

**LAND AT 55 VASTERN ROAD, READING RG1 8QT**

**Appeal reference: APP/E0345/W/21/3276463**

**APPEAL BY BERKELEY HOMES (OXFORD AND CHILTERN) LTD**

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**CLOSING SUBMISSIONS FOR THE APPELLANT**

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<b>INTRODUCTION.....</b>	<b>3</b>
<b>THE SCHEME AND THE APPLICATION PROCESS .....</b>	<b>4</b>
<b>PRINCIPLE OF THE PROPOSALS.....</b>	<b>5</b>
<b>QUALITY AND EFFECTIVENESS OF THE PROPOSED NORTH-SOUTH LINK (FIRST REASON FOR REFUSAL) .....</b>	<b>6</b>
Overview .....	6
The status of the RSAF and LTN 1/20.....	7
What the Local Plan requires .....	10
Whether an unbroken view between the station and the river is required .....	13
The Appellant’s switchback versus Mr Doyle’s “serpentine” or “zig zag” design .....	17
Safety benefits of the Appellant’s scheme .....	20
Wayfinding.....	22
The width of the route through the Site.....	22
The Reading ‘Grid’ .....	24
The towpath.....	26
Landscaping .....	27
Other miscellaneous issues.....	28
Conclusion on first reason for refusal .....	29
<b>RELATIONSHIP OF BLOCKS D AND E TO THE THAMES PATH (SECOND REASON FOR REFUSAL) .....</b>	<b>29</b>
The policy background.....	30
Blocks D and E serve an important ‘gateway’ function.....	30
The distinguished design of the buildings.....	32

Comparison with other development in Reading .....	34
Other matters on the second reason for refusal .....	35
<b>ECOLOGY AND TREES (THIRD REASON FOR REFUSAL).....</b>	<b>36</b>
Marginal vegetation.....	36
The precautionary principle.....	37
Overshadowing .....	39
Habitat Compensation .....	43
DEFRA Metric .....	44
Conclusion on marginal vegetation .....	47
Trees .....	48
<b>LIVING CONDITIONS FOR RESIDENTS (FOURTH REASON FOR REFUSAL) ...</b>	<b>51</b>
<b>LOSS OF 55 VASTERN ROAD (FIFTH REASON FOR REFUSAL) .....</b>	<b>52</b>
The policy approach to locally listed buildings .....	54
The heritage significance of the LLB.....	56
The Appellant’s consideration of retaining the locally listed building .....	59
Pre-application consideration .....	59
The possible function of the LLB.....	60
Façade retention.....	60
Preserving the fabric of the building .....	62
Summary on retention options for the LLB.....	64
Abstract references to the site’s history .....	64
Relevance of Appeal decision APP/E0345/W/20/3263270 (Dowsons maltings).....	66
Conclusion on heritage.....	67
The significance of the listing decision.....	69
<b>COMPREHENSIVE DEVELOPMENT (SIXTH REASON FOR REFUSAL) .....</b>	<b>71</b>
<b>HOUSING LAND SUPPLY .....</b>	<b>73</b>
<b>OTHER MATTERS .....</b>	<b>76</b>
<b>OVERALL BALANCE .....</b>	<b>78</b>

## INTRODUCTION

1. These are the closing submissions for the Appellant, Berkeley Homes (Oxford and Chiltern) Ltd in its appeal against the refusal of planning permission by Reading Borough Council (“the Council”) for the following development proposals at 55 Vastern Road, Reading RG1 8QT (“the Site”):

“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.”

2. In summary, the scheme will provide housing in an area where there is a significant need for housing, on a site allocated for that purpose and which itself is highly sustainable, being a brownfield site with excellent accessibility by travel modes other than the car. The scheme conforms with the development plan and with national policy and there are no sound reasons why it should be refused. It should be welcomed and planning permission granted as soon as possible.
3. The remainder of these submissions deals with the following matters:
  - a. The scheme and the application process:
  - b. Principle of the proposals:
  - c. Design (first reason for refusal):
  - d. Relationship of Blocks D and E to the Thames Path and the River Thames (second reason for refusal):
  - e. Ecology and trees (third reason for refusal):

- f. Living conditions for residents (fourth reason for refusal):
- g. Loss of 55 Vastern Road (fifth reason for refusal):
- h. Comprehensive development (sixth reason for refusal):
- i. Housing Land Supply:
- j. Other matters:
- k. Overall balance:
- l. Conclusion.

#### **THE SCHEME AND THE APPLICATION PROCESS**

- 4. The scheme proposes demolition of the existing structures and construction of a new residential community. The housing provided will comprise 209 new homes of various types and sizes. The residential accommodation will be supported by a café with riverside terrace. Importantly, the proposals also include a new north-south pedestrian/cycle link, connecting the Station to Christchurch Bridge and to the Thames towpath.
- 5. The Appellant has engaged with both the Council and the local community in a lengthy and thorough consultation process, both before and after submission of the application on 4<sup>th</sup> February 2020. As set out in the Statement of Common Ground (“SoCG”)<sup>1</sup>, the Appellant attended ten meetings with Council officers pre-submission, including six formal pre-application meetings. Further meetings with officers took place after the

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<sup>1</sup> SoCG, para 5.2.

application was submitted. The Appellant listened to the views of officers and of the local community and amended its proposals to take account of the opinions expressed. The Reading Civic Society referred to the Appellant's public consultation as "*exemplar*" and something "*other developers should take on board.*"<sup>2</sup>

## **PRINCIPLE OF THE PROPOSALS**

6. The principle of a residential-led mixed use development of the Site is firmly established in the Local Plan. The Site forms part of land which benefits from a site-specific allocation in policy CR 11 g, RIVERSIDE.<sup>3</sup> CR 11 g allocates the Site and the neighbouring SSE site mainly for residential development with the 1.24 ha allocation area identified with an indicative capacity for 250-370 dwellings.
7. The Site is in a highly accessible location by all means of travel, particularly by public transport, walking and cycling, and from a transport perspective is ideally suited for a higher density development which has a low dependency on travel by car.<sup>4</sup>
8. The proposals are fully consistent with the National Planning Policy Framework ("the Framework"). The Framework promotes sustainable development that delivers economic, social and environmental benefits. To achieve this, the efficient use of land is required (para 125), with development on previously developed, vacant or underutilised sites being promoted, in particular for housing (para 120 (d)).

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<sup>2</sup> [CD 2.2 para 1.10. These comments were echoed by Cllr Rowland in the Planning Applications Committee meeting on 31 March 2021.

<sup>3</sup> [CD 3.43].

<sup>4</sup> Mr Witchalls' Statement of Case ("SoC"), para 2.1.3 (p 3).

9. The strong policy support for the principle of development is confirmed in the SoCG,<sup>5</sup> and in the officers' report to the Planning Applications Committee where it was stated:

*"..there is a strong case for achieving the best use of this allocated residential site when coupled with the significant need for housing in Reading and the need to maximise the efficient use of land, particularly brownfield land in such a location close to facilities."*<sup>6</sup>

## **QUALITY AND EFFECTIVENESS OF THE PROPOSED NORTH-SOUTH LINK (FIRST REASON FOR REFUSAL)**

### Overview

10. The scheme provides an excellent north-south link in full accord with the relevant Local Plan policy and the Reading Station Area Framework ("RSAF")<sup>7</sup>. Policy CR 11 g states that

*"Development should continue the high-quality route including a green link from the north of the station to the Christchurch Bridge, with potential for a small area of open space at the riverside."*<sup>8</sup>

11. This green link enables a key and final part of the north-south spine, directly linking central Reading to Christchurch Meadows, Caversham and beyond to the north, as well as to the towpath by the side of the Thames. It has been designed as a focal point to the Site, enabling the creation of a well-designed, green and integrated public realm. A key element of the design was to ensure that the link does not bypass the Site but integrates

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<sup>5</sup> SoCG, paras 7.2–7.13.

<sup>6</sup> [CD 2.1], para 6.7.

<sup>7</sup> [CD 6.3].

<sup>8</sup> [CD 3.43].

with it. Not only does this offer opportunities for social interaction, but active frontages are created to aid surveillance and security.

12. The route is set within an attractive and inviting planted corridor which changes as one moves through the Site from the urban edge of Vastern Road to a new, open public space with a riverside café and bridge link to the river and beyond, as well as a link to the towpath below. The link complies with all relevant standards and will be safe to use.

13. Despite all this, the Council takes issue with the quality and effectiveness of the link provided by the Appellant. The Council's planning witness Mr Markwell accepted in xx that this was the Council's "main objection" to the scheme. We deal with each of those complaints in turn. None has any merit.

#### The status of the RSAF and LTN 1/20

14. Before turning to the issues raised, it is important to say something about the status of two documents relied on heavily by the Council: the RSAF<sup>9</sup> and Local Transport Note 1/20 ("LTN 1/20")<sup>10</sup>. The appeal scheme complies with the guidance set out in both of these documents, as will be discussed further below. However, as a preliminary point, the Council has overstated the importance of these two guidance documents throughout its evidence, treating them both as if they were Local Plan policy.

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<sup>9</sup> [CD 6.3].

<sup>10</sup> [CD 6.16].

15. We first deal with the RSAF, a 2010 supplementary planning document (“SPD”) drafted primarily by Mr Doyle that predates the current Local Plan by nine years:

- a. Firstly, the RSAF is not Local Plan policy, nor should it be treated as such. It is an SPD, and therefore as a matter of law it cannot govern development management decisions.<sup>11</sup> Regulation 5 (1) (a) (iv) of the Town and Country Planning (Local Planning) (England) Regulations 2012 (“the 2012 Regulations”) provides that documents containing development management policies which are intended to guide the determination of applications for planning permission are to be Local Plans. Also, regulation 8(3) of the 2012 Regulations provides that policies in SPDs must not conflict with the development plan. The reason for the distinction between Local Plans and SPDs is that SPDs are not subject to the rigours of public examination.
- b. Secondly, on its own terms, the RSAF merely “*supplements*” Policy RC1 of the old Reading Central Area Action Plan (a policy which has since changed and has now become policy CR11).<sup>12</sup> It is therefore akin to supporting text rather than policy in its own right.
- c. Thirdly, in respect of the updated Framework:

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<sup>11</sup> Regulation 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012. In both *William Davis Ltd v Charnwood Borough Council* [2017] EWHC 3006 (Admin) and *R (Skipton Properties Ltd) v Craven DC* [2017] EWHC 534, the High Court quashed purported SPDs because they were not limited to statements which can lawfully be contained in SPDs.

<sup>12</sup> RSAF [CD 6.3], Para 1.8 (p 9) and 4.2 (p 20). Policy RC1 is set out on p 22 of the RSAF.

- i. Para 134 of the Framework is clear that design policy is to be distinguished from design guides and design codes found in SPDs. Taken at their highest, design SPDs can only be “*taken into account*” when determining whether a proposal is well designed (Framework para 134).
  - ii. In any event, the RSAF does not fall within the kind of local design codes envisaged by the Framework. This is because it pre-dates the National Design Guide and the National Model Design Code that such local codes should follow (Framework para 129).
- d. Therefore, while the RSAF is clearly relevant to the issues before the Inspector, and should be given weight, it cannot itself be determinative of the planning issues in this appeal, as appears to be suggested by the Council.<sup>13</sup> The RSAF is guidance at best, and it certainly is not Local Plan policy.

16. Similarly, LTN 1/20<sup>14</sup> is also guidance: it is therefore not mandatory and should be interpreted flexibly. As with the RSAF, it is not development plan policy: and so while relevant to the issues before Inquiry, compliance with it or not cannot be determinative of the appeal as a matter of law.

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<sup>13</sup> Mr Doyle’s Rebuttal Proof, paras 4.2.10-4.2.11.

<sup>14</sup> [CD 6.16]. The Council’s transport witness Mr Cook relied heavily on this document in his evidence.

### What the Local Plan requires

17. The Site-specific policy CR 11 g requires that development should continue the high-quality route including a green link from the north of the station to the Christchurch Bridge, with potential for an area of open space at the riverside.
  
18. Policy CR11 g does not require a link between the Station *and the Thames*. The emphasis is on the link between the station *and the bridge*.<sup>15</sup> Mr Doyle did not discuss the implications of CR 11 g's requirement for a link between the station and *the bridge* in either his 292 pages of written evidence or in his oral evidence in chief ("chief") (which lasted over a day).<sup>16</sup> The Council has accepted that it not possible for there to be a straight line between any part of the station and the bridge.<sup>17</sup>
  
19. The supporting text to Policy CR11 g, at para 5.4.6, is clear that the provision of *visual* links along the route is not mandatory.<sup>18</sup>
  
20. In applying Policy CR 11 g, it is also important to bear in mind the fact that the Site has very significant constraints, which include the unusual shape of the site, the many surrounding buildings, flood levels and the change in levels between the south of the

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<sup>15</sup> Moreover, the Reading Tall Buildings Strategy Update Note 2018 [CD 6.23] emphasises the importance of the Bridge, not some unspecified area of riverbank (p 75): "*The reading Station Area Framework looked in more depth at key views in the area. In particular, it identified a number of points where views could be improved, and, of most significance, opportunities to create new lines of sight through the area, from the Christchurch bridge southwards and from the northern station entrance northwards, so assist in creation of the north-south link.*"

<sup>16</sup> This is despite Mr Doyle agreeing that he intended his evidence to be a fair guide for the Inspector to the relevant policy material and the implications of that policy material.

<sup>17</sup> By e.g. Mr Doyle in xx and in RBC's advice of 22<sup>nd</sup> October (Appellant's SoC appendix 13), p4, para 3. See also the Planning Committee Report [CD 2.1], para 4.45, as referred to by Mrs Cohen in chief.

<sup>18</sup> [CD 3.43]: "*If visual links are also provided, this will help change the perception of the area north of the station as a separate entity*" (emphasis added). Mrs Cohen emphasised this in chief.

site and the river. Any proposal for the Site has to operate within-and respond to-these constraints.

21. Given that CR 11 g requires a link between the station and the bridge (not the river itself) and the Site's very significant constraints, the Council's preoccupation with achieving a perfect straight line cannot be justified. It is completely unrealistic to expect a perfect straight line from the station area to the river. Policy CR 11 (v)'s requirement for directness has to be read in this context; the scheme provides links to both bridge and towpath, both of which we suggest are indeed direct.

