



PROOF OF EVIDENCE of Mr MATTHEW SHELLUM
SITE: FORMER BUZZ BINGO SITE, BOLTON ROAD, BANBURY,
OX16 0TH

CHURCHILL RETIREMENT LIVING
CHURCHILL HOUSE
PARKSIDE
RINGWOOD
BH24 3SG

JULY 2022

TOWN & COUNTRY PLANNING ACT 1990

APPEAL BY CHURCHILL RETIREMENT LIVING LTD AGAINST CHERWELL DISTRICT COUNCIL'S FAILURE TO DETERMINE A PLANNING APPLICATION FOR THE DEMOLITION OF EXISTING BUILDINGS AND REDEVELOPMENT OF THE SITE TO FORM 80 RETIREMENT APARTMENTS (C3 USE) FOR OLDER PERSONS WITH ASSOCIATED COMMUNAL FACILITIES, ACCESS, PARKING AND LANDSCAPING & LISTED BUILDING APPLICATION FOR REMEDIAL WORKS TO TRELAWN HOUSE FOLLOWING THE DEMOLITION OF THE BUZZ BINGO BUILDING

SITE AT: FORMER BZZ BINGO SITE, BOLTON ROAD, BANBURY, OX16 0TH

LPA REF: 21/04202/F & 21/04179/LB

PLANNING INSPECTORATE REF: APP/C3105/W/22/3296229 & Y/3298661

PLANNING INQUIRY DATE: 9th-16th August 2022

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Contents

1.0	Executive Summary	4
2.0	Professional Qualifications and Experience.....	9
3.0	Introduction and scope of my evidence.....	10
4.0	Site History & Planning Process.....	11
5.0	Planning Policy.....	1414
6.0	Consideration of the Main Issues.....	Error! Bookmark not defined.26
7.0	Third Party Representations.....	30
8.0	Why Planning Permission should be Granted.....	31
9.0	Conclusion.....	4444

APPENDICES

Appendix 1	Highways Technical Note on Conditions – Paul Basham Associates.
Appendix 2	Extracts from 'A Better Life', ORB, (2008)
Appendix 3	'Silver Saviours of the High Street', Homes for Later Living, (2021)
Appendix 4	'Healthier and Happier', Homes for Later Living, (2019)
Appendix 5	Housing Markets and Independence in Old Age: Expanding the Opportunities", University of Reading
Appendix 6	'Retirement Living Explained: A Guide for Design & Planning Professionals'

1.0 Executive Summary

- 1.1 The appeal proposal is for the redevelopment of a vacant brownfield site in the centre of Banbury for 78 Retirement Living apartments for older persons including communal facilities, and associated parking and landscaping.
- 1.2 Following the Appellant's submission of the appeal on the grounds of the Council's failure to determine the application, the Council resolved at its Planning Committee of the 19th May 2022 that had it been able to determine the application it would have refused the application for the following reasons, and I summarise;
- (i) **Impact of the proposed building on the character and appearance of the Banbury Conservation Area and adjacent Trelawn House;**
 - (ii) **Insufficient information on the drainage of the proposed scheme;**
 - (iii) **The proposal would result in inappropriate piecemeal development of a wider policy allocation; and,**
 - (iv) **Absence of a legal agreement to secure planning infrastructure obligations.**
- 1.3 In respect of the second reason for refusal the Appellant has continued to engage with the Lead Local Flood Authority and provided to them an updated drainage strategy on the 29th June 2022. The Lead Local Flood Authority has confirmed in consultation correspondence on the 14th July that they have now have no objections to the scheme subject to the inclusion of appropriate conditions.
- 1.4 In respect of the fourth reason for refusal the Council confirmed at the case management conference that it accepted the Appellant's position based on the affordable housing and viability statement provided with the application and was no longer seeking planning obligations towards affordable housing provision and other infrastructure.
- 1.5 The remaining issues for this appeal are therefore the proposed development's impact on the character and appearance of the Banbury Conservation Area and adjoining Trelawn House, and whether the proposed development would adversely affect the comprehensive redevelopment of the wider policy allocation.
- (i) Impact of the proposed building on the character and appearance of the Banbury Conservation and adjacent Trelawn House**
- 1.6 The Council cite in the first reason for refusal that the proposal is contrary to two policies of the development plan relating to heritage: Policy C18 from the saved local plan policies from the 1996 Cherwell Local Plan; and Policy ESD15 on the character of the built and historic environment from the 2015 Cherwell Local Plan. Both policies predate the recent version of the NPPF and need to be read in conjunction with national planning policy. The reason for refusal does acknowledge this and alleges a breach of paragraphs

199, 202 and 206 of the NPPF. The NPPF introduces the weighing of public benefits against any identified harm to designated heritage assets. The Council's reason for refusal alleges the extent of harm as '*less than substantial*'. This is a direct reference to Para 202 of the NPPF which requires weighing the public benefits of the proposal including, where appropriate, securing its viable use against any identified less than substantial harm to the significance of the heritage asset(s).

1.7 The Appellant's case as set out in Mr. White's evidence is that the proposal would not lead to any harm to the significance of the identified heritage assets (Banbury Conservation Area and Trelawn House). In that respect it is not necessary to carry out the weighing exercise set out in Paragraph 202.

1.8 Even if it were considered that the proposed scheme would result in some element of less than substantial harm, which the Appellant refutes, then I consider that the public benefits of the proposal far outweigh such harm. The Council's reason for refusal states that *the benefits of bringing the site back into use and making efficient use of the land would not outweigh the harm*. With respect the public benefits of the proposed scheme are far greater and wider ranging than the Council's limited assessment of the benefits.

(ii) The proposal would result in inappropriate piecemeal development of a wider policy allocation.

1.9 The third reason for refusal on comprehensive development was not a reason for refusal given in the planning officer's report to committee and officers supported the development of the site. I infer from this that this was a member-led additional reason for refusal.

1.10 Both the Council's reasons for refusal allege harm to Policy Banbury 8, the third reason for refusal citing the proposal's failure to be a comprehensive redevelopment of the allocation as grounds for refusal. However, the Council do not have a 5-year housing land supply and therefore those policies which are most important for determining the application are out of date, including Policy Banbury 8. Given the extent of the Council's shortfall in housing delivery of 1638 units and the proposal's delivery of 78 residential units to address some of that shortfall, I do not consider an allegation of failure to provide a comprehensive development of the allocation stands up to scrutiny in terms of development plan or national planning policy framework objectives and cannot outweigh the Council's need to deliver new homes.

1.11 Policy Banbury 8 also does not prevent a phased approach to the redevelopment of the allocation providing that it clearly demonstrates that proposals will contribute towards a single coherent development. The adjoining tyre depot site referenced in the reason for refusal is not available for development and is leased to the current occupier until at least 2026. It is not known when this site might become available, indeed if it will ever

become available. In any event the proof of evidence of Mr. Scott and the urban design analysis document submitted with the application demonstrate that the proposed development would not prejudice the redevelopment of the tyre depot site.

- 1.12 In conclusion, Policy Banbury 8 is out of date, the Council have an extensive shortfall in housing delivery and cannot reasonably prevent suitable and readily available brownfield sites in one of the District's most sustainable principal settlements from coming forward for residential development. The policy does not prevent phased delivery and there is no certainty whatsoever of, if and when, the adjoining tyre depot site might become available for development. The Appellant's evidence at this appeal and through its application submission demonstrates that it would not prejudice the wider policy allocation, and professional planning officers of the Council agreed with that position.

Planning Balance

- 1.13 In summary, the Appellant's case is that the appeal scheme would not cause any material planning harm and would deliver the following significant planning benefits:

- The delivery of 78 units of C3 dwellings in an authority where they are unable to demonstrate a 5-year housing land supply (**substantial weight**);
- The delivery of 78 units of specialist accommodation for older persons which national planning policy identifies the need for delivery as 'critical', and the development plan identifies support for its provision during the plan period need to be for older persons accommodation (**substantial weight**);
- Redevelopment of a previously developed site (**substantial weight**);
- Redevelopment of a site in a sustainable location being within the town centre with local shops and facilities within walking distance (**substantial weight**);
- Making optimum use of the site (**substantial weight**);
- Releasing under-occupied housing stock in a local area where there is an acknowledged constraint on available land for residential development (**substantial weight**);
- Removal of a negative landmark and enhancement of, and positive contribution to, the Banbury Conservation Area and Trelawn House (**substantial weight**);
- Economic benefits through the generation of jobs in the construction phase and by residents of the proposal spending locally (**substantial weight**);
- Social benefits associated with specialist older persons accommodation resulting in fiscal savings for the national health service (**substantial weight**); and
- Environmental benefits from the redevelopment of this site and through the sustainable construction of the proposed development (**moderate weight**).

1.14 All these planning benefits weigh heavily in favour of the proposed development.

Conclusion

1.15 The Council allege non-compliance with Policy Banbury 8 of the Cherwell Local Plan but given the Council's absence of a 5-year housing land supply it is considered that this policy is out of date. In any event the policy does not preclude the phased development of the wider allocation and the Appellant has demonstrated that the proposed development is of a high quality. The Council's arguments relating to comprehensive development do not bear scrutiny when set against their pressing need to deliver residential units in the district, and the uncertainty of, if and when, the adjoining tyre depot site might come forward. The Council's current housing shortfall of 1638 units is significant and the pressing need for delivery must outweigh the Council's ambitions to develop the appeal site with the adjoining tyre depot.

