Application for costs
An application for costs was made on behalf of the appellant against the West Berkshire District Council. This application is the subject of a separate Decision.

Procedure
Although this ‘urban development project’ falls within the descriptions set out at paragraph 10b of Schedule 2 and exceeds the thresholds in column 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011, the Screening Opinion issued by the Council on 30 March 2012 indicated that this scheme would be unlikely to have any significant environmental effect and consequently would not constitute EIA development. An Environmental Statement is thus not required. This is consistent with the stance taken by the Council in granting the original planning permission.

The scheme was also advertised as a Departure from the Development Plan under the 2009 Regulations, as it involved a mixed-use scheme in a ‘protected employment area’ identified by policy CS9. This does not appear to have been done in connection with ‘saved’ policy ECON1 and the permission granted in 2009.

Decision
The appeal is allowed and outline planning permission is granted in respect of the application to extend the life of consent reference 08/01255/OUTMAJ for a mixed use redevelopment comprising approximately 26,554m2 of floor space providing for offices, retail, financial and professional services, hotel, restaurant, hot food take-aways, motor dealership and residential apartments (160 units), together with 330 car parking spaces, a new junction on to the A339, site access and ancillary development all on land off Faraday and Kelvin Roads, Newbury, Berkshire, in accordance with the terms of the application ref: 12/00772/XOUTMA (dated 29 March 2012) and the plans submitted therewith, subject to the conditions listed in the attached schedule.

Main issues
From what the Inspector had read and seen, he considered that this appeal turns on whether the proposal would:

i) accord with the requirements of policy CS9 of the Core Strategy, or

ii) be warranted, on balance, by other policies and provisions of the Development Plan and by cogent material considerations, and

iii) replicate the previous permission in the absence of material changes in policy or circumstances.

Reasons
The site
The appeal site is a small part (1.3ha) of the London Road Industrial Estate, a hotch-potch of undistinguished buildings strewn beside undistinguished roads, all rather incongruously named after particularly distinguished scientists. Cars on display, or parked in forecourts, or lining the estate roads dominate much of the street scene. A car dealership stands on part of the appeal site. But, there are also run down corrugated sheds here, along with underused and vacant yards and buildings, hemmed in behind the utilised and more robust structures fronting the block circumscribed by Kelvin, Faraday and Fleming Roads. To the west, beyond fencing and foliage, are the dual carriageways of the A339 separating the site from Victoria Park, across which there is a modest walk to the ‘new’ Parkway Shopping Centre and the centre of the town: to the north, along London Road (part of the A4), there are ‘retail sheds’ occupied by Majestic Wine, Lidl and Pets at Home: to the east and south, are more car dealerships and the rest of the industrial estate, including some small workshops.

The proposal
The scheme is submitted in outline, with only scale and access to be considered now. Much illustrative material provides indications of cross sections, heights and massing of the buildings envisaged, together
with broad floor plans, indicative land uses and landscaping. The essence of the scheme is a raised ‘plaza’ with a stepped pedestrian access from Fleming Road (to the south) surrounded by a series of ‘stepped’ flatroofed blocks rising to a maximum height of 26m, roughly 7 storeys including the podium level car park. The block facing the A339 is shown as continuous. The 4 other blocks are shown grouped to form a central ‘plaza’ with further pedestrian entrances to the south and east. Vehicular access to the car park beneath the ‘plaza’ is indicate to be from Faraday Road (to the east) and provision for goods deliveries to the basement is shown from Kelvin Road (to the north).

The proposal is intended to renew the planning permission for a mixed use scheme granted in January 2009. Although there are one or two procedural or mechanical differences between the appeal scheme and the previously permitted proposal (to be addressed later), the material components of the former are, for all practical purposes, identical to the latter. Hence, the current scheme entails the provision of offices (up to 7,234m2 of Class B1), shops, together with financial and professional service outlets (up to 3,984m2 in Classes A1 and A2, of which no more than 2,200m2 is to be Class A1, previously secured by a section 106 Undertaking but now to be subject to a condition), an hotel (up to 3,562m2 of Class C1), restaurants and ‘takeaways’ (up to 1,376m2 of Classes A3 and A5), a motor dealership (711m2 sui generis) and 160 flats, of which 48 (30%) are to be ‘affordable’. Provision is to be made for some 330 cars to park beneath the ‘plaza’ and a new link road from the A339 into the London Road Industrial Estate via Faraday Road is to serve the development. It could also serve the rest of the Industrial Estate and help to facilitate much of the currently envisaged regeneration for the area.

