

24 August 2018



Mr Paul Morgan
Chair of Newbury Community Football Group

By email: chair@ncfg.uk

Strategic Support

Council Offices
Market Street Newbury
Berkshire RG14 5LD

Our Ref: C/2018/101

Your Ref:

Please ask for: Rachel Craggs

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Dear Mr Morgan

Stage Two Complaint – Newbury Football Ground

I am responding to your email of 20 July 2018, which relates to a Stage Two complaint about the temporary closure and potential redevelopment of Newbury Football Ground (NFG).

More specifically, you have complained about the following:-

- West Berkshire District Council (WBDC) has failed to supply a substantive response to your requests about the future use of the facility in the short, medium and long term.
- WBDC did not offer Newbury Community Football Group (NCFG) or Newbury Football Club (NFC) the opportunity to run the Ground.
- WBDC has not provided any evidence of the process undertaken to support the proposal to open the site up as a multi-use games area (MUGA) to local residents and you have also asked for copies of minutes/meeting notes that came to this conclusion.
- WBDC has failed to give sufficient detail about how the Ground will operate in order to provide continuous availability after it closed on 24 June.
- By managing the facility itself, WBDC will have to use public funds and is therefore using them inappropriately since continued management by the NFC and NCFG would obviate the need to use public funding.
- WBDC is not entitled to close the Ground and redevelop it without evidence to show doing so would be in the best interests of the community and this contravenes WBDC's duties to protect the Ground.
- WBDC is relying on a plan that is 15 years old and has been superseded by the National Planning Policy Framework (NPPF), Sport England's Playing Field Policy, the local Core Strategy, the Asset of Community Value (ACV) and Newbury Town Plan.
- WBDC's proposal to redevelop the site is premature, as Nick Carter, Chief Executive, stated in May 2017 that development was unlikely to occur within 5 years.
- The Ground is not part of London Road Industrial Estate (LRIE) and it is not required for housing land supply, since the Development Plan Document (DPD) excludes the LRIE from the housing allocations.

- No planning permission exists for any alterations to the Ground and facilities and the permitted development right to demolish part of the facility has been removed by the ACV.
- By attempting to close the facility to community use, WBDC is undermining the purpose of the ACV without having applied due process.
- WBDC has failed to be transparent in its decision making as it has not held any public meetings about the Ground and there has been no consultation about the wider LRIE, as all meaningful decisions have been made in camera.
- WBDC persistently confuses Newbury Football Club (NFC), a private club that uses the Ground with Newbury Football Ground (NFG).
- WBDC has failed to act in accordance with aspects of the Committee on Standards 'The 7 Principles of Public Life'.

In dealing with this matter, I have considered the National Planning Policy Framework (NPPF) published in July 2018 by the Ministry of Housing, Communities and Local Government. I have also spoken to Nick Carter, Chief Executive, Bill Bagnell, Special Projects Manager and Bryan Lyttle, Planning and Transport Policy Manager. In addition I have reviewed correspondence between you and the Council and considered the Asset of Community Value (ACV) criteria, as well as the West Berkshire Core Strategy and the Housing Site Allocation Development Planning Documents (DPD) 2006-26.

My understanding of the background is that the Council's proposals to redevelop the LRIE were first published in the Council's Newbury 2025 Vision for Newbury Town Centre in November 2003. These proposals were reiterated in the Newbury 2025 Vision updates published in September 2006 and November 2008 and the Newbury 2026 Vision published in October 2014.

In April 2014, St Modwen Plc was appointed as the Council's development partner, following the publication nationally of the business opportunity during 2013 and subsequent public procurement exercise. This was ratified at the meeting of the Council's Executive Committee on 20 November 2014 as set out in the minute below:-

'48. London Road Industrial Estate Development Agreement (EX2882)

The Executive considered an exempt report (Agenda Item 8) concerning the London Road Industrial Estate (LRIE) Development Agreement between St. Modwen Developments Limited and West Berkshire Council, in order to acknowledge the contents of the agreement and for the Council to enter into contract with St. Modwen.

RESOLVED that the recommendations in the exempt report be agreed.'