1.16 The Appellant considers through the evidence of Mr. Jackson and Mr. White that the proposed scheme would not cause any harm to the significance of the Banbury Conservation Area nor to the adjacent listed Trelawn House nor to the character and appearance of the surrounding area. Indeed, I would go further to say that the proposed development which would remove an identified negative landmark of the conservation area (Banbury Conservation Area Appraisal) and replace it with a high-quality residential development representing an enhancement of the conservation area and to the setting of Trelawn House. In the absence of any harm to the significance of designated heritage assets the Appellant considers that paragraph 202 of the NPPF is not engaged.

1.17 Even if there is some small element of less than substantial harm identified to the significance of a designated heritage asset it is considered that the material public benefits of the proposed scheme as listed in Paragraph 9.3 above outweigh any such harm.

1.18 Finally, para 11(d) of the NPPF is engaged in this case because of the Council's lack of a 5-year housing land supply. The Appellant's case is that there is no harm to any designated heritage assets and therefore that no footnote 7 policies are engaged. Alternatively, the public benefits of the scheme outweigh any less than substantial heritage harm meaning that that the heritage policies in the NPPF do not provide a clear reason for refusal. In either case, the 'tilted balance' in footnote 11(d)(ii) of the NPPF applies planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The Appellant considers there are no adverse impacts associated with the proposed scheme. Even if there were any it is clear when weighing the extensive benefits of this proposed scheme that any

adverse impacts would come nowhere near to significantly and demonstrably outweighing the planning benefits.

1.19 I therefore respectfully request that the Inspector allows this appeal.

2.0 Professional Qualifications and Experience

- 2.1 I am Matthew Shellum BA hons DIPTP MRTPI, Planning Director and Head of Appeals at Planning Issues Ltd., a post which I have held for 3 years. I hold a degree (Batchelor of Arts with Honours) in Geography and Planning Studies and a post graduate diploma in Town Planning, both from Oxford Brookes University. I am a member of the Royal Town Planning Institute and have been so for over 14 years.
- 2.2 I previously held the post of Principal Planning Associate for The Planning Bureau Ltd. where I was employed since 2001. The Planning Bureau's primary client was McCarthy & Stone Retirement Lifestyles Ltd. who also specialise in the provision of older persons accommodation. I have 20 years of planning experience working with the retirement housing sector. I have obtained in the region of 200 planning consents for retirement housing schemes around the country via local permissions and planning appeals during that time.
- 2.3 Prior to 2001 I held posts with local planning authorities in Hampshire and Wiltshire.
- 2.4 Planning Issues Ltd. provide planning advice to the Appellant on all its development proposals nationwide and have been involved with this appeal site since January 2021. We acted as agent on behalf of the Appellant in submitting and pursuing the planning application that is now subject to this appeal. In the course of my role, I review circa 50 sites a year for the Appellant at various stages of land acquisition, pre-application planning submission, planning application and planning appeals.

3.0 Introduction and scope of my evidence

- 3.1 This proof of evidence relates to an appeal made under Section 78 of the Town and Country Planning Act 1990 against Cherwell District Council's failure to determine the applications subject of these appeals for the redevelopment of the site to form 80 Retirement Living apartments for older persons, with associated communal facilities, parking and landscaping following the demolition of existing buildings on the site, and remedial works to the listed Trelawn House following the demolition of the existing Buzz Bingo building.
- 3.2 I have considered the proposal against the policies of the development plan and have concluded that the proposal complies with the development plan when considered as a whole. Applying s.38(6) of the 2004 Act, the appeal should therefore be allowed unless material considerations indicate otherwise. In this case the Appellant's position is that all material considerations weigh in favour of the grant of permission.
- 3.3 My proof of evidence considers the following aspects of the case:
- A brief description of the Appeal proposal, site history and planning process;
 - Relevant Development Plan Policy and Material Planning Considerations;
 - Why Planning Permission should be granted;
 - Consideration of the Council's reasons for refusal;
 - Representations by third parties;
 - Planning balance; and
 - Conclusion.
- 3.4 A Planning Statement (CD-17), Design and Access Statement (CD-16) and Viability Statement (CD-18) were submitted with the application. To avoid duplication of evidence, reference will be made to these documents where appropriate.
- 3.5 The Appellant's case is supported by proofs of evidence from Mr. Robert Jackson on Design, Mr. Paul White on heritage and Mr. Dominic Scott on urban design and comprehensive development. I rely upon their evidence in reaching a view on the overall planning balance.

4.0 Site History & Planning Process

Appeal Site

- 4.1 The site is located within the built-up area of the town of Banbury. The site is within Banbury Town Centre and within close proximity to a range of shops, services and public transport. The site currently comprises the vacant Buzz Bingo Hall, offices and parking area. It is on the junction of Castle Street and North Bar Street. Bolton Road is to its eastern boundary, The existing building is two commercial storeys in height with the first floor contained within a mansard roof finished in slate with a red brick ground floor.
- 4.2 The site surrounds but does not include Trelawn House, which is a Grade II Listed Building. The existing former Buzz Bingo Hall is attached to Trelawn House on three elevations except for the public facing elevation onto North Bar Street. A front portion of the site sits within the Banbury Conservation Area which extends to the south of the site to take in properties backing on to Bolton Road, and to the north to include residential terrace housing on the north side of Castle Street.
- 4.3 To the north of the site is a two and three storey terrace of residential properties and an historic public house on the junction of Castle Street and North Bar Street. To the west of the site on the junction of North Bar Street and Castle Street is a three and three half storey apartment development. To the south-east of the site is a commercial tyre depot. To the east of the site is Bolton Road which provides access to the Council's Castle Street car park and to the rear of properties fronting on to Parsons Street.

Relevant Planning History

- 4.4 A search of the planning register reveals there is no relevant planning history on the appeal site. Planning applications were made in 2007 for minor modifications to the Bingo Hall and in 2015 for advertisement consent.

Planning Application Process

- 4.5 In accordance with the National Planning Policy Framework at paragraphs 39-41 the Appellant submitted a pre app on 23rd August 2021. A meeting was held with the Council on 2nd November, with a written response received on 17th November 2021.
- 4.6 The applications subject of these appeals were submitted to Cherwell District Council on 16th December 2021 and were validated on the 16th December 2021 for the listed building application and 23rd December 2021 for the full planning application. The planning application submitted was for the redevelopment for 80 retirement living apartments including communal facilities, access, parking and associated landscaping,

whilst the listed building application was for remedial works to Trelawn House following the demolition of the existing Buzz Bingo building.

4.7 During the course of the application the Appellant produced revised plans which reduced the number of proposed apartments from the submitted 80 units down to 78 units.

4.8 Subsequent to the appeal being lodged the Council took the application to its Planning Committee (CD-62) on the 19th May 2022, where it was resolved that had the Council been able to determine the application it would have refused planning permission for the following reasons:

1. The development proposed, by virtue of its scale, form and design in relation to Trelawn House adjacent and the Banbury Conservation Area is considered to have a detrimental impact (less than substantial) upon the character and appearance, historical integrity and setting of this grade II Listed building and would fail to preserve and enhance the character and appearance of the Banbury Conservation Area. Furthermore, the development by virtue of its form and design fails to provide the bespoke landmark building as required by Policy Banbury 8 and the Banbury Vision and Masterplan SPD 2016. The benefit of bringing the site back into use and making efficient use of the land would not outweigh the harm caused to the heritage assets. The proposals are therefore contrary to saved Policy C18 of the adopted Cherwell Local Plan 1996, Policies Banbury 8 and ESD15 of the adopted Cherwell Local Plan 2015 and Government guidance within paragraphs 199, 202 and 206 of the National Planning Policy Framework.

2. The proposal lacks detail and information relating to the drainage of the site and is therefore contrary to Oxfordshire County Council's published guidance "Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire" and Policies ESD6 and ESD7 of the adopted Cherwell Local Plan 2015 and Government guidance within the National Planning Policy Framework.

3. The application proposal which seeks permission on only part of the Policy Banbury 8 allocation, and more crucially fails to include the adjacent tyre depot fails to provide a coherent and integrated development on this part of Policy Banbury 8 site, resulting in an inappropriate and potentially harmful piecemeal development. As such the application is not in accordance with Policy Banbury 8 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

4. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a result of the development and necessary to make the impacts of the development acceptable in planning terms, to the detriment of both existing and proposed residents and contrary to Policies BSC3, BSC10, BSC11 and INF 1 of the Cherwell Local Plan 2015 and Planning Obligations SPD 2018 and Government guidance within the National Planning Policy Framework.

4.9 In respect of the second reason for refusal the Appellant has continued to engage with the Lead Local Flood Authority and provided to them an updated drainage strategy (CD-22 & 23) on the 29th June 2022. In light of the additional drainage information the Council have confirmed at the case management conference that they were no longer pursuing the second reason for refusal subject to the application of appropriate conditions should the Inspector be minded to allow the appeal. This is reflected in the Statement of Common Ground at Paragraph 8.19 and in the proposed conditions at Appendix 1 to the Statement of Common Ground.

4.10 In respect of the fourth reason for refusal, the Council confirmed at the case management conference that it accepted the Appellant's position based on the affordable housing and viability statement provided with the application and was no longer seeking planning obligations towards affordable housing provision and other infrastructure. This is reflected in the Statement of Common Ground at Paragraph 3.12.

