



Over **30 years** of success and still planning

WALSINGHAM PLANNING

SPECIALIST PLANNING & DEVELOPMENT CONSULTANTS

Statement of Case

Former Hartwells Garage Site,
Newbridge Road, Bath

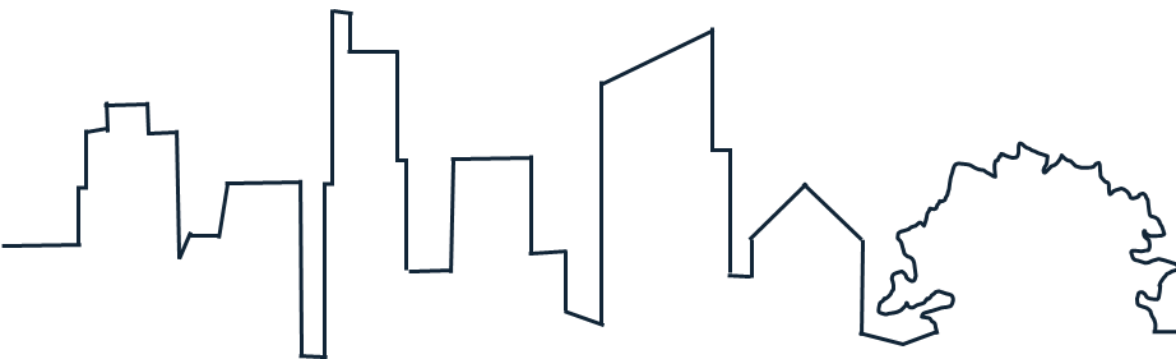
On behalf of Oakhill Group Ltd

AUGUST 2020

Walsingham Planning

Bourne House
Cores End Road
Bourne End
Buckinghamshire
SL8 5AR

Telephone
01628 532244



bourne.end@walsingplan.co.uk
www.walsinghamplanning.co.uk

CONTENTS

1	INTRODUCTION.....	1
2	APPEAL SITE BACKGROUND	3
3	APPEAL PROPOSAL.....	7
4	PLANNING POLICY.....	9
5	THE COUNCIL’S REASONS FOR REFUSAL.....	11
6	THE APPELLANT’S RESPONSE.....	13
7	PLANNING CONTROLS	25
8	CONCLUSIONS	27
9	LIST OF DOCUMENTS.....	30

I INTRODUCTION

I.1 This Statement comprises the appellant's pre-inquiry Statement of Case under the Town and Country Planning (Hearing and Inquiries Procedure) (England) (Amendment) Rules 2013. The Statement has been prepared by Walsingham Planning on behalf of Oakhill Group Ltd. (the appellant).

I.2 This appeal is submitted in response to the refusal by Bath and North East Somerset Council ("BANES") on 16 March 2020 of an outline application submitted by the appellant on 18 April 2019 (ref. 19/01854/OUT) for the following development:

"Outline application with all matters reserved except for access and layout comprising the demolition of the existing buildings on the site; construction of replacement buildings ranging in height from 3 to 5 storeys providing a mixed use development comprising up to 104 residential units (Class C3 Use), up to 186 student bedrooms (Sui Generis Use), and a commercial retail unit (flexible A1/A3 Use); formation of new vehicular access from Newbridge Road, construction of new access ramp, and provision of vehicle parking spaces; provision of new shared bicycle and pedestrian sustainable transport route through the site and formation of new access and linkages on the eastern and western boundary; and provision of hard and soft landscaping scheme across entire site."

I.3 The appellant wishes the appeal to be heard via a Public Inquiry. A Public Inquiry is considered to represent the most appropriate appeal route in this instance given the range of issues including the principle of the proposed land use; the degree of impact arising from the proposed development on matters relating to layout, quantum of development, and design; and affordable housing. This view is supported by advice received by the appellant from Leading Counsel.

I.4 The appellant maintains the view that the scheme is in accordance with current planning policy such that outline planning permission should be granted.

I.5 The appellant's case in support of the proposals will be summarised under various sections within this Statement as follows:

2. Appeal site background

3. Appeal proposal

4. Planning policy
5. The Council's reasons for refusal
6. The Appellant's response to the Council's reasons for refusal
7. Planning Controls
8. Conclusions
9. List of documents

2 APPEAL SITE BACKGROUND

Site and Surroundings

- 2.1 In their evidence the appellant will describe in detail the appeal site and its relationship with the surrounding suburbs and Bath in the wider context. The appellant will explain the constraints of the site which influence the ability to redevelop it.
- 2.2 The appeal site is the former Hartwell Garage site on Newbridge Road, Bath. The site has an area of 1.49ha and comprises previously developed brownfield land within the western suburb of Newbridge.
- 2.3 Before its closure in the spring of 2019, the site accommodated a large car showroom – orientated north to front Newbridge Road – a vehicle repair workshop, and associated buildings. The site has recently been let on a short-term contract, rent free, to an historic car restoration charity, until redevelopment is able to come forward.
- 2.4 The site is bisected from north to south by Osborne Road, which is a bridge over the former railway line running in an east-west alignment across the lower part of the site.
- 2.5 There is a significant height differential across the site, dropping down approximately 7 metres in elevation from the northern boundary with Newbridge Road to the southern boundary of the site.
- 2.6 The upper part of the site accommodates the two-storey car showroom fronting Newbridge Road, and the lower part accommodates the workshop and areas of hardstanding and informal parking.
- 2.7 The existing vehicular access is on the west side of the site; the access road passes in front of the showroom building and down a steep slope to the southern part of the site. A further means of access is on the southern boundary of the site via the Maltings Industrial Estate, which the appellant has right of access through.
- 2.8 A concrete batching plant operated by Hanson Aggregates immediately adjoins part of the western boundary of the site. The plant sits partly below the former used-car display area fronting Newbridge Road, but has its own ramp access from Newbridge Road.

