

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

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**CLOSING SUBMISSIONS ON BEHALF OF  
THE LOCAL PLANNING AUTHORITY**

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**INTRODUCTION**

1. In accordance with the LPA's Statement of Case<sup>1</sup> and written evidence submitted in support thereof, the primary purpose of these closing submissions is to summarise the Council's evidential case substantiating the LPA's retained reasons for refusing permission. As every witness appearing at the Inquiry on behalf of the Council has confirmed in their written evidence, no part of the LPA's evidential case is intended to do otherwise.
2. The LPA's evidence and these submissions, therefore, should not be interpreted as justifying a refusal of permission for any reason other than as recorded in the LPA's decision notice.<sup>2</sup>

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1 CD5.2

2 CD3.2

3. As this appeal relates to a determination contrary to Officers' recommendation, those appointed to appear on behalf of the LPA at the Inquiry have been careful to ensure that the lawful decision of the Committee<sup>3</sup> is properly represented and defended in this appeal.
4. The application for planning permission the subject of this appeal was ultimately reported to the Council's District Planning Committee ("the Committee") on 8 January 2025,<sup>4</sup> with an officer recommendation to grant conditional planning permission, subject to the conclusion of suitable planning obligation.
5. Following careful consideration and debate, the democratically elected Members of the Committee resolved to refuse the revised application contrary to officers' recommendation identifying six reasons for refusal later recorded in the decision notice dated 30 January 2025.
6. Whatever else may be said about the determination of the application the subject of this appeal, on the information then available, the democratically elected Councillors were entitled as a matter of law and as a matter of planning judgement to refuse to grant planning permission.
7. Notably, in respect of the three retained reasons for refusal, the Appellant cannot and does not now contend otherwise.<sup>5</sup>
8. Accordingly, that decision should be accorded due deference in the determination of this appeal. On any view, elected Members fundamentally disagreed with Officers' conclusions on the design quality of the development proposals and the impact of elements of the scheme on the historic environment and the living conditions of future occupiers.
9. Following the examination of the evidence at the Inquiry, the LPA maintains its three retained reasons for refusal, each of which has been substantiated by the Council's expert witnesses.

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<sup>3</sup> Minutes of District Planning Committee meeting dated 8 January 2025 [CD3.5]

<sup>4</sup> CD1.5

<sup>5</sup> SB-W:XX (LPA)

10. In summary, the LPA maintains that the appeal proposal fails to accord with the newly adopted development plan policies identified in the Council's evidence and within Annexe 1 to the Main SoCG,<sup>6</sup> and that other material considerations do not indicate that planning permission should be granted.
11. 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 significantly and demonstrably outweigh any benefits secured by the scheme.

### **PROPER APPROACH**

12. The proper approach to the determination of this appeal is not in dispute.
13. By section 70(2) of the Town and Country Planning Act 1990 ("the 1990 Act"), when determining each appeal, the Inspector must "have regard to ... the provisions of the development plan, so far as material to the application" and "other material considerations", and pursuant to the duty under section 38(6) of the Planning and Compulsory Purchase Act 2004, determine the appeal "in accordance with the plan unless material considerations indicate otherwise".
14. It is agreed that the newly adopted development plan policies most important to the determination of the appeal are not out-of-date. Consequently, paragraph 11 c) of the National Planning Policy Framework ("NPPF") applies to the determination of the appeal. It necessarily follows and is agreed that the so-called 'tilted balance' within paragraph 11 d) of the Framework is not engaged in the present appeal.
15. It is trite but nevertheless important to observe that the appeal must be determined on whole of the evidence before the inquiry, taking account of all material planning considerations. In that latter regard, there is no dispute as to the materiality of any consideration addressed in the evidence before the

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<sup>6</sup> CD5.7

Inspector or any material dispute on the relevant legal framework applicable to the determination of the appeal.

16. It necessarily follows that that the resolution of the main issues in dispute in this appeal essentially involve matters of planning judgement for the decision-maker, including the weight to be accorded to any material consideration. Likewise, the weight to be attached to the evidence submitted, or any part thereof, is ultimately a matter for Inspector.