4.11 Accordingly, it is considered that the main issues for this planning appeal are:

(i) Whether the proposed building by virtue of its scale, form and design preserves or enhances the Banbury Conservation Area and setting of Trelawn House;

(ii) Whether the proposed development would result in any harm to the comprehensive redevelopment of the area.

5.0 Planning Policy

- 5.1 The development plan for Cherwell District Council comprises the Cherwell Local Plan 2011-2031 Part 1 (2015), the saved policies of the adopted Cherwell Local Plan 1996, and Cherwell Local Plan 2011-2031 (Part 1) Partial Review – Oxford’s Unmet Housing Need (2020). The Partial Review of the Local Plan only relates to development around Kidlington and northern villages on the northern edge of Oxford.
- 5.2 Please refer to the Planning Statement submitted with the application for a wider review of development plan policy (CD-17). I below set out briefly those policies considered to be salient to this appeal proposal.
- 5.3 The NPPF¹ advises that policies in local plans should be reviewed to assess whether they need updating at least once every five years, and no later than five years from the date of the plan adoption and *should take into account changing circumstances affecting the area, or any relevant changes in national policy*. The purpose of the review is to ensure that policies remain relevant and effectively address the needs of the local community². It is acknowledged that policies will age at different rates according to local circumstances and that a plan does not become out of date automatically after 5 years³.
- 5.4 Para 64 of the PPG on Plan Making advises;
- ‘Due weight should be given to relevant policies in existing plans according to their consistency with the National Planning Policy Framework. It will be up to the decision-maker to decide the weight to give to the policies.’*
- 5.5 The Cherwell Local Plan 2011-2031 and the saved policies of the Cherwell Local Plan 1996 were adopted prior to the publication of the latest versions of the National Planning Policy Framework and the Planning Policy Guidance and over 5 years ago. The Council have started the process of replacing the development plan with the Cherwell Local Plan 2040 but this is in its infancy of public consultations on development options. The policies of the Development Plan need to be read in accordance with national planning policy with the weight to be attached to them determined by their consistency with national policy.

Cherwell Local Plan 2011-2031 (2015) (CD-52)

- 5.6 Paragraph A.9 on Page 28 of the plan includes the ‘vision’ for Cherwell District up to 2031. Included within the ‘vision’ are the aims to maintain and improve the vitality of town centres as accessible economic, cultural and social hubs and to *build sustainable*

¹ Para 33, NPPF

² NPPG reference ID:61-062-20190315

³ NPPG reference ID:61-064-20190315

communities by facing the challenge of a growing and an ageing population ensuring that the settlements of Banbury, Bicester and Kidlington, along with the rural areas offer a high quality of life and meet the needs of all sections of the population. The 'vision' also seeks to protect and enhance the built environment and its heritage.

- 5.7 Paragraph A.21 identifies that a key challenge within the district to building sustainable communities is meeting the needs of a growing and ageing population. Strategic objective 7 on page 32 sets out the requirement to meet the housing needs of all sections of Cherwell's communities, particularly the need to house an ageing population.
- 5.8 Strategic objective 12 on page 35 for ensuring sustainable development seeks to *focus development in Cherwell's sustainable locations, making efficient and effective use of land.* Strategic objective 13 seeks to reduce the dependence on private cars for mode of travel and to increase public transport use, cycling and walking. Strategic objective 14 seeks to create more sustainable communities by providing high quality, locally distinctive and well-designed environments. Strategic objective 15 looks to protect and enhance the historic and natural environment.

Policy PSD1

- 5.9 The policy sets out the presumption in favour of sustainable development contained within the National Planning Policy Framework advising that the Council will take a positive approach to development proposals that accord with the principles of sustainable development.

Policy BSC1

- 5.10 This policy sets out the district wide housing distributions and sets out the number of dwellings to be provided in the plan period and the proportions of distribution split between Bicester, Banbury and the rest of the district. The policy is considered to be out of date as the housing requirement is not based on the Government's latest standard methodology for assessing objectively assessed needs and the Council's absence of a 5-year housing land supply which is referenced in subsequent section 6.0 of this proof.

Policy BSC2

- 5.11 Policy BSC2 expects housing development to make effective and efficient use of land, encourages the re-use of previously developed land in sustainable locations. The policy is in accordance with national planning policy contained in Section 11 of the NPPF which advises planning policies and decisions should promote an effective use of land (Para 119) and that substantial weight should be given to re-using suitable brownfield land for

homes (Para 120c). The proposed development clearly accords with the aims of national planning policy and Policy BSC2 of the development plan.

Policy BSC4

- 5.12 Policy BSC4 is the Council's policy on housing mix which supports a range and mix of housing to meet current and future requirements in housing need in the district. The policy provides positive support for the provision of specialist housing for older people in suitable locations close to services and facilities. The supporting text makes reference to the Council's former Housing Strategy for Older People (201-2015). The local need for specialised accommodation for older persons is considered further in Section 8.0 on material planning benefits of the proposed scheme. The policy is in accordance with national planning policy at Paragraph 62 of the NPPF and NPPG which identifies the delivery of older persons accommodation as being 'critical'. Clearly, given the highly sustainable location of the appeal site the proposal complies with the locational requirements of the policy.

Policy ESD1 & ESD2

- 5.13 Policy ESD1 seeks measures to be taken to mitigate the impact of development within the district on climate change. The policy advises on a strategic level that this will mean distributing growth in the most sustainable locations; delivering development that seeks to reduce the need to travel; designing developments to reduce carbon emissions and using resources efficiently; and promoting the use of renewable or low carbon energy. The proposed scheme complies with this policy's strategic objectives being on a highly sustainable site for a form of residential development that is not reliant on the use of a private car. The proposal also includes measures to reduce carbon emissions and utilise forms of renewable energy provision. Policy ESD2 introduces an energy hierarchy of reducing energy use, supplying energy efficiently, and making use of renewable energy.

Policy ESD3

- 5.14 The Council's sustainable construction policy has been subsequently superseded by building regulations in respect of design and construction. The policy does require a water efficiency usage of 110l per person per day. The policy encourages new development to reflect a high-quality design and high environmental standards.

Policy ESD10

- 5.15 The policy seeks proposals for development to achieve a net gain in biodiversity sought by protecting, managing and enhancing existing resources. Development proposals will be expected to incorporate features to encourage biodiversity. The proposed scheme

would result in a net gain of biodiversity with the introduction of green landscaping and tree planting to this town centre site.

Policy ESD15

5.16 Policy ESD15 is the Council's policy for the conservation of the character of the built and historic environment. The policy expects new development proposals to complement and enhance the character of its context. The policy requires submission of design and access statements with new development proposals to show an understanding of the context and design rationale behind the proposals. It should be noted that in this case the application subject of this appeal was submitted with a design and access statement, an urban form analysis document and a heritage statement and there was clear understanding of historic context and the built environment and opportunities to improve both in a manner that complements and reinforces local distinctiveness. The policy also required design to be addressed at the pre-application stage on major developments which the Appellant did do with the Council.

5.17 The policy contains a number of bulleted criteria all of which are relevant to the appeal proposal, however I will identify some of the more pertinent criteria to the appeal proposal. The policy seeks for all new development to be of a high-quality design which should improve the quality and appearance of an area and the way it functions. The policy supports the efficient use of land through appropriate land uses, mix and density of development. The policy identifies the need for new development to contribute positively to an area's character and identity by creating or reinforcing local distinctiveness. The policy also requires development to respect traditional pattern of routes, spaces, blocks, enclosures and the form, scale and massing of buildings. In design terms it also advises:

'Development should be designed to integrate with existing streets and public spaces, and buildings configured to create clearly defined active public frontages.'

5.18 There are no separate policies on heritage assets or the historic environment, only policy ESD15. The policy seeks new development proposals to provide sufficient information on heritage assets to assess the potential impact of the proposal on their significance. The policy also seeks new development to conserve, sustain and enhance designated and non-designated heritage assets. The policy references the NPPF as drafted at the time (2012 version) but does not reference paragraphs 202 or 203 of the NPPF of the current version of the NPPF which requires a balancing exercise and any harm weighed against public benefits (202). In regard to heritage considerations the policy needs to be read in conjunction with the NPPF.

Policy Banbury 8: Bolton Road

- 5.19 Policy Banbury 8 is an allocated site for the redevelopment of the Bolton Road development area of which the appeal site is a part. The policy is referenced in both the Council's first and third putative reasons for refusal.
- 5.20 The policy seeks the redevelopment of the area to include a range of town centre and high-quality residential uses. It requires proposals to respect and enhance the historic setting of the site. The policy suggests retail, hotel, leisure and car parking as acceptable along with an indicative figure of 200 dwellings from the area.
- 5.21 The policy does not require comprehensive redevelopment of the entire allocated area. It speaks of '*preference*' for comprehensive development but not a requirement indeed it is permissive of a phased approach where it can be demonstrated that proposals will contribute towards the creation of a single integrated community and coherent development.
- 5.22 The policy provides a list of design and place shaping principles including compliance with Policy ESD15; a high quality landmark mixed use development; pedestrian and cycle linkages; a very high quality residential development considering impact on the conservation area using high quality materials in light of its historic context; regard to historical grain and adjoining listed building; the creation of high quality public realm and consideration of street frontages; and the height and massing being sensitive to its surroundings and to important views.
- 5.23 The supporting text to the policy advises that the Council were preparing a masterplan for the Bolton Road Development Area to form supplementary planning document, which has subsequently been produced.

