



Appeal Decision

Inquiry held on 3 June to 6 June 2025 and 10 June to 12 June 2025

Site visit made on 11 June 2025

by R Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st August 2025

Appeal Ref: APP/W0340/W/25/3359935

Kennet Centre, Newbury, RG14 5EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Lochailort Investments Ltd against the decision of West Berkshire Council.
 - The application Ref is 23/02094/FULMAJ.
 - The development proposed is described as 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.
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Decision

1. The appeal is dismissed.

Procedural and Preliminary Matters

2. The Council's Decision Notice set out a total of six reasons for refusal (RfRs). A Case Management Conference (CMC) was held on 10 April 2025 at which representatives of all main parties were in attendance. At the CMC, the administrative and procedural arrangements for the inquiry were discussed and it was agreed how the evidence should be heard.
3. Following the CMC and as a result of ongoing discussion between the parties, the submission of further information, and subject to appropriate conditions and obligations, the Council did not pursue those reasons relating to parking (RfR2) and affordable housing provision and planning obligations (RfRs 3 and 4). The Newbury society (NS) and Newbury Town Council (NTC) were Rule 6 parties to the inquiry with the latter retaining objections relating to parking which were dealt with in writing and at the inquiry.
4. Discussions on a S106 legal agreement continued before and during the inquiry, including at a Round Table Discussion (RTD). There was agreement that the obligations would comply with the requirements of Regulation 122 of the Community Infrastructure Regulations 2010. The Council submitted a statement setting out the justification for the various obligations, including references to relevant planning policies and the rationale for calculating the financial contributions. This was revised following discussions at the RTD.
5. By the end of the inquiry some minor drafting amendments were still required and I therefore allowed a period for the agreement to be completed and it was duly

submitted within the deadline imposed. I deal with the agreement as necessary below but as a result of the above the inquiry was closed in writing on 25 June 2025.

6. A general planning Statement of Common/Uncommon Ground (SoCG) along with additional SoCG covering heritage, living conditions and noise were also submitted along with written evidence on parking from the appellant and rebuttal evidence from the appellant. At my request having heard the evidence and mindful of the number of relevant heritage assets to consider a 'Listed Building and Visual Impacts' summary table (LBVI) setting out the final positions of the parties was submitted after the inquiry. The NS also submitted an 'additional buildings table' at the same time which included their view on the effects on a number of unlisted buildings. However, I did not request this latter evidence and whilst I note the appellant's ultimate conclusion no harm would be caused it has not been determinative in my decision.
7. I am required to determine this appeal on the basis of the development plan and national policy which are in place at the time of my decision and on Tuesday 10 June, the Council resolved to adopt the West Berkshire Local Plan Review 2023-2041 (LP). The LP had already helpfully been addressed in the evidence of the parties and as a consequence of its adoption it was common ground that the presumption in favour of development set out in paragraph 11 of the National Planning Policy Framework (the Framework) no longer applied by virtue of the Council's housing land supply position. The appellant did not advance any other arguments that the LP was otherwise out of date in any other Framework terms or that the presumption in favour of sustainable development applies but that the Framework remains a significant material consideration to which I return to below.
8. The inquiry was served by a series of Core Documents (CDs) and further inquiry Documents (IDs) were submitted during proceedings. The information for the inquiry was all made publicly accessible electronically during the course of the event and I sought to ensure that opportunities for views to be shared and, where appropriate, for any interested persons to ask relevant questions of the relevant witnesses.
9. I carried out a number of unaccompanied site visits, including a main visit on 11 June where I viewed the appeal site from a number of locations in accordance with an itinerary agreed by all parties.

Main Issues

10. In opening the inquiry, and following what was discussed at the CMC, the main issues in this appeal are:
 - Whether the proposal would preserve or enhance the character or appearance of the Newbury Town Conservation Area (NTCA) (including consideration of character and appearance, scale, height, massing, density and townscape effects) and the effect of the proposal on the setting of listed buildings.
 - The effect of the proposal on the living conditions of future occupiers, with particular regard to noise and the provision of acceptable private amenity space.

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

Reasons

Heritage Assets and Design – Context

11. Sections 66 and 72 of the Planning (LBs and CAs) Act 1990 place duties on the decision maker with regard to listed buildings and their settings and conservation areas. The courts have found that considerable importance and weight should be given to the desirability of preserving the setting of listed buildings in any balancing exercise with material considerations which do not have this status.
12. The proposal would not cause any direct physical harm to any heritage asset, rather the disputes concern the character and appearance of the NTCA and the setting of 44 listed buildings including two Grade I and four Grade II* listed buildings. The disputes are relatively narrow because the Council and appellant agree that the taller blocks, A and B and part of Block S have the potential to cause harm. The NS also consider harm would arise from Blocks C, D and E. The Council and Rule 6 parties do agree on some neutral and net beneficial effects but disagree with the appellant on the majority of impacts to the relevant heritage assets as set out in the LVBI.
13. The appellant's case is that there are heritage benefits that offset what might otherwise cause harm and that there would be no harm in a number of instances. The appellant therefore contends a net or internal heritage balance should be undertaken to assess the overall level of heritage harm. I am mindful of court judgements referring to how the statutory duties should be discharged and highlighting the ability for such a net heritage balance to be undertaken. The PPG¹ also confirms that the category of harm should be explicitly recognised and in *Mead*² it was determined the PPG holds equivalent legal status to the Framework. Policy SP9 of the LP also requires opportunities to preserve, enhance or better reveal significance should be taken and it also follows the approach in the Framework.
14. Heritage assets (including conservation areas) can gain significance from their relationship with their setting. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.
15. Further, HE guidance in 'The Setting of Heritage Assets', indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset.
16. The Framework does not protect the view of an old building for its own sake or because the view can be seen from part of the building's visual setting. What really matters is the extent to which that view contributes to the asset's significance.

¹ Planning Practice Guidance 018 Reference ID: 18a-018-20190723.

² Mead Realisations Ltd v SSLUHC [2024].

Being able to accurately assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is especially important to understanding the potential impact and acceptability of development proposals. Although no statutory protection for the setting of a CA is present in the Act, the Framework requires consideration of any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting.

17. The appellant produced a number of verified views (AVRs), including additional AVRs requested by members prior to their decision being made, a computer-generated kinetic video and 360-degree bubble walks. There is no dispute regarding the locations or methodology used and I am satisfied they give a helpful representation of the proposal, noting any limitations in their scope and use.
18. In this appeal there is clearly an overlap between the NTCA considerations given the listed buildings also contribute to its character and appearance and therefore its significance. I have structured this issue considering both the NTCA and listed buildings, including consideration of any heritage enhancements/benefits before coming to an overall finding on any harm, or otherwise and then returning to any necessary balance.
19. The Council's evidence to the inquiry identified the impacts of the appeal scheme but did not conclude on the impact of the ability to appreciate significance and did not place harm on any 'less than substantial' scale. The identification at a late stage within the LBVI table of where the harm sits on any scale was not therefore examined at the inquiry and whilst I have considered the final conclusions of the Council the weight to be given is reduced accordingly.
20. Despite this Council's views on impacts were clearly expressed at the inquiry and in closing submissions. I also visited the site and the surrounding streets on a number of separate occasions before and during the event. Further, as repeatedly highlighted by the parties I must form my own professional judgements and I have determined the proposal on this basis.
21. For the vast majority of people, heritage is something which is enjoyed kinetically as people move through and around places. It is often only the more committed heritage enthusiast or inquiry witness who will study heritage assets in much greater detail than this and I have very lengthy and detailed analysis before me, including from two Rule 6 parties. I have been mindful of this in coming to my findings but have not found it necessary to address every single academic or other point made in evidence and at the inquiry, focusing on those matters that remain in dispute between the parties and on which my considerations turn.

