
Appeal Decisions

Hearing held on 29 and 30 July 2015

Site visit made on 30 July 2015

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 August 2015

115 London Road, Newbury RG14 2AH

Two appeals made by Ressance Land No 6 Ltd against West Berkshire Council.

Appeal A Ref: APP/W0340/W/15/3006535

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The application Ref 14/01524/OUTMAJ, dated 12 June 2014, was refused by notice dated 10 September 2014.
- The development proposed is the development of 42 apartments and 500sqm of B1 office.

Appeal B Ref: APP/W0340/W/15/3011908

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to determine within the prescribed period an application for outline planning permission.
 - The application Ref 14/02589/OUTMAJ, was dated 2 October 2014.
 - The development proposed is the development of 37 apartments and 400sqm of B1 office.
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Decision

1. Both appeals are dismissed.

Application for costs

2. At the Hearing an application for costs was made by Ressance Land No 6 Ltd against West Berkshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The planning application for the Appeal A scheme used the above description of development. During the course of that planning application the Applicant sought to amend the description to 37 apartments and 400sqm of offices and to submit indicative elevation drawings for that scheme. The Council declined to accept that amendment and refused permission for the Appeal A scheme in part because of a lack of elevation drawings for the 42 apartment/500sqm offices scheme that was being determined.

4. The Appeal B application is similar to the proposal to which the Applicant had sought to amend the Appeal A application in that it includes 37 apartments and 400sqm of offices. It also includes indicative elevation drawings. As the Appeal B application has been subject to full consultation, no other person's interests are likely to be prejudiced if Appeal A is determined on the basis that it is amended to the same description and drawings and supporting information as the Appeal B scheme. As agreed at the hearing both appeals have therefore been determined on the basis of the Appeal B application drawings and the following description:

'The development of 37 apartments and 400sqm of B1 office'.

5. In relation to the consultation responses, whilst regard is to be had to the responses to the original Appeal A planning application and the appeal stage consultation (insofar as they remain relevant to the amended scheme), for the purposes of both appeals greater weight is accorded to the consultation responses to the Appeal B scheme which is the same scheme as the amended Appeal A scheme.
6. The Council did not determine the Appeal B application. Neither has it formally resolved what its decision would have been had the appeal against non-determination not been submitted. However the Council's statement for the Appeal B scheme indicates that permission would have been refused had the application been considered valid. For the purposes of the appeal regard has been had to the reasons given by the Council for refusing the Appeal A planning application insofar as those reasons remain relevant to the amended Appeal A scheme and the Appeal B scheme.
7. Whilst the application descriptions do not refer to the partial demolition of the existing building, that is shown on the submitted drawings and it would be necessary for the development to be implemented.

Policy Context

8. The appeals are required by statute to be determined in accordance with the provisions of the adopted development plan unless material considerations indicate otherwise. The development plan here includes the West Berkshire Local Plan Core Strategy 2006-2026 (2012) (the CS) and the saved policies of the West Berkshire Local Plan 1991-2006 (the WBLP). Material considerations include the National Planning Policy Framework (2012) (the Framework), Written Ministerial Statements of policy, the national Planning Practice Guidance (PPG) and local Supplementary Planning Documents (SPD). Also material are the non-statutory Newbury Vision 2025 document (2003) and Newbury Town Design Statement (2005). The emerging Vision 2026 document is at an early and evolving stage and has not been adopted. It merits little weight.

Main Issues

9. The Appellant has drawn attention to a recent appeal decision at Burghfield (Appeal Ref APP/W0340/A/14/2228089) where the Inspector concluded that West Berkshire currently lacks the 5 year supply of housing land required by the Framework. However the Appellant does not rely on a lack of supply and has not sought to demonstrate that the Council's policies for the supply of housing are consequently out of date. Moreover the Council is mounting a

legal challenge to the Burghfield decision. Neither does the Council seek to demonstrate that there is any upper limit on housing provision, particularly within defined settlements. It is therefore unnecessary to determine for the purposes of this appeal whether or not there is a 5 year supply of housing in West Berkshire.

10. I consider the main issues to be:

a) Whether the applications were validly made, and whether sufficient information has been provided about the following matters:

- the appearance of the development;
- the use and alteration of existing buildings on the appeal site;
- the transport and traffic implications of the development.

b) Whether these would be sustainable developments having regard to:

- the effect on employment;
- the effect on the character and appearance of the area (including landscape features);
- the effect on the setting and significance of heritage assets;
- the provision for traffic, parking and waste collection;
- the effect of each proposed development on carbon emissions;
and
- the provision of affordable housing.

Site Description and Planning History

11. The appeal site is occupied by a detached 2-3 storey office building erected in the 1970s on a prominent corner site beside the roundabout junction of the A4 dual carriageway London Road with the A339 dual carriageway. The application form describes the current use of the premises as 'B1 business'. The Council does not dispute that use. The building is currently occupied for business use. I saw that the first floor of the 2 storey main building is in office use and that the ground floor is in a mix of associated uses by the same company which include offices, assembly, distribution and ancillary storage. A 3-storey wing provides ancillary accommodation including toilets, a canteen, and a disused boiler room.
12. The boundary with the two main roads is enclosed by a tall hedge. There is a group of mature trees within the London Road frontage. On the opposite side of the A339 to the west are two Grade II listed buildings and part of the Town Centre Conservation Area. On the opposite side of the A4 London Road to the north is a further Grade II listed building (now a public house) and the Shaw Conservation Area, which here includes a long crescent of houses.
13. Access to the appeal site is provided by a private road to the rear which is shared with other businesses and which connects to a cul-de-sac of public highway within the London Road Industrial Estate (LRIE).

