IN THE MATTER OF

LAND ADJACENT TO OAKHURST RISE,

CHELTENHAM

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CLOSING SUBMISSIONS

ON BEHALF OF

THE APPELLANT

William Morrison (Cheltenham) Limited and The

Trustees of the Carmelite Charitable Trust

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CONTENTS

INTRODUCTION

1. This is an Appeal by William Morrison (Cheltenham) Ltd and the Trustees of the Carmelite Charitable Trust (LPA Ref: 20/00683/OUT) against the decision of Cheltenham Borough Council ("**the Council"**) to refuse outline permission for a scheme on an allocated site for 43 dwellings, including access, layout and scale, with all other matters reserved for future consideration on land adjacent to Oakhurst Rise, Cheltenham.

2. The only reason for refusal relates to the impact of the proposed development on the significance of the setting of two heritage assets and consequent harm to the significance of Ashley Manor (GII*) and Charlton Manor (GII). [1] It states as follows:

> *'The proposed development would have a significant impact on the setting of nearby listed buildings. The resultant 'less than substantial' harm to these designated heritage assets must be afforded significant weight, and this harm would fail to be outweighed by the public benefits arising from the proposal in the overall planning balance.*
>
> *Policy HD 4 of the Adopted Cheltenham Plan suggests a minimum of 25 dwellings can be accommodated on this site subject to a list of criteria. The proposal for 43 dwellings against the policy requirement of 25 has led to a layout which does not respect the character significant and setting of heritage assets. The proposal is therefore in conflict with Policy HD4 of the adopted Cheltenham Plan.*
>
> *The development would also be in conflict with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, adopted policy SD8 of the Joint Core Strategy (2017), and paragraphs 193, 194 and 196 of the National Planning Policy Framework (2019).'*

3. The focus of this appeal is on the NPPF paragraph 196 balancing exercise: where a development proposal will lead to less than substantial harm to designated heritage asset and the ice house (which has been assumed to be curtilege listed), this harm should be weighed against the public benefits of the proposal.

4. These include:
    a. 21 market homes – to address an agreed shortfall of housing below 5 years;
    b. 18 affordable homes - to meet an "acute" need for affordable housing in the Borough;
    c. 4 self-build/ custom build plots – to address the Council's agreed repeated failure to meet its statutory requirements;
    d. ecological enhancements through the Landscape and Environment Management Plan;

[1] Agreed with RW in XX

e. employment benefits – agreed with the council during the construction phase;[2]
f. benefits to the two charities who, in turn, deliver "public benefits";
g. drainage enhancements to attenuate runoff.

5. The Rule 6 party, Charlton King Friends ("R6"), and local residents also raised various additional issues. These largely related to:
    - the impact on ecology, biodiversity and the local wildlife site ("LWS");
    - the impact on trees;
    - the highways impacts - including on cycling and traffic;
    - springs and drainage.

6. The Appellant's evidence shows that only minor harm is caused to the significance of Ashley Manor and Charlton Manor (through impact on setting). And that this is overwhelmingly outweighed by the multiple and substantial benefits of the scheme. This proposal has involved a significant evolution since the proposal for 90 dwellings which the professional planning officers of the Council considered to be acceptable. That is down to the judgement of many people, including :

    - Mr Peter Frampton, who felt the 90 dwelling scheme proposal was too much;

    - Inspector Brian Sims, who felt the 68 dwelling proposal did not do enough to reduce harm to the setting of Ashley Manor and Charlton Manor and the intervisibility between both and the ice house; and

    - Both Mr Chris Morris and Mr Philip Grover, who felt this proposal needed to address the concerns of Inspector Sims; to step further back than 30m from Charlton Manor; provide screen planting; exclude the ice house from within the development and give it some "breathing space" so it was not incorporated into the screen planting.

7. This scheme strikes the right balance between minimising heritage harm and maximising public benefit.

8. The public benefits of the scheme are abundant and should weigh heavily in favour of permission being granted. The Council has agreed substantial weight should be given to the market housing, the affordable housing and the self-build housing. It gives weight to various other matters including the employment benefits, the biodiversity benefits and benefits to the two charities. On the basis of the agreed evidence between the two main parties, the public benefits clearly outweigh the heritage harm. The Rule 6 Party did not present planning evidence and its witness is not a planning expert. It has therefore not entered into the weighing of the public benefits of the scheme.

[2] CDK7, SOCG

THE DEVELOPMENT PLAN

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 establishes that planning decisions must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

10. The relevant parts of the Development Plan ("**DP**") are the Gloucester, Tewkesbury and Cheltenham Joint Core Strategy ("**JCS**") and the Cheltenham Local Plan ("the Local Plan"), adopted in July 2020.[3] The JCS covers strategic housing, employment and infrastructure requirements across the JCS area – this was adopted by all three councils in December 2017. However, the new Cheltenham Plan addresses the more detailed local policies, non-strategic allocations, local infrastructure issues and development management policies relevant to Cheltenham.

11. Whilst the strategic housing policies are contained in the JCS, the Local Plan, makes provision for a very limited number of housing sites. Their delivery is critical to ensuring housing land comes froward in Cheltenham before the strategic allocations. Their importance has been immediately highlighted by the fact that, despite the very recent adoption of the Local Plan last year, the Council already has a shortfall in its five year supply. Sadly, Inspector Sims assumed that upon adoption of the Local Plan there would, automatically, be a five year supply of housing land. That optimism was badly misplaced. He dismissed the appeal with that assumption being part of his conclusions (para 124). He was quick to dismiss the professional officers and the Local Plan Inspector's conclusions about the extent of development proposed for the site. With the latter, he referred to ***"the Inspector dealing merely with the draft allocation."*** (my emphasis) Whereas in fact, the Local Plan Inspector would have had a much better view about the wider policy constraints in Cheltenham and the housing land supply difficulties than he did. That is why she supported the allocation with very specific guidance about how it could be developed. Nor merely the consideration of one site. Context is important to all decisions – and the Local Plan Inspector had a much better understanding of the wider context.

12. The very small number of available housing sites in Cheltenham makes their development even more critical than might otherwise be the case. Green Belt wraps around Cheltenham from the South to the North East, with all the remaining boundaries being part of the Cotswolds Area of Outstanding Natural Beauty ("**AONB**").[4] The town also contains numerous protected open spaces including Local Green Space ("**LGS**"), two of which are extensive, despite the guidance in the NPPF that they should not be. As the Appellant's planning witness, Mr. Peter Frampton ("**PF**") put it, Cheltenham is a "highly constrained town".[5]

13. The site comprises some four hectares of land. It is subject to several constraints. Policy HD4 sets out several site-specific requirements:

[3] CDK7, SOCG 1.1.
[4] EIC of PF.
[5] EIC of PF.

"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"**

14. The planning application has very obviously been designed to address all of these considerations, and, in several respects, exceed them. It is therefore a proposal which is fully compliant with the development and enjoys the presumption in favour of proposals which conform to the Development Plan. Now the Local Plan has been adopted, it should have been granted permission, without delay.

The Relevant Tests from the Development Plan and the NPPF

The Development Plan

15. The starting point for determining this application is the statutory test set out in Section 38(6) Planning and Compulsory Purchase Act 2004. This requires the decision makes to ask whether the proposal conforms with the Development Plan and, if not, whether material considerations weigh in favour of the grant of permission despite any conflict with the Development Plan (hereinafter "**DP**").

16. Here the proposal does comply with the DP, not least because it is an allocated site. Policy HD4 contains various criteria. If the Inspector considers these criteria are met, and there is no conflict with HD4 or SD8 of the JCS (referred to in RR3), then permission should be granted. The Appellant's case is, emphatically, that it should be granted precisely because it does - quite obviously and explicitly - conform to the Development Plan because it meets to requirements of Policy HD4.

17. In deciding whether the proposal conforms with the Development Plan, Policy SD 8 also needs to be considered. It reads as follows:

"Policy SD8: Historic Environment

1. The built, natural and cultural heritage of Gloucester City, Cheltenham town, Tewkesbury town, smaller historic settlements and the wider countryside will continue to be valued and promoted for their important contribution to local identity, quality of life and the economy;

2. Development should make a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment;

3. 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. Consideration will also be given to the contribution made by heritage assets to supporting sustainable communities and the local economy. Development should aim to sustain and enhance the significance of heritage assets and put them to viable uses consistent with their conservation whilst improving accessibility where appropriate;

4. Proposals that will secure the future conservation and maintenance of heritage assets and their settings that are at risk through neglect, decay or other threats will be encouraged Proposals that will bring vacant or derelict heritage assets back into appropriate use will also be encouraged;

5. Development proposals at Strategic Allocations must have regard to the findings and recommendations of the JCS Historic Environment Assessment (or any subsequent revision) demonstrating that the potential impacts on heritage assets and appropriate mitigation measures have been addressed.

This policy contributes towards achieving Objectives 1, 2, 4 and 5."

18. Both the Council's Conservation Officer and the professional planning officers found there to be no conflict with this policy. The policy takes a high level approach to heritage conservation as one would expect with a strategic plan. It refers to making a positive contribution to local character, distinctiveness and sense of place. And that needs to be considered. While it does not actually refer to the concepts of "substantial" and "less than substantial harm", which is a little surprising, paragraph 4.9.11 of the JCS says that SD8 reinforces the framework (the NPPF).[6] In any event, we are inevitably drawn back to the NPPF when considering the relevant test to apply to the heritage issues in this case.

The NPPF

19. The test in paragraph 196 is an easy test to apply. It is simply a balancing exercise. Given heritage is the only reason for refusal then if the Inspector concludes that the public benefits do outweigh the heritage harm, then there is no other reason to refuse permission, on the basis of the Council's case. Permission should therefore be granted in this case.

[6] PFPoE 4.19.

20. The Rule 6 Party raise various other issues which will need to be considered. But it is important to note that none of these warranted a reason for refusal. In other words, neither the professional planning officers of the Council, nor the elected members felt there were any other grounds upon which the proposal should be refused.

21. The Appellant accepts there will be harm arising from the loss of two category B mature trees and the short length of hedgerow (see Peter Frampton PoE, para 5.1). But other than this, the Appellant does not accept there is any other harm and that many of the concerns raised are done so without evidence or justification, including issues such as highway safety, harm to ecology and the claimed unsustainability of the location. Indeed, the way some issues have been raised is unfortunately in the extreme - such as the mock coroner's report designed to suggest that the Inspector would be responsible for a death at a road junction. The Inspector can be assured that neither the highway officers at Gloucestershire County Council, nor Mr Padmore believe the proposal give rise to any safety concerns.

22. But if paragraph 196 test is passed, then the proposal quite clearly conforms to the Development Plan and permission should be granted. That is the correct approach under both Section 38(6) PCPA 2004 and paragraph 11(c) of the NPPF.

The Tilted Balance

23. The Council accepts it cannot demonstrate the necessary minimum five year supply of housing land. As a consequence, the "tilted balance", set out in paragraph 11(d)(ii) of the Framework should apply: Suffolk Coastal v Hopkins Homes: Richborough Estates v Cheshire East [2017] UKSC 31. Under the tilted balance, the NPPF requires *"granting of permission unless" "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*.

24. However, the tilted balance does not apply *"where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed."* (11(d)(i)). The clear reason for refusing applies in situations involving the protection of interests of acknowledged importance as set out in footnote 6 of the NPPF. One of those circumstances, in this closed list, relates to designated heritage assets. But properly read, the disapplication or non-application for the tilted balance only takes place if the relevant policy in the Framework provides a clear reason for refusal.

25. **First**, in this case, the relevant test in the Framework is contained in paragraph 196. This is because all parties agree that the harm to the heritage assets is less than substantial harm. The test in 196 of the NPPF requires the decision maker to consider whether the less than substantial harm to the significance of the heritage assets is outweighed by the public benefits. That weighing exercise is arguably just that. It is not, in and of itself, a clear reason for refusing the development.

26. **Second**, paragraph 196 does not instruct the decision maker to automatically refuse permission if the harm does outweigh the benefits. Overcoming the paragraph 196 test would also mean that there was no "clear reason" for refusing the development: in such circumstances it ceases to be a reason for

refusing planning permission at all. Great weight should of course be given to heritage harm, consistent with the legislative provision in Section 66(1) of Listed Buildings Act 1990: this issues and the case law on Section 66(1) and the NPPF is addressed in detail below.

27. **Third**, if the paragraph 196 test is overcome, then the decision maker must ask themselves whether the proposal is in accordance with the Development Plan. This often requires a consideration of a wider range of issues - if they are in issue. In this case however, the Council are not alleging any further issues, save for the need for education and library contributions. The Appellant does contest these. But equally it offers up through a unilateral undertaking contributions if the Inspector concludes they are necessary.

28. Given there is only a heritage RR, then it might be assumed recourse to the tilted balance is an additional unnecessary step to take in this type of case. Certainly, it becomes an unnecessary step when dealing with very onerous policy tests such as the very special circumstances test for inappropriate development in the Green Belt or any development in Local Green Space, or the exceptional circumstances test for new development in the AONB: all three of which apply to extensive areas of Cheltenham. In other words, if one can show that there are very special or exceptional circumstances then, in those cases, one assumes there is no need to apply the titled balance since a much higher hurdle has been overcome.

29. In this case, however, the tilted balance test is not irrelevant. It is clearly engaged here because the Council cannot show a five-year supply of housing land. There are also the other issues in this case to consider raised by the R6 parties. Therefore, it is necessary to ask whether the proposal is in conflict with the Development Plan, taken as a whole. This will be as part of the broader planning balance exercise which considers the range of additional issues which the R6 party suggest should be reasons for refusal in this case.

THE HARM TO THE SIGNIFICANCE OF THE DESIGNATED HERITAGE ASSETS

30. The focus of this appeal has been on the Council's reason for refusal: the impact of the proposed scheme on the setting of two designated heritage assets: the Grade II* listed building known as Ashley Manor (AM) a further listed building, Charlton Manor (Grade II) which bounds the site to the east. Consideration has also been given to the Ice House,[7] which is associated with the setting of Ashley Manor.

The Law

31. As the inspector will be only too aware, pursuant to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, there is an express need in considering whether the grant of planning permission to have special regard to the desirability of preserving Ashley Manor and the curtilege listed structures and Charlton Manor, as well as their setting or any features of special architectural or historic interest which they possess (CD L1).

[7] although it was recognized that there is a degree of uncertainty as to the precise nature of the structure.

32. Case law has sought to ensure that decisions makers do appreciate this legal obligation and the need to treat heritage considerations properly and not simply seeing them as just another material consideration. The Inspector will be very familiar with the judgments in Banwell (CD L22) and Forge Field (INQ 35). The Courts have emphasis that having special regard involved merely giving weight to the matters in the planning balance. In Forge Field the Court held there was a strong statutory presumption against granting planning permission for any development which would fail to preserve a listed building's setting. And indeed, the PPG is clear that great weight should be given to a heritage asset's conservation irrespective of whether an potential harm amounts to less than substantial harm. But that is not to say that heritage harm means planning permission should be refused because there is an adverse impact on a heritage asset or its setting. The harm must first be categorised as less than substantial, substantial or total loss (and possibly no harm). The extent of harm within that category can also be considered, so in this case the parties agree there is less than substantial harm, and the Appellant says it is at the lower end fo the scale and minor (PG EiC). And having done so, then the decision maker is entitled to say that they find the harm to a particular heritage asset to be minor or limited. In this case the harm to Ashley Manor and its curtilege listed structures including the ice house is minor. Great weight should be given to that harm. But only as minor harm. The Courts and the PPG are not saying that all harm to listed building should be judged to be the same or a uniform degree of harm nor a uniform degree of weight That would be absurd and would render the whole assessment of harm utterly pointless.

33. The way to approach this is as the SoS did recently in his decision at Bradford, allowing 500 houses on an unallocated greenfield site in the Green Belt (INQ 21). In respect of the harm to the significance of the setting of Black Bull Farm, the SoS expressed that impact and the weight to be given to it in this way: ***"he attaches great weight to the limited impact on its wider, rural setting." (para 32).*** This is like the beach ball and tennis ball analogy. One can give great weight to both. But the harm, if measures by way of the size of the ball, is greater with the beach ball. It has more impact. And to treat the harm from both as the same would be absurd.

<u>The Setting of Ashley Manor</u>

34. The starting point is to consider the SCG on heritage. The contents are not repeated here given these are agree matters.