The Newbury Town Conservation Area

22. Designated in 1971 the NTCA was formed by three separate areas part of the historic settlement core that grew up around a crossing point of the River Kennet and the medieval marketplace. The main streets form an inverted 'Y', with the later addition of the east-west London to Bath Road in Speenhamland at the northern end. It was the subject of amendments and extensions in 1973, 1983 and 1990 and the boundary further reviewed in 2021 as part of the Newbury Town Centre - Conservation Area Appraisal and Management Plan (the CAAMP).

23. The town's success as a market town during the later medieval period derived from the cloth trade, bolstered by the town's location between intersecting transport routes. Newbury's location midway between London and Bath had importance in reviving the fortunes of the town centre in the Georgian period.
24. The burgage plots laid out on Mansion House Street, Market Place, Cheap Street and the adjacent part of Bartholomew Street date from earlier in the medieval period, likely 13th century. The burgage plots laid out on Northbrook Street date from slightly later, possibly the 15th century. The narrow footprint of the buildings in all of these areas means that the burgage plots are still legible today. Many of the buildings that sit on these plots were altered, re-faced or rebuilt in the 18th century, when the town experienced a period of revived prosperity when it became the primary overnight coaching stop on the route to Bath.
25. This also saw a proliferation of coaching inns, particularly north of the town in Speenhamland, then part of Speen parish. Many of these Georgian inns survive, offering a characterful and distinctive building typology. Northbrook Street and Bartholomew Street are intersected by narrow passageways between buildings, several of which have rear courtyards. However, many such courts and yards have been subject to extensions and infill development.
26. The town has retained its historic route network and many of the narrow burgage plots, resulting in a fine, dense urban grain, concentrated around historic routes. The organic nature of the route network means that there are numerous channelled views which unfold, with more of the townscape moving into view around the gently curving corners on Bartholomew Street and Cheap Street, for example.
27. The appeal site lies within Character Area 6: Kennet Centre and partly within Area 3: Market Place. Area 6 is the largest character area in Newbury and is the area that has experienced the most amount of change during the course of the 20th century. The area is situated to central-western and southern part of the NTCA is characterised by a mix of 20th century developments, fine grain historic buildings, and contemporary development. It is also subject to ongoing change with the recent construction of the Weavers Yard development.
28. The main typologies or building types within the area are a mix of late 20th century developments including: The Kennet Centre (KC) and associated car parks, the Council Offices and some larger-plot buildings including residential and commercial buildings; contemporary development, including Weavers Yard, and fine grain historic buildings. One is led by a narrow and meandering historic route network around this southern part of the town centre leading to some of the most significant heritage assets in the Bridge, St Nicolas Church and around Market Place.
29. The area contains a range of buildings that differ in form, height and appearance, and in the parts of the centre, historic architecture can be appreciated from street level and in middle and longer distance views. Building heights range from two to five storeys, with Weavers Yard reaching five storeys and some residential blocks behind the Council offices at four storeys. There are several prominent heritage assets and townscape features that help to form the identity of the town, such as Newbury Bridge, The Parish Church of St Nicolas, The Town Hall, and various other prominent houses, churches and alms houses. Its high concentration of

quality heritage assets allows Newbury to play a key role as the cultural centre of the district, and the NTCA is at the heart of this.

30. Although no single architectural style dominates, buildings in the area predominantly use brown or red brick, with some historic buildings featuring render or stucco; other materials include cladding, glazing, and slate or clay tile roofs. I observed that the generally high-quality stock of traditional buildings creates a coherent and intimate atmosphere, enhanced by the narrow plots and fine urban grain with generally low and modest scale buildings but there remains variety in styles, materials, heights and plot widths to add visual interest.
31. In walking those routes and in accordance with the agreed itinerary I also observed that the varied rooftops of the buildings generally, affected by some notable exceptions such as the car park mansard tower, stood strongly silhouetted against an open sky which in short, medium and longer views played an important part in my understanding and appreciation of the buildings, their setting and the historic townscape of this part of the NTCA.
32. Views along certain streets within the NTCA also revealed a mixed character, with both modern and historic buildings visible together at certain points and with some notable juxtapositions. The NTCA undoubtedly does have detracting and neutral architectural elements. The KC is one of a large number of generic town centre malls built around the country during the same period, facing inwards and visually detracting from the surrounding historic built form due to its appearance. It is clearly of its time, as are many of the other more modern buildings within the NTCA and its wider setting, including the somewhat monolithic BT telephone exchange and more redevelopments such as Parkway and Weavers Yard. However, the KC does not unacceptably dominate the experience of the NTCA because its scale and height is generally sympathetic and broadly appropriate to its context.
33. Ultimately, there was no dispute that the KC is a detracting element which diminishes an understanding of the former historic grain of the site and its Bartholomew and Cheap Street facade are of their time and could be considered uninspiring. The Vue Cinema in the southeastern corner displays materials, a form and scale that is incongruous with the rest of the conservation area and that building, along with the multi storey car park would be retained.
34. The combination of the character and appearance of its buildings, together with their function in contributing to the uses and activity of the town centre, both individually and collectively contribute strongly to the significance of the NTCA. Despite modern development the high concentration of designated and non-designated heritage assets dating from multiple eras, and its routes create a distinct and rich cultural heritage and with multiple buildings of special historic and architectural interest that can be readily appreciated.

Character and Appearance

35. The CAAMP is clear, amongst other things, that the maximum building height is 5 storeys in this area with most buildings on Bartholomew Street being 2 or 3 storeys. It is also clear that future development should be mindful that existing features and buildings within the setting of the conservation area that

could benefit from enhancement do not set a suitable precedent for development³ (e.g. the telephone exchange) which in my view presents an unrepresentative impression of the town's historic character and identity. It is worth noting at this point that the appellant's HTVIA aligns with the findings in the CAAMP.

36. Paragraph 137 of the Framework requires that design quality should be considered throughout the evolution and assessment of individual proposals. Reaching conclusions on the visual aspects of design and its impacts often involves a level of subjective judgment but the design analysis and evaluation that underpins such proposals is an objective process that should be based on a thorough and detailed understanding of a site's context.
37. As well as being an iterative process, good design embraces all elements of a scheme, such as form, function, aesthetic, detailing, durability, sustainability, local and wider context, an appreciation of the environment and heritage. There are many other factors in trying to satisfy all these requirements in the same space whilst delivering a viable and deliverable scheme.
38. Contemporary design can develop a further layer of townscape which complements, rather than competes with the past. However, it is critical to understand how the proposals will spatially and visually engage with their context and how new development responds to and addresses the constraints and opportunities of the site and locality. Achieving high quality of design is not just centred around what a place or development looks like – aesthetics – but also how users experience it.
39. The DAS⁴ sets out that the overall concept is a simple one, to create a series of pedestrian routes, spaces, alleyways, all familiar patterns within the heart of Newbury, which connect the main areas of pedestrian activity and interest. The starting point for a permeable scheme is consideration of the existing system of links, and here the legibility of the scheme has been clearly considered with the new north to south route.
40. The DAS states however that towards the southern and central area of the site where the surrounding buildings are newer, larger, and where the historical industrial uses were located, the texture of the design changes a 'little', with buildings of a larger scale and a more industrial aesthetic. The DAS also refers to design led optimisation and that the volume of the perimeter blocks has been maximised but to not exceed the absolute maximum heights considered appropriate.
41. However, the appellant also does not contend that the historical use as Plenty's Ironworks contained buildings of the scale or heights proposed. Although blocks were revised in order to create landscape podiums it is somewhat unclear what consideration was given to the overall suitability of the form, mass and heights of the tallest blocks relevant to designated heritage assets as being appropriate given the prevailing existing building heights and the scale and form of buildings that formerly existed on the site, in accordance with the guidance in the CAAMP.