14. Adjoining the Appeal Site to the south and also bordering the A339 are 2 vacant flat-roofed 2-storey business premises which the Appellant is acquiring in order to implement permitted development rights to convert them to apartments. The Appellant also holds from the Council the head lease of an extensive area of land in employment use to the south of the latter site which again borders the A339. That land was the subject of a lapsed outline planning permission for mixed employment, leisure and residential development known as Faraday Plaza. A recent attempt by the Appellant to obtain a new planning permission for similar mixed development on that site was refused by the Council and is now at appeal with an Inquiry due in November 2015 (Land off Faraday Road and Kelvin Road - ref APP/W0340/W/14/3002040). To the south of that land and encroaching onto it, planning permission has been granted and funding identified to create a new junction into the LRIE from the A339.
15. On the appeal site the Appellant has previously made a successful application for prior approval for change of use of the present building (including the 3 storey element) to 14 apartments using temporary permitted development rights that are currently due to expire by April 2016.

Reasons

Application Validity, and Adequacy of Submitted Information

Appeal A

Information on Appearance

16. The Appeal A application was made in outline to develop 42 apartments and 500sqm of office space to include access, layout and scale but with appearance and landscaping reserved for subsequent determination. As appearance was reserved, no elevation drawings were included. The diagrammatic floor plans and site layout of the development indicated that the 3 storey part of the present building would be demolished. That part includes toilets, a canteen and a disused boiler room but no office floorspace. New wings would be added to the north and south of the retained 2 storey main building. These would extend closer to the main roads and would be up to 5 storeys high. A further storey would also be added to the retained main building which would thus become 3 storey.
17. On 2 July 2014, less than one month after the application was submitted and citing Part 2 Article 4 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (the DMPO 2010), the Council wrote to require details of appearance by 18 July 2015. The letter referred to the prominent location and scale of development in a highly visible location close to a designated conservation area. Had the Applicant provided these details appearance would have ceased to be a reserved matter.
18. The Appellant's response offered to supply only indicative elevations and asked that the Council revise its request. An extension of time to 25 July was requested in respect of the indicative elevations. On 17 July the Council agreed to the time extension and confirmed that only indicative elevations, street scene and additional sections were required in relation to appearance. It follows that the Council had revised its request and that appearance was to remain a reserved matter. However, when the illustrative drawings were

submitted, the Applicant had revised the number of apartments from 42 to 37 and had reduced the new office floorspace from 500sqm to 400sqm.

19. The Council has a discretion as to whether or not to accept amendments to a planning application and in this case it refused. No indicative elevations were provided for the original 42 apartment/500sqm scheme. Neither did the Council declare the application invalid. The application therefore continued to determination without any indicative elevations. The Council then refused permission in part because there was insufficient information to consider the impact on the character and appearance of the area and the setting of nearby conservation areas and listed buildings.
20. At the Appeal stage the Council has sought to claim that the Appeal A application was invalid for a different reason which relates to the description of development. However if that was the case then the Council should have declared the application invalid and not have determined it without the information about the description which the Council considered to be necessary for that determination. The Applicant should have been informed that the application was invalid and the Applicant could then have either provided the requested information or could have invoked the procedure for invalidity dispute in the Development Management Procedure Order.
21. Having regard to the visual sensitivity of the site and its surroundings and to the statutory and policy provisions for assessing the impact on heritage assets, it is concluded that there remains insufficient information about appearance to assess the original Appeal A scheme. However, as it has been agreed that the description and drawings for the Appeal A scheme should be amended to match the Appeal B scheme, then there is sufficient information about appearance to determine that issue. The matter of the description of both developments (which is now the same) is considered below.

Appeal B

22. The subsequent planning application relating to Appeal B did include indicative elevations as well as the amendment of the description to 37 apartments and 400sqm of floorspace. It does thus allow the likely impact on character and appearance and the setting of heritage assets to be assessed.

Information on Existing Buildings

Appeal A

23. In respect of the Appeal A scheme the Council also refused planning permission in part because of a lack of information in the application about the loss of business floorspace and because the consequent lack of information meant that the impact of the proposal on local services and infrastructure could not be fully determined. The Council had not declared the application invalid for the lack of that information and it proceeded to determine the application.
24. I consider that there would have been two alternative ways to approach the matter:
 - a) The Applicant could have included the change of use of the offices to residential within the subject planning application, notwithstanding that there was an alternative route for conversion using permitted development rights. In relation to matters such as the proportion of affordable housing

the Appellant could have argued that the alternative route of permitted development was a material consideration which should be taken into account. Had permission been refused the permitted development rights could still have been exercised in the fallback situation.

