does not mean that the effects of the appeal scheme are unacceptable. The relevant question is how the scheme will impact on the character of the area, and whether these impacts will be acceptable (Policy ESD13). For the reasons set out below, they plainly would, and indeed AB now accepts compliance with Policy ESD13.

[47] See CDN1 Appeal Decision of 2003 para 4.48, Inspector's Report to SoS.
[48] CD G5 Conservation Area Appraisal, p. 70, bullet point 5.
[49] See the reasoned justification for PV 5 at C.293 of CD G1 Cherwell Local Plan 2011-2031, pdf p.259 and hardcopy p.257.
[50] CD H1 the Emerging Local Plan at 7.22 pdf p.206 hardcopy p.204.
[51] See LSCG table *"Sensitivity and Value of Landscape Receptors (CDA15 Appendix 8)".*
[52] AB Round Table.

49. The site is currently experienced as an edge of settlement landscape[53], and plainly has the capacity to accommodate the change proposed[54], as recognised by the various Landscape Sensitivity and Capacity Studies before the inquiry. This conclusion is also supported Appellant's site specific LVIA, the Council's qualified Landscape Officer[55] – who did not object to the scheme – and, indeed, the Case Officer. Mr. Bateson was always a lone voice in suggesting otherwise, and the Council's case was unsupported by any expert analysis or analysis. Mr. Bateson's proof of evidence and the SoCG both set out that Mr. Bateson is <u>not</u> an expert in such matters[56].

50. Further, as Ms. Lancaster explained, GLVIA is clear. Consented schemes properly form part of the baseline that should be considered in the assessment[57]. The new settlement at Upper Heyford is allocated, and further, the Council's housing trajectory assumes that the adjacent PV5 development consented will ultimately come forward. It will plainly have a significant effect on the context of the appeal site. <u>There was no evidence or challenge</u> (by either the LPA or R6 party) to the Appellant's case that this should properly form part of the baseline. The appeal scheme will be sandwiched between elements of that major consented development and will not be out of character with it. The following points are noted:

    (a) Immediately to the west of the appeal site, the Pye/BDW site is allocated for development and, Mr. Bateson accepted in the RT session that once this is developed, the appeal site would become *"edge of settlement"*. The immediate context of the appeal site will therefore be one of development, softened and broken up by existing and proposed vegetation. On the approach from the east, the consented development will be visible and will inform the character of the approach to the settlement, and the view.

    (b) In addition, from the Camp Road/Chilgrove Drive junction, there will be views to the major commercial development to the north of the appeal site. Again, this is allocated and consented, and the parameters for this development show large commercial buildings up to 18m high, and which the Officer's Report in respect of the DL scheme characterised as *"akin to some of the largest storage buildings in Bicester"*[58]. The density of development

[53] WL RT
[54] See CD J10, the 2014 LCSA at para. 3.39. See also CD G8 HELAA 2018 Appendix 4 p. 78 refers to a "logical extension" which "could be developed without opening up". See also WL PoE para.3.57.
[55] See CD D11, CD E7 Overarching SoCG at paras. 8.30 & 8.35 and CD E10 LSoCG at paras. 1.9, 2.8, 3.2.
[56] See CD E7 Overarching SoCG at para. 1.4 and E19 AB LPoE at 6.22.
[57] GLIVIA at p.27
[58] CD N8 at para.9.147. See also CD N6 fig. 4.3 and WL PoE insert TG9.

around the HAS will also increase significantly. Mr. Bateson characterised the structures as *"massive"* in the RT session, and also conceded that the denser development would be *"more akin to built form in an urban area".* The impact is clearly illustrated on the montage produced as part of the hybrid application, which show the 18m and 10m parameters proposed: See Insert TG30[59].

(c) There will be major upgrades to Chilgrove Drive to the east, which will comprise a new 12 – 17m wide, primary HGV access and bus route, and will include a signalised junction, lighting, and associated infrastructure. When taken to the relevant drawing[60], which he had not previously considered, Mr. Bateson accepted that there *"would be more of an urbanising impact than (he had) previously acknowledged".*

51. In short, following the implementation of development, the character of the appeal site and its immediate context cannot, on any sensible basis, be described as "rural". The character of the site will be heavily influenced by built form to the north and west and contained by significant road infrastructure to the east. The appeal site will not be experienced as part of the rural open countryside, and instead will appear more of a *"left over field"*[61].

52. Taking these points into account, and as noted by the Council's own qualified landscape officer, it is plain that the appeal scheme will form a natural *"rounding off"* of the settlement in this location. That judgment is also supported by the Council's own evidence documents, including the HEELA (which states that the site can provide a logical extension, and that development can be contained)[62], and evidence supporting the draft allocation, which makes it clear that development in this location is entirely appropriate in the context of residential development to the west, north and proposed road infrastructure[63].

53. In that context, the appeal scheme should be regarded as a positive proposition. It is a landscape led scheme, which provides a significant amount of open space (some 49.5% / 5.64 ha of the site will be open space, against a requirement for 1.3ha), and which responds

[59] CD E14 WL PoE p. 52.
[60] Camp Road/Chilgrove Drive Junction Improvements' (drawing reference: 39304/5501/SK26 revision I, appended to the 8 September 2022 s.106 planning obligation and Appendix A to DB Rebuttal PoE.
[61] WL RT
[62] See CD G HELAA p.78 Appendix 4
[63] See WL PoE at paras. 3.115 & 4.14

positively to the Council's aspirations in respect of Green Infrastructure[64]. As set out above, it will form a natural "rounding off" of the settlement and can be accommodated into the receiving environment without undue harm to its character. Overall, at year 15, there will be no harm in landscape terms, with the overall effect edging towards beneficial[65].

54. Nor would there be unacceptable visual impacts as a result of implementation of the appeal scheme. The appeal site makes a limited contribution towards the visual amenity of the local area, and even Mr. Bateson's evidence only focussed on three highly localised viewpoints from Chilgrove Drive and Camp Road where there are glimpsed views through gaps in the hedge. These glimpsed views towards the appeal site are already experienced in the context of development. This is because there are also glimpsed views of the HAS from these locations which, as set out above, exert a *"threatening"* and *"foreboding"* influence on the visual environment. Following implementation of the allocated and consented schemes, views towards the appeal site will become further urbanised with or without the appeal scheme, influenced by the residential development to the west, the large commercial sheds (up to 18m) to the north, and the significant road infrastructure to the east, which has already been consented (and thus found to be acceptable) by the LPA. There will be nothing uncharacteristic or unexpected about the change in the view proposed. In addition, the existing landscape structure, together with the landscaping proposed, will assist in integrating the change proposed, as Mr. Bateson ultimately accepted in the RT session.

55. For the first time in the RT, Mr. Bateson referred to views into the appeal site from the commercial development to the north, that might become available following the grant of permission. These points, made late and without supporting evidence (they are not raised, explained, or evidenced in Mr. Bateson's proof) were wholly without merit. This is not least because Mr. Bateson ignored the fact that the hybrid application itself approves significant commercial development/sheds between flying field and the site boundary, that views will be experienced in the context of this major development and also in the context of the residential development to the east and road infrastructure to the west, and that employees will be focussed on work and so will have a low susceptibility to change. Any views experienced by employees will likely not be public views. It also ignores the significant landscaping that is proposed by that scheme to the site boundary. In short, any views out from the new

[64] The GI strategy is in accordance with the Council's GI document CD H19 A Greener Cherwell Local Plan – fig. 5.2 at p.41 – demonstrates how GI is incorporated into the site – scheme accords with this.
[65] WL RT: overall landscape effects at year 15 are neutral – beneficial (closer to neutral).

commercial edge of the CA will be experienced in the context of major development, and the expectation will be of development in the view. There is, therefore, nothing in this new point raised by Mr. Bateson, which was wholly unsupported by any objective analysis whatsoever.

56. The case put to the inquiry by the Council is also inconsistent with the fact that it has identified the appeal site as a preferred residential allocation in its emerging Plan, which the Council has formally approved for consultation. The Council says that the emerging Plan is at an early stage, and policies can be attributed limited weight. However, that does not grapple with the fundamental inconsistency in the Council's approach. On the one hand, the Council says that there is an evidence base that suggests that it is appropriate to allocate the appeal site and therefore accepts that there are no overriding constraints in terms of landscape, character and appearance to development. In refusing the scheme, the Council said that the site is unacceptable in landscape terms for development. The former position is supported by evidence, the latter was not.

57. Drawing this together, it is clear that the effect of the proposal on the landscape and local character will be appropriate, as accepted by the Council's own qualified Landscape Officer and Case Officer. The Council's case as put to this inquiry was unsupported and unsupportable, particularly in the context of the very significant changes that are coming at Heyford Park with or without the appeal proposals.

58. The Councils' qualified Landscape Officer was plainly right to advise that the impact of the proposal on the character and appearance of the area did not justify the refusal of permission. The Case Officer was plainly right to advise that the effect of the proposal on the character and appearance of the area was acceptable even in circumstances where the Council has a five-year land supply, and the tilted balance is not engaged. As the Officer confirmed, the proposal complies with ESD13 and NPPF174. The Council's evidence to this inquiry did not come close to demonstrating the contrary. AB was right to concede that, on the basis of the evidence to the inquiry, the proposal complies with ESD13 and NPPF174.

(iii) <u>The effect of the proposed development on heritage assets.</u>

59. The Council's reason for refusal alleges harm to the RAF Upper Heyford Conservation Area ("CA"). Whilst there are a number of other designated and undesignated assets in the locality, the Council and DL have <u>not</u> alleged that the significance of any other asset would be harmed by the appeal proposals. This includes the southern bomb stores, and the Hardened Aircraft

Shelters ("HAS") to the southeast of the Conservation Area[66]. Both parties agree that these structures contribute to the significance of the Conservation Area, but neither alleges that the appeal proposals would cause harm to the significance of those assets in their own right.

60. These closing submissions therefore focus on the Council's case in respect of the Conservation Area. Nevertheless, for the Inspector's reference, the Appellant's assessment in respect of the HAS and the Southern Bomb stores is set out in Mr. Copp's proof of evidence and is not repeated here[67].

61. It is a matter of agreement that the Appeal Site forms part of the setting of the RAF Upper Heyford Conservation Area, and that there will be change within the setting of the Conservation Area as a result of this scheme. However, the fact that development is consented within the setting of a Conservation Area does not mean that there is (inevitably) harm to it. What is important is what (if anything) the setting contributes to the significance of the asset, and the effect of the proposal on its significance. Here, there would be no harm to the significance of the CA for the detailed reasons set out by Mr. Copp in his evidence.