³ Paragraph 2.19 of the CAAMP.

⁴ Paragraph 6.1.2.

42. Whilst there would be some improvements and enhancements to the appreciation of the NTCA (and its listed buildings) these would be experienced predominantly at street level and at close range. I do not regard the change as 'little' because the scale, height and form of Blocks A, B less so with S would unacceptably raise and draw the eye up and behind the existing historic roofscape as one experiences the town centre and in particular, in a number of views along Bartholomew and Cheap Street within the NTCA. From Market Place (AVR_4 and 5) enhancements at street levels from frontage buildings would not offset the visual harm from the significant array of additional built form extending significantly above the existing and proposed roofscape.
43. Views from within or outside an area form an important way in which its significance is experienced and appreciated, thus highlighting the importance of setting and its potential impact on the conservation area's significance and overall experience. The scale and height of the blocks looming behind would dominate the townscape in views from Bear Lane to a built form of a much larger scale than anything that previously existed and detracting from an appreciation of the significance of the more modest scale of built form in this part of the NTCA, as demonstrated in AVRs B and C.
44. Whilst I note the appellant's views these views are not positive contributors I disagree as there are clear views of and into part of the NTCA at these points. The introduction of such overly dominant built form onto the site would jarringly stand out against the skyline. I deal with these further below but from a number of views along Bartholomew Street the scale, mass and height of development as a backdrop to the lower built form of the frontage buildings would also result in a major change and an erosion in the appreciation of the character and significance of the NTCA.
45. In other views into the NTCA AVR_10 and 11 demonstrate to me there would be some further erosion of the character of the NTCA from the introduction of further massing above the existing roofscape. This is despite being seen in association with other modern development and would dilute an appreciation of the form and grain of the NTCA.
46. Turning to matters of appearance the appellant was correct in confirming⁵ that whilst the Council did not take any issue with the external appearance of the proposal per se, assessing a high quality of design means that external appearance cannot be separated from consideration of the scale, form and layout of the building it serves. The detailed appearance of a scheme has an important role to play in responsiveness and should not be regarded as a mere by-product of the proposal. There are limited ways however to address buildings of this use, form and scale.
47. If a building is intended to be visually integrated into its surroundings it is important that its detailed design has a family resemblance to its surroundings and here there is undoubtedly a mix. The DAS states the focus is on a simple architectural approach of paying closer attention to the forms of existing buildings but this has resulted in a significant contrast between a mix of appropriately detailed and well-designed street elevations and buildings in some places, and substantially larger modern interpretations of built form in the internal areas of the site.

⁵ Dr Miele in response to my questions and in closing submissions.

48. The dominance and prominence of Blocks A and B would be exacerbated by the use of contrasting dark grey metal roof set against red brickwork. Although set back, the appearance would draw attention to the height and bulk of built form that would be visually far larger and dominating than any building in this part of the NTCA. The balconies on the eastern elevation of Block A would add little perception of visual depth to create sufficient interest for blocks of this size.
49. For the most visible parts of the blocks the window arrangement adds vertical emphasis with further interest from balconies but the overall impression gathered from a number of views would be of a series of flat roof podium spaces juxtaposed with pitched roofs and gables that appear more in keeping with a Victorian Mill or Warehouse in a more industrial urban location and not a lower-level industrial shed or similar structure that would have previously occupied the site. The design may well bring to mind an industrial past and was the intention but I am not convinced it is suitably reflective of Newbury's because such blocks would not be read or seen as part of the former industrial uses and buildings on the site or in the immediate area.
50. On Market Street the DAS common principles utilised in this typology contain high levels of repetition, rhythm and hierarchy of vertical and horizontal elements seeking to create buildings that would consist of simple detailing but yet are rich in character. The Market Street frontage could certainly be improved and cues have been taken from traditional Victorian warehouse typologies with the façade articulated by different eaves details, inset brick window reveals, contrasting spandrel panels and pitched roofs visible from street level.
51. Despite the Weavers Yard development opposite the blocks either side of the new north/south route would also be the largest buildings by some margin along Market Street. The existing facades are referred to as 'impermeable' and 'faceless' but this would be replaced by overly repetitive window arrangements giving too much vertical emphasis that for such an important gateway would result in an institutional appearance on buildings of significant height. Sited directly on the street frontage and over such wide and box like buildings the appearance of Blocks S and D would be uninspiring and appears justified on the basis of other modern developments opposite. Rather than creating a strong identity it is the very type of 'of its time' modern architecture that has been allowed in and around the NTCA that are not as positive contributors as perhaps once intended or envisaged.
52. Seen in association with the retained cinema, the juxtaposition of the two six storey blocks and their marked contrasting appearance would visually compete with each other on an important gateway into the town as shown in AVRs E and F. Despite the lack of architectural merit in the existing elevations the proposal would replace inappropriate design with just a different and more modern version of, inappropriate design.
53. There would clearly be a number of positive heritage enhancements and I have no doubt the design process was iterative led by leading Architects and designers and supported by other experts in their field. Attempts were also made to address concerns and work proactively with the Council and consultees, so much so that a positive recommendation was made by officers. Nonetheless, as a direct consequence of the choice to seek to accommodate 427 units density and viability considerations appear to me to have dictated the overall form, scale, mass and appearance of the buildings.

54. As an imposition of a confused mix of retained buildings that cause harm, some new buildings that have been appropriately designed, others not, historic buildings and existing buildings with a negative effect such as the cinema the approach fails to capture the essence of the site and its historic surroundings. A clashing intrusion of urban apartment-built form imposed onto the centre of the site the blocks in dispute would feign respect to local distinctiveness but would simply be too big and visually dominating for this site.
55. At its heart this is a scheme that to my mind has been created and arranged in such a way that it seems too artificial and unrealistic, imposed on the historic townscape of the NTCA rather than integrating successfully with it. The blocks in dispute would be the wrong Architecture, in the wrong place introducing a false narrative to Newbury's past. The design bar is a high one and one which in this sensitive historic environment would not be met. I return to matters of overall harm and weight in my conclusions below.

The setting of the listed buildings

56. There are 44 listed buildings grouped by the appellant into nine groups along with a number of 'other' buildings. I must consider the effects individually but for the purposes of this decision I have grouped them in the same way below.
57. I have set out the context for consideration of setting above but in each case there are broad similarities between buildings with the significance of each building mainly derived from its historic and architectural appearance and as surviving examples of an earlier streetscape and demonstrate several stages of this market town's evolution along the historic street layout. In terms of setting, each building can be understood in close, medium and longer views as part of the still discernible historic street layout and within a town centre environment comprising a mix of uses and building types including other listed and non-listed historic buildings and cultural, municipal and religious buildings amongst others. In other words there are aspects of the setting of each which contribute to their significance and the NTCA.

Group 1 – Immediate vicinity of the appeal site

58. This group includes the Newbury Public House (Bricklayer's Arms) on the western side of the appeal site fronting Bartholomew Street. On the eastern side it includes the Catherine Wheel Inn, 32-34 Cheap Street, all Grade II listed buildings. These buildings are those that are located on the 'island' that accommodates the KC. Some listed buildings have been retained on the island site and integrated into the new block and frontages. Whilst the appearance of the KC has partially eroded the settings of these listed buildings, they are still important survivors with special interest that also make a clear contribution to the streetscape and character and appearance of the NTCA.
59. What is not there is also important as what is and from a number of viewpoints the eye is drawn to the largely uninterrupted and consistent skyline above the varied roofscapes of the buildings. The buildings would see some beneficial enhancements to their immediate setting from replacement frontages of a more suitable appearance that reinforces setting but this would be at street level and appreciated in short distances/views. I disagree that it is only over these short

distances one ‘best’⁶ appreciates significance as it is a kinetic experience as highlighted in the CAAMP and medium and longer views are important. Here, the eye would be further drawn up and toward the significant built form and roofscape of the internal blocks and away from The Newbury as shown in AVR_A and to a much lesser degree AVR_3.