35. Key features of the **significance** of AM underpinning its Grade II* listing were explained by Mr Philip Grover ("**PG**") and were largely focused on its architecture. The main area of interest is the later building erected on the site which has a richly decorated interior and two fine elevations unaltered by the presence of the school (south and west). It is a suburban Regency manor and, as PG made clear, he believes it is the notable fine interior decoration which elevates it to the Grade II* status. The houses connection with Nathaniel Hartland with features in the list.[8]

36. The heritage significance of AM is assisted by several key features of the property. These include:
    a. the portico orientated towards the approach sweep;[9]

[8] PG EIC
[9] see plate 3 of PG PoE

b. the full height deeply projecting bow with giant Corinthian columns rising up either side of the central windows;[10]
c. the principal room of the house with views towards the south towards the gardens and elevated Cotswold escarpment beyond;

37. Key features of the **setting** impacting the significance of AM were also explained by PG. First and foremost, these included the immediate curtilage around the building including the carriage loop and the stone pillars. Then there are the remnants of the pleasure gardens to the south (as illustrated in the lithograph on Figure 7 in the Appendices of PG).[11] Beyond this, the wider open land to the south, now in use as sports pitches for the school, also forms part of the setting of AM. Save for the driveway trees, there are no remnants of the pleasure gardens in this area. This large wide open area is remains largely free from any form of development. This emphasises, yet further, what is agreed to be the most important elevation of AM, namely the southern elevation.

38. Not only was there broad agreement between the two heritage experts on these issues, by William Holborow ("**WH**") and PG, but this was also consistent with the finding of the ECUS Report.[12] That too stated that the primary views were drawn from the south, east and west – across the designed garden towards Leckhampton and Cheltenham.[13] It was these views which were described as being "*consciously designed*" grounds surrounding the manor as opposed to the surrounding landscape.[14] Indeed, the ECUS report explains that the contribution of the north is to provide "a *shelter belt of trees to the northwest and trees to the northeast*" which would have formed the "*backdrop to the listed building to help filter views towards the house and its designed garden landscape*"[15] (*see plates 3,4 and 5 of PG's Appendices for photographs of this*[16]). The purpose of this southward focus was to allow the wealthy financier to "impress visitors" by showing off the gardens.[17]

39. By contrast, the back (north elevation) had a much more prosaic function. PG puts this in his fourth layer of the setting. Moreover, PG then divides this fourth layer into two, recognising that the eastern part of the Appeal Site does at least form part of the backdrop to the house, and allowing a degree of intervisibility between the AM and the ice house and also the Grade II listed Charlton Manor. Whereas in contrast, the western part of the Appeal Site is very much more incidental.

40. It is also necessary to recognise the **immediate setting** of AM has not remained unchanged. This is important, in particular, in terms of how WH approaches the status of AM. He considers the value of the property to be very high. That is the highest category in his table if heritage value and puts it on a par with heritage assets such as the Royal Crescent in Bath, St Paul's Cathedral, the Houses of Parliament and Stonehenge. Grade II* listed Ashley Manor may be significant, but, in no way is it on par with those

[10] ibid. 7.6
[11] this was the lithograph of the mid-19th century – which is pictured looking north with the pleasure grounds to the south in the foreground.
[12] 2019 CD
[13] ECUS report (2019), 5.2.3
[14] ECUS report (2019) 5.2.3
[15] ECUS report (2019) 5.2.3.
[16] CDH2, page 12 and 13.
[17] PG, EIC

assets which warrant the categorisation of very high value. Nor indeed thousands more buildings, such as the very many Grade I listed churches of England. Part of that diminishing significance is because of the impact the school has on the listed building (that is in addition to the fact the immaculate interior of the building is a major part of its value).

41. The ECUS report identified that AM is now defined according to its former grounds and its relationship with the school buildings of St Edwards. This includes: the single storey nursery / kindergarten to the north with its 1980s red brick; the south's series of bright blue tennis courts (which are in the former ornamental gardens;[18]) and the three storeys to the east of the site with its twentieth century modern additions of the school buildings.[19] There was agreement between the experts that these additions were largely considered to have negatively impacted the setting of AM.

The Setting of Charlton Manor

42. PG explained the significance of CM as one of the first properties on the Battledown Estate, deriving mainly from its intrinsic architectural quality and its historical interest. It was built as part of a housing estate leading off various suburban roads within the Battledown Estate. These houses have clearly defined gardens. There is simply no comparison with the setting of Ashley Manor. The houses are able to enjoy their wider landscape setting, largely because of their elevated position. Charlton Manor enjoys views to the south and views over the open land to the immediate west which contribute to its significance.[20] PG's Proof of Evidence Figure 9, contained a photograph in a sales brochure dating from 1897 which showed the view looking south from CM across the richly planted gardens towards Leckhampton Hill. [21] Significant features of its setting include:

    - the immediate garden setting on the West which has been subject to change in recent years;[22]
    - the modern swimming pool and associated paved terrace;[23]
    - the large timber pergola;[24]
    - the cast iron Victoria gazebo; [25]
    - the modern low rendered wall.[26]

43. The broader setting was also considered by the ECUS Report (2019) where it was explained at 5.2.17 that "*The site is situated to the west of the designated heritage asset and the fields within form as a semi-rural backdrop within the wider setting of the listed building. This semi-rural backdrop does not provide a significant contribution to the understanding of buildings historic and architectural interests*

[18] ECUs report 5.2.4 and PG EIC
[19] ECUs report 5 2.4 and PG EIC
[20] CDH1, page 31 and 32.
[21] CDH2, page 9 figure 9.
[22] CDH1, page 32.
[23] ibid.
[24] ibid.
[25] ibid.
[26] ibid and as displayed in Plate 24.

which are most readily appreciated within the immediate setting. As such, the site is considered to provide a neutral contribution to the heritage significance of the listed building'.

The Ice House

44. The ice house is considered by PG in his PoE. Some doubt remains as to whether it is actually an ice house, however, all parties have proceeded on that assumption since ice houses were a common feature of properties such as Ashley Manor at the relevant time. As such, PG assumes that the Ice House is associated with AM. It is approx. 100m north of the nearest part of the Grade II* listed AM. This is a predominantly sub-terranean structure albeit it forms part of a mound visible above the ground. PG considers it "unusual" to have an ice house located in an open, elevated locations.

45. PG does not doubt that the ice house forms part of the setting of AM. The Appeal Scheme has been specifically designed to address it as part of the setting.

46. Whether the Ice House is listed is more of a moot point. It is not individually listed. Therefore, the only way in which it could be considered listed is if it forms part of the curtilage of AM. Inspector Sims, does not address the point. Indeed, his decision does not suggest it is curtilage listed. The nearest one gets to that being his assumption is set out in his paragraph 31(iii). PG is prepared to accept that it is curtilage listed. Peter Frampton, the Appellant's planning consultant, ("**PF**") has made clear that the Inspector needs to consider that in light of the very recent case of *Blackbushe Airport.*

47. The Court of Appeal's judgment in *R (on the application of Hampshire CC) v Blackbushe Airport* considered the issue of curtilage in detail. In reviewing all the available case law, the Court comes to the conclusion that it is difficult to support the view that a curtilage can be seen as an expansive area. It is a lengthy decision concerned with a very different set of circumstances, However, the key feature of it is the re-affirmation of the view that the curtilage must be so intimately associated with the building as to lead to the conclusion that the land forms part and parcel of it (see Nugee LJ at [127]).

48. PF has raised doubt about whether the Ice House can be seen as part of the curtilage in that way. Of course, the Inspector is entitled to favour the view of PG. But it is necessary to address the point, because it is right to record the correct status of the ice house.

49. If the conclusion is that the Ice House is part of the curtilage, then it is a curtilage listed structure. Given that is the approach adopted by PG, then in his evidence the Inspector has an opinion that is based on the assumption it is curtilage listed. His judgment is that there is minor harm to the setting of the listed building, which includes the curtilage listed Ice House.

50. The Council's case is about the impact of the proposal on the setting of the nearby listed buildings. The setting of the Ice House has been addressed in the proposal, including the Conservation Officers concern to ensure there is breathing space around the Ice House, such that it is physically separated from the screen planting.

51. The Council stated in closing that it considered the ice house to be curtilege listed. But it also makes clear in paragraph 4 of the closing that it "has not sought to make a case in respect of harm to the ice house. It is assumed that means that the Council does not allege the proposal causes any harm to the ice house.

52. The R6 Party raised in closing that the setting of the Ice House will be obscured. IT is not entirely clear what this means, or how it is envisaged this would lead to a loss of heritage significance. The proposal including the planting have been specifically designed to ensure the Ice House can be seen, and with the amended alignment, so that there is "breathing space" between it and the tree planting. In some views from the west of Ashley Manor, it will not be seen because of the planting. But it will be seen from the entrance. The historic image which Mrs Walker took PG to in her XX of him is not accurate representation of a view to the Ice House because of the position of the driveway, the Ice House and the Manor are not correct. Added to which there is, and always have been (as the historic maps show) trees located north of the house end of the driveway and the carriage loop, which act to obscure views of the Ice House. The image, as well as being inaccurate in terms of its perspective, is only a glimpsed view through the trees to the Ice House. The intervening trees emphasizing the point that such a view, if it was available historically, was only incidental. To the extent the new planting will obscure views of the Ice House from the driveway, this is therefore nothing new. Ice Houses are not monuments built to be celebrated or as some kind of folly. They were functional buildings kept away from the main house.

Previous considerations of heritage impacts on the Appeal Site.

53. The first iteration of this scheme was for 90+ houses. The professional planning officers of the Council recommended the grant of planning permission. But the members refused. The matter was not appealed for the reasons explained by PF in EiC.[27] The last appeal related to a scheme for some 68 houses. That took place by Roundtable ("**RT**") and Inspector Sims in that decision refused planning permission.

The decision of Inspector Sims

54. The focus of the previous Appeal Inspector's concerns were the impact of the proposed scheme (68 units) on the setting of AM and CM and the relationship to the Ice House. The key areas of concern were:

    a. the landscape boundary screening to AM;[28]
    b. plots 27-30 in the south east corner of the site "intervening prominently" in views to the north, including from its interior and impeding the appreciation of the Ice House and rural backdrop;[29]
    c. the visibility of built form from CM and prominent views available from west-facing windows;[30]
    d. distant views from CM being partly obscured by the intervening dwellings of 31-34[31]

55. All of these concerns relate to the eastern part of the Appeal Site.

[27] PF, EIC
[28] CDB6, DL78
[29] CDB6, DL79
[30] CDB6, DL84
[31] CDB6, DL84

The Allocation of the Site and the Local Plan Inspector's View

56. At the time that development was considered by Inspector Sims, the scheme had not yet been allocated in the Local Plan: Inspector's Sims' DL had considered that the site was potentially going to be allocated according to the draft policy HD4.

57. At paragraph 21 of the Local Plan Inspector's Post Hearing Advice Note 4.4.19 CDL7, the Inspector notes that Historic England proposed amendments to the wording of Policy HD4. However, Inspector Wendy Burden (the Local Plan Inspector) expressly considered that the reduction in the area of the development recommended by Historic England is "not justified"[32]. Accordingly, she considered that there was good reason to require new tree planting around the east and south boundaries to safeguard the setting of both listed buildings.[33] Of material importance is the fact that she then recommended that :

    a. new housing should be located away from the setting of the west elevation of AM;[34]
    b. that this could be achieved by "*amendment to the southern boundary of the allocation site so that it continues in a straight line westwards from the rear of the northernmost school building*";
    c. to provide an undeveloped buffer between the rear garden boundary of CM and;
    d. that new development on the eastern boundary of the site should be repositioned at least 30 metres west of the rear boundary with Charlton Manor.

58. At the Reg 19 stage of the Local Plan, Mr. Rowley, the Principal Officer for the Local Plan explained that Officers had looked at the issue of density in light of the original 100 unit scheme, and that they had arrived at the 25 figure at the area "west of the tree belt" – and that this was an approximate figure to be used as a starting point for the design of any future scheme.[35] Ultimately, as PF explained in EIC, despite Historic England's ("HE's") view that the west of the site should not be allocated, the Inspector considered that, with an appropriate layout and form, this could be addressed. This led to the "minimum of 25" text. But it is important to recognise that main driving force for rejecting development of the site was Historic England, who's view was very clearly considered, and dismissed, by the Inspector.

Shaping the current appeal proposals

59. The Appellant's scheme has clearly been radically reduced and altered since the last appeal. It very plainly takes into account the views of Inspector Sims and the Local Plan Inspector who allocated the site. This too was evident from the EiC of PF who explained his involvement, particularly looking at the heritage aspects of the scheme: to do this he brought in a heritage expert to look at the scheme *de novo.*

[32] CDL7 Inspector's Post Hearing Advice Note 4.4.19 CDL7, paragraph 21.
[33] CDL7 Inspector's Post Hearing Advice Note 4.4.19 CDL7, paragraph 21.
[34] CDL7Inspector's Post Hearing Advice Note 4.4.19 CDL7, paragraph 22.
[35] CDK2, Email from John Rowley at Cheltenham Council of 2 February 2021.

60. Some of Inspector Sims' conclusions go beyond the requirements of the Local Plan. Furthermore, the Appellant has gone beyond even the specific concerns of Inspector Sims. This proposal has been significantly paired back. For example, the 30m distance from CM is now greatly exceeded, with a huge area of the eastern part of the site to remain undeveloped. The significant lessening of the harm to the significance of the setting of AM is plain to see. There is no development east of the ice house, even though the first ECUS report saw no difficulty in incorporating the ice house into the development proposals.

61. There is also no development within even 50m of the southern boundary of site, with nothing below the line of no-development proposed by the Local Plan Inspector and incorporated into the HD4. Indeed nearly all of the tree belt to the north of that line has yet further distance separation as well as what will become, in time, a very significant visual separation proposed by the screen planting. The Rule 6 Party suggests that there is development south of that line because of the attenuation pond. That is not a credible argument because it cannot sensibly be argued that a small pond harms the setting of Ashley Manor. And indeed, SW accepted that in XX making everyone wonder why the point is being raised at all. The pond is so low key, that it may not even qualify as development. But even if one assumes it is (an assumption to be made out of caution rather than accuracy) it is questioned how this harms the setting of Ashley Manor.[36]

62. The tree belt will help to define the edge of the allocation and funnel views out from Ashley Manor looking west (the main entrance), which WH agreed in XX. It will also provide clear definition to the extent of the setting to the west of AM, an area which is more immediately impacted by the car parking and the paraphernalia of the school's hobby farm. As for the lower vegetation proposed in the screen belt above the drainage proposals, that does not provide a line of sight into the development from the entrance of Ashley Manor. This is a suggestion that has come from Mrs Walker and it is not accurate. That is clearly not the case as seen on the plan which show where that entrance is. It is also the case that the landscaping is a Reserved Matter.

63. PG confirmed that he had been involved March 2020 and had been instructed to give a view on layout and approach to the development particularly in light of the "lessons learned" from the previous appeal. The previous appeal decision has driven this proposal. The lessons learned clearly relate in the main to the eastern part of the site, the relationship between the two listed buildings and the ice-house and the position of any screening. As PG explained in his evidence in chief, that his heritage expertise had shaped the Appeal Scheme and that it was "quite clear" to him that the eastern portion of the site should be kept free from development. One does not need to see the site to understand that. PG explained the proposals he put forward not only sought to focus on the comments of Inspector Sims, but also the Cheltenham Borough Council ("**CBC**") Conservation Officer, who had appeared as a witness for the Council at the previous Appeal objecting the proposal. The whole intention was to, very deliberately, seek to avoid another expensive and time consuming appeal.

64. Officers were, of course, supportive of the proposal, as was the Conservation Officer this time. But again, the members were not persuaded. Precisely what their concern were is not at all clear.

[36] this was also raised by the R6 in their closing submissions.

65. PG visited the site in March before he wrote his heritage statement and before the application was submitted. The criticism of him doing so is difficult to understand.