St Modwen's 'masterplan' for the redevelopment of the LRIE was subsequently unveiled at the Newbury Vision Conferences held in 2014 and 2015.

In 2015, WBDC notified NFC, the leaseholder for the Ground, that its occupation and management of the Ground would be terminated. However, two extensions of one year each were granted by WBDC to NFC and these expired on 24 June 2018, when the Ground was temporarily closed to the public. Prior to this, WBDC offered Newbury Town Council (NTC) the opportunity to manage the site, but these discussions concluded in April 2018 without agreement. As a result WBDC issued a press release on 21 June 2018 stating that it would be managing the Ground as a multi-use games area (MUGA), which would be available to the community when it reopened in September 2018.

In 2016 NCFG submitted an application for the Ground to be listed as an Asset of Community Value (ACV). This was successful and the Ground was entered onto the list on 10 October 2016.

On 27 February 2018 NCFG submitted planning application 18/00603/COMIND for the renewal and expansion of the existing football pitch including artificial pitches. This was validated on 3 April 2018 and a decision is currently awaited.

On 19 July 2018 NCFG submitted planning application 18/00604/OUT for the replacement of the clubhouse and stand at the Ground. This was validated the same day and a decision is also currently awaited.

On 4 June 2018, you submitted a complaint to the Council under Stage One of the corporate complaints procedure and Nick Carter sent you a response on 20 June. As you were not satisfied with this response, you submitted a request for a Stage Two review of your complaint and I will now respond to the points you have raised.

I have grouped your complaints together to save repetition and I have not responded to them as numbered in your complaint. However I will start by addressing your complaint that WBDC has persistently confused Newbury Football Club with Newbury Football Ground. I can see from correspondence between you and the Council that the terms have been used interchangeably, however I am assured by Nick Carter that WBDC has always been clear about the distinctions between the two groups and the documentation does support this.

Future Plans for the Ground

You have complained that WBDC has failed to supply a substantive response to your requests about the future use of the facility in the short, medium and long term. I can see that Nick Carter has attempted to provide you with this information in his Stage One response and I hope this Stage Two response will provide the additional detail you have requested.

Operation of the Ground for Community Use by WBDC

Nick Carter has advised that NCFG and NFC were not considered as potential operators for the Ground, as it will form part of the Council's regeneration plans either as housing or for employment purposes. Therefore, as the timescales for the site were unclear and WBDC needed to be in a position to provide vacant possession for redevelopment at short notice, it would not have been possible to draw up a short term agreement with NCFG or NFC. However, WBDC considered that it would have been possible to agree a short term lease with NTC and, as they already manage Victoria Park and are a long term tenant of the Council, they were an obvious partner.

It had been hoped that the plans for the site would be more advanced by this stage, but as you will be aware, they have been held up due to the challenges in the courts from Faraday Development Ltd.

You have requested evidence in the form of meeting minutes setting out how the decision was reached to open the site up as a MUGA available to local residents, and

the process that was undertaken to support this conclusion. By MUGA the Council means a grassed playing field, which will be maintained to the same standard as before, with the same dimensions. It will therefore, not be a formal purpose built MUGA with a synthetic surface and pre-marked for a limited number of fixed sports activities, but will be available for a wide variety of sporting activities.

I understand this decision was reached during internal discussions between officers about how the site might best be used on a temporary basis as a public facility and consequently, no formal meeting minutes were taken. In addition, no consultation took place with the community prior to the release of Councillor Fredrickson's press release on 21 June 2018 setting out the proposals, as it was the Council's view that this was not required because there was no change to the use of the land. In addition, both NFC and NCFG were aware that the lease was expiring and the Ground would have to be vacated three days later.

Now that the Ground has been vacated, the Council may decide to remove fixtures and fittings before the Ground can be opened to the public and any removals will be undertaken via Planning where applicable. A site inspection has also had to be undertaken and this is due to be concluded by the end of August 2018.