60. Again, new development to the south of Nos. 33 and 34 Cheap Street would be a more appropriate design than the existing flat roof but of a significantly greater scale and with a variety of markedly different roof forms. The use of contrasting materials would allow a degree of prominence to be retained for the Catherine Wheel Inn but my own observations and informed by AVRs B and C and D (taken from outside the NTCA), they still show a scale and massing of built form as an immediate backdrop to the Catherine Wheel and Nos 33 and 34 Cheap street that would substantially reduce the backdrop of sky. The blocks would unacceptably draw the eye away from the architectural interest of the buildings resulting in a clear and harmful diminishment in the appreciation of their upper storeys and roof form and detracting from their architectural interest.
61. I do not share the appellant’s view that these areas do not allow for positive views, the context of the NTCA has changed but even having regard to the heritage benefits I still consider the harm to setting is not outweighed by the benefits to be beneficial. There would be lower harm on the scale of less than substantial harm.

Group 2 – Northern end of Bartholomew Street

62. Numbers 149, 150, 151, 152, 153 and 154 Bartholomew Street are Grade II listed buildings and sited to the north of Group 1. Principally listed for their group value, the significance of the buildings lies in their varied character and plot widths, and subtle variety of height within a traditional height datum, creating an attractive group (which adds to their interest), employing varied traditional detailing, such as elevated bayed frontages, sash windows, dentilled eaves, pitched roofs, with dormers.
63. Again, there would be some enhancements to the immediate street context and setting of the buildings but having lingered in this location a while, as many pedestrians do with its views along the canal, moving south there would be a clear awareness and views of the upper storey of the taller blocks behind which would detract from an appreciation of their significance over this intermediate or middle distance. I did not observe the proposal or its impacts would be peripheral, on the contrary the views are channelled along the well-defined and enclosed Bartholomew Street and again, the eye would be drawn up and away from the elevations at a number of points.
64. Even having regard to the KC which reveals itself in closer views the imposition of much taller blocks behind the rooflines and against the sky would diminish the appreciation of their architectural interest as demonstrated in AVRs 2 and A, lesser so in AVR_3. I disagree it would be net beneficial and would be less than substantial harm to the significance of those buildings at the lower end of the scale.

⁶ Dr C Miele PoE 7.58.

Group 3 and Group 7 – Bridge over the River Kennet and Northbrook Street

65. Group 3 consists of the Grade II 1 Northbrook Street, 1, 2 and 4 (Grade II) Bridge Street and the Grade II* listed bridge over the River Kennet and are sited at a point of emphasis within the NTCA, at the intersection of the canal and the commercial frontage to Northbrook Street. Group 7 is 102-103 Northbrook Street and The Former Stables at No. 104, all Grade II listed buildings.
66. The above-named buildings comprise a highly attractive grouping, and the bridge itself affords an opportunity to enjoy views east and west along the canal and to admire the historic buildings one sees from this location, including their prominent frontages and roofscape.
67. AVR_2 shows that on traveling south the upper storeys and roofscape of Blocks A and B would be clearly visible above the existing buildings along and behind the chimneys. As one pauses to experience the historic built and natural environment here the view is channelled by the narrow street and again the eye would be unacceptably drawn up and away from the historic street and roofscape by much larger built form behind.
68. The appellant categorises this as very low that with enhancements of the street frontage of Bartholomew Street it becomes 'Net Neutral' but these are minor enhancement in the context of the kinetic experience from this area of Group 3 as one moves south. Having regard to those enhancements I do not find they are so weighty so as to outweigh the lower level of less than substantial to be neutral effects on significance. My observations were that there would still be a low level of less than substantial harm.

Group 4 – Remainder of Bartholomew Street

69. This group includes 12 Grade II listed buildings (16, 17, 28, 29A, 29, 40 and 45, 104 and 106 and 102-103, 118 and 119, 114 and 115 Bartholomew Street, The Dolphin and Coopers Arms public houses. Positioned to the immediate south and southwest and are essentially the remaining buildings in Bartholomew Street to the south.
70. Forming part of the historic layered streetscape of this part of Newbury their historic features are appreciated relatively close given the narrow nature of the street. There are a number of modern insertions including modern shopfronts and buildings the blank facades of the KC form a backdrop to the scene for Nos. 28-29A, eroding the historic interest and attractiveness of the setting. The prominent 'campanile' mansard structure to the north of the car park also draws the eye.
71. From the south the appeal site is a more distant backdrop to the majority of those buildings with the closet of the group being Nos. 118-119 and there is some detraction from modern development associated with the appeal site to the setting of this southern group. However, AVR_12 shows the enclosure of the sky gap at the end of the view north from development of a significant scale and above and behind the existing campanile mansard structure. The introduction of further large and modern buildings in the background would result in some further erosion of the appreciation of the historic interest of those buildings. I categorise this as a very low level of less than substantial harm.

Group 5 – Cheap Street

72. Group 5 comprises buildings located along Cheap Street: Newbury Post Office, 41, 48 and 50 Cheap Street - Grade II listed buildings ranging from the 17th to 19th century. These lie immediately adjacent the southeastern corner of the appeal site. I agree with the appellant that each of these buildings have a group value with the retained historic layout and grouping of buildings on the eastern side of Cheap Street. Further I observed the Post Building to be visually dominant with its open yard to the immediate south and views across to the Cheap Street frontage.
73. There would be some improvements by replacement of buildings with more suitably designed buildings in Block C albeit any benefit needs to be balanced against the significantly greater scale of development introduced. At street level the cinema would remain and it is unlikely Block A would be appreciated other than from the immediate area around the junction with Bear Lane into Market Place and from Bear Lane itself including from across the less developed yard of the Post Office building. Again, the large brickwork walls and arrangement of windows and balconies on Blocks A and B would be at a height and scale significantly above the existing, including new street facing buildings.
74. Taking account of appearance benefits at street level from Block C and others in this frontage, along with the removal of the KC eastern entrance, these still do not outweigh the harm so as to be beneficial. There would still be a very low level of less than substantial harm to the significance of the Post Office building and No 41 Cheap Street.

Group 6 – Market Place and Wharf Street

75. Group 6 comprises buildings located along Market Place and Wharf Street (Nos. 1-3 Wharf Street, 24 and 27 Market Place, The Elephant at Market (formerly listed as the Queen's Hotel), The Corn Exchange and The Hatchet Inn all Grade II listed buildings. I have also included 21-25 Market Place given its location close to the others in this group around the square.
76. These buildings are all located on the open space formed by Market Place, an important historic space where along with other non-designated buildings that forms a well-defined and attractive space with a mix of uses reflecting the commercial core of Newbury. There would be enhancements to the frontage of the Market Place and in combination with its location the effect on 21-25 Market Place would be negligible and not harmful.
77. The change to skyline should be viewed relative to the overall extent of Market Place, a generous space with varied townscape within and visible from it but it is also a central and well used space. However attractive the street elevations may be, above roof level there would be an overly prominent array of gable ends and pitched roofs with the upper parts of the taller Block B behind. I do not agree that in views south (AVR_4) the roofs would gently climb, they would be read as untypical and noticeable major changes to the roofscape. The upper storeys of Block C would also be visible, the prominence of which would be exacerbated above the red brick and tile by the flat roof and contrasting use of white render.