- 2.9 A sewer main runs along the southern part of the site (along a similar alignment to the former track bed) which has an easement either side which restricts development of that part of the site. This restriction extends to tree planting either side of the sewer alignment.
- 2.10 The surrounding area is varied in character. Much of it is residential and includes a mix of suburban housing as well as higher density terraced houses and apartments. Industrial buildings currently occupy the site and a further area of industrial buildings adjoins the southern boundary extending southwards towards and along the river. Immediately adjacent to the site to the west is a concrete batching plant.

Sustainability

- 2.11 The appellant will demonstrate that the site is in a sustainable location that is suitable for the scale of development proposed.
- 2.12 It is a brownfield site, the redevelopment of which is, by definition, sustainable development.
- 2.13 The site enjoys good access to public transport. Newbridge Road is a main bus route which provides access between the city centre to the east and Bath Spa University to the west. There are both west-bound and east-bound stops located in front of the site. Oldfield Park train station is a 20-minute walk to the south-east of the site.
- 2.14 The appellant will refer to Development Plan proposals for a Sustainable Transport Route through the site along the former railway track alignment which will increase the site's sustainability credentials and will connect to sections of the existing Bristol to Bath cycle path.
- 2.15 Local walkable facilities include the Locksbrook Inn public house on Brassmill Lane a short walk south of the site, and Electric Bear Brewing situated on the industrial estate immediately south of the site. There is a designated local centre at Chelsea Road - less than a five-minute walk to the east of the site – which provides local shops, services, and other facilities.

Planning History

- 2.16 The site was formerly used as a quarry at what was then the western edge of Bath. This use is understood to have ended around 1900. The London Midland and Scottish Railway formerly ran through the site. The garage use began in the early 1950s and the concrete batching plant was installed in the late 1960s, originally on a temporary basis.

- 2.17 A Certificate of Appropriate Alternative Development was issued on 8 October 2010 for residential redevelopment of the site (10/03384/CAAD). This set out several key design parameters, namely a maximum residential density of 80 dwellings per hectare and maximum heights of buildings – 8m above road level for dwellings fronting Newbridge Road and 14m above ground level for dwellings at the base of the quarry.
- 2.18 In September 2014, an outline planning application was submitted for 194 student bedrooms in three blocks (14/03977/OUT), excluding the concrete batching plant. The scheme included a shared pedestrian/cycle way along the southern part of the site and left the area to the east of Osborne Road undeveloped. The application was withdrawn in November 2014 following a change in planning policy which was less favourable towards student accommodation being provided on site.

Pre-application enquiry

- 2.19 The appellants will describe the open dialogue with the Council which commenced with an initial pre-application enquiry in May 2016, followed by subsequent follow-up meetings in December 2016, June 2017, and January 2019.

Screening Opinion

- 2.20 A screening request was submitted in July 2017 whereby the Council confirmed that there is no requirement for an Environmental Impact Assessment. The scheme has not changed to the extent where a different conclusion could be reached.

Environmental Designations

- 2.21 The site is not subject to any environmental designations.
- 2.22 The site is not located in Flood Zone 2 or 3 and so is not at significant risk of flooding.

Heritage Considerations

- 2.23 The smaller eastern part of the site – the railway cutting east of the Osborne Road Bridge – lies within the Bath Conservation Area. The main western part of the site – the part of the site that is built up – is not within the Conservation Area.
- 2.24 There are no listed buildings on the site.

- 2.25 There are no listed buildings or structures near to the site which could be affected by the redevelopment proposals.
- 2.26 The reasons for refusal do not relate to the impact on the Conservation Area and its setting, impact on listed buildings, or any other Heritage Assets.

3 APPEAL PROPOSAL

- 3.1 The appellant will describe in detail the proposed development within their evidence.
- 3.2 The appeal proposal seeks outline planning permission to demolish the existing buildings as part of a comprehensive redevelopment of the whole site, including new sustainable bicycle route connections and landscaped areas.
- 3.3 The site is the subject of an allocation in the current Development Plan for the comprehensive redevelopment of the site to provide 80-100 residential units. This site allocation – Policy SB15 – includes the concrete batching plant, whereas the outline application (that is the subject of this appeal) excludes the batching plant which is in separate ownership.
- 3.4 The proposal involves the erection of new buildings to provide up to 104 new residential units as part of a mixed-use development which also proposes 186 student bedrooms, and a small flexible Class A1/A3 retail unit at ground floor level on the Newbridge Road frontage. It is noted that from September 2020 the proposed use of this unit will be the new Class E Use.
- 3.5 The residential mix comprises 24 x 1 bed 1 person units, 40 x 1 bed 2 person units, 5 x 2 bed 3 person units, and 35 x 2 bed 4 person units, a total of 104 units.
- 3.6 The purpose-built student accommodation comprises 157 bedspaces arranged in cluster flats and 29 self-contained studios, a total of 186 bedspaces.
- 3.7 If outline planning permission is granted via appeal, a reserved matters application will then be submitted to seek approval of matters including appearance, detailed design, and landscaping.
- 3.8 The site layout plan shows a terrace of buildings fronting Newbridge Road with a new vehicular access point at the eastern end of this frontage. This ramp provides access to the lower part of the site on the quarry floor and former railway track bed, providing access to residents' parking spaces.
- 3.9 A smaller car park is proposed on the existing decked area on the western edge of the site above the concrete batching plant, also accessed from Newbridge Road via the existing vehicular access point. In total 113 residential parking spaces are proposed, including 4 disabled spaces. Three further spaces are included for the commercial unit, and one additional car club space. Electric vehicle charging points are provided on the smaller car park deck.