As WBDC had been in discussion with NTC up until April 2018 about the potential for them to manage the Ground, there has only been a short period of time for WBDC to develop its own plans for the operation of the site. However, these plans will be published in September 2018, when they will be widely disseminated and they are likely to include the retention of the site for games use, which will be opened up to the community. It may possibly take the form of an open MUGA, in order to ensure it is available to as many different sectors of the community as possible, but as previously described, it will not be a typical MUGA.

It will be necessary for Council to use some public funding in order to manage the site. However the Council's view is that this can be balanced against the fact that the facility will be available to the whole community at no cost, which was not the case when it was used solely by NFC.

Redevelopment of the Ground and LRIE

You have complained that WBDC is relying on a plan that is 15 years old and has been superseded by various other policies and documents. I can see that the relocation of Football Ground is referred to in sections 5.13 and 5.23 of the Newbury 2025 A Vision for Newbury Town Centre that was published in November 2003. It should be noted the Newbury Vision is not a planning document but a publicly declared aspiration for the town's future in terms of viability, vibrancy and sustainability. Clear reference is made to the fact that the Ground is likely to be integrated into future plans for the LRIE in the following updated documents as detailed below:-

Newbury 2025 update published September 2006 – Appendix 1

'AFC Newbury have surrendered their lease of the Football Ground at Faraday Road. The Council has granted a short term lease to a third party to enable the site to continue to be used as a Football Ground for another year. Beyond that point the site will be used as a temporary car park for WBDC staff during the construction of

Park Way. Beyond that, the site is likely to be integrated into future plans for the Business Quarter.'

And

'Initial discussions have commenced [regarding the development of the LRIE] although no specific proposals have been brought forward to date.'

Newbury 2025 update published November 2008 – section 3.1

'The Council will take an active lead in preparing a strategy for the development of the Town's business Quarter which is focused on the London Road Industrial Estate. The aim will be to then find a private sector partner to work with the Council to help deliver that strategy and realise the aspirations reflected in Newbury 2025. A planning application has already been submitted for the redevelopment of part of the site.'

Newbury 2026 published October 2014

'In partnership with a developer, the Council will redevelop the LRIE over a ten year period protecting employment and securing new employment and providing high quality town centre family and small residential units adjacent to the beautiful Kennet and Avon Canal.'

You have stated that WBDC is not entitled to close the Ground and redevelop it without evidence to support that doing so would be in the best interests of the community. In addition, you have claimed that this would contravene WBDC's duties to protect the Ground as stipulated in the Core Strategy, Local Plan Policies ADPP2 and CS18 and the ACV.

My understanding is that in order for WBDC to achieve outline planning consent to develop the LRIE, which will include the Football Ground, the consent will be subject to a full consultation process, which may ultimately include referral to the Secretary of State. As part of the process, any consent that is possibly granted will have to conclude that the redevelopment would be of greater benefit to the public than the loss of the Football Ground. Consequently, via a formal Planning process, WBDC will have to prove it has the right to close the Ground. Therefore the Council has no intention of closing the facility without applying due process, and it will remain open to the community for use as a MUGA until planning consent has been obtained. I appreciate it is your view that the Football Ground is not part of the LRIE, but this is not the view of the Council.

I am aware that the Ground does not have a sports designation within the Local Plan but the LRIE is defined as a protected employment area in paragraph 5.54 of Policy CS9 of the West Berkshire Core Strategy (2006–2026) adopted in July 2018, which states:-

'In terms of sequentially preferable locations for office development, the following sequence is appropriate in accordance with national policy:

- 1. Sites within existing town and district centres.*
- 2. Suitably located brownfield sites or Protected Employment Area within an edge of centre location, and Newbury Business Park. Protected Employment Areas in such locations are: London Road Industrial Estates; Hambridge Road/Lane; Green Lane; Charnham Park; Station Yard; Arlington Business Park; Station Road and adjacent Estates.'*

However the Ground is listed in paragraph 5.129 of the Green Infrastructure Policy CS18, which states:-

‘Sporting provision ranges from established sports clubs with good facilities such as Newbury Rugby Club, Newbury Town, Thatcham Town and Hungerford Town Football Clubs, and Falkland Cricket Club, to facilities for amateur sport like Henwick Playing Fields and Newbury Athletics Club. In addition there are boating and sailing facilities at Burghfield and Theale, canoeing on the Thames at Pangbourne, and a large number of golf courses throughout the District.’

