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## Appeal Decision

Site visit made on 1 September 2020

**by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 October 2020

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**Appeal Ref: APP/W0340/W/20/3252212**

**Newspaper House and Units Q1-6, Plot Q, Faraday Road, Newbury  
RG14 2DW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Newspaper House Holdings Ltd against the decision of West Berkshire District Council.
  - The application Ref 19/01281/OUTMAJ is dated 13 May 2019.
  - The development proposed is the demolition of existing Newspaper House and commercial buildings and redevelopment of the site for 71 flats and office accommodation together with parking and associated works.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The planning application was not determined by the Council before it was appealed. From the Council's Appeal Statement of Case and all the other evidence submitted I would regard the main issues as being (1) the effect of the development on flood risk, and (2) whether the proposed development makes sufficient contribution to affordable housing needs in this area.

### Procedural Matters

3. The appeal seeks outline permission with the only matter reserved being landscaping. In so far as the submitted plans and drawings show details of landscaping matters, I have treated those as being purely illustrative.

### Reasons

#### *Flood Risk*

4. The proposal for both apartments and office accommodation is at a site near the centre of Newbury where there are existing offices, which appear to be mainly vacant. The site is within close proximity to the River Kennet and is, at least in part, within Flood Zone 3 according to the Environment Agency (EA). Although in Flood Zone 3 the area does benefit from flood defences. Flood Zone 3 (FZ3) is an area of high probability flooding.
5. The appellant has submitted both a Flood Risk Assessment (FRA) and also 'Sequential Tests' (ST) to support the proposal. The ST is required as there is

proposed a residential aspect (Use Class C3) of the development within this flood zone, which constitutes a 'More Vulnerable' land use. As the site is within FL3, in accordance with the National Planning Policy Framework (the Framework) there is a requirement for both an FRA and a ST. The aim of the ST is, according to the Framework, to steer new development to areas with the lowest risk of flooding. Its only if the ST is passed then consideration is given as to whether the proposal passes the Exception Test, which is also necessary for the development to be considered acceptable in this regard.

6. Firstly, the submitted ST and the appellant's Statement of Case makes the case for there being no alternative site preferable to the appeal site due to the regeneration benefits that a mixed use development within this industrial estate would bring. It is clear from some of the evidence provided that there are some ambitions that the Council have to regenerate the London Road Industrial Estate, which may possibly include some housing. However, to my knowledge there is currently no adopted policy, master plan, or development plan document to provide a detailed regeneration strategy for this industrial estate.
7. There would be benefits with the proposed scheme, such as the job creation, improved quality office accommodation, additional housing for Newbury, and the visual enhancements of this site near a Conservation Area, for example. The site would be well located near the town centre and I am also aware that the site currently includes a large vacant building which would be replaced. However, I am not persuaded that this means that the ST search area should not go beyond the appeal site, which despite the benefits is in this high risk flood area. For instance, there could be sites elsewhere in the District, in areas of lesser flood risk, which could provide similar benefits. Therefore, whilst the regeneration benefits of the proposal are noted they are not such that the ST should discount all other sites in West Berkshire.
8. Notwithstanding the above points about the appeal site, the appellant has continued in their ST to consider other sites, as to whether they would be sequentially preferable in terms of flood risk.
9. In the appellants ST it demonstrates how different sources of information on alternatives sites were used to identify other potential sites. The latest ST information includes the recently published Housing and Economic Land Availability Assessment (HELAA), replacing some of the sources used with the previous STs for the site. With all the sites that the appellant considered most were discounted for various reasons. Some sites were identified as having some potential, but even using a disaggregation approach the appellant concludes that the other potential sites would not provide sufficient land to accommodate the scale of development proposed at the appeal site. However, the Council disputes these conclusions and the methods and search criteria used by the appellant.
10. In the attempt to search for an alternative site which has less of a flood risk, it is firstly noted that this is in FZ3. However, the appellant in their FRA state: "as the site is protected to a 1:100 year standard by flood defences which effectively defend the site such that flood risk is similar to a Flood Zone 2 designation". Whilst I note the defences which will help to reduce the flood risk level of this area, I am also aware that the EA regard this site as FZ3, albeit

- with flood defences. The EA have not concluded that due to the defences the site is FZ2 that I am aware of.
11. On this basis, I am not persuaded that the site should be considered as FZ2 for the purposes of the ST. As such, I do not agree with the appellant's ST methodology in that only sites with a lower flooding probability than those within FZ2 can be considered as preferable (Flood Zone 1 only). From the evidence I can only conclude that sites in Flood Zone 2 are also preferable to the site for residential development and so should not be discounted.
  12. In response to this issue, the appellant in their Statement of Case has considered the site as Flood Zone 3 as a worst case scenario in their assessment of the latest housing sites information from the Council, including the HELAA. Therefore, preferential sites can include those in FZ2. However, for various reasons the appellant has discounted most of the sites within the HELAA for the Newbury town area, with those remaining likely to provide significantly less units than the 71 residential dwellings proposed.
  13. As mentioned in the preceding paragraph, the appellant has only considered sites within the Newbury town area of the HELAA. This relates to the ST area of search. The reasons given for focusing on Newbury is that it would be illogical to divert the benefits of development away from Newbury, given its development needs and considering the aims of 'Area Delivery Plan Policy 2' (Newbury) of the Core Strategy, for example.
  14. However, it is my view that the search area should be set significantly wider taking in the settlements of the District of West Berkshire which is covered by the Council's housing policies. Such policies are permissive for housing in urban areas, rural service centres, and service villages of the District to varying degrees. Furthermore, I also note that Newbury is not the only urban area listed under policy ADPP1, which also includes Thatcham, Eastern Urban Area (comprising Tilehurst, Calcot and Purley on Thames), although it is possible that there may be sites available which could accommodate a development of the scale proposed in this appeal in one of the more rural settlements in the District. Furthermore, Newbury is considered within policy CS11 as a major town centre and that as a main urban area this will be one of the areas which will be the focus for development. However, this is not primarily a housing policy and also other settlements are mentioned (albeit smaller settlements than Newbury).
  15. The proposed development is high density and of a large scale and is more likely suitable in larger settlements. However, policy CS4 of the Core Strategy does allow for densities above 50 dwellings per hectare where considered appropriate. There is no policy that I am aware of that limits higher densities to Newbury alone, with the Council highlighting settlements such as Hungerford and Thatcham, for example, which also have transport nodes where higher densities could be potentially appropriate.
  16. Considering the above, whilst Newbury is a larger urban settlement within the District and there is an indicative target for housing within this town, this does not mean that the benefits of housing development as part of a mixed use scheme cannot also be positive for other smaller settlements. From the evidence provided I am not persuaded that this proposed housing development is specifically needed in Newbury to support its communities or for redevelopment purposes, to the degree that all potential sites within the