- 3.10 Behind the Newbridge Road frontage buildings, the ground level drops away onto the former quarry floor. This change in elevation allows for two 5 storey blocks of student accommodation to be constructed which sit below the ridge height of the 3 storey Newbridge Road terrace by 2-3m
- 3.11 The scale, form and rhythm of the frontage apartments will respect and help to unify the established residential street frontage. The terrace will be three storeys plus roof in height – not exceeding 11.3m in total – and will be built in materials to reflect its setting.
- 3.12 The two blocks of student accommodation provide a total of 186 bedspaces, the majority arranged in clusters where students share a communal kitchen/lounge.
- 3.13 In addition to the vehicle parking spaces, secure bicycle parking spaces are provided within the buildings providing 208 spaces in total for the residential use and 72 spaces in total for the student accommodation. A further 24 visitor spaces are provided via 12 Sheffield stands located externally.
- 3.14 The appellant will describe how the internal courtyard areas between the buildings provide a sense of place and destination within the development and are linked via the main pedestrian route through the site up a staircase and on to Newbridge Road. These linkages provide access from Newbridge Road onto the new Sustainable Transport route being provided along the former railway track bed.
- 3.15 This shared bicycle and pedestrian route runs east-west across the site linking the Bristol and Bath railway path into the centre of the City. It is a fully segregated route and will be built to Sustrans design standards.
- 3.16 The appellant will explain how the open nature of the proposed scheme will allow sufficient space for a substantial scheme of soft landscaping across the site. This includes the spaces around and between the main residential and student buildings, but also woven across the site following the sustainable transport route and taking in the railway cutting to the east beyond the bridge.
- 3.17 The appellant – Oakhill Group Ltd – is committed to delivering this high quality, mixed use development with high sustainability credentials.

4 PLANNING POLICY

4.1 The appellant's evidence will refer to relevant national planning policy and guidance, and other relevant Government publications. Particular reference will be made to the following:

- National Planning Policy Framework (latest 2019 version)
- National Planning Practice Guidance (from 2014 onwards)

4.2 The latest version of the National Planning Policy Framework (NPPF) was published in February 2019 and is a key consideration in the assessment of planning applications. The key objective of the document is its presumption in favour of sustainable development. This should be considered in both plan making and decision taking.

4.3 The appellant will refer to the Core Principles set out in the NPPF, and draw upon the guidance set out at paragraphs 11, 12, 57, 59, 61, 64, 103, 105, 108, 110, 111, 117, 118, 122, 123, 124, 127, 128, 130, 184, 189, and 196 in their evidence. This list is not exhaustive.

4.4 It will be the case of the appellant that the development meets the key tenets of Government policy and guidance, having particular regard to:

- The reuse of previously developed land
- Development focused in sustainable locations
- Prioritising brownfield land for homes
- Making efficient use of land, noting how the NPPF at para. 123(c) guides LPAs to refuse applications if development does not make efficient use of land
- The importance of well-designed places
- Boosting the supply of housing
- Providing different types of housing which includes student accommodation
- Achieving mixed use development

- 4.5 With regards to Paragraph 11 of the NPPF, the appellant is of the view that the Development Plan - and its policies used to guide decision-making - are broadly consistent with Government policy and are therefore up to date.
- 4.6 The appellant's evidence will refer to the relevant policies contained within the Development Plan, which comprises at the time of writing the Bath & North East Somerset Local Plan which is split into two parts: Part 1 is the Core Strategy adopted July 2014, and Part 2 is the Placemaking Plan adopted July 2017. The appellant's evidence will in particular focus on Policy SB15 'Hartwells Garage' – the adopted site allocation Policy.
- 4.7 The appellant will also refer, where relevant, to the Council's various Supplementary Planning Documents including the Planning Obligations SPD ((April 2015), the Bath City-Wide Character Appraisal SPD (August 2015) and the City of Bath World Heritage Site Setting SPD (August 2015).
- 4.8 The appellant's evidence will acknowledge the emerging Local Plan. A consultation document underwent an initial 'Issues and Options' consultation in November 2017 followed by an 'Options' consultation from November 2018. This document was intended to coordinate its approach with the West of England Joint Spatial Plan, which has since been withdrawn.
- 4.9 Following the withdrawal of the West of England JSP, the Council are launching a revised timetable and are effectively restarting the consultation process and updating parts of their current Local Plan. BANES have recently undertaken a 'Local Plan Partial Update' consultation in May 2020 as the first stage in this new process. The consultation provided a list of policies the Council proposes to review later in the year as part of a Reg 18 'Options' consultation.
- 4.10 The Council anticipates the Publication version of the Local Plan Partial Update to be published in June/July 2021, submission to the Secretary of State in September 2021, the Examination in Public to take place in December 2021, with adoption scheduled for April 2022.
- 4.11 The emerging plan is at a very early stage and adoption is still some way off, little (if any) weight can be afforded to any emerging policies or amended wording to existing policies as and when the information is made publicly available.

5 THE COUNCIL'S REASONS FOR REFUSAL

5.1 The matters in dispute are set out within the Council's reasons for refusal listed on the Decision Notice dated 16 March 2020 as follows:

1. *The application seeks outline consent for, amongst other things, the provision of up to 186 student bedrooms (Sui Generis) in addition to 104 residential units (Class C3). The application site is allocated for residential redevelopment by Policy SB15 of the Placemaking Plan. This policy, and its supporting text, is clear that the site (including the adjacent concrete batching plant) is allocated for 80-100 dwellings and that this cannot include student accommodation. By including student accommodation the proposal is therefore in direct conflict with Policy SB15 of the Bath & North East Somerset Placemaking Plan and as such is unacceptable in principle.*
2. *The proposed development by virtue of its inappropriate layout which comprises of 4 blocks of deep plan form with limited space around that is uncharacteristic and alien to the locality, and which is principally a consequence of the excessive quantum of development, fails to enrich the character and quality of Newbridge and fails to contribute positively to local distinctiveness, identity and history. The submitted illustrative scheme fails to demonstrate that a development of the quantum/uses proposed can be achieved on this site whilst also responding positively to the site's context; the illustrative scheme fails to do so and accordingly is contrary to Policy CP6 of the Bath & North East Somerset Core Strategy and Policy D1 and D2 of the Bath & North East Somerset Placemaking Plan.*
3. *The proposed development fails to provide an appropriate mix of housing. The nonstudent element of the scheme comprises one and two bedroom flats only, alongside the purpose built student accommodation. The housing mix put forward is therefore contrary to the objectives of Policy CP10 of the Bath & North East Somerset Core Strategy which requires new housing development to provide a variety of housing types and sizes.*
4. *The proposed development does not incorporate sufficient habitat creation, protection or enhancement; in particular there is a lack of adequate connective green infrastructure connecting existing habitats on and off site. Furthermore the proposed layout fails to avoid unacceptable adverse impacts on trees, trees of value are not retained and their loss has not been justified. The application is therefore contrary to Policy CP6 of the Bath & North East Somerset Core Strategy and policies CP7, NE5 and NE6 of the Bath & North East Somerset Placemaking Plan.*