22. It is also apparent that the Council has not offered any realistic alternative that meets its own unobtainable definition of "*direct*." Mr Doyle recited in chief three dictionary definitions of "*direct*". But it is clear that his own meandering, multi-level 'serpentine' or 'zig zag' alternative does not meet these definitions.

23. LTN 1/20 provides a general *aim* of directness. But as Mr Cook accepted in xx, that aim must have regard to what is practical in the circumstances. It must also have regard to all users, not just cyclists.<sup>19</sup> Moreover, it is clear from LTN 1/20 that "directness" is a matter of feeling rather than something more tangible or scientific.<sup>20</sup>

24. The Appellant's transport witness Mr Witchalls is an experienced cyclist who commutes to and from Reading town centre via bike. As he notes at para 5.3.5 of his

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<sup>19</sup> As both Mr Cook and Mr Markwell accepted in xx. See e.g. LTN 1/20 [CD 6.16], para 1.4.6: "*Cyclists and pedestrians are considered to be 'traffic', within the meaning of the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004, and therefore duties to manage the road network to secure 'expeditious and safe movement for all traffic' apply to them as well as motorised modes.*"

<sup>20</sup> [CD 6.16] para 1.6.1, point 18 (p 13): "*Cycle routes must flow, feeling direct and logical. Users should not feel as if they are having to double back on themselves, turn unnecessarily, or go the long way round.*"

Proof of Evidence (“PoE”)<sup>21</sup> the switchback ramp is designed with short ramp sections, meaning cyclists will have sight of the full ramp while travelling along it, which helps to maintain a feeling of moving in the desired direction and avoid a feeling of doubling back. This clear line of sight also distinguishes the Appellant’s scheme from Mr Doyle’s layout, which would be burdened with obstructive visual features such as railings and cliff face elevations.<sup>22</sup>

25. To the extent that directness can be measured scientifically, the Council has produced its own tool for assessing the directness of cycle routes, which is in Appendix D to the Local Cycling and Walking Infrastructure Plan 2020-2030 (“LCWIP”).<sup>23</sup> Directness is assessed on a scale of 1 to 5. Mr Witchalls has shown in Appendix B to his PoE that the Appellant’s layout scores the top score for directness (5/5) compared to the existing route.<sup>24</sup> Therefore using the Council’s own methodology, the Appellant’s route is a direct route. At no point does the LCWIP seek to differentiate qualitatively between different routes that fall within that top score.

26. Finally, Mr Cook accepted in xx that the proposed route through the site is significantly faster and more direct than the existing route.

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<sup>21</sup> At p 11.

<sup>22</sup> As discussed by Mr Taylor in chief.

<sup>23</sup> [CD 6.19]; Appendix D is at [ID 10].

<sup>24</sup> Which Mr Cook accepted in xx. Mr Cook appeared to criticise the Appellant for not using the Council’s directness measure to assess Mr Doyle’s zig zag layout: but as Mr Cook accepted in xx, no alternative layout was suggested by the Council in the run up to the determination of the planning application, and Mr Doyle’s zig zag layout was not put forward until mid-August 2021.

27. For these reasons, the appeal scheme does provide a direct and attractive link between the station and the bridge and the Thames towpath and meets the requirements of the relevant policies.

Whether an unbroken view between the station and the river is required

28. We now turn to the question of whether an unbroken view between the station area and the river is needed, as the Council suggests.

29. The Council placed much reliance on paragraph 7.10 of the RSAF, which says that of particular significance are views along the “*direct north-south link, between the Station and the Thames, where should be an unbroken line of sight.*” This paragraph is to be interpreted in the light of Local Plan, which post-dates the RSAF by nine years and which in any event has primacy. The Local Plan Site-specific policy CR 11 g provides that the bridge is the node on the Thames to which the link should flow (and as set out above the Council that accepts no straight line between the station and the bridge is possible). That the link is to be to the bridge is also clear from figure 5.3 of the Local Plan<sup>25</sup>. It is significant that in pre-application correspondence, Council officers emphasised the importance of links to the bridge, as opposed to the river itself or some other part of the riverside<sup>26</sup>. Further, paragraph 5.4.6 of the supporting text to policy CR11 establishes that a visual link is *optional*. It would be contrary to Regulation 8(3) of the 2012 Regulations for RSAF paragraph 7.10 to make a visual link (whether to the

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<sup>25</sup> Local Plan p 149.

<sup>26</sup> See Mr Markwell’s letter to Barton Willmore dated 15<sup>th</sup> February 2019, pp 9-10 (on Council website, in “Correspondence” folder at 10.6).

bridge or to any other location) mandatory, as this would conflict with paragraph 5.4.6 of the Local Plan, as Mrs Cohen said in xx and rx.

30. In any case, an unbroken line of sight from the station to the river is impractical, and any line of sight to the riverside would be very narrow and only achieved at the price of unacceptable implications for development of the Site.

31. In xx Mr Doyle conceded that, adopting his alternative layouts, one could “*probably not*” see the river surface from the station square<sup>27</sup> and that any view of the river would be only a “*sliver*”.<sup>28</sup> In fact, it would almost certainly not be possible to view the river from the station under any of his alternatives, even if there were a straight line between the station and the river. This point is well illustrated by Mr Doyle’s Figure 3 on page 11 of his Rebuttal Proof, which purports to show a view from the south side of Vastern Road along De Montfort Road to the river (although the photograph was taken from nearer to the river than Mr Doyle sets out). There is apparently a boat in this photograph. It is invisible, and it is not apparent that one is looking towards the River Thames, even though the photograph is zoomed in much further than the human eye would see. All that is visible are the trees on the opposite bank. This photograph demonstrates the low value of an ostensibly unbroken line of sight towards the river.

32. Of course, any possible sliver of a view of the Thames from the station square under Mr Doyle’s designs would also include the many trees that line the (necessarily green) link. These trees would be indistinguishable from the trees on the far bank, even if they

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<sup>27</sup> Moreover, as Mr Taylor noted in chief, given the upward incline to the bridge connection, this would be technically impossible.

<sup>28</sup> See e.g. Mr Doyle’s PoE, Figure 34.

did not block the view of the riverside entirely. The obstruction from these trees would be even more significant if seen from the elevated station concourse, where the view would be blocked by the canopies of these trees. Mr Doyle argued that it would be possible to design the landscaping so that it did not obstruct the line of sight, but this would not be practically possible. As Mr Taylor pointed out, on Mr Doyle's serpentine layout any line of sight to the river would not be aligned with the route through to the river, so it is inevitable that landscaping would obtrude upon it. Mr Doyle produced no evidence to prove that a view of the river from the station would be obtained in any of his alternative designs. Had he been confident of his position, he could have provided a verifiable photomontage or one of his model images, looking along this view from the eye level of a person on the ground. However, he provided neither, relying instead on a bird's eye view from the opposite direction<sup>29</sup>.

33. Mr Doyle's suggestion that there can be a direct line of sight between the station square and the river is also predicated upon the removal of the Goods Office (Block C), in addition to the partial removal of the Goods Warehouse (Block B) and Christchurch Wharf (Block E)<sup>30</sup>. However, as well as providing continual active frontage, Block C has an important function as an acoustic shield, protecting the rest of the site from noise from the adjacent SSE site<sup>31</sup>:

- a. If Block C was removed from the scheme in order to provide a straight line between the station square and the river, there would need to be a long, high

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<sup>29</sup> Mr Doyle's PoE, Figure 34.

<sup>30</sup> Mr Doyle's PoE, Figure 30 and 31.

<sup>31</sup> Which Mr Doyle accepts: see his Rebuttal Proof at para 3.2.40 (p 37).

acoustic wall in its place to provide the equivalent acoustic protection, as Mr Doyle accepted in xx.

- b. This blank wall would be 25m long and 6-9m in height<sup>32</sup>. It would be highly undesirable in design and townscape terms to have such a substantial inactive street frontage at an important juncture on the north-south link and contrary to the need to ensure active frontages along the route, as set out in para 5.4.6 of the supporting text to Policy CR 11.
- c. The disbenefits of placing a long, high blank wall along the site are not just visual, however: the removal of Block C and partial removal of Blocks B and E would also involve a substantial reduction in the number of dwellings the Site can provide.
- d. Accordingly, the disbenefits of removing these buildings would greatly outweigh any benefit associated with the (highly unlikely) opening up what Mr Doyle described as a “*sliver*” of a view of the river from the station square, which is the sole reason he suggests that Block C should be removed.<sup>33</sup>The Council has not properly considered this issue: Mr Markwell confirmed in xx that his own written evidence had not considered the planning implications of removing Block C.

34. Mr Doyle’s alternative route suggestion, shown in plan on his Figure 32 and in the perspectives at Figures 34 and 35, would be entirely unacceptable. As he accepted in

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<sup>32</sup> As discussed by Mrs Cohen in chief.

<sup>33</sup> See his PoE, Figure 31.

xx, the route to the bridge would be “tortuous”. It would be unacceptably hard to find, accessed only through a narrow gap in the wall of development facing the river. That wall of development would itself be unacceptable in massing terms, as Mr Doyle agreed in xx.

35. Mr Doyle’s alternative sketches are focused entirely on achieving one outcome: a “straighter” route than the Appellant’s. In focusing on this sole outcome only, Mr Doyle ignores the many other important considerations and policy requirements that informed the Appellant’s careful design: such as providing attractive buildings and public realm, massing, dwelling yield, acoustic protection, visual interest and providing a coherent community space.

#### The Appellant’s switchback versus Mr Doyle’s “serpentine” or “zig zag” design

36. We now turn specifically to compare the merits of the Appellant’s switchback design against the sketches offered by Mr Doyle regarding possible alternative layouts within the Site.

37. We note to begin with that Mr Doyle’s alternative layout sketches first appeared in the Council’s Design Statement of Case (“SoC”). Prior to this, there was no suggestion from the Council that an alternative layout to the switchback would be preferable. The Council’s officers noted in an e-mail to the Appellant on 8 December 2020 that the switch-back design should be retained, as the Council considered that “*in overall terms... this route signifies the best possible with all competing demands considered.*”<sup>34</sup>

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<sup>34</sup> Mr Taylor’s SoC, para 3.17 (p 32).

38. We also note that during his oral evidence Mr Doyle was at pains to emphasise that his sketches are only illustrative. Necessarily this means that unlike the Appellant's scheme, his sketches are not fully thought through. They focus exclusively on avoiding a switchback and fail to take into account all other design and planning considerations.

39. Turning now to a comparison of his sketches with the appeal proposals:

- a. As Mr Doyle accepted in xx, none of his sketches allow a view from the station or station square directly to the bridge.
- b. There are also more changes of direction in Mr Doyle's routes.<sup>35</sup> Under the Appellant's design, the maximum number of physical changes of direction for pedestrians and cyclists is three.<sup>36</sup> By contrast, Mr Doyle's zig zag alternative has no fewer than five changes of direction.<sup>37</sup>
- c. In terms of directness, in the Appellant's scheme the majority of pedestrians will not need to use the switchback. They will have an even more direct route to the bridge via the steps.
- d. The Appellant's route is less reliant on railings than Mr Doyle's multi-level zig zag route. As was explored in xx, if Mr Doyle's design was adopted, upon

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<sup>35</sup> Changes of direction are of course antithetical to the dictionary definitions of "direct" that Mr Doyle reminded the Inquiry of.

<sup>36</sup> See Mr Taylor's PoE, para 3.28 (p 21).

<sup>37</sup> See Mr Taylor's PoE, para 3.57-3.58 (p36). There is no suggestion that either of the "more direct" alternatives put forward in the design addendum by the Appellant as alternatives to the switchback should be adopted in place of the appeal scheme, as was accepted by Mr Doyle in xx. These were dismissed by the Council's planning officers at an early stage.

entering the site one would be presented with railings along the entire western side of his design due to the changes in levels. By the Appellant's estimates, a pedestrian or cyclist entering the site from the station would be presented with three sets of railings between themselves and the river.<sup>38</sup> For this reason, unlike the attractive shared space offered by the Appellant, Mr Doyle's alternative layout would provide an unsightly series of cliff edges and multiple levels. It would be a frustrating experience for users to be funnelled through such a complex system. This is in stark contrast to the open simplicity and gradual incline of the Appellant's design, where the route contains straighter sections which align with a user's direction of travel.

- e. In Mr Doyle's sketches, the riverside café in the Appellant's design is hemmed in by the zig zag route and isolated from the river. Further, the extent of usable terrace is less than half of that contained within the Appellant's design and anyone using the terrace space or seating would potentially block the view of a cyclist using the route.
- f. The high number of bends on Mr Doyle's zig zag route also raises further potential safety concerns, as cyclists are more likely to try to take shortcuts and increase the risk of collision.<sup>39</sup> The Appellant's switchback presents no such risk. It complies with all relevant standards and no safety concerns have been raised by the Highways Authority. The Council has not provided any evidence

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<sup>38</sup> Mr Taylor in chief.

<sup>39</sup> See Mr Witchalls' PoE, para 5.5.2 (p 15): "*an alignment which will enable faster cycling on a shared path with cyclists likely to aim for the straightest path by cutting across the route at each bend. This would naturally increase the risk of higher speed collisions with pedestrians.*" Mr Cook accepted he had pointed to no standards or guidance where a succession of zig zag bends had been countenanced.

that the other switchbacks in Reading referred to by Mr Witchalls have caused any inconvenience or difficulties for cyclists.<sup>40</sup>

40. For these reasons, it is clear that Mr Doyle's preoccupation with one single issue, directness, has led to him neglecting the myriad of other planning issues and constraints that led to the careful and thoughtful design of the Appellant's route. His approach is not appropriate.

41. As Mr Cook accepted in xx, if an alternative layout were to be substituted for the switchback, that other layout would have to be acceptable overall: not just in highways terms, but also planning and design terms. Given these considerations and the many constraints of the Site, the Appellant's design is the best possible design in the circumstances.

#### Safety benefits of the Appellant's scheme

42. A significant benefit of the switchback arrangement is the fact that the switchback will significantly reduce cyclist speed on a busy shared space, compared to a straight-line arrangement that could be abused by cyclists as a 'rat run'.<sup>41</sup>

43. As with the other alternative proposals, the Appellant's scheme requires space to be shared between a number of different users, including pedestrians, cyclists, wheelchair users and buggies.

