

Statement of Common Ground

Topic Paper 3: The effect of the proposal on the living conditions of future occupiers, with particular regard to the provision of external amenity space and noise.

Between

Lochailort Newbury Limited

And

West Berkshire Council

In Respect of:

The Mall, The Kennet Centre, Newbury, West Berkshire RG14 5EN

Town and Country Planning Appeals

(Determination by Inspectors)

(Inquiries Procedure)

(England)

Rules 2000

PINS Ref:

APP/W0340/W/23/3321517

LPA Ref:

23/02094/FULMAJ

Date:

28 April 2025

Reference:

Final. v.1

Amenity / Open Space and Landscaping

1. The reason for refusal relating to External Amenity Space sets out:

The Council's Supplementary Planning Guidance Quality Design Part 2 document notes that the following provisions should be sought for development in regard to provision of outdoor space.

- 1 and 2 bedroom flats; from 25 sq.m communal open space per unit
- 3 or more bedroom flats; from 40 sq.m communal open space per unit

The proposed average outdoor amenity space per unit across the proposed development is 12.9 sqm. This is below the required level of the SPD.

As such the proposed development does not constitute quality design due to the lack of private amenity space and would not contribute to the quality of life of future occupants by providing them with adequate space outdoors. The development is therefore contrary to Policy CS14 of the West Berkshire Core Strategy 2006-2026, the SPD Quality Design Part 2, and the National Planning Policy Framework.

2. The proposed amenity and open space on site is broken down as follows:

Table 1: Proposed Amenity Space

Type of Amenity Space	Area Provided (sqm)
Communal Amenity Space	4,272.48
Private Terraces	902.58
Private Balconies	367.08
New Street	3,669.76
Total External Amenity/ Open Space	9,211.9
Residents' Amenity (Internal)	1,103.69
Total Internal and External Amenity/ Open Space	10,315.59

3. The different types of open space delivered on site are described below however it is a matter of dispute whether all of these spaces contribute to or are material to provision of the communal outdoor space

New Street

4. New street provides a new street link to Market Street, Batholomew Street and Cheap Street with a new Civic Square, adding to the public realm. This is space open to all.

Communal Amenity Space

5. Podium communal garden spaces are proposed on the 1st, 2nd, 3rd, 4th, 6th and 7th floors and are distributed across the site. The communal roof gardens provide shared space for residents and all spaces will be accessible to all residents.
6. The communal roof spaces and the floor they are located on are shown on the below plan (taken from the Landscape Design Statement, page 45 - CD1.173):



Plan 1 – Amenity Spaces

Private Terraces

7. Private terraces are provided throughout the development and are, in most cases, provided for dwellings that face onto communal amenity space. The locations of the private terraces are shown dark blue on the below plan (taken from the Landscape



Plan 2 – Types and Locations of Amenity Spaces

Balconies

8. Balconies are provided throughout the site and vary in size.

Internal Amenity Space

9. Internal amenity space is provided for the residents on site and includes dining rooms, meeting/ work spaces, a gym and squash court, and residents' lounge.
10. Internal cycle storage for 685 bicycles is provided as well as a 'Library of Things' from which residents can borrow equipment.
11. In total 10,315.59sqm of open and/ or amenity space is proposed. This amounts to 24.16sqm per unit. If the new street is removed, this amounts to 6,645.83sqm amounting to 15.56sqm per unit. Without the new street and internal amenity space it amounts to 12.97sqm per unit.
12. A commuted sum of £52,738.56 is agreed in respect of public open space and is acceptable to the Council for meeting the requirements of Policy RL.2.

Planning Policy Position

13. Policy RL.1 states that:

“The Council will require, in new residential development of ten or more dwellings, the provision of between 3 and 4.3 hectares of public open space per thousand population in such form, scale and distribution as may be considered appropriate depending on local circumstances, together with associated facilities/equipment.”

14. Policy RL.1 identifies public open space to consist of:

- (i) areas for formal sporting activity;
- (ii) areas for informal recreation and leisure purposes;
- (iii) play areas; and
- (iv) amenity land.