A signed and dated (5 November 2015) section 106 Agreement would secure the provision of the affordable housing. The provision accords with policy CS6 of the adopted Core Strategy which requires that 30% of the units (48 in total) on previously developed sites (like this one) and accommodating 15 dwellings or more (or extending to 0.5ha or more – such as the proposal) should be ‘affordable’, subject to viability considerations. A suggested condition insists that development shall not begin (save for the new link road) until the location of the affordable units on the site has been agreed in writing with the Local Planning Authority.

The previously submitted Undertaking, dated 15 August 2014, limiting the provision of retail floor-space to no more than 2,200m2, is now superseded by suggested Condition 3. The condition limits the ‘gross external floor areas’ of all the ‘commercial uses’ in line with the figures set out above. In any case, the Undertaking would no longer be effective depending, as it does, on permission having been granted by the Council, a requirement that is no longer possible.

A Community Infrastructure Levy will apply in relation to the residential and retail uses proposed, in accordance with the adopted CIL Charging Schedule, effective from 1 April 2015.

Apart from the conditions already referred to, other suggested conditions relate to the submission of details concerning the appearance, landscaping and layout of the buildings, together with floor levels and a limitation on the height of the blocks to no more than 26m. There are measures suggested to control noise, ‘air handling’ plants, flood risks, the management of surface water and drainage and to ameliorate any impact of contamination. Provision is also made for bats and swifts and for the protection of trees.

Planning policy and the main issues
The Development Plan now consists of the West Berkshire Core Strategy 2006-2026, adopted in July 2012, and the ‘saved’ policies of the West Berkshire District Local Plan 1991-2006. There is an SPD relating to Planning Obligations and there is an adopted CIL Charging Schedule. In addition there are two aspirational ‘Vision’ statements, the initial one written in 2003 (Newbury 2025) updated in 2014 by Newbury 2026; the initial ‘Vision’ is referred to in the Core Strategy.

The Decision Notice listed 4 reasons for refusal and cited policies CS5, CS6, CS9, CS11, CS13 and ADDP2 in support of that decision. However, the Statement of Common Ground now indicates (subject to the suggested conditions and the proffered section 106 Agreement) that the appeal scheme would accord with all those policies except policy CS9. Hence, the Council offer no evidence in support of reasons for refusal 2 - 4 relating mainly to retail impact, car parking and traffic and, although they maintain that the scheme would be contrary to policy CS9, their stance is that the significant employment generating uses and the individual merits of the scheme, including its regeneration potential, tip the balance in favour of the
In addition, no evidence is offered in support of the first reason for refusal now that the appeal scheme entails the provisions of a section 106 Agreement to secure the delivery of the requisite affordable housing. In those circumstances, there ought to be little to consider here. Nevertheless, the Inspector thought that he had to address the issues outlined above.

**Policy CS9**

The Statement of Common Ground makes it clear that the one remaining policy conflict engendered by the scheme is with policy CS9. Essentially, the proposal to provide 160 dwellings is claimed to conflict with the location of the site within an identified ‘protected employment area’ (the whole of the London Road Industrial Estate) ‘designated’ for business, industrial and storage purposes (Class B uses). Other ‘employment generating uses’ (not in Class B) are to be favourably considered where these would be complementary to the existing business use and consistent with the integrity and function of the location. Where such uses would be likely to substantially prejudice the strategy set out in the context of the policy they are not to be permitted. The policy stems from, and supersedes, policy ECON1 in the old Local Plan, where the designation, role and boundaries of the ‘protected employment areas’ were identified. However, the Core Strategy confirms that those designations, roles and boundaries are to ‘continue’ until reviewed in the context of a Site Allocations DPD. The Proposed Submission Housing Site Allocations DPD (currently being reviewed in the light of consultations) indicates that the London Road Industrial Estate is to be regenerated with the aid of a comprehensive master-plan intended to promote high quality offices, commercial and employment generating uses together with some housing. However, the details are yet to emerge and the DPD has further to progress on its path to adoption. So, for the moment the role and function of this ‘protected employment area’, as indicated in policy CS9, remains.