62. This is a Conservation Area that has been extensively assessed, and there is a very detailed, and comprehensive, evidence base relating to it. This includes a detailed Conservation Area Appraisal[68], which was produced in April 2006 when the Conservation Area was designated. This was informed by a Conservation Area Plan[69]. Historic England has been closely involved in the assessment of significance of the base and the structures within it, and the designation of the CA was closely followed by the designation of the scheduled monuments and listed buildings within it. Historic England was also involved in developing a Comprehensive Planning Brief for the Area. This was subject to extensive consultation and adopted as SPD by the Council[70]. It informed the wider development of the allocation and is referred to in the Local Plan[71], and the LPA has confirmed its continued relevance[72].

[66] Buildings 3037, 3038, 3039, 3040, 3041 & 3064 in CD G5 Conservation Area Appraisal at Fig. 17 on p.46. See CD E15 TC PoE at 2.3.
[67] See CD E15 TC PoE at p.29 – p.36 regarding the HAS. See CD E15 TC PoE at p.37-38 for the SBS.
[68] CD G5 Conservation Area Appraisal produced April 2006.
[69] See CDK3 Conservation Area Plan and CD N3 2010 Heyford park Appeal Decision.
[70] CD N2 Comprehensive Planning Brief 2007 SPD.
[71] The Comprehensive Planning Brief SPD is referred to in the reasoned justification for PV 5 at C.293 of the Cherwell Local Plan 2011-2031 CD G1, pdf p. 259 and hardcopy p. 257.
[72] Both at the inquiry (through Mr. Grant in the RT session), and also in CD H1 the Emerging Local Plan at 7.22 pdf p.206 hardcopy p.204.

63. This comprehensive evidence base is highly material to a proper understanding of the significance of the Conservation Area. It lends no support to the Council's case at this inquiry.

64. The significance of RAF Upper Heyford is derived from its role as a Cold War airfield for fast jets. During the 1970s, a hardening process at the airfield swept away much earlier development at the base and established a hardened base for fast jets[73]. The significance of the CA is related strongly to this role[74], and is primarily historic. It also derives, to an extent, from the architectural significance of the structures within it and the extent to which they exhibit the innovative technology of the time. This is exhibited in their function, their relationship to each other, and their relationship to the landscape and taxi ways of the flying field, which together give an indication of how the base functioned as a whole. The CAA confirms that,

> "[t]*he prominent hardened aircraft buildings, the enclosure fences around operational areas, the planned layout of the functionally related groups of buildings and the spaces in between, together with 'campus' nature of the site all contribute significantly to the 'Cold War' character of the site*"[75].

65. Dr. Doggett agreed with this assessment.

66. Mr. Copp explained that the most significant part of the Conservation Area is the flying field, and this is therefore the focus of the detailed assessments that have been undertaken. The distinction between the residential and the technological area is also of significance, as again this illustrates how the whole functioned and the contrast between the different areas of the base. The areas to the periphery of the site, including adjacent to the appeal site, are of lesser historic and architectural interest and significance.

67. Mr. Copp's assessment is supported by the Council's own Upper Heyford Conservation Plan[76], which also forms part of the Council's own adopted, extant SPD[77]. The 2007 SPD was produced following extensive engagement with relevant experts including English Heritage

[73] This process, in accordance with NATO strategy, included the construction of new hangars, fuel stores and administrative buildings typically using steel frames and formers with thick concrete panelling to protect the buildings from attack and allow the launching of counter-strikes.
[74] See 5.41 and 5.42 CD E15 TC PoE.
[75] CD G5 CAA, p.22
[76] CDK3 Conservation Area Plan at pdf p.27
[77] See Appendix C2.12, C5.3, C7.7 of CD N2 Comprehensive Planning Brief 2007 SPD and repeat references to the Conservation Plan as part of the relevant evidence base within that document.

and confirms the relative significance of different areas within the Conservation Area. It shows the preserved runway in the centre of the site, and the HAS and scheduled monuments to the north and north-east, as being of the greatest significance. It also explains that areas to the periphery, including adjacent to the appeal site, are of lesser significance. In the RT session, Dr. Doggett suggested that he disagreed with this assessment, although it was wholly unclear why, or what the evidential basis for this could be. The relative significance of the different areas within the Conservation Area is established by the Council's own adopted SPD, produced in consultation with English Heritage, and which the adopted Local Plan explains has informed the assessment of acceptability for the allocation within the CA itself, and which the LPA itself accepts remains relevant[78].

68. Within the CA are a number of groups of Hardened Aircraft Shelters ("HAS"). The significance of these structures is primarily historic. They illustrate the period of hardening within the base and are clear evidence of the cold war and military strategy. To a degree they also have architectural interest as they show the construction techniques necessary to protect aircraft. Of particular importance is their group value and association with each other. This is because layout was key to their function. Their dispersal, and groupings of no more than three within 500m, provided protection in the event of an attack, so that if two or three were lost, the remainder would survive. Their layout, grouping, and relationship to each other is therefore illustrative of the flexible response strategy. Dr. Doggett accepted that the most significant HAS are located to the north and northwest of the Conservation Area, and within the scheduled area. These have a relationship with the fast reaction and alert area and the core parts of the airfield. The HAS to the southeast are more peripheral and are somewhat separated from the most significant parts of the airbase. They have always been accepted to be of lesser significance, and at one time were proposed for demolition on the basis that the harm that they cause to the surrounding area in respect of visual amenity justified their loss[79].

69. A number of bomb stores are also located to the southeast of the Conservation Area. Again, whilst there are bomb stores that are of greater significance to the north, which probably stored nuclear weapons, the stores to the south are of relatively limited significance. They were used to store more general munitions, are not particularly innovative architecturally, and are peripheral to the key area of significance (the flying field). The bomb stores are commonplace installations for airfield of this type.

[78] As confirmed on behalf of the LPA in the RT session by Mr. Grant.
[79] CD N2 Cherwell DC, RAF Upper Heyford Revised Comprehensive Planning Brief (2007) Appendix C2.2

70. The appeal site is a green field located outside, but adjacent to the Conservation Area. It forms part of its setting. However, save for emphasising the distinction between the airfield and the landscape beyond, it does not contribute to the significance of the asset. It is of note, in this respect, that not one of the documents that have extensively assessed the CA has identified that the agricultural land to the south of the CA contributes to its significance.

71. This is unsurprising. The airbase was chosen as a base for fast jets as a result of its topography (it is located on a plateau), because there was a semi-established airbase already in situ and because its location to the west offered a degree of additional protection. As confirmed in the Planning Brief SPD[80] and agreed by Dr Doggett in the RTS, the airfield was effectively imposed on this landscape.

72. The location of the airfield was <u>not</u>, therefore, selected because it was in an *"isolated rural location"* as claimed by Dr. Doggett. There is no evidential basis for that assertion, and indeed, Dr. Doggett's evidence in that respect ignores the fact that the airbase was constructed immediately east of an existing settlement at Upper Heyford. Indeed, the impact of noise on the local population prompted the construction of *"hush houses"* for engine testing, demonstrating that the airfield was imposed on the landscape <u>in spite of</u> its relationship with the village. It was not isolated from it. It also provided a source of employment for much of the local population.

73. The facility was designed for maximum efficiency and took no account of existing field boundaries or planting. By necessity, it was a secure, enclosed operation, which did not interact with the landscape. It was "inward looking", and it is that inward looking character, the relationship between the groups of structures and the landscape within the airfield (its runways and taxiways and service areas) that is illustrative of its significance (above). The airbase is completely different in character to the surrounding landscape and, being imposed on the landscape, has no functional or aesthetic relationship to it[81]. The difference between the stark, open character of the flying field and the surrounding landscape which is broken up

[80] See CD N2 Cherwell DC, RAF Upper Heyford Revised Comprehensive Planning Brief (2007) SPD at 5.2. See also 3.4 of the CAA CD G5 which explains that "the creation of the rural landscape and that of the military base could not be more dissimilar" and that "the airbase is a landscape that has come into being for one major function".
[81] See CDG.5 CAA at 3.4.

by planting is particularly evident when visiting the site, as the site visit would have confirmed.

74. Dr. Doggett also claimed that aircraft would have taken off over the appeal site, as aircrafts would have taken off in an easterly direction because this is the direction, they were heading in. There is no evidence to support that assertion, as typically aircraft take off into the prevailing wind. Further, this is not a factor of significance that is highlighted in any of the (very extensive) documentation before the inquiry. In any case, the appeal site is not situated to the east of the runway, it is to the south of it. The Council has already allocated and permitted very significant development between the flying field and the appeal site (including residential development and commercial development with parameters up to 18m – see further landscape section of closing). It is hard to understand what harm can reasonably be suggested might occur if the appeal site is developed in that context.

75. Turning to views, Dr. Doggett accepted in the RT session that he did not allege any views of significance *out of* the CA would be adversely affected by the appeal proposals. However, he did partly base his case on the fact that, in a number of limited locations from Camp Road and Chilgrove Drive, views across the appeal site to the HAS and southern edge of the Conservation Area are possible.

76. However, Dr. Doggett accepted in answer to the Inspector's questions that these views are already limited and glimpsed through gaps in the hedge. He also accepted that these views are incidental, in that they resulted from the imposition of the air base on the landscape. What Dr. Doggett did not do was to explain why or how any of these views contribute to the significance of the Conservation Area in these circumstances. The fact that the edge of a CA, or structures within it, can be seen (or, as here, glimpsed) does not mean that a view is of significance to the heritage asset.

77. In this respect, it is of note that the CAA has carefully and expressly identified key and important views[82] into and out of the CA, and Policy PD4 of the Neighbourhood Plan[83] confirms that it is these that are to be protected. The LPA agree that none of the identified

[82] See fig 9, 10 and 11. In particular, Fig 9 in CDG.5 CAA notes views to the north and west, with only one view to the south-east which is from the very end of the runway. There are really good long-distance views west over the valley, while the land to the north is also more open as would have been apparent on the site visit.
[83] Mid- Cherwell Neighbourhood Plan CD G4 Policy PD4 is at hardcopy p.33 or pdf p.38.

views would be adversely affected by the proposed development[84]. The Conservation Officer also confirmed that no specific views would be adversely affected by the proposals[85]. It is now a matter of agreement with AB that there is no conflict with PD4, or indeed with C33 of the 1996 Plan, which seeks to protect "recognised" views of historical value.