66. PG explained that the heritage focus had been "*at the heart of the decision making*" and that this scheme had involved a "*regrouping and rethinking*".[37] Part of the discussions with the Council's conservation officer had been (i) the prospect of keeping up to 70% of the site free from development and (ii) the ability to screen out the development using planting. The scheme had also been the subject of detailed discussions with officers, a process which the Council's heritage witness, WH, explained that he had not been a part of. Indeed, WH conceded in XX that he had not even spoken to the Conservation Officer from the Council prior to this appeal. This is unfortunate when the officers have recommended approval and a discussion with the officer would allow the witness representing the Council to fully understand the officers concerns: how the scheme evolved, why the planting was proposed, why it was extended northwards, why the screening was moved away from the edge of the Ice House, why there is no development across a vast part of the site, why the development is concentrated in the north west of the site, and why there is such a large area of land undeveloped to the south of the allocated site.

67. PG also explained why, in stark contrast to the last Appeal Scheme, the Conservation Officer who had been against the previous Appeal Scheme, had, in fact, supported this one. PG concurred with that Officer accepting that he "had a point" in what he was concerned about at the last appeal. PG explained that he accepted the previous Appeal Scheme had obstructed views. A shift away from containing built development on the Eastern part of the site was part of the advice that he had also given to the client. He noted that keeping such a large section of the site free from built development is a "*big ask for an allocated site*"[38] but, the Appellants were of the view that the "*bullet had to be bitten*" and that they had worked hard to ensure that covered this off.[39] He is right: it is a big ask to leave so much of the site undeveloped when the whole site is allocated for housing development. The allocation makes clear some areas are not to be developed. But the Appellant has gone far beyond that especially with regard to the 30m buffer to be left around Charlton Manor.

68. Indeed, this openness had formed a fundamental feature of the application. As PG explained, the ethos of the scheme is that the extent of the open space was to minimse the extent of the built form across the site and try to avoid harm to the listed buildings. That very generous open space, particularly focused in the more sensitive areas of the Appeal Site: the north east of AM and the West of CM. The photomontages provided in PF's evidence and submitted with the application confirmed that in PG's view, the level of harm would be "*minor*".

69. The photomontages provided show that the proposed development is visible at year 1,[40] but with much more contained by year 8.[41] They have not been challenged in terms of their accuracy. The management of the site will ensure that if any trees are lost in the early years of planting they will be replaced. There

[37] PG EIC
[38] PG EIC
[39] PG EIC
[40] CDK2, PF PoE appendices, 45
[41] PF EIC

is no tangible evidence to suggest the trees will not take and grow on site, especially given all the trees which have successfully grown there over time and are present on site now.

The Scaling Back of Development

70. The Appeal proposals have been **significantly scaled back**, and this was recognised in the conservation officer's report to committee. This is unsurprising given that there are a number of very important differences between this scheme and the last:
    - former plots 31-34 have been removed – WH agreed that this was a significant material change;[42]
    - plot 35 and 35 are not part of the development at all - those two are also removed and again agreed to be a significant material change in XX;
    - Further units have been removed from the northern part of the site;
    - There are no dwellings proposed east of the Ice house;
    - Far more than 30m separation is proposed between the built development and the rear garden of Charlton Manor;
    - 70% Open Space had been proposed, focused to East of the site, to the south of the site and around the ice house all of which is designed to respect the setting of both AM and CM; and
    - the tree belt which would act as a soft boundary between both heritage asset and the proposed development.

71. The Conservation Officer, who appeared at the last inquiry to give evidence against the scheme, explained (as part of this scheme) that the "*the proposal has been significantly amended*" since the previous proposals: this was specifically *"to address the reason for refusal*". Notable, he considered was:
    - the decrease in the number and location of dwellings;[43]
    - the proposed extensive landscaping measure to reduce and mitigate the visual impact on the heritage assets and their setting;[44]
    - cumulatively, the public benefits – which he then went on to outweigh against heritage harm.[45]

72. The Conservation Office considered that this had been achieved through:
    - limiting the built form to the north-west of the proposal;[46] and
    - preserving the existing rural setting to the north of AM;[47]
    - with a notable "finger" of land to the southern section of the development site.[48]

73. The Officer also went on to consider the planting band which he considered "*introduces and reinforces extensive landscaping*" which would be located *"between the proposal and the remaining retained rural setting, in an effort to soften its impact.*" The Officer considered it to be notable that the "*visual link*

[42] WH XX
[43] CDA102a. Officer Report, page 14.
[44] ibid.
[45] ibid.
[46] CDA102a, Officer Report, page 13.
[47] CDA102a, Officer Report, page 13.
[48] CDA102a, Officer Report, page 13.

between the north elevation of Ashley Manor and the icehouse is preserved within the development proposal, it being retained within its rural setting, with the tree planting serving to reinforce the vista without encroaching upon it".[49]

74. The Officer also considered the impacts on CM noting that the "*development proposal has attempted to address the concerns over the location of built form by limiting it to the north-west of the site, enclosing it with extensive landscaping in the form of tree planting and by retaining a notable section of rural setting*." [50] In the longer term, a strong tree line would be created, which would result in a change to the setting.

75. It was against this context that the Conservation Officer explained that the "*heritage concerns previously raised over refused outline applications 17/00710/OUT and 18/02171/OUT have to an extent been addressed by the current application*." He went on to say that he considered that "*there are still issues with the proposal in terms of its impact on the setting of the heritage assets, which result in it causing less than substantial harm*." Importantly, however, "*on balance, it is considered it should not be objected to in heritage terms due to the amendments made to the number and location of dwellings, the measures introduced to mitigate its visual impact and the associated public benefits*".[51] That too is the view which was shared by PG. He has never adopted the position there is no harm to the significance of the heritage assets

76. The support for the scheme from the Conservation Officer came after a lengthy process of consultation. As PG explained, the proposals had been shaped to address both the Conservation and Planning Officer's suggestions. Importantly, that resulted in a positive recommendation from both. In XX, WH conceded that he had not been a part of this process.

77. Moreover, in XX, WH agreed that (i) the CO's view, (ii) the positive recommendation for approval and the (iii) the views of the Local Plan Inspector were material considerations which this Inspector could take into account. Given the extensive and careful consideration of the Appeal Scheme over time, which has resulted in a high degree of agreement between the various heritage experts, the Inspector is encouraged to give significant weight to these considerations.

<u>The treatment of the application by the planning committee</u>

78. The scheme then came before the planning committee. A transcript of the planning committee meeting was submitted (17th September 2020). The vote was finely balanced (5 votes to 4). It was clear from 01:52:24, that the members are seen to be casting around for a reason for refusal – as was put to Robin Williams ("**RW**"), the Council's planning witness in XX that the members were really "*scraping the barrel*" –and he agreed that it was "*not an edifying spectacle*". It was only with the assistance of officers that members were able to articulate a reason for refusal. Given the debate, it was clear that they took into account immaterial considerations (namely lack of agreed s.106) and failed to focus on the careful analysis of that prepared by their own officers, where both conservation and planning officers had supported the proposals.

[49] ibid.
[50] ibid. page 13.
[51] CDA102a, Officer Report, page 11.

The Council's current heritage case

79. The Council's case now advanced as part of this inquiry is different to that which their own specialist officers considered to be important. There are real problems with the council's heritage evidence:
    - there appears to be a mischaracterisation of the relevant test – focusing on harm to the setting, rather than having regard to the harm to the significance of the asset;
    - the attempt to reject the value of the tree belt or replace it with clumps, despite its recommendation by the Council's own officers as a way of ensuring development on this allocated housings site is kept separate and distinct from the setting of the listed building;
    - a pre-occupation of focusing on the number 25;
    - a suggestion that that the proposal should follow the density of the Battledown Estate, when, at 4 dwellings per hectare, that is not a density which could ever really be judged acceptable in an urban area;
    - a suggestion that the proposal is very similar to the Ewens Farm development, when that is not remotely credible: Ewens Farm has been developed across a very large area without retaining trees and vegetation (if they were present), let alone leaving large areas free from development;
    - concerns about the parking and the road layout when these will not even be visible once the planting has grown;
    - a desire to claim the proposal should be refused on heritage grounds without a consideration of the public benefits as required by the NPPF. WH should not be advancing such a view, most especially when he is not considering the public benefits.

Flawed assessment

80. It is clear that the approach to the assessment of the setting of the heritage assets was flawed. In his PoE, WH explained that he had assessed the impact on the setting of the heritage assets and the effect was to cause "*a significant degree of less than substantial harm to the setting of the heritage assets*". However, in XX, WH accepted that it was important, instead, to assess the harm to the significance of the heritage asset. It was clear from XX that he had, wrongly, assessed the harm to the setting instead.

81. WH accepts that the magnitude of harm to AM is minor. That is very similar to the position adopted by PG. But to then elevate that harm to one of a large/moderate harm to the heritage assets, WH relies upon a methodology derived from a British Standard document for assessing the impact on heritage assets in the Guide to Conservation of Heritage Buildings.[52] This Guide is not identified or referred to in the extensive guidance on heritage matters provided in the PPG. It also, significantly, pre-dates the NPPF and the relevant test set out it there. So too does it pre-date the PPG. WH considered that the heritage value of AM to be "very high". This is the highest category and the only way in which he can elevate the harm to such high proportions.

[52] CDH4 PoE WH.

Figure 2 **Magnitude of impact plotted against value**

VALUE						
	Very High	Neutral	Slight	Moderete/ Large	Large/Very Large	Very Large
	HIgh	Neutral	SIight	Slight/ Moderete	Moderete/ Large	Large/Very Large
	Medium	Neutral	Neutral/ Slight	Slight	Moderete	Moderete/ Large
	Low	Neutral	Neutral/ Slight	Neutral/ Slight	Slight	Slight/ Moderete
	Negligible	Neutral	Neutral	Neutral/ SIight	Neutral/ SIight	Slight
		No change	Negligible	MInor	Moderate	Major
		MAGNITUDE OF IMPACT				

82. WH agreed in XX that the "very high" classification that he had given AM also encompassed UNESCO World Heritage Sites and Grade I listed assets. He provided no justification at all for the "very high" classification. The Guide does not provide any indication on this. And as can be seen it is highly sensitive to change through a single change in the value classification. It was suggested to him in XX that, instead this could have a "high" classification of value. There was no justification for the "very high" classification given for example, the GII* listing (not GI) and the modern additions.

83. As can be seen, movement from "very high" to "high" drastically reduces the output from moderate / large to slight / moderate. And in XX he appeared to accept that the proposal would be borderline anyway. This then appeared to be retracted. But what it shows is just how sensitive to change and how subjective this formulaic matrix approach is. PG has favoured a narrative approach and away from EIA development cases, there is good justification for this: PG's point is supported by what is said in HE GPA in Planning Note 3 on page 8 of the document (green box), particularly that contained in the second column.[53]

84. WH conceded in XX that, in using the British Standard (BS), it had to be accepted that the PPG is not only more recent and makes no reference to this BS, but that the pivotal and central tests in the NPPF, including NPPF/196 are also not addressed in the BSI at all.[54] On that basis, the Inspector is invited to disregard this analysis. Added to which, reliance upon it would raise important questions about whether AM should be categorised as "very high". The efficacy of WH's whole approach relies on that categorisation and yet there is no guidance to suggest Ashley Manor should be in that category at all. To be clear, PG does not accept this categorization is appropriate.

<u>The focus on the tree belt and disregard for openness</u>

85. The focus of the Council's case, in light of the evidence of WH is the tree belt. The proposed broad belt of native woodland planting of approximately 20 metres in depth (wider in some places) is designed to

[53] CD H17
[54] WH XX

provide a substantial and appropriate visual buffer between the GII* listed AM and the closest part of the proposed development. This will result in mitigation of visual impact to "a substantial extent".[55]

86. The Council's shift in position now to criticise this is surprising. The west of the site already contains a "*wide belt of mature trees*",[56] and, furthermore, the LPI found that the designation HD4 would require "*tree planting around the east and south boundaries to safeguard the settings of both listed buildings*";[57]

87. As PG explained, the proposed tree belt would be away from the boundary of the developed area of the site, looking west, would assist with minimising impact on the setting of AM as its function was to mitigate (but not completely screen out) the visual impact.

88. PG then went on to explain that it was important that this was in the context of the Appeal Site being an allocated site – accordingly, there would "*always be some kind of built form*" and that it was better that this was built in "*from the outset*."[58] The landscaping scheme would also be similar in terms of the maturity to the West of the site - it would be "*a new, but highly appropriate, feature*". Given the existing hedgerows belts, the trees would not, in any way, be out of keeping. Those existing hedgerow belts contain very substantial trees which again would make what is proposed, replete with extensive tree planting entirely in-keeping. The new planting would be largely north to south as with the existing vegetation on site. But more sinuously around the ice house to ensure it has breathing space and then east- west in the southern part of the site to provide very legitimate definition separating the development from the setting to the west of Ashley Manor.

89. PG went on to explain that he "*wholeheartedly disagreed with the view of Historic England*" (HE) who had offered a view about the tree belt. He disagreed in particular with the comment that this would be "inappropriate" particularly in the context of this being an allocated site. There is no evidence that the author of that letter has even visited the site.

90. The alternative hypothesis put forward by WH was there should not be any screening - instead, he was of the view that "clumps" would be better.[59] It was clear that this represented a shift in the Council's case. When asked in XX about when this idea had come to him, WH explained that this had come to him "*in the last few weeks*".[60] That is why it does not even feature in his proof of evidence and the weight to be given to such off the cuff thoughts, after months of detailed work by others should not be given any serious consideration or weight. WH confirmed that his new theory on this was not something which had been raised with the Conservation Officer, had not been raised with members of the committee, was not part of his proof of evidence or any evidence that he could commit to in writing. At no point had he raised this with the Appellant. This was particularly surprising given the tree belt had been shaped with very active input from the Council at all stages.

[55] CDH1 PG PoE 8.8.
[56] PG PoE 4.2,
[57] This informed MM to Policy HD4 - explained in greater detail in PG's PoE at 5.11.
[58] PG, EIC.
[59] WH, EIC.
[60] WH, XX

91. Notwithstanding the fact that the Council's case on the tree belt now appears to have entirely changed, WH's view does not withstand scrutiny. WH accepted in XX in that there is already existing vegetation (plate 3), that planting is a legitimate way of screening and that distance and separation were ways of reducing impact on the setting (and the significance) of a designated heritage asset.[61]

92. Indeed, one must ask what WH is really proposing with his clumping theory. Is it that the tree planting should be used to retain a well-defined setting for all the undeveloped land but then open up some views of the new housing with gaps? What really is the point of that? No one will fail to see the screen planting. But the houses will then be left far more exposed. It is genuinely difficult to see how that will not cause more harm to the setting. To do so, but allow for larger properties in that area also makes no sense as it would open view of those houses too. What is the point of doing so when a really effective screen can be produced allowing a much better optimisation of the site on the land behind?

93. In closing, the LPA stated that this was a "tree barrier". It is not designed to be a barrier and nor is it one It is mitigation to lessen the impact of the new development on the significance of Ashley Manor and its setting. It will not entirely screen the development, even when mature, but will substantially mitigate. That makes perfect sense in the context of an allocated site where new housing is to be built. If the development was 25 or 26 dwellings, then there would still need to be a mitigate its impact. For the reasons shown on LM24 and LM25, the same area or indeed a greater area across the appeal site would be required to accommodate a development built in the form of either the Oakhurst Rise or Battledown Estate densities. Screen planting would still be needed then. Of course the Rule 6 Party and the other residents would prefer no development on the site or development in the western field only. The latter would not achieve even 25 dwellings. And would be wholly inconsistent with the local plan policy, and its parametres, which was of course found sound by the inspector in its current form. Added to which despite the attempts to suggest the linear belt of trees and shrubs would be alien, is accurately entirely consistent with the linear lines of trees and shrubs which presently exist on and around the site and through the middle of the western part of it.

94. It also clear that the Appellants have sought to keep free from development a very significant part of the development site. 70% of the site is not proposed for development. The Council have tried to suggest other figures. But they have not actually disagreed with the 70& figure which has been carefully measured by the Appellant's team. To be clear this is not just the area east of the planting belt. It is includes the other large parts of the site which are left free from built development including about half of the western field (because of the veteran trees and the western setting from Ashley Manor; the southern part of the site between the tree belt and the southern edge of the site; he extensive areas of retained hedgerows; the new belt of planting itself; and the areas which will remain undeveloped around the trees especially in the northern part of the site, and which are not gardens.