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<sup>40</sup> See Mr Witchalls' PoE, para 3.4 (p 11).

<sup>41</sup> As Mr Taylor commented in chief.

44. Mr Cook relies on para 6.5.9 of LTN 1/20 to argue that it is not necessary in safety terms to slow cyclists' speed, because cyclists tend to alter their behaviour according to the density of pedestrians.<sup>42</sup> However, para 6.5.9 refers to further guidance in Chapter 8 of LTN 1/20. In that chapter, para 8.2.11 provides that:

*“It may be necessary to encourage cyclists to slow at certain points, such as the access to cycle tracks, areas of high localised pedestrian activity, steep gradients and locations where there is the potential for conflict such as junctions and the entrances to subways and bridges, particularly if visibility is constrained.”*<sup>43</sup>

45. As Mr Witchalls commented in chief, all these factors apply here. Mr Cook also accepted in xx that the appeal scheme would be an area of high localised pedestrian activity.

46. It is not known whether cycle collisions have already occurred near the bridge to date, because such collisions are not usually reported.<sup>44</sup> But in any event, Mr Cook accepted in xx that any present lack of issues with cycling speed on the southern end of the Christchurch Bridge could provide no guide to what would happen in the appeal scheme, as the situation would be entirely different. In the appeal scheme, on exiting the bridge to travel southwards a cyclist would no longer have to negotiate a 90 degree bend (as at present), but instead would travel straight ahead. Moreover, Mr Doyle accepted in xx that cyclists could well enter the site at speed.

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<sup>42</sup> [CD 6.16], p 68.

<sup>43</sup> [CD 6.16], p 85.

<sup>44</sup> As Mr Witchalls noted in chief.

47. Speed reduction is therefore an important benefit of the switchback arrangement and helps in achieving a safe and attractive route.

### Wayfinding

48. Mr Doyle claimed there was insufficient wayfinding in the scheme. His definition of wayfinding is however too simplistic. As Mr Taylor discussed in chief, wayfinding is a term coined in the classic 1960 town planning text 'The Image of the City' by Kevin Lynch. It is more than mere signage. Wayfinding is an organisation of definite sensory cues, which include shape, buildings, massing, colour and texture. The Appellant's scheme incorporates a number of creative wayfinding measures that go beyond simply signage. The scheme uses the arrangement of buildings to direct and invite onward views and movement; contrasting textures and colours in the paving material to draw the eye; changes in scale which define transition points between spaces; transitions in brickwork colour as you move through the Site (with red brick more associated with the industrial Vastern Road end, and buff brickwork more associated with the riverside); generous planting; a prominent piece of public art; echoes of the railway tracks; and stud markers to indicate the cycle route.<sup>45</sup> These features add further attraction to what is already a direct and convenient layout.

### The width of the route through the Site

49. On the issue of route width, the appeal scheme offers 3m widths as a minimum<sup>46</sup>, compared to the 4m minimum Mr Doyle says should be offered. As Mr Taylor

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<sup>45</sup> See e.g. Mr Clark's SoC, para 7.2-7.15 (p 40), and PoE, para 3.38 (p 11).

<sup>46</sup> The first part of the route within the Site on exiting the bridge is 4m wide.

explained in his PoE, the specification of a 3m wide foot/cycleway was at the request of Council officers during pre-application discussions.<sup>47</sup>

50. Mr Doyle accepts his alternative sketches require more railings, which would further reduce the available widths his alternatives can offer. Moreover, the earlier iterations of his sketches all included a 3m wide route only, which suggests that he and the Council accept the sufficiency of such a width<sup>48</sup>.

51. The width of Christchurch Bridge is 3.5m between handrails at the point where it would connect to the Site. Mr Doyle suggests that there will be an unacceptable throttling effect moving from a 3.5m width (with handrails) on the bridge to the wider 4m route in the first part of the Site south of the bridge, followed by the 3m path (without handrails) further along the link within the Site. This is implausible. If this were a real issue it would have been raised by the Highways Authority. As it happens, the Highways Authority is happy with the width of the route throughout the Site, which is unsurprising as it specified that width.

52. There is no national or local policy or guidance that suggests that wider routes are in any way an indicator of quality. Mr Doyle relied on reference in the National Model Design Code<sup>49</sup> to the relationship between width of streets and height of buildings. However, as Mr Taylor pointed out, this passage in the NMDC is concerned with the

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<sup>47</sup> Mr Taylor's PoE, para 3.46 (p 26).

<sup>48</sup> See Figures 12-15 in Mr Doyle's SoC (p 84).

<sup>49</sup> [CD 6.2]; Mr Doyle relied in particular on Fig. 45 on p 43 of the National Model Design Code Part 2 Guidance Notes. The Guidance Notes are not on the Core Documents, but the relevant passage is quoted at para 2.5.8 (p10) of Mr Doyle's SoC.

width of the *street* as opposed to the width of particular routes within that street (which is generous in the appeal scheme).

53. This is also unsurprising: the appropriate width of a route will depend on the context. The width of the Appellant's route is entirely appropriate in this context. It is ample.

#### The Reading 'Grid'

54. The Council suggests that the Appellant's scheme does not accord with what is described as the Reading "*grid*." However, the only expert who has carried out a detailed analysis of this grid is the Appellant's townscape witness Mr Clark.<sup>50</sup> As Mr Clark explained in chief, the street pattern in central Reading is not the "*broadly rectilinear grid*" that Mr Doyle describes it to be.<sup>51</sup> It is at best a *highly distorted grid* rather than a rectilinear grid.<sup>52</sup> It has a number of curved, cranked and partially enclosed routes. Whilst there are some areas of broadly parallel streets in an around the town centre, these areas are very limited in their extent and-where present-they are typically not aligned to the pattern of adjoining areas.<sup>53</sup> This distortion significantly limits the potential for long forward visibility in central Reading.<sup>54</sup> Views along streets are often closed or deflected. Notwithstanding this, Reading's streets can (and do) function effectively as legible routes to follow.

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<sup>50</sup> See e.g. Mr Clark's SoC, para 7.21 (p 45); Mr Clark's Rebuttal Proof, para 2.1-2.8 (p 2).

<sup>51</sup> Mr Doyle's PoE, para 3.3.22 (p 20). In fact, Mr Doyle concedes at para 3.3.25 (p 21) it is a "distorted grid".

<sup>52</sup> See Mr Clark's Rebuttal Proof at para 2.2 (p 2). This is clear from the drawing at Figure PC-R-1 (p 3). The RSAF at figure 5.2 (p 28) describes the grid in terms of a "*route network*" rather than a rectangular pattern of streets, which is entirely appropriate.

<sup>53</sup> Mr Clark's Rebuttal Proof, para 2.3 (p 4).

<sup>54</sup> See e.g. Mr Clark's Rebuttal Proof, townscape corridor photographs 3, 4, 6, and 7.

55. The notion of a grid is used in the RSAF at p 28 (under the heading of Public Realm Priorities) where Fig. 5.2 illustrates “*The existing Central Area pedestrian route network or ‘grid’.*” This idea of the “grid” as a “network” is a more appropriate interpretation of the word in this context, rather than as a regular pattern or orthogonal streets offering direct visual links, which the centre of Reading does not have-as Fig. 5.5 of the RSAF clearly illustrates. Fig. 5.5 includes a number of curved or cranked routes (including one through the appeal Site), so such irregularities do not in themselves preclude inclusion in the “Grid.”

56. The appeal proposals fit comfortably within this wider pattern. The design approach replicates the interest and the intimacy that is characteristic of views within Reading town centre. In circumstances where a “straighter” route is clearly unachievable given the negative knock-on effect this would have on a host of other planning factors,<sup>55</sup> the appeal scheme instead provides an attractive unfolding townscape with emerging views around edges and corners that is typical of the wider area. This is an entirely valid design approach to creating a legible, interesting and inviting route. As Mr Clark notes, it is supported by the well-established principle of closure set out by Gordon Cullen in his well-known book “*The Concise Townscape*”, which creates a sense of unrolling or revealing.<sup>56</sup> It is also entirely in accordance with the views of Design South East, who agreed with the concept of a sequence of spaces along the green link rather than a single straight line.<sup>57</sup>

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<sup>55</sup> Such as dwelling yield, active frontages, the openness of the shared public space, and the riverside café.

<sup>56</sup> See Mr Clark’s SoC, 7.8-7.10 (p 41). This principle is based on observations of many existing townscapes.

<sup>57</sup> They noted that noted that the public realm “*should be conceived also as a sequence of spaces. We envisage at least three spaces...*”: SoCG, Appendix C.

57. As Mr Clark said in answer to Inspector questions, such an approach is entirely consistent with aiming to provide as direct a route as possible as it invites progress through visual interest. The Council made much of the reference in the Design Principles of the DAS<sup>58</sup> to the use of buildings to deflect vistas and define the public route. However, that principle is (a) demonstrably acceptable and (b) has to be seen in the context of the other Design Principles set out in the DAS<sup>59</sup>, which include addressing the site constraints, providing a high-quality route through the Site and opening up views to the river and into the Site.

#### The towpath

58. The Council's objections regarding the towpath connection to the Site have now been resolved.

59. The Appellant's Transport PoE includes a revised option for the towpath access.<sup>60</sup> This drawing shows the provision of a 1:21 gradient connection from the site to the towpath. The Appellant confirmed during the inquiry that it wished to formally amend the appeal proposal for this drawing to be taken into account. Both parties agree this would comply with the *Wheatcroft* principles.<sup>61</sup>

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<sup>58</sup> Page 55, principle 11.

<sup>59</sup> See DAS p 55.

<sup>60</sup> Appendix F, Berkeley Drawing Number 448.LAND.SK.101) (Appendix A to the 3<sup>rd</sup> addendum to the Transport SoCG) [ID 16].

<sup>61</sup> See Section M.2 to Annex M of The Planning Inspectorate's Procedure Guide: Planning appeals – England (updated 13 October 2021).

60. On the basis that this design alteration will replace the submitted drawing, the Council are now satisfied that a suitable access connection to the towpath for both pedestrians and cyclists will be made.<sup>62</sup>This should be counted as a major benefit of the scheme.

### Landscaping

61. In his Design SoC Mr Doyle noted that “*the detailed landscape design of the route is generally successful and appears attractive.*”<sup>63</sup> Nevertheless, he goes on to criticise the amount of landscaping offered by the appeal scheme.<sup>64</sup>

62. To the extent that open space and soft landscaping is relevant to the first reason for refusal (and, of course, there was no suggestion in the reasons for refusal that the scheme should be refused on the basis of landscaping or lack of open space):

- a. There is no policy requirement for any amount of soft landscaping or indeed any amount of riverside open space on the Site, as Mr Doyle accepted in xx. Nor is there any such requirement in the RSAF, which refers only to a “*high quality public realm*”.<sup>65</sup> Moreover, the RSAF explicitly recognises that “*This will not be of a large size, due to space constraints.*”<sup>66</sup>
- b. Nevertheless, the scheme offers substantial riverside open space and soft landscaping, which are benefits over and above the strict policy requirements.

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<sup>62</sup> [ID 16], para 2.5. These objections were contained in Section 4.4 (p 10) of Mr Cook’s PoE ‘Southern Towpath Access’.

<sup>63</sup> Para 2.14.4 (p 27).

<sup>64</sup> SoC para 2.14.4 (p 27); see also his PoE, para 3.7 (p 30).

<sup>65</sup> [CD 6.3] Para 5.16 (p 27).

<sup>66</sup> [CD 6.3] Para 5.16 (p 27).

The riverside café terrace in particular will have notable amenity value for residents and users of the Christchurch Bridge. This is a benefit that is only achievable through the Appellant's configuration of the site. In Mr Doyle's layout, the cafe is contained within the larger zig zag path and isolated from the river.

- c. Mr Doyle's alternative zig zag layout offers less soft landscaping and less than half the amount of usable terrace than the Appellant's scheme<sup>67</sup>.

#### Other miscellaneous issues

63. As a minor point, some additional criticism was offered by Mr Doyle about the podium level of the site being 0.375m above the bridge, requiring a very slight gradient down to the river from the north of the site. This is of no consequence in terms of the directness or quality of the link. The level is set by the undercroft parking, which can be no lower than 38.1m AOD to comply with flooding requirements, give sufficient room for vehicles, and allow a nominal amount of build-up to provide soft landscaping.<sup>68</sup>

64. Mr Doyle also made the unevicenced assertion that the turn from the Appellant's café terrace to the bridge could be dangerous because it was a "blind bend". This assertion should be rejected. The Highways Authority has not objected to the layout on safety grounds. The scheme complies with all relevant standards.

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<sup>67</sup> See Mr Taylor evidence in chief, and as put to Mr Doyle in xx.

<sup>68</sup> As Mr Taylor explained in chief.

### Conclusion on first reason for refusal

65. In conclusion, the green link offered by the appellant is fully in accordance with Policy CR 11 g and the remainder of the relevant policies. It also provides an attractive and well-designed walking and cycle route in accordance with para 106(d) of the Framework. It achieves the highest score under the Council's own measure of directness. Accordingly, the Council's objection to the alignment of the link is misplaced. The attitude of the Reading Civic Society is to be preferred, who commended the "*high quality*" of the link.<sup>69</sup>

### **RELATIONSHIP OF BLOCKS D AND E TO THE THAMES PATH (SECOND REASON FOR REFUSAL)**

66. The proposals will have no detrimental effect on the setting or character of the Thames path or the Thames itself. Rather, they will bring significant improvement to the character of the river corridor and views across and along it, by replacing the existing utilitarian void that currently diminishes the waterfront with a visually interesting and locally distinctive arrangement of built form, soft landscape and public realm across the river frontage, as envisaged in the RSAF.<sup>70</sup>

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<sup>69</sup> Update report to the Planning Applications Committee ("Update Report") [CD 2.2], para 1.13.

<sup>70</sup> [CD 6.3]; see e.g. Figure 14.5 (p 80).