15. Policy RL.2 sets out:

“The provision of public open space may be satisfied in the following ways: (a) by allocating space on the development site itself; (b) by making space permanently available through formal agreement on other land in the applicant’s control which is readily accessible from the development site and appropriate for public open space/recreational use; (c) in certain circumstances by making payment (subject to formal agreements) to meet the necessary public open space or other recreation requirements within a reasonable distance of the development site. The Council will accept such a payment only if it is able to provide new public open space or other appropriate recreation facilities easily accessible to the development site within a reasonable period of time; (d) by a combination of (a), (b) and (c).”

16. Part 2 of the Design Quality SPD (2006) (CD 4.10) sets out at paragraph 1.16.1

“Some flexibility in traditional garden standards is now needed to accommodate PPG3 densities. To ensure that land is used more efficiently, garden sizes in new development will on average be smaller than much of the post war development. However, the Council considers that it is still essential for the living conditions of future residents that suitable outdoor amenity space is provided in most new residential developments.”

17. Paragraph 1.16.5 sets out:

“For flats, a reasonable provision of communal outdoor space is suggested. However, it is noted that there are a variety of approaches to providing outdoor amenity space for flats which will vary according to the location and character of the proposed development;

1. 1 and 2 bedroom flats; from 25 sq.m communal open space per unit
2. 3 or more bedroom flats; from 40 sq.m communal open space per unit.”

18. Emerging policy DM31 (Residential Amenity) sets out that residential development will be expected to include functional amenity space of a quality and size to meet the needs of the occupants. The reasoned justification for the policy repeats the guidance set out

in the Design Quality SPD stating,

“As a guide, for 1 or 2 bedroom flats at least 25 square metres of communal open space should be provided per unit. For three or more bedroom flats at least 40 square metres of communal open space should be provided per unit.”

19. It is agreed that for the purposes of this appeal, the guidance set out in the SPD Quality Design Part 2 is relevant and that this comprises the following guidance for flats:

“For flats, a reasonable provision of communal outdoor space is suggested. However, it is noted that there are a variety of approaches to providing outdoor amenity space for flats which will vary according to the location and character of the proposed development;

- 1. 1 and 2 bedroom flats; from 25 sq.m communal open space per unit*
- 2. 3 or more bedroom flats; from 40 sq.m communal open space per unit.”*

20. It is agreed that there is no planning policy guidance requiring private amenity space for flats.

21. It is agreed that the amenity space provided on site includes communal outdoor amenity space, private terraces and private balconies and that these all count towards the outdoor amenity space for the purposes of this planning appeal as set out in the below table:

Type of Amenity Space	Area Provided (sqm)
Communal Amenity Space	4,272.48
Private Terraces	902.58
Private Balconies	367.08
Total Amenity Space	5542.14

22. This amounts to a total of 12.9sqm per unit.

23. It is agreed that the above presents a guideline for amenity space which can vary according to location and character.

24. It is agreed that the SPD emphasises that it is the quality of the amenity space that matters most. It is agreed that there is no objection to the hard and soft landscaping of the proposed amenity spaces.

25. It is agreed that, as a build to rent scheme, bicycle storage, a gym and squash court and communal amenity areas are incorporated internally.. It is a matter of dispute as to the extent that this contributes to or is relevant to the outdoor amenity provision for residents.

26. It is agreed that a dedicated play area is secured on site via suggested Condition 52 which states:

“No residential unit shall be occupied until a children’s play use has been created in one of the commercial units on the ground floor. Details of the play provision, design and size shall be agreed in writing the Local Authority.”

27. It is agreed that the site is located with excellent accessibility to high quality public open spaces and play spaces such as Victoria Park, Northcroft Park, Goldwell Park and the Kennet and Avon Canal. It is a matter of dispute how this contributes to or is relevant to the provision of communal open space.

28. It is agreed that the Sterling Cables development of 167 flats (application reference: 15/00319/FULEXT) which provides approximately 1,200sqm of communal amenity space amounting to circa 7sqm per unit. Private amenity space is also provided in the form of balconies only. This is below the level proposed on the appeal site, yet the committee report concluded:

“Officers have some concerns about the actual value of the amenity space in the courtyard between the 6 blocks noted above, since given their proximity, height, mass and scale, and orientation, the courtyard will receive little natural light particularly during the winter months. However, once again, any purchasers will be aware of this factor before buying..... On the other hand, the applicants have noted that all of the flats will have a balcony, so each will have a small degree of private external amenity space. Given the clear need to allow a relatively high density on the site in order to facilitate the redevelopment, this slight reduction in acknowledged standards is considered, on balance, to be acceptable.”