## **PRELIMINARY ISSUES**

### **Agreed matters**

17. The main Statement of Common Ground ("SoCG")<sup>7</sup> and the topic specific SoCG on Heritage,<sup>8</sup> Living Conditions,<sup>9</sup> and Highways and Transport<sup>10</sup> record the areas of agreement between the Appellant and the Council, which are considerable and save where otherwise expressly stated, are not repeated in these submissions. To the extent necessary and appropriate, additional matters agreed during the examination of the evidence are referred to below.

### **Development Plan**

18. By way of its resolution passed at the Extraordinary Council Meeting held on 10 June 2025,<sup>11</sup> the Council formally adopted<sup>12</sup> the West Berkshire Local Plan Review 2023-2041 ("LPR").<sup>13</sup> The LPR replaces the previous statutory development plan,<sup>14</sup> the components of which were identified in the Council's resolution.

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<sup>7</sup> CD5.7

<sup>8</sup> CD5.8

<sup>9</sup> CD5.9

<sup>10</sup> CD5.10

<sup>11</sup> CD4.31: LPR Adoption Report, para 2.1

<sup>12</sup> Resolution, para 3)

<sup>13</sup> CD4.34: LPR Adoption Report, Annex E

<sup>14</sup> Resolution, para 4)

19. The main SoCG agrees the list of LPR policies which are relevant to the determination of the appeal.<sup>15</sup> The Appendix to that SoCG sets out a comparison of the relevant now superseded development policies with the now adopted policies of the LPR.

#### **Build to rent scheme**

20. As agreed during the examination of the Appellant's evidence,<sup>16</sup> a summary of build to rent ("BTR") is provided in the Planning Statement submitted in support of the application the subject of this appeal.<sup>17</sup> In the present case, it was also agreed that the height, scale and massing of the appeal proposal, and its impacts on the relevant issues of planning importance addressed by the LPA's retained reasons for refusal are the direct consequence of the economics underpinning the residential build to rent scheme.
21. As the Planning Statement explains, this BTR scheme provides additional amenities and services incorporated into the design of the development incorporating a wide range of amenity offerings enhancing the customer experience within the building. On the Appellant's case, these include a 24-hour concierge, purpose built parcel rooms, a fully fitted gym, secure and ample bicycle parking, car parking, electric vehicle charging points, a dining room, meeting rooms, tenant hub, generous outdoor amenity space in several locations throughout the building, catering facilities, tenant recreational activities and efficient heating systems.
22. Referring to the iterative process of designing and redesigning the previous application and appeal scheme to reduce its impact on the historic environment, the Appellant also agreed that the height, scale and massing of the buildings incorporating the BTR scheme represents the minimum viable form of development for a BTR residential product on the appeal site. It must follow that the impacts of the proposal, the acceptability of which remains in dispute between

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<sup>15</sup> CD5.7

<sup>16</sup> SB-W:XX

<sup>17</sup> CD1.72, Section 7.0, p 26

the two main parties, is the direct consequence of delivering the BTR product in this location.

### **Alternative scheme**

23. An alternative planning application has been submitted which Historic England has confirmed is an improvement to the appeal proposal (see Appendix 1). This is a realistic alternative scheme, which does not harm the setting of the listed buildings and may represent a viable scheme, and the appeal proposal would not be the optimal use of the site. A summary of the alternative scheme is addressed in the Appellant's evidence.<sup>18</sup> Whilst the existence of the alternative scheme, which was not revealed to officers until after the Committee meeting on 8 January 2025, for the reasons addressed in evidence, the LPA accepts that it can only be accorded limited weight.

### **MAIN ISSUES**

24. So far as material to the LPA's retained reasons for refusal, the Main Issues identified by the Inspector and agreed by the parties are considered in turn.

