

**APPEAL REFERENCE APP/W0340/W/25/3359935**

**APPEAL MADE BY LOCHAILORT NEWBURY LIMITED**

**THE MALL, KENNET CENTRE, NEWBURY.**

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**OPENING STATEMENT FOR THE APPELLANT**

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1. In these short opening submissions, the Appellant will set out in summary the case that it makes in respect of the main issues, as these were identified by the Inspector in his case management conference note of 1 May 2025.
2. Before doing so, we address the context for the consideration and the determination of those issues.
3. First, the proposal is for the demolition of the existing Kennet Centre and redevelopment to provide new homes, shops and other facilities as well as a much improved and greatly needed public realm. It is common ground with the Council, and as is recognised by all other main parties, that the Kennet Centre is outdated and generates harm in townscape, visual and functional terms and harms the significance of heritage assets. It presents a block in terms of accessibility and permeability within the town, not least from Newbury Railway Station to the retail and other services in the town centre to the south. The proposals will remedy this.
4. Secondly, it is agreed that the proposal delivers substantial benefits that the Council themselves in many respects consider should attract very great weight. These include new homes on a locationally highly sustainable brownfield site which currently offers none, new and modern retail and other floorspace on a site which currently offers little or at least little that is attractive to occupiers and users and new public realm and routes through the site from east to west and, critically, from north to south where the site, in its current form, is an obstacle to movement and a block to permeability. The removal of the adverse effect of the existing Kennet Centre on the significance of the Newbury Town Centre Conservation Area

(“NTCCA”) and of listed buildings within it and its replacement with a new form of development which is much more sympathetic and appropriate to the historic environment around it is also a benefit to which, logically, great weight and importance should attach.

5. We turn then to the main issues.

Main Issue 1 – Whether the proposal would preserve or enhance the character or appearance of the NTCCA and the effect of the proposal on the setting of listed buildings (including town character, scale/height/massing and density, appearance and townscape effects).

6. At the outset, we note that, from the Council’s evidence, its concern is focused to impact on heritage assets – the NTCCA and a range of listed buildings within and beyond that area. Its concern arises from impact on significance of those assets by reason of height and scale of blocks A, B and S within the development. It takes no point at all, and raises no criticism of, any other aspect of the development in terms of its impact on heritage assets including and in particular its design and elevational treatment. Indeed, and rightly, it considers that the development will deliver considerable heritage benefits, as expressed in the heritage statement of common ground (CD 5.8) para.11. The extent to which the Council thereafter properly calibrates and considers those benefits is a matter to be explored. Moreover, the Council does not, it appears, advance any non-heritage townscape or visual harm, indeed, and again rightly, it recognises considerable benefits in townscape and visual terms as a result of what is proposed.
7. In terms of the Council’s case, it is the case that the development will bring change. It is unavoidable for any development and particularly one on as large a site as the appeal site. However, that does not mean that heritage harm follows. When the development as a whole is considered, and considered properly and sensibly, the significance of heritage assets is at least preserved and we say will, in respect of a number of assets and groups of assets, be improved. In reaching this assessment and where a development will affect individual assets and groups of assets in various ways, to adopt an internal heritage balance is the most appropriate course. This involves balancing any adverse effects with beneficial

effects and in both cases attaching great weight and importance to those effects. This is what Dr. Miele for the Appellant has done and done so carefully leading to the conclusions set out in his evidence.

8. The extent to which the Council and even more so the rule 6 parties have undertaken properly this exercise (or even undertaken it at all) will need to be explored further. However, what is notable is that the Council's position seems still to be that any impact on designated assets is less than substantial at the low end of the scale.
9. We should add that Historic England's position which ultimately comes down to a limited concern about impact on AVR Views 1 and 8 is not one which can or should sustain a rejection of this scheme. Notably, by 20 March 2024, Historic England had withdrawn its objection to the proposal (see CD 2.39). Its final position was that the Council was in a position to be able to conclude reasonably that the proposal and its impact in heritage terms was clearly and convincingly justified (CD 23.40).
10. Our case is that the proposed development does not cause harm to the significance of any heritage asset and in many cases delivers benefits. Development plan policy is met and the NPPF para.216 balance is not engaged.
11. If the Inspector finds harm, then in all cases it is accepted to be less than substantial and, on the basis of the Council's conservation officer's assessment, is at the lower end of the scale. In that case, we submit that Council officers when advising the Planning Committees on three separate occasions were correct that the public benefits which this development will yield outweigh any heritage harm.

Main Issue 2 – whether proposed parking provision would be acceptable and the effect on highway safety

12. The Council does not persist with any concern about the proposed parking provision nor, as we understand the position to be, do either of the rule 6 parties.
13. The proposals will lead to a small reduction in parking places in an existing multi storey car park. The same car park will provide car parking provision for the new residents alongside 83 new parking spaces (for exclusive use of those residents) to be delivered within the development itself. The capacity of the multi-storey car

park is sufficient for this and mitigation in the form of real-time parking availability will be delivered through this scheme that will direct users to other car parks in Newbury when necessary. The quantum of car parking to be provided and parking strategy generally has been agreed with the Council. The site is located in a town centre with excellent access to public transport (not least the railway station), shops and services. The arrangement proposed is entirely appropriate.

