



TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL BY

**AGAINST THE DECISION OF CHELTENHAM BOROUGH
COUNCIL TO REFUSE PLANNING PERMISSION FOR**

**AN OUTLINE APPLICATION FOR 43 DWELLINGS INCLUDING ACCESS, LAYOUT AND
SCALE, WITH ALL OTHER MATTERS RESERVED FOR FUTURE CONSIDERATION**

AT LAND AT OAKHURST RISE, CHARLTON KINGS, CHELTENHAM

**ON BEHALF OF WILLIAM MORRISON (CHELTENHAM LTD)
AND THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST**

LPA REF: 20/00683/OUT

PINS REF: APP/B1605/W/20/3261154

PROOF OF EVIDENCE OF P J FRAMPTON BSC (HONS), TP, MRICS, MRTPI

PF/10093

FEBRUARY 2021

LIST OF APPENDICES

APPENDIX 1	Technical Note on Drainage and Flood Risk Matters
APPENDIX 2	Technical Note on Highways Matters
APPENDIX 3	Technical Note on Landscape & Visual Impact Matters
APPENDIX 4	Verified Views Technical Note by MHP Design
APPENDIX 5	Hydrology Technical Note prepared by Simpson Engineering
APPENDIX 6	Dwg No. PL020 Comparison of Built Area between 18/02171/OUT and current proposal
APPENDIX 7	Email from J Rowley, dated 2 nd February 2021
APPENDIX 8	Dwg No. PL005 Proposed Site Layout v1 – 100 dwellings
APPENDIX 9	Dwg No. PL018 Constraints Plan
APPENDIX 10	Dwg No. 19216.301 Rev A Woodland Planting Plan
APPENDIX 11	Email to CK Friends, dated 13 th January 2021
APPENDIX 12	Flood Management Betterment Infographic
APPENDIX 13	Appeal Decision APP/D3830/W/19/3241644 Albourne, West Sussex, 11 th September 2020
APPENDIX 14	Appeal Decision APP/P1615/W/19/3236737 Newent, Forest of Dean, 9 th October 2020
APPENDIX 15	Appeal Decision APP/D2320/W/20/3247136 Euxton, Chorley, 11 th August 2020
APPENDIX 16	Appeal Decision APP/D3125/W/17/3182718 Enstone, Oxfordshire, 30 th April 2018

1.0 INTRODUCTION

Peter J Frampton BSC (HONS), TP, MRICS, MRTPI will say:

1.1 I hold a Bachelor of Science Honours Degree in Town Planning. I am a member of the Royal Town Planning Institute and the Royal Institution of Chartered Surveyors. I am a Director in the firm of town planning consultants and chartered surveyors that bears my name, Frampton Town Planning Ltd, trading as 'Framptons'.

1.2 Framptons has offices at Oriel House, 42 North Bar, Banbury and Aylesford House, Royal Leamington Spa. I have practised in planning consultancy for over forty years. Prior to entering private practice in 1982 I held the position of a Senior Development Control Officer at Lichfield District Council.

1.3 The Statement of Common Ground reached with the LPA establishes that the difference of opinion between the Appellants and the LPA is confined to whether the proposal is compliant with:

- Policy SD8 from the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy, and
- Policy HD4 of the Cheltenham Local Plan, only in so far as there is a dispute whether the proposal comprises a *'layout and form of development that respects the character; setting and significance of heritage assets that may be affected by the development'*.

1.4 Arising from the Case Management Call, the main issue for consideration has been identified as being:

‘The effect of the proposed development upon the setting of Ashley Manor and ice house (Grade II listed) and Charlton Manor (Grade II listed) including whether the harm is outweighed by the public benefits.’*

1.5 I have prepared my proof of evidence to address this main consideration and the ‘other matters’ raised by CK Friends as the Rule 6 Party. I have also addressed responses provided in third party representations.

1.6 I have appended to my Proof of Evidence technical notes prepared by the Appellants’ highways; engineering and landscape consultants relating to matters expressed as:

- Drainage and Flood Risk (**Appendix 1**) (**CD L2**) prepared by Mr A De Croos of Simpson Engineering
- Highway Safety (**Appendix 2**) (**CD L3**) prepared by Mr A Patmore of Cotswold Transport Planning Ltd
- Landscape and Visual Impact (**Appendix 3**) (**CD L4**) prepared by Mr Davies of MHP Design
- Verified Views Technical Note (**Appendix 4**) (**CD L18**) prepared by Mr Davies of MHP Design
- Hydrology Technical Note (**Appendix 5**) (**CD L19**) prepared by Mr de Croos of Simpson Engineering

1.7 I will express my planning judgements based on these technical notes. The consultants will be available for the round table session when these matters are discussed.

1.8 When assessing the effect of the proposed development upon the environmental interests raised by the LPA and the Rule 6 Party, I rely upon the expert evidence within the proofs of evidence of:

- Mr P Grover, BA(Hons), BTP, Dip Arch Cons, MRTPI, IHBC, Director at Grover Lewis Associates Ltd, in respect of heritage matters (**CD H1 – 3**)
- Mr A Baxter, BA(Hons), MA (Oxon) MSc, CEcol, CEnv, MCIEEM, Director at Aspect Ecology, in respect of ecological matters/veteran trees (**CD F1 – 3**)
- Mr J Forbes-Laird, BA(Hons), Dip.GR.Stud, MICFor, MRICS, MEWI, Dip.Arb(RFS), Director & Principal Consultant at FLAC, in respect of arboricultural matters (**CD E1 – 3**)

1.9 The Appellants request that the application includes a provision for self-build/custom-build housing (4 dwellings). The Appellants have undertaken a consultation exercise to ensure that no party or person may be prejudiced by the inclusion of this form of housing within the scheme. The steps taken to consult on this provision and responses received are set out in the separate Wheatcroft Statement (**CD C12**).

1.10 No consultee has objected to the provision of self-build/custom build housing with the scheme. Those neighbour objections received reinforce an objection to the principle of development or the layout, rather than being directed to the substance of the requested amendment to the scheme.