- b) Alternatively the Applicant could have kept the conversion out of the description of the development proposal (as was done). But in that event the Applicant should still have acceded to any request from the Council for supporting information as to the amount of office floorspace lost or apartments to be gained and the disposition of the existing and proposed uses. There would be obvious cumulative impacts which would be a material consideration. This would be particularly in respect of travel patterns and parking and waste collection requirements. It was material for the Council to be informed what the fallback or base situation of development on the appeal site would be in these respects when assessing the development that did require planning permission.
25. As it stands, at the appeal stage the Appellant has indicated that there is uncertainty as to whether or not the building will in fact be converted from office space to apartments, not least because the permitted development rights are due to run out by April 2016. If that time limit is not extended by the Government there are now practical obstacles to completing and bringing into occupation that development whilst the remaining development is still under construction.
26. Consideration is thus needed for two alternative scenarios in respect of cumulative impacts if the office to apartment conversion is, or is not, implemented. In any event the partial demolition of the existing building is part of the subject planning application and the alteration in floorspace within the application site should have been recorded on the planning application form. Also it should have been made clear whether the parking provision shown on the application form was intended for the exclusive use of the flats and the new offices for which planning permission was sought (as the form may imply) or would also be shared with the existing offices or converted apartments (as the drawings may suggest).
27. The Appeal A planning application was not declared invalid by the Council who proceeded to determine it but the Council included a lack of information as a reason for dismissal. At the appeal stage the Council sought to argue that Appeal A application had been invalid and that the Appeal was itself invalid. The DMPO 2010 and its replacement DMPO 2015 provide that the appeal route may be followed in circumstances where there is a validation dispute. Thus, even if the Appeal A scheme had been declared invalid before its determination by the Council, the Applicant could still have appealed.
28. The consideration for that appeal would have been whether the information supplied was adequate for the application to be valid. If it was not then the appeal could not have been allowed.

Appeal B

29. The Appellant would have been aware that the lack of information in relation to the loss of office floorspace had been a specific reason for refusal of the Appeal A scheme and yet that information was still omitted from the Appeal B planning application. The drawings were again annotated '*existing office*' whilst the

Appeal B scheme Design and Access Statement again stated that the office building would be converted to residential apartments using permitted development rights.

30. The Council sought to clarify the position resulting in the following sequence of events:

- On 31 December 2014, the Council pointed to the apparent discrepancy between the submitted drawings and the above statement in the DAS. The Council asked for the drawings to be amended to show the proposed residential use. However the Drawing 18d that was apparently submitted in response on the same day still shows '*existing offices*' and not the residential conversion.
- On 8 January 2015 the Council first indicated that the application may be invalid and requested drawings showing both the existing and proposed use of the office building.
- On 12 January 2015 the Council again requested floor plans of the proposed use of the existing offices. A reply from the Applicant referred the Council to the floor plans from the prior approval application whilst adding that 2 of the flats shown on those drawings would have been in the demolished part of the building.
- On 19 January 2015 the Council pointed out the conflict between those plans and the planning application layout and again requested floor plans of what was proposed by 20 January. On that day the Appellant finally submitted a floor plan (Drawing 18f) which did include the floor plans of the proposed residential conversion and its relationship to the new development.
- On 23 January 2015 (the final day of the 13 week determination period) the Council issued a letter advising that the application was invalid. That letter did not give a reason.
- On 5 February 2015, in response to another email, the Council gave reasons for the invalidation. This was on the basis that the Council now regarded the 12 flats in the residential conversion shown on Drawing 18f to be part of the development for which planning permission was sought. It followed that the application form did not correspond to the development on that drawing as it did not include those 12 flats. The Council considered that floor plans of the existing offices were also necessary and that the application form should detail the loss of existing office space. The Council was relying on Article 6(1)(c) of the Town and Country Planning (Development Management Procedure)(England) Order 2010 which requires planning applications to be accompanied by '*any other plans, drawings and information necessary to describe the development which is the subject of the application*'.
- On 18 February the Applicant replied to contest that, as the residential conversion was permitted development and not part of the proposal for which planning permission was sought, the application accords with Article 6.

31. In paragraph 24 above I explain my view that there would have been two alternative ways to deal with the conversion. The Applicant had chosen to keep the conversion outside the description of the development on the basis that it could be implemented as permitted development. The conversion was thus not included on the application drawings or the application form but it was referred to in the Design and Access Statement. The Council then reasonably

requested additional information about the conversion. However the Council did not then make clear that it was questioning the description of the proposal or seeking incorporation of the conversion into the planning application. That only emerged after the Council had issued the invalidation notice.

32. The DMPO 2010 (as amended) did provide a procedure for validation disputes in circumstances when the Applicant is unwilling to provide requested information. That could have been invoked after 8 January 2015 by the formal service of a counter notice under Article 10A of the DMPO 2010 but it was not. In fact the requested drawing of the proposed use of the floorspace in the converted building was finally provided by the Applicant on 20 January. The Council had not specifically questioned the description of development until after finally declaring the application invalid on when it became part of the reason for that decision. There was therefore no opportunity for the Applicant to invoke the procedure for validation disputes in that regard and no alternative other than to appeal for non-determination.
33. At the appeal it was pointed out to the parties that, as the application description had not been amended, the appeal should be determined on the basis of the original description in the planning application. That original description can be related to the submitted drawing 18d. As this drawing did not include the conversion of the offices to apartments, and because the drawing 18f submitted on 20 January had not been subject to any consultation procedures, I ruled that it should be regarded only as supporting information about the conversion to flats, should that be capable of implementation as permitted development.
34. For the reasons explained above, it is also necessary to consider what may be the situation should the building remain in B1 business use. However I do not consider it was necessary to supply floor plans of the existing office use.