### The policy background

67. Development on the riverside frontage of the Site must take account of the fact that the Site is within the Local Plan policy CR 11 Major Opportunity Area where high density development is proposed.<sup>71</sup>
68. Block D (the Turbine Hall) and Block E (Christchurch Wharf) are not “tall buildings” as defined by the Local Plan (i.e. 12 storeys or above for residential<sup>72</sup>).
69. The RSAF sets out a number of benchmark or indicative heights for different parts of the Station Area. Quite apart from the fact that the RSAF is not development plan policy, the RSAF itself states that “*Benchmark heights are not absolute limits and may be modified upwards in certain circumstances.*”<sup>73</sup> It is plain from the RSAF that the Council does, indeed, envisage buildings of the height and mass of Blocks D and E at the northern gateway to the Site<sup>74</sup>.

### Blocks D and E serve an important ‘gateway’ function

70. There was agreement at the inquiry on the Site’s role as a strategic gateway to the centre of Reading, and other development adjacent to the river. The scheme will assist in marking this important gateway, while being subordinate in scale to the planned development around the station. Blocks D and E and the riverside element of the

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<sup>71</sup> [CD 3.43].

<sup>72</sup> See Policy CR 10 [CD 3.42]: “*In Reading, tall buildings are defined as 10 storeys of commercial floorspace or 12 storeys of residential (equating to 36 metres tall) or above.*”

<sup>73</sup> Page 33. Para 6.23 also provides that “*Benchmark heights may be modified upwards in order to realise certain urban design or other major planning benefits, or where applicants have demonstrated convincingly that the potential impact of higher buildings on the surroundings can be mitigated.*”

<sup>74</sup> See eg Fig 14.5 of the RSAF.

scheme generally will fit in with the prevailing pattern of existing development enclosing the southern edge of the river corridor.

71. Figures 6.5, 14.1 and 14.5 of the RSAF provide an illustrative masterplan of the gateway development the Council envisages on the Site.<sup>75</sup> Though they are said to be illustrative, paragraph 14.1 of the RSAF states that they represent a “*possible scheme that would comply with the [Station Area] Framework...*” It is striking that Figures 6.5, 14.1 and 14.5 show two landmark buildings in the places where Blocks D and E are proposed. These landmark buildings are between 10-12 storeys in height<sup>76</sup>- significantly larger than the riverside buildings to the east and west-and appear at least as close, perhaps closer, to the river than Blocks D and E. The footprints of these buildings (and the way they fall back into the Site) closely align with Blocks D and E, as Mr Taylor noted in xx. Mr Taylor explained in oral evidence that further south into the Site from Blocks D and E, the development closely aligns with the RSAF benchmark height until rising again on Vastern Road, where officers<sup>77</sup> found the scale to be acceptable.

72. Reference to Figs 6.5, 14.1 and 14.5 of the RSAF shows that the Council (and indeed Mr Doyle, the principal author of the RSAF) have long considered the Site to be a gateway site where taller buildings are justified-in other words, a situation where in the words of para 6.23 of RSAF “*[b]enchmark heights may be modified upwards in order to realise..urban design or other major planning benefits*” . It is therefore inexplicable that the Council is opposing the height and distance to the river of the appeal scheme’s

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<sup>75</sup> [CD 6.3], p 80-81.

<sup>76</sup> Confirmed by Mr Doyle in xx.

<sup>77</sup> Committee report para 6.17.

Blocks D and E.<sup>78</sup> Blocks D and E are not “tall buildings,” and are comparable in height and set-back from the river to the buildings shown in the RSAF. Indeed, Mr Doyle’s argument that taller build forms should be avoided at the riverside (eg in his Rebuttal at paras 3.3.16-3.3.49) is plainly inconsistent with what is stated to be acceptable in the RSAF. In seeking an explanation for the Council’s stance, it is perhaps significant that there is no reference anywhere in the written evidence submitted on its behalf to Figures 6.5, 14.1 and 14.5 of the RSAF. Perhaps they were simply forgotten-who knows? But it is beyond doubt that they show acceptance of development of the same height and location as Blocks D and E.

#### The distinguished design of the buildings

73. As Mr Doyle accepts, the design of the buildings is of high quality<sup>79</sup> and is architecturally interesting.<sup>80</sup> In the Heritage round table session, Mr Edgar also said the design of the buildings was “*high quality.*” This view is shared by the Reading Civic Society, who rated the quality of the designs and proposals for the site “*very highly and... one of the best [they] had seen for some time*”.<sup>81</sup> Design South East also noted that “*The panel broadly supports the scheme and has no major issues with use, quantum, height and massing.*”<sup>82</sup>

74. The appeal scheme is a huge improvement on the existing site. As Mr Clark noted in chief, what is currently on site is an unattractive, utilitarian void that blocks the

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<sup>78</sup> See e.g. Mr Doyle’s Rebuttal Proof at para 3.3.42 (p 58).

<sup>79</sup> Mr Doyle’s SoC Para. 3.8.1 (p 45).

<sup>80</sup> Mr Doyle’s SoC, para. 3.12.1 (P 48).

<sup>81</sup> Update Report [CD 2.2], para. 1.11.

<sup>82</sup> Committee Report [CD 2.1], para 4.2.2.

connection between the bridge and the town centre. This will be replaced by an architectural scheme of real distinction, with attractive public realm and active frontages.

75. The design of Blocks D and E take cues from Victorian power stations such as detailing, brickwork and large windows. However, they are not an attempt to mimic the exact form or proportions of a power station.<sup>83</sup> Mr Doyle’s criticisms in that regard are contradictory. He both criticises the blocks in the appeal scheme for being taller than they are wide (suggesting that they should be of similar proportions to actual power stations, i.e. wider than they are tall<sup>84</sup>), while also arguing that taller, slimmer towers on the site would be preferable because they would follow the tower-like forms of Thames-side power stations.<sup>85</sup> He cannot have it both ways.

76. During the application process, officers were comfortable with the proposed heights of the buildings<sup>86</sup>, as Mr Markwell stated in September 2020. A change in the Council’s position was only apparent when the Committee report was issued.<sup>87</sup> Mr Markwell accepted in xx that “*no explicit concerns*” about massing were raised before the issue

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<sup>83</sup> See the Design and Access Statement (“DAS”), para 3.6.2 (p 80). See further below in respect of the fifth reason for refusal.

<sup>84</sup> In chief; see also Mr Doyle’s Rebuttal at p 60.

<sup>85</sup> PoE 4.9.8: “*In any case, a slimmer ‘tower-like’ massing would, to my eye, seem to result in a more elegant architectural statement and follow from the tower-like forms of Thameside power stations, including Bankside and Battersea on which the architectural language of the scheme is based.*”

<sup>86</sup> Design SoC, para 6.56 (p 69); para 3.14 (p 32); see also Appendix 26 to the Appellant’s SoC, Note of a meeting between the Appellant and the Council (16/9/20), para 2.18 (“*JM advised that RBC are relatively comfortable with proposed scale of development*”).

<sup>87</sup> Design SoC, para 6.57 (p 69). This opinion appears to contradict the officers’ view prior to committee; see 3.16.3 (p 32): “*Officers stated that they liked the northern part of the route and how it opened out with the landscaping and café*”.

of that report. This perhaps suggests that the second reason for refusal was not the product of prolonged reflection.

#### Comparison with other development in Reading

77. As Mr Clark noted in chief, there is substantial built form along the southern riverside and in the expanding town centre, including at other river crossings such as Reading Bridge. This is a clear pattern and is characteristic of the town.

78. The scale and massing of the proposed blocks on the Site are appropriate in the context of other buildings along the riverside in Reading. This is set out in Appendix A to Mr Taylor's SoC (p 83) (with the amendments suggested in the table in Mr Doyle's Rebuttal at para 3.3.38 (p 57)). The height, set-back from the river, height to width ratio and building frontage width of Blocks D and E all fall within the range of the buildings considered, and the appeal scheme has the most publicly accessible riverside space of them all. Mr Doyle argued that it was necessary also to consider buildings further West<sup>88</sup>. The riverside buildings to the West are similar to those considered in Mr Taylor's assessment, in their frontage widths and set-backs from the river. The fact that they are generally lower in height than Blocks D and E is hardly surprising given that the appeal Site has a central, gateway role, as recognised by the scale and siting of riverside buildings on the Site envisaged in the RSAF.

79. It is also curious that although the Council considered that the scale of Blocks A and B was acceptable in the context of nearby Clearwater Court and Reading Bridge House

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<sup>88</sup> As shown in Doyle Figure 18/21.

for the Vastern Road site of the development, the same logic was not applied in respect of the river-facing side<sup>89</sup>.

80. Overall, Blocks D and E are part of a carefully designed architectural solution for this important Site, which will fulfil the aspirations of the Council and integrate appropriately into the existing riverside frontage.

Other matters on the second reason for refusal

81. We deal briefly with two further matters raised by Mr Doyle under the second reason for refusal.

82. First, Mr Doyle's evidence occasionally slipped into consideration of the amenity effect of the proposals on Lynmouth Road. The second reason for refusal relates to the setting and character of the Thames Path. It has nothing to do with the amenity of residents on Lynmouth Road. The Council and its officers were correct not to refuse permission on this ground. The relationship between the scheme and the Lynmouth Road properties was extensively considered at the RTS on the Rule 6 party's concerns and is dealt with below.

83. Secondly, Mr Doyle offered some criticism of the ground floor frontage of Block D.<sup>90</sup> As Mr Taylor explained in xx, this is required to be car parking due to a number of technical factors.<sup>91</sup> Regarding Mr Doyle's unevidenced assertions about the potential

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<sup>89</sup> A point raised by Mr Taylor in chief.

<sup>90</sup> Mr Doyle's Rebuttal Proof, para 3.3.6 (p 48). See also the illustration in Mr Taylor's Rebuttal at p 57.

<sup>91</sup> Including flood risk, the variance in elevations on either side of the building, the requirement to provide lightwells if any accommodation were to be provided in these areas, and the difficulty of raising the entire block to connect with the link to the bridge.

for “*transgressive acts*”: Thames Valley Police’s Crime Prevention Design Officer was engaged at the pre-application stage and informed the final design of the scheme, raising no objections. The scheme’s active frontages will provide ample natural surveillance.<sup>92</sup>

### **ECOLOGY AND TREES (THIRD REASON FOR REFUSAL)**

84. The Council’s objections under this reason for refusal are limited to two matters: the purported effect of the proposals on the marginal vegetation that grows along the River Thames, and the number of large canopy trees provided on the Site. We address each in turn.

#### Marginal vegetation

85. The objections of the Council’s ecologist, Mr Sutton, relate exclusively to the effect of the proposals on the marginal vegetation adjacent to the site.<sup>93</sup> No objection is raised in the relation to the river itself or the other vegetation in it. It is common ground that habitats within the site are limited and of low ecological value.<sup>94</sup>

86. It is agreed that the extent of marginal vegetation adjacent to the Site is 70sqm: 15 square metres is in the coil rolls planted by the Council, and 55 square metres on the bank.<sup>95</sup> It is also agreed that marginal vegetation is part of the River Thames, which is

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<sup>92</sup> Committee Report [CD 2.1], para 4.4.1.

<sup>93</sup> Marginal vegetation is herbaceous (non-woody) vegetation located at or just below water level on the margins of watercourses: see Mr Corbyn’s SoC, para 3.21, fn 1 (p 12).

<sup>94</sup> SoCG, para 7.85 (p 29).

<sup>95</sup> Ecology SoCG, para 2.4. Pre-planted coir rolls are a method of establishing marginal vegetation on hard-edged riverbanks such as those adjacent to the site: Mr Corbyn’s SoC, para 3.21, fn 1 (p 12). For an illustration of how coir rolls are planted see Mr Corbyn’s SoC, Appendix I (p 43).

a habitat of borough importance.<sup>96</sup> The dispute is about the significance of the impact the appeal proposals will have on marginal vegetation. The Appellant suggests that any impact will be neighbourhood significance only.

*The precautionary principle*

87. Before turning to the substance of the Council’s objections, Mr Sutton suggested that the Appellant’s approach does not adhere to the precautionary principle.<sup>97</sup> This suggestion is based on a fundamental misunderstanding of the precautionary principle.

88. There are several different definitions of the precautionary principle, but the Appellant is content to adopt the definition in the Ecological Impact Assessment (“EcIA”)

Guidance appended to Mr Sutton’s PoE, namely:

“The principle that the absence of complete information should not preclude precautionary action to mitigate the risk of significant harm to the environment.”<sup>98</sup>

89. It is clear from this definition, which was not quoted by Mr Sutton in his written or oral evidence, that the precautionary principle does not require that development proposals are rejected on the basis of mere supposition. As was noted recently by the Court of Appeal in *R (Kenyon) v SSHCLG* [2020] EWCA Civ 302 (emphasis added):

“66. The precautionary principle will only apply if there is “a reasonable doubt in the mind of the primary decision-maker”... It is contrary to the principle outlined there to argue that, merely because somebody else has taken a different view to that of the primary decision-maker, it cannot be said that there was no reasonable doubt.

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<sup>96</sup> See Mr Corbyn’s Rebuttal Proof, para 3.3 (p 1).

<sup>97</sup> See Mr Sutton’s PoE, para 5.1.9 (p 12).

<sup>98</sup> Appendix 1 to Mr Sutton’s PoE (p 83).

67. In the present case, neither the first nor the second respondent had any doubt that the proposed development was not likely to lead to significant effects. In circumstances where there was no doubt in the mind of the relevant decision-maker, there is no room for the precautionary principle to operate.”

90. Moreover, in *Preston New Road Action Group v SSCLG* [2018] EWCA Civ 9 at [94], a case about fracking, the Court of Appeal said “[t]he existence of *“uncertainty in [relevant] scientific knowledge” ... does not render unlawful the approach adopted by the inspector and the Secretary of State*” (i.e. the grant of planning permission in that case). The Court went on to note that this conclusion “*was not undermined by the existence of scientific doubt or dispute.*”

91. Applying this guidance from the courts, and the definition actually given in the EcIA Guidance:

- a. The precautionary principle requires “reasonable doubt” to come into effect: it does not require the absence of any scientific doubt or dispute at all.
- b. Reasonable doubt must relate to significant effects, rather than any effects at all.
- c. Even where there is reasonable doubt, all this requires is “*action to mitigate the risk of significant harm*” (EcIA Guidance definition).

92. Accordingly, Mr Sutton’s suggestion that the appeal should be dismissed on the basis of the precautionary principle is entirely misconceived. As Mr Corbyn stated in chief and xx, there is no reasonable doubt about whether the proposals will have significant effects on the marginal vegetation. Put another way, there is no cogent evidence that they will. Applying *Kenyon*, “*merely because someone else has taken a different view*”

is not enough to engage the principle. But even if there were reasonable doubt, the compensation planting offered by the Appellant is a “*precautionary action*” that is more than sufficient to meet the requirements of the principle. It represents an entirely precautionary approach.