district outside of Newbury should be discounted. To my mind, it has not been sufficiently demonstrated that there are no other sites elsewhere in the District, outside of Newbury, which could possibly accommodate the proposed development in areas of lesser flood risk.

17. Further to the above, I also note that the appellant has discounted all sites that would not support a major housing development on the basis that they would not provide affordable housing. Affordable housing is a benefit, but as the most recent ST has considered the Newbury area HELAA sites alone, I cannot be certain that there are no other sites beyond this town which could be sequentially preferable from a flooding perspective whilst also likely to provide affordable housing. Therefore, even if I were to agree with the appellant's reasoning for considering 'major' housing sites only this is undermined by the overly narrow search area focus on just Newbury, as there could be other sites that could accommodate sizable housing schemes with affordable housing in other parts of West Berkshire.
18. For these reasons, it has not been sufficiently demonstrated through the ST and other Statements as submitted that there are no sequentially preferable sites within an appropriate search area where the proposed development could be located, based on the most up-to-date data available. The appellant states that there are no sequentially preferable sites within Newbury from their analysis, but there is no evidence before me that clearly sets out that the proposed development could not be accommodated on a sequentially preferable site in a settlement within the District other than within Newbury. In view of the seriousness of the consequences of flooding I am not satisfied that the sequential test has been passed. As such the exception test does not need to be considered in these circumstances.
19. Overall, whilst I acknowledge the flood mitigation and plans for escape provided within the FRA, which has been agreed by the EA (subject to conditions), the ST has not been passed as it is not possible from the evidence before me to conclude that there are no more potential alternatives to this site away from high flood risk areas which exist in the District. As such, the proposal does not meet with the requirements of the Framework to avoid, where possible, flood risk to people and property.
20. The proposal is therefore contrary to policy CS16 of the West Berkshire Core Strategy 2006-2026, which requires that development in flood risk areas will only be acceptable where a sequential approach has shown there to be no reasonably suitable and available sites at a lower flood risk.

#### *Affordable Housing*

21. At the time of the planning application being appealed by the appellant there was no agreed planning obligation (PO) to safeguard the delivery of affordable housing as part of the proposed development. The Council has now had view of the draft PO as submitted by the appellant. They have stated that with amendments the submitted undertaking could overcome the refusal reason, with the Council requiring 21 units to be affordable, with 15 units social rented and 6 units intermediate to be policy compliant.
22. The Council amendments they require relate to the PO not identifying the unit mix and the location of the affordable units within the scheme. A revised PO has been submitted although there are still some points where the parties have

not agreed on its content. However, a signed and dated PO has been submitted which commits to 21 affordable dwellings on site with a mix of Social Rented Dwellings and Shared Ownership Dwellings, with a 70/30% split. Whilst there may be some points that may need some further revisions, it is clear that the appellants intend to provide affordable housing as part of the development.

23. If there had been no issues which had led me to regard this proposal to be acceptable in all other regards, it would be important to finalise a suitable PO for the provision of the affordable housing. However, as I have found that the development as proposed would have a significant flood risk with the ST failing to incorporate an appropriately wide search area, then I have not pursued the matter of the PO and the affordable housing further. Even if the development had been acceptable with regards to CS6 of the West Berkshire Core Strategy 2006-2026, then this would have provided policy compliant affordable housing, which whilst of significant benefit, would not outweigh the harm as a result of the flood risk I have identified.

### **Planning Balance**

24. The proposal would bring some significant benefits, such as the redevelopment of the previously developed site with 71 housing units (many being affordable) within Newbury, replacing what appears in part a vacant site. It is stated that the proposal would create a significant number of jobs. The proposal may also visually improve the site, which is near a Conservation Area. I give all the potential benefits cumulatively substantial weight.
25. However, the site is within Flood Zone 3 (albeit with flood defences). The Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, but this has not been satisfactorily demonstrated as being the case with this appeal (Paragraph 158). Flooding can result in severe consequences especially for those living in such areas if a flood event occurs, to which there is a notable probability for this site. Therefore, considering all the above, the harm significantly and demonstrably outweighs the benefits of the scheme, including all those raised by the appellants.

### **Conclusion**

26. As such, on balance and after consideration of all matters raised, the appeal should be dismissed.

*Steven Rennie*

INSPECTOR