1.11 I subsequently undertake a planning balance with the public benefits that are identified in the Planning Statement of Common Ground reached with the LPA (**CD K7**), as set out in the table below:

	Public Benefit	Weight	
		Appellants	CBC
i)	Provision of Market Housing	Substantial	Substantial
ii)	Provision of Affordable Housing	Substantial	Substantial
iii)	Provision of Self-Build Housing (4 units) (As from October 2021)	Substantial	Moderate
iv)	Employment Opportunities (during construction and as a consequence of new homes being occupied)	Moderate	Moderate
v)	Provision of Management Plans for Existing Trees and Retained Grassland	Substantial	Moderate
vi)	Provision of a Positive Surface Water Drainage System	Minor	Minor

1.12 In respect of the weight to be placed upon these public benefits there is a difference of opinion between myself and Mr Williams, planning consultant on behalf of the LPA, in respect of the weight to be placed on matters iii) and v) in the table above, namely:

- The weight to be given to the provision of self-build/custom-build housing. (As, from October 2021 there is no disagreement to the weight to be placed on this public benefit.)
- The weight to be given to the provision of management plans for existing trees and retained grassland.

1.13 The benefits are all public benefits within the meaning set out in the PPG (Paragraph 020 Reference ID 18a-020-20190723) delivering economic, social or environmental objectives as described in the Framework (8).

1.14 The weight placed upon the provision of affordable housing and self-build/custom-build housing is underpinned by the conclusions reached in the evidence presented by:

- Mr J Stacey, Ba (Hons), Dip TP, MRTPI, Senior Director at Tetlow King, in respect of affordable housing matters (**CD J1 – 3**)
- Mr A Moger, BA (Hons), MA, MRTPI, Associate Director at Tetlow King, in respect of self-build/custom-build housing matters (**CD J4 – 6**)

1.15 The provision of affordable housing and self-build/custom-build housing are secured by way of Planning Obligations under Section 106 of the Act (Affordable Housing by way of a S106 Planning Agreement with CBC (**CD C9**); Self-Build/Custom-Build Housing by way of a Unilateral Undertaking(**CD C11**)).

1.16 The weight to be given to the provision of market housing is reinforced by the acknowledgement of the LPA that, notwithstanding the adoption of the Cheltenham Local Plan in July 2020, the Council can only demonstrate a 3.7 years housing land supply (SoCG paragraph 2.2). I consider this represents a serious shortage in the delivery of new homes in the context of the Government's repeated commitment to boost housing land supply.

1.17 The Secretary of State for the Ministry of Housing, Communities and Local Government made a Housing Update Statement on 16th December 2020, stating:

*'We want to build more homes as a matter of social justice, of inter-generational fairness
and as one of the best proven ways of creating jobs and economic growth.'*

1.18 In the preparation of my Proof of Evidence, I have identified an additional public benefit which arises from the fact that the freehold of the land is owned by a charitable Trust (the Carmelite Charitable Trust Charity Reg No. 1061342). The leaseholder in occupation is St Edwards School (Charity Reg No. 309681).

1.19 I understand it is a statutory requirement of a charitable organisation that it exists for public benefit. I refer to the activities of these Trusts in section 4 of my Evidence. I place limited to moderate weight on these additional public benefits.

1.20 There remains an outstanding issue between the Appellants and the County Council concerning the demands made for financial contributions towards the provision of education and library services. I rely upon the evidence of Mr J Kinsman, CEng, MICE, BSc(Eng), ACGI, Consultant at EFM Ltd, (**CD G1 – 3**) in his analysis of the effect of the development upon the availability of social infrastructure. A Unilateral Undertaking (**CD C10**) has been prepared to secure the payment of financial contributions which are considered to be lawfully demanded based upon Mr Kinsman's evidence, or the evidence of the County Council.

1.21 In preparing my evidence, I understand my professional duty to the Inquiry. I declare that:

- a) to the best of my knowledge, information and belief, this Proof of Evidence complies with the requirement of the giving of expert evidence and, as a witness, I understand my duty to the Inspector and have complied with this duty;

- b) I believe the facts I have stated in this Proof of Evidence are true and the opinions I have expressed are correct;
- c) the Proof of Evidence includes all the facts which I regard as being relevant to the opinion which I have expressed and I have drawn to the attention of the Inspector any matter which would affect the validity of that opinion; and
- d) the provision of the Proof of Evidence complies with the Code of Professional Conduct of the Royal Town Planning Institute, as set down in the Ethics and Professional Standards Advice for RTPI Members (2016).

Signed:



Dated:

23/02/2021

2.0 THE PLANNING HISTORY

2.1 I have set out the recent planning history of this site.

2.2 On 16th August 2017 an outline planning application was submitted for residential development of 90 dwellings including access, layout and scale with all other matters reserved for future consideration (Application Ref: 17/00710/OUT).

2.3 The Planning Officer recommended that planning permission be granted. This recommendation was not accepted by the Planning Committee, who resolved to refuse planning permission for five reasons relating to:

- RfR1: Impact on trees
- RfR2: Impact on the setting of nearby listed buildings
- RfR3: Impact on the highway network
- RfR4: Impact on biodiversity
- RfR5: Impact upon the AONB

2.4 The layout plan submitted with this application; the Planning Officer's Report to the Planning Committee and the Decision Notice are provided as Core Documents (**CD B1**; **CD B2** and **CD B3**).

2.5 In recognition that an appeal to the Secretary of State should be pursued as 'the last resort', I advised the Appellants to revise the development proposals. Specialist advice was engaged in response to the objection relating to arboricultural matters (veteran trees). The revised application sought permission for 69 dwellings.

- 2.6 In undertaking the planning balance of this application, the Officers again concluded that the planning balance lay in favour of granting planning permission.
- 2.7 A Wheatcroft amendment was made to the submitted scheme to revise the layout in response to the Post-Examination Hearing Note from the Examination Inspector which responded to objections to the allocation – particularly in the context of potential impact upon heritage considerations. The amended scheme then comprised 68 dwellings. The subsequent appeal (Ref: APP/B1605/W/19/3227293) was dismissed.
- 2.8 The appeal proposal has been prepared to address the criticisms of the Appeal Inspector (Mr Simms) to the previous scheme.
- 2.9 I have set out this history, not by way of any intimation that the Appellants ‘deserve’ a planning permission through perseverance with the development management process. Rather, it is fundamental in decision-taking for it to be acknowledged that Inspector Simms undertook a planning balance of the effects/merits of the particular scheme that was before him.
- 2.10 There have been material changes in planning circumstances in the period between the dismissed appeal and the current proposal, namely:
- i. The detail of the proposed layout and the number of dwellings proposed.
 - ii. The eastern part of the site is now free from development when,
 - a. previously it was the location of 10 very large houses (no.s 27 – 34 on the previous appeal layout plan); and

- b. 8 of those houses were the subject of specific criticism by the previous Inspector on heritage grounds (refer to paragraphs 79 and 84 of the appeal decision).

