

Closing Submissions by Trevor Standen on behalf of JLH and JCA

Madam

This proposal follows on from the unsuccessful Bellway decision. That decision did not concern itself with flood issues, as this has had to do. There are various issues which the appellants have not satisfactorily addressed.

Flood Risk

It is clear from a reading of the letter from The Environment Agency that Spring had not addressed the flood issue – in cross-examination this was effectively admitted – how could Spring do otherwise? *This was not an issue you will recall at the last appeal.* This then raises the issue as to whether it is satisfactory to leave the issue to be dealt with by condition. I submit that in a case where visual considerations are paramount to the setting of the listed St. Barnabas Church and the newly created Piazza, as well as to the adjoining Jericho houses, it is important for you to have been furnished at least with some illustrative drawings which might show the ways of alleviating the flood risk and the visual effects of each. Spring have speculated as to ways of addressing the issue. One of these is creating a gradient. Leaving aside the issue that if this gradient went onto church land, in which case a faculty would be necessary from the DAC, one obvious consequence that could ensue is that if breaks are not applied, prams could roll into the canal. It has indeed come as a revelation to many residents of Jericho that Spring has not addressed the flood issue satisfactorily. Madam you have heard Dr. Lloyd's evidence. I submit that the consequences of satisfactorily addressing the flood issue are too important to be left to be dealt with by condition.

We have been critical of the proposals. Our experts have kept their comments to the differences between this scheme and the Bellway scheme. Before dealing with those, it is of course important to remind ourselves of the North Wilts case. Although this encourages consistency in planning decisions, it specifically does not compel an inspector to follow the decision of a brother inspector if there are good reasons for not so doing. You will recall that one witness for JCA was critical of the general concept of the bulk, scale and massing, and indeed it is fair to say that many others share that view.

Dead Frontages

In terms of the evidence presented, we say that the blocks to the front will have dead frontages, and OCC is of the same view. This is clearly contrary to policies CP 9 and 1 of The Local Plan.

Mixed Uses

We cannot deny the content of the SPD, but have to make two observations:-

- a) That policy is not cumulative and certainly does not preclude live/work units or A3 uses;
- b) You have had evidence from Mr. Ferguson and others that this is both a sustainable location and that in order to make it work, these additional uses are important.

If the SPD allows the Piazza to operate as part of the mixed use, then so be it, but a proper evaluation of all the evidence indicates that to make the Piazza successful it is important to have a wider range of mixed uses. Madam you are not precluded from so finding, and indeed I would encourage you so to find. In one sense this is something again that is different from the Bellway appeal, except in its case those more desirable elements were incorporated. You will also be aware that no evidence has been advanced to indicate how or why those uses would not be commercially successful.

Parking

Mr. Anstis refers in his second supplementary proof to the change in policies, now present, *but not present at the time of the Bellway proposal* for there to be car free developments and/or developments with much reduced parking. This location is a clear example of a sustainable site being close to the railway station and the city centre. Correspondingly we consider it to be a shame and bad land use planning, that the blocks have to rely so much upon the allocation of unnecessarily large areas given over to parking, at the expense of potential amenity land.

Contemporary Approach, Horizontality and Corner Treatment

We also draw your attention to the fact that

- i) the previous inspector gave no guidance on what a “contemporary approach” means in architectural terms;
- ii) he did not, as Mr. Payne was forced to agree, retracting his own evidence, hold “horizontality” to be an important ingredient of the architecture, since this was a description advanced by the local authority rather than his own judgment, see para. 46 of his report;
- iii) he found that one of the features of the area was a different treatment at the corners.

As to the last point, this proposal differs from Bellway in that it drops the corner treatment to blocks A and B.

Roofscape

Similarly Mr. Payne agreed with Mr. McCoy that if one looks at the development from the towpath opposite (surely even a more important vantage point now than at the last appeal in view of BW’s decision to upgrade it in the near future), there is a variegated roofscape. That variegation will be negated by these proposals. Moreover the Bellway proposal had not simply a variegation of roofscape, but the presence of recesses. We say that the deletion of these factors will only accentuate the length and architectural form of these proposals, and will not draw the eye to the church as it should be, but will present a jarring and discordant impression. The juxtaposition of

the church and these buildings will not be a happy one. As Mr. McCoy reminds us, the adverse effect of the roofscape is also noticeable from the little houses in St. Barnabas Street.