#### **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.'*

25. LPR policies SP7 (Design Quality), DM9 (Conservation Areas) and DM10 (Listed Buildings) set out detailed criteria for protecting the historic environment. Policy SP7 requires positive action to be taken to ensure that opportunities for the conservation and enhancement of the historic environment are maximised, and requires development proposal to conserve and enhance aspects of the environment which amongst other things are of historic or townscape

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<sup>18</sup> CD5, para 1.17

significance. In addition, the Policy SP7 requires preservation, enhancement or better revelation of the setting of historic assets significance and/or setting.

26. LPR policy DM9, concerning development within Conservation Areas, and says that development which will affect important views into, out to, across or through the site will need to demonstrate how the special character, appearance and significance of the Conservation Area will be preserved or enhanced. The policy sets out detailed criteria for assessing such development proposals, which includes respecting the overall settlement patterns, reflecting the form and layout including views and vistas and the shape and character of spaces contributing to its historic character. It also requires that the scale, height, form, massing and alignment respects the historic and architectural character, including the roofscapes of the area, and the relationships between buildings and the spaces between them.
27. LPR Policy DM10 sets out detailed criteria for assessing the proposal which affect the setting of listed buildings. It requires a demonstration of the need and desirability of the development, and how the significance of the setting of the listed building will be preserved. The policy states that development will not be permitted where it would harm the setting of a listed building.
28. In support of its case that elected Members were entitled to conclude that permission should be refused on heritage grounds, the LPA relies upon the heritage evidence presented by Dr Hawkes-Reynolds ("RHR"),<sup>19</sup> which assesses the compliance with the relevant LPR policies, and sets out extent of the harm that the proposal would have on the designated heritage assets. Her evidence describes and assesses in detail the harm that the proposal will have to the character and appearance of the Newbury Town Centre Conservation Area ("NTCCA"), and the views within and throughout the conservation area, and the general townscape, due to the scale massing, height, impact on rooflines of the appeal proposals. It also sets out in detail the harm to the setting of specified listed buildings within the Conservation Area.

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<sup>19</sup> CD5.12

## **Setting and significance**

29. By reference to the heritage evidence examined at the inquiry, the Council relies upon the following relating to the setting and significance of designated heritage assets:
- (a) The description of significance and the contribution of setting presented in the appellant's Heritage Statement is agreed to be policy compliant as stated in the Statement of Common Ground;
  - (b) Historic England guidance on setting states how setting is multi-sensory. Visual differences are the most obvious, but there are many other factors. Visual observations are also not static, and they can change depending on how the asset is experienced.
  - (c) It is appropriate to separate the immediate and wider setting. Though what defines either is not defined and is equally subjective. Differentiating between these two can help establish whether change in setting will impact significance depending on the relationship between the two.
  - (d) The manner in which the setting is experienced by different people is also relevant. For example, motorists and cyclists would have a low to medium sensitivity to setting change having regard to their focus on the road. Passengers (including those using public transport) would have a greater sensitivity to change, i.e. a medium sensitivity due to the ability to observe surroundings and appreciate the streetscape.
  - (e) In this particular case, the immediate streets with the exception of Cheap Street are pedestrianised. Therefore, the traffic of people will be local residents, leisure shoppers or leisure visitors who will have a higher sensitivity to change.

## **Impact**

30. The examination of the evidence identified the key issues in dispute between the main parties regarding the impact of the proposal on character and appearance of the conservation area and the setting and significance of the relevant listed

buildings identified in the Heritage SoCG. In respect of the latter, the Council accepts that the Inspector must consider each designated heritage asset individually and, as such, the LPA will rely upon its contribution to the table requested by the Inspector.