### *Overshadowing*

93. As a result of the development, the sunlight will be as shown in the daylight and sunlight assessment of the Appellant’s consultants EB7.<sup>99</sup> The marginal vegetation will receive less direct sunlight, but it will still largely benefit from 2-6 hours of direct sunlight a day during the growing season, as well as sky light.<sup>100</sup>

94. Before turning to the Council’s case on overshadowing, we deal firstly with two factual points:

- a. Mr Sutton accepted Mr Corbyn’s correction that the maximum amount of sunlight on the longest day is slightly less than 14 hours, rather than the 16.5 hours Mr Sutton suggested.<sup>101</sup> This means that the figures in Table 1 of his Rebuttal are all incorrect and need to be amended, so as to increase the percentage of previously available sunlight that the marginal vegetation will enjoy with the scheme in place.<sup>102</sup>

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<sup>99</sup> At Appendix C to Mr Corbyn’s SoC (p 29).

<sup>100</sup> Mr Corbyn’s PoE, para 5.2 (p 9).

<sup>101</sup> In xx: see Mr Corbyn’s Rebuttal Proof, para 7.1 (p 5); Mr Sutton’s PoE, para 5.1.1 (p 10).

<sup>102</sup> Mr Sutton’s Rebuttal Proof (p 15).

- b. The area of marginal vegetation in question is not in constant sun. There is existing shading from the ramp and the bridge and poplar trees. Table 1 of Mr Sutton's Rebuttal does not take account of the fact that parts of the area of marginal vegetation are shaded already.

95. Turning now to the Council's case, Mr Sutton refers to a 1983 scientific paper by Dawson and Haslam ("the Dawson paper").<sup>103</sup> This paper does not assist the Council:

- a. The Dawson paper concerns plants in the river, which are quite different to marginal vegetation and can be expected to be less tolerant of shade due to their relative position in the river.<sup>104</sup>
- b. The Dawson paper emphasises the importance of sky light, and in particular the fact that with full shading, plants can still grow due to sky light.<sup>105</sup>
- c. The Dawson paper is also clear that growth can still be appreciable even in full shading.<sup>106</sup>

96. In general, Mr Sutton's evidence does not address the important role sky light plays in riverside plant growth. Direct sunlight and sky light are not the same thing. Mr Sutton said in xx that he did not believe sky light would be a significant factor here: but he

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<sup>103</sup> Mr Sutton's Proof, 5.1.5 (p 11). The Dawson paper is Appendix 3 to his PoE.

<sup>104</sup> Mr Corbyn's Rebuttal Proof, 7.3-7.5 (p 4).

<sup>105</sup> Mr Corbyn's Rebuttal Proof, 7.6 (p 4).

<sup>106</sup> At p 161; see also Mr Corbyn's Rebuttal Proof, para 7.6.

offered nothing in support of this assertion. Most of the marginal vegetation is on the riverbank, where it will receive a significant amount of sky light.

97. We turn now to the Ellenberg light values.<sup>107</sup> It is agreed that the marginal vegetation in question has a light value of 7, which is described as “*Plants generally in well-lit places, but also occurring in partial shade.*” There is no definition of “*partial shade*” in Ellenberg. Therefore, the only way to determine whether marginal vegetation will continue to grow alongside the development is to ascertain the conditions in which it is now growing elsewhere along the river and at the canalside.

98. This will be a matter for the site visit, but it is obvious from several photographs before the Inquiry that marginal vegetation on this part of the Thames grows well in shaded places, including areas that receive more shade than will be case for the marginal vegetation adjacent to the Site with the appeal scheme in place:

- a. The photos provided by the Appellant during the Inquiry of the canalside at Burghfield clearly show marginal vegetation growing vigorously beneath what Mr Sutton describes as an “*impenetrable line*” of evergreen 12m high Cypress trees.<sup>108</sup> This is despite the fact that:

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<sup>107</sup> Appendix 1 to Mr Sutton’s Rebuttal; Hill, M.O.; Mountford, J.O.; Roy, D.B.; Bunce, R.G.H. 1999 *Ellenberg’s indicator values for British plants. ECOFACT Volume 2 Technical Annex*. Huntingdon, Institute of Terrestrial Ecology, 46pp. (ECOFACT, 2a). See Mr Corbyn’s SoC at para 5.3; Mr Sutton’s Rebuttal at para 5.3.1 (p 14).

<sup>108</sup> Mr Sutton’s Rebuttal Proof, para 5.2.10 (p 12). Mr Sutton’s photos of the same area show gaps in marginal vegetation caused by geese grazing as well as trampling by people and dogs.

- i. The trees are overtopping the marginal vegetation, thus reducing sky light as well as direct sunlight;
  - ii. The trees are only 4m from the riverbank;<sup>109</sup>
  - iii. The photos were taken in November, where the marginal vegetation is likely to be far less vigorous.
- b. Mr Corbyn's Appendix L photos in his PoE show several photos of marginal vegetation growing in shade, partial shade and dappled shade along Hills Meadow Park and Kings Meadow Park.<sup>110</sup> Indeed, in the first photo on p 39 it appears that marginal vegetation is *only* growing under the shade of a tree.

99. Mr Sutton suggested that the previous failure of marginal vegetation planted in coir rolls adjacent to the Site showed that the appeal scheme would have a similar effect on the marginal vegetation remaining. However, the two situations are not comparable. Mr Corbyn's Appendix H photos in his PoE demonstrate that where marginal vegetation near the Site has failed, this is largely due to it being almost completely shaded by the bridge ramps, and, in particular, the tall ruderal plants that grow along the bank. Mr Corbyn described this tall ruderal vegetation as forming a "curtain" around the marginal vegetation. There is simply no comparison with the effect of the appeal scheme.

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<sup>109</sup> [ID 22]; as explained by Mr Corbyn in chief.

<sup>110</sup> At p 38.

100. As Mr Sutton pointed out, it is also of course important to bear in mind on the site visit that the marginal vegetation that can be seen growing in shade is at its least vigorous due to winter<sup>111</sup>.

101. Overall, it is clear that Mr Corbyn's evidence on likely impacts is to be preferred. As he fairly accepted, there may be a slight reduction in vigour and a loss of small areas of marginal habitat already struggling to establish: but the condition of the marginal vegetation overall will not change as a result of the appeal proposals.<sup>112</sup>

#### *Habitat Compensation*

102. For the above reasons, there is no reasonable doubt that the development will have a significant effect on the adjacent marginal vegetation. There is simply no convincing evidence that it will. But for further assurance, and out of an abundance of precaution, the Appellant has additionally offered substantial habitat compensation of 34 sqm: twice the amount of marginal vegetation in the current coir rolls.

103. Mr Sutton now agrees that this new planting would establish.<sup>113</sup> Mr Sutton has rightly pointed out that geese are a particular problem at Christchurch Meadows, responsible for the loss of marginal vegetation on the northern bank and so threatening the establishment and survival of survival of coir rolls there<sup>114</sup>. The proposed new

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<sup>111</sup> As also is the tall ruderal vegetation, which by late November (the time of the site visit) collapsed onto the ground but whose effect in the growing season can be seen from the photographs submitted in evidence.

<sup>112</sup> Mr Corbyn's PoE, para 5.6 (p 10).

<sup>113</sup> Mr Sutton's Rebuttal Proof, para 7.2.3 (p 19). This is clearly a change in the view expressed in his PoE, para 7.1.9 (p 16). He does suggest that this new marginal vegetation would not be additional to what would grow there anyway: but he offered no evidence to support this view. It is significant that though the marginal vegetation at the "Option B" location has been present for several years, it has not so far grown out into the area of proposed new planting.

<sup>114</sup> Sutton SoC para 7.1.7.

marginal vegetation would however be protected from geese and boats by a management plan secured by condition.

*DEFRA Metric*

104. Mr Corbyn and Mr Sutton used the DEFRA Metric (“the Metric”) to examine the effect of the scheme and of the compensation.

105. It is, to begin with, clear from the relevant advice that Metric figures are not absolute values but come with a “health warning.”<sup>115</sup> Further, as with any calculation, they depend crucially on the inputs. Mr Sutton’s calculations<sup>116</sup> assume that there will be a significant effect on all of the marginal vegetation adjacent to the Site. Although for the purposes of his calculations Mr Corbyn assumes that there will be harm to the marginal vegetation in the coir rolls sufficient to reduce its condition to “poor”<sup>117</sup>, there is no evidence that there will be a significant impact on the marginal vegetation on the bank, so it is inappropriate for a Metric calculation to assume such impact. After all, the marginal vegetation on the bank now meets condition criteria 2-6 of the Core Criteria<sup>118</sup>. It does not meet criterion 1 which relates to the water table being at or near the surface so its condition must be regarded as “moderate” as opposed to “good”. With the appeal scheme in place, the riverbank vegetation will continue to meet criteria 2-6, so its condition will not change.

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<sup>115</sup> The User Guide quoted at Mr Corbyn’s Rebuttal Proof at para 8.3 (p5).

<sup>116</sup> In his Rebuttal Proof

<sup>117</sup> Mr Corbyn’s Rebuttal Proof para 8.1.5 (p 7) onwards.

<sup>118</sup> As set out by Mr Sutton at 7.5.4 of his Rebuttal Proof, para 7.5.4, p21.

106. This difference in assumptions in relation to the impact of the riverbank explains much of the difference between the Metric calculations of the two experts.

107. However, further, in calculating the extent of beneficial effect of the compensation, Mr Sutton deducts a figure for the value in habitat units which he says is represented by the area of river (34 m<sup>2</sup>) in which compensation planting will take place. Mr Sutton deducts the ecological value of the river from the overall gain, on the basis that the new planting would amount to an in-watercourse encroachment. This is a significant error, because coir rolls are included in a river to improve its condition and should not therefore be considered as encroachment. The user guide for the Metric explicitly warns against such an approach.<sup>119</sup> Further, as Mr Corbyn also pointed out, it makes no sense in biodiversity terms to make this deduction, because the area of river in which the new planting will take place is a tiny fraction of the Thames, and so planting in it cannot realistically be supposed to result in a loss of habitat value.

108. Tellingly, Mr Corbyn was not challenged on this point in xx. This point explains why on Mr Sutton's analysis the net gain as a result of the planting is so close to zero as not to show up in Mr Sutton's tables.<sup>120</sup> In other words, on Mr Sutton's evidence the new marginal vegetation has very little, if any, greater value than the river area in which it is to be planted, and the value of the river is deducted. That explains why Mr Sutton

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<sup>119</sup> The Guide clearly states that coir rolls that “*have been included to improve the condition’ of the river and reinstate natural riverine hydro-morphological and geomorphological processes, are excluded from in-watercourse encroachment multipliers*”: Mr Sutton's PoE, Appendix 7 (p 85).

<sup>120</sup> Compare the gain in units as a result of the compensation planting in the table at Mr Sutton's Rebuttal Proof para 7.9.7, p27 (0.02 habitat units) with the existing value he ascribes to the area of river affected (0.02 units, see his Rebuttal Proof at 7.8.13, p26).

can say<sup>121</sup> that to compensate for what he asserts will be the damage to the existing marginal vegetation, an area of 542m<sup>2</sup> of new planting will be required.

109. Mr Sutton sought to respond by saying that this 542m<sup>2</sup> was a maximum, and that as a minimum he was suggesting that 80m<sup>2</sup> of compensation would be needed. However, that figure still depends on the (groundless) assumption described above that there will be a significant impact on the marginal vegetation on the bank.

110. The evidence before the inquiry shows that even if there is a marked effect on the marginal vegetation in the coir rolls, the proposed new planting will be more than adequate to compensate for it. In his Rebuttal Proof, Mr Corbyn's Metric calculation shows that even if all the marginal vegetation in the coir rolls changes from "good" condition to "poor", the compensation planting will still produce a net off-site biodiversity gain. A similar result can be reached referring to Mr Sutton's Metric calculations. He assesses the value in habitat units of the existing marginal vegetation as twice that of the new planting, to take account of the time needed for new planting to establish<sup>122</sup>. Given that the new planting (34m<sup>2</sup>) is more than twice the area of the marginal vegetation in the coir rolls (15m<sup>2</sup>) it follows that even on Mr Sutton's figures, the HU value of the marginal vegetation proposed to be planted by way of compensation exceeds that of the existing area that is assumed to be affected.

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<sup>121</sup> Sutton rebuttal 7.9.11

<sup>122</sup> He allows 0.002 HU per sq m for the existing-see his Rebuttal Proof at para 7.5.10, p 22, and 0.001 HU per sq m for the new planting-see his Rebuttal Proof at para 7.9.7, p 27.

*Conclusion on marginal vegetation*

111. Overall, there will be a substantial gain in biodiversity off-site as a result of this appeal scheme.<sup>123</sup> The sunlight that will remain, together with diffuse skylight, will be sufficient to sustain the existing marginal vegetation adjacent to the Site, which can often be found flourishing in areas of shade, partial shade and dappled shade.

112. In any event, adopting a precautionary approach, additional marginal vegetation planting is proposed at a location on the south bank of the river to the east of the Site as compensation for any impact. Even if there were an impact on the marginal vegetation in the coir rolls adjacent to the Site, there would still be a substantial gain from planting over twice the length of the existing coir rolls. This is shown by the Metric calculations at table 2 and 3 of Mr Corbyn's Rebuttal. Proof<sup>124</sup> The overall effect from the development, taking on and off-site together, will be a very substantial improvement.<sup>125</sup>

113. The mitigation hierarchy is complied with. Any limited impact that occurs cannot reasonably be avoided when balanced against

- a. The loss of housing delivery that would occur if the buildings were set back or reduced in height as the Council seeks, on this allocated and highly sustainable site

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<sup>123</sup> Mr Corbyn's Rebuttal Proof, para 8.15 (p 7).

<sup>124</sup> At p 8 and 9.

<sup>125</sup> Mr Corbyn's Rebuttal Proof, para 8.18-8.19 (p 9).

- b. The harm that would be caused in design and townscape terms from the loss of enclosure and definition provided by Blocks D and E as proposed, if they were set-back and reduced in height as the Council advocates <sup>126</sup>.