78. The degree of visibility where it would be seen would be peripheral to the setting of 24 Market Place, and The Hatchet but the impact would become more appreciable as one passes The Corn Exchange and Elephant of the Market. The Corn Exchange is a more monumental building, taller and more prominent than its neighbours, projecting into the square from the northeastern frontage of the space. I observed in views from the northern end of the place it formed a dominant silhouette against the undeveloped skyline to its principal elevation, already set forward from The Hatchet Inn.
79. Its setting is most appreciated from the square but the setting of The Corn Exchange would be eroded by modern, taller development from certain points around the space and on moving south as demonstrated in AVR_04 and to a lesser degree in AVR_05. Having regard to some street level enhancements from new frontage buildings this would not outweigh the harm to result in beneficial effects and there would be a low level of less than substantial harm to the significance of The Corn Exchange and the Elephant at the Market.

Group 8 – The Wharf

80. This group consists of the Grade I Museum on Wharf Street, the Grade II* Corn stores and two Grade II listed buildings of Wharf House and The Stone Building. Neither the Council or Rule 6 parties allege harm to the latter two buildings and the dispute relates to The Corn Stores (now museum).
81. The heritage value of the museum is derived from its interest as a structure from the late Stuart period. The building has interest with its association and relationship with the adjacent Grade I listed former cloth factory and represents the development of the agriculture industry in the 17th century. Its primary setting could be regarded as the relationship with Wharf Street and Market Place, which would be unaffected but its long roof forms have special architectural interest relating to former use that can be appreciated from the north and Victoria Park, as shown in AVR_8 and to a lesser degree AVR_9 which is not as sensitive, and from a much-changed context of modern development and road infrastructure. It would also appear that the Telephone Exchange was approved before the wharf areas became part of the NTCA.
82. The appellant contends this modern setting actively detracts from an appreciation of the pair of buildings but the long roof line of The Granary is an important part of its architectural interest and heritage value. There are limited viewing points that communicate the particular historic or architectural significance of the former historic stores, which is reflected, for example, in its timber framing, proportions, materials and other details which communicate its age and purpose. The higher elements of the scheme would be prominent behind the largely uninterrupted roof line and therefore results in a further erosion in the ability to appreciate that particularly long and distinctive roof form and architectural interest would result. This would not be a neutral impact and would be less than substantial harm to the setting of the Museum but toward the lower end of the scale.

Others

83. The Parish Church of St Nicolas – A grade I listed building with its north and south gateways, both Grade II* listed. The church plainly has historic and architectural interest. The immediate setting of the church, its historic church yard and listed

entranceways contributes to an appreciation of the architectural qualities of the church.

84. Its wider setting has been subject to change over time. The appeal site in its current condition does detract from a close appreciation of the church by eroding an understanding of the historic streetscape of Bartholomew Street and the somewhat incongruous materials of the modern KC entrance. The architectural, historic, and internal significance of the church would not be affected, as to would any ability to appreciate it, from its churchyard.
85. The church also has relatively limited visibility from the close network of streets around the appeal site and Market Place, due to interposing development and the orientation of streets. Heading south along Northbrook Street, one does not become aware of it until they have passed the bridge, and similarly in the journey north from Bartholomew Street and east from Market Place, almost upon it. The immediate setting of the gateways would be affected to a minor degree as the bridge is crossed and one moves south by Blocks A and B but any very low level of less than substantial harm would be outweighed in this instance by the removal of the KC frontage and reinstatement of a more sympathetic form of development, at street level.
86. From Goldwell Park, the proposal would appear behind the church tower but would remain lower in height, screened and filtered by mature trees. Whilst this could add to cumulative impacts, given the monolithic scale of the exchange building, the church is closer to the viewer, and the proposal would sit below both the far horizon and the church's pinnacles. Consequently, the effect would be neutral.
87. *Town Hall and other municipal buildings* – The immediate setting of the Town Hall is at the nodal point between the main commercial thoroughfare of Northbrook Street and the top of the inverted 'Y' formed by the street layout that contains the site. The town hall is visible from multiple locations across the town, with views of the tower from Market Place, the northern side of the canal, terminating views along Wharf Street, views north along Cheap Street and Bartholomew Street.
88. The position of the Town Hall at the main confluence of historic streets in Newbury, abutting the main commercial square and landmark qualities in views over varying distances means that its setting makes a substantial contribution to the significance of the building. The eastern elevation is the most sensitive containing the clock tower which would not be affected by the proposal other than in some longer views such as AVR_9. Its rear elevation is secondary and the building's silhouette would not be affected and there would be improvements at street level. I agree with the appellant that no harm to significance, in terms of its setting would result but I do not consider that the replacement frontages given how the hall is appreciated should be regarded as enhancements that should carry significant weight.
89. At the inquiry additional longer distance views were also put forward by the NS, from Abbey Close and Russell Road to the west of the appeal site. The views were not verified or agreed by the parties and having visited those areas I have not found them to be determinative in my assessment of heritage effects or my determination of the appeal.

Conclusions on first main issue

90. In this appeal there would be enhancements to the NTCA and the setting of listed buildings including from the removal of certain elements, from the architectural approach to some of the new buildings and as set out in the Heritage SoCG. I have considered these in my assessment of harm for each heritage asset above but have found in a number of instances that the effects have been underestimated and that the heritage benefits would not offset the harm to the extent contended by the appellant. For the avoidance of doubt however I do not consider that the substantial harm contended by the Rule 6 to be evident.
91. The proposal would seriously depreciate and detract from the experience of being in the NTCA and an appreciation of its significance (and that of the listed buildings within it) in a number of ways and in a number of views. I consider the proposal to not be sufficiently considered in the way it deals with the changes necessary for effective re-use of this site in such a sensitive historic context.
92. Achieving the high bar for design at such densities requires places and schemes to integrate not intrude into their surroundings, so they relate well to them, are influenced by, and influence their context positively. That would not be the case here. The blocks in dispute would be at complete odds with the more domestic and modest commercial scale of the prevailing character and appearance of this part of the NTCA. This would not be the 'sensitive' re-development that respects the surrounding historic townscape as advocated in the CAAMP⁷.
93. The proposal would therefore cause harm to the heritage significance of the NTCA the character or appearance of which would not be preserved or enhanced. There would also be harm in and from certain views into the NTCA from its wider setting. I have also found a number of harms to the listed buildings above as a consequence of the extent and location of the development proposed within their setting.
94. The development would run contrary to the expectations under s72 and s66 of the Act which requires that I take account of the desirability of preserving the character or appearance of a conservation area and listing buildings. It would conflict with Policy DM9 of the LP insofar as that requires conservation areas to be preserved or enhanced and in particular, that the scale, height, form, massing, and respects the historic and architectural character, including roofscapes of the area, the relationship between buildings and the spaces between them. There would also be conflict with Policy DM10 which requires development to not be permitted if it would harm the setting of a listed building.
95. Turning to Policy SP9 of the LP which aligns with the Framework on heritage, on the scale of less than substantial harm, the overall harm to the NTCA should not be categorised as low or minor, for the reasons set out above I consider that even with the enhancements that is a clear underestimation of the magnitude of harm caused by key components of this particular proposal on its significance. I categorise it as less than substantial harm in the middle of the scale.
96. The requirement to give considerable importance and weight to any harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving its setting is the same in every such case. It is a matter of

⁷ CD4.7 page 250.

planning judgement and the Framework does not prescribe any particular approach to identifying harm or gauging its extent. Here there would be a range of very low and low less than substantial harms to the setting of listed buildings as set out above.