On the face of it, it seemed pretty plain to the Inspector that housing development must be contrary to the provisions of policy CS9. Housing is not a Class B use, for which this ‘protected employment area’ is explicitly designated. Moreover the juxtaposition of housing with ‘business, industrial and storage uses’ could, all too easily, seriously detract from the reasonable environment that residents might expect to enjoy and inhibit the operations, growth and viability of the enterprises nearby, thus fundamentally undermining the whole purpose of the designation and the role envisaged for these areas in policy ADPP2 (of which more later). In addition, he did not agree that a residential scheme can be properly described as an ‘employment generating use’. Of course, builders build it and residents subsequently require all sorts of goods and services; some may even work from home, but, a dwelling is not a place where most people generally go to gain paid employment and, both in terms of the Town and Country Planning (Use Classes) Order and common usage, a dwelling would not normally be denoted or described as an ‘employment generating use’. The Inspector considered that policy CS9 reflects just such a ‘common sense’ approach and must be properly interpreted on that basis. In any case, protection for a ‘protected employment area’ would be pointless, and entirely ineffective, if residential development were to be as acceptable there as anywhere else. Hence, although the policy does not explicitly prohibit residential schemes, he did not agree either that it is neutral with respect to housing or that such development ‘cannot be contrary to the policy itself’. Quite the opposite. Indeed, he considered that policy CS9, as written, clearly serves to discourage housing schemes in ‘protected employment areas’ and that housing development on its own would clearly contravene the aims, terms and provisions of the policy itself.

Of course, other policies ‘pull’ in other directions. The main focus for housing growth is to be in Newbury and, the re-use of ‘previously developed land’ on sites ‘well integrated into the town’, particularly where the required affordable housing and infrastructure provisions can be met, is supported by several such policies. But those policies tend to be general and must, consequently, be interpreted to comply with more specific designations, including those explicitly identifying ‘protected employment areas’. It makes nonsense of those designations to interpret such compliance the other way around. And, although policy ADPP2 supports the ‘regeneration of the Faraday Road area’ and is intended to refer to the appeal scheme (as permitted in 2009), it does not obviously condone regeneration through the construction of housing on its own. It follows that housing would not only be a form of development generally contrary to the provisions of policy CS9, but also that a residential scheme would, in isolation, be contrary to the relevant provisions of the Development Plan.

**The Development Plan and other material considerations**

Nevertheless, the balance to be struck in relation to a mixed use project such as this warrants different considerations. And, as indicated above, different policies in the Core Strategy pull in different directions to policy CS9.
In particular, Area Delivery Plan Policy 2 of the Core Strategy sets out specific aims and requirements for Newbury itself. In relation to the town centre it states that ‘regeneration of the Faraday Road area … for mixed use and office developments will create additional jobs and improve the environment of this part of the town’ and it refers to a ‘permission … for an office building of over 7,000m², a restaurant and hotel’ as having been granted. It is agreed in the Statement of Common Ground that this is intended to be a specific reference to the scheme granted permission in 2009 on the appeal site and which the current project is proposed to renew. The current project is thus consistent with, and supported by, a key policy of the Core Strategy. And, in relation to both the scale and the consequential provision of additional jobs and environmental improvement to a run-down part of the town, this mixed use scheme chimes with the Strategy’s aims and provisions; indeed, it represents just how 'Newbury will be the main focus for business development over the plan period', as policy ADPP2 advocates.

The proposal would result in several material benefits. First, it would result in renewal and regeneration here. Second, the scheme is expected to generate some 575 jobs in offices, shops, cafés and bars, roughly a 10-fold increase in the industrial employment potential of the appeal site and recognised as ‘a substantial number of new jobs’ in the Planning Officer’s report. Third, the proposal would deliver some 48 affordable dwellings, in line with policy CS6. Fourth, the project would provide a new access road into the London Road Industrial Estate from the A339. This is seen as crucial to the intended redevelopment and regeneration of the Estate as a whole. Indeed, the Council authorised the instigation of CPO procedures (in July 2015) to acquire land to deliver just such an access road (granted permission in 2015, albeit configured slightly differently to the link put forward in the context of the appeal proposal) in order to unlock the potential for the redevelopment of the Estate for a mix of uses broadly similar to those in the appeal scheme. Indeed, the ‘vision’ for the whole Estate indicated in the latest Strategic Economic Plan from the LEP suggests the provision of 14,000m² of B1 floor-space (creating 1,000 jobs), ‘between 165 and 300 dwellings… and an 80 bed hotel’. The emerging Submission Housing Site Allocations DPD currently reflects that ‘vision’; the comprehensive master-plan cited in that document being intended to promote high quality offices, commercial and employment generating uses and some housing. The appeal proposal is expected to deliver, on its own, about half of the jobs and floor-space envisaged by the LEP, all or about half of the dwellings expected and the suggested hotel. It would also deliver the access road on which the redevelopment of the rest of the Estate depends without (on the face of it) the need for public subsidy. Moreover, it seems to me that the appeal scheme would almost inevitably act as a catalyst to encourage further redevelopment along the lines put forward in the Strategic Economic Plan and (as indicated below) elsewhere.