Saved Policies of the Cherwell Local Plan 1996 (CD-53)

- 5.24 The Council's reasons for refusal include reference to one policy of the saved Cherwell Local Plan 1996 in the first reason for refusal. Clearly, given the age of the policies they need to be read in conjunction with the National Planning Policy Framework.
- 5.25 **Policy H4** encourages the provision of housing schemes for the elderly on sites within convenient reach of shops, community facilities and public transport.
- 5.26 **Policy C18** is referenced in the first reason for refusal and relates to applications for listed building consent. However, the Council have cited it as being breached on the planning application subject of this appeal. I do not therefore think that the policy is applicable to the 'planning application' appeal. The policy itself requires development proposals to have special regard to preserving the listed building or its setting. The policy given its age needs to be read in conjunction with the NPPF and Section 16 on Conserving and

Enhancing the Historic Environment. **Policy C19** requires sufficient information to enable an assessment to be made of the likely impact of the proposals on the listed building and its setting. **Policy C20** requires care to be taken to ensure that development within the setting of a listed building respects the architectural and historic character of the building and its setting.

5.27 **Policy C28** seeks to ensure that the standards of layout, design and external appearance including choice of materials are sympathetic to the character of the urban context. In conservation areas a high standard of design will be sought using local building materials. **Policy C30(i)** requires new residential development to be compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.

Material Planning Considerations

National Planning Policy Framework (2021) (CD-47)

5.28 The Planning Statement (CD-17) submitted with the application provides an overview of national planning policy. For ease of reference, I will briefly focus on national planning policy in respect of the outstanding issues for determination at this appeal where it is not contained in other appeal documents, as well as national planning policy in respect of material planning considerations when assessing the planning balance of the proposed scheme.

National Planning Policy Framework (NPPF) (CD-47)

5.29 In relation to this Appeal, the following sections of the NPPF are particularly material:

- **Para 7** - *“The purpose of the planning system is to contribute to the achievement of sustainable development.”* This statement puts sustainability at the heart of planning and is the thread that runs through the NPPF.
- **Para 8** - sets out the component parts that constitute ‘sustainable development’, namely economic, social and environmental.
- **Para 11** - *‘Plans and decisions should apply a presumption in favour of sustainable development.’* For decision making this means approving development proposals that accord with up-to-date development plans without delay.
- **Para 12** - The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision

making. Where a planning application conflicts with an up-to-date development plan permission should not normally be granted.

- **Para 57** – sets out that planning obligations must only be sought where all the CIL 122(2) tests are met.
- **Para 60** – sets out the planning objective *‘To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay’*. This is a recognition of the level of need for new housing across the country against the recent dwindling trend of housing supply.
- **Paras 60 and 61** – state that local housing needs assessments should determine the minimum number of homes needed, unless exceptional circumstances justify an alternative approach. This goes further to state that *“the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities...”*
- **Para 63** - where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless: off-site provision or an appropriate financial contribution in lieu can be robustly justified; and the agreed approach contributes to the objective of creating mixed and balanced communities.
- **Para 69** – Identifies that small and medium sized sites make an important contribution towards meeting housing requirements in an area. The paragraph requires Local Planning Authorities to identify land to accommodate at least 10% of their housing requirement on sites no larger than 1 hectare. Criterion (d) advises that local planning authorities should work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.
- **Para 92** – advises that planning policies and decisions should aim to achieve healthy, inclusive and safe places which enable and support healthy lifestyles through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

- **Para 93** - to provide the social, recreational and cultural facilities and services that the community needs, planning policies and decisions should plan positively for the provision and use of shared spaces, communal facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments.
- **Para 111** - states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- **Para 119** - advises that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.
- **Para 120(c)** - gives substantial weight to the value of reusing suitable brownfield land within settlements for homes.
- **Para 124** - advises that planning decisions should support development that makes efficient use of land, taking into account (amongst other things) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it; and the desirability of maintaining an area's prevailing character and setting, or of promoting regeneration and change.
- **Para 125** - states that where there is an existing shortage of land to meet identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential of each site.
- **Para 126** - The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creating better places to live and work while making development acceptable to communities.
- **Para 130** - seeks to ensure that developments:
 - a) Function well and add to the quality of the area over their lifetime;
 - b) are visually attractive due to good architecture, layout and landscaping;
 - c) are sympathetic to local character and history including the built environment and landscaping, while not preventing or discouraging appropriate innovation or change including increased densities;

- d) Establish or maintain a strong sense of place to create attractive, distinguished places;
 - e) Optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development;
 - f) Create places that are safe, inclusive and accessible, promoting health and wellbeing, with a high standard of amenity and where crime does not undermine the quality of life.
- **Para 134** - Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents.
 - **Para 194** - Local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
 - **Para 199** - When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
 - **Para 202** - Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
 - **Para 206** - Local Planning Authorities should look for opportunities for new development within conservation areas, and within the setting of heritage assets, to enhance or better reveal their significance.

National Planning Policy Guidance (CD-48)

5.30 The National Planning Policy Guidance (NPPG) was published "online" in March 2014, and has been subject to subsequent revisions. It is considered that the following sections are of particular relevance to this appeal:

- Housing for Older and Disabled People

5.31 With respect to the section on '*Housing for Older and Disabled People*', it was introduced into the PPG as a separate section in July 2019. I consider it to be significant that the Government has deemed it necessary, given the extent of need for these forms of accommodation, to have a dedicated section providing advice for plan makers and decision takers to secure delivery of these specialist forms of accommodation. Whilst the whole section is relevant to the appeal proposal, Paragraph 001 identifying the scale of need is worth reiterating:

'The need to provide housing older people is critical. People are living longer lives and the proportion of older people in the population is increasing. In mid-2016 there were 1.6million people aged 85 and over; by mid-2041 this is projected to double to 3.2 million. Offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems. Therefore, an understanding of how the ageing population affects housing needs is something to be considered from the early stages of plan-making through to decision-taking.' (my emphasis).

5.32 Paragraph 003 advises that for plan-making purposes 'strategic policy making authorities will need to determine the needs of people who will be approaching or reaching retirement over the plan period, as well as the existing population of older people.'

5.33 Paragraph 013 states that it is up to the plan-making body whether to allocate sites for specialist housing for older people and this might be appropriate where there is an identified unmet need for specialist housing. The paragraph identifies the location of housing as a key consideration for older people, factors to consider include the proximity of sites to good public transport, local amenities, health services and town centres.

5.34 Paragraph 016 states '**where there is an identified unmet need for specialist housing, local authorities should take a positive approach to schemes that propose to address this need.**'

National Design Guide (2019) (CD-49)

5.35 The Ministry of Housing, Communities and Local Government published the National Design Guide in 2019. The design guide is a practical guide to achieving well-designed and successful places. It forms part of the Government's collection of planning practice guidance and supports the National Planning Policy Framework. The National Design

Guide is considered in further detail within the submission Design and Access Statement (CD-16).

Supplementary Planning Documents

5.36 The Council's first reason for refusal makes specific reference to the Banbury Vision and Masterplan SPD 2016.

Banbury Vision and Masterplan SPD 2016 (CD-55)

5.37 The Banbury Vision and Masterplan SPD establishes the long-term vision for the town. The Masterplan contains design principles for sites in the Local Plan including Policy Banbury 8. Page 29 sets out the key initiatives of the Masterplan to deliver a vibrant and attractive town centre which includes:

- Preserving and enhancing the heritage assets and their settings;
- Enabling the development of the two town centre strategic sites which include the Bolton Road allocation of which the appeal site forms part; and
- Encouraging high quality housing development on appropriate sites within the town centre.

5.38 Pages 40-41 of the Masterplan include reference to the Bolton Road (Banbury 8) policy allocation. Page 41 identifies that the allocation should provide a mixture of residential and town centre uses including retailing opportunities together with car parking.

5.39 Appendix 1 to the Masterplan includes an indicative plan of the Bolton Road allocation splitting it into three clear blocks either side of Bolton Road. The plan identifies that the elevation to North Bar Street and its junction with Castle Street is an important frontage, as is the junction with Castle Street and Bolton Road. The indicative plan suggests a landscaped edge to the Castle Street frontage. Pedestrian and cycle links from Castle Street to Parsons Street are shown maintained through the existing Bolton Road.

5.40 The Masterplan and indicative urban framework plan are considered further in Mr. Scott's and Mr. Jackson's evidence.

6.0 Consideration of the Council's Reasons for Refusal

6.1 Section 38(6) of the Planning & Compulsory Purchase Act 2004 provides that the appeal application must be determined in accordance with the development plan unless material planning considerations indicate otherwise. The Appellant's position is that the proposed development accords with the development plan when considered as a whole and all material planning considerations weigh in favour of the application.

6.2 The Appellant's other witnesses deal with the two principal issues of dispute at this appeal and my evidence considers the development plan and material planning benefits which weigh in favour of the appeal proposal. I consider the three main issues identified by the Inspector as arising out of the reasons for refusal in turn below by reference to the relevant development plan policies and the weight to be attached to them. Prior to delving into those main issues, I consider the question of whether Para 11(d) of the NPPF applies to the appeal proposal and the weight which can be given to the relevant development plan policies as a consequence.

Para 11(d) of the NPPF

6.3 Paragraph 74 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement. The supply of specific deliverable sites should, in addition, include a buffer of 5% or 20% where there has been significant under delivery of housing over the previous 3 years.

