

In the Matter of:-

THE TOWN AND COUNTRY PLANNING ACT 1990

-and-

THE TOWN AND COUNTRY PLANNING (DETERMINATION BY INSPECTORS)
(INQUIRIES PROCEDURE) (ENGLAND) RULES 2000

-and-

AN APPEAL BY LOCHAILORT NEWBURY LIMITED IN RELATION TO LAND KNOWN
AS THE MALL, THE KENNET CENTRE, NEWBURY RG14 5EN

PINS REF: APP/W0340/W/25/3359935

LPA REF: 23/02094/FULMAJ

OPENING STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

INTRODUCTION

1. The application for planning permission the subject of this appeal was submitted on behalf of Lochailort Newbury Limited ("the Appellant"). The description of development recorded in the application form dated 7 September 2023 ¹was:

"Full planning permission for the redevelopment of the Kennet Centre comprising the partial demolition of the existing building on site and the development of new residential dwellings (Use Class C3) and residents' ancillary facilities; commercial, business and service floorspace including office (Class E (a, b, c, d, e, f, and g)); access, parking, and cycle parking; landscaping and open space; sustainable energy installations; associated works, and alterations to the retained Vue Cinema and multi storey car park."

¹ CD1.1

2. The planning application was supported by a suite of documents including a Planning Statement,² which set out the relevant planning history for site,³ and a Design and Access Statement,⁴ which explained the scheme evolution for the proposed development.⁵ The latter document provides an overview of the Appellant's attempts to address the LPA's legitimate objections, supported by Historic England, to earlier iterations of the scheme.

THE LPA'S DECISION

3. The application was initially reported to the 3 October 2024 meeting of the Council's Western Area Planning Committee with an officer recommendation that planning permission be granted subject to planning conditions and the conclusion of a planning obligation under section 106 of the 1990 Act.
4. The long and relatively complex planning history relevant to the application was addressed in a detailed Committee Report prepared by the case officer. Following consideration of the application, due to the strategic nature of the application a motion was proposed and carried to refer the application to the District Planning Committee.
5. The application was subsequently reported to the 13 November 2024 meeting of the Council's District Planning Committee ("the Committee"). At that meeting elected Members put forward a proposal to refuse the planning application. This was lost, as was a subsequent motion to approve the application. Due to an insufficiency of time, consideration of the application was deferred to the next Committee meeting.
6. The application was subsequently reported to the 8 January 2025 meeting of the Committee, which considered the application afresh due to the intervening publication of the revised National Planning Policy Framework ("NPPF") in December 2024. Following careful consideration and debate, the democratically

² CD1.72

³ *Ibid*, §5

⁴ CD1.101

⁵ *Ibid*, §5

elected Members of the Committee resolved to refuse the application contrary to officers' recommendation.

7. By way of a decision notice dated 30 January 2025,⁶ the Council refused planning permission in respect of the application citing six reasons for its decision together with various informatives.
8. The LPA's reasons for refusal are set out in full within Section 1 of the Main Statement of Common Ground ("SoCG")⁷ and need not be duplicated here.

THE APPEAL

9. On 3 February 2025, the Applicant submitted an appeal to the Secretary of State under section 78 of the 1990 Act, against the Council's decision to refuse planning permission. On 14 February 2025, the Planning Inspectorate ("PINS") validated the appeal formally, which has been registered under PINS Ref: APP/W0340/W/25/3359935.
10. Following the CMC held on 10 April 2025, by way of an email messaged dated 24 April 2025,⁸ the Council confirmed that the LPA no longer seeks to defend the second reason for refusal relating to the provision of car parking spaces, which is withdrawn.
11. The Council also confirmed that the fourth reason for refusal relating to the provision of affordable housing could be satisfied if an appropriately worded Section 106 planning obligation is provided that secures the proposed Build to Let tenure and a viability review mechanism should the economics of provision change prior to occupation. The Inspector's revised CMC Note⁹ acknowledges these concessions and updates the original note accordingly.