29. The Weavers Yard development which is located opposite the site on Market Street (application reference: 16/00547/FULEXT) contains no communal amenity space, and not all the units have access to private amenity space. Yet the committee report concludes:

“All houses are provided with private amenity space, whilst most apartments above ground floor level have access to a private balcony. The site is located within a highly sustainable central location, where access to a wide range of amenities is available. Furthermore, a Residents’ ‘Hub’ is proposed which will provide internal community space for the residents. It is therefore considered that the proposed level of private amenity space is acceptable within this town centre location.”

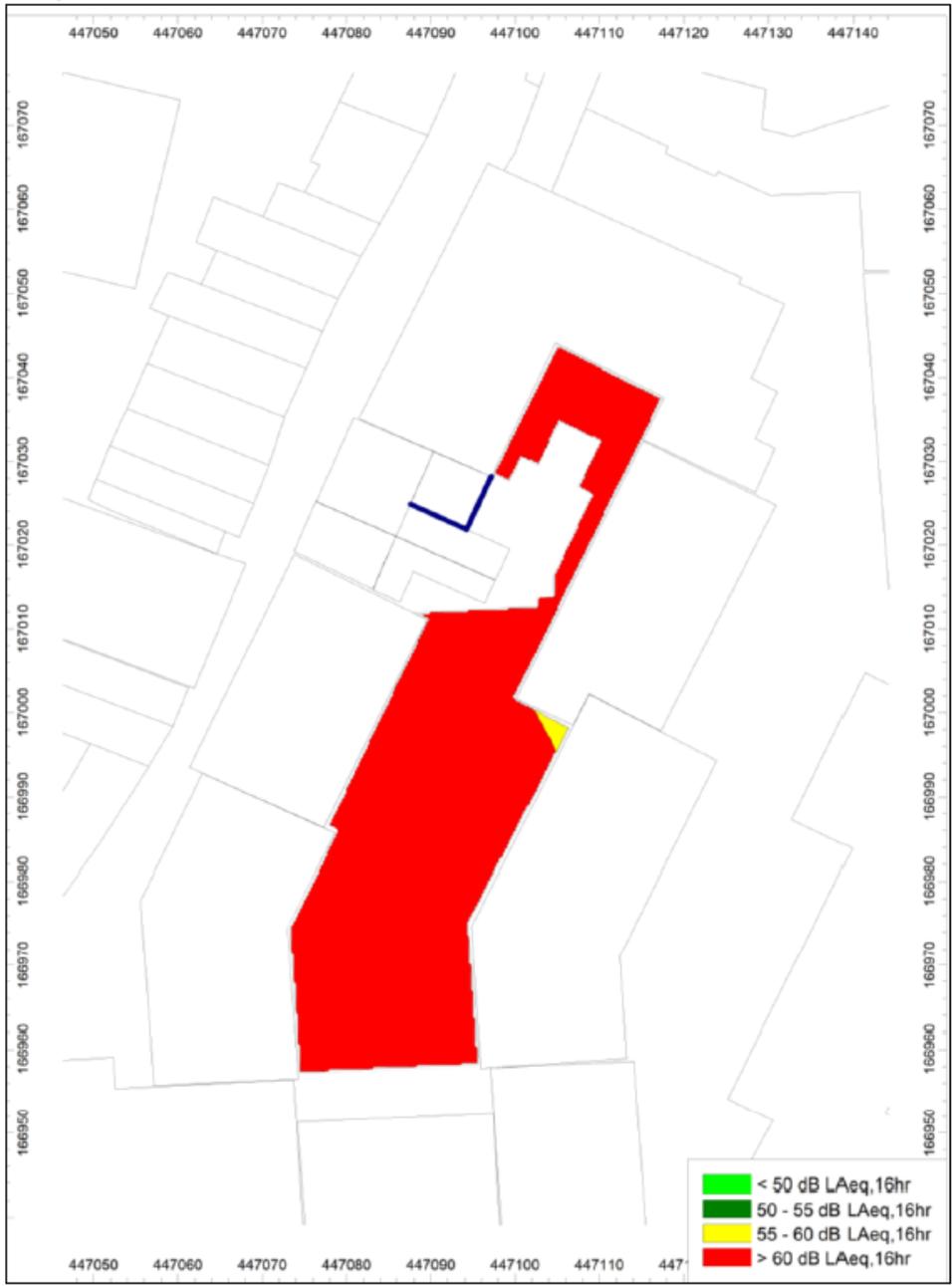
30. It is agreed that the Committee Report notes that recent appeal decisions in West Berkshire confirm that the provision of open space would vary according to: the location and character of the proposal, whether the proposal would provide for family accommodation, and the access to high quality open space. Appeal reference: APP/W0340/W/20/3263493 for 50B Bartholomew Street, close to the site, confirms