Attached as **Appendix 6** is a drawing which shows the built area as proposed in the 68 dwellings application (Ref: 18/02171/OUT) when compared with the current proposal.

- iii. There is no development proposed around the icehouse, when previously it sat within the heart of proposal with housing proposed around it on all four sides.
- iv. The fact the site is now formally allocated for development in an adopted development plan with criteria to be satisfied (Policy HD4 (CD L7)).
- v. Housing land supply has deteriorated from '*less than 5 years*' (per the agreed Statement of Common Ground for Appeal Ref: APP/B1605/W/19/3227293) to a 3.7 years supply. The previous Inspector having simply assumed that upon adoption of the plan there would be '*a resultant increase in housing land supply for Cheltenham to above five years*' (Decision Letter paragraph 124)
- vi. The previous scheme did not include provision for self-build/custom-build dwellings.
- vii. The site was not, at the date of the appeal, designated as a Key Wildlife Site under Policy SD9.
- viii. The economic circumstances of the country have changed substantially arising from the COVID-19 pandemic.

2.11 A fundamental change to the proposals in the establishment of a tree belt to visually contain the new housing development, and form a new wider setting to the two listed buildings. Attached as **Appendix 4 (CD L18)** is a Verified Views Technical Note prepared by Mr Davies that describes the process for the verification of these view points, and the constructed images of the proposed new houses at Year 1 and Year 8. The planting matrix to achieve screening at Year 1 is similarly

explained and is consistent with the achievement of biodiversity gains. The planting matrix can be appropriately referenced within a planning conditions for the provision of landscaping.

2.12 The appeal decision letter of Mr Simms does not create a precedent for the determination of this appeal which is to be considered on its own individual merits. In the words of the Judgment of *Poundstretcher v SSE 1988* this proposal does not 'sit on all fours' with the previous scheme.

2.13 I acknowledge that a previous appeal decision is capable of being a material consideration where the previous decision is sufficiently closely related to the issues raised in a subsequent appeal. However, in this case, I have identified distinguishing features of substance which in my opinion provide sound reasoning for reaching a different conclusion on the overall merits of this proposal (the issue of consistency in decision-taking).

3.0 RELEVANT PLANNING POLICY

3.1 Arising from the 'main issue', the key planning policy provisions from the Development Plan are:

- Gloucester, Cheltenham and Tewkesbury Joint Core Strategy Policy SD8 Historic Environment
- Cheltenham Local Plan Policy HD4 Land off Oakhurst Rise

3.2 Policy HD4 allocates the appeal site for housing development and identifies 'constraints'. The Policy thereafter sets out Site Specific Requirements, which are set out below:

- *'A minimum of 25 dwellings, subject to masterplanning (in accordance with Policy SD4 of the JCS) which demonstrates that the development can be achieved whilst accommodating:*
- *Safe, easy and convenient pedestrian and cycle links within the site and to key centres*
- *A layout and form that respects the existing urban characteristics of the vicinity*
- *A layout and form of development that respects the character, significance and setting of heritage assets that may be affected by the development*
- *Protection to key biodiversity assets and mature trees*
- *New housing should be located away from the setting of the west elevation of Ashley Manor. There should be no development south of a straight-line westwards from the rear of the northernmost school building. In addition, to provide an undeveloped buffer between the rear garden boundary of Charlton Manor and the new development a landscaping buffer should be provided for 30 metres west of the rear boundary with Charlton Manor*
- *Long term protection of mature trees and hedges*

- *Any development on the site should secure improvements to the Ice House'*

3.3 Arising from the 'other matters' to be discussed at this Inquiry, the following are the key policies:

Gloucester, Cheltenham and Tewkesbury Joint Core Strategy

- Policy SD9 Biodiversity and Geodiversity
- Policy SD4 vii. Design Requirements – Movement and Connectivity
- Policy INF1 Transport Network
- Policy INF2 Flood Risk Management

Cheltenham Local Plan

- Policy C11 securing community infrastructure benefits
- Policy G12 Protection and replacement of trees
- Policy G13 Trees and Development

National Planning Policy Framework

3.4 The issues for consideration in this appeal particularly engage national planning policy set out in:

- Section 5: Delivering a sufficient supply of homes
- Section 11: Making effective use of land
- Section 12: Achieving well-designed places
- Section 15: Conserving and enhancing the natural environment
- Section 16: Conserving and enhancing the historic environment

4.0 RELEVANT PLANNING CONSIDERATIONS

Introduction

4.0 Policy statements are not to be read as statute. They are not to be applied slavishly or with unswerving prescription. Tension may occur between the wording of policies, or policies may pull in different directions. Policy statement should hence be interpreted objectively in accordance with the language used, read as always in their proper context. The context of the policy will include its subject matter and also the planning objectives it seeks to achieve and serve. The task of interpretation of the meaning of a planning policy should not be undertaken as if the planning policy is a statute or contract. *‘Planning policies are designed to shape practical decision-taking and should be interpreted with that practical purpose clearly in mind’.* (Dove J Canterbury City Council v SSCG and Gladman Developments Ltd 2019).

4.1 In deciding whether, given a conflict with one or more policies, a particular proposal is still in overall accordance with a development plan, three factors are significant:

- i. How firmly a policy supports or conflicts with a proposed development.
- ii. The relative importance of the policy to the plan’s overall objective.
- iii. The extent of the breach of the policy.

4.2 Policy HD4 is the dominant policy for the determination of the merits of this appeal. The dispute with the LPA is confined to the site-specific requirement as to whether the proposals comprise:

‘A layout and form of development that respects the character significance and setting of heritage assets that may be affected by the development.’