31. In respect of the former, the LPA relies upon the written evidence of RHR in relation to the impact of the proposal as assessed by reference to the views addressed in her evidence and considered in detail during the examination of the heritage evidence. The LPA invites the inspector to prefer the RHR's evidence on matters of impact generally.
32. By way of summary, the LPA relies upon the following observations in respect of the adverse impact of the proposal on the character and appearance of the conservation area.
33. ***View south along Northbrook Street, Bridge Street and Bartholomew Street [AVR 1,2,A,3]***
  - (a) It is agreed that the demolition of the Kennet Centre and the introduction of new sympathetically designed buildings through the scheme will be an enhancement to the street setting of the listed buildings, however, this change will not be appreciated from any great distance.
  - (b) This positive change will be appreciated when in proximity to the buildings and with clear direct sight lines. There will be a progressive appreciation through travelling down the street as well which will both enhance the conservation area and the street setting.
  - (c) However, when looking up, the height of the buildings will introduce an incongruous element out of character with a market town centre and overshadow the benefits delivered at street level. This will be evident at the north end of Bartholomew Street and become more obvious travelling southwards.

- (d) Dr Miele acknowledges that the proposals appear behind the chimneys.<sup>20</sup>As RHR noted, red brick against red brick means the chimneys will no longer be visible in the roofline. Jagged roofline caused by chimney stacks and parapet or compartment walls is no longer as visible (AVR 2 and 3). The importance of the roofline is expressly mentioned in LPR policy DM9 and the CAAMP.
- (e) Subject to the concession made by RHR in evidence, in the same vein, the backdrop of The Newbury Public House will be altered by the appearance of tall buildings behind it. However, Dr Miele admits<sup>21</sup> that the upper parts of the buildings will be visible. This means that there is an increase in visible height over the rooftops. Given the low-rise urban nature of the area, RHR asserted that a peripheral impact is still an impact. Setting can be wider and this change will introduce harm to the wider setting and changing the character of the CA.
- (f) Located on the west side of Bartholomew Street, the various listed buildings will experience a smaller change in setting due to the tall buildings appearing opposite.
- (g) Those buildings at the southern end of Bartholomew Street will have oblique or incidental views. These views will change and the appeal site become more prominent as one moves north.
- (h) As stated in the CAAMP,<sup>22</sup> kinetic views are important and help define the market town and its characteristics (para. 9.16). This is a smaller change in setting, but one that still departs from the market town character of the area which is a contributing factor to the significance of the listed buildings.

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<sup>20</sup> Rebuttal CD.5.25

<sup>21</sup> Rebuttal CD5, para 3..257

<sup>22</sup> CD4.7

34. ***Views south from Market Place [AVR 4]***

- (a) The group of buildings around the Market Place capture the historic market place and maintain a heavily commercial character. It is in the main pedestrianised and the hospitality premises all benefit from large outdoor seating areas enabling visitors to slowly experience the quality of the surrounding built form, which is primarily listed.
- (b) Again, the streetscape is of low-rise buildings though there are a few larger scale buildings in the form of the Corn Exchange and the Town Hall which given their civic role is understandable.
- (c) While the proposed development will introduce more dynamic frontages at street level, AVR 3 and 4 show taller buildings set behind these. This will disturb the low rise feel of the area which is symptomatic of a market town.
- (d) In longer range views to the south, taller buildings will appear changing the character and appearance of the area and therefore the market place setting of the listed buildings and their significance will be impacted.

35. ***Views from the east along Bear Lane [AVR B, C, D]***

- (a) Supplementary verified views requested by the Committee from Bear Lane show the full scale, bulk and height of the proposed development in greater view (AVR B, C and D).
- (b) In part, Bear Lane lies outside of the conservation area and has seen more recent development which can be described as less sympathetic. However, it provides a panoramic view of part of the conservation area and so is an introductory route into the conservation area.
- (c) Furthermore, as is clearly articulated in the legislation and policies, development within a conservation area should seek to enhance its significance. Therefore, unsympathetic development outside of the conservation area should not be used as a precedent for introducing less appropriate development within the conservation area,

- (d) AVRs B, C and D show that the proposed development will fill a large open gap in the skyline demonstrating the full height of the scheme and how different it is to the current built form, primarily in height. Although there was industry historically in this part of town, it was low-rise. The proposed buildings are more akin to large warehouses or mill factories – taller more dominating buildings.
- (e) As stated above, the street elevation improvements will benefit the street setting of the listed buildings and the conservation area. However, the wider setting of the Catherine Wheel PH and the Post Office will be heavily impacted by virtue of the taller buildings behind them in views B, C and D. The architectural significance of the Catherine Wheel PH will be harmed by this change in setting.