Information on Transport and Traffic

Appeals A and B

35. The Appeal A planning application was refused in part because of the lack of a Transport Statement. This related to disagreement on the interpretation of thresholds for such statements in the then government publication '*Guidance on Transport Assessment*' (since withdrawn). Whilst the individual elements of 42 apartments and 500sqm of offices were below the thresholds for those uses (50 dwellings and 1500sqm respectively), the Highway Authority considered that 500sqm of offices would generate more traffic movements than 8 dwellings and therefore the cumulative impact would be greater than for 50 dwellings.
36. It is notable that the consultation response omitted to take account of the cumulative impact of traffic movements according to whether the existing building remained in B1 business use or was converted to residential use.
37. At the appeal hearing the Council did not pursue its requirement for a Transport Statement for Appeal A. This was because it had not made the same demand in respect of the Appeal B scheme, to which the amended Appeal A scheme is now identical. Also the above Government guidance has since been replaced and the thresholds no longer apply.

38. The parking provision for both schemes appears to have taken account of the proposed conversion of the office building to apartments and has apparently been assessed by the Council on that basis including shared use of parking spaces by residents and the occupiers of the new 400sqm of office space.
39. The Council did not refuse Appeal A due to a lack of parking provision. Neither did it cite a lack of parking information in relation to the Appeal B scheme. However, at the hearing the Appellant indicated that the office to apartments conversion may not proceed. If it did not then the parking would potentially be shared between 12 fewer apartments but with much more office space. That scenario does not appear to have been assessed.

Conclusions on Validation and Information

40. It is concluded overall that both applications were valid notwithstanding that the application form did not record the ancillary business space that would necessarily be lost through demolition in order to implement the development. The Council was aware of that loss. It is also concluded that both appeals can be determined on the basis of the amended Appeal B application description, drawings and supporting information.
41. However as the conversion of the retained part of the existing building from business use to apartments remains uncertain (notwithstanding the statement to that effect in the Design and Access Statements for both applications) it is necessary to consider what the cumulative impact of the developments may be according to whether that building:
- (a) remains in business use (with or without refurbishment); or
 - (b) is converted to 12 apartments (as shown on the supporting drawing 18f).

Sustainable development

Employment

42. The appeal site is in a Protected Employment Area (PEA) as defined in the development plan by CS Policy CS9. The footnote to Policy CS9 provides that the PEA designations will continue to be in use until reviewed under the Site Allocations and Delivery DPD. However the Council explained at the hearing that it is now preparing a Site Allocations document ahead of that review of the PEA. This is intended as an interim document in order to maintain the supply of development sites. A review of the PEA is now intended to follow both the completion of the joint Strategic Housing Market Assessment (SHMA) which is being carried out with some other Berkshire planning authorities and an update of the Employment Land Assessment (2007). That is in order that the identification of housing sites and employment land can take account both of objectively assessed need for housing across the market area and also the need for different types of employment which is also related to future population and housing levels. This would feed in to a new Local Plan that would replace the CS.
43. Policy CS9 does allow for some non-business but employment-generating development in the PEA (subject to criteria). However because Policy CS9 designates the PEA for 'B uses' and because the declared policy aim of CS9 at paragraph 5.45 is to facilitate and promote the growth of business

development I do not agree with the Appellant's interpretation that the policy allows for residential development. Thus, whilst the office development of the appeal proposals would conform to Policy CS9, the residential element would not and there is an associated conflict with Policy CS9. I therefore turn to whether there are any considerations which indicate that the policy should not be applied here.

44. The PEA includes mainly 1 and 2 storey buildings in various business uses. Many are of poor quality design and materials and some are obviously vacant or underused. The spaces around the buildings are dominated by vehicle parking with very little soft landscaping. The area appears run-down and there is thus obvious potential for redevelopment to make more efficient use of the land and to improve both the accommodation available and the environment. That could potentially be in the form of business development, as Policy CS9 envisages. However there is also some evidence of consideration having been given to other mixed redevelopment in the future including residential accommodation.
45. In particular the Appellant draws attention to the previous outline permission that was granted in 2009 for the Faraday Road site, prior to the adoption of the CS. That permission is referred to at CS Policy ADPP2 as offices, a restaurant and a hotel. The Appellant points out that it also included residential units. However that permission has since lapsed and an application to renew it has been refused for reasons which apparently included the conflict of the housing provision with Policy CS9. I therefore attach little weight to that scheme.
46. The Appellant also refers to non-statutory documents prepared by, or adopted by, West Berkshire Council including the Newbury Vision 2025 (2003) and the subsequent Newbury Town Design Statement. These lack the weight attributable to the development plan. Moreover whilst these include some comments on the environment and design, the appeal site lies within what was described as the Business and Commercial Quarter. There is no support in the document for residential development. The Vision 2025 document seeks to encourage redevelopment of the Quarter for *'higher density primarily business uses.'*
47. Whilst the emerging Newbury Vision 2026 refers to the possibility that some land currently in employment use may be re-used for mixed use/residential, that document has not been formally adopted, is not part of the development plan, and the need for any development plan changes would be addressed by the review of the PEA as flagged in the CS and the Council's evidence for the appeals. In the interim a reference in the document to providing residential units adjacent to the canal could refer to land outside the PEA and is not relevant to the appeal site.
48. There is a suggestion from the Appellant that the Council is considering options for redevelopment of its own landholdings in the LRIE area which may include residential development. In particular it is suggested that the scope for such development was relevant to the proposal for the new junction from the A339 and to an application to the Local Enterprise Partnership for grant funding towards that scheme. It is prudent for the Council to consider the possibility that residential use may emerge from the intended review of the PEA after the SHMA and ELA update have been completed. In the meantime it is also prudent for the Council to plan for a major item of infrastructure which would