95. Given this 70% figure and its concentration focussed around the north western quadrant of the site, it is somewhat difficult to understand why on an allocated housing site, left undeveloped far beyond the parameters in the LP policy the Council still ask for more land to be undeveloped. The Council seem pre-occupied with the figure of 43, but this is a proposal of mostly 20 pairs of semi detached houses. In that

[61] WH XX

regard, it is being used efficiently. And given the wider context of the constraints around Cheltenham that is necessary and prudent. As PG explained, the proposals ensure that the green backdrop, immediately to the north of Ashley Manor, and to the immediate west of Charlton Manor will remain entirely free of development. This area of retained green space incorporates the former ice house, which has a historical connection with Ashley Manor and a visual relationship with both listed buildings. The appeal proposals will ensure that intervisibility between the two listed buildings and the Ice House remains unobstructed. That addresses a key concern of both Inspector Sims and the Local Plan Inspector. That was not contested by the Council.

96. This is no insignificant amount of open greenspace either. The Appellant's team has carefully measured the amount of residential development (houses, gardens, roads and parking areas) in relation to the total site area. Of the total site area of 41,481 sqm, 12,206 sqm will comprise developed land. This accounts for less than 30% of the total allocated site area. Put another way, over 70% of the allocated site will remain free of built development, and will be retained as managed green space.

Scale and Density

97. It was also clear that the Council's heritage expert was concerned about the scale of the development: in XX, WH agreed that his assessment had here focused on the "scale" of the development. That runs clearly contrary to the advice set out in the PPG where "it *is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed*".[62] Relying on the assessment, according to the scale of the development, it would be against the grain of established practice and guidance. By contrast, RW in XX accepted that this was not about the numbers – that was also clear from the opening statement. He accepted that "*this was a distraction*".

98. It was clear that the context in which the Appeal Site sits is mixed: WH considered that Oakhurst Rise was quite obviously post war. At paragraph 6.2 of his proof of evidence, WH explains that the approach to site planning as set out in the Design and Access Statement ("**DAS**") is dictated by the constraints in HD4 and, whilst the proposed layout satisfies these constraints, the DAS does not demonstrate a holistic approach to master-planning.

99. This criticism is also baseless. WH conceded that the site had been designed to leave 70% as Open Space. It was also clear that Ewen's Estate, and Oakhurst Rise did not have the same character – that none had a significant number of mature or veteran trees, or the 30m buffer, the space around the southern edge of the site. Any criticisms levelled at the scheme not being consistent with the exceedingly low density of Battledown of 10 dwellings per ha was also considered to be unrealistic.[63] It was therefore put to WH that the site would in no way look similar to Ewens Farm, or Oakhurst Rise, that a master planning approach did require looking not just at the buildings, but also the retained vegetation and the new vegetation. This was the holistic approach.[64]

[62] CDD2, see paragraph 18 of the PPG on the Historic Environment.
[63] WH XX
[64] which was discussed by WH in his PoE at 6.2 in any event.

100. Quite apart from the criticisms made by WH, PF explained that the process had been iterative. Experts had been brought on board early, and that the Appeal Scheme had evolved from consideration of the heritage assets – indeed it was "heritage led".[65] That approach had informed the siting and form of the buildings, the open spaces and the arboricultural strategy.

The Position of the Rule 6 Party

101. Dr Doggett's (Heritage consultant for the R6 Party) ("**DrD**") gives his view at 2.21of his PoE that:"*rather than actually addressing the Inspector's clearly articulated concerns, or for that matters those expressed by the Council's Conservation Officer in his proof of evidence and at the 2019 inquiry, Grover Lewis take the view that because the housing numbers have been reduced an 'open' area of land is left in the south-east corner of the site and because extensive tree screening is proposed, the impact on the significance of the settings of Ashley Manor, Charlton Manor and the icehouse is somehow 'minimal' and 'would be at the low end of less than substantial harm in terms of the NPPF(…)"*

102. He goes on to say that "*is simply not good enough*"[66]. That, however, is factually incorrect. His analysis is premised on an understanding that development would be omitted from the South East of the site only: that vastly understates the differences between this scheme and the last which would omit development on the whole of the east side of the site – it is left entirely underdeveloped. That is obvious from even just looking at the plans.[67] That misunderstanding informs his assessment of how the Appeal Scheme would impact the settings of both AM and CM.

103. From paragraphs 2.1 to 2.5 of his Heritage Statement Dr D discusses the contribution that the Appeal Site makes to the setting of AM – he comes to a "sweeping conclusion" that the Appeal Site (in its entirety) is of great significance.[68] However, it is clear that even the 2019 Appeal Inspector was of the view that the main focus of his concern was on the open, eastern part of the site, encompassing the tree-covered mound of the former ice house.[69] He also comes to the view that the setting of CM is "fundamental" – however, it is the immediately surrounding garden, followed by the immediately adjacent part of the Appeal Site, and the south-westerly views towards the Cotswold escarpment which are most important.[70] That too, mischaracterises the nature of the setting of importance to both heritage assets.

104. At 2.15 and 2.17 of Dr D's Heritage Statement,[71] he then goes on to consider the planting along the southern boundary of the Appeal Site close to AM. As PG explained "*this was a feature of the 2019 Appeal Scheme*",[72] but, this is "*not a part of this scheme; there is no planting in the areas identified*".[73] Paragraph 2.16 also relates to the effects of the 2019 scheme on the setting of CM where development on the

[65] PF, EIC.
[66] CDH22, Dr D's Heritage Statement, 2.22.
[67] CDC12, Wheatcroft Statement, pages 9 and 11.
[68] CDH1, PGPoe, page 43, paragraph 8.28.
[69] CDH1, PGPoe, page 43, paragraph 8.28 and his photomontages.
[70] CDH1, PGPoE, page 43, paragraph 8.29.
[71] PG in ReX
[72] PG in ReX, but also confirmed in his proof at 8.32
[73] PG in ReX

eastern side, close to the garden boundary of the listed building, would partly obstruct distant view and obscure the ice house. As PG explains, development on this part of the site has now been excluded.[74]

105. At 2.20 of his PoE, Dr Doggett then goes on to assert that "*none of the Inspector's specific concerns are addressed by them [Grover Lewis] or anyone else on the Appellant's team*". PG explains that those are wholly untrue – the Appeal Scheme "*expressly set out to address their principal concerns*", by substantially reducing the quantum of development, keeping the eastern portion of the Appeal Site entirely clear of development - respecting the settings of both AM and CM and the former ice house. It also moves development away from the southern boundary and further away from AM.[75] As PF explained, this is a heritage-led scheme, where the constraints of the site shaped the proposals.

106. In closing, the R6 party, at paragraph 68, stated that Dr Doggett was of the view that HE have a "long held" opinion that is consistent. That is incorrect. Whilst HE planners, in commenting on the emerging allocation, wished to see development restricted to the far western part of the site, beyond the hedge line, the consultation comments by the Inspector of Historic Buildings and Areas on the application for 90 units (17/000710/OUT - HE letter of 30 October 2017) stated: '*Historic England does not support the* ***principle*** *of development on this parcel of land*' .

107. In Closing, the R6 also stated at paragraph 72 that the development will form the backdrop to the building, and street lights "*will be a feature of views from the south*." At no point was that point raised during the inquiry and the Appellants would have produced evidence on this point. That was not the case before the Inspector and on that basis alone, it too should be disregarded.

108. Insofar as it is now raised, it warrants a response. Although this is an outline planning application, and details such as street lighting have not formed part of the submitted information, some consideration of this issue has been given by the appellants' team – mainly to reassure the team that street lighting would not cause an adverse heritage impact or harm residential amenity. Although not designed in detail, measures would include:

- · Luminaire shrouds to minimise light spillage;
- · Design to a reduced lighting standard, reducing the minimum LUX levels;
- · Maximise column spacing to reduce number of required columns;
- · Warm white LEDs;
- · Bespoke dimming regime to minimise the intrusion of night time lighting.

109. At paragraph 72 of the R6 closing submission it is stated that "*the sale of the site will represent the total and permanent loss of a large proportion of the estate*": it should be noted that sale of land is not a planning issue. The principal of development of the site is, of course, established in the Development Plan Policy HD4. Moreover, they go on to state that "*the development will be visible from significant views from the listed building*", but, yet, views do not necessarily equate to heritage harm.

110. Finally, Dr D also appears to undertake a planning balance. That was described as "*remarkable*" by PG – particularly as nowhere does he discuss the public benefits of the scheme, "*let alone attempt to*

[74] PG in ReX
[75] CDH1, PG PoE, page 45.

evaluate them".[76] As PG explained, that is an inappropriate exercise for a heritage consultant to undertake.

111. Accordingly, Dr D's approach is riddled with inaccuracies, including a failure to consider properly the scheme which is on the table and takes an incorrect approach to the paragraph 196 planning balance exercise. On that basis, his assessment should not be relied upon.

The Position of Historic England

112. During the course of this application process (and the previous Appeal Schemes), HE had made representations. Of particular relevance in this case was the letter of 12th May 2020 addressed from Mr Stephen Guy from HE to Ms. Emma Pickernell of CBC. He considered that the open green space of the application site was considered to contribute to the setting of the GII* listed AM. HE therefore objected on the basis that the quantum, location and screening of the proposed development would "*result in harm to the heritage significance, as defined by its setting*".[77]

113. This position is indefensible. **First**, in EIC and in XX, both PG and WH respectively agreed that the visit to the site was fundamental in order to make an assessment of the scheme. Despite this, no site visit was recorded in the submission material prepared by HE. Furthermore, HE was also not present at the inquiry. For those reasons alone, the Inspector is only invited to give those submissions very limited weight.

114. **Second**, it is clear that there were a number of features of HE's advice which cannot withstand scrutiny. As part of their submission material,[78] HE referred to the similarities between AM and Palladio's Villa Rotunda. That, it was said, gave rise to the tradition of villa architecture, including that it "*sits upon a small hill*" and is "*encompassed by the most pleasant risings…and therefore…enjoys the most beautiful views from all sides*".[79]

115. PG, in his PoE, considered that the that it was a "*preposterous and pompous suggestion*" that AM was analogous to the Villa Rotunda (Villa Carpa), a UNESCO World Heritage Site. While it is true that AM enjoys an "*elevated suburban location and, as a Regency mansion, is Classically-styled*," the differences between the two buildings "*could not be more pronounced*". The reasons for this analysis put forward by PG were also sound:

- The 16th Century Villa Rotunda sits upon a hilltop, while AM is a mid-19th century manor built part way up a hill slope;
- the Villa Rotunda has mathematical precision and symmetry and the building has never been extended, while AM is entirely asymmetrical and has four completely different elevations;
- the Villa Rotunda was completed in one single phase, AM was constructed in two main phases with later phrases of substantial extension and alteration.

[76] CDH1, PGPoE, page 41, 8.26.
[77] CDH21.
[78] CDH21, page 21.
[79] ibid.

116. PG ultimately concludes that this is an "*unhelpful and misleading*" assessment of the context. Even WH in XX, disagreed with HE's analysis, saying that it was "*frankly a bit of a distraction*".

117. PG took further issue with the comments which have been put forward by HE, not least because their consultation response gives little, if any, credit to the substantial changes that have been made in shaping the Appeal Scheme. He noted that this was with the specific aim of complying with the recently adopted Development Plan policy.

118. It is largely agreed that the open, eastern part of the Appeal Site which forms the predominant green backdrop of AM. As set out above, ECUS' view is broadly consistent with this analysis. As PG explained, it is the land that is to the open, eastern part of the site which forms the green backdrop of AM – that land that is to be left undeveloped in the Appeal proposals. PG explained that from a close reading of the 2019 Appeal Inspector's decision letter too, the primary concern was the focus on the eastern proportion of the Appeal Site, containing the ice house. Viewpoint 1 of the Landscape and Visual Assessment[80] shows this. It is submitted therefore that both Inspector Sims and the LPI's concerns have been addressed.

119. In a recent appeal decision in Enstone (CDL14), it was found that in certain circumstances, it would not be inappropriate to disagree with HE where the analysis was found to be unconvincing. It is submitted that that this is one such example. It was not clear that HE representatives had visited the site, its advice contains factual inaccuracies, and unhelpful analogies. There was agreement between the experts on this point. For those reasons, the Appellant submits hat the views of HE should not be given any weight.

Assessing harm to the significance of the heritage assets.

120. Central to this appeal is the NPPF paragraph 196 balancing exercise: where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this should be weighed against the public benefits of the proposal. Despite this being the touchstone for this appeal, WH's PoE at bullet point 7[81] states that the proposal causes "*less than substantial harm to the setting of the designated heritage asset*". That is a misapplication of the relevant test.

121. **First**, as PG explained, WH's assessment conflates setting and significance – this was a common enough mistake to make, but is not the correct approach. This is important. The reason it is important is that to assess harm to setting (and not to setting insofar as it is relevant to the broader significance) is to augment the role that setting plays in the assessment of the impact of the scheme on the significance of the heritage asset. Assessing harm against setting (as has been done by WH) risks overstating the impact in heritage terms of the proposal – contrary to WH's evidence, harm to setting is not the same as harm to setting's impact on the heritage asset's significance. To find otherwise would be contrary to policy.

[80] CDH1, PGPoE, Plate 29.
[81] CDH4, WHPoE, page 16, bullet point 7.

122. When properly assessed, PG was of the view that harm to the overall significance of the heritage asset (for which setting can be considered) was deemed to be at the lower end of less than substantial – it was, in his view "*minor*".[82] His assessment takes account of the setting, but also in the context of the broader context of the impact on the significance of the heritage asset. That is the correct approach, and one that Appellant urges the Inspector to adopt.

123. In response to any issues in classifying harm within the broad spectrum of less than substantial harm, reference has been made to the case of *R(on the application of Shimbles) v City of Bradford MDC* [2018] EWHC 195 (Admin).[83]The Council refers to this case in its closing submissions at paragraph 17. The Council makes the point there are no sub-categories of harm, less than substantial harm is less than substantial harm.

124. That is right. The three sub-categories are set out in the NPPF and the NPPF does not re is no sub-category. So factually that is correct. So too is the statement that less than substantial harm is less than substantial harm, which is simple a truism. In the same way that the Archbishop of Canterbury is the Archbishop of Canterbury. But the *Shimbles* decision is not to be misunderstood as asserting that a decision maker would be at fault for describing the harm as less than substantial and at the lower end of that scale. Nor would it be wrong for a decision maker to say the harm is less than substantial and I find it is minor. There is absolutely nothing wrong with that and is in fact a very sensible way in which to approach the matter when one is engaged in a balancing exercise (as per NPPF, 196) , where what is on the scales needs to be weighed.

125. The High Court held that a decision maker was not obliged to place the harm in the case somewhere on a spectrum within the category of less than substantial harm. To the non-lawyer such a conclusion may seem difficult to reconcile with the guidance on heritage matters in the PPG which expressesly advocates placing harm on such a spectrum. But that is not the consequence of the case at all. There is no contradiction. By and large the High Court does not look at decisions in terms of whether they are correct or not. It looks to see if the decision is in anyway unlawful. The PPG is guidance and useful guidance issued by the Government designed to assist decision makers. The Court was not telling the Government the guidance in the PPG is wrong. That would not be for the Court to do, in any event. The Judge was simply saying that the decision made, in that case, was not unlawful for the failure of the decision maker to have placed the harm on a spectrum. That is very different from saying a decision maker should not do so.

126. The Administrative Court spends most of its time upholding decisions from lower tribunals. If it did not, then every party disgruntled by such a decision (so roughly half of them) would take their decision to the High Court. The High Court has enough trouble containing this tidal wave of unmeritorious claims without inviting more work upon itself. In *Shimbles* the court was simply saying, on the facts and evidence in that case, it was not necessary for the decision maker to place the less than substantial harm on a spectrum. Hence in the ratio (the key legal part) of the decision (often summarized in the front page head note under the word "held"), the Court used the word "obliged". In other words, it was saying it is not necessary in every case for the decision maker to have to grade the less than substantial. This does not undermine the guidance in the PPG. The guidance is, of course, very useful.

[82] PG, EIC.
[83] CD Volume 17, L22, page 11153.

127. The Council also refer to the decision of ***R (on the application of James Hall and Company Limited) v Bradford MDC*** [2019] EWHC 2899 (Admin) (CD L15). Specifically, reference is made to paragraph 34 as endorsing the approach in the *Shimbles* case. There is no reference in that paragraph to the *Shimbles* case. Moreover, in the penultimate sentence of the paragraph the judge actually writes "The fact that harm may be limited or negligible will plainly do to the weight to be given to it." That is correct.