**36. *Town Hall & Church***

- (a) RHR made the point that the town hall is no longer the most visually dominant/important building. The eye is being raised again.
- (b) Much of the significance of the church comes from its architecture and history. Has a clear immediate setting. But Bartholomew Street is the wider setting of the church associated with the town centre. The church is part of the development of the town, changes to the town will impact its setting. Admit this change in setting will not impact the significance. However, must remember that as grade I listed it has a much higher significance and so any change is magnified and can have a greater impact.

**37. *Views towards Wharf and Museum***

- (a) Views from these buildings towards Market Place will have the roof lines interrupted by the proposed development. The long roof of the Corn Stores (now Museum) will be less defined against the backdrop of the proposed development and this is part of its significance and how it is visually appreciated.
- (b) The former Cloth Hall sits behind the Corn Stores visually, but the roof forms one continuous line. Currently, the backdrop is of a market town

with low rise buildings. AVR 8 shows how the roof line of these buildings will be visually lessened. The long roof line is part of the building's significance. This view also has the Town Hall clock tower which will now be competing in height with the proposed development. This is a specialist view that will not be perceived by all. Like the church, this is a Grade I and Grade II\* listed buildings and so very high significance and so the harm threshold is higher.

38. ***Other views from conservation area towards site***

- (a) The submitted AVRs show that the height, massing and built form will be visible in several of the long-range views from within the conservation area as well as outside it. The current views in the conservation area highlight the low-rise close grain of the urban form and importantly views down several streets are characterised by the rooflines descending gradually towards the vanishing point.
- (b) While outside the conservation area, AVR 10 shows that the proposed development will result in an extension of roofline bulk that encroaches towards the pinnacles provided by the Town Hall clock tower and the spires of St Nicholas (Grade I). This view shows much of the modern unsympathetic development that has happened. However, increasing this with further massing in the distance is harmful to the conservation area.
- (c) AVR 11 show the introduction of a visible bulk higher than the roof lines in front of it, and from an approach to the conservation area.
- (d) The Market Street elevations show the full scale of the proposed development at this point. The conservation area has a different character in this area, and includes the more recent Weavers Yard. Weavers Yard is four storeys (two storeys lower than the proposed development), though the high pitch of the roof makes the building appear taller than four storeys. However, the proposed development is taller than the remainder of the street elevation and the massing is very evident in both AVR F and E.

## Conclusion - Heritage

39. 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, RHR 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.
40. 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, which should also be accorded great weight in the heritage balance, RHR 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.

## 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.*

41. LPR policy DM30 (Residential Amenity)<sup>23</sup> requires all development to provide and/or maintain a high standard of amenity for existing and future users of land and buildings.

## Outdoor amenity space

42. Policy DM30 specifically requires all new residential development to provide functional amenity space to meet the needs of future residents. The supporting text to Policy DM30<sup>24</sup> repeats the Quality Design SPD guidance<sup>25</sup> and also says

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<sup>23</sup> CD4.34, p 218

<sup>24</sup> *Ibid*, para 11.100

<sup>25</sup> CD4.10

that balconies can be taken into consideration as compensation for limited garden space if they provide high quality space.