78. Further, the assertion of Dr. Doggett that the scheme would be unacceptable because landscaping to the boundaries of the CA would be "alien" and "block views" is completely at odds with the Council's own SPD, which expressly seeks to replace the existing fencing along the boundary with landscape treatment[86]. This supports the Appellant's case that the CA is inward looking, that what is important is that the distinction between it and the surrounding landscape is retained, and that the appeal proposal is completely acceptable in heritage terms.

79. In any event, Dr. Doggett did not appear to be aware that very significant changes have been approved to the Conservation Area, that will inevitably change its character, setting, and the views that he identified. He certainly does not, in his proof of evidence, make any reference to the allocation at PV5, the development consented by the DL hybrid scheme, or the BDW/Pye scheme to the west at all. Even when asked about this by the Inspector in the RT, Dr. Doggett erroneously asserted that the approved development is limited to the former residential and technical areas. It is not, and development within the flying field itself has been permitted[87]. Dr. Doggett has not properly understood, or accounted for, the very significant changes coming to RAF Upper Heyford, irrespective of whether permission has been granted for this scheme. That was a significant omission, and plainly affects the robustness of his assessment.

80. The effect of these changes has already been described in detail in the landscape section of these closing submissions and is not repeated. However, it is patently clear that major commercial development to the south of the flying field and immediately adjacent to the appeal site, with height parameters of up to 18m, significant development around the HAS themselves, and major road infrastructure sufficient to accommodate HGV traffic along Chilgrove Drive, will completely change the context of the views identified by Dr. Doggett.

[84] See CD E10 Landscape SoCG at para. 2.17.
[85] See CD E10 Landscape SoCG at para. 2.13 and CD E7 Overarching SoCG at para 8.40.
[86] See p.2 of CD N2 Comprehensive Planning Brief 2007 SPD.
[87] See p.54 of the DAS CD N7. Parcels 10, 21 and 23 will provide residential development within the flying field.

The proposals also include for a potential new heat and power plant south of the shelters with an exhaust stack up to 24m tall[88]. In the RT Dr. Doggett claimed that the importance of the (glimpsed) views across the appeal site was lay in the (glimpsed) views of "*open space around a former airfield".* It is not accepted that this relationship is of significance for the reasons set out above. However, it is hard to see how the point can be reasonably maintained at all in view of the significant development proposed and the impact that it will have on the (glimpsed) views back to the CA. This is clearly illustrated in TG30[89], which is DL's montage of the commercial development with its 10m and 18m from the junction between Camp Road and Chilgrove Drive. This is development that is consented by the LPA, and it is impossible to understand how the LPA now reasonably alleges that additional development in this view would harm heritage significance of the CA in this changed context.

81. New residential development is also allocated and consented within the Conservation Area itself, and on the BDW/Pye site within the setting of it. The Conservation Officer's consultation response in respect of that scheme accepted that no harm would be caused, and there was no objection from HE. This again illustrates the point that there is no in principle reason why residential development cannot be accommodated in the setting of the CA without causing harm to it.

82. For all those reasons, the character and land use of the appeal site as an undeveloped, agricultural field, and the limited/glimpsed views across it from Chilgrove Drive/Camp Road, do not contribute to the significance of the Conservation Area. The only contribution that the appeal site makes is that it is distinct in character from the "inward looking" CA. That, of course, would continue to be the case following the construction of development on the appeal site. The appeal proposals would not harm the significance of the CA. There is compliance with Policy ESD15 of the Local Plan and the heritage chapter of the NPPF.

83. Notwithstanding the above, if a different view is taken by the Inspector, the proposal will of course have to be considered in accordance with paragraph 202 NPPF and Policy ESD15, which both invite consideration of whether less than substantial harm is outweighed by the public benefits of the scheme, assessed in the context of S72 of the PLBCA. A short

[88] CD N7, DAS p.54 and also CD N6 the height parameters plan.

[89] See CD E14 PoE of WL at p. 52.

summary of the relevant case law on heritage decision making is Appendix one to these Closing Submissions.

84. We turn to the planning benefits later, but here pause to note that during the RT session, Dr. Doggett revised his assessment as to the level of harm that he says will be occasioned to the CA. At its highest, the Council's evidence is now that there is less than substantial harm, and that the level of harm falls within the mid – lower range of this bracket. Further, in answer to the Inspector's questions, Dr. Doggett accepted that this could be mitigated "very slightly" further by setting development back from the northern boundary. This was also the opinion of the Conservation Officer.

85. Whilst the Appellant's firm position is that the Council's case on heritage is unevidenced and unsupportable, it is therefore of note that, even taken at its highest, the level of harm alleged by the LPA is towards the bottom end of the scale. It is accepted that great weight should be given to the conservation of the asset, in accordance with NPPF 199 and the statutory test in s72 LBCA. However, there is clear and convincing justification for the proposal (NPPF200). This is because even if the Council's evidence is accepted, this a low level of harm, and it is clearly outweighed by the significant public benefits of the scheme in accordance with NPPF202.

86. The proposal is therefore compliant with ESD15 of the LP and NPPF202 on any basis, a conclusion also shared by the Case Officer. It is also, therefore, compliant with the relevant provisions of PV5 relied on by the LPA (above), in respect of which AB confirmed the same tests should apply.

iii. <u>Whether the development makes appropriate provision for infrastructure and transport mitigation to ensure a sustainable development and make the development acceptable in planning terms.</u>

87. The LPA accept that, subject to the S106 obligation, RfR 2 is overcome. The scheme makes appropriate provision for infrastructure and transport mitigation to ensure a sustainable development and make the development acceptable in planning terms.

88. There is not, and has never been, an objection from either the Highways Authority (or the LPA) in relation to highway matters. Indeed, Ms. White for the HA took the time to assist the inquiry by attending to explain the position of the statutory consultee. Her evidence was

cogent, clear and compelling. It is a well-established principle that the views of the Highway Authority, as statutory consultee, are to be given *"great" or "considerable weight"* and that departure from those views requires *"cogent and compelling reasons"*[90]. The evidence of the Rule 6 Party does not come close to meeting that standard.

89. As set out in the evidence of Mr. Parker ("JP"), the points taken by Mr. Frisby for DL against the scheme have been somewhat of a moveable feast. There was, however, a common theme. This was that Mr. Frisby persisted in introducing new points without any proper evidential basis for doing so. Mr. Frisby did not carry out any independent safety or capacity assessments, for example, to substantiate his (now withdrawn) allegation that the scheme was unacceptable on road safety and capacity grounds. The information relating to DL's trajectory and trip generation, which was necessary to assess the impact of the scheme and PV5 together prior to mitigation, was only produced in his rebuttal evidence. Even then, the information was not properly analysed, and capacity assessments were not undertaken. This was information to which only Mr. Frisby was party. In truth, the highways "objection" by the R6 party has been no more than a fishing expedition. This approach is thoroughly unreasonable, particularly given that the R6 party has been professionally represented by a highways consultant throughout.

90. Nevertheless, to assist the inquiry by agreeing common ground, Mr. Parker has patiently addressed, in detail, each and every point raised, even where information was provided very late in the day, and even where points were raised without any independent evaluation whatsoever. JP's evidence is cogent, compelling, and patently unanswerable. In the end, the R6 party has withdrawn the vast majority of its objections, and significant common ground has been reached. In particular:

    (a) The scheme is acceptable on highway safety grounds. An independent RSA supports this conclusion.

    (b) There is no objection based on the capacity of the highway network to accommodate the development proposed. Specifically:

[90] See, for example: Shadwell Estates Ltd v Breckland DC and Pigeon (Thetford) Ltd, para. 72; Visao v Secretary of State [2019] EWHC 276 (Admin) at paragraph 65; Swainsthorpe Parish Council v Norfolk CC [2021] EWHC 1014 (Admin) at [70])

- It is agreed that the impact of the development of the appeal site on its own is acceptable (i.e. without PV5 and the associated mitigation);
- In the scenario that both the appeal scheme and DL scheme come forward, it is agreed that there will be no unacceptable impact on the highway network prior to the implementation of proposed mitigation (this is based on agreed worst case assumptions in respect of the delivery trajectories for each scheme);
- It is agreed that the Appeal site and PV5 can both be developed in full without any unacceptable impact, subject to the obligations and contributions in the S106 obligation.

It is noted that JP's work on capacity also addresses the traffic concerns expressed by the Mr Martin Lipson on behalf of the Mid Cherwell Neighbourhood Plan group.

(c) The obligations in the S106, and the triggers in respect of them, are all agreed.

91. There is no objection from the HA or LPA in respect of any of these points either. The scheme is acceptable in terms of highway safety, and the residual cumulative impact on the road network will not be severe. There is plainly compliance with NPPF111. This is not, therefore, a case that should be prevented or refused on highways grounds.

92. In opening, the Rule 6 party maintained its concerns about the accessibility of the proposal. However, in the round table session ("RT"), in answer to the Inspector's questions, Mr. Frisby expressly confirmed that the site was acceptable in respect of accessibility – having regard to the walking and cycling distances along Camp Road to local facilities.

93. It is plainly right that the appeal site is an accessible and sustainable location for the development proposed. As agreed with the LPA, Upper Heyford benefits from numerous facilities, including a community centre, two shops, pharmacy, restaurant, bowling alley, pub, hotel, schools amongst other facilities. Additional further facilities are proposed in line with the overall Masterplan for phased delivery at Heyford Park, including new facilities to the north. The allocation will also deliver a significant quantum of employment development that will bring around 1500 jobs to the local area. Many of these will come forward in the "Creative City" /commercial area immediately adjacent to the appeal site. As set out above, aligning jobs and housing growth is, self – evidently, a core sustainable planning principle.

94. The obligations in the S106 provide that a package of highway works making Camp Road safe and suitable for pedestrian and cycle use must be delivered before occupation of the appeal scheme[91]. It is a matter of express agreement in the SCG with the LPA that many of the existing facilities in Heyford Park are located within a reasonable walking and cycling distance from the Site along this route.

95. NDG[92] and MfSt[93] advise that a walkable neighbourhood is typically characterised by having a range of facilities within 10 minutes (up to "about" 800m). However, this is expressly *"not an upper limit"*, and walking offers the greatest potential to replace short car trips, particularly those under 2km[94]. In this case[95]:
    (a) There are a range of facilities, or proposed facilities at "about" 800m from the appeal site. These include the Free School (800m), Sainsbury's Local (850m) and restaurant and leisure facilities (830m and 805m)[96].
    (b) Mr. Frisby agreed, in answer to the Inspector's questions, that there was no numerical "upper limit" in respect of accessibility and walkability. He indicated that his view was that around 1600m (or around a 20-minute walk) would be reasonable. Within that distance are a bike service and repair and café facility (900m), a dental clinic (900m) the innovation centre, community centre/shop (1200m), the Heyford Park Chapel (1250m).
    (c) Within 2km are a gym and a nursery.
    (d) DH accepted that DL's own proposed residential development to the northwest is further away from the existing facilities than the appeal site. This is allocated and permitted development and is considered by DH to constitute sustainable development. The R6 party case that the appeal site is unacceptable and contrary to PV5 because it is not sufficiently proximate to existing facilities is wholly inconsistent with the distance between parts of its own site allocation to the existing facilities.