128. The Judge in the _ case was not at the Planning Bar. That of course does not in any way invalidate their decision and as an officer of the court myself I would not wish to undermine its authority. But I am entitled to submit that the Judge might have expressed himself differently had they appreciated how valuable the guidance in the PPG is to practitioners. For example, he might have said that the fact it was not unlawful to refer to such a grading of less than substantial harm, that did not mean that a decision maker who did do so was in any way doing anything wrong.

129. Moreover, and this is the acid test. *Shimbles* was decided three years ago in February 2018. The Government does change the PPG, and indeed the NPPF, when it is necessary to do so because of court judgments. But it has not sought to do so in respect of the guidance on grading less than substantial harm. The NPPF has undergone two changes since February 2018, and is currently the subject of a third consultation change. The policy on less than substantial harm has not been changed. More importantly, the change if it were to be made might be expected to be found in the PPG, as both cases relate to what is said in the PPG. The PPG can, and indeed is, changed overnight without consultation. And it has not been changed either. The present guidance on articulating the harm was in fact issued after the Shimbles judgment (18a-018)

130. It is entirely appropriate to classify where on the broad spectrum of less than substantial harm the appeal proposal lies: not least because in *Shimbles* (a decision of the High Court) the judge was not exercising planning judgment. Furthermore, the PPG expressly (which came after *Shimbles*) endorses the approach taken by the Appellant – that is to articulate the degree of less than substantial harm to be caused to the significance of a heritage asset.

131. In light of the above, PG concludes that the level of less than substantial harm to the significance of Charlton Manor to be at the low end of the less than substantial scale (i.e minor).

132. For completeness, the adverse heritage effects of the appeal proposals on the significance of the non-designated heritage asset, Glen Whittan, through impact on its setting, are found to be negligible.

133. Overall, therefore, the collective harm to the significance of the heritage assets, which is the setting in respect of all the assets is less than substantial harm which should properly be assessed to be minor.

The heritage harm side of the scales: weighing the harm in the paragraph 196 balance

134. The setting of the heritage assets only contributes in part to their significance in heritage terms. The impact of heritage harm should be seen in that context.

135. In this particular scheme, setting appears to only play a relatively small part in the assessment of the overall significance of the heritage asset. As was evident from PG's EIC, the focus of this listing in

particular is mainly on the interior of the heritage asset. Insofar as setting is relevant, the focus is on the south elevation of AM (overlooking the pleasures gardens). Those aspects of the setting of AM are not impacted by the appeal proposals.

136. In respect of CM, the Appeal Scheme also mitigates the harm to the setting through the tree belt. That too results in only minor harm to the significance of the heritage asset.

THE PUBLIC BENEFITS OF THE SCHEME

137. Central to the paragraph 196 balancing exercise is the assessment of the public benefits which are to be weighed against the less than significant heritage harm. These are abundant and are covered here in detail.

Market housing

138. Mr Robin Williams ("RW") for the Council accepted in XX that Cheltenham is a "*highly constrained town*" given that there are policy restrictions which wrap around it - that, he acknowledged made finding sites within the urban area challenging.[84] That also makes it difficult for supply; and he recognised that, in a situation where we are dealing with an allocated site that there is a presumption in favour of permission being granted.

139. It is common ground that CBC cannot demonstrate a 5-year supply of housing land, indeed, the latest Council position statement shows a supply of 3.7 years (August 2020). It is agreed that this represents a significant shortfall,[85] and that the site will eventually deliver an appropriate number of dwellings through its allocation in the Cheltenham plan. This, as PF noted in EIC was the "minimum". Despite the suggestion of Cllr Mathew Babbage that we were not in a housing crisis, that view was not accepted by the Council's own planning witness RW, who was able to accept that the shortfall of housing meant that we were in a "housing crisis". Against that background, it is common ground that the provision of market housing should also be given substantial weight.[86]

140. It was put to RW in XX that the bringing forward of larger strategic sites, including Swindon Village (on the North West side of Cheltenham) will take a long time to come forward, including because there is discussion that a new motorway junction will be necessary. He accepted that the Council have not even attempted to suggest that it will be able to meet that the 5YHLS, and that there were "*only a few housing sites in the plan*". [87] As PF explained in his EIC, the scale of reduced housing delivery from this strategic allocation of the plan period is substantial, some 3000 dwellings. There are doubts as to whether that site can come forward, meaning that there could be a further supply requirement of some 3000 homes over the plan period.

141. It is also clear that previous Appeal Inspector Sims took the view that planning permission should not be granted for the 68 house scheme – importantly, against the backdrop of the preparation of the Local Plan. There are two points to note about this. **First**, at that stage, the CBC housing land supply

[84] RW, XX
[85] CDK4, PoE of Robin Williams page 11, paragraph 3.3.1
[86]CDK7, Planning SoCG, page 3.
[87] accepted by RW in XX.

figure was 4.6 years; even against that target the Appeal Scheme was considered to make a "*significant, beneficial, 68-unit contribution to the overall housing supply*".[88] Now, at just 3.7 years, the maximum weight should be given to this important delivery of an allocated housing site, which would likely be built out within two years of commencement.[89]

142. **Second**, it was clearly material to Inspector's Sims' decision that the Local Plan was in preparation and that there would be a "*resultant increase in housing land supply in Cheltenham to above five years*". That has not turned out to be true. In fact, the pressure of the uncertainty around the supply of the strategic sites coming forward, and the worsening of the 5YHLS figures means that Inspector's Sims' opinion should be viewed through that lens.

The Affordable Housing

143. The Appellant calls detailed evidence on this because it is a really important part of the Appellant's case. The success rate for major housing appeals is now down at around 30%. As demonstrated by INQ20, the proportions are very different in inquiries where affordable housing evidence has been called. Without this evidence being heard there is a real danger that inquiries only hear from people who oppose development and little consideration is given to those who benefit from it, most especially affordable housing.

144. The Appellant wishes to make clear that the ability to deliver AH on this site is an important part of this proposal and the benefits of the scheme, especially in the face of a significant and severe shortfall in the 5 year HLS and dire affordable housing delivery record: a record that the council themselves describe as "*poor*" [90]and a matter that "*simply cannot be allowed to continue*"[91] Cheltenham, and by any measure of affordability, this is a Borough in the midst of an affordable housing crisis too, is one where "*urgent action must be taken to deliver more affordable homes*".[92]

145. In light of this it is pertinent to consider the comments in the Housing, Homelessness and Rough Sleeping Strategy for CBC[93]which indicates, "*The number of new affordable housing completions has fallen in recent years, largely due to our reliance on delivery thorough s.106 provision. These pressures have been compounded by high house prices, which led to more households seeking private rented accommodation as a solution to their housing needs. This in turn has pushed up the price of the private rented market. The Government's introduction of the freeze on welfare benefits, most notably Local Housing Allowance, has meant that benefits have failed to keep pace with these increases in rents, forcing many low income households out of the private rented sector*".

146. There is no dispute over the extent of the need in the Borough and the shortfall that has accrued following the poor delivery record. The needs and shortfalls are recorded in the AH SoCG.[94]Furthermore, there is no disagreement that there has been an accumulated shortfall of 1015 affordable homes against

[88] CDB8, Inspector Sims' decision, paragraph 111 of
[89] PF, EIC.
[90] CD J14, p11, para 2
[91] CD J14, p11, para 2.
[92] CDJ1 JS PoE, p66 7.35
[93] CD J14, p8 1.4,
[94] CDJ7 AH SoCG, p5-7. 6.1-6.3.

the 2015 SHMA update requirement of 231 homes per annum.[95] In this context, the Council has little justification for refusing any housing applications which delivery meaningful affordable housing – particularly surprising given the wording of paragraph 59 of the Framework.

147. This proposal is not made in a vacuum. The extent of the crisis is revealed in the speeches and reports on the housing crisis set out in Mr Stacey's ("**JS**") Proof and Appendices. The content of these were unopposed by the Council. Each one warrants careful consideration.[96] There has been no XX on these documents. Their contents are uncontested and uncontroversial. This is accepted by the Council in the Affordable Housing Statement of Common Ground[97]which indicates, "*the parties agree there is an acute national housing crisis*". Furthermore, it is common ground that, "*the parties agree that there is an acute need for more affordable homes in the Borough*".[98] Further evidence of this was provided by RW, who indicated that:

(i) there is an acute national housing crisis;

(ii) affordable Housing need is just as important as general needs;

(iii) there is an acute need for more AH;

(iv) there are thousands of people on the register;

(v) it can be seen in evidence that 25% of the register have expressed one of their preferences to live in Charlton Kings;

(vi) we never hear from those people at Inquiries;

(vii) "substantial weight" was the highest level of weight in the planning balance;

(viii) he agreed that it would be life changing for those in need to have a home;

(ix) he agreed that the additional affordable homes above the "minimum of 25" was substantial.

148. Beyond the national crisis and the borough wide crisis there can be no doubt that the appropriate description of the extent of the crisis in Charlton Kings is also "acute". Mr Stacey provides comprehensive evidence about the housing crisis nationally, within Cheltenham and within Charlton Kings. He explains that current state of market signals in Cheltenham indicate a "a worsening trend in affordability in Cheltenham, and by any measure of affordability, this is a Borough in the midst of an

[95] CDJ7 AH SoCG, p7, 7.1 and Figure 5.

[96] including Laying the Foundations – A housing Strategy for England (November 2011) (JS paragraphs 3.2 – 3.3 page 6); House of Commons Debate (October 2013) (Appendix JS3); Building the Homes We Need (April 2014) (Appendix JS4); Priced Out: Affordable Housing in England (November 2017) (JS paragraphs 3.15 – 3.18 page 10); House of Commons Briefing Paper: Tackling the under-supply of Housing (June 2017) (JS paragraphs 3.22 – 3.25 pages 11 and 12) Housing, Communities and Local Government Committee: Building more Social Housing, Third report of Session 2019-21 (JS paragraphs 3.97 – 3.101 pages 22 and 23); Bleak Houses – Tackling the crisis of family homelessness in England (August 2019) (JS paragraphs 3.50 – 3.56 pages 15 and 16); White Paper: Planning for the Future (August 2020) (JS paragraphs 3.102 – 3.104 pages 23 and 24); Speech by Secretary of State for Housing, communities and Local Government to the Chartered Institute of Housing (September 2020) (Appendix JS7);

[97] CDJ7 AH SoCG, p8 8.7

[98] CDJ7 AH SoCG, P8 8.8.

affordable housing crisis, and one through which urgent action must be taken to deliver more affordable homes".[99] In XX, RW accepted, that, in sharp contrast to the housing at Battledown, where house prices are extraordinarily high, there were a high number of people on the housing waiting list in Borough and this had created an acute need for more affordable housing.

Delivery Figures and Other Statistics

149. **Past Delivery:** The past delivery of AH in Cheltenham is best described as "poor"[100]or "extremely poor and dire" (JS EiC) [101]and has overall been insufficient to meet need. The gulf between affordable housing delivery and needs is enormous. Since the publication of the SHMA in there has been a shortfall in the delivery of affordable housing amounting to 1,015affordable homes.[102]That is 1,015 households who have not had their housing needs met.

150. **Housing Register:** The Housing register on 1st April 2020 stood at 2,418 households. Of the 2,418 households, 25% or 598 households are seeking an affordable home, as one of their 3 preferences in Charlton Kings. [103]

151. **Temporary Accommodation:** has seen a rise by 31% to stand at 17 households being housed in temporary accommodation on 1st April 2020.[104]

152. **Average Affordability Ratio:** as an indicator of the unaffordability of housing in Cheltenham JS identified that the average house price to average income ratio of 10 in the September 2020 Homes Truths report.[105]

153. **Lower Quartile Affordability Ratio:** Furthermore, he also identified that the lower quartile house price to income ratio has risen to 8.94 in 2019/20.[106]

Responding to the Crisis

154. In order to address this shortfall this scheme delivers 18 affordable housing units marginally exceeding the requirements of JCS Policy SD12. The 42% offer will provide six social rented homes, seven affordable rented homes and five shared Ownership homes.

Weight to Affordable Housing

[99] JS PoE, p66, 7.35.
[100] CD J14
[101] JS EiC
[102] JS PoE, p55 Figure 6.6
[103] JS Appendix 1
[104] JS PoE, p62, 7.11
[105] JS Appendix 8
[106] INQ 25

155. The Council's witness agrees that affordable housing is "important" and "people are in need now". They also agree that the weight should be **substantial**. However, as explored in XX, the additional homes provided above the "minimum" are not merely a marginal difference but a substantial difference.

156. Mr Stacey suggests the substantial benefits of "more" affordable homes should be given **substantial weight** in the planning balance. Whilst, RW also prescribed "substantial weight" there was no tangible evidence, certainly nothing of the scope, breath and scale of JS's evidence to assist in quantifying the enormity of the problem and correctly ascribing substantial weigh to the benefit of delivering affordable homes. Anything less than substantial weight belies the importance of the AH offer and is deeply concerning not least for the hundreds of households unable to meet their housing needs without some form of assistance.

157. Inspector Stephens in his report on the Droitwich appeals makes it abundantly clear that *"affordability is at crisis point"* and emphasised the social element to this when recognising that *"these are real people in real need now"*.[107]It is rare we see such emphasis in decision letters and Inspectors reports. The Inspector is urged to give that same emphasis here.

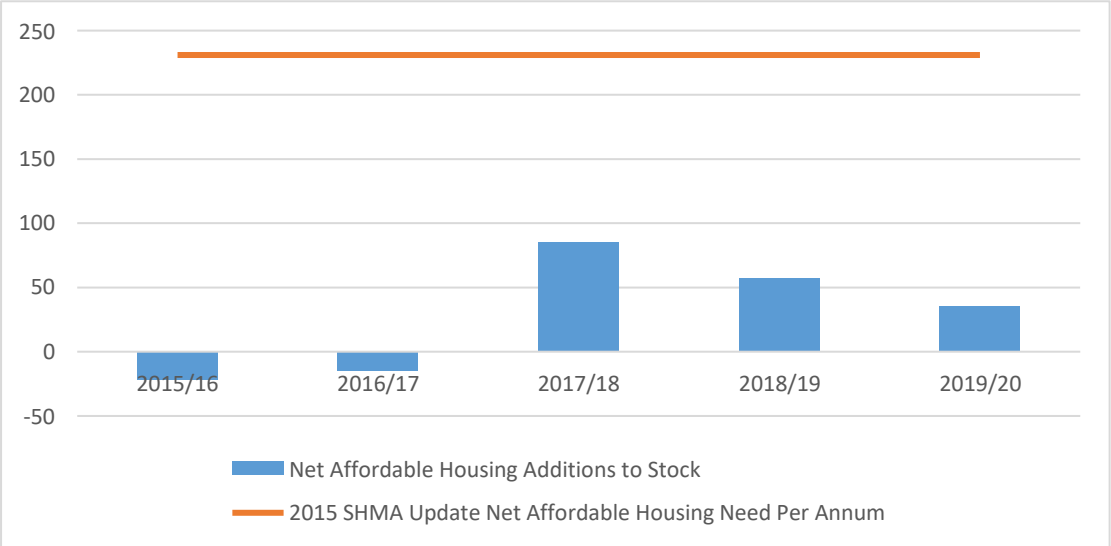

Figure 6.7 Affordable Housing Delivery Compared to Identified Affordable Housing Needs

Self-build / custom build

158. Central Government have made it increasingly clear since the 2011 National Housing Strategy a decade ago that it strongly supports self-build and custom housebuilding and is targeting a significant

[107] CD J57, p111 8.124.

increase in the delivery of this particular housing product. It is common ground between that parties that the provision of self-build and custom housebuilding plots is a key part of the planning system.[108]

The statutory and policy requirements

159. This has become ever more apparent through the NPPF (2019), its inclusion within the National Design Guide (2019) which identified self-build and custom housebuilding as an element of the 10 characteristics that make up the Governments priorities for well-designed spaces, and of course the fact that it has its own specific section of the PPG.[109]

160. The 2019 NPPF sets out at Paragraph 60 that, in determining the minimum number of homes needed, strategic policies should be informed by a local housing need assessment. It goes on at Paragraph 61 to state that within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in policy, including "*people wishing to commission or build their own homes"* with footnote 26 of the NPPF detailing that:

> *"Under Section 1 of the Self-Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand."*

161. The Self-Build and Custom Housebuilding section of the PPG was updated as recently as 8 February 2021 and includes a section[110] titled 'what are the benefits of self-build and custom housebuilding' which explains that:

> ***"****Self-build or custom build helps to diversify the housing market and increase consumer choice. Self-build and custom housebuilders choose the design and layout of their home and can be innovative in both its design and construction****".***

162. It is common ground between the parties[111] that JCS Policy SD11 encourages, but does not require, self-build and custom housebuilding provision, and that none of the JCS strategic allocation policies require such provision to be made.[112]It is also common ground that the Cheltenham Plan does not contain any policies related to self-build and custom housebuilding provision[113] despite being prepared in the context of the original 2012 NPPF[114] and the 2015 Self-Build and Custom Housebuilding Act (as amended).[115]

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[108] CDJ8, Self-Build SoCG, p4, 4.1.
[109] CDJ4, Moger PoE, Appendix AM2.