97. Less than substantial harm does not equate to a less than important planning consideration and the Framework at sets out that, in such circumstances, the extent of such harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. In carrying out either an internal or public benefits balance, sustaining or enhancing the significance of a heritage asset and the contribution of its setting is a public benefit⁸. A potentially relevant public benefit can include a heritage related benefit as well as one that has nothing to do with heritage. Having carried out an internal balance to conclude on heritage harm and having still found less than substantial harms I now return to the public benefits overall.
98. Paragraph 125 (c) of the Framework is relevant in terms of giving substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs. Nonetheless the PPG is also clear that the decision maker will need to take account of it alongside other policies within the Framework taken as a whole. What is required is a clear articulation of how that revised approach has been considered and applied alongside the other policies.
99. High quality design has always been an objective of the Framework and more recently the National Design Guide (the NDG) has been published. Whilst not a detailed set of criteria against which to assess the design of a proposed development at a local level, sets out broad principles to achieve the well-designed places that the Framework expects new development to deliver. I have had regard to the appellant's specific assessment but disagree and find that the elements considered above and the scheme overall should not be regarded in my view as a well-designed place.
100. The proposal would maximise the development capacity of this accessible site. Regeneration of the site would in principle be a positive public benefit along with the effects from an increase town centre population. Additional workspace, a possible health space and retail floorspace for local and independent retailers. The existing KC is largely vacant and it is a site where residential led redevelopment should be targeted.
101. Since the proposal was submitted, determined and appealed the Council can now demonstrate a 5-year supply of housing land. It is of note that the strategy and housing requirements appear challenging in the face of constraints within West Berkshire but the plan has been found sound. An imminent review is required but it is challenging to conclude with any certainty on the evidence before me as to the ability of the Council to achieve the housing objectives, or otherwise of the LP. It is also a matter squarely for the review process to examine and resolve.
102. Nevertheless, the LP housing requirement appears to be double that planned for and 427 BTR units would provide a year's worth of the anticipated shortfall in an accessible town centre location. The calibration of the weight to be attached to these benefits is not an exact science and there is no prescribed methodology. In

⁸ PPG 020 ID:18a-020-20190723.

balancing all of these factors together the contribution to the town centre and housing attracts very significant weight in favour.

103. There would also be economic benefits, direct and indirect, which are an important material consideration but I do not consider the retention of an existing use in the cinema to be a benefit as part of this scheme. An estimate of 360 Full Time equivalent jobs during construction and 134 net additional FTE jobs once operational along with additional spending could arise from any similar development elsewhere but that does not detract from the fact that this particular development would offer such benefits, some of which would be temporary and short term, but others would be longer lasting and permanent. Given they are estimates, and nothing is certain or can be guaranteed I give them moderate weight.
104. Climate change benefits would amount from a reduction in carbon emissions when comparing the proposed scheme with the existing emissions of the KC which is significant. The development would also aim to meet BREEAM⁹ excellent rating for the commercial areas. Very low carbon emissions through the adoption of good fabric performance and employment of ground source heat pumps to supply space heating and domestic hot water are intended. The proposal would secure renewable energies to the level of building regulations and whilst the proposal would not achieve net zero carbon emissions in accordance with Policy SP5 of the LP, it is not in dispute that it would not be economically viable to do so within this site. I share the view of officers this is therefore a limited benefit.
105. A number of other environmental benefits such as car clubs, electric charging points, on site cycle hire appear to be predominantly mitigation with any extent of public benefit unclear. Subject to implementation of the proposed measures outlined within the Ecological Impact Assessment, the proposal would not result in any significant residual negative effects on remaining Important Ecological Features within the Zone of Influence (Zoi) as should be the case.
106. The scheme will deliver some small biodiversity net gains through installation of integrated nest boxes and the implementation of green roofs and terraces designed to maximise benefits for biodiversity. The enhancement measures are intended to benefit known features of ecological importance present within the Zoi, as well as biodiversity in general, and to contribute towards targets set out within the LP and the Framework. Given their scale they weigh modestly in favour.
107. It was accepted that the scheme would function properly with regard to delivering a good standard of BTR accommodation with a number of amenities and facilities. These are not benefits however, they are mitigation for predicted effects and perceived demands. The development would generate Council Tax and New Homes Bonus receipts. As the former is essentially a means for the Council to cover its costs arising from an increased local population, and/or to mitigate development impacts upon local infrastructure, it attracts little weight. There is no evidence of a connection between the New Homes Bonus payments and the development to enable it to be considered in accordance with the advice in the PPG. It therefore also carries limited weight.

⁹ Building Research Establishment Environmental Assessment Method.

108. There was some dispute as to whether planning obligations in the form of financial contributions and other mitigation can constitute public benefits along with some credibility issues in the Council's case as to how various weightings should be applied in the relevant decision-making process. Put simply, they can but an assessment must be made as to the extent of benefit that stems from something which is principally designed to mitigate.
109. Financial contributions would be secured for potential healthcare space, public open space, station improvements, a sustainable travel contribution, Traffic Regulation Order contributions and visual message signing. It is not credible that these contributions would result in no public benefits but it is also challenging to give anything other than an estimate of likely effects and overall they weigh modestly in favour.
110. The new north south route through the site would aid permeability and legibility and offer a further route through the site with some useable spaces, it would therefore have some wider public benefits for those accessing the town centre from the station and the south. However, given it would be largely contained between the buildings and in essence, provides access to the blocks, including access to the ground floor commercial units and spill out space for potential café uses etc I am not persuaded that provision of the route and space, particularly in an area that has two well defined routes around the east and west of the site should attract anything more than modest weight as a wider public benefit.
111. The Framework describes heritage assets as an irreplaceable resource that should be conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
112. In this appeal I have found a range of benefits but ultimately harm to a number of designated heritage assets which carry considerable importance and weight and conflict with policies of an up-to-date LP. When considering a proposal involving a number of heritage assets, if less than substantial harm is found to each, more weight can reasonably be attached in the overall planning balance to a number of 'less than substantial' harms than would be the case if only one asset would be harmed.
113. The appeal proposal is for development of major significance for the town and its historic built environment, and where both the harms and the benefits are considerably weighty matters. In my view, the harmful elements of the proposal from the failure to preserve or enhance the character and appearance of the NTCA and the special architectural and historic interest of the listed buildings are prevailing and the less than substantial harm is not outweighed by the public (including heritage) benefits. The proposal would therefore conflict with Policy SP9 of the LP and the Framework in terms of their heritage objectives.
114. In reaching this view I have carefully considered and given weight to the fact that that the proposal was recommended for approval by professional officers of the Council and that their recommendation was overturned by members of the committee. Members are not bound by those views and are entitled to take a different one, especially in a case which involve matters of planning judgement, as is the case here. It is ultimately the decision of the Council that I must have regard to as opposed to a recommendation from its officers. The reasons are also clearly

set out and articulated in RfR1 and were defended accordingly at the inquiry. This is also the case despite how considered or supported internally by other professionals that officer recommendation may have been, including the lack of objection from a previous conservation officer.

115. I have also been mindful throughout of the involvement of Historic England (HE) in the appeal proposals assessment and the relevant consultation responses. The Courts have found that considerable weight should be given to comments from statutory consultees and only departed from for good reason. In this case the objection to the proposal was withdrawn following amendments to the proposals with the final response given that the scheme had got to a point with the design, subject to being properly detailed the harm could not get much lower if the scale of development proposed is to be delivered. Further, that if the scale of development is needed to deliver the benefits that could reasonably be considered a clear and convincing justification.
116. This response does not read to me as any form of direct support for the proposal as the necessary consideration and assessments including any balance would rightly need to be carried out by the decision maker. The response does not refer to any conclusion on the effects on significance of any individual designated heritage asset or an assessment of harm on a scale. Historic England are no doubt familiar with the town and the proposal but as the decision maker I have also carried out a number of visits including a visit based on a series of agreed viewpoints in the immediate and wider area of the appeal site.
117. My decision is also taken in the context of a newly adopted local plan and the existence of a 5-year housing land supply. I have also held a public inquiry which HE did not attend or give evidence to. Even if my views are somehow to be interpreted as being contrary to any subjective levels of harm expressed by HE, I consider good reason has been set out above why I find the proposal to be unacceptable in terms of the first main issue. In no way does the consultation response(s) dictate that I should automatically decide or conclude otherwise and they do not alter my views or conclusions on the evidence before me.