4.3 The Statement of Common Ground to be finalised with CK Friends establishes that the issues of disagreement with CK Friends relate to:

- i) the impact of the development on the settings of nearby listed buildings (Reason for Refusal);
- ii) the compliance of the proposals with the site specific requirements as set out within Cheltenham Local Plan Policy HD4;
- iii) the ecological impact of the development on a main badger sett, mature trees, grassland and important hedgerows, and a Local Wildlife Site;
- iv) the identification as to which trees that are ‘*veteran trees*’ within the meaning of ‘*an ancient or veteran tree*’ (Framework Annex 2 Glossary);
- v) matters raised by Barton Hyatt in respect of alleged deterioration of veteran trees due to changes to soil hydrology, and the invalidity of the concept of ‘relic trees’; and
- vi) whether the proposed location of the artificial badger sett will have an adverse impact upon drains and spring water supply to Charlton Manor.

4.4 Before considering these issues, I consider it is appropriate to set out a background to the site specific requirement of ‘*a minimum of 25 dwellings*’ in policy HD4.

A Minimum of 25 Dwellings

4.5 The development plan process rarely can determine the precise dwelling capacity of a site because sufficient information is generally not available to form a judgement with precision as to the capacity of a site for development. This judgement is, essentially, the role of the development management process.

4.6 The Framework (123) states that:

*‘Where there is an existing or anticipated shortage of land for meeting 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.’ [emphasis added]*

4.7 Section 12 ‘Achieving Well-Designed Plans’ similarly states (127) that:

‘planning policies and decisions should ensure that developments ...

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development ...’

4.8 The Government now wishes to go further. The proposed revision of the NPPF, which was published last month, includes an amendment to the fundamental policy of the presumption in favour of sustainable development. The new amendment seeks, for the first time, to emphasis within the presumption *‘making effective use of land in urban areas’* and does so in the context of paragraph 11(a).

4.9 In the context of Policy HD4 *‘Optimise’* does not mean maximise, or minimise the number of dwellings to 26 (at least 25). *‘Optimise’* means to make the best or most effective use of a resource. In this context, the Local Plan (11.4) states:

*‘The existing built up area of Cheltenham is tightly constrained by Green Belt and AoNB with very little undesignated land in which to expand. **It is therefore logical to make the most***

of previously under-used sites within the existing urban area. The approach is also in line with JCS Policy SP1 which aims to see development delivered within existing urban areas and Strategic Allocations.’ [emphasis added]

4.10 It is understood that draft versions of the Local Plan had identified a potential capacity of the site for 80 – 100 dwellings. Mr Rowley, the Planning Policy Officer at Cheltenham Borough Council has explained in email correspondences dated 2nd February 2021 (**Appendix 7**) that:

‘Yes, the figure of 25 units was determined by using the original 100 unit scheme site plan to estimate how many units could be achieved to the west of the tree belt. Officers also looked at the relative density of existing development in the Oakhurst Rise area and applied that to the area to the west of the tree belt. This also gave a figure of 25. It should be noted that this was still an approximate figure to be used as a starting point for the design of any future scheme.’

4.11 The application plan for 100 dwellings is attached as **Appendix 8**. This layout shows the provision of 25 dwellings in the western part of the site.

4.12 The area of land to the west of the trees/hedgerow has constraints, particularly in the provision of Veteran Tree Buffers. A plan attached as **Appendix 9** illustrates the constraints on this part of the site. The western part of the site would not have the capacity to accommodate 25 dwellings in the form shown in the planning application.

4.13 An effective use of this allocated site for housing is significant to the Appellants, who have an interest in the land. The registered owners of the land comprise the Trustees of the Carmelite Trust. The activity of this charity is to enable the Carmelite friars to serve the community, directing

a large retreat and conference centre at Aylesford in Kent, running parishes in Llanelli and Faversham, a university chaplaincy in York and a number of more specialised apostolates (evangelistic activities). St Edward's School is governed by the Trustees of St Edward's School Trust. The objective of St Edwards School as a charity is for the benefit of the public to promote and provide for the advancement of education of children and young people.

4.14 Commercial arrangements are in place between the Appellants to provide the Trusts with a capital receipt in the event the site is sold for the provision of new homes. The capital receipt to the Carmelite Trust and the School Trust would further their charitable purposes.

4.15 In contrast to a situation where planning permission for housing development benefits a private land owner (and the developer promoter), a consent on this site will enable the furtherance of the work of two charities in the public interest. An inefficient (sub-optimal) use of this allocated site for housing would necessarily reduce capital receipts to the detriment of the activities undertaken by these two charities.

4.16 Land suitable for housing within the urban area of Cheltenham should be optimised for its contribution to meeting development needs – including provision for new homes. This resource should not be wasted in an ineffective way. The opportunity to use this site for housing should be optimised.

4.17 Policy HD4 in the submitted Local Plan (Reg 19) identified the site for ‘*approximately 25 dwellings*’.

This site-specific requirement was modified in response to the Inspector’s Post-Hearing Advice Note (CD L5). The Examining Inspector, in considering the objection to the submitted plan from Historic England, stated (21):

‘Historic England proposes amendments to the wording of Policy HD4. These would restrict new housing to the west of the site behind the existing tree belt and requirement improvements to be secured to the Ice House which lies between Charlton Manor and Ashley Manor. However, having viewed the evidence and visited the site, I consider that the reduction in the area of development recommended by HistE is not justified.’

4.18 Policy HD4 in the adopted Local Plan allocates the site for ‘*a **minimum** of 25 dwellings*’ [emphasis added]. All the other housing allocations in the Local Plan refer to ‘*approximately X dwellings*’. I address the approach now taken by the Planning Authority later in this evidence.

The Main Matter: Heritage

4.19 The JCS was examined for ‘soundness’ including its consistency with national policy. The ‘Delivery’ context for Policy SD8 states (4.9.11):

‘The NPPF provides a framework for conserving and enhancing the historic environment, which sits alongside a range of legislative regimes associated with planning and heritage. Policy SD8 reinforces that framework...’

4.20 Policy SD8(3) states ‘*Designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance, and for their important contribution*

to local character distinctiveness and sense of place'. Read in its proper context, Policy SD8 does not operate on the basis that where a development does not 'conserve' or 'enhance' the significance of a heritage asset, such a proposal would necessarily be in conflict with Policy SD8. Such an approach would then be in conflict with the approach set out in the Framework, and accordingly in conflict with the special duty of Section 66(1) of the Listed Buildings Act.