[110] CDD2, PPG, Paragraph 016a Reference ID: 57-016a-20210208
[111] CDJ8, Self-Build SoCG, p4 4.2
[112] CDJ8Self-Build SoCG, p4 4.3
[113] CDJ8Self-Build SoCG, p4, 4.4,
[114] Which required local authorities to plan for people wishing to build their own homes (Moger PoE, p5, 2.9-2.10
[115] CDJ8, Self-Build SoCG, p4, 4.5

163. The PPG is clear in recommending that in order to obtain a robust assessment of demand for self-build and custom housebuilding in their area, local authorities should use demand data from the registers in their area supported by additional data from secondary sources such as, but not limited to, building plot search websites. This is a matter of common ground between the parties.[116]

The Council's performance on Self / Custom Build

164. It is relevant to note therefore that it is also common ground[117] that the Council's 2020 Local Housing Need Assessment has not undertaken a robust assessment of demand in line with the recommendations of the PPG. This is spite of the fact that it cites the very section of the PPG that spells out to an authority precisely how it should undertake such an assessment.[118]

165. As Mr Moger's ("**AM**") evidence demonstrates,[119] when secondary data sources are examined in line with the requirements of the PPG then latent demand for self-build and custom housebuilding is substantially higher than the numbers recorded on the Council's Self-Build Register indicate.

166. Data taken from BuildStore, who hold the UK's largest database of self-build and custom housebuilding demand and supply, illustrated that there are 228 people on their Custom Build Register seeking a customisable home within Cheltenham Borough[120] and 584 people on their PlotSearch platform seeking a serviced plot to build or commission their own home within Cheltenham Borough.[121]Other secondary data sources, such as Ipsos Mori polling data undertaken on behalf of the National Custom and Self-Build Association, indicate that the demand in Cheltenham Borough could be as high as 1,939 serviced plots.[122]

167. The Self-Build and Custom Housebuilding Act 2015[123] placed a legal duty on local authorities to keep a Register of individuals and associations of individuals who want to acquire serviced plots of land to build or commission their own home.[124]

168. Those who join registers are recorded on monitoring periods known as Base Periods which run from 31st October one year to 30th October the following year, with the exception of the first Base Period which runs from either the date the Council begun its Register or 1st April 2016 (whichever came first) and runs to 30 October 2016. In Cheltenham Borough, the Register commenced on 3 September 2015 with Base Period 1 then ending on 30 October 2016.

[116] CDJ8Self-Build SoCG, p5, 4.14
[117] CDJ8Self-Build SoCG, p5, 4.15
[118] CDJ4 Moger PoE, p35-36, 4.5
[119] CDJ4 Moger PoE, p39-40, 4.22-4.29
[120] CDJ4 Moger PoE, p39 4.22
[121] CDJ4 Moger PoE, p39 4.22.
[122] CDJ4 Moger PoE, p39, 4.26
[123] CD-J9, p1-2, Sections 1(1)-(8)
[124]CDJ4 Moger PoE, p8, 2.22

169. The Housing and Planning Act 2016[125] amended the 2015 Act to place a Statutory Duty[126] on local authorities to grant sufficient development permissions to meet the demand for self-build and custom housebuilding within their administrative area within three years of the end of each Base Period.[127]

170. It is common ground[128] that the legislative requirements of the Self-Build and Custom Housebuilding Act 2015 (as amended) state that, in respect of the Statutory Duty to meet demand,

> *"The demand for self-build and custom housebuilding arising in an authority's area in a base period is the demand as evidenced by the number of entries added during that period to the register".*

171. AM's evidence demonstrates[129] that when the primary legislative framework is properly applied then the Council has indisputably failed to adhere to its Statutory Duty to meet demand arising in Base Period 1 and Base Period 2 within three years of the end of each Base Period, as it has sought to apply its performance against the Statutory Duty to artificially reduced register numbers through retrospectively removing entries.

172. AM's assessment of the future supply position[130] found that of the JCS strategic allocations with planning permission or live applications, none make any provision for serviced plots. Similarly, AM's assessment of Cheltenham Plan allocations with planning permission or live applications, just a single site makes any provision, namely this very Appeal Site which is before the Inspector.[131]

<u>The treatment of this product in other appeal decisions</u>

173. The importance of giving due consideration to future supply was addressed in the Appeal decision at Pear Tree Lane, Euxton, Chorley,[132]where the Inspector found that:

> *"Even so, and treating the Buildstore demand figures with caution, the evidence clearly indicates that the 5-year supply of self-build plots in the borough is likely to fall well short of the anticipated demand. As such the provision of a further 18 self-build and custom housebuilding plots on the Appeal Site would make an important contribution to the need for this type of housing"*

174. It is within this context that the appellant recognises that there is substantial unmet demand for this type of housing product within Cheltenham Borough that appears unlikely to be met anytime soon without the appeal proposals.

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[125] CDJ22, p7, Sections 10(1)-(3)
[126] CDJ22, p7, Section 2A
[127] CDJ4, Moger PoE, p10, 2.29
[128] CDJ8 Self-Build SoCG, p5, 4.9
[129] CDJ4 Moger PoE, p44, 4.53
[130] CDJ4 Moger PoE, p45 4.60 and Appendix AM5
[131] CDJ4 Moger PoE, p45 4.62 and Appendix AM5
[132] CD-J48, p13, 62

175. The appeal proposes 4 plots for self-build and custom housebuilding. These are secured by legal agreement which meets the definitions set out in the Self-Build and Custom Housebuilding Act (as amended) 2015 and includes a 3-year occupancy restriction for plot purchasers to ensure that they are provided for those genuinely wishing to self or custom-build their own home. They would constitute the equivalent of 21% of Base Period 3 demand which must be met by 30 October 2021 in order to avoid failing to meet the Statutory Duty for the third consecutive year.

176. It is common ground between the parties,[133] that 10% provision of self-build and custom housebuilding plots through the appeal proposals is a material consideration weighing in favour of the appeal proposals.

177. The Council's position going into the inquiry was that moderate weight should be attributed to the provision of the serviced plots now, with this then rising to substantial weight in October 2021. As RW agreed during cross examination, **substantial** weight should be afforded to the provision of these plots now and it was not appropriate to wait until October to do so. This was of course an eminently sensible concession by RW, helped no doubt by the facts that there is a complete lack of any other supply coming forward either through (i) the adopted Plans, (ii) the Council's persistent failure to meet their Statutory Duty and (iii) the substantial level of latent demand identified by AM's evidence.

<u>The weight to be applied</u>

178. As AM explained during his EiC, none of the other local authority areas in any of the appeals cited in his evidence were in as perilous a situation as Cheltenham Borough finds itself in respect of self-build and custom housebuilding, namely consisting of a combination of:

a. No five-year housing land supply;
b. The Statutory Duty under the Self-Build and Custom Housebuilding Act (as amended) having been indisputably failed by a considerable margin for both Base Periods 1 and 2;
c. The Council agreeing (RW, XX) that it is on course to fail to meet its Statutory Duty in respect of meeting demand arising from within Base Period 3 too;
d. An ineffective policy that fails to address this shortfall or deal with identified future demand; and
e. Secondary data sources identifying a level of demand that substantially exceeds the Council's Self-Build Register numbers.

179. The fact that this Council is in a worse situation than any of the appeals cited in AM's evidence is of particular relevance when one considers that amongst the decisions cited by AM is the Darnhall School Lane, Winsford decision which contains an endorsement by the Secretary of State that *"the social benefits of the provision of the self-build element of the scheme should attract substantial weight"*[134]

180. In addition to which, the Church Lane, Whittington decision[135] cited by AM found that *"the significant undersupply of self-build housing in the second base period carries substantial weight in*

[133] CDJ8Self-Build SoCG, p5, 4.11
[134] CDJ45, p5 28
[135] CDJ49, p1 4

favour of the proposal in helping to meet statutory requirements". It will also have not escaped the Inspector's attention that Cheltenham Borough Council are in an even worse situation than the relevant authority in Church Lane, having missed its first base period too. In that decision, substantial weight was attributed to the provision of just two serviced plots.

181. The appellants position is that given the scale of unmet need within Cheltenham Borough coupled with the total lack of future supply and the absence of any suitable strategy from the Council to address demand arising within the Borough anytime soon, nothing less than **substantial weight** should be afforded to the 4 self-build and custom housebuilding serviced plots that would be provided by the appeal proposals.

Employment opportunities

182. It is common ground between the parties that employment opportunities (during construction and as a consequence of new homes being occupied) should be given **moderate weight**.[136] RW agreed in XX that there were "*real and genuine employment and related benefits*" arising from the scheme, and, as PF explained, the housing strategy "Laying the Foundations",[137] considers that, for every new home, two jobs are provided for a year. That would be an estimate of 86 jobs. As Mr. Frampton explained this is in important factor which weigh in the balance, particularly while we are also in "an economic crisis", while the economy recovers from the Covid-19 pandemic.

Ecology & Improved Tree management

183. In terms of quantifying the biodiversity net gain that will be achieved, for the planning application, the Defra 2.0 metric (beta) was applied using a conservative approach, which did not apply the accelerated succession parameter as Mr Baxter ("**AB**") knew that this would be removed from the forthcoming Defra 3.0 metric. As explained by AB during the RT session, since the planning application, the government consultation on biodiversity net gain has concluded and the results have been published (see Annex TN21/1 at AB's Appendix AB18) which sets out that 'accelerated succession' will indeed be removed from Defra 3.0, but the values from it in Defra 2.0 will be used for the standard woodland categories in Defra 3.0. Therefore, it is right to apply the 'accelerated succession criteria' within Defra 2.0 to accurately recognise the value of woodland creation, that properly gives a 12.1% net gain from the proposal.

184. SW for the R6 party sought to challenge this in closing. She stated that "*there was no solid foundations from which to assert that biodiversity net gain can be accrued*". This is a particularly surprising assertion, not least because it was the R6 party that requested that the Defra metric be used as an assessment tool in their correspondence (from Bioscan) of 29 July 2020.[138] When Aspect Ecology corrected the metric and recorded it more accurately, the R6 complains about the result – a 12% net

[136] CDK7 Planning SoCG, page 3.
[137] CDJ18, Laying the Foundations, paragraph 11
[138] CDF27.

gain. Both the County Ecologist and the Gloucestershire Wildlife Trust agree that a net gain for biodiversity will arise from the proposals.

185. As was explained, through AB Appendix 18 (updated biodiversity metric), the introduction of flora and fauna through judicious planting is also a key benefit. As per the publication at AB's Appendix CDAB8, on page 5 which is not reproduced (but Mr Baxter read from in oral evidence), by following the principles laid out, it is possible to achieve a woodland rich in wildlife in wildlife in 12 – 20 years. While the draft Environment Bill requires habitats are managed for 30 years – by contrast the appeal proposals will provide for habitat management of the lifetime of the development, that is, in perpetuity. The metric does not take account of faunal benefits. These should be included in addition.

186. Habitat management on the site is currently not controlled, is unfavourable and is causing a deterioration of the veteran tree and grassland interests.[139]There is potential for considerable improvement particularly in terms of veteran tree management and the grassland management – this is to be built into the management plan. It is only through the granting of permission and the securing of those benefits through the management plan that these benefits may be secured and realised. In closing, the R6 party sought to attack the credibility of the mitigation strategy for the grassland value. The Wildlife Trust however believe this to be credible.[140] In correspondence, the GWT set out that *"[the 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"*. Further, this will ensure that the grassland is protected – it will not be lost to construction as Mr Forbes-Laird ("**JFL**") clarified in oral evidence.

187. Contrary to position of extensive site access, which was put forward by the R6 party, there is no public access to the Appeal Site at present. Access is via the school to the LWS and that would continue post development and will fully facilitate the continuation of the "value for learning" designation of the site. Controlled access for school use only is also advocated by the Wildlife Trust in their correspondence dated 1 September 2020 (CDF26) and as set out in the proof of AB at 4.5.3. The absence of a change to the position where no public access is allowed to the site, will ensure that the site biodiversity management can be effectively controlled so as to maximise the biodiversity offering of the site. The R6 party sought to cast doubt on these access requirements in their closing submission – however, there will be an access gate into the school field for management which can be used.

188. RW accepted in XX that the Biodiversity net gain would be capable of being afforded **significant** weight (by reference to the Appeal decision in Bradford[141]), despite, in his view it only being worthy of moderate weight.

189. Further benefits also arise from the ongoing site agreements to manage the veteran trees on site: thereby improving their sustainability and longevity. As explained by PF, these are an "*irreplaceable*

[139] CDF1, AB PoE, 4.7
[140] see correspondence of 7 September 2020 (CDF25)
[141] Inquiry docs of 29th March. Report to the SSHCLG by David Wildsmith (dated 18th July 2019) and SoS for HCLG dated 3rd March 2021

resource" and securing their future represents a substantial benefit which should also weigh in the overall planning balance. Management of non-veteran trees also represents a clear additional benefit.

Charity public benefits.

190. The Appeal Site is owned by the Carmelite Order (a Charity) and the school. Both are deemed to be charities by the Charity Commission - and it is because of their charitable status that they are required to make their facilities available to the public. It was put to RW in XX that, as charities, these would benefit from the uplift in the land value. RW did not resist this and explained that he "*followed the logic*". It is submitted that this is a further public benefit resulting from the Appeal Scheme. Accordingly, this would result in a further public benefit arising from planning permission being granted from the Appeal Scheme.

191. PF explained that in inquiry documents 16 and 17 (INQ16 &17), which were added by Mrs. Walker, the main benefits were deemed to be "*outreach within the Christian community*". This had included recent visits by the Chaplain to prisons and schools and, in furtherance of these objectives, had given away grants, bursaries and awards. This was pursuant to their statutory need to provide public benefits. As was agreed with the Council after the inquiry, that too should be given **minor weight** in the planning balance.

Ice house enhancement

192. Post inquiry, the weight to be attributed to benefits arising from the openness secured around the Ice House were considered by the parties. As explained by PG at 6.14 of his PoE, this would namely be through improvements to the former Ice house in the form of selective clearance of scrub, but retaining mature trees. In this way the heritage asset (Ice house mound) will be better revealed. The provision of a historical information board will mean that the significance will be better understood and appreciated. A 'light touch' is most appropriate - such an approach is also advocated by WH.

193. It was agreed between the Council and the Appellant that these should be given **minor weight** in the planning balance.

THE HERITAGE BALANCE: THE HARM TO THE SIGNIFICANCE OF THE HERITAGE ASSETS v THE PUBLIC BENEFITS

194. Accordingly, it is submitted that on the straightforward balancing exercise contained in paragraph 196, harm to the significance of the heritage assets is overwhelmingly outweighed by the public benefits arising from the scheme.

CONCERNS RAISED BY THE RULE 6 PARTY & LOCAL RESIDENTS

195. The main concerns raised by the local residents and the R6 party related to the following:

- highways and travel plan;
- the impact on the LWS, impacts on green space
- arboriculture;
- the prospect of springs on the site and drainage;

Overview

196. The first and most important point to make about the concerns raised by the Rule 6 Party is that they are not supported by the LPA. Nor indeed the local highway authority or any other statutory or non-statutory consultee. The residents are entitled to raise them are it is rare if ever that these concerns are punished in costs. But they are made in the context of residents and others expressing concerns in the face of experienced experts who have considered the evidence and raised no objection. The concerns are by and large unsubstantiated by evidence or appropriate expert opinion. And in the main they are bare assertions. In the closing submission of Mrs Walker, she asserts a myriad of points with breath taking confidence. That does not make them right. The Appellant has discussed and presented all its evidence the council's experts who have been satisfied with the results.