The Inspector read that the redevelopment of the London Road Industrial Estate is a long held vision of the Council. This is set out in the Newbury Vision 2025 document, published in 2003 but referred to in the Core Strategy in explaining the purpose of policy ADPP2. A ‘key aspiration’ is to ‘increase the type and level of employment opportunities … [and] … provide a high quality office environment to supplement current office provision in Newbury town centre and to attract inward investment’. The ‘Vision’ entails ‘a mix of employment generating uses and other appropriate commercial uses, and opportunities to provide residential development which could deliver additional homes in an attractive and sustainable environment within walking distance of Newbury town centre’ both within and beyond the ‘protected employment area’.

This ‘Vision’ has now been updated and taken forward to the end of the current Plan period in the recently published Newbury Vision 2026 document. It is explained that some of the original schemes have not been completed but will be progressed, including ‘a number of exciting potential developments’, such as ‘a mixed use (residential and commercial) re-generation of the London Road Industrial Estate’, also offering possible opportunities for private rented accommodation to meet local needs. The need for quality business space, particularly for offices, is reiterated as well as the provision of a positive ‘gateway’ at this corner of the town securing new employment and providing high quality town centre family and small residential units adjacent to the Kennet and Avon Canal. The provision (by 2016) of a new link road from the A339 into the London Road Industrial Estate is part of this ‘Vision’, seen as offering a means to ‘open up’ this important area.

Taking all those matters into account, the Inspector considered that the current proposal would accord with policy ADPP2, and, although the scheme would conflict with the terms of policy CS9, its potential contribution to the fundamental aims of policy ADPP2 (in fostering redevelopment and regeneration here) would offer compelling planning grounds in its favour. In any case, the long-held and recently confirmed ‘vision’ for this area has always envisaged the possibility of residential development within this particular ‘protected employment area’, thereby almost condoning that particular conflict with policy CS9 in this particular case; indeed, that is reflected in the stance adopted by the Council in relation to this appeal, as
the Statement of Common Ground confirms. Moreover, the proposal would result in several significant material planning benefits as indicated above. In those circumstances, he found that the balance struck within the Development Plan is firmly in favour of the scheme, an outcome rendered all the more compelling by the significant benefits likely to be delivered by this project.

The previous permission
The appeal proposal is described on the application form in exactly the same terms as the previously permitted scheme. It remains an outline proposal for a mixed use redevelopment amounting to some 26,554m2 of floor-space providing for offices, retail, financial and professional services, hotel, restaurant, hot food take-aways, motor dealership and residential apartments (160 units), together with 330 car parking spaces, and a new junction on to the A339. Condition 1 of the previous permission insisted that the scheme should ‘be built out in strict accord with the amended plans as specified in the letter dated the 14 November 2008 from the applicant’s agents’. The plans are listed, including those received subsequently (on the 20 January 2009) and amended. The letter of the 14 November 2008 explained that, as a result of changes made by the cited plans, the floor area of the scheme had decreased by about 9% and the floor-space allocated to the main uses was to be exactly as described above. Those ‘allocations’ are now to be controlled explicitly by a specific condition rather than by reference via a condition to plans and figures cited in an amending letter but the consequences for the scheme actually proposed are the same.

What is different is that the current proposal explicitly limits the extent of retail uses (Class A1) to 2,200m2. This was initially proposed to be achieved by an Undertaking made in August 2014, but is now addressed by suggested Condition 3. No such limitation was imposed on the previously permitted scheme, though the ‘amending’ letter of 14 November 2008 clearly explains that the increase of 2,618m2 of A1 and A2 floor-space (in the context of a 9% reduction in the proposal overall) was intended mainly to accommodate active frontages at street level and the A2 uses. It is clear from the letter and from submitted meeting notes that those changes were made in response to extensive and very positive dialogue with the Council. Clearly, the original scheme had included less extensive A1 and A2 uses amounting (by subtraction) to only some 1,366m2.

There are other ‘mechanical’ differences. A completed section 106 Agreement is to secure the provision of the affordable housing in relation to the current scheme while appropriate infrastructure provision is to be sought in accordance with the adopted CIL Charging Schedule. Corresponding provisions were met by a section 106 Agreement completed in May 2009 in relation to the previously permitted proposal. The differences are immaterial.