6.4 A failure to be able to demonstrate such a level of supply will result in the local planning authorities' policies that are most important for determining housing applications being deemed to be out of date (see footnote 8 to paragraph 11). The same deeming provision applies if the Housing Delivery Test set out in paragraph 76 of the NPPF indicates that the delivery of housing was substantially below the housing requirement over the previous three years.

6.5 The Council's latest Annual Monitoring Report (December 2021) identifies that the Council can only demonstrate a 3.8 year housing land supply for the period 2021-2026 and a 3.5 year housing land supply for the period 2022-2027. Given the Council's absence of a 5-year housing land supply, paragraph 11(d) of the NPPF is engaged (because the policies which are most important for determining the application are deemed to be out-of-date) meaning that permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any

adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

- 6.6 Footnote 7 to Paragraph 11(d) provides that the policies within the Framework relating to protected areas include designated heritage assets. In this case the designated heritage assets would be the Banbury Conservation Area and adjacent Trelawn House. It is the Appellant's case, as set out in Mr. White's evidence, that the proposal would cause no harm to the significance of any designated heritage assets and, accordingly, that the presumption in favour of sustainable development is not disapplied by virtue of para 11(d)(i).

The Three Main Issues arising from the Reasons for Refusal

(i) Effect on the Comprehensive Development of the Area

- 6.7 Both the Council's reasons for refusal allege harm to Policy Banbury 8, with the third reason for refusal citing the proposal's failure to comprise a comprehensive redevelopment of the allocation as grounds for refusal.
- 6.8 The third reason for refusal on comprehensive development was not a reason for refusal given in the planning officer's report to committee which infers it was a member led reason for refusal. Indeed, the officer report to committee at paragraphs 9.15 and 9.16 deals with this specific issue as follows:

'Whilst it is accepted that a residential retirement scheme on this part of the Banbury 8 site may be acceptable in principle, and that the remainder of the Bolton Road redevelopment area may be better suited to retail, leisure, car parking and hotel uses as required by Policy Banbury 8, due to its proximity and relationship with the town centre itself, the redevelopment of this part of the site in isolation for residential use only must not prejudice the viable and timely delivery of either the total number of dwellings (200) for the overall site or the delivery of the remainder of the site; including the design and place shaping principles, improved links to the town centre and improved public realm accordingly as required by the policy and SPD.

Notwithstanding the above, it is considered that on balance, the re-development of this part of the Bolton Road redevelopment site for elderly living accommodation might be acceptable in principle having regard to its sustainable location and proximity to the town centre, local amenities and public transport connections.' (my emphasis)

- 6.9 It is clear that professional officers' view was the proposed development would not affect the redevelopment of the wider Policy Banbury 8 allocation.

- 6.10 The third reason for refusal is specific in its allegation that it is the failure to include the adjacent tyre depot within the scheme which makes it an unacceptable piecemeal development. Information from the land registry identifies that the tyre depot is on a longer-term lease from the freeholder until 2026. Given the extent of housing shortfall in the district the Council do not have the luxury of preventing suitable and readily available sites such as the appeal site from coming forward for residential development in the hope that an additional parcel of land may come forward at some undefined point in the future. It should also be noted that the policy allocation is from 2015 and this is the first application seven years later for any redevelopment of any part of the allocation.
- 6.11 Policy Banbury 8 also does not prevent a phased approach to the redevelopment of the allocation providing that it clearly demonstrates that proposals will contribute towards a single coherent development. The road network identifies the perimeter blocks for the redevelopment of the allocation and I would refer to Mr. Jackson's evidence for the consideration of the proposed scheme in respect to the context of the site and the proof of evidence of Mr. Scott and the urban design document submitted with the application demonstrates that the proposed development in any event would not prejudice the redevelopment of the tyre depot site. The proposal complies with the aims and objectives of Policy Banbury 8.
- 6.12 However, as identified in the preceding paragraphs the Council do not have a 5-year housing land supply and therefore those policies which are most important for determining the application are out of date this includes Policy Banbury 8. Given the extent of the Council's shortfall in housing delivery of 1638 units, the proposals delivery of 78 residential units to assist this current shortfall I do not consider an allegation of failure to provide a comprehensive development of the allocation stands up to scrutiny in terms of development plan or national planning policy framework objectives and cannot outweigh the Council's need to deliver new homes. I consider that little weight can be given to Policy Banbury 8.
- 6.13 In conclusion, my view is that the proposal is in accordance with Policy Banbury 8. The policy does not prevent phased delivery and there is no certainty whatsoever of, if and when, the adjoining tyre depot site might be available for development. The Appellant's evidence at this appeal and through its application submission has demonstrated that it would not prejudice the wider policy allocation, and professional planning officers of the Council agreed with that evidence. The proposal is of a high-quality design as set out in Mr. Jackson's evidence and complies with the specific design principles of Policy Banbury 8.

Alternatively, if the Inspector were to find conflict with that policy, only limited weight could be given to it due to the policy being out of date as a result of the Council's extensive shortfall in housing delivery.

(ii) Effect on the significance of Heritage Assets

- 6.14 The Council cite in the first reason for refusal that the proposal is contrary to two policies of the development plan relating to heritage: Policy C18 from the saved local plan policies from the 1996 Cherwell Local Plan; and Policy ESD15 on the character of the built and historic environment from the 2015 Cherwell Local Plan. Both policies predate the recent version of the NPPF and need to be read in conjunction with national planning policy. The reason for refusal does acknowledge this with reference to an allegation of breach with policies 199, 202 and 206 of the NPPF.
- 6.15 The Appellant's case as set out in Mr. White's evidence is that the proposal would not lead to any harm to the significance of the identified heritage assets (Banbury Conservation Area and Trelawn House). Given the Appellant's case we consider that the proposed scheme complies with Policy ESD15 of the 2015 Cherwell Local Plan. I do not consider that Policy C18 is applicable to the planning application appeal but given we consider the proposal would lead to an enhance to the adjoining listed building we consider this policy is complied with anyway.
- 6.16 As set out above both Policy C18 of the 1996 Cherwell Local Plan and Policy ESD15 of the 2015 Cherwell Local Plan predate the NPPF and are not fully consistent with the NPPF on heritage assets. The NPPF introduces the weighing of public benefits against any identified harm to designated heritage assets, this is not reflected in either of the two policies and the weight to be afforded to them is lessened as a result. The Council's reason for refusal alleges the extent of harm as *'less than substantial'*. This is a direct reference to Para 202 of the NPPF which requires weighing the public benefits of the proposal including where appropriate securing its viable use against any identified less than substantial harm to the significance of the heritage asset(s). However, having identified no harm to the significance of heritage assets, the Appellant considers it is not necessary to carry out the weighing exercise set out in Paragraph 202 of the NPPF.
- 6.17 Even if it was considered that the proposed scheme does result in some element of less than substantial harm, which the Appellant refutes, then I consider the public benefits of the proposed scheme far outweigh any harm. The Council's reason for refusal states that *the benefits of bringing the site back into use and making efficient use of the land would not outweigh the harm*. With respect the public benefits of the proposed scheme are far wider and reaching than the Council's limited assessment of benefits. I set out the public benefits of the proposed scheme in Section 8.0 of this proof.

6.18 I would refer to the evidence of Mr. White and Mr. Jackson but I am of the view that the proposed development would not result in any harm to the character and appearance of the Banbury Conservation Area or the setting of Trelawn House. Even if any harm is identified then the overall public benefits of the proposed scheme far outweigh any less than substantial harm.

(iii) Effect on the Character and Appearance of the Area

6.19 Policy ESD15 considers not only development effecting the historic environment but also developments effecting all built environments and provides a list of criteria that all new development should meet in achieving a high-quality design. I would refer to the evidence provide by Mr.Jackson and I consider the proposal complies with Policy ESD15 in respect to being a high quality design that respects and positively contributes to the character of the area.

6.20 The proposal is attractive and of a scale that will improve the quality and appearance of the area. It makes efficient use of land and integrates with the traditional pattern of development in the area.

6.21 The first reason refusal also references Policy Banbury 8 and the Banbury Vision and Masterplan SPD. I would refer to Mr. Jackson and Mr. Scott's evidence and I conclude that the proposed scheme complies with the key site specific design and place making principles listed in the policy which are made to cover the entire site allocation. As set out above given the Council's absence of a 5-year housing land supply the policies most important for determining this application are considered to be out of date and that would include Policy Banbury 8, and therefore little weight can be afforded to it. The Banbury Vision and Masterplan SPD is not part of the development plan but is capable of being a material planning consideration but given the weight that should be afforded to the relevant planning Policy Banbury 8 is considered to be little, the weight to be attached to the SPD can be no more than little as well.

6.22 I consider that the proposed development complies with Policies ESD15 and Banbury 8 of the Cherwell Local Plan 2015.

7.0 Third Party Representations

7.1 The application received just 3 comments from third parties which is a low level for a major residential application. The three representations from third parties raised comments relating to the design and the use of the site.

(i) Design

7.2 The issue of design is addressed in Mr. Jackson's evidence and I would refer specifically to that in response to third party comments on design. It should be noted that third parties welcomed the redevelopment of the site and the removal of what they considered a '*modern eyesore*'.