43. The SPD guidance<sup>26</sup> sets out guidance for the provision of external amenity space to serve the needs of future residents and requires for 1- and 2-bedroom flats from 25 sq. m of communal open space per unit and for 3- or more bedroom flats from 40 sq. m open space per unit. It acknowledges that this can be provided in a variety of different ways.
44. Applying LPA policy DM30 and the SPD guidance requires a total of 10,870 sqm for this development. The quantity of the communal outdoor space falls very short of the guidance amounts set out in the guidance, as it is approximately half of the guidance amount.
45. Within the appeal proposals, there is a combination of space provided with different area of communal space and roof gardens, with a range of facilities in the space, as set out in the landscaping plans. The majority of the communal open space being provided within communal outdoor area, in different locations, throughout the development. The quality of the space provided is assessed using a combination of factors, including the quantity of the space provided, the functionality of the space, its accessibility, convenience, and how safe the space feels, and whether it provides useful and useable space for the residents.
46. The evidence of Mrs Cutts addresses the shortcomings of the amenity space provided and is not repeated here. In summary, the communal outdoor spaces are not easily accessible to all residents. Those living on floor 5 on either side of the development do not have access to outdoor space on their level at all. To access the open space they would need to walk along the corridors to access the stair/lifts to reach the appropriate and level and then walk along the corridor of another level to access the space. This complicated way of accessing the communal open space may not be particularly desirable, or indeed practical for residents, particularly if accompanying the children to some outdoor space for

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<sup>26</sup> Ibid, para 1.16

play and relaxation. This inconvenience also applies to other apartments which have no access to the open space on their level.

47. Table 3 in Mrs Cutts evidence shows the provision of space on each level for each block. Even where there is space provided on a level, it may be a significant distance from a number of apartments, involving a long route along the corridor, e.g. a distance of up to 120 metres of floor 2 of Blocks A C, D & E, and up to 50 metres of floor 6 of that block. On floor 1 of Block B, E,F,G there is a distance of up to 100 metres to access the communal outdoor space on floor and approximately 80 metres to reach the roof garden on the fourth floor, again reducing the likelihood of it providing accessible, and therefore useful and useable space for residents.
48. The outdoor communal space on floor 1 of Block B will also be affected by the noise from The Newbury Public House, as demonstrated by the Acoustic Report plan within the Topic Paper 3.<sup>27</sup> This will significantly reduce the usefulness of this area during events within The Newbury, which take place during evenings and weekends, particularly in the summer months when this area is most likely to be used. With this communal area being less appealing to use at these times, then residents will need to use the alternative open spaces in the development for a quieter environment. This will put more pressure on these areas, when there is an overall shortfall in the quantum of space across the development. For some residents these spaces are located further away from their apartments and less convenient and desirable to access.
49. The LPA does not consider it appropriate to rely upon internal amenity space which is provided within the development to serve the residents. This includes the residents lounge, dining rooms/meeting spaces and gym and squash court. Whilst these provide some degree of additional space which contributes towards the quality of the living environment, it is not a substitute for the ability to enjoy outdoor space, fresh air, space for children to play and appreciation of nature, particularly given the significant under provision of the outdoor open space within the development.

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<sup>27</sup> CD5.

50. Whilst acknowledging the proper concessions made during the RTD on amenity space, the LPA maintains that the proposal will not accord with development plan policy.

### **Noise**

51. LPR Policy DM5 criteria for preventing nuisance, criteria b requires new development to be compatible with surrounding uses and not to give rise to unreasonable restriction to be places on existing businesses and community facilities. The supporting text (at paragraph 10.41) highlights how good design and suitable mitigation are required to prevent harm to existing business in future.
52. The harm from noise coming from The Newbury Public House has been identified and addressed in the evidence submitted by Russell Davidson ("RD").<sup>28</sup> 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.
53. Noise mitigation for the exposed flats has been proposed in the form of external façade treatment, enhanced glazing and an acoustically treated mechanical heat and ventilation system to achieve the appropriate internal noise levels. No mitigation has been proposed for the exposed amenity areas.
54. Concern remains that future occupiers of the apartments in certain blocks would be limited in the use of their property, unable to open windows at certain times of the day and be restricted in the enjoyment of the external amenity spaces which could make this an undesirable place to live and adversely impact their quality of life.

### ***Principle of good acoustic design***

55. RD does not agree that good acoustic design has been followed in the present case and that using the building envelope is the viable option. In requiring good

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<sup>28</sup> CD5.13

acoustic design, ProPG details that there is a hierarchy of noise management measures that LPAs should encourage, using the building envelope to mitigate noise to acceptable levels is the least preferred.