5. *The proposed development generates a need for additional recreational open space but fails to meet this need on site or off site. The application is therefore contrary to Policy LCR6 of the Bath & North East Somerset Placemaking Plan as well as the Council's 'Green Space Strategy' and the Council's 'Planning Obligations' Supplementary Planning Document (SPD).*
6. *The proposed development fails to make a satisfactory or policy compliant contribution to affordable housing. The proposed contribution of 12.5% falls significantly below that required by Policy CP9 of the Core Strategy which requires a 40% contribution on this site. Whilst the Council accepts the conclusions of the viability assessment (that only a 12.5% contribution is financially viable) the NPPG is clear that the weight to be given to a viability assessment is a matter for the decision maker having regard to the circumstances in each case. In this case the Council affords limited weight to the viability assessment because the development plan is up-to-date and it has not been demonstrated by the applicant that there have been any material changes in circumstances since adoption. The application is therefore contrary to Policy CP9 of the Bath & North East Somerset Placemaking Plan.*

5.2 The appellant will present evidence at the Inquiry which will demonstrate that these reasons for refusal cannot be substantiated. The appellant will also demonstrate that there are significant benefits arising out of the proposals and that outline planning permission for the appeal scheme should be granted.

Third Parties

5.3 The appellants' evidence will address objections raised by third party representatives where they differ from the issues identified by the LPA. These are grouped into the following broad categories and can be summarised as follows:

1. Highway safety and traffic impact
2. Parking within the vicinity of the site
3. Management of students, including student parking
4. Access to the site via the Maltings Industrial Estate

5.4 The appellant will present evidence at the Inquiry which will demonstrate that these concerns are unfounded and are unjustified. These points were not accepted by the planning officer in their report to committee, and do not feature in the Council's reasons for refusal.

6 THE APPELLANT'S RESPONSE

6.1 The proposed development is wholly in keeping with key aspects of Government policy and guidance contained within the NPPF for the following reasons:

1. The development is in a sustainable location, made even more so through the delivery of the STR
2. It represents the reuse of previously developed land
3. It represents the efficient use of land
4. It is a high-quality design
5. The development would significantly boost the provision of housing
6. The development would provide a significant boost to student accommodation
7. It will provide a mixed-use development

6.2 The proposed development and the benefits it will bring forward fully accords with the NPPF and the Government's current priorities and ambitions for the development of sites such as the appeal site. Therefore, by meeting these key objectives, the appellant questions whether the Council's concerns justify the refusal of the application.

6.3 In any event, the appellant disputes the Council's concerns and reasons for refusal as follows.

First Reason for Refusal – Policy SB15 and Student Accommodation

6.4 The appellant will give planning evidence that:

1. The reason for refusal is incorrect in stating that:

“This policy, and its supporting text, is clear that the site (including the adjacent concrete batching plant) is allocated for 80-100 dwellings and that this cannot include student accommodation.”

2. Whereas Policy SB15 actually states:

“Residential development of around 80- 100 of dwellings, which could include a variety of specialist older persons housing types but not student accommodation.”

where this would prejudice the achievement of Policy DW.1 and B1 in respect of boosting the supply of standard market and affordable housing.”

3. The proposed development *by definition* does not prejudice the delivery of around 80-100 dwellings because 104 flats are proposed. The proposal is therefore not contrary to Policy SB15. The reason for refusal is incorrect.
4. This is not a matter of interpretation. Rather, the explicit use of the wording “*where this would prejudice*” has been inserted into the Policy, and the implications of this is clear: it allows student accommodation so long as 80-100 homes are delivered. It is therefore incorrect to state that “this cannot include student accommodation” as cited in the reason for refusal.
5. This has been confirmed in writing by the Council during the pre-application enquiry stage of the process, and is also confirmed by the Officer’s report to committee:

“Policy SB15 requires the provision of around 80-100 non-student units but it does not preclude additional forms of residential development, including student accommodation, above and beyond that figure once that requirement has been met.”

6. In their interpretation of Policy SB15 at the Committee Meeting Members have disregarded the clear wording of Policy SB15 and the statements from their own officers. It is not clear why Members have done this. The Policy has not been applied correctly.
7. If student accommodation is unacceptable on the site then the policy would state this in clear terms. It does not. Instead, the Policy explicitly qualifies a scenario where student accommodation could be accommodated on site.
8. It is clear by the wording of Policy SB15 that student accommodation is precluded only where it would prejudice the delivery of 80-100 new dwellings. It is therefore argued that the proposals are not contrary to Policy SB15.