96. Further facilities will come forward through the Heyford Park development that will be accessible to the appeal site, as they will to other parts of the allocation. This includes further

[91] See sixth schedule to the s106 and, in particular, the definition of 'principal works'.
[92] Page 20 of NDG
[93] CD L1
[94] CD L1 at 4.4.1
[95] See distances at JP Proof table at [2.5].
[96] JP and DB re-x

facilities to the north, and a significant employment development directly to the north of the appeal site in the "Creative City" zone. This will be accessible via Chilgrove Drive, to which pedestrian/cycle links are proposed from the appeal site.

97. Nor should the site's sustainability in respect of public transport be overlooked. The site provides direct access to Camp Road. The number 25 bus route serves Camp Road, and contributions have been agreed to help support and enhance the route to provide a frequency of from one per hour currently, to up to four buses per hour. The bus route connects directly with Bicester Village Rail Station, which provides two direct trains per hour to both Oxford and London Marylebone from early morning until late at night. OCC's strategy for the area is for the number 25 bus route to be enhanced to provide *"an attractive, credible alternative to car use and help attain a high modal share for sustainable transport from new development in the area"*. The appeal scheme assists in delivering these sustainable transport objectives[97].

98. It has always been the Appellant's case that the scheme was acceptable based on the pedestrian and cycle connections from the site to Chilgrove Drive and Camp Road. Ms White for the HA also confirmed that this was the basis upon which the HA had assessed the scheme and found it to be acceptable. The LPA accepts and has long accepted that the Site is a sustainable development location. The LPA has also expressly accepted that the proposal complies with NPPF105[98], and the same logically follows from Mr. Frisby's concession to the Inspector that the scheme is acceptable accessibility terms (above).

99. It is a complete <u>mischaracterisation</u> of the Appellant's evidence to claim, as the R6 Party attempted to do in opening, that additional connection points proposed to the north and western boundaries are *"fundamental to its (the Appellant's) accessibility strategy"*[99]. That is patently not the case, as a full and proper reading of Mr. Parker's evidence would have disclosed. These additional connection points are connection points <u>to the boundary</u> of the appeal site. They provide the potential for additional enhancements in respect of future connectivity as schemes are delivered on the allocated site, but the Appellant is not dependent on them in respect of accessibility.

[97] JP PoE, p. 8. See also CD C5 for pre-application advice at para.3 p.6 which advised that contributions will be sought for the public transport strategy. CD G10 Oxfordshire LTP 2015-2031 at para.107 p.54 refers to the strategy being informed by a rail demand forecasting exercise.
[98] 8.10-8.14 Overarching SoCG, CD E7
[99] See R6 opening para. 13

100. Policy PV5 of the Local Plan does not, strictly, apply to the appeal site (as the appeal site is outwith the allocation). Nevertheless, by providing connection points to the site boundary where it adjoins the allocated sites, and by maximising the site's potential in respect of connectivity, it fully complies with the aims and objectives of PV5.

101. First, PV5 advises that design should encourage walking, cycling and use of public transport. This is what the scheme does. It connects to Camp Road and Chilgrove Drive. It provides a new off-road cycle route to the north of Camp Road, which cannot come forward without the scheme, and is a benefit of it. As set out above, it also assists in the delivery of the County Council's sustainability strategy by delivering a contribution to provide a significant enhancement to the number 25 bus service (above).

102. Second, PV5 requires that historic routes are re-opened[100]. The historic route referred to is Chilgrove drive, which is proposed, by the Heyford MP, to link into a wider heritage trail[101]. The appeal scheme links into this. The appeal scheme can therefore link with the wider scheme and objectives of PV5.

103. Third, Policy PV5 requires layouts which *"maximise the potential"* for walkable neighbourhoods with a legible hierarchy of routes. In addition, it requires that layouts enable a high degree of integration with development areas within the PV5 allocation, with connectivity between new and existing communities.

104. These requirements are met. As Mr. Frisby accepted (answers to Inspector's questions), there is no "upper limit" as to acceptable walk distances within the policy, and compliance is a matter of judgment for the decision maker. As set out above, the key links to Camp Road and Chilgrove drive mean that the proposal is compliant with this part of the policy and the guidance in MfSt relating to the same.

105. Further, the proposal *"maximises the potential"* to integrate with other schemes as they come forward, in accordance with requirements of the Policy. In particular:

[100] See CD G1 Cherwell Local Plan 2011-2031, pdf p. 261 and hardcopy p. 259. "Integration of the new community into the surrounding network of settlements by reopening historic routes and encouraging travel by means other than private car as far as possible".
[101] See Heyford MP CD N7 p. 68

(a) The appeal scheme provides direct links to Chilgrove Drive, which is noted as a key pedestrian and cycle route in the Heyford Master Plan[102] . The DL S106 requires that the works to Chilgrove Drive will be required before development to the north (including the commercial and residential elements) can be occupied. Thus, Chilgrove Drive will provide a link to the northern part of the allocation once delivered, and the appeal site can integrate into the wider scheme when it comes forward.

(b) There is a connection point proposed to the northern boundary of the appeal site. Ms. White (HA) explained that she had requested this so that there is the potential for the scheme to link to the primary pedestrian and cycle route that is proposed to the north, and which is again noted as a key link in the Heyford MP[103]. There is every reason to be optimistic that this will be achieved. The allocation north of the appeal site has Outline Permission, but it does not yet have Reserved Matters approval. The LPA therefore has control over the layout and internal access arrangements of that scheme, and Mr. Bateson and Ms. White confirmed that they would seek connection points to the boundaries of the allocated site too. This would mean that connections could be delivered when the development to the north is built out. This would presumably be welcomed by DL, who has made it abundantly clear that they are all about creating communities. DH accepted in xx that this link could be achieved.

(c) A connection point is proposed to the western boundary of the appeal site. This "maximises the potential" for the scheme to link up to the allocation to the west when that scheme comes forward. There will then be a walk route provided through the BDW site to Camp Road.

Again, it is in the gift of the LPA to secure this through future approvals relating to the allocated site. This is because, rather than implementing the extant "Pye" permission for that site, BDW are seeking to progress an alternative scheme, which provides for a connection to its eastern boundary[104], and which links up to the appeal scheme's western connection. BDW has confirmed that agreement is in place in respect of this[105]. As explained by Mr. Bellamy in the RT session, this has been

[102] CD N7 Heyford MP p. 68
[103] See CD N7 Heyford MP p.68
[104] See Planning SoCG addendum: BDW Plan as appendix
[105] See JP letter, appendix to JP Supplementary PoE – last two pages and final appendix.

secured because one of the landowners of the appeal site has a right of way over a 6m wide strip of land across the whole of the BDW frontage and BDW cannot build out their scheme without him relinquishing these rights. The Appellant's landowner will provide that access on condition that BDW reciprocate by providing a connection through its land to the Appellant's scheme. This simultaneously assists in the delivery of the allocation (BDW site) and assists in integrating the two development sites. In any event, agreement *has* therefore been reached in respect of this matter, and the R6 party's assertion in opening that it is "going nowhere"[106] is unevidenced and unsustainable.

(d) The scheme can therefore connect and integrate to the allocated development to each of its boundaries. The key pedestrian and cycle routes shown on the Heyford Park MP are to the north, east and south, and there is no dispute that scheme can connect with these. There is plainly compliance with Policy PV5.

106. Notwithstanding the above, at the beginning of the inquiry (albeit not in written evidence), Mr. Frisby presented a plan showing an east-west link across land to the west of the BDW site that he said needed to be secured to make the scheme acceptable. He then argued that the link that he had suggested was not deliverable but suggested a Grampian condition holding back the appeal scheme until the said link was delivered. The R6 party case is wholly unsustainable:

(i) First, neither the Appellant nor the HA have ever suggested that an east – west link is necessary, and the LPA has agreed in the SCG that the proposal is sustainable without it.

(ii) Second, the Master Plan for Heyford Park[107] identifies the key and secondary links that will connect and integrate the allocation. If the east – west link was critical to delivery of the MP, one would have expected it to be shown on the MP, since the BDW site lies to the west of the appeal site and would benefit from it to the same extent. However, DL's own MP, which is said to deliver PV5, <u>does not show the link from east to west that Mr Frisby contends for at all</u> ("the Frisby link"). The Frisby link is a creation entirely of Mr Frisby.

[106] R6 Opening at para. 13
[107] CD N7 Heyford MP, p.68

(iii) Third, an argument that the appeal scheme is unacceptable as a matter of principle unless and until such land ownership issues are resolved would be inconsistent with the allocation of the BDW site to the west– since it also affects that site's ability to connect with other development to the west. This cannot have been the intention of the Plan. The DL hybrid application has also been approved and judged to comply with the PV5 policy test to maximise connections with a requirement to provide a connection to its site boundary at Parcel 13. Similarly, the Pye outline application has been approved and judged to comply with this aspect of PV5 with a requirement to provide an access up to its boundary[108].

(iv) Fourth, as set out in Mr Parker's 'Walking Distances Comparison' note (Technical Note 4) submitted to the inquiry following the Highways RT, the walking distance from the most northerly part of the appeal site to local facilities is only slightly shorter along the Frisby link as it would be walking south to Camp Road and along the new footway connection on the northern side of the carriageway. Across the central and southern parts of the Appeal site, the difference in distance between the two would be negligible either way. It is clear from this that the argument the east – west link is critical to the accessibility and walkability of the scheme is wholly unsustainable.

(v) The appeal scheme connects to the key links shown on the Heyford MP (above). It is impossible to understand why the appeal scheme is said to be inconsistent with a Master Planned approach to the delivery of PV5 when it connects into all the key links shown on the Master Plan that delivers PV5.