(ii) Use of the site

7.3 Comments were raised about using the site for alternative purposes, potentially leisure uses and questioned the need for further apartments in the town. As set out later in my evidence the Council have a shortfall of housing delivery and both the development plan and national planning policy emphasise the need to boost housing numbers on sustainable brownfield sites. Banbury is one of the principal and most sustainable settlements in the district and as such redeveloping the site for a high density residential development would be appropriate. The policy allocation, whilst out of date, still envisaged 200 dwellings to be provided in this part of Banbury. The policy allocation also referenced other uses coming forward and the redevelopment of this part of the allocation would not preclude alternative town centre and leisure uses coming forward.

7.4 In respect of redeveloping the site for retirement apartments I consider at the housing needs of the population in Section 8.0 of my proof but would note that the Government has identified the delivery of older persons accommodation as being critical, and there is an identified and growing need for specialist accommodation within the district. Given the specific locational requirements of this form of accommodation being in close proximity to shops, services and public transport there are limited opportunities to find suitable sites capable of delivering such accommodation.

(iii) Oxfordshire County Council Highways Authority

7.5 The local highway authority are not objecting to the proposed development but through a separate statement of case do indicate a list of conditions that they would like to have imposed if the Inspector were minded to allow the appeal. The Appellant considers that not all the requested highways conditions are necessary and has attached a Highways Technical Note addressing the conditions requested. Please see Appendix 1 to this statement.

8.0 Why Planning Permission should be Granted

8.1 Section 38(6) of the Planning & Compulsory Purchase Act 2004 provides that the appeal must be determined in accordance with the development plan unless material planning considerations indicate otherwise. I consider that the proposed development complies with the development plan and that all the material considerations indicate that the appeal should be allowed.

Compliance with the Development Plan

8.2 The Council have only identified 3 policies of the Development Plan that the proposal is alleged to breach; Policy Banbury 8 and Policy ESD15 of the Cherwell Local Plan and Policy C18 of the saved policies of the Cherwell Local Plan. The parties agree that the appeal proposal is compliant with all the Development Plan policies save for these three. For the reasons set out above, my view is that the proposal does in fact comply with all of the policies of the development plan.

Material Planning Considerations

8.3 In my view, the following are material considerations in the determination of this appeal:

8.4 (i) the Council's lack of a 5 year housing land supply

8.5 (ii) the numerous and substantial benefits that would flow from the proposed development, as follows:

- (i) Provision of residential accommodation;
- (ii) Meeting identified national and local housing needs;
- (iii) Redevelopment of previously developed land;
- (iv) Compliance with spatial strategy for redeveloping in sustainable locations;
- (v) Efficient and effective use of land;
- (vi) Economic Benefits of the proposed scheme;
- (vii) Social Benefits of the proposed scheme;
- (viii) Environmental Benefits of the proposed scheme; and,
- (ix) Release of under occupied housing stock.

Provision of Residential Accommodation

8.6 The proposed development would provide 78 units of residential accommodation complying with the development plan's aims and objectives of providing housing during the plan period. The proposal complies with the strategic policy objectives of the Cherwell Local Plan to meet housing needs for all stages of life and the NPPF's aims to

boost housing delivery (Para 60, NPPF). Furthermore, the Council are unable to demonstrate a 5-year supply of housing land supply and have a shortfall of 1638 units for the period 2022-2027. This will make a significant contribution (circa 5%) towards addressing the shortfall. Accordingly, I place substantial weight on the delivery of housing units.

Meeting identified National and Local Housing Needs

8.7 The proposed development would contribute towards the delivery of specialised older persons accommodation for which there is a need both nationally and locally. Paragraph 1 of the PPG on 'Housing for Older and Disabled People' (set out above) describes this need as 'critical'. I consider it telling that nowhere else in national planning policy is the delivery of a specific housing type described in such terms.

8.8 The PPG's comments on the need for delivery of older persons accommodation has been further underlined in the recent House of Lords Built Environment Committee report *Meeting Housing Demand* (10th January 2022) (CD-50). At Paragraphs 90 and 91 of the Report focussing on housing needs of older people, the committee states that:

'There will need to be a mix of more suitable, accessible 'mainstream' housing and specialist housing for the elderly if the housing market is to be sustainable in the coming years as the population ages. Older people's housing choices are constrained by the options available.'

Little progress has been made on housing for the elderly. As demand changes as the population ages, more focussed approach is needed. The Government must take a coordinated approach to the issue of later living housing, between departments and through the National Planning Policy Framework.'

8.9 The Government has published its response on the 28th March 2022 to the House of Lords Built Environment Committee's published report 'Meeting Housing Demand' from January 2022 (CD-51). In responding to Paragraph 18 of the committee's report identifying that the types of new homes built should reflect the increase in older people living alone, the Government stated:

'We recognise the importance of delivering the right kind of housing for older people and welcome this recommendation from the Committee. Ensuring older people can live in suitable homes tailored to their needs can help them to live healthier lives for longer, retain their independence and feel more connected to their communities. It can also help to reduce pressure on health and social care services. This Government is committed to supporting the growth of a thriving older peoples' housing sector, one that builds enough

homes to match growing need, gives certainty to developers and investors, and empowers consumers with choice from a diverse range of housing options.

The National Planning Policy Framework sets out that local planning authorities should assess the need for older people's housing and reflect this in their local planning policies. The health and lifestyles of older people differs greatly, as do their housing needs, which can range from accessible and adaptable general needs housing to specialist housing with high levels of care and support. To enable older people to live more safely and independently, local planning authorities should be considering the variety of needs in both their plan-making and decision taking.

However, we realise that more needs to be done to meet the housing needs of our ageing population. That is why we are launching a new taskforce on the issue of older people's housing this year, which will look at ways we can provide better choice, quality and security of housing for older people across the country. This includes looking at how to address regional disparities in supply of appropriate and specialised housing for older people. The taskforce will be chaired by the Minister for Housing and will include a range of representatives from across the sector, as well as DHSC's Minister for Care, to help us find solutions and examine where central and local government can best intervene, considering a range of possible levers.'

- 8.10 With regard to Paragraphs 90 and 91 of the Committee Report identifying that there will need to be a mix of more suitable, accessible 'mainstream' housing and specialist housing for the elderly if the housing market is to be sustainable in the coming years, the Government responded by saying:

'We are committed to further improving the diversity of housing options available to older people. Boosting a range of specialist housing across the country will be key to achieving this...

Ensuring our planning system supports the growth of specialist housing supply for older people will be crucial to this work. The National Planning Policy Framework sets out that local planning authorities should assess the need for older people's housing and reflect this in their local planning policies. The planning system must continue to provide for a diverse range of housing needs, including older peoples housing, and we are currently considering how to ensure this happens through the upcoming changes to the planning system.'

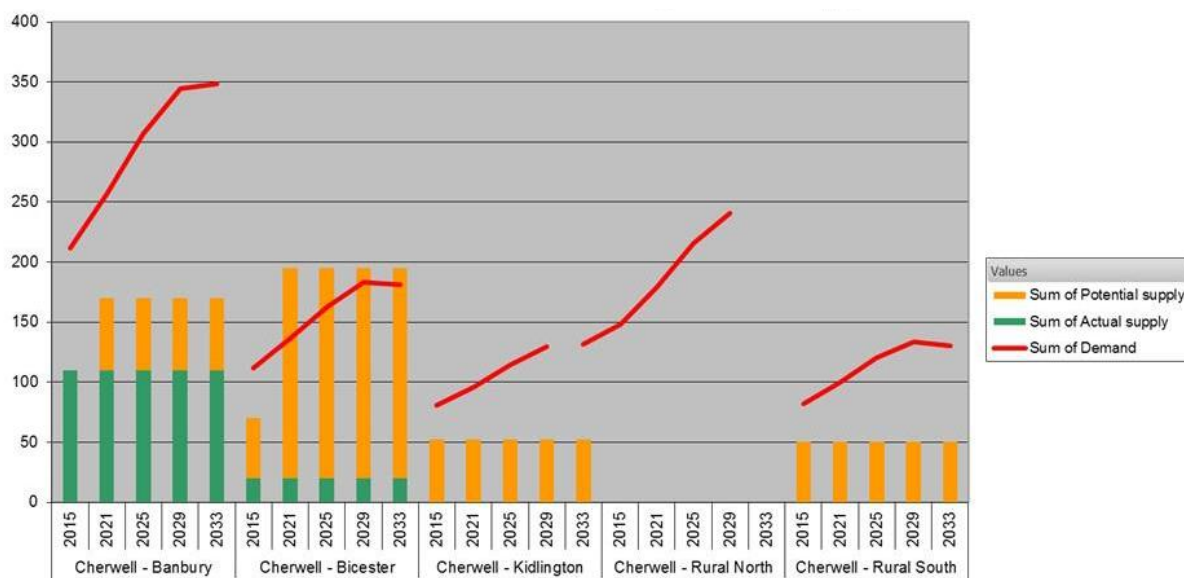
8.11 Paragraph 016 of the PPG states '**where there is an identified unmet need for specialist housing, local authorities should take a positive approach to schemes that propose to address this need.'**

8.12 On a local level the Oxfordshire Growth Needs Assessment Report (July 2021) CD-59 shows that in comparison to all other Oxfordshire Districts, Cherwell has seen the greatest increase in the proportion of the population aged 65+ between 2011-2018. The earlier Oxfordshire SHMA (2014)(CD-60) projects the growth in the older population in Cherwell between 2011 and 2031. The population aged 55+ in Cherwell will increase by 58% which is the highest of the Oxfordshire districts. It further shows a significant 142% increase in those aged over 85 between 2011 and 2031.