Second Reason for Refusal – Scale of Development and Response to Site Context

- 6.5 The appellant will give urban design, landscape & visual impact, heritage, and planning evidence to demonstrate that:

1. The layout of the appeal scheme is not ‘inappropriate’ and the alleged criticisms raised in Reason for Refusal 2 are without foundation, namely that:
 - a. *A deep plan form with limited space around that is uncharacteristic and alien to the locality.*
 - b. *Excessive quantum of development which fails to demonstrate a positive response to the site's context.*
 - c. *Fails to enrich the character and quality of Newbridge and fails to contribute positively to local distinctiveness, identity, and history.*
2. The local context is widely varied and has only been selectively considered by the Council. Members have drawn mainly from the suburban residential area north of the site rather than the entire site context which also consists of large industrial and commercial buildings including a concrete batching plant to the west and an industrial estate to the south. The site itself currently includes large commercial buildings of no design merit and its redevelopment provides the opportunity for a significant townscape enhancement.
3. This is a unique and challenging site by way of its previous uses, shape, features/constraints, and topography, which have not been properly considered when drawing up the reason for refusal. The site and context have been fully considered by the Appellant with a tailored and sympathetic design response to each part of the site and adjoining context. At the same time, the site is atypical and large enough to require a bespoke design approach which creates its own sense of place with its own unique contribution to local distinctiveness, identity, and history.
4. The plan form is entirely appropriate and not uncharacteristic, and this is supported both by contextual analysis and policy. For example, Policy SB15 suggests the upper part of the site should contain an active frontage with dwellings arranged as houses or flats, with an apartment typology on the lower part of the site. At the pre-application stage the Case Officer recognised the general approach towards the redevelopment of the site and the proposals have evolved on this basis.
5. The layout is not ‘inappropriate’ or excessively dense with ‘limited space’. Evidence will show that it is a well-considered response to the context and the unique site characteristics and will substantially improve the appearance of the appeal site which

currently makes a negative contribution to the townscape. The appeal scheme follows good urban design practice with its mix of uses and a permeable layout. The proposed series of landscaped spaces faced by active frontages will provide an attractive outlook and amenity for residents and visitors.

6. National and local policy encourages the efficient use of land particularly in accessible locations with good local facilities as is the case with the appeal site. The appeal scheme successfully balances character considerations with optimising the potential of the site. Professional officers were also satisfied that the appeal scheme demonstrated the quantum of development proposed can be accommodated on the site in a policy compliant manner.
7. Design is an iterative process where all aspects of the development are balanced and refined as the scheme advances. As part of this process, financial feasibility considerations including quantum of development and the viability constraints of the site are important factors which the reason for refusal fails to take into consideration. The policies cited and the allegations of overdevelopment cannot be read and applied in isolation, yet Members have done just this, contrary to the professional advice of their officers.
8. The policies cited in the reason for refusal are subjective in any event. For example, Policy D1 refers to “general” urban design principles and concludes that development which reflects these general principles will be supported. The appellant maintains that the proposed development successfully achieves these principles as well as positively addressing all the design policies quoted in the reason for refusal including Policy CP6 and Policy D2. As part of the evidence, the Appellant will provide a townscape and design assessment demonstrating this to be the case.
9. Overall, the appeal scheme provides an appropriate design approach including the layout and quantum of development. It will be sympathetic to the context whilst providing a locally distinctive design and layout that will improve the character and quality of the area and better optimise the potential of this brownfield site in line with local and national policy.

Third Reason for Refusal – Mix of Housing

6.6 The appellant will give planning evidence that:

1. The Policy is not prescriptive but instead allows interpretation or site-specific circumstance to factor into what is an 'appropriate mix'. The Policy states that regard should be had to the mix of dwellings in the locality and the character and accessibility of the location. The Officer's report notes:

“there is a significant quantum of conventional housing in the locality and it not considered necessary nor reasonable to insist that conventional housing be provided as part of the mix”

2. The development provides four different types of flats (1 person, 2 person, 3 person, and 4 person), and different types of tenure (including private rented and affordable rented), and is aimed a wide range of potential occupiers (graduates, young professionals, small families and downsizers).
3. Policy SB15 identifies how the site should provide apartments on the lower level and either houses or flats on the upper level. The appeal proposals meet this policy requirement.
4. The reason for refusal simply states that the development “fails to provide an appropriate mix of housing”, however what is an appropriate mix is not specified, defined, or required by the Policy.
5. It is therefore incorrect to state that the proposal is contrary to policy and fails to provide an acceptable mix.

Fourth Reason for Refusal – Habitat Creation and Enhancement; Impact on Trees

6.7 The appellant will give ecological evidence that:

1. The existing site context is dominated by buildings and hardstanding, along with areas of grassland, woodland, trees and scrub and small areas of landscape planting.
2. In terms of faunal species, the presence of a badger sett has been identified, and it is acknowledged that the site provides some opportunities for bats, hedgehogs, birds and reptiles.
3. Habitat Creation – evidence will be provided as to how habitat creation is incorporated into the appeal proposals. Indeed, given the existing context and starting position as a brownfield industrial site, opportunities are available for new native

habitat provision. In particular, it will be demonstrated how new habitat creation will function to facilitate wildlife movement across the appeal site.

4. Habitat Protection – evidence will be provided to demonstrate that the habitat protection measures incorporated into the appeal scheme are based on the results of ecological surveys undertaken at the site. It will be demonstrated how the proposed protection measures are sufficient and proportionate, with reference to the existing site context.
5. Habitat Enhancement – evidence will be provided that the appeal proposals incorporate biodiversity enhancements. Habitat enhancement will be tied to policy aims and evidence will be provided to demonstrate that the biodiversity enhancement measures are compliant with the nature conservation elements of Policy CP6.
6. Connective Green Infrastructure – evidence will be provided to demonstrate how the above habitat creation, protection and enhancement measures will function to provide connective green infrastructure to link onsite habitats to offsite habitats and enable the appeal site to function as a wildlife corridor.
7. It will be evidenced that the measures proposed reflect the aims of Development Plan Policies CP7 and NE5 with regard to the Green Infrastructure Network and ecological networks.

6.8 The appellant will give separate arboricultural evidence that:

1. The values of all of the trees on the site have been identified and the scheme has been designed to allow for the retention and protection of the highest value trees.
2. The removal of a low number of relatively low value trees is unavoidable, and therefore justified, in order to facilitate the proposals. The trees proposed for removal are not within a Conservation Area or protected by a Tree Preservation Order.
3. Compensatory tree planting will be proposed in excess of the requirements of the Planning Obligations SPD which will create additional habitat and enhance the connectivity of green infrastructure. The level of replacement tree planting also reflects the easement over the sewer which restricts planting in an area either side of its alignment.