[108] It is not accepted that the words "*facilitiate"* in the condition imposed on the Pye permission require an east – west link to be delivered or indicates that an east – west link is necessary to make the development acceptable. The Collins English Dictionary says facilitate *"means to **make it easier or more likely** to happen"*. Providing a connection point to the western boundary of the Pye scheme simply makes it easier or more likely for that scheme to connect into development to the west, if ownership constraints are at some stage resolved. The interpretation of the condition is, in any event, somewhat of a moot point since the Pye scheme is no longer to be progressed (BDW is now progressing an alternative scheme). If there is ambiguity in the wording of the condition, it will no doubt be resolved in future consents granted in accordance with the intention of the LPA and HA. In this respect, it of note that in the RT session, the LPA and HA said that they would not intend to make a scheme contingent on third party land issues that might impede its delivery, and that they would only require a connection to be provided to the boundary.

107. The reality of the situation is, therefore, that there is nothing of substance in the R6 party's remaining case. The Frisby link is not a requirement of policy. It is not a requirement of the Heyford Master Plan. It is not a requirement of the LPA or the HA. The difference it makes in respect of walkability is negligible. It should not be, on any sensible basis, an obstacle to the grant of planning permission. Indeed, when Ms. White was asked by the Inspector whether the Appellant could have done any more, the clear answer was an emphatic "no".

108. Drawing all this together, the appeal site is located at a major location for growth, is agreed to be accessible to a range of services and facilities in accordance with NPPF105, and *"maximises opportunities"* to integrate and link with future schemes as the allocation comes forward and is in accordance the objectives of policy PV5 and the principles of the Heyford Park Master Plan. There are no reasons, let alone "clear and compelling" reasons to depart from the considered opinion of the statutory consultee, the HA, in this case, which confirms that the proposal is acceptable in highways, accessibility and locational sustainability terms.

(v) Whether a five-year supply of deliverable housing land can be demonstrated

109. Following the adoption of its Authority Monitoring Report (AMR, core document O3) the day before the inquiry opened on 4th December 2023, it is agreed that the base date is 1st April 2023 and the five-year period is to 31st March 2028. It is also agreed that the LHN for Cherwell is 710 dwellings per annum and the 5% buffer applies.

110. As identified by the Inspector at the start of the Round Table Session (RTS), there are two issues between the Appellants and the Council in relation to 5YHLS:

- **Firstly, whether there should be separate calculations; one for Cherwell and one for Oxford's Unmet Housing Need; and**

- **Secondly the extent of the deliverable supply at 1st April 2023.**

Single or separate 5YHLS calculations

111. On the first issue, if the Appellants are right and a single calculation should be made then the Council cannot demonstrate a 5YHLS by a significant margin. Its supply would be just 2.15

years and the shortfall would be 3,792 homes[109]. Even if the LPA's supply were accepted, applying a single requirement, the Supply would be 3.16 years and the shortfall would remain a very substantial 2,446 homes.

112. The Council relies on the recent Deddington appeal[110] to support its case. However, this was a hearing where it is unclear what evidence and argument was produced in support of a single requirement. Indeed, the appeal decision was that there was no evidence before the Inspector to reach a conclusion other than that put forward by the LPA. There is evidence before this appeal, and we respectfully request that it is considered on its own merits.

113. The Council's approach is inconsistent with the Framework. 5YHLS is a creature of national policy. It is the Framework that sets out what it is, how it should be calculated and what the consequences are when there is a shortfall.

114. There has been a material change in circumstances in national policy since the Partial Review was adopted. The Partial Review was examined under the 2012 Framework. Paragraph 47 of that (archived) version of the Framework required a 5YHLS to be demonstrated against "requirements" (plural). In contrast, NPPF61 and NPPF66 of the 2023 NPPF are clear. These paragraphs expressly contemplate single requirement figure for the whole of the authority area which includes the local housing need for the area and any unmet need from neighbouring areas[111]. These paragraphs are completely new, and this wording was not included in the 2012 NPPF. Nor was the guidance set out in paragraph 2a-010 published, which sets out the circumstances when it might be appropriate to plan in "a housing requirement" for a higher figure than LHN including when it is agreed that unmet need from a neighbouring area is to be taken on.

115. Paragraph 74 of the Framework sets out the minimum requirement to demonstrate a 5YHLS and states that this should be against the "housing requirement" (singular) or the LHN where the strategic policies are more than five years old (unless those policies have been reviewed and found to be up to date). It envisages that there is one "housing requirement" (singular), which can contained in "strategic policies" (plural). The associated guidance in the PPG also refer to there being a housing requirement[112]. Again, in this respect, the wording of

[109] BP Supplementary PoE, table 7.1, page 23
[110] CD ID 23.
[111] Paragraphs 61 and 66 of the Framework
[112] Paragraphs 68-001, 68-002, 68-003

the 2023 NPPF is different to the 2012 NPPF, where the HLS was to be assessed against "housing requirements"[113].

116. Further, it is of note that the emerging Cherwell Local Plan Review proposes to abandon the separate calculations, and proceeds on the basis that a single housing requirement including the two components of Cherwell's need and Oxford's unmet need will be necessary. Paragraph 219 of the current Framework explains that plans may need to be revised to reflect policy changes which the current Framework has made. Cherwell LP Review does exactly that, by reflecting the wording in the current Framework[114].

117. The South Oxfordshire Local Plan was also examined and adopted under the terms of the current Framework. It includes one housing requirement which includes the two components of South Oxfordshire's need and the unmet need for Oxford. The approach in the Cherwell eLP and in South Oxfordshire further underscores the point that, in a NPPF2023 compliant world, a single requirement is necessary and appropriate.

118. To support its approach, the Council refers to appeals in Tewkesbury and Malvern Hills. But the circumstances in those cases are very different. Unlike here, neither have a component of the housing requirement in a strategic policy which is less than 5 years old. In those areas the strategic policies were more than 5 years old. Malvern Hills was attempting to apply a joint approach to calculating 5YHLS against a combined LHN with its neighbours without that approach being set out in a development plan. Tewkesbury were attempting to rely on sites allocated to meet Gloucester's unmet need against its LHN and thus conflated need and supply.

119. The situation in Cherwell is relatively unique. Few authorities have one component of the housing requirement in a strategic policy less than five years old and another component in another strategic policy which is more than five years old. The situation is however comparable with the Vale of White Horse where that Council applies the same approach proposed by the Appellants here i.e. that 5YHLS is measured against the LHN for the area (as the strategic policy including the housing requirement is more than 5 years old) plus the unmet need for Oxford (as the strategic policy for that component is less than 5 years old). That approach was endorsed in the Grove decision[115]. As set out in paragraph 17 of that decision, the 5YHLS does not drive the spatial strategy, it simply ensures that current housing needs can be met using up

[113] See BP Proof – para 7.23, page 48 – for extract.
[114] E.g. paragraphs 3.159 and 3.160 of the LP Review
[115] Core document M40

to date calculations of housing need and supply[116]. Applying the clear and express wording of the NPPF, 5 year supply must now be assessed against a single requirement. That conclusion is consistent with the approach in *Grove*.

120. The Framework's policy for there to be one housing requirement is further reinforced by the way housing delivery is measured through the Housing Delivery Test (HDT), and the inter-relationship between this and the five-year supply calculation and wider provisions in the NPPF that seek to boost supply and delivery. The HDT was introduced in the 2018 version of the Framework, and therefore did not exist when the Partial Review was examined.

121. The HDT methodology is prescribed, and requires that housing delivery is measured against a figure which includes the LHN for Cherwell plus Oxford's unmet needs. This is entirely consistent with paragraph 66 of the Framework which refers to one single requirement figure for the "whole area".

122. HDT is inexorably linked with the 5 – ys calculation. This is because NPPF74 requires the Council's supply to include a buffer, moved forward from later in the Plan period. Whether a 20% buffer applies is determined, expressly, by reference to performance against the HDT, and the purpose of this is to improve the prospect of achieving the planned supply. Further, FN8 of the NPPF applies the tilted balance in circumstances where the LPA cannot demonstrate a five-year land supply of deliverable sites with the appropriate buffer, as set out in NPPF74.

123. It is inconsistent and incoherent to argue, as the LPA seeks to do, that one should disaggregate the requirement for Oxford and Cherwell, but apply a buffer calculated by reference to delivery in Cherwell and Oxford. For example, applying a 5% buffer to the requirement for Oxford on the basis that delivery in Cherwell has been stronger is perverse, and will plainly not assist in achieving the planned supply for Oxford assessed against a single requirement.

124. This was not an issue that arose under the 2012 NPPF, because the HDT didn't exist in the 2012 NPPF. In determining what buffer was appropriate, the 2012 NPPF asked the decision maker to consider whether there had been "persistent under delivery". That judgment could plainly be reached in respect of a single requirement, or two requirements. That is not the position now, for the reasons set out above.

[116] Grove appeal decision, core document M40, paragraph 17

125. In this respect, it is of note that whilst policy PR12a uses the wording of the 2012 Framework in relation to "persistent under delivery" in respect of the buffer to be applied, the LPA use the HDT in accordance with NPPF2023. The LPA's acceptance that it is necessary to use the more up to date requirements of the NPPF in preference to their adopted policy in relation to one element of the calculation (buffer) but not the other (requirement) is inconsistent and illogical, and, it is submitted, an obvious attempt to avoid the consequences of the NPPF.

126. It is also of note that a HDT result of less than 95% requires authorities to prepare an action plan to "assess the cause of under-delivery and identify actions to increase delivery in future years"[117]. This clearly looks at improving supply so that delivery does not drop. There is a further trigger of the presumption in favour of sustainable development where the HDT drops to below 75% will also increase supply to in turn improve delivery. In short, supply and delivery are intrinsically linked. The purpose of maintaining an adequate forward supply is to ensure that delivery is maintained. Calculating the two on a different basis is like comparing apples and pears.

127. Despite the failure of the Partial Review to have delivered of <u>any</u> dwellings to meet Oxford's unmet needs over the last 3 years, the Council avoids any of the consequences in NPPF2023 because there is no HDT measurement for Oxford's unmet need and the HDT result for the whole area is greater than 95%. In other words, the Council benefits from the only delivery being on sites in Cherwell and that delivery has exceeded the annual LHN plus Oxford unmet need figure for the last 3 years. This is the very scenario the Partial Review Inspector was referring to and seeking to avoid in paragraph 148 of his report as the failure to meet Oxford's unmet need is essentially disregarded because of better performance on the Cherwell sites.

128. The avoidance of such consequences triggered by a failure to deliver housing in accordance with the HDT is clearly inconsistent with the Framework.