114. It is also important to emphasise that shading of the river is clearly envisaged in the RSAF. Given the significant heights of the buildings shown in Figure 14.5 of the RSAF, this would undoubtedly have a similar or greater impact on the marginal vegetation than the appeal proposals.<sup>127</sup> The Council's only answer to this point is that that the RSAF pre-dated the installation of the existing coir rolls.<sup>128</sup> But the supporting text to Policy CR 11 of the Local Plan, which was adopted in November 2019, notes that the RSAF continues to apply.<sup>129</sup> This surely suggests that the Council is not, in reality, concerned that the appeal scheme would have any adverse impact on the marginal vegetation adjacent to the Site.

115. There is accordingly no reason to refuse this scheme on the basis of its impact on marginal vegetation.

### Trees

116. The second part of the Council's case in relation to the third reason for refusal concerns tree planting at the riverside.

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<sup>126</sup> See Taylor PoE, para 3.79, p42

<sup>127</sup> [CD 6.3], p 80.

<sup>128</sup> Put to Mr Corbyn in xx.

<sup>129</sup> [CD 3.43], supporting text at 5.4.9: "A *Station Area Development Framework* was prepared for most of this area in 2010 to provide more detailed guidance, and a *Station Hill South Planning and Urban Design Brief* covering sites CR11 a, b and c dates from 2007. *These documents continue to apply*, alongside any future *Supplementary Planning Documents*" (emphasis added).

117. The scheme proposes substantial landscaping on the riverside. The “right tree, right place” principle is fully respected by the appeal scheme, which provides a large canopy tree (oak) at a nodal point by the café, complemented by trees of narrower form but nevertheless substantial canopy height (between 15m and 25m)<sup>130</sup> which can be accommodated successfully on the built frontages.

118. However, the Council argues that there is insufficient space within the proposed riverside buffer for “the required large canopy trees.” The disagreement relates only to the proportion of trees on site that will be large canopy, not the overall quantity of tree planting.<sup>131</sup>

119. There is no requirement in local or national policy for every (or indeed any) new tree planted in a development to be of a large canopy species. Ms Hanson accepted this in xx. The operative text of Policy EN14 does not refer to large canopy trees.<sup>132</sup> Paragraph 4.2.68 of the supporting text says there is a need to use appropriate large canopy trees, but again, as agreed by Ms Hanson in xx, this does not amount to a requirement to plant such trees in any particular location. Furthermore, as Ms Hanson noted in xx, to define “large canopy trees” she has simply referred in evidence to a definition in Hillier’s Designer’s Guide (rather than any definition provided by the Council)<sup>133</sup>.

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<sup>130</sup> Ms Hanson’s PoE, Table 1 (p 10-11).

<sup>131</sup> It is common ground that the Tree Survey and Arboricultural Impact Assessment submitted as part of the application are acceptable: SoCG para 7.94 (p 30).

<sup>132</sup> [CD 3.20].

<sup>133</sup> Ms Hanson’s SoC, para 1.8 (p4).

120. At para 2.4 of her Rebuttal Proof (p 5) Ms Hanson attempted to draw on the supporting text to Policy EN11 (paragraph 4.2.46), highlighting the part that refers to the “*largely natural*” character of the Thames. However, she did not highlight the fact that the text goes on to state that the Thames “*meets the edge of the town centre on the south bank between Caversham and Reading Bridges*” i.e. where the Site lies. Nowhere in Ms Hanson’s written evidence does she discuss the fact that paragraph 4.2.46 indicates that the character of the Thames is more urban along this stretch<sup>134</sup>. Nor indeed does she discuss the implications of the high-density development required by policy CR 11 for tree planting on the site.

121. As Mr Clark noted in chief, along the southern river side near the Site there is in fact relatively limited vegetation, which is consistent with the strong urban influence of the town centre.<sup>135</sup> The trees that are on the southern side are typically situated on connecting routes or nodal points (as will be the proposed oak in the appeal scheme), rather than being placed in a line along the waterfront.

122. Moreover, the Council has provided no assessment that the canopy trees they seek along the bank would allow sufficient sunlight hours for the adjacent marginal vegetation, which is surprising given the importance the Council places on marginal vegetation.<sup>136</sup>

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<sup>134</sup> Mr Markwell in xx was unable to point to any part of the Council’s written evidence where this point is addressed.

<sup>135</sup> See also his PoE, para 3.48 (p 14): “...*there are currently very few trees along the southern Thames riverside between Caversham Bridge and Reading Bridge – they are not a key characteristic of the southern riverside frontage, which is generally dominated by built form.*”

<sup>136</sup> As Ms Hanson accepted in xx.

123. Ms Hanson also sought to introduce a completely new point in chief: that there might be a conflict between the one large canopy tree proposed for the site and the café. This point was not put to Mr Clark or Mr Taylor. It should be dismissed as there is no evidence to support it. The long-term management of planting will be secured by planning condition. This will ensure that there is no future conflict between planting and buildings.<sup>137</sup>

124. Overall, there is no reason to refuse permission for the proposed development on the basis of insufficient large canopy trees. A substantial number of large canopy trees are not a policy requirement, and the development offers an abundance of attractive planting (including a large canopy tree at a nodal point). The Council's stance in this regard is inconsistent with its own policy approach. Local Plan policy (CR 11g and EN11 countenances development set back 10m of the river<sup>138</sup> (too close for a line of large canopy trees, as Ms Hanson confirmed in Inspector questions), and (RSAF Figures 14.1 and 14.5) specifically shows development so close to the river's edge as clearly to preclude the planting of large canopy trees in this location.

#### **LIVING CONDITIONS FOR RESIDENTS (FOURTH REASON FOR REFUSAL)**

125. The Council has withdrawn its fourth reason for refusal on the basis that the noise levels from the equipment on the neighbouring SSE site can be adequately dealt

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<sup>137</sup> Mrs Cohen's PoE, para 4.61 (p 31).

<sup>138</sup> And even the 10 m distance is only required "Wherever practicable"-see policy EN11.

with by condition.<sup>139</sup> It is now agreed that the noise environment to external amenity areas will be acceptable, and demonstrates that a suitable quality of accommodation can be provided for all future occupiers by a combination of glazing and mechanical ventilation.<sup>140</sup> The Appellant wishes to formally amend the appeal proposal development for the new agreed plans to be taken into account in determining the appeal. Both parties agree this would comply with the *Wheatcroft* principles.<sup>141</sup>

### **LOSS OF 55 VASTERN ROAD (FIFTH REASON FOR REFUSAL)**

126. Contrary to the Council’s case under this reason for refusal, the Appellant has demonstrated that retention and re-use of the locally listed building 55 Vastern Road (“the LLB”) has been explored fully (and indeed exhaustively). The LLB cannot realistically be retained on a site allocated for high density development. Nevertheless, the benefits of the proposals significantly outweigh the harm caused by the loss of the LLB.

127. The Appellant’s case under this reason for refusal can be summarised as follows:

- a. The LLB has a local significance, but its overall significance is at a relatively low level. The building has been substantially modified over many years and

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<sup>139</sup> Noise from the substation is characterised by a continuous low level, low frequency “hum” from the operation of the transformers and from the very infrequent operation of the transformer cooling fans. The Appellant’s assessment has considered the noise impact both externally and inside the new dwellings.

<sup>140</sup> Fifth addendum to the SoCG [ID 17], para 2.7 (p 3).

<sup>141</sup> Fifth addendum to the SoCG [ID 17], para 2.8 (p 3).

the main part of the former historic site, the power station, has long been demolished.

- b. Given the compact size of the LLB façade, there is no realistic possibility of it being incorporated into a high-density development of the kind accepted in principle by the Council and envisaged in Policy CR 11 and the RSAF. The Council suggests that the façade and/or the building structure can be retained as part of a much larger high-density building which can simply be placed on top of the LLB. This would be wholly inappropriate. It would largely eradicate what limited historic significance the LLB currently has, because on any configuration, the new building would be completely unrecognisable from its previous form. This proposal should therefore be discounted.
  
- c. As a result, any building that attempted to incorporate the façade, and indeed any additional part of the LLB, could not realistically be higher than two storeys. This would have a marked effect on the ability to develop the rest of the Vastern Road frontage. In the committee report<sup>142</sup> officers expressed satisfaction with blocks A and B. However, Mr Doyle made clear that if the LLB were retained as it is or with minimal increase in height, development of the scale proposed on Vastern Road would not be acceptable. That would severely limit the number of dwellings on a site that has been allocated for high density residential development.

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<sup>142</sup> Committee report paragraph 6.17.

- d. Accordingly, retention is simply not an option if the Site is to be redeveloped in accordance with the Local Plan.

128. That is the essence of the Appellant’s case on heritage. We now discuss these points in more detail.

#### The policy approach to locally listed buildings

129. The key development plan policies governing the general approach to locally listed buildings are Policy EN1 and Policy EN4:<sup>143</sup>

- a. Policy EN1 of the Local Plan provides that *“Any harm to or loss of a heritage asset should require clear and convincing justification, usually in the form of public benefits.”*
- b. Policy EN4 considers locally important heritage assets specifically. It states that *“Planning permission may be granted in cases where a proposal could result in harm to or 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.”*

130. Both of these policies do not clearly distinguish between nationally listed and locally listed buildings. They therefore impose more onerous tests than the

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<sup>143</sup> Policy EN6 is also relevant to new development in a historic context and will be discussed further below.

Framework.<sup>144</sup> It follows that they are inconsistent with the Framework. Unfortunately, this issue was not raised in the examination of the Local Plan.

131. Both the site allocation (Policy CR 11 g) and the RSAF envisage and encourage high density development on Vastern Road. In that regard, it is telling that at no point in either the site allocation or the RSAF is the LLB even mentioned.

132. As for national policy:

- a. Para 203 of the Framework provides that the effect of a planning application on the significance of a non-designated heritage asset should “*be taken into account*” in determining the application. A “*balanced judgment*” will be required, having regard to the scale of any harm or loss and the significance of the heritage asset. This test is notably less onerous than the tests that apply to designated heritage assets in paras 199-202 of the Framework. Importantly, unlike Policy EN4, this national policy test does not require that the benefits of the development must significantly outweigh the asset’s significance.
  
- b. Para 219 of the Framework provides that due weight should be given to existing policies “*according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).*” Accordingly, to the extent that Policies EN1 and EN4 impose a more onerous test than national policy, the weight given to those

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<sup>144</sup> As Mr Markwell accepts in his PoE, para 8.16 (p 23).

policies should be reduced accordingly and the national test in the Framework preferred.

### The heritage significance of the LLB

133. Mr Weeks' PoE sets out the historic context and significance of the LLB in some detail. In summary:

- a. The LLB was constructed in circa 1900 as the gate lodge to the Reading Electric Works (a local power station) with a vehicle arch and lodge/office on the ground floor and accommodation for the site superintendent on the first floor.<sup>145</sup> It was a minor work by the office of Albury and Brown, a local architectural firm.
- b. The building has a good quality façade. However, the façade has been substantially modified over the years, with the addition of modern windows and the infilling of the archway. In terms of design, the façade was derivative of fashionable London styles from the previous decade. It re-used the eclectic detailing of any number of 1890s commercial buildings in central London and the growing suburbs, as well as in burgeoning towns and cities nationwide. This shows Albury and Brown's knowledge of architectural trends and desire to translate them to Reading.<sup>146</sup>

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<sup>145</sup> Appellant's Heritage PoE, para 2.3 (p 2).

<sup>146</sup> As Mr Weeks explained in the Heritage RTS.

- c. Other than the façade, the LLB has little else of architectural interest.<sup>147</sup> The interior of the building is unremarkable. It is also greatly altered.<sup>148</sup>
- d. The building to which the LLB once provided the gateway, the old power station, has long been demolished. Because of this, members of the public walking past the LLB are unlikely to gain many clues as to what the building once was. There is nothing about the building that indicates the particular function of the site behind, i.e., as the entrance to a power station site.<sup>149</sup> Mr Edgar initially (in his SoC,<sup>150</sup>) denied that the setting of the LLB had changed. In his later evidence he appeared to accept that the setting had radically changed and instead sought to make a virtue of its loss, saying that the LLB deserves protection as the last remaining remnant of the power station<sup>151</sup>. However, the observer would not be able to tell that this is the case.

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<sup>147</sup> See para 6.38 of the Committee Report [CD 2.1]. Mr Edgar does not suggest there is anything of particular value in e.g. the rear or flank exterior. This chimes with the application for local listing at App 6 to Mr Edgar's SoC. The comment on p5 under "Townscape Value" is purely about the front façade.

<sup>148</sup> For example, the original doors have all gone bar one, 12 new doorways have been inserted, the original staircase has been removed; Mr Weeks' Rebuttal Proof, para 1.3. All Mr Edgar says in his SoC at para 3.19 is that the interior retains some "nibs" of internal walls, cornicing etc, which he repeats at 2.5 (p 6) of his PoE. Moreover, Mr Edgar suggests nothing of particular value in the interior in his application for listing (at p 8 of his Rebuttal Proof); he refers to various elements but doesn't claim they have any value.

<sup>149</sup> Mr Weeks' PoE, para 3.7 (p 4).

<sup>150</sup> Mr Edgar's SoC, para 3.28 (p 22): "*With regard to setting, it is considered that the building's setting has not in fact, altered significantly: it has always experienced abutting significant industrial/commercial buildings, as it does today.*"

<sup>151</sup> Mr Edgar's Rebuttal Proof, para 2.5 (p 3): "*In response to comments made about the setting of the locally listed building having changed it is incorrect to assert this means the building has a low level of significance.*"

- e. The wider setting of the building has also altered significantly: the LLB cannot now be appreciated within the edge of town industrial environment in which it was developed.<sup>152</sup>
  
- f. Whether or not Albury himself had anything to do with the design, he was not a figure of national significance, nor does Mr Edgar describe him as such: he was only of local and regional importance.<sup>153</sup> Only the most exceptional architects such as Lutyens or Wren have such status that even their lesser buildings are listed purely due to their authorship.