Vicarage

We have been critical of the block adjacent to the Vicarage and your attention has been drawn by Mr. McCoy to inconsistencies between the perspective and one of the elevations. Mr. McCoy draws your attention to the fact that a "dormer" is not what the roof treatment can be called and that it is significantly higher at the eaves than the previous proposed building. You may also consider as we do that its appearance is visually jarring with that of the vicarage. You will note the metallic finish to the top storey. This façade juxtaposed between the vicarage and the church is most insensitive.

Canal Path

We also say that there will be problems with the width of the canal path. Here again is another example of Spring not having done its homework. You will remember that whereas their original proposals envisaged cyclists riding into the Piazza, they have now said that cyclists will have to dismount at the canal path. This is an admission of a problem; however it is not good enough to suggest such a response to the issue, since the enforceability of such an arrangement is entirely another thing. They have moreover not advanced any money or mechanism that could finance the effective enforcement of it if it were it to be in a planning condition. You have been referred to various documents on the subject of safety. Most guidance is not specific to canals, although BW and The Inland Waterways Association have produced some guidance. You have the reference in TA 90/05 (which like HD 42/05 has been published *after the last appeal*) to kerb shyness, which to put it simply means that some additional width needs to be allowed to clear the handle bars of the cyclist, whether he be walking or cycling. Perhaps the most telling point is that since this is a waterside location and as Nigel Vening concludes, this creates an "obvious risk to all users". Madam there is no guidance that supports the proposed width. The bollards need 600 mils under BW guidance. The barrier- in this case the building needs 250 mm minimum and since it is higher than that, it needs 500 mm. Thus adding this to the minimum width of 2 m, a total width of 2.85 m is necessary, which this proposal simply does not have. *Mr Suckett's response that the scheme will be self-policing when there has been an accident does not deserve*

The Bridge

Our case is that to locate a bridge in the position where the appellants show it will be a) be to encourage criminal activity, a view is shared by the local police and b) there will be a major lost opportunity if the bridge is not put in front of the piazza. You will remember Mr. Ferguson who has much experience with such developments emphasised how important access routes are to the success of such projects. You will also appreciate that the alternative bridge issue was *not in front of the inspector at the Bellway inquiry*. In this regard there is a link between the canal path and the bridge issues, since if it is the case that BW in the short term is to upgrade the towpath opposite, it will be preferable for cyclists to use that and then access a well observed

evidence it would seem that a widened towpath opposite taken with the bridge which we propose, would present a preferable alternative

and safe bridge in front of the Piazza. This will also help to create a more successful Piazza etc. in line with the advice from Mr. Ferguson.

Radcliffe Infirmary Masterplan

Similarly, the previous inspector did not have the significance of the redevelopment of the Radcliffe site and its consequences argued before him. We cannot point you to a planning consent, although our understanding is that the first application is imminent. We can however point to the Local Plan DS 66 which mentions the redevelopment of the site. We can mention that as the Masterplan itself says at p.12, that views of the Grade 1 listed Radcliffe Observatory (or Tower of The Winds) will be opened up from views from Cardigan Street. Obviously the linking of views between the grade 11* St. Barnabas and these points will be good visually as well as an aid to navigating the city, but a consequence of this proposal is that block C will block that view from the Piazza, the bridge where we say it should be and from the widened towpath opposite. The fact that there is a Masterplan and that it is in The Local Plan are material planning considerations. We appreciate that you do not have a planning consent or even an application in front of you, but we submit that you can be guided by the development considerations recited in the Masterplan and would be entitled to hold that such a development seems likely. At bare minimum, we say that a determination of this application will be premature pending the resolution of these issues. Again, if block C were not there or were relocated back, this would help to make the Piazza a discovered area with sight lines through to The Tower of the Winds ~~and The Infirmary building~~. It would also assist numerous visitors to Oxford arriving from the station to better find their way around, as well as assist visitors and employees of the University's new administrative headquarters find their way to the site. A vista would be created straight from the towpath opposite. It is Madam, if I may say so, difficult to see how you will be able to appreciate this point on a site visit, since the site is currently boarded up.