129. It is a well-established principle that policies are to be interpreted objectively, in accordance with the language used, understood in its proper context. The LPA does not live in the world of Humpty Dumpty and cannot make the NPPF2023 mean what it wishes it would mean (*<u>Tesco Stores Ltd v Dundee City Council</u> 2012 UKSC 13*, per Lord Reid at [19]). For the reasons set out above, it is clear from the wording of the NPPF 2023, which is unambiguous in its reference to a single requirement, understood in its proper context – which includes the relationship

[117] Framework paragraph 76

between the requirement and HDT (above), that HLS is to be considered against a single requirement. The policies of the Council's development plan that seek to disaggregate the requirement are inconsistent with NPPF2023, and, in accordance with NPPF219 should be accorded limited weight[118].

130. In any event, even on its own case, the Council cannot avoid the tilted balance being triggered by footnote 8 of the Framework in this case. On its own case, the Council has a 0.1 year supply for Oxford's unmet needs. This is a shortfall of some 2,839 homes[119], and amounts to a failure to meet the requirement of PR12a to demonstrate a five year land supply from 2021, as well as the NPPF. Even on the LPA's own case, this is plainly a case where *"the LPA cannot demonstrate a five – year supply of deliverable housing sites (with appropriate buffer)"* in accordance with NPPF11[120]. It follows that the policies of the PR are out of date, and the tilted balance applies[121]. The Council has no real answer to this point.

131. The Council seeks to avoid all the above by saying that it has carefully considered what sites it wishes to allocate to meet Oxford's unmet needs through its Partial Review. But this point does not address the wording of NPPF11, and again simply illustrates that the Council is seeking to avoid any consequence of this woeful supply position.

132. At the RTS there was no real answer to the Inspector's questions about what the Council was doing to address the significant shortfall or how the application of the tilted balance would assist in addressing the shortfall. The Partial Review itself allocates 6 sites. They are surrounded by Green Belt. There is no contingency sites or windfall or a geographical area within it where additional sites could come forward, and the Council has not taken action under PR12 (b) to address the position. AB therefore accepted that there was no "plan led" solution to address this chronic and acute situation. Nor is the eLP coming to the rescue any time soon, and it is a matter of agreement that it should be accorded limited weight given its stage.

133. This is <u>exactly</u> the type of situation where the NPPF envisages that policies should be considered out of date, and the tilted balance applies. This LPA has a <u>commitment</u> to assist in meeting Oxford's unmet need. That was the whole purpose of the Local Plan Review. The <u>only</u> prospect, on the evidence, of doing so is to release additional sites in Cherwell. The policies of the LPR that would otherwise restrict development coming forward outside the allocations to

[118] BP RT
[119] BP supplemental proof page 3 table 1.1
[120] NPPF11 and FN8
[121] Subject to NPPF11 limb (1) - heritage

meet Oxford's needs are out of date, and the tilted balance applies. The appeal site is accessible to Oxford (by a short bus/train journey), and falls within the same HMA as Oxford. It might not have been a site that the Council chose to allocate, but those sites are failing to come forward to meet Oxford's needs in accordance with the requirements of the NPPF and the commitment in the adopted Plan.

134. For all these reasons, a single 5YHLS requirement, consistent with the current Framework should be applied and therefore the Council cannot demonstrate a 5YHLS in accordance with it.

135. However, even if this is wrong, on the Council's case there is a 0- 0.1 year supply for Oxford.

136. On either basis, this is a situation where the LPA cannot demonstrate a five – year land supply, the tilted balance is engaged[122], and it should be beyond sensible dispute that there is a pressing need for the delivery of additional housing to meet what is a very substantial shortfall.

Supply/Sites

137. Regardless of the position on Oxford's unmet needs, the Council cannot demonstrate a 5YHLS on its single approach. BP concludes that it is 3.83 years. Only 310 dwellings would need to be removed from the Council's position for there to be a shortfall. BP has identified 1,183 dwellings that should be removed from the Council's supply figure with reference to the definition of deliverable in the annex to the Framework and paragraph 71 of the Framework in relation to the windfall allowance.

138. Whilst the Council claims a 5.4 year supply (the same position that it claimed at the time the appeal application was determined), its position does not stand up to scrutiny as was established at the RTS. A summary of the position on the disputed sites is set out in the appendix to these closing submissions. However, we make some general submissions here.

139. Firstly, 9 of the disputed sites are sites which the Council itself has identified as *"severely at risk"*[123]. As BP explains in his supplementary PoE and at the RTS, it is unclear how on the

[122] Subject to the application of limb (1) – heritage – NPPF11
[123] Core document I12A

one hand these sites are severely at risk and on the other hand the Council can claim to have the clear evidence of deliverability for these sites.

140. Secondly, it was only after several requests from the Appellants that the Council revealed its "evidence" to support its assumptions made in the AMR as set out in core document I12. However, this information is far from "clear evidence" of deliverability. Indeed, in xx AB queries whether the AMR *"could be believed"* and commented that *"it had been brought out in somewhat of a rush"*. The Appellants respectfully invite the Inspector to compare the evidence this Council relies on now to that which was firmly rejected as being clear evidence by the Secretary of State in Braintree, in appeals in South Oxfordshire and West Oxfordshire and by an Annual Position Statement Inspector in South Kesteven[124].

141. Here, the information the Council relies on is not only unclear but it is inconsistent with the assumptions made in the very recently published AMR, to the Council's advantage[125]. For example, on two sites[126], the developers involved have told the Council their anticipated build rates, yet the Council has increased the build rate on both sites without any clear evidence to justify it.

142. In some cases, there is no evidence at all from those promoting sites and the Council's "clear evidence" for the inclusion of these sites is that it has attempted to contact the promoters involved[127]. Whilst the Council has requested that promoters complete proformas, few are included in core document I12. Those that have been provided are scant in detail. For example, on one site, there is no explanation of when the S106 is to be resolved or applications for RM and discharge of conditions made. The form simply provides build rates[128].

143. Thirdly, comments were made for the first time at the RTS that were not in the AMR or core document I12 but nevertheless revealed that there are clearly relevant issues that should have been identified and properly considered by the Council ***before*** it published its AMR last week. One site was said to have an unresolved *"thorny issue"*[129] relating to the relocation of a football club[130]. Another has an unresolved BNG issue involving land outside of Cherwell[131].

[124] BP Main PoE, appendices EP2-EP5
[125] See the highlights in yellow in BP's appendix EP9
[126] Site M -Salt Way East and Site L - Drayton Farm
[127] Site G - Deerfields and Site H - Ambrosden
[128] Site C – Bankside Phase 2 (core document I2M)
[129] AB RTS
[130] Site C – Bankside Phase 2.
[131] Site H – Ambrosden.

On Dorchester's phase 10 site, the Council relies on the developer's phasing plan, but that plan was withdrawn the same day the AMR was published[132].

144. It is no surprise that the disputed sites were identified by the Council in document I12A, which is called *"Sites Appellant Claims Lack Clear Evidence"* before the Appellants had even identified them. Once this document and the remainder of the evidence in core document I12 is properly assessed it is also unsurprising that the Council identifies many sites as being *"severely at risk".* That is the Council's assessment. These sites should not have been included as deliverable in the AMR in the first place. The Council's approach has been thoroughly unreasonable, as is underscored by the fact that, in relation to one site, the Council continued to argue that a site was deliverable when it had been told in no uncertain terms by a developer that it would not deliver any dwellings on its site in the 5YHLS period due to utilities constraints, and then failed to disclose this relevant information at the appropriate time[133].

145. The Appellant's detailed position on disputed sites is Appendix Two to these closing submissions.

(vi) The overall planning balance.

146. It is clear that there is a five year land supply in this case, an that the shortfall is substantial. On the Appellant's case, there is a 2.15 year supply and a shortfall of 3,792 (see BP SPoE at Table 1.2), which is agreed to be acute. AB agreed that the weight. Both DB and AB characterised a 3,792 shortfall as acute and the weight to be attached to the provision of housing in those circumstances as substantial and at the top of the scale.

147. If, contrary to the Appellant's case, land supply is measured against a single requirement for Cherwell, there will still be a 3.83-year supply on the Appellant's analysis of sites, and a shortfall of some 873 homes (see BP SPoE at [8.4]). Again, AB and DB agreed that in these circumstances the weight to be attached to the provision of housing remained substantial.

148. However, even if the entirely of the LPA's case as to supply were accepted, and a 5.4 year housing land supply were demonstrated, the Council accepts that the weight to be attributed to the supply of housing should be significant. This is because, as set out above, there has been,

[132] Site K – Heyford Park.
[133] Core document I12S and JG main proof of evidence, page 40 – Bicester 12: "Wretchwick Green" as explained in BP Supplementary PoE, paragraphs 8.10 to 8.17. Note – the LPA now accepts that this site is not deliverable. However, it should never have been included in the AMR in light of the points above that the LPA was fully aware of.

and will continue to be, a substantial shortfall in planned requirements across the district, which has resulted from a substantial failure of its major strategic allocations to come forward. A component of this shortfall arises at Upper Heyford. The appeal site can provide much needed homes in a suitable location to address those needs.

149. Further, as Mr. Bateson accepted, and as the Case Officer noted, even where a five year supply is demonstrated, it is important that suitable sites continue to come forward so that the Council can continue to demonstrate a rolling five year land supply. Mr. Pycroft's undisputed evidence is that from next year, the Council will start to fail the HDT, and is likely to do so until 2026/7[134]. This is another reason why it is important that suitable sites come forward now.

150. Finally, even on the Council's case, it can only demonstrate a 0.1 year supply against the requirement for Oxford. This really is as bad as it can get, and the situation is acute. There is no plan led solution to redressing this situation, and it is important that suitable sites within Cherwell that are within the same HMA as Oxford, and that have accessibility to Oxford, can come forward to assist in meeting that need. Otherwise, there is simply no prospect of the commitment to Oxford being delivered. That would be the antithesis of the purpose of the Partial Review.

151. In those circumstances, Mr. Bainbridge's firm evidence was that substantial weight should be attributed to the supply of market housing in this case on any basis. That is clearly right.

152. None of this is undermined by residual points made by the R6 party. As to the potential drainage works along Camp Road, no one is suggesting that the full closure of the entirety of Camp Road would be necessary – such an assertion would be absurd and is not consistent with the letter appended to DH's proof. The undisputed highways evidence of Mr. Parker in the RT was that this could be managed in the normal way by the highway authority to allow traffic to pass, and DB explained that progression of a scheme could start early once outline consent was obtained, and had been factored into his trajectory, which assumes 80 – 100 homes could be delivered within the five year period. The R6 party noted the consultation response from Thames Water, and said this could take 18m – 3 years to resolve. 18 months would not disturb the Appellant's trajectory, as DB explained. 3 years might have some impact, but it would still be possible to secure a year's worth of delivery (40 – 50 homes).