be of benefit to whatever form of development comes forward in the LRIE and on adjoining land.

49. Turning now to the merits of the appeal schemes compared to the fallback situation.
50. In the fallback situation there would be no employment remaining on the appeal site if the Appellant implemented the conversion of the existing building as a scheme for 14 apartments. However there is limited time available to do that before the permitted development rights expire in April 2016. Moreover the Appellant indicated at the Hearing that, in the event that the appeals were dismissed, the permitted development scheme would not necessarily be implemented as alternative proposals may be brought forward depending on the reasons for dismissal. In the fallback situation it thus remains possible that the present business occupation would continue or that the building would be refurbished for another business occupier. Were the appeal to be allowed it would be theoretically possible for the present employment use to continue. However it is unlikely that the current business would remain in occupation given the disturbance of the building activities and the demolition of their toilet and canteen accommodation.
51. The appeal schemes include 400sqm of offices which would provide some employment opportunities in modern premises. The Appellant considers that this would be equivalent to the loss of employment space if the existing offices are converted to residential use. However the loss of office space is estimated at about 1000sqm. Whilst their present occupier does not use them intensively there is the potential for another occupier to do so, notwithstanding that this would be likely to require some expenditure to refurbish and modernise the accommodation. Policy CS 9 would also provide in-principle support for a more intensive redevelopment of the site for business use.
52. It is concluded on this issue that, whilst the new office space would be supported by Policy CS 9 and would provide more employment than if the permitted development conversion to flats is implemented, the development would probably itself displace the existing business occupier and result in a net loss of business floorspace. It would also remove the potential for the site to be redeveloped for business use in accordance with the policy aims. Residential use of the site remains contrary to the aims of Policy CS 9 and it is premature to conclude that the proposed review of the PEA would result in the de-designation of this part of the LRIE. In relation to paragraph 22 of the Framework the site is currently in use for employment and it has not been demonstrated that there is no reasonable prospect of the site being used for employment in the future.
53. Although the Council had approved some residential development in other Protected Employment Areas, it does not follow that the PEA policy should be set aside in every case. The Council is entitled to consider in each case whether there are any material considerations that indicate that a decision should be made other than in accord with the development plan. Those considerations are likely to vary from site to site and each determination should be made on its own merits.

Character and appearance

Context

54. The A4 London Road and the A339 dual carriageway are major routes through the town which provide access to the town centre and employment areas. They are 'key frontages' in the terms of the Quality Design SPD.
55. The A339 dual carriageway enters the town just to the north of the Robin Hood roundabout which is adjacent to the site. After passing the appeal site the A339 then continues south between avenues of trees which significantly screen what would otherwise be unsightly industrial sheds and garages on the LRIE, at least in summer. On the opposite west side of the road is a thicker belt of trees within the conservation area along the edge of Victoria Park. This avenue of trees serves to visually isolate the A339 road from the Park and the LRIE, particularly when the trees are in leaf.
56. The Vision 2025 and the Newbury Town Design Statement describe the Robin Hood roundabout as a major gateway into Newbury Town Centre and advise that visual enhancement measures would therefore be particularly significant but do not indicate what form these enhancements might take. In particular there is no statement of support for tall or 'landmark' buildings.
57. Referring to the 'Faraday Road Industrial Area' the Design Statement points to the poor quality of buildings fronting the A339. It is not clear that this includes the appeal site building which is more attractive than some of the buildings and sheds further south which are closer to Faraday Road itself. The existing low profile building is seen above the frontage hedge. The adjacent vacant 2 storey building to the south is more open to view. The latter semi-derelict and long vacant building is of similar height to the present building on the appeal site. It is likely to remain and be refurbished when it is converted to apartments as permitted development. That can be expected to improve its appearance.
58. The Newbury Town Design Statement seeks additional tree planting on London Road, which is said to have fewer trees than other approach roads.
59. Vision 2025 at paragraph 5.59 refers to the attractive human scale of Newbury with a prevailing building height of 2 to 3 storeys. A number of taller buildings are said to provide identity and visual interest to the town centre. The Quality Design SPD (2006) supports the concept of landmark buildings to create local identity. An example local to the Robin Hood roundabout would be the church and opposite with its tower. However the SPD advises developers to consider the architectural quality of prominent landmark buildings.