4.21 Paragraphs 193 – 196 of the Framework set out the approach to 'considering potential impacts' namely:

- *'great weight should be given to the asset's conservation'* (193) i.e. the avoidance of harm
- *'any harm to or loss of, the significance of a designated heritage asset should require clear and convincing justification'* (194)

4.22 In this context, the Framework 196 explains that *'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'*.

4.23 This approach to the application of Policy SD8 provides consistency with the provisions of the recently adopted Local Plan – in the allocation of the appeal site for housing development (Policy HD4).

4.24 Policy HD4 applies three criteria with regards to heritage assets, namely:

- *A layout and form of development that respects the character, significance and setting of heritage assets that may be affected by the development. (in dispute with CBC)*
- *New housing should be located away from the setting of the west elevation of Ashley Manor. There should be no development south of a straight line westwards from the rear of the northernmost school building. In addition, to provide an undeveloped buffer between the rear garden boundary of Charlton Manor and the new development, a landscaping buffer should be provided for 30 metres west of the rear boundary with Charlton Manor. (not in dispute with CBC)*
- *Any development on the site should secure improvements to the Ice House. (not in dispute with CBC)*

4.25 The dispute with the LPA confined to compliance with the criterion relating to the ‘*layout and form of development*’ in a heritage context. This criterion does not use the term ‘*conserve*’ or ‘*avoidance of harm*’, but rather, states that the development should ‘*respect*’ the character and significance of the setting of the historic asset which may be affected by the development. It is considered that, in its proper context, ‘*respect*’ means, as stated in the Appellants’ Statement of Case (paragraph 2.15) (**CD C3**):

‘a scheme that minimises the harm to the significance of the designated heritage assets to such a degree that, even when considerable weight is attached to the residual harm to significance, that level of harm is outweighed by the public benefits as required to be considered in the planning balance provided by the Framework paragraph 196.’

- 4.26 It is considered that such an approach is consistent with the Framework in optimising the use of land for housing. Any further reduction in the provision of dwellings on the site is not required to make the development compliant with Policy HD4 – and would result in the unnecessary loss of new homes, which are required to meet identified housing needs (Framework 123) (market housing; affordable housing; self-build/custom-build housing; and in the context of a 3.7 year housing supply).
- 4.27 Setting is not in itself a heritage asset, nor a heritage designation, but comprises the surroundings in which a heritage asset is experienced. The Framework acknowledges that the extent of a setting is not fixed and ‘may change as the asset and its surroundings evolve’ (Framework Glossary).
- 4.28 A principal feature of this revised scheme is the establishment of a substantial tree belt that confines built form to the west, and safeguards open land to the east. A specification for the tree planting matrix has been prepared and has been submitted to the LPA (**Appendix 10**). The requirement to undertake this landscaping in accordance with this specification can be secured by a planning condition. The tree belt will redefine a wider setting for the two listed buildings.
- 4.29 I conclude that this proposal respects the character, significance and setting of heritage assets that may be affected by the development.
- 4.30 This interpretation and application of Policy HD4 is considered entirely consistent with the provisions of the Framework (193 – 196). Had the LPA in the preparation of the Local Plan, or the Examining Inspector, concluded that this site was only suitable as a housing allocation providing the significance of the heritage assets was preserved (i.e. no harm), then the heritage criteria to Policy HD4 would have stated this requirement. The extent of the housing allocation as shown on the Proposals Map would have been modified accordingly. The Local Plan Inspector did not

require the boundary of the allocated site to be modified in response to objections made to Policy HD4, including objections from Historic England.

- 4.31 The Appellants' heritage specialist concludes that this proposal will result in a level of harm to the significance of the designated heritage assets at the '*low end of less than substantial harm*' (Ashley Manor, Ice House, Charlton Manor – HIS 5.3). He states in his Proof of Evidence (paragraph 7.4):

'I gauge the adverse heritage effects to be very minor'

- 4.32 As required by statute and national planning policy, I shall give **this** level of harm '*considerable importance and weight*' when undertaking the planning balance.

- 4.33 Mr Grover has expressed a view that the scheme will cause slight harm in the significance of Glen Whittan as a non-designated Heritage Asset. I have taken this slight harm into account when forming my planning balance (Framework 197).

- 4.34 CK Friends contend (SoC 3.8 (**CD C7**)) that the proposal is in conflict with the second criterion (listed above), in that the scheme proposes:

'development (using the definition as applied within Section 55 of the 1990 Town and Country Planning Act) within the 'no development zone' stipulated to protect Ashley Manor.'

- 4.35 With respect to CK Friends (and as explained in correspondence to Sally Walker dated 13th January 2021 [11.07] (attached as **Appendix 11**) it is considered that this is an overly legalistic interpretation of this criterion which is inappropriate for the application of a policy statement.

The draft SoCG with CK Friends (provided to CK Friends on 11th January 2021) identified this matter as a matter of disagreement. CK Friends have deleted this matter as a matter of disagreement. It is believed that, in so doing, this argument against the granting of planning permission is no longer being pursued. For the purpose of completeness, I set out my reasoning why the proposed layout does not offend the ‘buffer criterion’ of Policy HD4.

4.36 Development (within the meaning of Section 55 of the Act) lying in the area of the allocated site ‘*south of a straight line westwards from the rear of the northern most school building*’ comprises:

- underground foul and storm water drainage
- underground storm water drainage tank
- the formation of a pond – which has principally been provided to enhance biodiversity value.

4.37 It is considered that the CK Friends’ approach to interpreting this policy statement has failed to read the policy in its proper context. The Local Plan Inspector’s Report, dated 17th March 2020, (CD L6) retains an evidential value as to the evolution of Policy HD4 and its underlying intent. The Inspector states at paragraphs 58 – 59:

*‘Policy HD4 provides for some 25 dwellings on land at Oakhurst Rise. MM016 provides for a restriction to the area of the site to ensure that **new development does not impact on the setting of adjacent listed buildings**. A recent appeal decision for some 68 dwellings was found, among other issues, to materially alter the character and appearance of the site harmful to the setting of the listed buildings and to result in a loss of protected trees. The appeal was dismissed.*

An allocation for some 25 dwellings would considerably reduce the potential for the harmful impacts which were identified in the appeal scheme. A more modest development would enable the interrelationships between the listed buildings, the site and the Ice House to be better addressed and to avoid any harmful impact on the setting of the listed buildings. It would also enable the retention of important trees within the site, and I have made a minor change to the wording of modified Policy HD4 to require the protection of mature trees. In view of the location of the site within the built-up area and the need for residential development within Cheltenham, I find that with an appropriate layout and form of development the issues raised as part of the appeal scheme could be satisfactorily addressed and the allocation is sound.' [emphasis added]

- 4.38 It is considered that the Local Plan Inspector's reference to 'new development' (paragraph 58, first sentence) relates to development which could potentially impact upon the setting of the adjacent listed buildings – rather than seeking to preclude all forms of development as defined by the Act.