Living conditions – Noise

118. The premises in question, The Newbury Public House has a semi enclosed outdoor terrace on its upper floor and the use of the terrace is permitted to 0130 hours with recorded music permitted to midnight Monday to Sunday. Although the Premises Licence permits live music indoors only, the Live Music Act 2012 deregulates amplified live music (along with karaoke) can be played until 2300 hours (with recorded music following) unless the licence, following review specifies otherwise. A number of breaches of the licence appear to have occurred with no further action taken by the Council's Environmental Health department.
119. A noise assessment was carried out for a single period in November 2023, following that continuous monitoring was carried out for 18 weeks. This identified external events at the Newbury Public House would yield noise levels ranging from 71 to 76 dB LAeq outside dwellings within Block B, E and F with noise levels exceeding WHO and other guidance within the external amenity levels by between 5 and 15 dB LAeq. Ultimately acoustic modelling has demonstrated that the predicted entertainment noise levels at the façade and in the external amenity

space surrounded by Blocks B, E and F will exceed the recommend target levels. Approximately a quarter of the units would be affected.

120. Noise mitigation for the exposed units has been proposed in the form of winter gardens, façade treatment, suitable glazing and an acoustically treated mechanical heat and ventilation system to achieve the appropriate internal noise levels. I am satisfied from the evidence produced that subject to mitigation, impact noise could be mitigated to acceptable levels, both internally and externally, when assessed against BS 8233:2014, which, despite the limitations set out by the appellant appears to be an appropriate reference tool along with the other guidance referred to. However, the question that arises in this issue as to whether, in this town centre location to ensure noise levels from the premises would not adversely affect the living conditions of its occupiers the mitigation proposed would provide an acceptable residential living environment.
121. As a starting point, the appellant contends using the building envelope to mitigate noise to acceptable levels is considered the viable option¹⁰. As to whether good acoustic design practice has been followed in the design and evolution of the proposal to support that approach, the design analysis does not indicate whether alternatives, such as locating sensitive rooms and amenity space away from the elevations directly overlooking the terrace or in the orientation of buildings so as to try reduce the noise exposure, were considered.
122. Achieving high quality design, which includes creating a high quality of amenity, begins with a process of analysis that should begin as soon as any land is under consideration to be developed. Whilst there is some inevitability of developing in such town centre locations a fabric first approach to mitigation appears to have been undertaken at the expense of alternative layouts and form of buildings that may not have resulted not in the same effects. I do not know the exact extent or details of that initial design work but on the evidence before me it appears that the noise consultants for the appellant have been presented with the scheme and asked to design acoustic mitigation for it rather than being involved from the outset.
123. Dealing with the amenity areas and winter gardens, there would be a number of other alternative amenity spaces that could be used. In any event, the uncontested evidence of the appellant's noise expert is that noise levels in the winter gardens would be approximately 50 dB LAeq T which would meet the World Health Organisation and British Standard guideline levels. However I am also mindful that the times at which the music events would take place would be the times at which the communal gardens would not typically be in use but for some that this would make the living environment in this location undesirable with it occurring on a regular basis. Noise levels would also appear be at the upper end of the scale.
124. I accept that it will only be when the terrace is playing live or recorded music that windows and balconies of the most affected units may need to be closed. Exposure would be on average 2 to 3 evenings a week all year round, but entertainment could quite easily occur multiple times a week, at various times, especially during the summer months as permitted by the licence. I do not regard the number of units that would be affected (c.100) as insignificant and the period of

¹⁰ Section 5 of PoE of Joe Baggeley of Anderson Acoustics.

impact could be greater given the 39 breaches reported in the period from 6 June to 19 September or put another way a breach every week¹¹.

125. For those affected residents I accept that national policy or local policy do not suggest that opening windows for ventilation is a fundamental right. However, human nature is such that where one can open a window when it is fine weather, then it would be wholly desirable to do so. Mechanical ventilation is not a substitute for being unable to do so and might be considered as something of a 'last resort'.
126. The inability to have access to fresh air at the relevant times of choice through open windows and having to use a sealed winter garden or other outside amenity space would result in a somewhat oppressive sense and perception in the living environment that would at times feel like existing in and being restricted to an enclosed space. In the summer months in particular, occupiers would have to sleep in sealed rooms, relying upon comfort cooling ventilation or alternatively seek fresh air outside.
127. Clearly residents of any BTR scheme would have a choice and I have no doubt the information measures outlined by the appellant in the form of renter's information packs and a noise management plan could assist. I would also expect for any large scale BTR scheme in such a location with identified impacts that this kind of documentation be provided and include information on the promotion of amenities, the public spaces, the various facilities within the building and their operation and so on. To my mind this does represent a somewhat take it or leave it approach and it does not provide justification for the quality of living environments created.
128. I have also carefully considered the town centre location and the government's aims and objectives in allowing greater deregulation of the leisure industry and further that there may well be additional noise sources. The PPG notes that the potential effect of a new residential development being located close to an existing business giving rise to noise should be carefully considered; existing noise levels from the business may be regarded as unacceptable by the new residents and subject to enforcement action.
129. The building is embedded into the site but to suggest that any decision other than to accept these living conditions could unreasonably blight opportunities that the site offers implies only one approach and it has not been demonstrated through the design process that other options were considered. It is also the specific effects of this particular mitigation that is the issue here and in this particular location.
130. The overall result would be a sizeable number of living environments that would fail to adequately address the connections between people and places and the integration of this new development into the historic and commercial built environment. The proposal would result in unacceptable impacts on the living conditions of a significant number of future occupiers that would likely give rise to adverse effects on health and quality of life.
131. For these reasons, the proposal would cause some harm to the living conditions of occupiers due to noise and the necessary mitigation required to satisfactorily mitigate it. In my view and no matter how standard these approaches appear to be

¹¹ CD1.220.

elsewhere I consider this element should not be regarded as a high quality of design. In this regard there would be conflict with Policies DM5 and DM30 of the LP insofar as they require a high standard of amenity and no harm to the amenity of occupants of neighbouring land and buildings, and future occupants of the development, through an unacceptable increase in noise.

