Appeal by Berkeley Homes (Oxford and Chiltern) Ltd in respect of Land at 55 Vastern Road, Reading, RG1 8BU

Planning Inspectorate’s References: APP/EO345/W/21/3276463

**Opening Submissions on behalf of**

**Reading Borough Council**

(Inquiry commencing 26/10/21)

**1. Introduction**

* 1. The appellant submitted an appeal against the decision of Reading Borough Council (“RBC”) to refuse permission for the demolition of existing structures and erection of a series of buildings ranging in height from 1 to 11 storeys, including residential dwellings (C3 use class) and retail floorspace (A3 use class), together with a new north-south pedestrian link, connecting Christchurch Bridge to Vastern Road, dated 9 April 2021.

1.2 There were a total of seven reasons for refusal which you have distilled into the following seven core issues which fall for your determination:

(1) The effect of the proposed development in design terms with particular reference to the quality and effectiveness of the proposed north-south link through the site and the setting and character of the River Thames and the Thames Path;

(2) Whether it has been demonstrated that the proposal would be part of a comprehensive approach to the development of the Riverside sub-area of the Station/River Major Opportunity Area;

(3) The effect of the proposed development on 55 Vastern Road, a non-designated heritage asset;

(4) The effect of the proposed development on the natural environment with particular reference to marginal habitats and large canopy trees;

(5) Whether the development would provide acceptable living conditions for future residents with particular reference to noise;

(6) Whether a legal agreement which would secure appropriate contributions towards the provision of affordable housing, an employment and skills plan, open space, carbon offsetting and ecological mitigation has been provided; and,

(7) Other planning matters, including the benefits to be weighed in the planning balance.

1.3 It is agreed that the Council can demonstrate a 5 year housing land supply and therefore the appeal should be determined in accordance with the provisions of the Development Plan. This reflects the fundamental need to ensure that development should be plan-led, something which is inherent in section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 which establish a statutory presumption in favour of the Development Plan. This presumption is re-emphasised in the Framework and was the subject of guidance by the Court of Appeal in *Gladman Developments Limited v Daventry [2016] EWCA Civ 1146.* In respect of a very old development plan Sales L.J. stated at paragraph [40](iv):

*“(iv) Since an important set of policies in the NPPF is to encourage plan-led decision-making in the interests of coherent and properly targeted sustainable development in a local planning authority's area (see in particular the section on Plan-making in the NPPF* (2012)*, at paras. 150ff), significant weight should be given to the general public interest in having plan-led planning decisions even if particular policies in a development plan might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan-led approach at all."*

1.4 This analysis respects the dicta of Lord Carnwath at paragraph [55] of *Suffolk Coastal DC v Hopkins Homes and another [2017] UKSC 37* (CDK5). The fact that the provisions of the Development Plan taken as a whole are breached puts this development squarely at odds with the core principle that planning for the future should be genuinely plan led. To use the words of Lord Carnwath at [21] the Framework:

*“…cannot and does not purport to displace the primacy given by statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.”*

1.5 These words resonate in Reading and in respect of this site which benefits from a Site-Specific policy within the Reading Borough Local Plan (which was adopted in November 2019). The site sits within the Station/River Major Opportunity Area which is described as “*a flagship scheme*”. Policy CR11 requires at (v) “*a direct landscaped link between the station and the river Thames*”. Policy CR11g, Riverside, covers the appeal site and requires that development continue “*the high quality route including a green link*”. The overarching Policy CR11 also stipulates (at (ii)) the need to facilitate greater pedestrian and cycle permeability, particularly on the key movement corridors. North-south links through the area centred on the new Station, including across the IDR, are given particular importance. The need to give careful consideration “*to the areas of transition to low and medium density residential*” (vi) is emphasised along with the need for development to demonstrate that “*it is part of a comprehensive approach to its sub-area*”, which does not prevent neighbouring sites from fulfilling their part in the policy requirements (vii).