Conclusion of Heritage Matters

- 4.39 I conclude that the public benefits which would be realised from allowing this development outweigh the low level of harm – given considerable importance and weight (great weight) – to the significance of the historic assets, as a consequence of the effect upon their setting. I have also taken into account the impact of the proposals on the significance of Glen Whittan as a non-designated heritage asset.

- 4.40 The level of harm to the significance of the heritage assets has been reduced to the extent that the benefits outweigh the effects of the development upon the significance of the heritage assets, to an extent that any further reductions in the amount of new homes would diminish the public

benefits of the proposal. I am of the opinion that the proposals have optimised the site for new housing.

Other Matters

Ecology and Trees

4.41 The underlying policy objective of Policy SD9 is to protect and enhance the biodiversity and geodiversity resource of the JCS area. Criterion (ii) is engaged in consequence of the designation of the site as a Local Wildlife Site. The application of Policy SD9 is to ensure that *‘new development both within and surrounding such sites has **no unacceptable** adverse impacts’* [emphasis added]. The application of this policy requires a planning balance to be undertaken.

4.42 Aspect Ecology provided the LPA (prior to the determination of the application, and prior to the designation of the site as a Key Wildlife Site) a Technical Note (TN11), titled ‘Assessment of compliance with Joint Core Strategy Policy SD9 (2ii and 5) should the site be designated a KWS’.

The Note (**CD F10**) states (7.2):

‘In this regard, the scheme sensitively incorporates biodiversity features of demonstrable value e.g. veteran trees, and where losses of habitats within the site are unavoidable e.g. some hedgerows, these are satisfactorily mitigated. In respect of grassland matters, some 56% of the existing resource would be retained. The grassland at present is of relatively low botanical value and accordingly of reduced ecological function, such that in Aspect Ecology’s opinion it does not merit KWS designation. Under the proposals the retained grassland would be significantly enhanced and its botanical interest would be greatly increased, which

in turn would provide enhanced resources for its attendant faunal biodiversity. Furthermore, its future would be secured and the risk removed that its interest could be lost through inappropriate management. Its enhanced biodiversity value would be maintained through the application of a specific conservation management plan with funding secured for the long term. Accordingly, a net beneficial outcome would arise for the grassland interest present.'

4.43 A further Technical Briefing Note (TN12) comprised a Framework Management Plan for Restoration of Retained Grassland and Associated Habitats (**CD F11**) (07/09/20). Dr Juliet Hynes Nature Recovery Network Co-Ordinator for the Gloucestershire Wildlife Trust responded to this Framework (email dated 07/09/20) (**CD F13**), stating:

'Gloucestershire Wildlife Trust confirms that the prescriptions within the revised draft of the FMP should result in securing and enhancing the biodiversity interest of the retained areas of the Local Wildlife Site.'

4.44 The Planning Officer, when reporting the application to the Planning Committee, reported on the advice received from the County Ecologist, who advised the LPA (6.5.31):

- *'Compared to previous development schemes for this site (17/00710/OUT & 18/02171/OUT) there will be fewer units and greater retention of habitats and features. There is to be extensive tree/shrub planting, additional new habitat features and improved meadow management. Overall a biodiversity net gain can be secured with appropriate conditions and planning obligations in place as I have previously advised.'*

- *The development if consented would be compliant with NPPF paragraphs 8, 170, 175 or 180. The proposal avoids significant harm to biodiversity and protects veteran trees. It makes effective use of the land and also provides a mechanism to secure a better more resilient future for biodiversity.*
- *Biodiversity improvements have been designed into and around the development. Given policy HD4 of the newly adopted plan [see below], the type and scale of the development appears to me to be appropriate for the location*
- *The development if consented would be compliant with JCS policy SD9. The development provides appropriate mitigation for some unavoidable effects but importantly positively conserves and enhances biodiversity overall which are relevant to the location.*
- *The development if consented would be compliant with policy HD4 in the recently adopted Cheltenham Local Plan. The development provides for long-term protection of mature trees and hedgerows on site, better commuting corridors and foraging areas for bats, and is an opportunity to enhance biodiversity overall.'*

4.45 The LPA is satisfied that the proposal has an '*acceptable impact upon wildlife and biodiversity*'.

4.46 Mr Baxter addressed the objections raised on behalf of the CK Friends in a Technical Briefing Note (TN13) 'Response to Charlton Manor Comments dated 04/09/20' (**CD F12**). Mr Julian Forbes-Laird similarly responded to comments made on behalf of the CK Friends to arboricultural matters (**CD A101**).

4.47 Mr Baxter has concluded in his evidence (paragraph 4.5.5.):

‘... I further consider, in line with JCS Policy SD9(2)ii and SD9(5) that the potential harm to the LWS can be satisfactorily mitigated and the appeal proposals would have no unacceptable adverse impact on the LWS or upon the criterion for which it is listed, namely ‘value for learning’.

4.48 Mr Baxter describes the future management measures proposed to the retained grassland through the provisions of a Management Plan – which he considers will achieve significance enhancements. Mr Baxter concludes that the ecological interest of the appeal site would decline in the absence of an imposed management plan (PoE 4.7.7).

4.49 Mr Baxter has considered the effect of the development on badgers – which are not protected for their conservation status, but specifically to protect the mammal from ill treatment. Badgers are a common species. Mr Baxter is confident that badgers will continue to occupy the site post-development (with the strategy to provide an artificial sett).

4.50 Mr Baxter expresses the opinion that beneficial management of veteran trees can *‘provision of a veteran tree management plan will serve to increase the lifespan of these important trees. Given the irreplaceable nature of these habitats ..., the benefit arising from increasing their lifespan is significant.’* (PoE p15). Mr Baxter expresses the opinion that, in the absence of veteran tree management which is delivered by these proposals, future mis-management could occur reducing biological interest and ultimately may foreshorten their lifespan (PoE 4.7.1).