197. Mrs Walker has not bene alone in that approach. Take for example the evidence of Mr Edwards, who is an engineer. He is not a highway engineer. Engineering is brado church. He said as an engineer he judged the absence of personal injury accident reported to the police as irrelevant as regards the safety of the junction (. He did so extraordinary confidence. And yet what he was saying is completely contrary to what every LHA in the country does. As Mr Padmore explained that empirical evidence of accidents is the best available evidence and that is why every applicant for planning permission looks at it when a new development is proposed. Not only do they look at it. They are required to look at it by each and every LHA. It does not mean there will never be an accident there. But the more data that is available about any accidents that have occurred the hundreds of thousands of movements that take place at a junction each year, the more valuable and reliable it is. He was cross-examined over this point, and conceded various points about the value of the data. But it is really unfortunate that inquiry time has to be taken up addressing these asserts and the complete disregard some people have for expert evidence, empirical evidence and expert opinion.

198. Similarly, Mr Peter Marden's submission of a mock coroners report is unfortunately in the extreme. That is not something I have ever seen at an inquiry before and it is really regrettable that he would wish to seek to bully the inspector in this way.

199. Most of the people who have spoken at this inquiry live around the edge of the site. They are well organised and articulate individuals. They are entitled to feel upset about the development, the way in which it will affect their view and the many months of construction which will take place. But that does make any of the argument they raise right, nor the confidence with which they are asserted.

200. The Appellant has had time to address various of these concerns. But of course it cannot deal with al the points raised. The inspector has rather more time, and I would urge that each point raised in closing is addressed. Inspectors are only required to address the main controversial issues in a case. A decisions cannot be challenged for a failure to address non-main issues, no matter how much local residents might think they are important. The fact a matter is not a reason for refusal is a useful way of calibrating its importance. But by addressing all the points raised that closes down the ability of objectors to challenge a decision, if permission is granted.

Highways and sustainable travel

201. In response to the evidence presented by multiple local residents about the impact on highways, Mr Adam Padmore of Cotswold Transport Planning ("**AP**") and ("**CTP**") gave evidence.

202. **First**, it is relevant to note that the site has already been allocated for a minimum of 25 dwellings - the LPA have accepted the principle of development on this site. The highways issues have been considered carefully by CBC in relation to the site's allocation, and also by Gloucestershire Highways Authority. The relevant highways considerations have therefore been considered in detail several times as part of this process.

203. **Second**, AP explained that, in transport assessment terms, there is "*essentially no difference*" between a scheme of 25 or 43 units:[142] neither reach the threshold of 80 units which is, historically, when a detailed capacity assessment is required. It is clear therefore that the site falls far below that bar.

204. Furthermore, GCC did not even object to the original 90-unit scheme – the 43 unit scheme represents a substantial reduction from that. This also included Oakhurst Rise as the designated point of access.

205. The transport infrastructure surrounding the site is not insufficient for accommodating a development of this scale. The overriding NPPF policy allows for impact from development in transport terms and only recommends that decision makers refuse planning permission where the impact upon development in transport terms is severe.[143]

206. Residents estimated that the use of the site would be approximately 86 cars. That analysis is, with respect, not sound. While there may be 86 cars with a two cars per household ratio, the peak hour assessments use trip rates (not car ownership data) and the reality of traffic movement is that movements will be substantially less than that. They are likely to be even less than 43 movements in the peak periods. GCC asked the Appellants to undertake such an assessment following national assessment methodologies.

[142] AP, EIC
[143] CDD1, NPPF, 109.

207. **Third**, Cycle design guidance document LTN1/20 has replaced LTN2/08 since the original decision was issued. However, the weight of importance being applied to this needs to be moderated. AP explained that this is guidance, and its primary use is for the design of new cycle infrastructure where it is being provided. In the case of Oakhurst Rise, no need off-site has been identified - where nothing off-site is being designed, the guidance document becomes superfluous.

208. LTN2/08 this was not updated in 2012, however it was supplemented by LTN1/12. Guidance document LTN1/12, which specifically advises on shared use routes for pedestrians and cycles at the design stage, is not relevant to this application or appeal, because a shared pedestrian/cycle route was not deemed by the Highway Authority as a necessary infrastructure requirement in order to facilitate walking or cycling from the development site. GCC accepted that the location of the site and local highway infrastructure was sufficient to support walking and cycling. LTN2/08 remained as the main reference document to cycle infrastructure design until it was superseded by LTN1/20: SW was incorrect to state that LTN1/12 superseded LTN2/08.

209. Cycling is plainly an option from this location. It is very well located to the shops on the London Road, the town centre and wider facilities in Cheltenham. Not every one will chose to cycle. That is the same in any location and similar to the residents on Battledown Estate, where they also have to negotiate a hill. Having to deal with points like this is really unnecessary specially when the come from the people who happily live on the same hill.

210. In addition, the Appellants have committed to providing a voucher for an e-bike per household to residents of the new homes. That is a generous contribution which will assist with mobility to and from the site in the main town centre.

211. **Fifth**, a criticism of STATS-19 was advanced by local resident, Mr Edwards as being an inadequate assessment methodology. This is a methodology which is used by almost every local authority to assess highways impacts. There had been no evidence at all that this was an accident blackspot. Despite contesting the methodology put forward by the AP, Mr Edwards could not put forward any evidence (anecdotal or otherwise) of accidents on the relevant junction. On the basis of no evidential basis for that claim at all, the Inspector is strongly requested to give no weight to those criticisms.

212. A mocked up Coroner's report was read to the inquiry by a local resident. AP explained that in his professional career he "*had never seen anything like it*" – the author appeared to have had no experience in coronial or health and safety law, and it was deemed to be a "*weaponisation*" of the issue, designed to invoke an emotional response.[144] It also appeared to be from a local resident who did not even live on Oakhurst Rise. AP considered whether there was any technical basis for it, whether it was supported by empirical evidence. He concluded that it did not. AP emphasised that it was *his "strong professional conclusion*" that the site was both sustainable in terms of the travel opportunities and distance to services and amenities.

213. Finally, contrary to the assertions of the R6 in Closing, Oakhurst Rise is below modern day guidance on gradient, but only marginally and that is not prohibitive in itself to this road serving further

[144] AP EIC

development. Prevailing guidance on level highway infrastructure does not undermine new development from taking access from it.

214. All highways professional parties to this Appeal agree that the access is safe and no evidence has been provided to the contrary. For the reasons set out above, the Inspector is invited to give the issues raised in relation to highways no weight.

Ecology

The impact on the LWS

215. Several of the residents raised concern about the impact on the LWS. As explained by AB, the LWS was however designated for its "value for learning" this is being retained for use by the school and therefore there is no detriment in this regard. Despite criticisms from the R6 party, as AB set out in evidence, the enhancements to the LWS will make it much more accessible to learning.

216. The R6 party also levelled criticisms at the surveying processes which underpinned the grassland content assessment. The only credible formal surveys of the grassland are those caried out by Aspect Ecology. These demonstrate the grassland is of limited value as Mr Baxter explains at section 4.3 of his proof. Moreover, the County Ecologist is in full agreement.[145]

Badgers

217. The Badger Sett, BS4 will be temporarily excluded during construction then the Badgers will be allowed to return post construction. AB and JFL have worked together on this strategy. While Badger BS 1,2,5 & 6 are to be lost to the proposed development, S1 is the main sett and it cannot be avoided. Its loss to the layout will be re-provided by way of an artificial sett in close proximity. At Sett 1, AB explained that activity went up in January 2021 but, more recently, (per AB's site visit of 23 March 2021, it had returned to expected levels.

218. The protection provided for will be subject to the licensing regime governed by NE. This will mean that there will be: exclusion and monitoring, sett closure through ground proofing / fencing and one-way gates, backfilling with surrounding soil. Thereafter, there is a high probability that after moving the badgers will remain in the artificial sett. This method is in line with the standing advice of NE (and will be governed by its licensing regime). Grassland management around the sett would be through cutting with hand tools and then raking it off to bail.

219. In the RT session, AB explained that ground conditions for the artificial sett would be similar to the natural sett - as the same latitude for BS3 will be retained and will remain available for use by badgers. They will also have other natural setts located offsite but elsewhere in their territory, and have been routed to the obvious paths; a further benefit to be delivered to the badger population.

[145] CDF1, AB PoE, see 4.3.8.

220. In the R6's closing, in paragraphs 12 and 13, criticisms were levelled at the potential harms to the main badger sett – as it is "destroyed" and was not going to be relocated with a spring. If the bore hole is encountered then the mitigation strategy can be located. Further accusations were made regarding compensatory foraging – that too is baseless. Badgers are an omnivorous species which is highly adaptable. Additional foraging is not required. Nonetheless, new landscape planting will include fruit bearing species. This is standard practice and is readily accepted by Natural England during the licensing process.

221. The R6 seek to take that point further arguing that this was some kind of "fundamental design flaw" and that there was "still no answer to the badgers of Oakhurst Rise". That is also not true. There has always been an answer – that is a standard artificial sett solution that is used on many development sites and works very well. Badgers are a common species and can be readily accommodated by this standard method which has been in use for decades and is readily licensed by Natural England.

222. In closing, at paragraph 11, the R6 party sought to argue that mitigation (in the avoid-mitigate-compensate framework) was the only option which the Appellant had considered. However, in the absence of appropriate management, the grassland and tree interests on the site will decline. The appeal proposals represent an opportunity to bring forward grassland of enhanced ecological value so that its botanical interests become much more accessible for learning. This is likewise the case for other species such as reptiles, amphibians, butterflies and dragonflies which will benefit from the proposals.

223. The Rule 6 party also sought to argue that this was a "high risk" case of mitigation given the "interrelationship between mitigations" required. This is not a high risk case. Badgers and Slow worms are not in conflict and both can be easily accommodated. These groups are regularly found co-located on development sites and mitigation can be readily provided. The measures required are standard in nature, as would be expected for these common species. No rare species are present requiring specialist or demanding bespoke mitigation strategies.

224. SW then explained that the R6 party had submitted evidence that invertebrate species not seen elsewhere in the Cheltenham borough are commonplace on the site. By this, the Appellant's consider that the R6 party is likely referring to the chimney sweeper moth which is a common species (see AB PoE Appendix 1, paragraph 4.1.8). As was explained by AB, the site has been the subject of the reptile survey work.[146]

225. At paragraph 16 of their closing, the R6 stated that they "noted that that T3026 recorded as important to bats was dismissed by Aspect". Contrary to the R6 assertion, this tree was fully surveyed for bats by Aspect Ecology, with the results found in Table 5.1 of the Ecological Appraisal (CDA10) with the tree (3026) labelled as T12 on the associated Plan 5487/ECO2 in the report.

226. Several of the local residents were able to accept that, despite their concerns that this was going to impact the access to local greenspace, they were able to concede under XX that the space was not truly public and was only available with permission. Mr Marsden (the ex-Olympian) was able to accept that X-Country was the only sports facility available on the site, and that there were numerous other school facilities which provided sports facilities including Leckhampton FC and the Cheltenham Ladies College.

[146] CDF1 AB PoE Appendix 1, paragraph 4.1.4.

Moreover, the concerns were that the ability of the public to be "in nature" were also largely addressed by the proximity to the AONB (approximately 1.5 miles away)

Arboriculture

227. The approach taken by the R6 party, specifically regarding the "relic tree" does not have a scientific underpinning, and similarly, other concerns raised by them including soil hydrological impacts on retained trees have been allowed for as part of the design – with any outstanding matters capable of being resolved by Condition (which Barton Hyett Associates, for the R6 party accept). Current site management arrangements run counter to the interests of irreplaceable habitat. If this Appeal is allowed, the management regime will be changed to one that secures significant, long-term benefit for the ancient and veteran trees and their habitat features. It must be right that this strongly positive outcome is afforded very substantial weight.

228. The R6 party raised several concerns about the arboricultural aspects of the scheme. No issues were raised between the Tree Conservation Officer at the Council and the Appellant. The issues were narrowed to a few trees difference between the Rule 6 Party and the Appellant over a small number of ancient and veteran trees, and regarding the removal of two other trees of indifferent merit (3016 and 3017).

229. Uniquely amongst all commentators, the R6 party have claimed – on the opening morning of the Inquiry – that two additional trees (3032 and 3033) are veteran trees and so fall to be considered under NPPF 175c. The case that these trees are "irreplaceable habitat" and that they would be harmed by the proposals is not one adopted by the local authority, the Woodland Trust, the Ancient Tree Forum and even the R6 party's own arboricultural advisors. This is a case that the R6 party has utterly failed to make out.

230. It is apparent from the R6 party closing submission[147] that the sole criterion that they have applied is the size of the trees' stems, particularly that of 3032.

231. However, as JFL explained, this tree is subject to the genetic aberration known as "burring", which in this case is profuse about its stem. Whilst its stem can of course be measured, the relationship between stem size and tree age cannot reliably be deduced using the accepted methodology of the "White Method"[148]. Indeed, this method specifically advises against measuring tree stems over burring.[149]

232. JFL, being a leading arboriculturist, explained that trees 3032 and 3033 were "notable" trees because they lack any or sufficient veteran features to meet the criteria of "condition" set out in the Framework. Insofar as every arboriculturist who has looked at these trees, and the FLAC tree survey data which describes them, concurs that they are not veteran trees, the Appellant submits that this baseless allegation merits no further attention.

[147] R6 Party Closing Submissions para 61
[148] *Estimating the age of large and veteran trees in Britain* Forestry Commission 1998, at JFL11
[149] Ibid. Figure 2

233. In any event, these trees are not at risk of harm from the Appeal Scheme because no construction would occur within their fenced-off Root Protection Areas. The issue raised by the R6 party of drainage impacts is a red herring: the drainage would be installed by trenchless methodology (see, for example, BS5837:2012[150]), and so would pass harmlessly below the trees' roots.

234. In order to bring an element to the objectivity of grading the trees, JFL has developed a systematising matrix - the assessment process known as the RAVEN method[151]: a system which utilises and matches the criteria found in Lonsdale's Book[152] (including at its Fig. 1.3, reproduced at JFL18). He explained to the inquiry that his motivation for devising this system was that there was no system currently in place, and this was an attempt to "add clarity" which was founded on the NPPF and, designed for the planning system. Inspector Sims accepted this method of assessment.

235. JFL explained that the test in the NPPF (175c) in for the removal of (ancient woodland or ancient or veteran trees) was about as high as it could be in the framework: development which resulted in the loss or their deterioration should be refused unless there are wholly exceptional reasons and a suitable compensation capacity. The definition of ancient or veteran tress is a tree which because of its "age, size, **and** condition" is of exceptional biodiversity, cultural or heritage value. As JFL explained, the test is an additive – which is unsurprising given their "exceptional" status – as defined by Mr. Taylor of the Woodland Trust (WT) as being "top of the range".

236. The Woodland Trust sought to put forward – in oral submissions – an alternative method for identifying veteran trees, the so-called "Specialist Survey Method". Setting aside issues of admissibility, Mr Forbes-Laird was able to assist the Inquiry by explaining that this method is for surveying trees after they have first been classified as veterans. As such, it is not – as wrongly claimed by the Woodland Trust – an alternative identificatory approach.

237. Underscoring the need for and desirability of a transparent and repeatable method for identifying trees, JFL also explained that there had been a considerable degree of inconsistency in the evidence and concerns put forward by stakeholders including the Ancient Tree Forum ("**ATF**") and the WT. The inconsistencies are encapsulated here in Table 1, from which it is apparent that only JFL has expressed a consistent opinion In the Appellant's submission, that the inability of other parties to agree both between and within themselves places the decision-maker in an impossible position. In this context, RAVEN is nothing less than a lifebelt in a sea of uncertainty.