4. Potential adverse impacts on retained trees have been identified, assessed and mitigation measures have been proposed to minimise the impacts.
5. By any reasonable measure or interpretation, the scheme complies with Policy NE6 of the Placemaking Plan.

Fifth Reason for Refusal – Recreational Open Space

6.9 The appellant will give planning evidence that:

1. Policy LCR6 is explicit in stating that where a need is generated and this cannot be met on site, then the developer will be required to either provide for or contribute to the provision of recreational open space or sport facilities.
2. The appellant has committed to making a financial contribution of £25,000 towards allotments in accordance with the Planning Obligations SPD 2015.
3. It is also the case that the proposals will provide the STR through the site and will fund the missing links of the STR between Bath Spa’s Locksbrook campus to Brassmill Lane to the west and onto the main Bath Spa campus. This is a longstanding policy objective of the Council as it will promote sustainable travel (walking and cycling) both for students and local residents, beyond just the occupiers of the development. As such it will provide an important recreational resource which cannot be provided in full without the site being redeveloped. This is a significant material consideration.
4. This approach has been agreed with officers. The officer’s report confirms that:

“it is impractical for this development to provide sufficient quantities of these greenspace typologies on-site. Importantly it is recognised that the development can provide wider green infrastructure benefits through the delivery of the sustainable transport route. The route will provide improved access to existing green space typologies on the river corridor and beyond and has the potential to be a recreational facility that can contribute to meeting the requirements of policy LCR6.”
5. The policy explicitly states that the “need” does not have to be met on site – allowance is made for financial contributions towards allotments, and the STR. Provided these contributions are met then the need would be met, and Policy LCR6 is satisfied.

6. It is incorrect for the Decision Notice to state the development fails to meet the need and is contrary to policy when the appellant has been explicit in their commitment to making the requisite financial contribution and delivering the STR in accordance with policy.
- 6.10 The appellant does not object or dispute the scope of the planning obligations, and the reason for refusal can be readily overcome by signing a S106 Agreement. The appellant is confident that the part of the Agreement dealing with recreational open space can be agreed with BANES Council to secure the allotment contribution and the delivery of the STR.
 - 6.11 The appellant will continue dialogue with BANES Council to agree the content and detail of the obligations. A draft of the proposed legal agreement will be submitted to the Inspector at least 10 days prior to the opening of the inquiry (as required by Annex N of the Planning Inspectorate's Procedural Guide to Planning Appeals dated July 2020).

Sixth Reason for Refusal – Affordable Housing Provision

- 6.12 The appellant will give planning and viability evidence that:
 1. The reason for refusal in respect of affordable housing can be separated into two parts:
 - a. The Council does not dispute the conclusions of the viability assessment (that only 12.5% contribution is financially viable); however
 - b. The Council state that they afford limited weight to the viability assessment.
 2. The appellant in its evidence will show that the Council were wrong to afford limited weight to the viability assessment. The Council state *'the NPPG is clear that the weight to be given to a viability assessment is a matter for the decision maker having regard to the circumstances in each case. In this case the Council affords limited weight to the viability assessment because the development plan is up-to-date and it has not been demonstrated by the applicant that there have been any material changes in circumstances since adoption'*.
 3. The appellant will show that the Council have made an incomplete reference to paragraph 57 of the NPPF, which states *'The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, **including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force**'*.

4. The appellant will show that the Council do not currently have up to date viability evidence underpinning the Local Plan. As such the Council should have followed their own Policy CP9 that explicitly states that viability should be taken into account, including exceptional build or other development costs, the achievement of other planning objectives and the tenure and size of the affordable housing. This is a fundamental aspect to development considerations and is explicitly built into the Policy.
 5. Following independent review of the financial appraisal the Officer's report concludes that *"the application is not contrary to policy and is thus acceptable"*. It is not clear why Members have dismissed expert consultant reports in favour of a policy target which cannot be achieved on this site.
 6. The reason for refusal has ignored the mechanisms in the wording of Policy CP9 which require site-specific viability constraints be taken into account. The Policy has not been applied correctly.
 7. If viability is ignored then the site will not come forward for redevelopment. No housing and no affordable housing will be delivered, nor will other benefits including provision of the missing elements of the STR. This is contrary to the objectives of the Plan, specifically Policy SB15.
 8. It is incorrect to state that the proposal is contrary to Policy CP9 when the Policy explicitly states that viability should be taken into account.
 9. The proposal complies with Policy CP9 by delivering the maximum level of affordable housing the scheme can viably afford. This quantum of affordable housing has been agreed with the Council's own independent consultants.
- 6.13 Likewise as with Reason 5 above, the appellant does not object or dispute the need to secure affordable housing, and the reason for refusal can be readily overcome by signing a S106 Agreement which the appellant is confident can be agreed with BANES. The appellant will continue dialogue with BANES to agree the content and detail of the obligations. A draft of the proposed legal agreement will be submitted to the Inspector at least 10 days prior to the opening of the inquiry (as required by Annex N of the Planning Inspectorate's Procedural Guide to Planning Appeals dated July 2020).

Third Party Objections

6.14 The third-party objections to the application can be grouped into the four broad categories outlined in Section 5 of this document.