What, then, warranted a refusal to renew planning permission to renew the scheme? The Planning Officer’s report cites physical and policy changes. The physical changes entail the completion of the new Parkway Shopping Centre (across Victoria Park) which had only just been started in 2009: the commencement of a scheme for 1500 dwellings at Newbury Racecourse, committed in 2009 but only permitted in 2010: the completion of the Aldi store on the London Road, permitted in January 2010: and, possibly, the installation of a new Morrison’s store in the town centre. The policy changes cited are the publication of the Framework (NPPF) and the adoption of the Core Strategy.

The Statement of Common Ground now indicates that the physical changes are, in effect, irrelevant. It is agreed that ‘both in terms of relevant planning principles and the quantum of floor-space proposed in respect of the individual land uses, all of the proposed uses specified in the description of development … are acceptable in the context of this appeal. Hence, the physical changes cited do not affect the merits of this proposal.

As for the policy changes, it is true that the Framework focuses on ‘sustainable development’, advocates the importance of a plan-led system and reiterates the statutory requirement that applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise but, it was (almost) ever thus, as the 1992 version of PPG1 indicates and, although the adoption of the Core Strategy might well confirm that the approach to ‘protected employment areas’ set out in policy CS9 is sound, that approach actually endorses the continuation of the designations, roles and boundaries of those areas identified in policy ECON1 of the old Local Plan until reviewed in the context of a Site Allocations DPD. Whether a concept now identified as temporary and subject to review deserves ‘greater weight’ because it features in an adopted Core Strategy rather than in a recently ‘saved’ policy of an old Local Plan seemed highly debatable to the Inspector. In any case, planning policies do not ‘fade away’ with age alone. The proper test depends on their relevance. What the adoption of the Core Strategy and policy CS9
actually demonstrate is that the terms of previously ‘saved’ policy ECON1 remain relevant, just as they were when the previous permission was granted.

The Inspector considered, therefore, that for all practical purposes, the current proposal replicates the originally permitted scheme. Where differences can be identified, they serve to clarify matters that might initially have been assumed to have been commonly understood and, as it is now agreed that the intervening physical changes do not affect the merits of the appeal proposal and as the policy changes are rather more apparent than real, it seemed to him that the circumstances prevailing here do not warrant preventing this scheme.

**Conditions and the Agreement**

Several conditions are imposed to ensure that the scheme would be implemented as intended. They relate to the submission of details concerning the location of the affordable housing, the appearance, landscaping and layout of the buildings, together with floor levels and a limitation on the height of the blocks to no more than 26m. They also relate to the overall limitation on the floor-space contained within the scheme and the restrictions on the maximum floor-space to be occupied by individual uses, his conclusion rests on those details. There are measures to control noise, ‘air handling’ plants, flood risks, the management of surface water and drainage, the removal of spoil from the site and to ameliorate any impact of contamination. The preparation of a Construction Environmental Management Plan, together with measures to control odour and dust, are required to foster ‘good practice’ and to comply with policy C14. A Grampian condition is imposed to ensure that this scheme would not be implemented without the provision of the link road (either as proposed here or as designed by the Council) from the A339. Provision is also made for bats and swifts and for the protection of trees. The Inspector amended some of the suggested conditions to avoid reliance on third parties, to include a commonly used ‘buffer’ to allow for climate change and for clarity.

The signed and dated section 106 Agreement would secure the provision of the affordable housing, in accordance with policy CS6. The Inspector's conclusion rests on that provision. The need for additional infrastructure would now be provided in accordance with the adopted CIL Charging Schedule.

**Conclusion**

The Inspector found that although the provision of 160 dwellings here would, in isolation, be contrary to policy CS9, several other policies in the Development Plan pull in other directions, as do many policy aims and the long-term ‘vision’ envisaged for this area, so that the balance struck within the Development Plan is firmly in favour of the scheme. Other considerations and the likelihood of realising significant benefits make the case for this project all the more compelling. In those circumstances, in the absence of material changes in policy or physical conditions, and having considered all the other matters raised, he concluded that this appeal should be allowed, subject to the conditions listed in the attached schedule.