132. The proposal would also conflict with the aim of the Framework at paragraph 135 to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Living conditions – Amenity space

133. The second part of Policy DM30 of the LP aligns with the Framework in terms of seeking to provide and/or maintain a high standard of amenity for existing and future users of land and buildings. Importantly for this issue functional private amenity space is required of a quality and size to meet need. The supporting text of the policy clarifies that as a guide, for 1 or 2-bedroom flats at least 25 square metres (sqm) of communal open space should be provided per unit. For three or more-bedroom flats at least 40sqm of communal open space should be provided per units. Balconies may not be counted towards the provision of amenity space for houses or flats, unless in exceptional circumstances, where they provide high quality space.
134. The Council made no qualitative assessment of the spaces but private amenity space can, and should, be sought to be provided in a variety of different forms and types, and a quantitative assessment is not the only calculation. Even with the inclusion of private balconies the quantity of such space falls short of that guidance but the Council also did not object to the quality of the amenity space proposed. There are no requirements set out for BTR units and the SPD guides that roof gardens are a good way of providing green private space within apartment blocks. I am also aware that the Council have accepted 7sqm of space for the Sterling Cables development.
135. Communal spaces for BTR schemes typically include a number of internal lounges at ground and upper floors with some open areas, and in this case a gymnasium and squash court. I agree with the Inspector in the Basildon appeal that such internal spaces can contribute to the amenity spaces available for BTR occupiers.
136. I strongly doubt that the limits on number of occupiers of the space at any one time would be breached, the spaces may not be overlooked but they are meant to be private and are covered by CCTV. With the exception of Block D whose core would access the civic square space, the spaces would be accessible across the proposal with each individual core having access to an area of communal space. Walking distances may not suit all but they would be short but space is available within a short distance from every unit, including for occupiers of Block D.
137. Turning to the new internal north south route, it is not intended as private amenity space but nonetheless could no doubt be implemented to be an attractive multifunctional space easily accessible by residents. Whilst not private as such well-designed seating and relaxation areas could provide a form of space for reflection/contemplation or even a short break during the day/evening and the quality of space proposed could be landscaped as proposed to be of a sufficiently high quality.

138. Further, I observed that within reasonable walking distances and along safe routes are a variety of parks, recreation and other open spaces which would provide additional and accessible alternative and additional spaces, including for those seeking some privacy, for the occupiers of the flats, should they wish to use it.
139. Wherever the numbers may ultimately fall the combination of amenity spaces proposed, in this town centre location and even on the Council's best case in terms of the quantitative shortfall would be outweighed by the considerations above. The proposal would provide amenity space which would be of an acceptable location, size and quality to meet the needs of occupants. Insofar as this issue is concerned, there would be no conflict with Policy DM30 in terms of its requirement for functional amenity space of a quality and size to meet the needs of the occupants.

Other Matters

140. Issues were raised by NTC concerning parking provision and ultimately, effects on highway safety. The amount of car parking serving the development would reduce significantly as part of the scheme and the residential element of the proposal is intended to be 'car free' with parking provision on-site only for those who need it. There is nothing unusual about 'car free' developments especially on sites like the appeal site that are close to public transport hubs and in an accessible town centre location.
141. On the written evidence submitted and further to my own questions at the inquiry on this matter, I do not consider that the scheme need result in increased parking pressure on adjacent, or even more far flung, streets, subject to planning obligations secured in the S106 agreement, that should be regarded as unacceptable or that would result in unacceptable highway safety impacts.
142. The Council and Rule 6 parties drew my attention to an alternative proposal by the appellant on the same site and known as 'The Old Town' scheme. A valid application has been submitted and is currently being considered by the Council's officers. In this appeal that proposal is not before me in anything other than name, brief outline, and no drawings or further details were submitted to the inquiry. Further, at no point did the Council or Rule 6 parties seek to demonstrate in their evidence that this was a realistic alternative scheme of a less harmful design and with lesser impacts. I have no doubt this is because that proposal still has outstanding issues to be resolved, consultation responses to be reviewed and decisions made.
143. Caselaw of relevance includes the *East Quayside*¹² judgement which explains, in cases relating to heritage assets and alternative schemes '*this, of course, is not to say that the absence of an alternative design that would cause less harm than the development proposed is irrelevant to the decision on the application for planning permission, and an immaterial consideration... it can be relevant, and may be important, in the balance finally struck between harm and benefit.*' However, for the above reasons it has not been considered further in any detail and on the evidence before me in this appeal its existence carries little weight.

¹² East Quayside 12 LLP v The Council of the City of Newcastle Upon Tyne [2-23] EWCA Civ 359.

144. Other appeal decisions and judgements have been put before me to inform and support the respective cases of the main parties. I have had regard to them so far as necessary, whilst also noting that the facts and matters in this case turn on materially different considerations, for example either by location or the main issues and the evidence presented. It is an accepted premise that each case is to be determined on its own merits and circumstances and it is a matter for the decision maker to undertake the necessary planning balance. As such, I do not consider they are directly comparable and I attach limited weight to those presented.

Conclusion

145. Drawing my conclusions together, although there would be no conflict with the LP in terms of the provision of private amenity space the conflicts with the LP that I have identified are such that the proposal should be regarded as being in conflict with the development plan, when read as a whole. I consider the harm in relation to the first main issue to be prevailing and such that this would be the case even if I had found with the appellant on the second main issue in terms of noise.

146. Material considerations, including the Framework, do not indicate a decision should be made other than in accordance with the development plan.

147. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

R Aston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Douglas Edwards, of King's Counsel

He called,

Sarah Ballantyne-Way BSc (Hons) MSc MRTPI

Lochailort Investments Ltd

Dr. Christopher Miele MRTPI IHBC

Montagu Evans

Nick Jones-Hill

Waterman

Joe Baggerley BSc (Hons) MSc MIOA

Anderson Acoustics

FOR THE LOCAL PLANNING AUTHORITY:

Mark Beard, of Counsel

He called,

Sian Cutts BSc (Hons) DipTP MRTPI

Senior Planning Officer – WBC

Laila Bassett BA (Hons) MSc

Principal Planning Officer - WBC

Dr. Rebecca Hawkes-Reynolds PhD IHBC

Principal Conservation and
Design Officer – WBC

Russell Davidson BSc (Hons) DipAc

Senior Scientific Officer - WBC

RULE 6 PARTIES:

Cllr Andrew Moore

Newbury Town Council

Closing submissions delivered by Cllr Gary Norman leader of Newbury Town Council

Dr. David Peacock

The Newbury Society

INTERESTED PARTIES:

Keith Hoddinott

Cllr Adrian Abs - West Berkshire

Cllr Martin Colston - West Berkshire

DOCUMENTS SUBMITTED TO THE INQUIRY

Document Number	Document name	Submitted by
Document 1	Addendum to Dr. Miele's PoE	Appellant
Document 2	ERRATA to Dr. Miele's PoE	Appellant
Document 3	Draft S106 legal agreement	Appellant
Document 4	Appellant's Opening Statement	Appellant
Document 5	Representation of Cllr A Abs WBC	Cllr Abs
Document 6	WBS Opening Statement	Council
Document 7	NTC Opening Statement	Rule 6
Document 8	NS Opening Statement	Rule 6
Document 9	Representation of Mr. Hoddinott	Mr. Hoddinott
Document 10	Representation Cllr M Colston	Cllr Colston
Document 11	EiC Statement NTC	Rule 6
Document 12	NS EiC Statement	Rule 6
Document 13	Spoken representation from Cllr A Abs	Cllr Abs
Document 14	Appendix to SBW's PoE	Appellant
Document 15	Site Visit Itinerary	Both
Document 16	Pack of AVR's	Both
Document 17	Open Space distances	Both
Document 18	Note of Historic England site visit	Appellant
Document 19	Draft CIL compliance statement	Council
Document 20	NTC EiC - Planning	Rule 6
Document 21	NS EiC - Planning	Rule 6
Document 22	Draft planning conditions	Both
Document 23	Closing Submissions	Council
Document 24	Closing Submissions	NTC
Document 25	Closing Submissions	NS
Document 26	Closing Submissions	Appellant
	<i>Submitted after the inquiry adjourned on Thursday 12 June 2025</i>	
Document 27	Amendment to closing submissions correcting a page number reference omitted from original	Rule 6 (NS)
Document 28	Shared Listed Buildings and Visual Impacts Table	Appellant
Document 29	The Newbury Society Additional Buildings Table – Not accepted	Rule 6 (NS)
Document 30	Amended CIL Compliance Statement	Council
Document 31	Completed S106 legal agreement	Appellant