Highway safety and traffic impact

6.15 The appellant will give evidence that:

1. A safe and suitable access is proposed based on current design guidance and taking account of traffic speeds on Newbridge Road. There are no highway safety issues at the site entrance and the proposed pavement widening would also improve visibility to the west as well as pedestrian convenience and safety. The proposals will result in only a slight increase in vehicular trips on the local highway network compared to the previous and lawful garage use, and the proposed parking levels are appropriate for the land use in this location.
2. The vehicle access ramp will be gated and not publicly accessible. It will be operated by residents with passes and will not be able to be used by pedestrians or cyclists wishing to move from Newbridge Road to the STR or vice versa. This avoids potential conflict between vehicle and pedestrian movements, they remain segregated. At the lower level of the site, a fully segregated sustainable transport route is achieved ensuring there is no conflict between spaces used by vehicles and the future bicycle route anywhere within the site.
3. The LPA's Highways Officer has commented that the development will not have any adverse impact on traffic in the area and that the proposed access to/from Newbridge Road would not adversely impact highway safety. There are no transportation or highways matters that should preclude the granting of outline planning permission.

Parking within the vicinity of the site

6.16 The appellant will give evidence that:

1. The proposed level of parking provision is appropriate for the proposed development – an allocation of 1 space per unit. The appellants evidence will describe how parking will be controlled on site and will refer to the proposed infrastructure improvements which will improve sustainable transport options for occupiers of the development and residents in the area.

2. The cycle-friendly infrastructure and provision of 300 bicycle parking spaces across the site will provide a realistic alternative to the private car for future residents when the new cycle route is delivered. A Travel Plan secured by S106 Agreement will be implemented which ensure the sustainability credentials and measures proposed are delivered.
3. The site's sustainability credentials, level of parking provided, and management of the parking on site will ensure there will be no adverse impact on on-street parking in the vicinity of the site.

Management of students, including student parking

6.17 The appellant will give evidence that:

1. A dedicated management company will be on site to manage the development, including the student accommodation and dealing with site specific management issues. Reference will be made to the Framework Management Plan prepared as part of the planning application and which sets out measures to demonstrate how the site will be managed once the development is complete. This includes enforceable measures to prevent any student parking either on-site, or within 3km of the site.
2. A condition is proposed requiring a Full Management Plan to be submitted and approved prior to first occupation of the development and controls on student parking will be secured by via legal agreement. This will ensure the development can be operated and managed without giving rise to amenity, parking, or operational issues as a result of the student accommodation proposed.

Access to the site via the Maltings Industrial Estate

6.18 The appellant will give evidence that:

1. The appellant has legal 24/7 rights of access through The Maltings Industrial Estate to Brassmill Lane, which will enable servicing and deliveries to the new development and access to a small number of car parking spaces. Evidence will be presented to demonstrate the existing access rights and how it would be controlled once the development is occupied.

Concluding Comments

- 6.19 These matters raised by third parties were not accepted by the planning officer in their report to committee, and do not feature in the Council's reasons for refusal.
- 6.20 The appellant will present evidence at the Inquiry which will demonstrate that these concerns are not warranted or justified.

7 PLANNING CONTROLS

7.1 The appellant accepts that if the Inspector is minded to grant planning permission, planning controls in the form of planning conditions will be required

7.2 The appellant is in agreement with the conditions as drafted in the Planning Officer's Report to Committee and will confirm this in a Statement of Common Ground with the Council.

7.3 The appellant also accepts that a Section 106 Agreement will be required to secure the following:

- Subject to any necessary updating in advance of the opening of the Inquiry, to provide 12.5% of the development as affordable housing – affordable rent at 60% of market values.
- A review/clawback mechanism to secure increased provision should viability improve.
- Financial contribution of £260,000 to fund the missing parts of the STR.
- Completion of off-site highway works comprising widening of footway and bus stop improvements to Newbridge Road.
- Restriction of student occupiers from operating private cars and parking them near the site. These measures are set out within the Parking Management Plan which includes the specific controls and how they will be enforced.
- Management Plan to control vehicle movements and access.
- Financial contribution of £25,000 towards allotments.
- Targeted Recruitment & Training Plan.
- Provision of fire hydrants and maintenance for 5 years.
- Restriction on short term lets.

7.4 The appellant will seek to enter into such an agreement with the Council, or in the alternative will provide a Unilateral Undertaking under S106 of the Act.

- 7.5 The appellant does not dispute the Council's request for the financial contributions and planning controls listed above to be covered by the S106 Agreement, or by conditions. The level of mitigation is proportionate to the scale of development and it will need to be secured through the Section 106 Agreement. The Section 106 Agreement will be prepared by the appellant and provided to the Inspector at the Public Inquiry.

8 CONCLUSIONS

- 8.1 Section 38(6) of the 2004 Planning & Compulsory Purchase Act requires that the determination of any planning application must be in accordance with the development plan, unless material considerations indicate otherwise.
- 8.2 The proposed development complies with the key tenets of Government policy and guidance as set out by the NPPF. The development is by definition sustainable – meeting the economic, social, and environmental criteria defined within the NPPF. The proposal represents the redevelopment of a vacant brownfield site to create a vibrant mixed use new community, and the important socio-economic benefits of the proposal includes the delivery of the STR, a generational opportunity to open part of this important link on the cycle network.
- 8.3 In refusing the application Members have failed to have due regard these key aspects and objectives of Government policy.
- 8.4 Members have failed to correctly apply the terms of policy SB15, which is articulated correctly in the officer’s report to committee.
- 8.5 It is incorrect to state that Policy SB15 prohibits student accommodation on site. It only does so if 80-100 units are not being provided. The policy clearly accepts student accommodation if there is no prejudice to the delivery of market and affordable housing.
- 8.6 Notwithstanding this, *even if* student accommodation is prohibited by SB15, the proposal is acceptable in its own right as 80-100 homes are being delivered. The provision of student accommodation on site does not result in the other objectives of Policy SB15 – or indeed any other development plan policy – from not being met.
- 8.7 A well-designed and well laid out scheme can be achieved that is appropriate to the site. The local context is varied, and the site itself is unique and presents an opportunity to create its own identity, in doing so maximising the use of brownfield land in accordance with the NPPF.
- 8.8 The final development – using local architectural cues, materials, vernacular and detailing – would be capable of adding to and enhancing the character of the immediate locality, however ultimately these details would be the subject of Reserved Matters applications.
- 8.9 There are no effects on any listed buildings, and there will be no adverse impact on the adjacent Conservation Area.