**Costs Decision**

**Reasons**

The Planning Practice Guidance reaffirms that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

**The gist of the cases**

The Inspector did not need to recite everything in the written submissions made in relation to this application for costs or the rebuttal from the Council; those papers are on the file. In essence the claim is that it is self-evident that the Council have behaved unreasonably, since they now agree (as demonstrated in the Statement of Common Ground) that, subject to the section 106 Agreement and the imposition of suitable conditions, the proposal would be acceptable in terms of both the quantum of floor-space proposed for each use and the planning principles involved; hence no evidence is offered in respect of any of the 4 reasons for refusal. It follows that the 4 reasons for refusal must remain unsubstantiated. The assertion is that had the relevant procedures and policies been applied correctly, permission would not have been very seriously delayed and the appellant would not have been put to the unnecessary expense of correcting misconceptions about the application or pursuing the proposal at appeal.
In response, the Council claim to have behaved reasonably, having regard to the DCLG publication ‘Greater Flexibility for Planning Permissions Guidance’ (that then applied), the terms of the application and relevant policy. Instead they assert that the appellant brought about the delay in determining the application and the subsequent appeal by refusing to undertake an appropriate retail impact assessment and then only submitting a completed section 106 Undertaking (limiting the retail floor-space to 2,200m²) after the committee resolution to refuse the application. In addition, the Council maintain that the appellant’s approach to policy CS9 (asserting housing to be an employment generating use) is nonsensical.

Cost considerations
The Inspector carefully considered those matters. The Statement of Common Ground now indicates (given the completed section 106 Agreement and subject to the imposition of the suggested conditions) that the proposal would be acceptable in terms of the quantum of floor-space proposed and the planning principles involved; hence no evidence is offered to substantiate any of the 4 reasons for refusal. That constitutes reason enough to warrant an award of costs. How has that come about?

It seemed to the Inspector that the Council have misunderstood or misapplied the procedures applicable to the application, misinterpreted the weight due to their own policies relevant to the proposal and, in his view, perversely construed what was actually being proposed. Quite why such a catalogue of misconceptions was allowed to occur is beyond the forensic scope of this application for costs. In any case, although such reasons may affect the degree of ‘unreasonableness’ exhibited, they do not (at least in this instance), affect the outcome of the relevant test, namely whether unreasonable behaviour has actually occurred. Nevertheless, the chronological coincidence of such errors with the commissioning, publication and recommendations of the Strategic Feasibility Study into the future use of the London Road Industrial Estate (including the appeal site) and the publication of the consequent Development Prospectus and Opportunity Document for the Estate is of concern.

Procedural muddles
The misunderstanding (or misapplication) of the procedures applicable to the application relate mainly to the provisions (no longer applicable) set out in the ‘Greater Flexibility for Planning Permissions Guidance’. The purpose of that ‘new’ measure, under which this application was submitted, was ‘to make it easier for developers and local planning authorities to keep planning permissions alive for longer during the economic downturn so that they can more quickly be implemented when economic conditions improve’. The procedure entailed a simplified form of application which had to be for the same development as that previously permitted with the form simply referring back to the earlier permitted proposal. Since schemes for renewal would previously have been deemed to have been acceptable, the advice was to ‘take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly’ with determinations focussing on those ‘Development Plan policies and other material considerations which may have changed significantly since the original grant of permission’. The clear implication was that in the absence of such changes, the renewal of permission might be expected, though in the face of substantial changes, renewal might be refused.

The Council interpreted those provisions as requiring this application for renewal to replicate in every respect the terms of the previous permission, members being advised that the procedure prohibited the imposition of any additional condition. That interpretation, and hence the proffered advice, was wrong. The Guidance explicitly stated that exactly the same conditions as those imposed previously did Costs Decision relating to not necessarily have to persist. On the contrary, section 70 of the Town and Country Planning Act 1990 continued to apply, and by way of example, the Guidance explained that different conditions might be imposed, or others removed, to render the scheme acceptable in the light of new policies or circumstances. The policies and circumstances perceived as have changed are listed in the Planning Officer’s report, but (leaving aside for the moment whether such changes were actually material) the Council steadfastly refused to countenance the imposition of any condition that might have responded to the changes perceived. Of course, they might have been right had such a condition materially altered the nature of the application. But the muddle (discussed later) focussed merely on a suggested condition to apportion the extent of Class A1 and A2 uses, explicitly limiting the amount of A1 retail floor-space to 2,200m². Such a condition would have done no more than correct the Council’s incomprehensible misinterpretation of what was actually proposed and (as now agreed) overcome one of the reasons for refusal. Those circumstances render the failure to follow the correct procedure all the more perverse.
There have been more mundane misunderstandings. An earlier application to renew this planning permission (11/02159, dated 6 October 2011) was refused partly due to the absence of an Environmental Statement. No Environmental Statement had been required in connection with the previously permitted scheme and the sudden requirement to provide one seems strangely at odds with the Council’s stance that the application for renewal should precisely replicate the terms of the previous permission. In the event, the Screening Opinion subsequently issued by the Council in connection with the current renewal application confirms that an Environmental Statement was not required.