⁶ CD3.2

⁷ CD5.7

⁸ CD5.6

⁹ CD5.5

AGREED MATTERS

12. In accordance with the Inspector's case management directions, the LPA and Appellant have been working constructively to identify areas of agreement on matters relevant to the determination of the appeal.
13. As the Main Statement of Common Ground ("SoCG")¹⁰ and the topic specific SoCG on Heritage,¹¹ Living Conditions,¹² and Highways and Transport¹³ confirm, the areas of agreement between the Appellant and the Council are considerable and will assist the Inspector to focus upon the relatively limited matters that remain in dispute.
14. The SoCG updates the current position on the Local Plan Review 2022-23 ("LPR"), confirming that, following the completion of the independent examination, and the Inspector's Report has concluded that with the Main Modifications the Plan is sound, legally compliant, and capable of adoption. A special meeting of Council will be held on the evening of 10 June 2025, where Councillors will decide whether to adopt the LPR.
15. The principle of the development of the Kennet Centre for a mixed-use scheme including 427 dwellings is agreed within the SoCG, which also agrees the list of policies that are relevant to the determination of the appeal. Appendix 1 to the SoCG, sets out a table comparing the relevant policies with the existing and emerging plans.
16. Paragraph 8.1 of the SoCG also identifies the Matters in Dispute between the main parties upon which the evidence at the inquiry should focus.

¹⁰ CD5.7

¹¹ CD5.8

¹² CD5.9

¹³ CD5.10

THE COUNCIL'S CASE

17. The Council maintains the three retained reasons for refusal which remain in dispute in this appeal,¹⁴ and contends that the proposal fails to accord with the adopted development plan policies identified in the Council's decision notice and that other material considerations do not indicate that planning permission should be granted.
18. For the reasons explained in the Council's submitted evidence, the appeal proposal is unacceptable in planning terms, and the adverse effects of granting permission would not outweigh any benefits secured by the scheme, whether or not the so-called tilted balance in paragraph 11 d) of the NPPF applies.
19. The LPA's four proofs of evidence prepared and submitted in May 2025 supplement the Council's Statement of Case dated 10 November 2022,¹⁵ addressing the Main Issues identified by the Inspector (CMC Note v2, paragraph 5). In doing so, the evidence takes full and proper account of the matters agreed in the statements of common ground.
20. The LPA's evidence is confined to the matters that remain in dispute between the principal parties as recorded in the final section of the main SoCG. For the avoidance of doubt, the LPA's proofs of evidence are produced to substantiate the LPA's retained reasons for refusal only. No part of the LPA's evidential case is intended to do otherwise. The LPA's evidence, therefore, should not be interpreted as justifying a refusal of permission for any reason other than as recorded in the LPA's decision notice.

¹⁴ RR1, RR5 and RR6

¹⁵ CD5.2

21. On that basis, the following brief observations on each Main Issue are confined to the LPA's submitted evidence.

Main Issue 1

'Whether the proposal would preserve or enhance the character or appearance of the Newbury Conservation Area and the effect of the proposal on the setting of listed buildings. To include subtopic areas of town character, scale/height/massing and density, appearance and townscape effects.'

22. The LPA relies upon the written evidence submitted by Dr Rebecca Hawkes-Reynolds¹⁶ and Mrs Sian Cutts¹⁷ to address this main issue and substantiate RR1 (Heritage and Townscape).
23. The evidence of Dr Hawkes-Reynolds addresses the impact of the appeal scheme on the significance of the Newbury Town Conservation Area and on the significance and setting of various listed buildings within the conservation area in proximity to the site.
24. Acknowledging that the appeal site represents a large part of the centre of the town, and that the existing shopping centre is detrimental to the character and significance of the identified heritage assets, Dr Hawkes-Reynolds concludes that the erection of tall and large buildings across the site would erode the market town character and result in modern development intruding on the views towards, and from within, the historic core of the town.
25. This change would have a harmful impact on how one experiences the centre of the town and, although the appeal scheme will deliver many heritage benefits, Dr Hawkes-Reynolds concludes that these will be overshadowed by the height and bulk of the proposed development. In doing so, the proposed development would cause less than substantial harm to the significance of the conservation area and to the significance and setting of many nearby listed buildings.

¹⁶ CD5.12

¹⁷ CD5.11

Main Issue 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.

26. The LPA relies upon the written evidence submitted by Mr Russell Davidson (noise)¹⁸ and Mrs Sian Cutts (outdoor amenity space)¹⁹ to address this main issue and substantiate RR5 and RR6.
27. The decision notice records that the application was refused in part on the grounds of the quality of residential accommodation provided, specifically, in terms of access to adequate private external amenity space (RR5) and noise (Blocks B, E and F) from The Newbury Public House (RR6).
28. The submitted evidence demonstrates that the provision of open space does not accord with the requirements of adopted policy CS14 for new development to make a positive contribution to the quality of life in West Berkshire, and the guidance set out in the Quality Design SPD which states that for 1- and 2-bedroom flats from 25 sqm of communal open space should be provided, and for 3- or more bedroom flats from 40 sqm should be provided. It is agreed that the provision in the appeal proposals is 12.9 sqm. Emerging LPR policy DM31 also requires functional amenity space to meet the needs of future occupiers and repeats the SPD guidance.
29. The evidence also demonstrates that the quality of the space proposed is also deficient in a number of respects, when considering the functionality of the space, the accessibility, convenience, the safety of the space and its usefulness. The evidence will demonstrate that the location within the site is not convenient to all residents which reduces its accessibility. The Council does not accept that this aspect of its evidence raises new issues that were not addressed by the reasons for refusal or identified in the LPA's Statement of Case.