134. It is important to stress that the LLB is not a “listed building” and therefore it is not a designated heritage asset. It is locally listed only: the lowest level on the hierarchy of heritage assets. Mr Edgar was wrong to say at para 3.14 of his SoC that the fact the building is not statutorily listed is not a reflection of its significance. Plainly it is. As the Historic Environment document “Managing Significance in Decision-Taking” (Historic England, 2015) says at para 10, understanding the level of significance is important as it provides the essential guide to how the policies should be applied.<sup>154</sup>

135. Indeed, Mr Edgar’s entire approach can be characterised as treating the locally listed building as if it were statutorily listed. At para 3.47 of his SoC, Mr Edgar states that “*very great weight*” should be attached to the loss of the locally listed building.

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<sup>152</sup> Mr Weeks’ PoE, para 3.7 (p 4).

<sup>153</sup> Mr Edgar’s PoE, para 2.7 (p 7).

<sup>154</sup> Appendix 2 to Mr Edgar’s SoC.

This goes even further than the “*great weight*” that para 199 of the Framework requires to be given to designated heritage assets. This approach is simply not credible.

The Appellant’s consideration of retaining the locally listed building

*Pre-application consideration*

136. Para 4.1.29 of the Committee Report accepted the analysis in the DAS as to why façade retention and other options were rejected.<sup>155</sup> Despite this forming part of the reason for refusal, no concern was raised in the Committee Report about inadequate consideration of retaining or incorporating the building into the scheme.

137. Moreover, Reading Civic Society noted that “*The possibility of retaining the run of old buildings along Vastern Road, and the LLB, was explored extensively and repeatedly*” and that “*We accepted that it was not practical to incorporate the old buildings on Vastern Road into a new building.*”<sup>156</sup>

138. Nevertheless, in the evidence before this inquiry, the Appellant has carried out further analysis that demonstrates conclusively that the LLB cannot be retained in a manner that meets the aspirations of the Site’s allocation. Moreover, none of the mooted retention options put forward by the Council are viable, appropriate and/or proportionate to the limited significance of the LLB.

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<sup>155</sup> [CD 2.1].

<sup>156</sup> Update Report [CD 2.2], para 1.16.

### *The possible function of the LLB*

139. It is hard to see a function for the LLB within the development. It is clearly in the wrong position to be the entrance to the Site, as Mr Edgar now appears to accept.<sup>157</sup> Mr Taylor demonstrates in his Rebuttal Proof why the location of the LLB makes its use impractical, even if this were possible or desirable.<sup>158</sup>
140. More fundamentally, however, retention of the LLB would not make sense in design terms.

### *Façade retention*

141. As the DAS explains, façade retention is simply not a realistic option in this case.<sup>159</sup> This is primarily because retaining a 2-storey façade in front of a modern tall building would be incongruous and inappropriate. Over the course of the inquiry the Council produced no examples of where this had been done successfully, despite the point being raised several times. Mr Doyle and Mr Edgar could only refer to the Great Expectations building in central Reading: but this building involved the retention of the façade of a designated heritage asset in front of a new *lower* building on a continuous street scene of buildings of a similar height.<sup>160</sup> In the Heritage RTS, Mr Edgar said the

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<sup>157</sup> Mr Edgar suggested in his SoC that the LLB would make an ideal entrance feature: Mr Edgar's SoC at para 3.60 (p 35). However, at para 3.21 of his PoE (p 16) he accepted it may not be possible to use the LLB as a primary entrance as it is peripheral to site and due to the change in levels.

<sup>158</sup> Mr Taylor's Rebuttal Proof, para 2.51 – 2.53 (p 20). Mr Taylor shows at Figure Ap.18 of his Rebuttal Proof the impracticality of using the LLB as a secondary entrance due to distance from circulation core.

<sup>159</sup> [CD 1.119], at para 2.7 (p 34).

<sup>160</sup> See Mr Taylor's PoE, figures 3.33 and 3.34 (p 50). Mr Doyle declined to mention façade retention in his written evidence.

scale of Great Expectations was “*slightly different*” to his proposals for the appeal scheme: in fact they are worlds apart.

142. Perhaps having realised the impracticality of the suggestion that the façade of the LLB could simply be attached to the front of a tall modern building, the Council veered away from this proposal during the course of the inquiry-towards an alternative façade retention proposal of “building up” the existing façade in a way that mimics and extends it to the height of a tall building. As Mr Weeks noted in the Heritage RTS, this would be very difficult to achieve. The difficulty involved is disproportionate to the low significance of the building in question. But even if it could be achieved, as Mr Weeks pointed out, the new much-extended façade would be very different to what was there before and would largely eradicate what little historic significance the previous building had.<sup>161</sup>

143. Moreover, such an approach is contrary to Local Plan Policy EN6. The supporting text to Policy EN6 at 4.2.24 (not cited by Mr Doyle) states in terms that when designing new buildings, “*The aim is not to copy existing heritage, but to use new development to underline key consistent elements of the local historic environment. Good, modern design that is complimentary to the historic environment will be acceptable and preferable to ‘pastiche.’*” The appeal scheme achieves such a modern design. This is far more appropriate than to attempt to extend the façade in the same style.

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<sup>161</sup> In particular, passers-by would be misled by the scale of the new façade: they would understandably but incorrectly assume that the building was a remnant of a former metropolitan commercial high street, rather than the gateway to a power station.

144. Finally, it is worth reiterating the point made by Mr Weeks in the RTS that façade retention is itself controversial in the heritage community. He explained that the Society for the Protection of Ancient Buildings is against façade retention because this retention method permanently destroys the ability to appreciate the intended nature of the building: essentially creating a two-dimensional artefact like a painting or a photograph. Mr Edgar himself noted in his SoC that façade retention would still result in a medium to high level of harm to the building.<sup>162</sup>

*Preserving the fabric of the building*

145. Preserving the additional interior fabric of the building *as well as* the façade would be even more difficult in technical terms.<sup>163</sup> As Mr Taylor noted in chief, while Mr Rumbold's suggestions are theoretically achievable, it would require a highly complex structural approach to retaining the building. In particular:

- a. Mr Taylor said that in all his years of working with listed buildings and locally listed buildings he had never come across a structural engineer content to rely on the structure of a small brick building to support many storeys above (up to 11) just by improving the foundations.
- b. If a frame were set up to support the storeys above, it would need to either be within the building itself (as the Appellant does not own the land on the

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<sup>162</sup> At para 3.53 (p 32).

<sup>163</sup> See Mr Taylor's PoE, Paras 3.105 – 3.114 (p 52); Mr Taylor's Rebuttal Proof, para 2.47 – 2.54 (p 18).

building's eastern side) or cantilever the full width of the LLB-both of which would be a significant structural undertaking.

- c. Threading steelwork through a chimney to support up to 11 storeys of accommodation<sup>164</sup> would itself be a huge technical feat, if it were possible at all<sup>165</sup>.
- d. Considerable internal works would also be required, such as raising the floor, adjusting doors, moving floor levels, adjusting the roof level and the introduction of stairs and/or a lift.<sup>166</sup>
- e. All of the options put forward by Mr Rumbold would require the removal of so much of the fabric of the building that it begs the question why it is being retained in the first place.

146. All of these options would be highly complex technical endeavours. This is wholly disproportionate to the low historic significance of the building. Moreover, given these proposals would all involve the retention of the two-storey façade, all of the points highlighted above in relation to façade retention would apply. Essentially, the Council's proposals would fail to preserve the integrity of the LLB and produce an incongruous result.

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<sup>164</sup> As suggested by Mr Rumbold in his Rebuttal Proof, para 2.4, p15.

<sup>165</sup> As discussed by Mr Taylor in chief and xx.

<sup>166</sup> See e.g. Mr Rumbold's PoE (pdf p 7), para 2.10; Mr Edgar's PoE, para 3.20 (p 16).

*Summary on retention options for the LLB*

147. In summary, the only way the façade could realistically be retained would be to cap the development on Vastern Road at 2 storeys. This would greatly reduce the dwelling yield for the site because of the loss of dwellings from the footprint of the LLB, and in addition the need to scale down the rest of the Vastern Road blocks in order to integrate with the retained LLB. It would also be completely contrary to the Local Plan, which envisages high density development for the allocation.

Abstract references to the site's history

148. In circumstances where the retention of the LLB is not a realistic option, the Appellant has carefully applied the heritage policies in the Local Plan to reference the site's historic past in its design of the scheme:

- a. Policy EN4 states that *“Replacement buildings should draw upon heritage elements of the previous design, incorporating historical qualities that made the previous building significant. This may include appearance, scale and architectural quality.”*
- b. Policy EN6 is also relevant, as it emphasises the fact that new development must make a positive contribution to the existing historic context and reflect borough-wide major heritage themes that contribute to local distinctiveness.<sup>167</sup>

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<sup>167</sup> The policy sets out patterned brickwork as a particular example of this, which the appeal proposals use.

- c. As discussed above, the supporting text to policy EN6 at 4.2.24 states that “*The aim is not to copy existing heritage, but to use new development to underline key consistent elements of the local historic environment.*”

149. It is not disputed by the Council that the proposed new buildings are well designed. Mr Edgar agreed as much in the Heritage RTS. As Mr Taylor explained in the RTS, the design of the buildings was informed by pre-application discussions with the Council, and in particular the suggestion that the design of the buildings should draw on the character of the former buildings on site, including the LLB. The Council’s previous historic buildings consultant noted that these are “*bespoke designs...considered to work well in the historic context.*”<sup>168</sup>

150. These historic references have been successfully incorporated into the scheme.<sup>169</sup> In respect of e.g. Block B (“The Goods Warehouse”) they include:

- a. The motif of the archway, which appears in stone detailing above the windows;
- b. Red brick facades with blue brick detailing;
- c. The sills, keystones, string courses, stone banding and stone heads;
- d. Flat roofing.

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<sup>168</sup> At para 4.1.24 of the Committee report [CD 2.1]; see also his comment at para 4.1.30 that the proposals are a good quality response to the historic context of the proposed development.

<sup>169</sup> Mr Taylor’s SoC, para 5.31-5.33 (p 49) and the DAS [CD 1.119], para 6.86-6.87 (p 74); section 3.4.2-3.4.8 (p 60).

151. In the Heritage RTS Mr Edgar said he agreed with “90%” of Mr Taylor’s summary of the successfully incorporated references to the former buildings on site. He added only that if the façade of the LLB were retained on the front as well, this would bring the scheme “*a long way down the track*” towards removing this reason for refusal. Mr Doyle similarly commented that he thought the design was “90% *there*” in heritage terms. These comments should be borne in mind when considering the strength of the Council’s objections on heritage grounds. Those objections should be rejected.

Relevance of Appeal decision APP/E0345/W/20/3263270 (Dowsons maltings)<sup>170</sup>

152. The relevance of this decision is commented on by Mr Weeks in his PoE at para 4.3 (p 10). In summary:

- a. The building in that case is described as a “*landmark*” at DL 20 and “*very prominent*” at DL 27. Although the LLB in the present case can be seen in the street, it does not have the prominence of the buildings in the Dowson maltings case.
- b. The Inspector referred to a feeling of cohesion and connectivity between the appeal building and the Victorian surroundings; see DL 26. That is not present here.
- c. The Inspector found that the buildings’ architectural and historical value was largely as part of a group, and that demolition would harm the group value of

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<sup>170</sup> ID 12

the appeal buildings and neighbouring buildings-see DL 24 and 25. Again, this is not a consideration here.

153. Also, the appeal site in that case was not a central urban site allocated for development, unlike this case. The Inspector described the wider area as being “*suburban*”<sup>171</sup>, which is very different to this site.

154. Accordingly, the Dowsons malting appeal decision does not assist the Council in the present case.

#### Conclusion on heritage

155. Overall, the Appellant has adopted a carefully considered and sensitive approach to heritage.<sup>172</sup> Every possible option to retain the LLB has been considered at length. Each of these options had to be discounted:

- a. Any decision to retain the LLB or part of it which does not increase the height would unjustifiably force substantial reductions in building across the rest of the Vastern Road frontage, and thus significantly reduce the dwelling yield.

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<sup>171</sup> DL 6

<sup>172</sup> The suggestions made by Mr Doyle that the DAS and the TVIA do not deal sufficiently with heritage issues were misconceived. Contrary to his suggestion in chief, the Heritage Statement clearly did feed into the DAS: [CD 1.119], para 2.6.5 (p 32). The Council could have sought more detailed consideration of heritage matters in the TVIA (which it had for over a year before refusing permission) but never did so. No criticism of the TVIA was made on this ground prior to determination.

- b. Façade retention on the front of a modern tall building would jeopardise the integrity of the building as well as producing an incongruous and inappropriate design.
- c. Any decision to build above the LLB would also jeopardise the integrity of the building and would also be a huge technical challenge.

156. That being the case, the remaining question is whether the benefits of the scheme outweigh its loss. The clear test in para 203 of the Framework should be applied rather than the more restrictive test in Policy EN4 i.e. a simple balancing exercise. There is no justification for taking a different approach in Reading from that which national policy sets out for the nation as a whole.

157. The numerous benefits of the proposals undoubtedly outweigh the loss of the LLB. The Committee Report accepted at para 6.41 that were the scheme otherwise acceptable to the Council in design terms, the loss of the LLB could have been outweighed by the quality of the design and layout proposed.<sup>173</sup> The Reading Civic Society agreed: they “*accepted that the overall benefits of the scheme outweighed the loss of the LLB.*”<sup>174</sup>

158. Even if, contrary to the approach set out in the Framework, the more restrictive test in Policy EN4 is applied, the benefits of the scheme do clearly and convincingly outweigh the loss of the LLB. The limited historic significance of the building does not come close to outweighing the many significant benefits of the scheme, including the

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<sup>173</sup> [CD 2.1].

<sup>174</sup> [CD 2.2], para 1.16.

provision of an excellent north-south link within a scheme worthy of this gateway location and new dwellings provided on a highly sustainable brownfield site.

159. This conclusion is entirely consistent with the development plan.

The significance of the listing decision

160. As Mr Edgar rightly observed in the Heritage RTS, the issue of national listing is a “*red herring*”. The building is not listed, and until it is (should that ever happen), a decision should be made on the basis of the current position.