4.51 Mr Forbes-Laird has considered the objection by CK Friends that the proposal does not provide for the 'long term protection of trees and mature hedges'. Mr Forbes-Laird responds to this objection, stating (paragraph 5.4):

'It is apparent from the foregoing that Inspector Sims raised only two concerns against the First Appeal scheme: loss of TPO tree T11 (FLAC ident. 3014) and safeguarding for retained trees. The 43-Unit scheme, as now appealed, has been designed with these specific matters in mind, and ensures that both concerns are addressed.'

4.52 The proposed development would involve the loss of two mature trees (FLAC ident 3016 and 3017) and hedgerow within 'grown out' hedgerow as referred to Mr Forbes-Laird. Both trees are of moderate quality (Cat B) and neither are included within the TPO. I acknowledge this loss in undertaking the planning balance.

4.53 In exercising my planning judgement, with the expert opinion of Mr Baxter and Mr Forbes-Laird, I conclude that the proposals are compliant with JCS Policy SD9 and Local Plan Policies G12, G13 and HD4 in respect of biodiversity and tree issues. Veteran trees enjoy a high level of protection as irreplaceable habitat (Framework 175a). Mr Forbes-Laird has emphasised the importance of the implementation of a management regime geared towards the preservation of such habitat features. Forbes-Laird has provided specific evidence where tree work in the absence of a Veteran Management Plan has harmed the status of a veteran tree. Mr Forbes-Laird states (6.5.13):

'...it must follow that very significant weight should attach to the implantation of a management regime geared towards their preservation'.

4.54 Policy SD9 encourages new development to contribute positively to biodiversity. The assessment undertaken by Mr Baxter is that this proposal could achieve a 12% biodiversity net gain – in excess of the anticipated requirement for development sites to achieve a 10% net gain for biodiversity as emerging in the Environment Bill. Mr Baxter expresses that a *‘very positive outcome for biodiversity will be secured under the appeal proposals’* (7.8.2).

Highway Safety

4.55 I acknowledge that the access to the site involves a rising gradient from London Road. This gradient is not so steep as to inhibit cycling or walking as alternative means of travel to London Road – where facilities and a regular bus service are available. The Technical Note provided by Mr Padmore (**Appendix 2 (CD L3)**) concludes that the development provides a safe and suitable access, is sustainable and will not result in any discernible impact on the safe operation of the local highway network (Technical Note paragraph 4.3).

4.56 I conclude that the proposed development is compliant with the provisions of JCS Policy INF1

Drainage and Flood Risk

4.57 There is often a general misunderstanding that the provision of built development and impermeable surfaces, such as roads and paths, necessarily will exacerbate flood risk. While such effect might occur if no mitigation measures are provided, addressing the increase in surface water run-off from built development is long established and proven practice.

4.58 I attach as **Appendix 12** a 'stylised' drawing to show the principles of the storm water regime for this site, which incorporates storm water retention on site, and discharge to the public sewer of no greater flow than the site in its existing greenfield form.

4.59 The scheme design has taken into account a potential increase in rainfall of 40% (as a consequence of the effects from climate change). As such the implementation of these proposals will have a positive beneficial effect in reducing surface water run-off from the site with the installation of the water attenuation facilities i.e. the facilities hold back the run-off water to regulate the rate of discharge. I have attached limited weight to this public benefit.

4.60 These principles are explained in paragraph 2.2. of the Technical Note prepared by Mr De Croos (**CD L2**) and appended to my Proof of Evidence (**Appendix 1**).

4.61 The Rule 6 Party alleges concern as to the potential impact of the construction of the artificial badger sett in the open area of land upon spring water, both in the context of the conditions within the sett and potential interruption of a spring water supply to Charlton Manor. These concerns are addressed in the Technical Note attached as **Appendix 5 (CD L19)**, with Mr de Croos concluding that '*the proposed location of the artificial badger sett will not have an adverse impact upon the drains and springs on the site*' (paragraph 3.1) and '*the construction of the artificial badger sett will not interrupt the supply of spring water to Charlton Manor*' (paragraph 3.2).

Landscape and Visual Impact

4.62 The Technical Note provided by Mr Davies of MHP (attached as **Appendix 3 (CD L4)**) properly makes the point that, in the context of potential impact on the AoNB, the issue is not whether the development would be 'seen' from the AoNB, but whether the development would cause 'harm'

to the landscape and scenic beauty of the AoNB (paragraph 5.1.2). Mr Davies has concluded that this proposal would cause no harm (paragraph 6.1.1).

4.63 I conclude that there are no serious adverse effects from the development in respect of any of the 'other issues' – indeed, in respect of biodiversity/trees, and drainage, there are positive public benefits.

Housing to meet specific requirements

4.64 Paragraph 59 of the Framework states:

'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.'

4.65 Provision for affordable housing and for people wishing to commission or build their own homes are specifically referred to in the Framework (61).

4.66 In his evidence on the need for Affordable Housing Mr Stacey concludes (paragraphs 8.12 – 8.14; 8.24):

'The 18 affordable homes that the appeal proposal would provide represents the equivalent of 11% of the total number of affordable homes delivered across the entire Borough since the SHMA base period in 2015/16. It is evident that the appeal site can help to make a

substantial contribution towards addressing the acute affordable housing needs of Cheltenham.

It is critical to view this in the context of the 2,161 households on the Borough's Housing Register at 1 April 2020 and it is important not to lose sight of the fact that these are real people, who are in real need, now.

There is a clear and pressing need for more affordable homes to be delivered in Cheltenham which the appeal proposals would make a substantial contribution towards helping to address. ...

Against the scale unmet need and the lack of suitable alternatives in the private rented sector in Cheltenham Borough, there is no doubt in my mind that the provision of 18 affordable homes will make a substantial contribution. In light of all the evidence I consider that it should be afforded nothing less than substantial weight in the determination of this appeal.'

4.67 In his evidence on the need for Self-Build/Custom Build Housing, Mr Moger concludes (paragraph 6.26):

'Against the scale of demand and the lack of any clear and suitable strategy from the Council to address this demand, there is no doubt in my mind that the provision of four self-build and custom housebuilding serviced plots through the appeal proposals will make a substantial contribution towards helping to address this identified need. In light of which, in my opinion, the evidence indicates that nothing less than substantial weight should be afforded to the provision of four Self-Build and Custom Build homes in the determination of this appeal.'