“... given the size of the proposed dwellings, the general character of the surrounding buildings and the proximity of the site to the amenities of the town centre, I am satisfied that the proposed amenity space would be appropriate and sufficient to serve the development.”

Noise

31. The sixth reason for refusal refers to the impact of externally generated noise on the living conditions of future occupiers.
32. The proposed development is situated in proximity to The Newbury Public House, which has a rear terrace that would be overlooked by some residential properties. This terrace from time to time and when in use generates noise from music and patrons attending the public house. It is matter of dispute the extent that this will impact the future residents.
33. The noise is likely to impact around 100 flats in blocks B, E, and F, either because they are in proximity to the public house or because their facades face it directly. It is agreed that mitigation is required, the suitability of this mitigation is a matter of dispute as to whether it achieves the requires standards for meeting quality design as set out in Policy CS14.
34. It is agreed that a suitable internal noise environment for residential units impacted by the noise events emanating from the playing of music on the outside terrace at The Newbury can be mitigated through the use of winter gardens, suitable glazing, insulation and mechanical ventilation as detailed in the submitted Noise Reports (CD1.84, CD1.182, CD1.204, CD1.205, CD1.207, CD1.221) and that this mitigation can be secured via suggested conditions 38 and 39.
35. The below diagram (Plan 3) shows the acoustic model indicating that the predicted entertainment noise levels in the communal gardens surrounded by Blocks B, E and F will exceed the target set out by WHO criteria (limit of 55 dB LAeq 16hour).
36. It is agreed that the only area of amenity space impacted by the noise is shown on Plan 3 below drawing in red (and Area 1 in Plan 1). The remaining 9 amenity space areas would retain an acceptable noise environment during noise events emanating from The Newbury.
37. It is agreed that Amenity Areas 2 – 10 as shown on Plan 1 above all comprise alternative amenity spaces within the development that could be used by residents during noise events emanating from The Newbury.
38. It is agreed that outside the noise events, the communal amenity space and residential dwellings would not be impacted by noise.
39. Condition 39 secures the submission and implementation of a noise mitigation scheme that would include details of internal noise mitigation.
40. It is matter of dispute whether managing the amenity space as part of condition 26 addresses the Council's concerns with regards to the amenity space.
41. It is agreed that the Newbury Public House License requires that music is not clearly audible in Bartholomew Street adjacent to residential properties and that patrons are cleared from the roof terrace by midnight Sunday to Thursday and by 01:30 on Friday and Saturday
42. The table appended to this SOCG is an agreed summary of the recorded noise events and

how they comply with the Licensing requirements as outlined above. Of the 39 events recorded, 13 were in accordance with the License.



Plan 3 – Noise Levels and Amenity Space

Signed

Name: Sarah Ballantyne-Way

Position: Planning Director, Lochailort Newbury Ltd.

Date: 06/05/2025

Signature:

Handwritten signature of Sarah Ballantyne-Way in cursive script.