161. Moreover, as Mr Weeks explained, it is highly unlikely the building will be nationally listed:

a. There is no reference in the listing application to any of the national listing criteria, which would be highly surprising in any serious application.

b. As Mr Weeks notes in the Appellant’s submissions to the Secretary of State on the listing application:

i. The government’s *Infrastructure: Utilities and Communication Listing Selection Guide* (December 2017) provides that “*only the most important power stations are listable.*”<sup>175</sup> For this reason, even if the old power station had survived in its entirety, it is doubtful that it would have been listable because it was not of national importance. It is

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<sup>175</sup> [ID 130].

fanciful to suggest that the sole remaining part of the power station is worthy of listing in the absence of the whole.

- ii. There is no group value in the building now that the power station has been demolished. This group value can be of “*overriding importance*” for buildings associated with utilities, as it helps explain the industrial process: *Infrastructure: Utilities and Communication Listing Selection Guide* (December 2017).
- iii. The DCMS’s Principles of Selection for Listed Buildings states that to be able to justify special historic interest, a building must illustrate important aspects of the nation’s history, and/or have closely substantiated historical associations with nationally important individuals, groups or events. The LLB reflects at best only an aspect of local history and is associated only with a local architect.

162. Furthermore, as Mr Edgar candidly explained in the RTS, the application for listing was not as a result of any change in the Council’s assessment of the significance of the building. Mr Edgar stated in terms that the listing application was a direct result of this appeal, because the Council was concerned that the LLB would be demolished pursuant to permitted development rights.<sup>176</sup> Applying for listing so as to avoid the permitted development rights for which the Government has legislated is a misuse of the listing process. In summary, no weight should be given to the listing application in

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<sup>176</sup> Of course, the demolition of the building was always part of the proposal from the start.

the planning balance, and the appeal should be decided on the facts as they currently are. The listing application is truly a red herring.

### **COMPREHENSIVE DEVELOPMENT (SIXTH REASON FOR REFUSAL)**

163. The Council's final substantive reason for refusal alleges that the proposed development has failed to adequately demonstrate that it is part of a comprehensive approach. The Council's case is that it has not been demonstrated how the neighbouring SSE site could come forward.

164. The Appellant showed how the SSE site could be developed in the DAS.<sup>177</sup> This satisfied the case officer Mr Markwell, who reviewed the matter in the first Committee Report<sup>178</sup> and then reverted to the issue in the Update Report<sup>179</sup> but remained of the view that permission should not be refused on this basis.

165. Mr Markwell was right in his assessment. Permission should not have been refused on this ground:

- a. The relevant Local Plan policy CR 11 (viii) does not require a fully designed scheme for the SSE site to be presented. Nor is there any requirement that the two sites must be brought forward together. Other constraints inevitably arise if the sites are not developed independently. The Council has never suggested that development of the Site *has* to await development of the SSE site.

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<sup>177</sup> [CD 1.119], p 105.

<sup>178</sup> Report to Planning Applications Committee [CD 2.1], paragraph 6.16.

<sup>179</sup> Update Report [CD 2.2], para 7.2.

- b. The suggestion that both sites *could* come forward together is unrealistic. The SSE site has its own constraints, including its dimensions, a line of mature poplar trees, and an occupied office block to the east of the SSE site. The cost of moving the active transformer equipment will also be very expensive.
- c. SSE do not consider that any development plans they may have for their site are jeopardised by the appeal scheme. Their position has now been set out twice in 2021, first in the letter of 16<sup>th</sup> July 2021<sup>180</sup> and most recently in their letter of 28 October 2021.<sup>181</sup> That current position obviously carries more weight than their representations in 2017 and 2018, made in different circumstances when they owned the entire allocation site and hoped for changes to the draft Local Plan (in relation to which they were unsuccessful). Before the start of this Inquiry, the Appellant was not made aware of SSE’s representations to the Council prior to the submission of the Local Plan to examination: but SSE’s position has clearly moved on now. SSE have stated expressly in their latest letter<sup>182</sup> that “*we can say that the Berkeley proposals before the inquiry do not prejudice any development which we might wish to carry out in future.*” This unequivocal statement by the owner of the SSE site should end any debate in relation to the sixth reason for refusal. The owner, who is in the best position to know, says that the appeal scheme will not prejudice any development it might wish to carry in future.

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<sup>180</sup> Appended to Mr Peckham’s PoE at Appendix A.

<sup>181</sup> [ID 14].

<sup>182</sup> [ID 14]

- d. In any event, the work that has been done by the Appellant amply demonstrates that if the SSE site does come forward, it can be developed. The appeal scheme has been carefully designed with this in mind. For example, façades without fenestration facing the SSE site (which are necessary due to the noise and visual constraints imposed by the SSE site) will allow development on the SSE site to be built so that it backs onto the Appeal site buildings and integrates with development of the Site.
- e. Mr Doyle’s complaints about the configuration of the Site have little substance. He suggests in his Rebuttal Proof that but for the eastern facing windows on Block D, an additional block could be developed on the SSE riverside front.<sup>183</sup> There is no requirement in policy or guidance for there to be such a block on the SSE site. But in any event, it would be highly undesirable in townscape terms (as well as causing loss of dwelling yield) for a prominent riverside block in the location of Block D to have highly visible blank walls along its eastern elevation, which would be necessary in order to make allowance for a future riverside block on the SSE site.

## **HOUSING LAND SUPPLY**

166. It is agreed that the Council has a 5-year housing land supply (“5YHLS”).<sup>184</sup>

167. However, the 5YHLS is a minimum requirement, not a cap. As Mr Worringham fairly noted in the Housing Land Supply Roundtable session (“HLS RTS”), Policy H1

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<sup>183</sup> Mr Doyle’s PoE, para 3.3.59 – 3.3.61 (p 64).

<sup>184</sup> SoCG, second amendment, para 2.1.

of the Local Plan states that provision will be made for at least an additional 15,847 homes.<sup>185</sup> The supporting text to Policy H1 also notes at 4.4.3 that:

“Reading is a very tightly defined urban area, and sites for new development are limited... Provision of new housing therefore involves a heavy reliance on previously developed land, and the supply of such sites constrains the amount of housing that can be delivered in the Borough.”

168. Moreover, national policy sets the goal of delivering 300,000 new homes per year.

169. Against that background, this is an allocated brownfield site in a highly sustainable location. It will be an important source of housing for the Council. Mr Worringham correctly observed in the HLS RTS that it was “*obviously better*” to bring housing forward earlier if possible. This is in line with Mr Markwell’s statement in the Committee report that there is a “significant need for housing in Reading”<sup>186</sup> and (later in the report<sup>187</sup>) that there is a “pressing need for housing...in the Borough.”

170. It is also relevant that we are in the midst of a climate change crisis. If we are to have any hope of addressing this crisis while meeting our own housing needs, it will be crucial to develop highly sustainable brownfield sites such as this.

171. In terms of the future HLS in Reading, which is also an important consideration:

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<sup>185</sup> [CD 3.25].

<sup>186</sup> Committee report para 6.7

<sup>187</sup> Committee report para 7.2

- a. While the standard method does not need to be applied yet, it will apply during the plan period (from November 2024). This is only 3 years away. Reading's housing need will then increase significantly. Even if we assume that all Mr Worringham's figures are correct, Mrs Cohen calculates the increase to be at least an additional 2000 dwellings, based on a 35% uplift. Mr Worringham agreed in the RTS that around 2000 was also the figure the Council had come to.
- b. As Mrs Cohen noted in the RTS, it is to be expected that Reading will find it difficult to meet its housing need in the future. Mr Worringham explained in the RTS that Reading always faces a challenge in meeting its HLS, as it does not have many greenfield expansion options. Careful stewardship of the Council's available land will clearly be required in order to meet its housing targets over the plan period.

172. Having interrogated the Council's approach to windfall, the Appellant does not fundamentally disagree with it. However, it is notable that the windfall figure has only been met in 3 out of 7 years. There is also more uncertainty the further into the future we look.

173. Regarding site-specific matters, there is particular uncertainty over a number of the sites referred to by Mr Worringham. Moreover, he seeks to rely on new permissions

that have not been tested by the Council's annual monitoring report.<sup>188</sup> This uncertainty amplifies the importance of maximising the housing yield of allocated brownfield sites.

174. Overall, despite the Council being able to demonstrate a 5YHLS, it is well aware that it cannot afford to relax. This brownfield regeneration scheme will make a vital contribution to meet the Council's future need. The loss 90 units that will result from the Council's proposed amendments to the scheme would cause significant problems for the Council in the future on housing land supply. Mr Taylor calculates that loss at up to 91 dwellings.<sup>189</sup> However, the figure could be even higher, as his calculation makes no allowance for reduction in dwellings in the development facing Vastern Road if the LLB is preserved as it is, given the likely pressure from the Council to lower heights along the rest of the Vastern Road frontage. Further, the figure of 91 does not include reduction in dwellings in Block D in order to make allowance for a riverside block on the SSE site (for which Mr Doyle advocated).

## **OTHER MATTERS**

175. There are no other matters pointing to refusal of permission for the appeal proposals. A section 106 obligation will be provided.

176. Third party concerns have been appropriately addressed in the evidence.<sup>190</sup> To summarise the Appellant's response to the Rule 6 party's objections:

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<sup>188</sup> Mr Worringham's Rebuttal Proof, para 2.3.11 (p 21).

<sup>189</sup> Mr Taylor's PoE, paragraph 3.132-3.133, p 61 and Appendix E.

<sup>190</sup> Mr Taylor's PoE, section 4 (P 62); Mrs Cohen's PoE, section 5 (p 34).

- a. The issue of overlooking issue is dealt with in Mr Taylor’s SoC at p 80.<sup>191</sup> The appeal site has undergone several changes in response to concerns about overlooking, including reducing Block A from 6 storeys to 2 storeys. The distance from development to the boundary of Lynmouth Road gardens is over 15m at its narrowest point, with the distance between the proposed building and the rear of the Lynmouth Road properties being between at least 25m and 29m. This can be compared against the width between the building frontages of Lynmouth Road and De Montfort Road of approximately 12m –13m.<sup>192</sup> The appeal scheme buildings are therefore set back sufficiently from Lynmouth Road.<sup>193</sup>
- b. Mr Witchalls responds to traffic concerns at para 8.1.5 of his PoE. A detailed traffic forecast has been undertaken by the Appellant showing there will not be a material impact on the surrounding local roads, with all loading and unloading undertaken from within the Site.<sup>194</sup> Parking controls will be put in place to ensure residents of the appeal proposals are unable to park on neighbouring streets.
- c. Regarding the suggestion of possible garden flooding, the appeal proposals introduce soft landscaping, permeable paving materials and underground rainwater storage, which in combination will amount to significant betterment

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<sup>191</sup> Figure 6.17- 6.18 and 6.19.

<sup>192</sup> Mr Taylor’s SoC, para 6.113 (p 81). Tree planting was provided to deliver the green link required by CR11 g and not to prevent overlooking; Mr Taylor’s PoE, para 4.13 (p 64).

<sup>193</sup> It is also worth noting that several properties on Lynmouth Road have been extended upwards or have put in planning applications for upward extensions, as was mentioned in the Rule 6 RTS and Mr Taylor’s PoE, para 4.6, p62.

<sup>194</sup> Mr Witchalls’ PoE, paras 7.1.4 – 7.1.10 (p 23).

in terms of runoff compared to the existing impermeable carpark hardstanding, as Mr Witchalls explained in the Rule 6 RTS.<sup>195</sup>

- d. The Appellant's lighting consultant Mr Barnes described the daylight and sunlight effect on neighbours as a result of the proposed development in the Rule 6 RTS. Detail was provided on how the scheme has evolved through its design to respect of the light to neighbours, in line with guidance and policy.
- e. Other issues raised by the Rule 6 Party are fully addressed in the written evidence.<sup>196</sup>

## **OVERALL BALANCE**

177. The Council's case at this Inquiry has focused very much on guidance and very little on Local Plan policy. This is perhaps unsurprising as the scheme is compliant with the Local Plan. The scheme realises the Council's long-held policy ambition of creating a north-south "green link", which is provided for in Policy CR 11 g.

178. The appeal scheme represents the complete redevelopment of a sustainably located, brownfield urban site allocated for residential development in the adopted Local Plan. The proposal will provide a significant quantum of new homes to assist Reading Borough Council in delivering enough housing to meet its increasing housing need.

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<sup>195</sup> In the Rule 6 RTS.

<sup>196</sup> Mr Taylor's PoE, section 4 (P 62); Mrs Cohen's PoE, section 5 (p 34).

179. The design of the scheme has been complimented by many stakeholders including two of the Council's own witnesses at the Inquiry.

180. The appeal scheme has numerous benefits set out in detail by Mrs Cohen in her PoE.<sup>197</sup> We highlight in particular the following:

- a. The delivery of 209 new homes on a site allocated for housing in the adopted Local Plan, in a scheme of real distinction.
- b. The delivery of one of the Council's key policy aspirations: a new north-south pedestrian and cycle link connecting Vastern Road to Christchurch Bridge. Without this scheme, the route to the Christchurch bridge envisaged by Policy CR 11 and the RSAF will not be achievable: nor will the high-density development for which this site was allocated.
- c. The provision of a riverside café and new public realm, creating an attractive active frontage to the river,
- d. The delivery of a substantial net biodiversity gain (off-site as well as on-site) through new planting,
- e. Financial contributions towards open space and leisure improvements in the borough, a new pedestrian/cycle crossing on Vastern Road and the Borough's Employment and Skills Plan.

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<sup>197</sup> Mrs Cohen's PoE, para 6.18 (p 41).

181. Overall, this is a scheme which should be welcomed. Everyone agrees that this is a site of real importance, as a riverside gateway to the town centre from Christchurch Meadow and the north bank of the river, and, in the opposite direction, from the town centre northwards. This is a redundant brownfield site which is failing to fulfil its proper role. The scheme celebrates the Site's important location and will make a substantial contribution to the locally distinctive character of the area by its sensitive and attractive place-making, with the green north-south link as the central and crucial feature. The development will be a great benefit for the whole community.

## **CONCLUSION**

182. In conclusion, the appeal proposals will regenerate this highly sustainable urban site, in a development that will provide housing in a Borough which has a significant housing need. The development will fulfil the aspirations of Local Plan policy CR 11 g, bringing environmental improvements by reason of its distinguished design including extensive public realm, and pre-eminently, a north-south link to Christchurch Bridge and the Thames towpath. These benefits will be achieved without unacceptable impacts. The appeal should be allowed.

**TIMOTHY CORNER, QC**

**19<sup>th</sup> November 2021**

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