1.6 As Mr Doyle makes clear, a route from the Station to the River connecting through to a new footbridge across the Thames was first proposed at least 20 years ago in a detailed study by Gibbs and the success of this route is central to this flagship scheme. It was developed in detail in the Initial Development Framework of 2002 which Mr Doyle drafted. The concept of a direct (meaning straight) link was developed over the following decades and Mr Doyle assisted the Council in the preparation of the Reading Station Area Framework (“RSAF”) which was adopted in December 2010. This document is described in the supporting text to Policy CR11 as providing the detailed guidance in developing this area. Within the RSAF the Kennet-Thames spine is described as “*A major “city spine*” and “*a direct pedestrian route*”, which is based on the north-south link and “*which is the most significant movement corridor in the RCAAP, and is vital to the success of development in this area*” (paragraph 5.9). The strategic importance of this north-south link is underlined by its inclusion as the Major Path in the Framework for Development at figure 8.2 (page 46). The RSAF requires the opening up of new views and states that “*Of particular significance are views along the north-south link, between the Station and the Thames, where there should be an unbroken line of sight*.”

1.7 It has been determined that development within Central Reading, within which the appeal site sits, should be required to demonstrate fundamental key attributes in terms of design, the first of which in CR2(a) requires development to “*build on and respect the existing grid layout structure of the central area*”, in particular the supporting text at 5.3.8 makes clear that one of the “*key themes*” is that new development should “*build on and extend*” “*the urban grid*”. Policy CR3 deals with the quality of public realm in the central area, and this requires development to “*enhance the appearance of watercourses*”, provide “*active elevations facing watercourses*” (CR3(iv)) and “*conserve and enhance the historic environment of the centre and the significance of heritage assets*” (CR3(v)). The distinct character of the Thames which (in contrast to the Kennet) “*retains its sense of tranquillity*” is noted to be a distinct character which has informed the local plan (5.3.12). The need for development to make positive contributions to the distinct, largely natural, character of the Thames is also emphasised in policy EN11 to which CR3 cross refers.

1.8 The gravamen of policy within the Local Plan, supported by the detail to be found within the RSAF, and in particular that policy relating to the Central Area in general and the appeal site in particular, does not simply require a betterment on the existing situation. It requires development which will play its part in delivering key strategic objectives to make this important area of Reading a place of the highest quality. It reflects more than 20 years of consideration of how this should be achieved. A failure to give non-compliance with this policy framework anything less than determinative weight in this appeal would entail a failure to respect the primacy of the development plan and would distort or displace the statutory scheme.

**2. The Case for the Council**

2.1 The evidence will demonstrate, Inspector, that in an attempt to make good the submission that the appeal proposals comply with the provisions of the Development Plan, the Appellant is forced into a series of untenable assertions on each of the main issues upon which you have to decide:

* It is suggested that a direct route through the site does not mean a straight route, and that a direct line of sight to the river is not required in the face of the clear stipulation to the contrary in the RSAF;
* It is suggested that a direct line of sight from the station to the river cannot be provided, but this assertion is based upon requirements which do not form part of the policy framework - such as the need for the line of sight to be between “nodes” including the Christchurch Bridge, or the need to be able to see the water in the river rather than greenery associated with it or boats travelling along it;
* It is suggested within the DAS that the site should be developed in accordance with design principle 11 “*Use of buildings to deflect vistas and define the public route through the site*” – the very opposite of what policy requires which is the creation of a direct line of sight from the station through to the river (RSAF 7.10) which will change the perception of the area north of the station as a separate entity (LP 5.4.6);
* It is suggested that a switchback system of ramps in which one is turned completely away from the river through an angle of almost 180 degrees, before turning back towards it again, is consistent with the need for a direct route through to the river;
* In respect of the Locally Listed Building, it is suggested that the recently adopted Local Plan Policy EN4, which stipulates that permission may be granted in a case where a proposal could result in harm to or the loss of a locally important heritage asset “*only where it can be demonstrated that the benefits of the development significantly outweigh the asset’s significance*” is in some way inconsistent with the NPPF because it includes the word “*significantly*” as a measure of how the benefits must outweigh the asset’s significance;
* In respect of noise, firstly in the Appellant’s proof of evidence it was suggested that doubling the weight of glass proposed to be used in relevant buildings would satisfactorily mitigate the noise from the SSE fans; later still in rebuttal evidence for the first time, evidence was provided on the ability of a ventilation system to mitigate noise from the SSE fans – both assertions demonstrated by Mr Scrivener to be incorrect;
* In respect of the riverside buffer, when demonstrated that there would be insufficient space to provide the required large canopy trees, it was suggested that the largely natural character of the Thames would be positively contributed to by the use of fastigiate, urban forms of trees.