Policy misconceptions
Turning to the weight attributable to policies, the Inspector considered only policy CS9; one or two other policy matters are touched on in his decision letter. It is asserted that preventing housing in ‘protected employment areas’, originally in line with ‘saved’ policy ECON1 but now in accordance with policy CS9, warranted greater weight than it did previously due to the (then) recent adoption of the Core Strategy but, although the new policy does endorse the continuing designations, roles and boundaries of those areas, it does so only until they can be reviewed in the context of a Site Allocations DPD. The endorsement is thus only temporary and it is subject to a planned and impending review. In contrast, policy ECON1 was intended to apply for the whole of the relevant Plan period: and, the purpose of the ‘Saving Direction’ was to ensure that it would continue to do so until superseded. On the face of it, therefore, the natural weight reasonably attributable to these policies would seem to be the reverse of that claimed by the Council. Certainly, a policy explicitly identified as ‘temporary’ and subject to a planned (now on-going) review is not an obvious reason to insist on stricter adherence to it in contrast to one ‘saved’ and enduring and, although policy ECON1 had endured for some time when the previous permission was granted, planning policies do not ‘fade away’ with age alone. In any case, the Inspector could discern no consideration of the weight (or otherwise) that might have been attributable to policy ECON1 in the process of granting the previous permission. Hence, he considered that the stance now adopted by the Council is somewhat contrived.

Even more so in the light of the emerging Site Allocations DPD (in which the review of the ‘protected employment areas’ is to take place) and the ‘Newbury Vision’ documents. The current version of the Proposed Submission Housing Site Allocations DPD indicates that the London Road Industrial Estate is to be regenerated with the aid of a comprehensive master-plan intended to promote high quality offices, commercial and employment generating uses together with some housing. Of course, the elements of this document available at the time of the decision must have been more embryonic but, the indicated redevelopment of the London Road Industrial Estate has actually been a long held ‘vision’ of the Council as indicated in documents published as far back as 2003, referred to in the Core Strategy, partly incorporated into policy ADPP2 and reflected in the emerging Site Allocations DPD. Housing has always been (and still is) envisaged as part of that ‘vision’. And, the Statement of Common Ground indicates that housing is acceptable here as part of the appeal proposal. In those circumstances, persistently objecting to the renewal of the previously permitted residential element of this proposal appears almost Gormanghastian in its pedantry and unreasonably myopic.

Misrepresentation of the proposal
As to the nature of the proposal, the Council have, until fairly recently, perversely construed this application for renewal as constituting a materially different form of development to that previously permitted. They have insisted that the scheme could have included up to nearly 4,000m2 of Class A1 retail floor-space; the assertion is even reiterated in their response to the appellant’s application for costs. As a consequence, they insisted that a retail impact assessment was necessary, its absence being one of the reasons for refusal. Moreover, the traffic impact assessment was influenced not only by that ‘additional’ retail floor-space, but also by a compounding error that it might all be occupied by a supermarket. The traffic impact was thus found to be ‘unacceptable’, resulting in another reason for refusal.

However, the application for renewal was made in exactly the same terms and envisaged exactly the same mix of uses (and their extent) as the permitted scheme. The previous permission was subject to the provisions set out in the letter of 14 November 2008 restricting up to 3,984m2 of floor-space to Classes A1 and A2. Clearly, the restriction did not apply solely either to Class A1 or Class A2. So, insisting that all that floor-space might only accommodate Class A1 retail uses constituted an inaccurate reflection of the proposal. Such an interpretation was either an exercise in Humpty-Dumpty logic, bending the restriction to mean something that it did not: or, it might have encompassed the possibility of subsequent ‘permitted development’ while steadfastly eschewing provisions to impose a suitable restricting condition. Neither alternative was reasonable.
No condition to apportion the extent of the Class A1 and Class A2 uses across the 3,984m2 of floor-space was imposed on the previously permitted scheme. It is not clear whether that was an oversight or whether such a condition was then considered unnecessary. Applicable planning policies (then in PPS6 and those 'saved' from the old Local Plan) could have warranted restricting the extent of Class A1 uses in this 'out-of-centre' location to less than 2,500m2 or requiring the submission of a retail impact study (or possibly both). The fact that neither was required may thus reflect an understanding that the retail floor-space envisaged was intended to be suitably limited and could, if necessary, be appropriately controlled as one of the details still to be approved after the grant of the outline planning permission. Indeed, as the 'amending' letter of 14 November 2008 clearly explains, the initial scheme had involved much less retail floor-space and the increase (of about 2,618m2) entailed in the finally permitted version had evolved in response to 'extensive and very positive dialogue with the Council'; it was intended mainly to accommodate active frontages at street level and the A2 uses.