8.10 The appellant will demonstrate the significant and material benefits arising from the development which are:

1. Reuse of previously developed land, as sought by the NPPF
2. Development in a sustainable location, as sought by the NPPF
3. The efficient use of land, as sought by the NPPF
4. Provision of market housing, as sought by the NPPF
5. Provision of affordable housing, as sought by the NPPF
6. Provision of purpose-built student accommodation, as sought by the NPPF
7. Economic benefits, as sought by the NPPF
8. Social benefits, as sought by the NPPF
9. STR on site and off site, as strongly supported by Development Plan policies A mixed-use development as encouraged by the NPPF
10. Ecological enhancements as encouraged by the Development Plan policies.

8.11 These 10 benefits individually achieve significant weight, and cumulatively they achieve compelling weight. The planning balance is strongly in favour of grant of consent.

8.12 In addition, taking all the policies of the Development Plan as a whole it can correctly and sensibly be concluded this is a development which accords with the Development Plan.

8.13 For the purposes of this appeal the appellant is of the opinion that the Development Plan is up to date and should be given full weight in decision-making. As set out at Paragraph 11(c) of the NPPF, development proposals which accord with an up to date Development Plan should be approved without delay.

- 8.14 The professional opinion of the Planning Officers of the Council – having looked at the application material and taken the various elements of the scheme into consideration – was to recommend approval.
- 8.15 The appellant will contend there are no other issues that have been raised by third parties that would override this conclusion and accordingly, subject to appropriate planning conditions and a Section 106 agreement, the appellant will conclude that the appeal should be allowed.

9 LIST OF DOCUMENTS

9.1 Reference will be made to the documents submitted to support the planning application:

1. Application form
2. Full suite of drawings by AWW
3. Design & Access Statement by AWW
4. Landscape and Visual Impact Assessment by Nicholas Pearson Associates
5. Visually Verified Montages by Nicholas Pearson Associates
6. Hard and Soft Landscape Proposals by Nicholas Pearson Associates
7. Planning Statement, including Heritage Statement and Affordable Housing Statement, by Walsingham Planning
8. Arboricultural Impact Assessment and Arboricultural Method Statement, including Tree Survey and Tree Protection Plan, by Tree Research
9. Ventilation & Extraction Statement by Hoare Lea
10. Energy Statement, including Sustainable Construction Checklist, by Hoare Lea
11. Statement of Community Engagement by Creatrix
12. Viability Statement by CBRE
13. Transport Assessment by Mayer Brown
14. Framework Travel Plan by Mayer Brown
15. Framework Management Plan by Walsingham Planning
16. Ecological Appraisal by Windrush Ecology
17. Foul & Surface Water Drainage Strategy by Hydrock
18. Noise Impact Assessment by Matrix Acoustics

19. Land Contamination Assessment by Ground Investigation (South West) Ltd.

9.2 The appellant will refer to the following documentation that did not form part of the application submission:

1. Photographic Report
2. Diagram of STR
3. 2010 Certificate of Appropriate Alternative Development
4. 2014 Planning Statement
5. Reps made in 2016
 - a. Initial online submission
 - b. Written statement
6. Note of meeting with Council 16.12.16
7. Inspector's Report on Placemaking Plan 28.06.17
8. Note of meeting with Council 15.06.17
9. Email from Chris Gomm dated 03.07.17
10. Pre-application advice dated 29.10.18
11. Note of meeting with Council dated 30.01.19
12. Letter to Chris Gomm dated 12.06.19
13. Letter to Chris Gomm dated 21.08.19
14. Email to Chris Gomm dated 23.10.19
15. Letter to Chris Gomm dated 12.11.19
16. Letter to Chris Gomm dated 03.02.20
17. Officer's report to committee

18. Minutes of committee meeting held on 11.03.20

19. Decision Notice dated 16.03.20

9.3 Viability expert evidence will wish to refer to (but not limited to):

1. BNP Paribas BANES Placemaking Plan – Viability Assessment (November 2015)
2. Colliers – Valuation Report – Dated 2017
3. FVA Rental Analysis Extract – No Date
4. Colliers – Valuation Report – Dated 5th April 2019
5. CBRE – Viability Report – Dated 18th April 2019
6. Cushman & Wakefield Viability Assessment – Dated 17th January 2020
7. RICS Guidance Note: Financial Viability and Planning, 1st Edition, August 2012 (FVIP)
8. RICS Practice Statement: Financial Viability in Planning: Conduct and Reporting, 1st Edition, May 2019

9.4 Townscape and visual impact expert evidence may refer to (but not limited to):

1. The National Design Guide
2. The Urban Design Compendium
3. Manual for Streets
4. Bath City-wide Character Appraisal 2005
5. Bath Building Heights Strategy 2010
6. Bath World Heritage Site Setting Study 2009
7. City of Bath World Heritage Site Setting SPD 2013
8. The City of Bath World Heritage Site Management Plan 2016-2022

9.5 The appellant will refer to the following policy documents in their evidence:

National Planning Guidance

1. National Planning Policy Framework (2019)
2. National Planning Practice Guidance (from 2014 onwards)

The Development Plan

3. Bath & North East Somerset Local Plan, split into two parts:

Part 1 – Core Strategy adopted July 2014

Part 2 – Placemaking Plan adopted July 2017

4. Planning Obligations SPD April 2015 (Amended 2019)
5. Bath City-Wide Character Appraisal SPD (August 2015)
6. City of Bath World Heritage Site Setting SPD (August 2015).

Draft Policy Documents

7. Local Plan Partial Update. Initial consultation documents comprising:
 - a. Local Development Scheme
 - b. Local Plan Partial Update Commencement Document
 - c. Local Plan Policies Review

- 9.6 The appellant reserves the right to add to, amend or delete documents on the basis of evidence presented by the LPA, as the appeal advances.