[134] See table 3.7 BP page 16

153. The appeal site will clearly a meaningful contribution to supply on any basis, and considering what weight is to be attributed to this delivery, one should also factor in the woeful position and very substantial shortfall in the Council's housing land supply position. Frankly, and with respect, it is an absurd proposition to suggest that the weight to be attributed to the delivery of additional homes should be reduced because there *might* be some infrastructure issues that *might* have an unspecified impact on delivery, in circumstances where the R6 party has not taken time to quantify the same properly, and in circumstances where this LPA is facing a shortfall of literally 1000s (on the Appellant's case – 3,792 homes) within the five year period. There is an acute and critical need to release additional homes now, and the points raised by the R6 party do not come close to demonstrating the contrary

154. Nor is there anything in the point that the Appellant's scheme will "cannibalize sales". Mr. Silver might be concerned about profitability and competition, but that is not a material planning consideration unless there are land use planning consequences. Here, <u>none</u> are evidenced. There is no marketing evidence to demonstrate that both schemes could not come forward successfully, there is no viability evidence to suggest that both schemes could not come forward together, that the R6 party has not even produced a trajectory to indicate what it thinks the impact might be. The R6 points are thoroughly unarguable, unevidenced and unreasonable, and cannot be given any weight in the balance.

155. The position in respect of affordable housing is also stark, and the position is agreed by AB to be *"acute"* (xx). In 8 of the last 11 years there has been a failure to deliver the affordable homes needed, and the shortfall against the 2014 SHMA figure of 407, which is the figure identified in the Local Plan[135] is a staggering 1,149 homes. The Council's most recent affordable housing needs assessment indicates that the need is higher, and against that more recent figure, there is, incredibly, an even higher shortfall of some 1,905 homes[136]. These are real people in real need that need a home now, and whose needs are not being met. It is a position that *should* be treated with the utmost seriousness by this Authority. Further, by falling back on LHN for the purpose of calculating its housing land supply, there is likely to be further downward pressure on affordable housing delivery: The 2014 SHMA indicates that a housing requirement of 1233 would meet affordable housing requirement in full. Delivery of the adopted requirement of 1140 would go a significant way to meeting this need, which is one of

[135] Para B.105. The Council's AMR refers to a lower "target" – but there is no apparent reference to this in the Local Plan, and it is unclear where it is from
[136] BP Supplemental proof page 4 - 5

the reasons it was selected by the Council (above). Delivery of 710 homes per annum (LHN) will get nowhere near. And that is before the existing shortfall to date is factored in.

156. In all those circumstances, Mr. Bateson conceded that the position was acute, and that the weight that should be attributed to affordable housing is substantial and "right at the top of the scale". He was plainly right to do so.

157. There scheme will deliver a further package of benefits, as set out in the Appellant's proof[137]. These include economic benefits, contributions to local facilities and highways infrastructure, and BNG of 12.37%.

158. And all to be delivered in a sustainable location, adjacent to a major location for growth allocated in the Council's own Plan.

159. The application plainly accords with the development Plan. There is conflict with H18, but there is agreed compliance with ESD13. The policies pull in different directions, and priority should be given to the latter, which is more up to date, consistent with the NPPF174, and in accordance with S38 (5) PCPA (above). On the Appellant's case, there is no other conflict with the development plan. There is no harm to heritage assets, and the scheme complies with policies ESD15, PD4, and PV5 in respect of its heritage impacts. There are no other policies of the development plan alleged to be conflicted. As a scheme that complies with the development plan, permission should be granted without delay, in accordance with NPPF11. There are no material considerations that demonstrate otherwise. This is a beneficial development, that can integrate well with its receiving environment and the proposed allocation, the R6 party has not come close to demonstrating the contrary.

160. The Council disagrees on heritage. It is of course accepted that great weight should be attributed to the conservation of the asset, in accordance with NPPF199 and s72 PLBCA. However, the Council's case at its highest is that the harm caused would be at the lower level within the less than substantial bracket (low – moderate). Applying NPPF202, the public benefits clearly outweigh the harm, and there is compliance with ESD15, PD4, and PV2 and NPPF202. This would be the case even with a five – year land supply, as the Case Officer accepted.

161. Thus, even if the Inspector considers that there is conflict with the development plan in consequence of conflict with Policy H18, the tilted balance is engaged in this case as a result

[137] Page 56 and subsequent.

of the LPA's failure to demonstrate a five year land supply. The R6 party's comments in respect of accessibility are not accepted, but frankly, even taken at its highest, it is plain that a couple of extra minutes on a walk to facilities does not come close to significantly and demonstrably outweighing the benefits of the scheme not least the a 3,792 home deficit in the five year land supply, and where LPA is at least 1,149 homes short of meeting affordable housing needs to date. All other impacts will be acceptable in this case.

162. This is exactly the type of scheme that the LPA needs, and that it should always have welcomed with open arms. It is very clearly a scheme for sustainable development in the terms of the adopted Plan and the NPPF. The negative effects will be limited, and the benefits substantial. It is exactly the type of site that is required to meet housing needs going forward.

163. The Appellant therefore respectfully requests tht permission is granted accordingly.

15th December 2023

Sarah Reid KC
Constanze Bell

Kings Chambers
Manchester
Leeds
Birmingham.

APPENDIX ONE: HERITAGE CASE LAW

1. Section 72(1) requires decision-makers with respect to any buildings or other land in a conservation area to pay *"special attention…to the desirability of preserving or enhancing the character of that area"*.

2. There is no statutory duty to protect the setting of a Conservation Area. The NPPF makes the setting of a Conservation Area part of what may make it significant (see Ouseley J in ***Safe Rottingdean Ltd v Brighton and Hove CC*** [2019] EWHC 2632 at para 88).

3. In ***R. (on the application of Irving) v Mid-Sussex DC*** *[2016] EWHC 1529 (Admin)* Gilbart J held that if there was harm to the character and appearance of one part of the conservation area, the fact that the whole would still have a special character did not overcome the fact of that harm. It followed that the character and appearance would be harmed. Although the question of the extent of the harm was relevant to the consideration of its effects, it could not be right that harm to one part of a conservation area did not amount to harm for the purposes of considering the duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 s.72.

4. Where there is harm to a heritage asset, a decision-maker must give that harm "*considerable importance and weight*" when carrying out the planning balance exercise (***Barnwell Manor***[138]***, Forge Field***[139]). A less than substantial harm does not equate to a less than substantial objection.

5. A decision maker may not treat the desirability of preserving the settings of listed buildings and the character and appearance of conservation areas as mere material considerations to which it can simply attach such weight as it sees fit (***Forge Field***[140]).

6. Generally, a decision-maker who applies the relevant parts of NPPF will have complied with the section 66(1) duty (***Mordue v Jones and SSCLG & South Northamptonshire Council*** *[2015] EWCA Civ 1243*).

[138] ***Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG*** *[2014] EWCA Civ 137.*

[139] ***R (oao The Forge Field Society) v Sevenoaks DC*** *([2014] EWHC 1895 (Admin)).*

[140] ***R (oao The Forge Field Society) v Sevenoaks DC*** *([2014] EWHC 1895 (Admin)).*

7. Chapter 16 of the NPPF sets out the Government's policies relating to the conservation and enhancement of the historic environment. The significance of the heritage assets affected should be identified and assessed (NPPF paragraph 195)[141]. The setting of a heritage asset may contribute to that significance or an appreciation thereof, may detract from significance or may have a neutral effect. A noticeable change to setting may have a harmful, beneficial, or neutral effect.

8. If the proposed development is concluded to cause harm to the significance of a designated heritage asset, such harm should be categorised as either less than substantial or substantial[142]. If a proposal would result in harm to the significance of a designated heritage asset, great weight should be given to the asset's conservation[143], meaning the avoidance of harm and the delivery of enhancement where appropriate.

9. Where less than substantial harm is identified, the clear and convincing justification the Framework requires can be provided by countervailing public benefits[144] delivered by a proposal.

10. There is no requirement in the Act or in policy that a decision-maker must undertake a "net" or "internal" balance of heritage-related benefits and harm as a self-contained exercise preceding the wider balance envisaged by NPPF 202. However, the Inspector can choose to undertake such an exercise when performing the s.66 duty (***Bramshill v SSHCLG*** *[2021] EWCA Civ 320* at para 71 *et seq*).

Appendix Two - 5YHLS Disputed Sites

A – Bicester Gateway Business Park
(Capacity = 273 dwellings, LPA's 5YHLS = 0 dwellings, Appellants' 5YHLS = 0 dwellings, Difference = 0 dwellings)

[141] Heritage interest – or significance - may be archaeological, architectural, artistic or historic (Glossary to the NPPF).
[142] NPPF paragraphs 202 and 201 respectively.
[143] NPPF paragraph 199.
[144] Public benefits can include heritage benefits and can also include benefits to the way an area appears or functions or land use planning benefits.

Whilst this site is included in the AMR as being deliverable and the AMR was only published on 4th December 2023, this site is no longer disputed by the Council and has been removed from the 5YHLS position as set out in the AMR.

B - Canalside, Banbury

(Capacity = 63 dwellings, LPA's 5YHLS = 63 dwellings, Appellants' 5YHLS = 0 dwellings, Difference = 63 dwellings)

The Council has identified this site as being "severely at risk". It does not have planning permission. Indeed, outline planning permission expired in June 2022 (i.e. before the base date). A resubmitted outline planning application for 63 dwellings was made in May 2022, a resolution to grant permission was made in July 2023 but the S106 agreement has not been signed since. The latest position confirmed by AB at the RTS was that an extension of time to agree the S106 expired last week. The Council's evidence is not clear evidence of deliverability. There is no written agreement with a developer to confirm any of the timescales proposed by the Council. Indeed, the Council's evidence (**CD I12A**) states there is no housebuilder and it "assumes" that dwellings will come forward in the 5YHLS period based on standard lead-in times. This is not clear evidence of deliverability. 63 dwellings should be removed from the Council's 5YHLS figure.