As far as the height of the likely new buildings is concerned, this will clearly define the views of The Tower of the Winds, pages 11 and 12 of the Masterplan indicate that the building would not be high, and Mr. Handcock has told Mr. Anstis that this would accord with his views as well.

Boat Repair Facility

Whilst we have given evidence on the above issues, we adopt the stance of the council on affordable housing and of JCBY on boat repair facility provision. You have heard from Jenny Mann representing the Management Committee of JCA that the community would welcome a boat repair facility. She you will remember drew your attention to the fact that the previous repair facility was able to operate without any adverse impact on the noise climate, and JCA believes that this represents another failing in the current scheme. It is confident that a revised proposal ought to be possible with an appropriate noise condition.

Alternatives

You have also had evidence given to you by Spring that their offer provides a great future for the site, but that similarly you have heard from Mr. Anstis who does not oppose the principle of a sensitive development on site, and who has on behalf of JLH made enquiries of Spring regarding the sale of the site. Obviously you have no firm evidence in front of you, and it is fair to surmise that this issue will depend very much on your determination of this appeal. It is however useful to bear in mind a) that the community is interested in acquiring the site on a not for profit basis and b) that this would involve them in advancing a more suitable development proposal.

Consultation

On a discrete point, you heard at the outset and from both Mr. Anstis and Dr. Lloyd how certain information key to the assessment of these proposals was not in the public domain i.e. the details of the sites the subject of the sequential test and certain information relating to affordability. The former since it was not in the public domain, was contrary to the Local Plan. Obviously that information has now come into the public domain, but one wonders how many members of the public would have been interested in that at the application stage and for a large part of the appeal period, but who have not been able to access it, and indeed how many not having been able to access it have not attended. It is in my submission dangerous to make assumptions as to whether those have been present at the appeal or involved in the process since the information was not in the public domain. A comment to the same effect can be found in the commentary of the JPL in reviewing the case of *Bernard Wheatcroft Ltd. v Secretary of State for the Environment and Harborough District Council Queen's Bench Division October 24, 1982 p. 43 JPL*. Obviously the Wheatcroft case was concerned with a discussion of whether an amendment which had not been consulted upon, but which was made during the appeal process was significant. In our case an amendment has not been made, but it must be open to doubt whether one can assume that members of the public who could not access important information would necessarily have accessed appeal documentation which should have been available in the council offices during the run up to the appeal. However as mentioned, it would appear that at minimum OCC's own policies have been breached as a result of the documentation not being in the public domain.

Conclusion

Madam, it is perhaps a rarity to find so many residents to be against a proposal, and with attendant coverage not only in local but national radio, television and press. However my clients do not oppose the principle of the redevelopment of the site, as is encouraged by the Local Plan, but they are incensed at the insensitivity of these proposals. You have obviously to take the refusal reasons at face value, and can of course consider any other reason which you consider relevant, but it is noteworthy that the decision by OCC to withdraw support for certain reasons that were originally given, was made on the advice of a lawyer who was not present to advise the committee. That lawyer's advice ought to have concerned itself with a correct understanding of *North Wiltshire District Council v The Secretary of State for the Environment and Mr. and Mrs. Keith Clover [1992] 955*, although we have not been furnished with his advice. That decision as you know Madam encourages consistency

in the planning process, but specifically allows inspectors not to slavishly follow the judgments of brother and sister inspectors. Suffice it to say, as you have heard from one of the councillors, they appear to have been of the impression that they had to drop various reasons for refusal. What is done is done, but you have had the voting figures for that meeting revealed to you, and it would certainly appear that the decision was nowhere near unanimous. We have concentrated primarily on the differences between the two decisions and also draw your attention to new advice since the last appeal and new considerations that have come on stream since that decision. We believe that you have and would encourage you to exercise plenty of discretion in refusing this application. To do so would not create a rudderless boat as the appellants have claimed, rather that we are asking you for a new rudder to take account of all of the circumstances obtaining today. Thank you.