8.13 The 2014 SHMA projects a need for housing for older people in Cherwell somewhere between 696 units @ 133 units per 1000 (Oxfordshire average supply) and 1,436 units @170 units per 1000 (national average).

8.14 Whilst slightly dated, the Local Plan Background Paper – extra care/elderly accommodation (Feb 2013) provides a useful analysis. The graph below sets out the sum of the actual and potential supply of extra care and sheltered housing against the sum of demand. As can be seen for Banbury, the demand is anticipated to rise significantly between 2015 and 2033 yet continues to outstrip the sum of the actual and potential supply.

Cherwell District Council Extra Care/Sheltered Housing demand and supply estimate



8.15 Cherwell's previous Housing Strategy for Older People (2010-2015) makes assumptions about the amount of accommodation needed in the district. This has not been updated in the recent strategy, however at the time it was prepared there was a need for an

additional 898 Sheltered Housing units for sale in Cherwell to 2026 above the existing supply.

- 8.16 The table over the page is taken from the Cherwell Older People Housing Strategy 2010-2015 and identifies the existing supply of 399 sheltered housing for sale units only represents 30% of the 1297 units needed by 2026. Thus, the delivery of specialist accommodation for sale for older persons needs to dramatically increase to meet the needs of our rapidly ageing population.
- 8.17 The 2015 Cherwell Local Plan aims to “*extend choice, to provide high quality homes and development, and to secure a mix of house types, size and tenure that meets housing need. This includes meeting the requirements of an ageing population through the provision of extra care, supported and sheltered housing*”.
- 8.18 Policy BSC4 sets out that opportunities for the provision of extra care, specialist housing for older and/or disabled people “will be encouraged in suitable locations close to services and facilities”. Paragraph B.121 states that there is a need to provide a mix of housing in Cherwell that reflects the needs of an ageing population. The proposal is considered to comply with policy BSC4.
- 8.19 It is noted that there are no allocated sites within the adopted Cherwell Local Plan for the delivery of older people’s housing. The need to meet this form of accommodation must come forward on suitably located windfall sites identified by the market. The emerging Cherwell Local Plan Review Options Paper does identify as one of its key objectives to provide more homes for an ageing population. We do not yet know whether this will translate its way through into emerging policies and allocations to ensure delivery.
- 8.20 Accordingly, I give substantial weight to the provision of this specialist housing for older people.

Redevelopment of Previously Developed Land

- 8.21 The proposed development will see the re-use of a vacant brownfield site within one of the main towns in the District where Policy PSD1 and BSC2 strategically looks to direct major residential development. Paragraph 119 of the NPPF advises that strategic policies *should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or brownfield land*. Paragraph 120(c) advises that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes. I would also note that this is a district restricted by the Oxfordshire Green Belt and Areas of Outstanding Natural Beauty. The importance therefore of being able to use a previously developed

site within one of the principal towns is amplified. Accordingly, I attach substantial weight to it.

Redeveloping in Sustainable Locations

- 8.22 The proposal is for the development of a highly sustainable site within the town centre of Banbury. The site has good access to public transport which is an important locational requirement for specialist accommodation for older persons. I place substantial weight on the proposals compliance with the development plan Policy PSD1 and the NPPF.

Effective and Efficient Use of Land

- 8.23 Sustainable land is a finite resource and Paragraph 119 of the NPPF encourages the effective and efficient use of land commensurate with maintaining the character of the area and healthy living conditions. Paragraph 124(a) advises that decisions should *support development that makes efficient use of land, taking into account the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it.*
- 8.24 In this case the District is constrained by green belt and areas of outstanding natural beauty. The extent and availability of land suitable for development that meets the strategic objectives of the development plan such as the appeal site needs to be used effectively and efficiently. This is supported by policy BSC2 of the Cherwell Local Plan which specifically requires the effective and efficient use of land. I consider that the redevelopment of the site for 78 retirement living dwellings optimises the development potential for the site whilst producing a good quality building which is compatible with the area.
- 8.25 I place substantial weight on the appeal proposal's effective and efficient use of the site.

Economic Benefits

- 8.26 The NPPF places at its heart the presumption in favour of sustainable development. Sustainable development is identified by the NPPF as having three component parts (economic, social and environmental) that need to be read as a whole.
- 8.27 The NPPF identifies the planning system as having a key role in building a strong and competitive economy. The provision of specialised accommodation for the elderly would also provide other benefits to the community and local economy as a whole. A significant benefit to the town from the scheme would however be the intended elderly residents themselves. If approved, the development once fully occupied, is likely to

accommodate some 100 - 105 residents who, given their age, are likely to use the shopping and other facilities of the nearby local shops on a regular basis.

8.28 Research undertaken by ORB in respect of private sector sheltered housing confirms the above. In their document "A Better Life" published in October 2003 (Appendix 2), detailed consideration was given to the benefit of developments for the elderly upon local amenities. Chapter 4 of the Report on page 27 identifies the following: -

"Private sheltered housing schemes play a vital part in the life of local communities. The propensity of older people to spend locally is high, assuming there is access to local shops which ordinary housing cannot guarantee."

8.29 The Report also undertook a number of case studies with local traders and on page 27 the owner of a local pharmacy commented:

"Since the retirement housing scheme opened three years ago, business has definitely increased by ten to twenty percent. Businesses locally do well because elderly people tend to shop locally".

8.30 More recently the Homes and Later Living group have published the report 'Silver Saviours for the High Street' (Appendix 3), which identified;

- Retirement properties create more local economic value and more local jobs than any other type of residential development.
- People living in each retirement development generate £550,000 of spending per year, £347,000 of which is spent on the local high street. Some £225,000 of this is new spending in the local authority, directly contributing to keeping local shops open.
- For just one retirement development, a local authority could expect to see benefits of 85 construction jobs for the duration of the build, as well as six permanent jobs.

8.31 The figures from 'Silver Saviours for the High Street' are based on a typical 45-unit Retirement Living development. In this case we are looking at a scheme of 78 units and the economic benefits through construction and to the high street could be nearly twice as much as the figures stated. Accordingly, I attach substantial weight to the economic benefits of the proposal.

Social Benefits

8.32 Retirement housing gives rise to many social benefits by providing a specialised age friendly environment to meet a specific housing need. The UK has the oldest housing

stock in the EU with 38% of our homes dating before 1946 and 21% before 1919. Older homes are in a poorer state of repair, are often colder, damper, have more risk of fire and fall hazards. They lack in adaptations such as handrails, wider internal doors, stair lifts and walk in showers. Without these simple features everyday tasks can become harder and harder. Specifically designed housing for older people offers significant opportunities to enable residents to be as independent as possible in a safe and warm environment. It also helps to reduce anxieties and worries experienced by many older people living in housing which does not best suit their needs in retirement by providing safety, security and reducing management and maintenance concerns.

8.33 Specialist Retirement Living housing offers significant benefits which can help to reduce the demands exerted on Health and Social Services and other care facilities – not only in terms of the fact that many of the residents remain in better health, both physically and mentally, but also doctors, physiotherapists, community nurses, hairdressers and other essential practitioners can all attend to visit several occupiers at once. A recent report 'Happier and Healthier' by Homes for Later Living (2019) (Appendix 4) has found that:

- Each person living in a home for later living enjoys a reduced risk of health challenges, contributing fiscal savings to the NHS and social care services of approximately £3,500 per year.
- Building 30,000 more retirement dwellings every year for the next 10 years would generate fiscal savings across the NHS and social services of £2.1bn per year.

(Homes for Later Living September 2019)

8.34 The table below breaks down health and social care costs, comparing housing for later living with mainstream housing:

Table below: The fiscal impacts of mainstream vs homes for later living housing, by outcome and efficiency

	Mainstream housing, pp >80yrs	Homes for Later Living housing, pp >80yrs	Difference
Adverse health outcomes / cause:	Cost (£)	Cost (£)	Saving (£)
Fracture or serious injury / falls	811	300	(510)
Dementia / loneliness	2,119	1,874	(244)
Stroke incapacitation / delayed action	477	343	(134)
Pneumonia, heart attacks, arthritis / cold homes*	205	nil	(205)
Visits to GP and A&E attendance / (various)	267	195	(72)
Subtotal (prevention)	3,878	2712	(1,166)
Efficiencies:			
Utilisation of public-funded institutional care**	1812	nil	(1,812)
Use of public-funded home care services	984	820	(164)
Use of disabled facilities grant money***	349	nil	(349)
Subtotal (efficiencies)	3,144	820	(2,324)
Total	7,022	3,512	(3,490)

(Homes for Later Living September 2019)

8.35 There are huge benefits from new found friends and companions. Around 3.8 million individuals over the age of 65 live alone in the UK, with increasing sense of loneliness and vulnerability. Research has suggested that the impact of loneliness and isolation on mortality is equivalent to smoking 15 cigarettes a day. These people are also much more likely to suffer from depression and to develop dementia.

8.36 The recent Housing for Later Living Report (2019) shows that on a selection of wellbeing criteria such as happiness and life satisfaction, an average person aged 80 feels as good as someone 10 years younger after moving from mainstream housing into housing specifically designed for later living.

8.37 I attach substantial weight to the social benefits of the proposal.

Environmental Benefits

8.38 There are considered to be significant townscape benefits from the proposed scheme in respect to the enhancement of the conservation area and the setting of the adjacent listed Trelawn House. The existing Buzz Bingo building has been identified in the Banbury Conservation Area Appraisal (2018) as being a negative landmark within the

Conservation Area. Para 206 of the NPPF advises that local planning authorities should look for opportunities for new development within Conservation Areas to enhance or better reveal their significance. I consider that the removal of a building which is identified to make a negative contribution to the Banbury Conservation Area and replaced by a high-quality residential scheme should be afforded substantial weight.