14. No party is now contending that the parking arrangement proposed will lead to unacceptable (let alone ) severe highway operational effects or to a compromise in highway safety.

Main Issue 3 – The effect of the proposal on the living conditions or future occupiers with particular regard to the provision of external amenity space and noise

15. The residential floorspace proposed will take the form of build to rent homes. Inherent in that form of new housing are a range of communal spaces, including internal spaces (a gym, a squash court, residents' lounges/dining rooms/function spaces). Such an arrangement is proposed in this scheme. The appeal site is located in Newbury Town Centre and close to a range of high quality public open spaces. A considerable quantum of communal space, external and internal and a generous amount of new public realm (the north-south route is itself approx. 3,700 sq.m. and will be landscaped to a high quality and a new public square will be provided). When considering the amenity offer to new residents, all of these spaces and facilities must be considered because all of them will be available to and function as space for use and enjoyment by new residents.

16. The Council contend that the quantum of communal space departs materially from the quantum derived from the application of the Council's Quality Design SPD (Part 2). We disagree. However, that guidance, it is agreed, should be applied flexibly and amenity space "can vary ~~it~~ according to location and character ((Topic 3 SoCG (CD 5.9) para.23). What is proposed was found to be acceptable by Council officers on three occasions, when advising members. Officers were correct in this assessment. The quantum of what proposed here, even on the Council's approach, substantially exceeds that provided in comparable scheme

in Newbury Town Centre, which have been found acceptable. The development is acceptable in terms of communal amenity space provision.

17. In terms of noise, the Council raises an issue with regard to the impact on new residents arising from the use of the external rear terrace of the Newbury PH. The Appellant has explained how new homes who may potentially be affected by the use of that terrace will be provided with winter gardens, acoustic glazing and other facilities to allow their windows to be kept close on the occasions that the terrace is in use. Some parts of the communal open space proposed (Area 1 on Plan 3 of the Topic 3 SofCG) may be affected by the use of the terrace on the occasions that music is played. This must be considered sensibly and in the context that the terrace is used on a limited basis and for short periods, usually in the evenings, when the amenity space is less likely to be in use by future residents. Nine other areas of communal external amenity space will be available within the development, and these are not affected by the use of the Newbury PH's terrace. Internal communal space too is unaffected. The appeal site is plainly in town centre and amenity considerations should be addressed in this context. The appeal site is of course one which the Council wishes to see developed. Council officers were satisfied that, with the mitigation secured by condition, the proposal are acceptable and advised members of this on three occasions. We agree and this conclusion is commended to the Inspector.

#### Main issue 4 – Affordable Housing

18. The Appellant has provided a financial viability appraisal in support of its application for planning permission. This has been reviewed by the Council's own consultant. It is not substantively in dispute. The viability constraints are such that the scheme cannot viably deliver affordable housing, and this is agreed. No policy conflict therefore arises. An appropriate review mechanism is secured through the planning obligation.

#### Main Issue 5 – Planning Obligations

19. A planning obligation is essentially agreed as between the Appellant and the Council which delivers all that the Council considers necessary for the development to be acceptable in planning terms.

Main Issue 6 and 7 – Five Year Housing Land Supply and the Planning Balances

20. As matters stand, the Council cannot demonstrate a 5 YHLS as required by NPPF 2024. As such, as matter stand, the tilted balance is engaged. This may change with the adoption of the new Local Plan.
21. However, it is notable that Council officers considered the development to be acceptable, whether or not the tilted balance was engaged; the officer reports of October and November 2024 were prepared in the context of the 5 YHLS obligations being met, in the Council's view.
22. The Appellant's position and that of Council officers who considered the application is that the proposal complies with the development plan, considered as a whole and there are very weighty material considerations which support the grant of planning permission, in the form of clear benefits in delivering regeneration on this underused brownfield site and in the form of the NPPF, including by making a major contribution to increasing housing and supply of housing and doing so on a brownfield site within a large settlement. These remain weighty considerations, whether or not the new local plan is adopted and whatever the 5 YHLS position may be. It remains the Government's objective to boost significantly the supply of homes (NPPF para.61). The 2024 NPPF requires decision makers to "give substantial weight to the use of suitable brownfield land within settlements for homes", proposals for which should be approved unless "substantial harm would be caused" (NPPF para.125(c)) No party before the Inquiry seriously claims that "substantial harm" will be caused by this scheme, indeed most recognise substantial benefits. The NPPF as a material consideration strongly supports the grant of planning permission, whether or not para.11(d) is engaged.
23. In direct response to matter 7, there is no conflict with the development plan, taken as a whole. If there is, other considerations, in particular the conspicuous

benefits of the scheme and the NPPF support the grant of planning permission, nonetheless.

DOUGLAS EDWARDS KC

3 June 2025.