4.68 The delivery of the self-build/custom-build housing is assured through the provision of the Unilateral Undertaking.

4.69 I have taken these considerations into account in the planning balance. The LPA is in agreement with the weight that I have placed on affordable housing as a public benefit, but considers that the weight to be place on the provision of self-build/custom-build housing should be ascribed moderate weight. I rely on the considerations of Mr Moger in ascribing substantial weight to this provision.

5.0 PLANNING BALANCE

5.1 I have acknowledged that the proposed scheme will result in a low level of harm to the significance of the designated heritage assets. I have given this level of harm considerable importance and weight. I have also taken into account the slight harm that will be caused to the significance of Glenn Whittan as a non-designated heritage asset. I have taken into account the loss of the two category B mature trees and the short length of hedgerow. I have had regard to the other issues raised by the Rule 6 Party and local residents who oppose the granting of planning permission. In my opinion, none of these issues singularly or commutatively amount to serious objections to this proposal.

5.2 I have identified public benefits from allowing this proposal and I have described the weight that I consider appropriate to these benefits (refer to table in paragraph 1.11) in undertaking the planning balance.

5.3 The LPA distinguish from the weight I have applied only in respect of:

- the weight to be given to the provision of self-build/custom-build housing prior to October 2021; and
- the weight to be given to the provision of management plans for existing trees and retained grassland.

5.4 I have also identified public benefits to the two charities which have a land interest in the site. It is in the interest of these public benefits that the site is used optimally for the provision of housing, so as to create capital funds for the furtherance of their public benefit activities.

- 5.5 CK Friends have explained in response to communication with Ms Walker that they are not accomplished to ascribe weight to the public benefits, I respect this position.
- 5.6 I am firmly of the opinion this proposal satisfies all the criteria of Policy HD4, and complies with JCS Policies SD8 and SD9 and Local Plan Policies G12 and G13. I rely on the evidence of Mr Kingsman for my conclusion that this proposal satisfies Policy C11 of the Local Plan in respect to the provision of community infrastructure. This policy would be satisfied by the Unilateral Undertaking even if the appointed Inspector is satisfied that the financial demands sought by the county council towards education and the provision for libraries is in fact lawful (Reg 122 CIL 2010) I conclude that the proposals comply with the development plan and that the decision-taking falls to be considered against the provisions of the Framework at 11c.
- 5.7 If the Inspector, notwithstanding my evidence, concludes that this proposal does not accord with the development plan (Framework 11c) then the decision-taking matrix of paragraph 11d is engaged – as a consequence of the inability of the LPA to demonstrate a five-year supply of deliverable housing sites. (The LPA acknowledges that presently only a 3.7 years housing land supply can be demonstrated notwithstanding the adopted of the Local Plan in July 2020). The tilted balance does not apply when certain policies apply. These include policies relating to designated heritage assets, but that is only when the relevant heritage policies in the Framework provide a clear reason for refusal.
- 5.8 It is agreed that the relevant heritage policy in the Framework is the one set out in paragraph 196 of the NPPF: the less than substantial harm to the significance of the heritage asset should be weighed against the public benefits of the proposal. It follows that, if the test in paragraph 196 of the NPPF is passed, then the tilted balance will apply and footnote 6 is not a constraint on its application.

5.9 In this case I have adopted the professional view of Mr Grover in respect of all the relevant heritage assets.

5.10 In my judgement, the public benefits (table at 1.11) from allowing this development outweigh the low level of harm that has been identified to the significance of heritage assets. I consider that the planning judgement is not finely balanced and that the public benefits, which are many, collectively and substantially outweigh the level of harm identified by Mr Grover. As such, the preclusive policy provision of Paragraph 11d (i) is not engaged.

5.11 In my experience, the public benefits arising from larger housing schemes, such as those being delivered on the appeal site, often outweigh less than substantial heritage harm. There are numerous examples of this and I attach several by way of example:

- Albourne, Mid Sussex – an Extra Care village located close to several listed buildings, a conversation area and a non-designated heritage asset (**Appendix 13**) (CD L9)
- Newent, Forest of Dean – upto 50 dwellings located close to several Grade II listed buildings (**Appendix 14**) (CD L11)
- Euxton, Chorley – upto 180 dwellings including 30% affordable housing, located close to a Grade II listed building (**Appendix 15**) (CD L10)
- Enstone, Oxfordshire – upto 29 dwellings, located close to two Grade II listed buildings (**Appendix 16**) (CD L13)

5.12 This is the natural consequence of the test in paragraph 196 of the NPPF. In my view, it has clearly been written to allow the public benefits of new development proposals to be properly taken into account in considering proposals which impact on England's many heritage assets. The intention

is also clearly to permit those public benefits, through a simple balancing exercise, to outweigh the harm to the significance of heritage assets in cases where the harm to the heritage assets is less than substantial.

5.13 I have identified additional public benefits to the two charities which, if accepted, add yet further weight to the public benefits and strengthen the case for the Appellant.

5.14 The operations of paragraph 11d (ii) is a titled balance in favour of a grant of planning permission except where the 'adverse impacts of doing so outweigh the benefits, when assessed against the policies in this Framework taken as a whole'. I accept that Policies SD8, SD9 and HD4 are not 'out of date' and are to be considered within the tilted balance. A judgement is then required as to the extent of the conflict with the development plan so that this adverse impact can be placed within the titled planning balance. A planning balance has to be reached whether the identified conflict with these policies is of such concern as to significantly and demonstrably i.e. provenly outweigh the benefits.

5.15 It is my professional judgement that this proposal complies with the development plan (Framework 11c). However, if my judgement is not accepted, then the decision-taking falls to be considered against the matrix of paragraph 11d of the Framework. It is my view that the public benefits of the proposal outweigh the less than substantial harm to the significance of the heritage assets. That being so, the tilted balance applies (Framework 11d(ii)). In so doing, I find the adverse impact of granting permission would not '*significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*'(2019).

Planning Obligations

5.16 In exercising this planning judgement, I have also considered the Appellants' position in the justification for planning obligations, as sought by the County Council. Even if the Inspector finds favour with the County Council's argument as to the lawfulness of the demand when assessed against Regulations 122 of the CIL Regulations, the submitted Unilateral Undertaking gives effect to this magnitude of financial contributions.

5.17 The proposals would therefore not be deficient in the provision of planning obligations.