It is not clear why a similarly flexible approach might not have sufficed in relation to the current renewal. There has been no material change in policy or circumstances; the Core Strategy and the Framework chime with the previous approach in PPS6 and the old Local Plan while it is agreed in the Statement of Common Ground that the circumstantial changes do not affect the acceptability of the proposed renewal but if, for clarity, an explicit division between the extent of A1 and A2 uses was deemed to be necessary, then it could have been achieved by the imposition of a suitable condition, as initially intimated in emails (dated 1 June 2012) from the case officer. Such a condition could hardly be said to 'change the nature of the proposal'; it would have simply apportioned space between the proposed A1 and A2 uses. It was not reasonable to insist that just such a further limitation might be required but to refuse to impose an appropriate condition.

In the face of such obstinacy, a section 106 Undertaking was prepared and submitted to limit the extent of the Class A1 retail floor-space to 2,200m2. A draft was delivered on the day (5 August 2014) that the relevant committee report was published; an ‘Update’ report was prepared for the committee meeting that took place on 13 August 2014. It is hard to read the ‘comment’ proffered in that report in any other way than as implying the proffered Undertaking to materially alter the nature of the application. The ‘comment’ includes the observation that ‘It is open to the applicant to submit a fresh application on the site if he so chooses on this revised basis with all the necessary supporting information and that application will be treated on its individual merits’. In the event, the completed Undertaking was submitted two days after the committee meeting but nearly two weeks before the Decision Notice was issued. The Inspector considered that the comments offered to the committee were misleading, as is now acknowledged in the Statement of Common Ground.

Other matters

The appellant points out that the Council suspended negotiations to consolidate leases on the site in 2011 coinciding with advice from Strutt & Parker on a strategy to increase Council revenue (as landowner) from the London Road Industrial Estate (including the appeal site) and to promote regeneration in line with both the Newbury 2025 Vision and the (then still emerging) Core Strategy. The Inspector reads in the Strategic Feasibility Study (first approved in September 2012 and adopted a year later) that the proposal, as permitted in 2009, ‘appears to be out of character with the location in its current form and due to its isolated nature opportunities for well-designed place-making with strong urban connection are limited. The Faraday Plaza site however will be a key land asset in any master-planning study therefore this strategic feasibility study includes it as part of an integrated comprehensive proposal in which a more appropriate arrangement of the various mixed uses can be secured. That assessment of the scheme is contrary to all other professional assessments and, at least from a planning point of view, unfounded in any reality that he could discern. Moreover, as the ‘more appropriate arrangement of the various mixed uses’ that actually emerged in the Development Prospectus and Opportunity Document was for a supermarket and car park, the ‘vision’ envisaged here seems particularly mediocre in comparison to the renewal application.

The Development Prospectus and Opportunity Document for the redevelopment of the London Road Industrial Estate indicates that ‘a mix of new homes, a supermarket and a range of substantial new business accommodation and other uses may potentially be included in the medium term’. That seemed to the Inspector to reflect something of the Newbury 2025 Vision. It was to be implemented incrementally because ‘The pattern of existing leasehold interests and other factors means that new development is likely to comprise a series of phased projects built out across the 35 acres over a 10 year period or longer’. It is explained that ‘These projects will be able to progress once the context for comprehensive improvement
has been agreed with a chosen partner and once planning support for the preferred mix and scale of uses has been established’.

It is not clear why none of the ‘phased projects’ envisaged appear to encompass the Faraday Plaza or to build on the previous ‘planning support’ for that scheme. However, the appellant suggests that the Council seek to prevent the renewal of that planning permission in order to secure the site at its ‘existing use value’ rather than at a value reflecting the redevelopment previously permitted. As indicated above, such considerations are beyond the forensic scope of this application for costs and, although the Inspector read in correspondence from the Council’s Chief Executive that ‘In regard of land acquisition it is key to delivery … that we adopt an approach which ensures 3rd party land is brought into book at prevailing market value ... and that CPO powers might be invoked, that does not necessarily provide the fuel to perpetrate the errors evident in the processing of this application for renewal. Nevertheless, the errors are evident and unreasonable.

**Conclusion**

In those circumstances, the Inspector found that unreasonable behaviour resulting in unnecessary expense, as described in the Guidance, has been demonstrated.

**Costs Order**

In exercise of his powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, the Inspector HEREBY ORDERED that West Berkshire District Council shall pay to Faraday Development Limited, the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

The applicant is now invited to submit to the West Berkshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

DC