The Appeal Schemes

60. It is acknowledged that the appearance of the proposed schemes and their landscaping are reserved matters. The elevations are thus only indicative and could change. However the layout and general form of the buildings and the external parking areas and hard-surfacing would be established.
61. There are trees on the London Road frontage of the appeal site which soften views of the present building. However the scheme layout is not reserved and it follows that the locally scarce mature trees on the London Road frontage of the appeal site would be removed and could not be replaced. That would

- conflict with the aims of the Newbury Town Design Statement to increase tree planting on London Road.
62. The proposed extension would be well forward of the retail buildings to the east and almost on the back of the footway, rising to 5 storeys. There would be very little room for any new planting at ground level. The southern wing of the building would also extend almost to the footway edge, well forward of the existing building and of the neighbouring building to the south and again with no room for planting. The height and massing of the extensions would be a radical departure from the present streetscene of recessive buildings set back from the road behind trees and other planting.
63. The architectural quality of the appeal scheme has been compromised by the retention of the existing building whilst seeking to significantly increase floorspace. This has forced the additional development to the edges of the site. If what is sought is a landmark structure then greater consideration is needed as to how this would relate to the nearby heritage assets and to the approach to the town centre. The elevations are also important and I consider that the Council would have been justified on these grounds in requiring that appearance (and also landscaping) not be reserved for subsequent determination.
64. As the first redevelopment of a key frontage on the east side of the A339 the isolated development of the appeal site would likely be followed by other proposals for piecemeal redevelopment that would radically alter relationship of this area to the road and to the town centre. The present avenue of trees would be replaced on one side by similar high urban buildings in a variety of forms and styles. Whilst this may be necessary to fulfil current and emerging policy objectives to use the LRIE land more efficiently, whether for employment or other uses, this demands a considered urban design approach such as that employed for the Parkway development to include consideration of the landscaping, set backs, building scale and form and movement patterns, including pedestrians.
65. My attention has been drawn to some large scale developments that have been approved outside the conservation area in areas of different character. However each site is necessarily unique in its context and I do not consider that require that the development proposed here be permitted.
66. It is concluded on this matter that the appeal development would harm the streetscene by reason of its height and scale in a very prominent main road location on a key frontage at the entrance to the town from the north and amongst much lower buildings. The height and bulk is exacerbated by the setting forward of the building to both frontages, also by the loss of mature trees and the lack of space for significant new planting. The development would not demonstrate high quality design that respects the character and appearance of the area as required by CS Policy CS 14. It would be a poor design in the terms of the Framework paragraph 64. In the absence of more comprehensive proposals for the A339 frontage this would be a piecemeal approach to development of an important frontage.

Heritage Assets

Town Centre Conservation Area

67. The town centre conservation area retains a market town character that is enhanced by the open space of Victoria Park. That character contributes strongly to its heritage significance, notwithstanding that the town centre now serves a much expanded urban area. Most buildings on the main streets of the centre are 2-3 storeys high. I was shown that some larger buildings have recently been added behind the frontage buildings on both sides of Northbrook Street. These include the major Parkway mixed retail and residential development that fronts the west side of Victoria Park. However the scale of that development is not apparent from Northbrook Street. I consider that this and other large developments I was shown in and around the conservation area have in general been carefully sited where they do not intrude in the main streets and they do not detract from the dominant low profile character and appearance of the conservation area.
68. One more prominent recent development adjacent to the conservation area is the 5 storey Travelodge Hotel on London Road. I do not know what it replaced but I saw that it is part of a relatively continuous built-up street frontage and it is itself set back from the road frontages on 2 sides, retaining some mature frontage trees. It thus does not appear unduly out of scale with its surroundings and it does not significantly harm the setting of listed buildings on the opposite side of London Road.

Shaw Conservation Area

69. The Shaw Conservation Area near the appeal site is characterised by an unusual long crescent of modest terraced brick houses set behind short front gardens along Shaw Road. These are of modest height and the length of the terrace creates a strong horizontal emphasis. They were probably erected in the early 19th century. The crescent faces open land and the Quality Design SPD highlights the Crescent as an example of a historic key frontage defining the edge of an open space. It was clearly designed as a whole.

Listed Buildings

70. Nos 105 and 107 London Road are Grade II listed early 19th brick villas that are set back from London Road and are partially screened by trees. They are of modest scale which harmonises with that of buildings in the Shaw Conservation Area opposite. 110-112 London Road is now a public house, but was built as a pair of semi-detached villas at about the same time as Nos 105 and 107 and is of similar scale and style. Whilst the wide roads and traffic tend to dominate their surroundings, the built environment on each side of the Robin Hood roundabout, including the appeal site, has a consistent scale with mainly two storey buildings set amongst trees and other vegetation.

Effect on Setting

71. Owing to the similar age, style, scale and materials, there is continuity between the heritage assets on both sites of the Robin Hood junction. There are also mature trees on each side of the roundabout, including on the appeal site.
72. The appeal site is only separated from the two conservation areas and the listed buildings by the widths of the intervening roads. The flat roofed existing

building is of subdued colour and is only a little taller than the heritage buildings. Its lower floor is screened by the hedge and the trees soften its profile.