8.39 The proposal will see the redevelopment of a previously developed site in a highly sustainable location. The scheme would also be designed to energy and water efficiency standards utilising photovoltaic panels for energy generation and restricting water consumption as a resource. The proposal will also include the provision of electric vehicle charging points.

8.40 I place substantial weight on the cumulatively environmental benefits of the proposed development through enhancement of the Banbury Conservation Area and its sustainable construction.

Release of Under Occupied Housing Stock

8.41 A research project undertaken by Professor Michael Ball from the University of Reading in May 2011 entitled “Housing Markets and Independence in Old Age: Expanding the Opportunities” (Appendix 5) reinforces the benefits set out above. The report reaffirms the position that Owner Occupied Retirement Housing (OORH) has a positive impact on local housing markets. Upon moving, most residents free up a substantial family home, with two thirds moving from houses with three or more bedrooms.

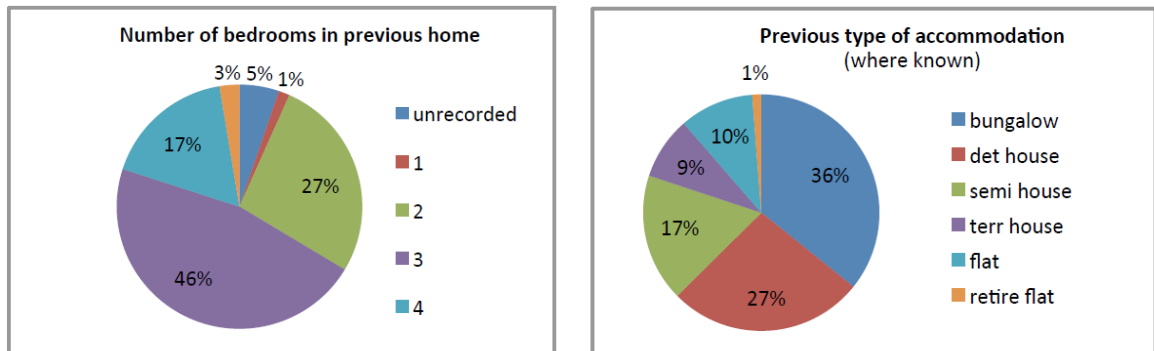
8.42 The report identifies the following benefits of specialist housing provision based on an analysis of 5,000 sales records of older people who bought retirement housing properties between 2007 and 2010. They show how specialist housing frees up under-utilised family-sized housing in the local area.

- For every 5,000 owner-occupied retirement homes sold, family housing to the value of £1.1 billion is released back onto local housing markets.
- For an individual retirement housing scheme of 40 dwellings, this equates to the release of 40 family-sized homes – the majority of which are in the local area – worth nearly £9 million.
- The average value of the individual dwellings released is just under £220,000. Two thirds had three or more bedrooms.
- Property vacated is then usually bought by younger people and often used to raise families. In this way, local housing stock is recycled through the generations.
- Provision of specialist retirement housing has a multiplier effect through the housing chain. For each individual specialist dwelling built, housing for six people

is provided; the 'classic' family of four in the vacated property, and the couple downsizing into specialist accommodation.

- A wider chain of moves is also triggered. As the initial property vacated is likely to be quite substantial, additional moves further down the chain occur. On many occasions, six or more moves can be stimulated.
- First time buyers also benefit. It is estimated that within six moves, a first time buyer is able to enter the housing market.

Figure 5.6: Characteristics of previous homes



8.43 In areas where housing supply is limited it will be important that the existing housing stock can be utilised to best meet local housing needs. The proposal has the potential to free up to 78 under-utilised houses in Banbury and environs and significant weight can be given to this.

8.44 The weight that should be afforded to these significant benefits has recently been considered in an appeal decision for the Appellant at a site in Fleet, Hampshire (APP/N1730/W/20/3261194) (CD-64). At Paragraphs 69-71 the Inspector in considering the planning balance and weight to be attached to the benefits of the proposed scheme states;

69. *'Moreover, there would be a number of benefits of the appeal scheme which were put forward by the Appellant. These benefits were not undermined to any degree during the Inquiry. I deal with each of these below explaining the weight that I attribute to each shown in the brackets.'*

70. *The following benefits would arise: (i) much needed housing for older people. The Council suggests that the weight to this benefit should be tempered because the residents of the scheme would not be restricted to being aged 85 or over. However, given the needs identified in the SHMA and the average age of residents of the Appellant's development being 79-80, the scheme meets the needs of the Council and significant weight should be given to this benefit. (ii) the development is of previously*

developed land (substantial weight); (iii) the development would be in a sustainable location (substantial weight); (iv) the development would make optimum use of the site (moderate weight); (v) the development would provide 31 market dwellings and is a clear benefit (substantial weight); (vi) the provision of the Appellant's payment of £500,000 to the delivery of affordable housing would be a significant benefit (substantial weight); (vii) there is a benefit releasing under-occupied housing stock (substantial weight); (viii) the site would provide economic benefits by generating jobs, in the construction and operational phases of the development and by residents spending locally (substantial weight); (ix) there would be social benefits in specialised age friendly housing (substantial weight); (x) the environmental benefits of the scheme are a clear benefit (moderate weight). Cumulatively, these 10 benefits weigh heavily in favour of the appeal scheme especially given the critical need for housing for older people as identified at national level in the NPPF and NPPG and at a local level in HLP32.

71. Therefore, even if I had reached a contrary conclusion in terms of this appeal and found that there was a conflict with the development plan, any harm which might be identified as arising from the appeal proposal comes nowhere near significantly and demonstrably outweighing the many and varied benefits of the appeal proposal. There is no reason to withhold planning permission in this case and I conclude that the appeal should be allowed (My Emphasis).

8.45 I would argue that the same applies here and that the cumulative benefits of the proposed scheme weigh heavily in favour of the appeal being allowed especially given the critical need for housing for older people as identified at national level in the NPPF and NPPG.

8.46 Similarly at a recent appeal for the Appellant in Basingstoke (APP/H1705/W/20/3248204) (CD-65) involving heritage assets the Inspector concluded;

72. In this instance, there is clear and convincing evidence with regards to the suitability of the proposal. The delivery of specialist housing weighs substantially in favour of the appeal scheme, especially given the critical need identified at national level in both the Framework and the National Planning Policy Guidance (NPPG), along with the identified shortfall in terms of the delivery at local level. As a result, even if I had reached a different conclusion in relation to the heritage issues and found there to be harm to the identified designated heritage assets, any harm would

have been clearly outweighed by the significant public benefits of the scheme. Therefore, in this case, I find no reasons to withhold planning permission.'

8.47 I therefore attach substantial weight to the release of under occupied housing stock.

9.0 Conclusion

- 9.1 The Appeal proposal accords admirably with the planning, housing and sustainability aims and objectives of the NPPF, PPG, National Design Guide and local planning policy, not least by providing residential development for which there is a 'critical' need nationally and locally in a sustainable manner.
- 9.2 I have considered the proposal against the policies of the development plan and consider that it complies with the development plan when considered as a whole. Applying s.38 (6) of the 2004 Act, the appeal should therefore be allowed unless material considerations indicate otherwise. In this case the Appellant's position is that all the material planning considerations weigh heavily in favour of the grant of permission.
- 9.3 The proposed scheme has been carefully designed having regard to the local context and neighbouring land uses. In summary, the Appellant's case is that the appeal scheme would not cause any material planning harm and would deliver the following significant planning benefits:
- The delivery of 78 units of C3 dwellings in an authority where they are unable to demonstrate a 5 year housing land supply (**substantial weight**);
 - The delivery of 78 units of specialist accommodation for older persons which national planning policy identifies the need for delivery as 'critical', and the development plan identifies support for its provision during the plan period need to be for older persons accommodation (**substantial weight**);
 - Redevelopment of a previously developed site (**substantial weight**);
 - Redevelopment of a site in a sustainable location being within the town centre with local shops and facilities within walking distance (**substantial weight**);
 - Making optimum use of the site (**substantial weight**);
 - Releasing under-occupied housing stock in a local area where there is an acknowledged constraint on available land for residential development (**substantial weight**);
 - Removal of a negative landmark and enhancement of, and positive contribution to, the Banbury Conservation Area and setting of Trelawn House (**substantial weight**);
 - Economic benefits through the generation of jobs in the construction phase and by residents of the proposal spending locally (**substantial weight**);
 - Social benefits associated with specialist older persons accommodation resulting in fiscal savings for the national health service (**substantial weight**); and

- There would be environmental benefits from the redevelopment of this site and through the sustainable construction of the proposed development (**moderate weight**).

9.4 Further, due to the Council's absence of a 5-year housing land supply, Paragraph 11(d) is engaged in this case. For the reasons set out above, and more fully in Mr White's evidence, the heritage policies in the NPPF do not provide a clear reason for refusing the proposed development and, accordingly, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

9.5 The Appellant considers that there are no adverse impacts associated with the proposed scheme. Even if there were any it is clear when weighing the extensive benefits of this proposed scheme (Paragraph 9.3 above) that they would come nowhere near to significantly and demonstrably outweighing the plan benefits.

9.6 I therefore respectfully request that the Inspector allows this appeal.