¹⁸ CD5.13

¹⁹ CD5.11

30. The harm from noise coming from The Newbury has been identified and addressed in the evidence submitted by Russell Davidson.²⁰ The evidence demonstrates that the mitigation measures proposed to address the noise levels from the Newbury Public House would not be sufficient to result in a satisfactory living environment for the affected residents. This is because it relies upon those residents closing windows and/or leaving their home to use amenity space elsewhere in the development.
31. In addition, the outdoor amenity space would also be affected by noise and reducing its usefulness and to residents within the whole development, further reducing the amount of outdoor space available during these periods. It may not be reasonable to expect people to leave their home or keep windows shut when events are taking place in The Newbury on a very regular basis, this may also be particularly unacceptable to residents with young children who would be more likely to be asleep in the early evening, making the mitigation proposed unsuitable to accord with the requirements of the existing and emerging development plan policies.

Main Issue 6

Whether the Council can demonstrate a five-year supply of deliverable housing sites. This was discussed in the context of the emerging local plan and whilst no formal update on timings could be given the examination appears at an advanced stage and the Council considered that the emerging plan could be adopted before a decision is made on the appeal. The evidence of the parties will need to deal with this, as necessary.

32. It is agreed that using the revised standard method NPPF (2025) and PPG²¹ results in an updated Local Housing Need ("LHN")²² for West Berkshire Council at 1,070 homes per annum. As the current housing requirement is set out in a strategic policy that was adopted more than five years ago, it is also agreed that the LHN

²⁰ CD5.13

²¹ Paragraph: 004 Reference ID: 2a-004-20241212)

²² NB: SoCG (CD5.7), para 7.25 erroneously refers to "housing requirement"

figure of 1,070 has been used for the calculation of the five year housing land supply that was published in February 2025.

33. Applying that LHN figure, it is common ground that the February 2025 Housing Land Supply ("HLS") position shows that the Council can demonstrate a 2.6 years' supply of deliverable sites, using a five year housing land supply from 2024/25 to 2028/29 against a five year housing requirement plus a 5% buffer (5,618 dwellings).
34. Annexe 1 of the NPPF (2025) sets out transitional arrangements in respect of the application of its policies for local plans that have reached a certain stage of preparation. As a result, the housing requirement within the LPR does not need to be amended to take account of the revised standard method. Whilst the five year housing land supply position published in February 2025 shows that a five-year housing land supply cannot be demonstrated, it is further agreed this position will change following the adoption of the LPR.
35. The LPA relies upon the written evidence submitted by Ms Laila Bassett to address this main issue. When giving evidence, Ms Bassett will address the relevance of the LHN of 1,070 homes per year to the determination of the appeal, which remains a matter in dispute between the Appellant and LPA.

Main Issue 7

If conflict with the development plan, when taken as a whole is identified, whether such conflict is outweighed by other material considerations.

36. The LPA relies upon the written evidence submitted by Mrs Sian Cutts to address this main issue.
37. The proposed development does not accord with the adopted or emerging development plan. The weight to be accorded to the failures to accord with policy is set out the planning evidence presented by Mrs Cutts. The LPA acknowledges that a grant of planning permission would secure various planning benefits, the details of which and the weight to be accorded to those benefits are also addressed by Mrs Cutts.

38. There is no dispute that, when adopted, the LPR will be an up-to-date development plan, thereby applying paragraph 11 c) of the NPPF. In those circumstances, the statutory test in section 38(6) of the 2004 Act will apply, without reference to paragraph 11 d) of the NPPF at all.
39. Should it prove necessary to do so, the Council will address the Inspector on the application of the so-called 'tilted balance' in paragraph 11 d) of the NPPF in closing.

CONCLUSION

40. For the reasons outlined above and addressed in detail within the Council's submitted evidence, in due course, the LPA will respectfully invite the Inspector to dismiss this appeal.

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Temple
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MARK BEARD

3 June 2025