***Conflict with the Development Plan***

2.2 The Council will demonstrate that the development proposed in this appeal is contrary to a whole raft of Local Plan policies relating both to development within the Central Area of Reading in general, and the Station/ River Major Opportunity Area with its specific Riverside sub-area Policy CR11g in particular.

2.3 Mr Doyle will demonstrate that the proposed development fails to provide a high quality north-south link through the site, indeed he will demonstrate that the design principles adopted by the Appellant have precluded the provision of a direct and unbroken line of sight through to the river in direct conflict with the objects of policy.

2.4 Mr Doyle will also demonstrate that Blocks D and E by virtue of their height and proximity to the Thames Path will harm the setting and character the River Thames, the path and the quality of the public realm. He will demonstrate that the heights of these buildings are roughly double the Benchmark for this area in the RSAF and that the Appellant’s assertion that there are factors which justify such an increase, are misconceived.

2.5 Mr Doyle will also demonstrate that the sketch provided by the Appellant to the planning committee purporting to adequately demonstrate that the proposed development is part of a comprehensive approach to developing area CR11g – that is to demonstrate how it would enable the remainder of the sub-area site allocation to come forward in accordance with policy – is unsuccessful.

2.6 Mr Sutton will demonstrate that the development will shade the River Thames and impact on its marginal habitats in a significant way. He will demonstrate that the mitigation hierarchy is a cornerstone of ecology policy with its systematic approach to addressing environmental impact and its proposed compensation. The hierarchy first seeks to avoid impacts, then minimise them, then take on-site measures to rehabilitate or restore biodiversity, before finally offsetting residual, unavoidable impacts. He and Mr Doyle will demonstrate that an alternative scheme could be devised of a reduced height and set back from the river which could avoid the harm to the marginal vegetation. Indeed, the Appellant accepts that this can be done. It follows that the mitigation hierarchy has not been followed in this case. Furthermore, Mr Sutton will demonstrate that, in any event, there is a lack of appropriate mitigation offered once one correctly calculates the effect of shading on the marginal vegetation.

2.7 Ms Hanson will demonstrate that the riverside buffer lacks sufficient space for the required large canopy trees, and finally Mr Scrivener will demonstrate that the development has failed to demonstrate that a suitable quality of accommodation can be provided for all the future occupants as the mitigation measures proposed would not be sufficient to adequately mitigate the impact of the noise pollution caused by the SSE fans.

***Supply of Housing***

2.8 That is not to say that the appeal site cannot be developed, the Appellant accepts that the issues identified in the reasons for refusal can be addressed by a reduction in the number of units provided and provide calculations to that effect. It is suggested by Mrs Cohen that reducing the number of units provided by the appeal scheme would be harmful because a higher number of units may be needed to meet targets later in the plan period. Even if this were correct it would not justify determining this appeal other than in accordance with the Development Plan. However, Mr Worringham will demonstrate that, contrary to Mrs Cohen’s suggestion, the exceedance of plan targets over the plan period is likely to be higher than the 556 dwellings based on the 2019-20 Housing Trajectory. Since the date of that trajectory, changes to the site-specific supply (taking into account any points made by Mrs Cohen) result in an expected figure of 1,275 dwellings in excess of plan requirements over the plan period. This continues to give more than enough headroom to accommodate the necessary reduction in dwellings on the appeal site, enabling the issues identified in the reasons for refusal to be satisfactorily addressed.

***Planning Balance***

2.9 It will be demonstrated that the proposed development is in fundamental conflict with the Development Plan. Very significant weight should be afforded to this harm. There are no material considerations of sufficient weight to outweigh this conflict. Finally, it is noted that at the time of writing the Appellant is yet to submit a final / agreed legal agreement

**David Lintott**

Cornerstone Barristers

25/10/21