73. By contrast the height of the extended building, amplified by its proximity to both roads and by the lack of space for significant trees or other landscape planting, would mark it out as a very urban structure more characteristic of large urban areas than the outskirts of market towns. It would be very prominently located in an isolated suburban setting where the nearest buildings around the roundabout are much lower and are likely to remain so. The tall structure would intrude sharply into the visual flow between the conservation areas and heritage buildings of similar age and scale on both sides of the roundabout.
74. Some other large developments in and around the town centre are also located at various distances from listed buildings. However some are visually screened by intervening buildings. Where buildings can be seen in the same view that is typically in the context of closely built-up streets which contain a variety of buildings. In each case the new development has a unique relationship to any other heritage assets and detailed direct comparisons with the appeal scheme are not possible or appropriate. Neither am I aware of what considerations may have been weighed with any identified harm to the setting of the assets. I have assessed the appeal scheme on its own merits.
75. It is concluded on this matter that the development would cause harm to the setting of the adjacent heritage assets identified above and their significance. It would thereby conflict with the objectives of CS Policy CS 19. The harm would be less than substantial in the terms of the Framework and would therefore need to be weighed with any public benefits of the proposals. However, having regard to Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, that the development would not preserve the setting or significance of the listed buildings merits considerable importance and weight in the planning balance.

Traffic, Parking and Waste Collection

76. As the only access to the appeal site would be from a private driveway off the end of a cul-de-sac, there is an issue as to how waste collection would be managed. The Highway Authority has advised that the access road would not be of adoptable standard because the turning head would be beneath a building. Waste vehicles therefore could not turn within the site and are not expected to reverse long distances or on new private access roads. The present turning head within the highway on the cul-de-sac is of inadequate dimensions, unless it can be extended, which is uncertain. Even if it can (using land currently controlled by the Appellant and/or the Council) then the drag distances to bring eurobins or wheelie bins from the appeal site to the highway would still be too long (96m) for the waste operatives to manoeuvre (recommended maximum distances would be only 10m/25m respectively).
77. The Appellant offered that the bins would be moved by the scheme managers. However they would then need to be stored close to the public highway to await the collection vehicle. The submitted details indicate that there could be up to 9 eurobins or 27 wheelie bins¹ (or possibly more) to be moved these long

¹ Waste Management comments

distances at one time, if that is to be the mode of collection. That would require a sizable off-street storage area if the bins are not to obstruct the highway. No storage area has been included in the submitted scheme and the practical and aesthetic consequences of requiring such a scheme by means of a condition are uncertain.

78. It is acknowledged that a similar issue would arise by implementing the permitted development conversion to apartments. That did not prevent highway authority support for the prior approval scheme. However in that case the scale of the problem would have been much reduced with only up to 14 wheelie bins to move or accommodate at a time. There may also be alternative means of collection such as communal eurobins for waste and recycling in the highway, but no such proposals are before me. As this design issue has not been resolved this reinforces my conclusion that this is a poor design.
79. In relation to traffic and parking, whilst it appears that the traffic generation and parking arrangements were acceptable to the highway authority and took into account the conversion of the main building into apartments, there has been no assessment of how the scheme would work if the main building remains in business use, potentially generating more traffic movements and with different patterns of demand for parking spaces and different on-site waste storage requirements. It is not possible to determine whether a severe adverse impact would be avoided in those circumstances in order to satisfy relevant requirements of the framework.

Carbon Emissions

80. CS Policy CS 15 seeks that major developments of this type meet Level 4 of the Code for Sustainable Homes in respect of residential accommodation and BREEAM Excellent in respect of the office development. The submitted Design and Access Statements declared that these requirements would be complied with.
81. On 25 March 2015 the then coalition government issued a statement which withdrew the Code for Sustainable Homes but which allowed that energy requirements not exceeding Level 4 could continue to be applied for a transitional period where there is a relevant development plan policy.
82. A pre-assessment was submitted in respect of the residential accommodation but not in respect of the office accommodation. At the hearing the Appellant explained that this was because the requirements of office occupiers are less predictable with regard to how the accommodation would be laid out and used. They pointed to a recent example in Newbury (Travis Perkins site) where the matter had been addressed by conditions and a relevant condition had been amended from BREEAM Excellent to Very Good after the pre-assessment had been carried out.
83. Were the proposed development otherwise acceptable, I consider that the matter could be suitably addressed by planning condition. That would comply with the objectives of Policy CS 15. Any subsequent variation would require a planning application with adequate justification.

Affordable Housing

84. CS Policy CS 6 would require that 30% of the dwellings be provided as affordable housing. The lack of provision was a reason for refusal of the Appeal A scheme. At the appeal stage the Appellant submitted a unilateral undertaking to this effect including one version which would apply to the proposed 37 dwelling scheme. That would be compliant with Policy CS 6.