Name: Sian Cutts

Position: Senior Planning Officer

Date: 06/05/2025

Signature: Sian Cutts

The Newbury – List of Events and Breaches of License
July – September 2024

No.	Date	Duration	Activity	Breach
1	Thursday 6 th June	19.40 – 00.40	Live Music	Live music on terrace. Patrons outside after midnight.
2	Friday 7 th June	19.35 – 00.35	Amplified DJ set	
3	Saturday 8 th June	17.25 – 00.30	Live Music	Live music on terrace.
4	Friday 14 th June	20.30 – 00.30	Live Music	Live music on terrace. Music audible at front of pub.
5	Saturday 15 th June	20.00 – 00.20	Live Music	Live music on terrace. Music audible at front of pub.
6	Thursday 20 th June	21.00 – 01.00	Live Music	Live music on terrace. Patrons on terrace after midnight.
7	Friday 21 st June	21.00 – 01.00	Background Music	Music audible at front of pub.
8	Saturday 22 nd June	20.00 – 02.00	Amplified DJ set	Patrons on terrace after 01.30. Music audible at front of pub.
9	Thursday 27 th June	20.00 – 01.00	Live Music	Live music on terrace. Patrons on terrace after midnight. Music audible at front of pub.
10	Friday 28 th June	19.00 – 01.00	Background Music	
11	Saturday 29 th June	20.00 – 01.00	Amplified DJ set	
12	Thursday 4 th July	20.00 – 01.00	Live Music	Live music on terrace. Patrons on terrace after midnight.
13	Saturday 6 th July	20.00 – 00.00	Amplified DJ set	
14	Thursday 11 th July	20.00 – 23.00	Live Music	Live music on terrace.
15	Friday 12 th July	20.00 – 00.00	Amplified DJ set	
16	Saturday 13 th July	20.00 – 23.00	Amplified DJ set	
17	Thursday 18 th July	20.00 – 01.00	Live Music	Live music on terrace. Patrons on terrace after midnight.
18	Friday 19 th July	20.00 – 01.00	Amplified DJ set	
19	Saturday 20 th July	20.00 – 01.00	Live Music	Live music on terrace.

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20	Thursday 25 th July	20.00 – 01.00	Live Music	Live music on terrace. Patrons on terrace after midnight.
21	Friday 26 th July	20.00 – 23.00	Live Music	Live music on terrace.
22	Saturday 27 th July	20.00 – 23.00	Background Music	
23	Thursday 1 st August	20.00 - 01.00	Live Music	Live music on terrace. Patrons on terrace after midnight.
24	Friday 2 nd August	20.00 – 00.00	Live Music	Live music on terrace.
25	Saturday 3 rd August	19.00 – 01.00	Amplified DJ set	
26	Thursday 8 th August	20.00 – 00.00	Live Music	Live music on terrace.
27	Friday 9 th August	20.00 – 00.00	Live Music	Live music on terrace.
28	Saturday 10 th August	14.00 – 00.00	Amplified DJ set	
29	Thursday 15 th August	20.00 – 01.00	Live Music	Live music on terrace. Patrons on terrace after midnight.
30	Friday 16 th August	20.00 – 01.00	Amplified DJ set	
31	Saturday 17 th August	21.00 – 00.00	Amplified DJ set	
32	Thursday 22 nd August	21.00 – 02.00	Live Music	Live music on terrace. Patrons on terrace after midnight.
33	Friday 23 rd August	20.00 – 01.00	Live Music	Live music on terrace.
34	Saturday 24 th August	17.00 – 21.00	Background Music	
35	Saturday 7 th September	18.00 – 02.00	Amplified DJ set	Patrons on terrace after 01.30. Music audible at front of pub.
36	Monday 9 th September	20.00 – 23.00	Live Music	Live music on terrace. Music audible at front of pub.
37	Friday 13 th September	21.00 – 02.00	Live Music	Live music on terrace. Patrons on terrace after 01.30. Music audible at front of pub.
38	Saturday 14 th September	17.00 – 02.00	Amplified DJ set	Patrons on terrace after 01.30. Music audible at front of pub.
39	Thursday 19 th September	21.00 – 02.00	Live Music	Live music on terrace. Patrons on terrace after midnight. Music audible at front of pub.

The Newbury – List of Events and Breaches of License
July – September 2024

Key:

No breach
1 x breach
2 x breach
3 x breach