[150] CDE7, Table 3 *Trenchless Solutions for Differing Utility Apparatus Installation Requirements*
[151] RAVEN: Recognition of ancient, veteran and notable trees.
[152] *Ancient and Other Veteran Trees: Further Guidance on Management*, Lonsdale D, Ancient Tree Forum 2013

Table 1 – Identification of veteran trees by Sylvan, the Woodland Trust and Ancient Tree Forum*

Organisation	Date	Veteran trees	Total VT
Sylvan	August 2018	3007, 3018, 3021, 3026, 3028, 3030, 3031, 3037	8
TWT	June 2020	As Sylvan + 3010, 3014, 3015, 3022, 3027	13
ATF	June 2020	As Sylvan + 3010 & 3014	10
TWT	March 2021	As Sylvan + 3010, 3014, 3015	11

** Sylvan Consulting is the collaboration between Julian Forbes-Laird (FLAC) & Alistair Baxter (Aspect) that initially advised the Appellant in respect of veteran tree identification.*

238. It is apparent that there is agreement between the WT and ATF that 3010 and 3014 are veteran trees. However, as JFL explained, these trees simply do not meet the criteria for veteran status in the Framework, which requires such trees to be "old relative to other trees of the same species". The threshold set for veteran age by Lonsdale has been adopted by JFL, which he described as representing ca. 25% of the lower range of the life expectancy of pedunculate oak. Both 3010 and 3014 are many decades below this age. They cannot be said to be relatively old amongst their kind, and accordingly do not fall within the Framework definition.

239. The allegation made by the R6 party in its Closing is that: "*Mr Forbes-Laird is arguing both sides of the fence with respect to root protection for ancient and veteran trees".*[153]That, however, is equally lacking in foundation. The approach adopted by JFL is objective, rational and balanced, and it is this:

(i) All retained trees are safeguarded by their RPA;

(ii) Additionally, all veteran trees are provided with a buffer zone;

(iii) In the case of veteran trees bearing >25% of their former estimated maximum crown volume, the buffer zone is derived by 15x stem diameter;

(iv) In the case of veteran trees bearing <25% of their former estimated maximum crown volume, "Relic Trees", the buffer zone is adjusted to reflect their inevitably compact biologically active space.

240. As JFL explained, the classification of certain trees as Relic provides them with a measure of protection against peremptory removal (to reduce what to lay eyes can appear to be an unjustifiable constraint) by adjusting the constraint to an extent that balances effective tree preservation with the responsible use of land.

241. The assertion by the Woodland Trust that JFL misuses the root to shoot ratio, is a cudgel now taken up by the R6 Party[154]. However, during the discussion on arboricultural matters it became abundantly clear that the Woodland Trust's representative, Mr Taylor, was not an arboriculturist and indeed the WT led no evidence on this point, merely offering assertion. Indeed, almost unbelievably, Mr Taylor sought to deny that a tree's root to shoot ratio declines with age, in direct contradiction of established arboricultural knowledge. As JFL explained, nature is governed by the law of parsimony, and in the case

[153] R6 Party Closing Submissions para 54.
[154] R6 Party Closing Submissions para 53

of trees they are incentivised to root as close to the stem as possible whilst meeting the needs of the crown. There is no reason whatsoever to suppose that, in the case of 3021 for example, it has unnaturally rooted way beyond the compulsion of necessity, and JFL is right to have rejected this speculative and irrational suggestion.

242. In relation to non-veteran trees, JFL was able to explain that the concerns raised in relation to the two 3014 and 3015 due to alleged adverse impacts on soil hydrology were not accurate: the drainage engineers were content that any runoff exceedance is designed to come in over the land and run into the drainage highways to the south. Moreover, he was able to explain that save for very few, select species of trees (including willow), most species, including the material oak, do not use groundwater.

243. The R6 party alleged in Closing submissions[155] that the future welfare of 3015, which it describes, fairly, as a successional veteran tree (i.e. a future veteran tree), is not secured. This claim does not bear scrutiny, as, like all retained trees on the Appeal Site, 3015 has a heavily safeguarded Root Protection Area ("**RPA**"). The tree protection arrangements designed by FLAC are set out in its Tree Protection Plan (JFL5), which for as described by the Council's Tree Officer as "particularly robust"[156].

244. Finally, I turn to the proposed loss of the two mature trees, 3016 and 3017, trees that not even the R6 Party claims to be veteran. They are not covered by the Tree Preservation Order. As JFL explained, the loss of these trees is intended to deliver higher quality private amenity space to plot 28. This proposal was not found to be objectionable by the local authority or indeed Inspector Sims at first time of asking.

245. Having addressed the various baseless negative points raised against the Appeal Scheme, we can now turn to the positive. It is irrefutable that current site management arrangements are sub-optimal as regards the safeguarding of the veteran trees' habitat value. In this regard, long-term preservation of this value through responsible and informed husbandry of Irreplaceable Habitat is a significant benefit. Given the very high levels of protection afforded to these features within the Framework, it must follow that this benefit should attract very substantial weight in the overall planning balance.

The prospect of springs on the site and drainage;

246. Mr Phil Walker raised concerns about the potential for natural springs on the site. He accepted however, that the applications had come before the council and that they had been assessed in terms of their flood risk and by the LLFA. Those bodies had raised no objection at all to the scheme. When pressed, the precise nature of his criticism was that when building works are taking place, there are likely to be springs. He stated that he was not "*recommending anything to the Inspector*" and on that basis it did not appear to be an objection at all.

[155] R6 Party Closing Submissions para 53

[156] Consultation response of Tree Officer on the application as now appealed, reproduced at JFL13

Other Residents

247. The Appellant has sought to address the concerns of local residents. The Appellant recognises the "lived experience" of those on Oakhurst Rise, Battledown and Ewens Farm. The Appellant has sought to respond to those substantive concerns as set out above, particularly in relation to highways, ecology and access to the LWS, the open spaces, soil hydrology and sports.

248. Without addressing every single point raised, we simply dd here that the other concerns raised by the residents included by way of mitigation to the loss of the current grazing in the form of the relocation of the school farm elsewhere in the grounds of the school. The Appellant considers it necessary that the Inspector notes that the school farm already is in the pleasure gardens in the front of the western elevation of AM.

249. The inquiry also heard from Mr Lythgoe concerning the bus from the local centre who were required to come and pick the resident with a disability. While the sympathise with the difficulties in ensuring that she is collected safely, it was clear that the difficulties arose with the faulty tailgate on the centre's bus. With all respect, it is submitted that the Inspector cannot give that issue any weight.

250. Finally, some residents including Mr Saunders and Ms Forster explained that access to the site was important to them. This must, however be seen through the prysm of its designation as an allocated site, and by reference to the fact that the AONB is approximately a mile from the site, with its uninhibited access to miles of vegetation. That too should not carry weight.

251. The residents' concerns have been heard throughout this process, and they were given considerable time to air their concerns at this inquiry. It is submitted, however that none were grounded in evidence. Accordingly, while they should be considered, it is the Appellant's submission that they should not be given any weight in the planning balance.

Gloucestershire County Council: Education and Library Payments

252. Regarding the contributions sought by GCC towards education and libraries, the difference between the parties is £452,881.70 (Mr Kinsman, page 28, Table 8). As confirmed in opening, the appellant will pay the amounts sought by GCC if you consider they are properly demanded, and the unilateral undertaking makes the necessary provision for this. For education, an alternative sum has been offered in the alternative, based on what Mr Kinsman believes is a more appropriate approach.

253. But first and foremost, the Appellant invites the Inspector to conclude that no contributions should be required in this case for either education of library provision.

254. The Appellant's case on library facilities boils down to the simple point that the first test of necessity has not been met. GCC has asserted need, but not provided any quantified evidence. Mr Kinsman's very thorough assessment is based on the advice provided in paragraph N.3.3 of the Procedural Guide, and demonstrates a number of flaws in GCC's approach – including its incorrect floorspace calculation

(which has not been defended by GCC at this appeal). The most telling evidence is Table 7 (Mr Kinsman, page 25) which demonstrates the reduction in activity levels at Charlton Kings Library - and completely undermines GCC's assertion that mitigation is needed. The contribution sought is supposed to address increased demand for such services arising from the development. Therefore, if the local library is being used less, as demonstrated by the activity level data, then a contribution required to mitigate the greater use of this service is wholly unjustified. By way of analogy, if small village post office is under threat of closure because of the move to the provision of such services on-line, the owners are hardly likely to want to make the occupiers of the new homes built in that village to pay to go into the post office. They would in fact be welcoming them with open arms. It is same with libraries. New occupants will help to support and potential save Charlton Kings library (if it comes under threat of closure). There is absolutely no justification for requiring a mitigation payment. Tempting as it may be for the County Council to want to seek financial contributions from landowners to try and retain our library network, planning obligations payments are not to be used as a general tax on development. The Inspector is invited to apply your 'blue pencil' and strike out the requirement for a library contribution.

255. The arguments about education are more complex, but again bear on the necessity test in the first instance. This has two strands – pupil yield (PPRs) and capacity. Both issues were discussed at the round table session yesterday. They were also being played out simultaneously in another planning inquiry where the matter is subject to cross examination. That is an appeal by local developer Robert Hitchins, for a site which is located in Wychavon in Worcestershire. But a site which will contribute housing to the requirement in neighbouring Tewkesbury, as permitted though the housing policies in the Cheltenham, Gloucester and Tewkesbury JCS. The Appellant at Oakhurst is not alone in raising fundamental issues about GCC's approach to education contributions, which are brought into sharp focus in that case as the figures are much higher than in the neighbouring county of Worcestershire. That evidence is being tested under cross-examination in that case.

256. GCC seek the payment and need to make clear not only the need for the payment but the sums demanded. The Inspector will have seen evidence of the considerable efforts Mr Kinsman made to engage with GCC on these matters, and the responses he received. They are more revealing.

257. There are a number of concerns about GCC's PPRs. These start with shortcomings in the PPR survey itself, including the way the information collected has been used (and not used), and equating the calculated population resident figure to additional need with no account taken of wider population changes (the questionnaire is CD G12) (Mr Kinsman's Appendix 1, pages 17-19). The suggestion from Mr Chandler at the round table session, that every family moving would be replaced by another family is simply not credible.

258. Furthermore, Mr Kinsman's sense checking demonstrates how GCC's PPRs produce a substantially overstated forecast increase in pupil numbers amounting to 7,816 pupils, compared with what actually happened between 2012 and 2020 (paragraph 3.28 and Figure 3 on page 15 of his proof and Tables E & F on pages 31 & 31 of his Appendix 3). In contrast, Mr Kinsman's approach to PPR's provides a much closer match, only overstating the figure by 259 pupils, over the same period, in which the actual increase was 5,959 pupils (Tables E & G on pages 31 & 31 of his Appendix 3). GCC's own population

forecasts are for only modest growth in the 0-19 age group, especially in Cheltenham (Mr Kinsman, paragraph 3.30, page 15; and CD G16, page 10, Table 3).

259. GCC's overstated PPRs have knock on implications, in GCC's assessment of available capacity. Mr Kinsman's assessment (based on the SPS (2018)) available to Mr Kinsman when he prepared his evidence) shows there is capacity available to accommodate the primary, secondary and post-16 education demand from the proposed development. The position remains unchanged based on the SPS (2021) which we understand comes into force today (1 April 2021), bearing in mind that the forecast figures include new housing that is not yet consented including local plan allocated sites such as the appeal site – which is the only such site in the primary planning area. It would be inappropriate to place any reliance on the primary forecast figures which were only produced by Mr Chandler on 29 March. Not only because of their timing, but also in light of their inconsistency with the forecasts and births information for the Charlton Kings primary planning area in the SPS (2021).

260. GCC's evidence on capacity and is not consistent with other parts of its own evidence. Lawyers call this type of situation internally inconsistent and it is a form of irrationality. On the basis of the evidence, we the inspector to apply the 'blue pencil' clause to strike out the requirement for the education contributions accordingly.

261. If the Appellant's position on necessity of the contribution is not accepted, and the Inspector considers that a contribution needs to be provided towards any of the types of education infrastructure, then we invite you to confirm that the "EFM PPR figure" should be used. As Mr Kinsman confirmed at the round table session, his PPR figures are robustly based and can be relied upon as appropriate in this case.

THE HERITAGE BALANCE, THE DEVELOPMENT PLAN AND THE OVERALL PLANNING BALANCE

262. The Council and the Appellant agree that the paragraph 196 balance is the starting point in balancing the harm to be caused for the heritage assets.

263. For the reasons which have been set out extensively, the Appellant is of the view that only "minor" harm will be caused to the listed buildings through impact on their setting. Though that should be given "great weight" or "considerable importance and weight" in the planning balance, the weight to be applied should have regard to the harm caused. Given the very minor harm caused, the Appellant's case is that this should not weigh heavily in the planning balance.

264. Mr Frampton explained in his evidence that the public benefits from larger housing schemes often outweigh the less than substantial heritage harm. These include:

- Albourne, Mid Sussex – an Extra Care village located close to several listed buildings, a conservation area and a non-designated heritage asset;[157]
- Newent, Forest of Dean – up to 50 dwellings located close to several Grade II listed buildings[158]
- Euxton, Chorley – upto 180 dwellings including 30% affordable housing, located close to a Grade II listed building[159]
- Enstone, Oxfordshire – upto 29 dwellings, located close to two Grade II listed buildings[160]

265. Moreover, in this case, heritage harm is overwhelmingly outweighed by the number of benefits arising from this proposal. These, as agreed with the Council are:

- market housing – substantial weight;[161]
- affordable housing - substantial weight;[162]
- self-build housing – substantial weight;[163]
- employment opportunities – moderate;[164]
- provision of a positive surface water drainage system- minor;[165]
- charity benefits – minor;[166]
- improvements to the ice house – minor[167];

266. That assessment alone (where there is agreement with the Council) outweighs any heritage harm caused to the significance of the heritage asset.

267. To the extent that there is dispute about the provision of management plans for existing trees and retained grassland, those too add further weight. The Council are of the view that the provision of management plans for existing trees and retained grassland are "moderate". The Appellant's position is that these are "substantial" given:

- the Bradford Appeal decision where the SoS afforded significant weight to biodiversity net gain;
- the fact that this is neither a policy nor legal requirement;
- that these benefits are secured in perpetuity;
- the fact that this secures an "irreplaceable" habitat through tree management;

[157] CDL9, PF PoE, Appendix 13
[158] CDL11, PF PoE, Appendix 14;
[159] CDL10, PF PoE, Appendix 15)(CD L10)
[160] CDL13, PF PoE, Appendix 16 (CD L13)
[161] CDK7, Planning SoCG
[162] ibid.
[163] conceded in XX
[164] CDK7, Planning SoCG
[165] ibid.
[166] ibid.

- the future and benefits it secures for the "value for learning" designation of the LWS.

268. There is no conflict with ND4 or SD8. The proposal accords with the DP and the test in 196 is overcome. The other reasons raised by the Rule 6 and local people do not result in any breach of the DP, let alone the DP taken as a whole. As such the appeal proposal should be granted permission and according to the NPPF 11(c) should have been done without delay given that they accord with a now fully up-to-date and recently adopted Development Plan.

269. Finally, it is submitted 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" within the meaning of paragraph 11(d) of the Framework also applies. Accordingly, the adverse effects of granted permission certainly do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

1st April 2021

CHRISTOPHER YOUNG QC
SIONED DAVIES

No5 Chambers
Birmingham – Bristol – East Midlands - London

Appendix 1.

List of abbreviations

EIC – Examination in Chief
GCC – Cloucetsreshire County Council
PoE- Proof of Evidence
PPG – Planing Practice Guidance
LHA – local highway authority
LPA – local planning authority
LWS – Local wildlife site
NPPF – National Planning Policy Framework
RR - Reason for refusal
SoCG – Statement of Common Ground.
XX – Cross examination

Appellant's witnesses who featured in this inquiry

PG – Mr Philip Grover (heritage)
PF – Mr Peter Frampton (planning)
JFL – Mr Julian Forbes Laird
AB – Mr Alistair Baxter
AP – Mr Adam Padmore
AM – Mr Andy Moger
JS – Mr James Stacey
JK- Mr Jan Kinsman

Council's Witnesses who featured in this inquiry.

WH – Mr William Holborow- (heritage)
RW – Mr Robin Williams (planning)

R6 Party

SW – Ms. Sally Walker
Dr D – Dr Doggett

Appendix 2

Revised Public Benefits Table
30/03/21

	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	Substantial
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

The Appellants' position is that the above Public Benefits outweigh the minor level of harm, given great weight, to the significance of Ashley Manor and Charlton Manor as designated heritage assets (Framework 196).

vii)	Landowners as Charities (serving a Public Benefit)	Minor	Minor
viii)	Improvements to the Ice House (shrub clearance; interpretation)	Minor	Minor

IN THE MATTER OF

LAND ADJACENT TO
OAKHURST RISE,
CHELTENHAM

_____

CLOSING SUBMISSIONS

ON BEHALF OF THE APPELLANT

_____

Frampton Town Planning Ltd