56. Using the orientation of buildings to reduce the noise exposure of noise-sensitive rooms is higher in the noise hierarchy, noise sensitive rooms such as bedrooms and external amenity space could have been located away from the elevations directly overlooking The Newbury's terrace. This would have minimised any potential noise impacts and reduced the number of rooms that may have been affected in addition to reducing the mitigation required to provide suitable internal noise, ventilation and thermal conditions within the apartments.
57. This principle has been followed in the design for the planning application for the alternative scheme. It should be remembered that good acoustic design is a process that begins as soon as land is under consideration for development. RD suggested that the Consultants have been presented with the said scheme and been asked to design acoustic mitigation for it, rather than having been involved at the very beginning of the development concept.

#### ***Acoustic mitigation***

58. The proposed acoustic mitigation measures may well provide a 'reasonable' living condition, but I would suggest that this is not desirable. Future occupiers of the apartments in the worst-affected blocks would be unable to open windows at certain times of the day and be restricted in the enjoyment of the external amenity spaces which could make this an undesirable place to live and impact their quality of life. External amenity spaces should be designed to achieve the lowest practicable noise levels.

#### ***Non-acoustic mitigation***

59. This idea is an interesting one however I can see difficulties. A noise management plan can be a useful tool for setting expectations and mitigating conflicts but it does come with potential drawbacks and risks. While informing residents about noise events can help manage expectations, it does not eliminate the actual noise issues. Some residents may still find the noise disruptive, especially if they forget about scheduled events or if unexpected noise occurs. Some residents may ignore

the recommendations and open windows or go to external amenity areas which may lead to complaints and disputes. Even with mitigation measures, some residents may still complain to the Council, potentially leading to restrictions on the venue's business. Problems may also occur if the noise management plan is not clearly communicated, residents may not fully understand the restrictions or scheduled noise events, or if noise events change at short notice or are extended. The noise impact could also exceed residents initial expectations and lead to complaints.

### **Conclusion – Living Conditions**

60. As such the development fails to accord with LPR policies DM5 Environmental Nuisance and Pollution Control, DM30 Residential Amenity and the objectives of the National Planning Policy Framework, due to the noise impact from entertainment noise on the proposed residents and failure to follow good acoustic design processes.

### **Main Issue 6**

*Whether the Council can demonstrate a five-year supply of deliverable housing sites ...*

61. As the LPR has now been adopted it is agreed that the Council can demonstrate a 5-year supply of housing in accordance with national policy. Whilst it is relevant to note that the LPR housing requirement is substantially lower than the most recent calculation of local housing need using the revised standard method, the Inspector should not speculate upon plan-making matters and it is premature to comment upon whether the housing requirement in any forthcoming local plan will address in full the local housing need in due course. Nevertheless, the Council accepts that proposal involves a windfall in terms of housing delivery which should be accorded weight as benefit weighing in favour of granting permission.

## **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.*

62. There is no dispute that the now adopted LPR constitutes 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.
63. The proposed development does not accord with the newly adopted development plan, when considered as a whole. The weight to be accorded to the failures to comply with policy is set out the planning evidence presented by Mrs Cutts and subject to examination. 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 was also addressed in evidence by Mrs Cutts.
64. Overall the LPA contends that weight attributed to the acknowledged planning benefits of the appeal proposal do not outweigh the planning disbenefits and conflicts with the development plan policies as the proposal will be harmful to the future living conditions of future residents and will result in harm to the setting and appearance of listing buildings and will be harmful to the character and appearance of the Newbury Town Centre Conservation Area.
65. The materiality of, and weight to be given to those considerations is a matter of judgement for the Inspector. Essentially, the Council has produced an evidential basis for dismissing the appeal on the basis of the three retained reasons for refusal on which evidence has been produced and examined at this inquiry.

## **CONCLUSION**

66. For the reasons outlined above and addressed in detail within the Council's submitted evidence, the LPA respectfully invites the Inspector to dismiss this appeal.

Six Pump Court  
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EC4Y 7AR

MARK BEARD

12 June 2025