Other Matters

85. A lack of works or off-site mitigation for the effect of the development on local infrastructure, services or amenities was a reason for refusal of the Appeal A scheme. However the Council did not pursue that reason at the hearing because a Community Infrastructure Levy has since been introduced which would address these measures and for which either development would be liable. In the absence of any evidence of a need for other site specific works, there would thus be no apparent conflict with Policy CS 5.
86. The appeal site adjoins the multi-lane A4 to the north and the multi-lane A339 to the west. Whilst the existing building is set back from both roads, the proposed flats would be erected almost on the back of the footway and within a few metres of very heavy traffic which creates a noisy environment and is likely to contribute to poor air quality. The next A339 junction to the south is the subject of an Air Quality Management Area. Traffic volumes adjacent to the appeal site are likely to be similar or possibly greater. Whilst it was suggested at the hearing that air pollution may be less at the Robin Hood roundabout because it is less congested, the faster traffic speeds may also mean that noise levels are higher.
87. The Council's pre-application advice to the Applicant dated 19 March 2013 had advised that residential or office accommodation closer to the A339 and A4 than the existing building would give rise to unacceptable living conditions regarding noise and air quality. Newbury Town Council and The Newbury Society both raised concerns about noise and pollution in relation to the Appeal A scheme. However the Council did not refuse permission on those grounds and instead agreed that the matter could be addressed by planning conditions. This is notwithstanding the absence of any assessment of current noise or air pollution levels. The Environmental Health consultation response to the Appeal A scheme is confusing in that, having said that noise and air pollution needed to be addressed in the planning application and pointing out that these had not been assessed, it went on to recommend a condition which relates only to noise and which does not set any noise parameters to be achieved.
88. In the absence of assessments of noise and air quality and recommendations for suitable mitigation, there must be some uncertainty that a satisfactory living environment could be created within the apartments and also in the external amenity spaces. For example the indicative elevations indicate that the flats closest to the A339 would have mainly glass west facing elevations. That would present a severe test to provide satisfactory noise insulation and air quality whilst also addressing solar heat gain. There is thus a risk of unacceptable levels of air and noise pollution contrary to paragraph 109 of the Framework. This reinforces other concerns about the proximity of the development to the roads and should be taken into account in the event that further redevelopment proposals come forward for the site.

Conclusions

89. The developments would accord with some development plan policies and Framework objectives and would conflict with others. A balancing exercise is therefore needed to establish whether or not the development would be in overall accord with the development plan and if it would be a sustainable development in the terms of the Framework.
90. The Framework provides that sustainable development has environmental, social and economic roles. Either scheme would create social and economic benefits by providing additional market and affordable housing in an accessible location close to employment and town centre facilities and within walking distance of public transport. However the likely displacement of the existing business from the site and the loss of an opportunity to provide additional employment space would cancel out the economic benefits. The harm of the poor design to the character and appearance of the area and to heritage assets, the inadequate space provision in the layout for landscaping, the lack of adequate provision for waste collection and the lack of assessment of noise and air quality or the traffic and parking implications of not implementing a permitted development conversion all amount to actual or likely environmental harm. It is therefore concluded overall that the developments would not be sustainable in the terms of the Framework and would not be in overall accord with the development plan.
91. For these reasons both appeals should be dismissed.

R P E Mellor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Duncan Crook	Appellant – Ressance
Sarah Melton	Planning Executive – Ressance
Nick Turner	Design Director – Ressance

FOR THE LOCAL PLANNING AUTHORITY:

Jake Brown	Senior Planning Officer – West Berkshire Council
Liz Patient	Solicitor - West Berkshire Council
Liz Alexander	Policy Team Leader - West Berkshire Council
Sarah Conlon	Senior Planning Officer West Berkshire Council -
Bob Turner	Highways Development Control - West Berkshire Council
Cathy Dodson	Housing Officer - West Berkshire Council
Laura Powell-Juarez	Planning Officer - West Berkshire Council
Bryan Lyttle	Planning and Transportation Policy Manager - West Berkshire Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Letter of appeal venue notification Appeal A
2. Letter of appeal venue notification Appeal B
3. Costs Application by the Appellant
4. S106 Planning Obligation Appeal A (42 dwellings 500sqm offices)
5. S106 Planning Obligation Appeal A (37 dwellings 400sqm offices)
6. S106 Planning Obligation Appeal B (37 dwellings 400sqm offices)
7. Appeal A Original Application Form (42 dwellings 500sqm offices)
8. Drawing RL
9. Drawing RL6/18D
- 10.Existing office floor plans
- 11.Newbury Town Design Statement
- 12.Location Plan for new junction from A339 to London Road Industrial Estate
- 13.Planning Report on new junction from A339 to London Road Industrial Estate
- 14.London Road Industrial Estate Protected Employment Area
- 15.West Berkshire Council Freehold Land Ownership in London Road Industrial Estate and adjacent land
- 16.Contract for purchase of land by Ressance No 4 Ltd

17. West Berkshire Council Freehold Land Ownership in London Road Industrial Estate and adjacent land
18. Plan of Appellant's land ownership re Faraday Plaza site
19. Council's written response to costs application
20. Council's closing remarks
21. Appellant's closing remarks
22. Artists impression of previous Faraday Plaza scheme
23. Plan of recently approved large developments in central Newbury
24. Drawing of Sterling Industrial Estate redevelopment