C - Bankside Phase 2

(Capacity = 825 dwellings, LPA's 5YHLS = 50 dwellings, Appellant's 5YHLS = 0 dwellings, Difference = 50 dwellings)

This is a large site identified by the Council as being "severely at risk". It does not have planning permission. The Council did not consider this site was deliverable at 1st April 2022 because it did not have outline planning permission. This remains the case. An outline planning application was made in June 2019, a resolution to grant subject to a S106 was made in July 2021. The S106 has not been signed almost 2.5 years later. The proforma provided for this site (core document I12M) is scant in detail. It simply provides build rates without any explanation as to how infrastructure or other likely obstacles will be overcome. There is no detail in relation to when a reserved matters application is to be made or applications for the discharge of conditions. AB explained at the RTS that there is an unresolved "thorny issue" relating to the relocation of a football club and transfer of land to facilitate it. The Council has not provided clear evidence of deliverability for this site and 50 dwellings should be removed from the Council's 5YHLS figure.

D - Land opposite Hanwell Fields Recreation

(Capacity = 78 dwellings, LPA's 5YHLS = 78 dwellings, Appellants' 5YHLS = 0 dwellings, Difference = 78 dwellings)

The Council considers this site is also "severely at risk". It does not have planning permission. An outline planning application for 78 dwellings was made in October 2021, a resolution to grant was made in August 2022 but the S106 has still not been signed. The Council's evidence (core document **I2A**) incorrectly states that the developer is Manor Oak Homes. It continued to claim the same at the RTS. However, the sales particulars (core document **I12C**) and proforma (core document **I12G**) explain that the site is to be sold once outline planning permission is granted. Manor oak Homes are the promoter, not the housebuilder. The S106 has still not been signed and a written agreement between the Council and the eventual developer of the site has not been provided. This is not clear evidence of deliverability and 78 dwellings should be removed from the Council's 5YHLS figure.

E – Land adjoining Withycombe Farmhouse / Banbury Rise Phase 2

(Capacity = 250 dwellings, LPA's 5YHLS = 50 dwellings, Appellants' 5YHLS = 0 dwellings, Difference = 50 dwellings)

This is another site which does not have planning permission and the Council has identified as being "severely at risk". An outline planning application was recommended for approval at committee in February 2023 but the S106 has still not been signed. A written agreement between the Council and the developer has not been provided. The email from the developer (core document **I12L)** simply states that the site will deliver in the 5YHLS subject to the signing of the S106 hopefully by the end of October, which has not happened. The Council has not provided clear evidence of deliverability for this site and 50 dwellings should be removed from the Council's 5YHLS figure.

F – Grange Farm, Station Road, Launton

(Capacity = 65 dwellings, LPA's 5YHLS = 63 dwellings, Appellants' 5YHLS = 0 dwellings, Difference = 63 dwellings)

The Council identifies this site as being "severely at risk". It has outline planning permission and some applications have been made to discharge some of the pre-commencement conditions relating to newts and archaeology. A pre-application meeting between the Council and the developer, Greencore has taken place but a reserved matters application has still not been made and there is no written agreement with the developer

confirming their lead in time and build out rate. In such circumstances, the Secretary of State removed sites from Cheshire East Council's supply in the decision in Nantwich (core document **M29**, paragraph 21). 63 dwellings should be removed from the Council's 5YHLS figure.

G – Land at Deerfields Farm, Bodicote
(Capacity = 26 dwellings, LPA's 5YHLS = 26 dwellings, Appellants' 5YHLS = 0 dwellings, Difference = 26 dwellings)

This site is identified by the Council has being "severely at risk". It has outline planning permission but no application for reserved matters. There is no identified developer and no confirmation of reserved matters or discharge of conditions timeframes from the promoter (core document **I12A**). The evidence the Council relies on for this site is an email from the Council chasing the promoter for comments, without a response (core document (I12R). This is not clear evidence. 26 dwellings should be removed from the Council's 5YHLS.

H – OS Parcel 3489 adjoining and south west of B4011, Ambrosden
(Capacity = 75 dwellings, LPA's 5YHLS = 60 dwellings, Appellants' 5YHLS = 0 dwellings, Difference = 60 dwellings)

This is another site without planning permission, which has been identified as being "severely at risk". Whilst a resolution to grant outline planning permission was made in February 2023, the S106 has not been signed. The Council's evidence (core document **I12A**) explains that no comments have been provided by the site promoter. At the RTS, AB explained that there is an unresolved issue in relation to BNG that involves land outside of Cherwell. This is not clear evidence of deliverability and 60 dwellings should be removed from the Council's 5YHLS.

I – Land north of Railway House, Station Road, Hook Norton
(Capacity = 43 dwellings, LPA's 5YHLS = 43 dwellings, Appellants' 5YHLS = 0 dwellings, Difference = 43 dwellings)

This site has outline planning permission and has been identified by the Council as being "severely at risk". The Council relies on the fact that a pre-application has recently taken place with a housebuilder. The details of the pre-application are not known. This is not clear evidence, 43 dwellings should be removed from the Council's 5YHLS figure.

J – Kidlington Grange, 1 Bicester Road

(Capacity = 15 dwellings, LPA's 5YHLS = 15 dwellings, Appellants' 5YHLS = 0 dwellings, Difference = 15 dwellings)

This site is identified as being "severely at risk". It does not have planning permission. Whilst a full planning application was approved subject to a S106 agreement in July 2022, it was taken back to committee in March 2023 because it is unviable to provide an off-site affordable housing contribution. The S106 has still not been signed and the correspondence relied on by the Council is dated July 2023 (**I12N**). The viability review mechanism has not been agreed and there is no written agreement with the developer. 15 dwellings should be removed from the Council's 5YHLS figure.

K – Former RAF Upper Heyford

(Capacity = 1,175 dwellings, LPA's 5YHLS = 488 dwellings, Appellants' 5YHLS = 138 dwellings, Difference = 350 dwellings)

Part of the site has detailed consent for 138 dwellings and these dwellings are not disputed by the Appellants. However, for the remainder of the site, the onus remains on the Council to provide clear evidence. The Council's evidence is far from clear.

Firstly, in I12A, the Council questions itself whether it has clear evidence for the inclusion of an additional 350 dwellings.

Secondly, in I12A, it explains that it accepts a further 182 at this parcel (and development on the other parcels which do not form part of this entry in the AMR) but specifically rejects any further parcels

Thirdly, at the RTS, AB claimed that this entry also included phase 9 – but phase 9 is already included in the AMR and is uncontested.

Finally, the Council's clear evidence for this site relies on a phasing plan submitted by the developer but we were told at the inquiry that this was withdrawn on 4th December and DH explained that the developer (Dorchester) is "considering" its position.

In summary, clear evidence has not been provided for the inclusion of any further dwellings than the 138 and 350 dwellings should be removed from the Council's 5YHLS figure.

L - Drayton Lodge Farm

(Capacity = 320 dwellings, LPA's 5YHLS = 250 dwellings, Appellants' 5YHLS = 180 dwellings, Difference = 70 dwellings)

The Council's trajectory is inconsistent with its own evidence provided by the developer (core document **I12K**).

This site now has detailed consent but the developer has explained that 30 dwellings should be included in the first year (2024/25) and then 50 dwellings thereafter, completing in 2030. Whilst the Council attempted to claim at the RTS that 2024 could be the calendar year, this argument is not credible. The Council had clearly asked the developer for its build rates over the financial year.

In summary, Vistry have said that 180 dwellings should be included in the 5YHLS, not 250 and 70 dwellings should be removed from the Council's 5YHLS figure.

M – South of Salt Way East

(Capacity = 1,000 dwellings, LPA's 5YHLS = 400 dwellings, Appellants' 5YHLS = 237 dwellings, Difference = 163 dwellings)

Phases 1 and 3 of the site have detailed consent for 237 dwellings, which are not disputed. For the remainder of the site, the onus is on the Council to provide clear evidence of deliverability.

Reserved matters applications for phase 2 have not been made. The evidence the Council relies on for this site questions whether there is any confirmed correspondence from the developer in relation to further reserved matters applications (core document **I12A**). The other evidence the Council relies on is inconsistent with its trajectory as the developer has indicated that 250 dwellings should be included in the 5YHLS, not 400. 163 dwellings should be removed from the Council's 5YHLS.

N – Graven Hill

(Capacity = 243 dwellings, LPA's 5YHLS = 243 dwellings, Appellants' 5YHLS = 243 dwellings)

Despite 276 dwellings being included on this site in the recently published AMR, the Council accepts that 33 of those dwellings should not be included.

O – North West Phase 2 (Bicester 1)
(Capacity = 1,700 dwellings, LPA's 5YHLS = 100 dwellings, Appellants' 5YHLS = 0 dwellings, Difference = 100 dwellings)
This site has outline planning permission. RM applications have been made for phase 1A (infrastructure) and the first residential phase of 123 dwellings. Both are subject to outstanding objections from statutory consultees and there is no clear evidence that they have been overcome. There is no written agreement from the developer in relation to their proposed build out rates. 100 dwellings should be removed from the Council's 5YHLS figure.

Partial Review sites

The Appellants position on these 3 sites are set out in appendix EP9 of BP's supplementary proof of evidence. The Council only includes 80 dwellings on these 3 sites which have been pushed back a year compared to the position at 1st April 2022. Despite asking for the evidence the Council has to support the inclusion of these site, none was provided. None of the sites have planning permission and in the absence of clear evidence they should not be included in the 5YHLS.

Even on the Council's figures, the 1,700 dwellings by 2026 required in the Partial Review is not going to be achieved. Indeed, no dwellings are expected by then. The 4,400 dwelling requirement by 2031 is not going to be achieved.

Windfall allowance (50 dwellings disputed)

The Council has increased its windfall allowance from its previous position of 100 dwellings in years 4 and 5 to 125 (i.e. 50 more than that set out in its position statement at 1st April 2022). The AMR then shows that windfall delivery is expected to drop to 100 per annum after the 5YHLS period.

Compelling evidence is required by the Council for the increase since the previous position but this has not been provided.

The AMR simply claims that an average of 140 dwellings per annum on small windfall sites has been achieved over the plan period to date. However, that is not correct. BP has looked at the past 2 years and noted that the claimed completions on windfall sites also include completions on plots at the Graven Hill self-build village, which is an identified site in the Local Plan and therefore by definition they are not windfall. Removing those plots means that actual windfall delivery was 88 in 2021/22 and 104 in 2022/23[145].

Further, the number of dwellings on small sites with planning permission at the base date was 309 (an average of 103 p.a. in the 3 years these are expected to be delivered). This does not support an increase to 125 in years 4 and 5. BP has shown that the number of dwellings on small sites where planning permission is granted has decreased each year[146].

In summary, the Council has not provided compelling evidence for an increase in its windfall allowance and this should be reduced to 100 dwellings per annum in years 4 and 5; a reduction of 50 dwellings from the Council's 5YHLS.

[145] BP Supplementary PoE, section 6
[146] BP Supplementary PoE, table 6.2