Although Policy CS18 does also state:-

‘Developments resulting in the loss of green infrastructure or harm to its use or enjoyment by the public will not be permitted. Where exceptionally it is agreed that an area of green infrastructure can be lost a new one of equal or greater size and standard will be required to be provided in an accessible location close by.’

And Policy ADPP2 states:-

‘Regeneration of the Faraday Road area immediately to the east of the town centre for mixed use and office developments will create additional jobs and improve the environment of this part of the town. Permission has been granted for an office building of over 7,000 sq.m, a restaurant and hotel.’

These are all material considerations that will be taken into account as part of the planning process when outline planning consent is sought. At this time all the various policies will be read in conjunction with each other and some maybe over-ridden by others.

Asset of Community Value (ACV)

I appreciate the Ground has been registered as an ACV and my understanding is that this will enable NCFG to submit a bid to the Council when the Ground is put up for sale on the open market, which the local authority will be required to consider. However, it does not mean that the local authority has to accept the bid if it is not commercially viable.

I can confirm that WBDC does not currently have any plans to demolish any part of the facility and should demolition work take place at a later date, it will be because the Council has followed the proper planning process in order to seek demolition consent. If and when this occurs, the ACV status of the Ground will be recorded as part of the planning process, which is already well known.

West Berkshire Housing Site Allocation

The reason that the LRIE is not mentioned in the West Berkshire Housing Site Allocation (2006–2026) DPD adopted in May 2017, is because the document is focussed on green field development and not brown field opportunities. Furthermore, the LRIE is not included in the Council’s five year land supply as it is not anticipated that the area will be redeveloped in the next five years, as Nick Carter acknowledged at the Newbury Vision Conference in 2017. However the document does include a statement which describes

the LRIE as an 'Area of Regeneration', although this is not a policy document and has no official status.

I note your comment that '*Local and national policies resist the redevelopment of playing fields for housing*', which I have discussed with Bryan Lyttle. He believes you are referring to paragraphs 96 to 98 in the National Planning Policy Framework (NPPF) published in July 2018 which state:-

- '96. Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.*
- 97. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:*
- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
 - b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
 - c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.*
- 98. Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.'*

However, I understand this needs to be read in conjunction with paragraphs 2 and 3 of the NPPF, which indicate that there will be circumstances when the redevelopment of playing fields for houses could be overridden by local development plans as they state:-

- '2. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.*
- 3. The Framework should be read as a whole (including its footnotes and annexes). General references to planning policies in the Framework should be applied in a way that is appropriate to the type of plan being produced, taking into account policy on plan-making in chapter 3.'*

Consultation on the Proposals

You have complained that WBDC has failed to be transparent in its decision making as it has not held any public meetings specifically about the Ground and there has been no consultation about the LRIE, as all decisions have been made in camera.

As you are aware, when the Newbury 2025 Vision was published in 2003, the LRIE was highlighted as an employment area and has been referenced in subsequent Vision updates as detailed earlier. However, the development of Park Way and the Market Street urban village were initially given precedence and it was not until 2011-12 that agreement was reached within the Council to progress the proposals for the LRIE.

In 2013 Strutt and Parker, on behalf of the Council, advertised nationally a developer 'Opportunity Document' to find a development partner for the redevelopment of the LRIE. As a result, St Modwen was selected from a final shortlist of three companies in April 2014, which was created from an earlier shortlist of six companies. As previously stated, this was ratified at the meeting of the Council's Executive Committee on 20 November 2014 and these minutes are in the public domain. The appointment of St Modwen and the proposals for the redevelopment of the LRIE were publicised widely in the local press, including in the Business Magazine on 17 April 2014, which stated:-

'West Berkshire Council has selected St Modwen as development partner on the redevelopment of the 25-acre London Road Industrial Estate site in Newbury. St Modwen will work alongside the council on the project, which will retain freehold ownership of the commercial and industrial area, to create a mixed-use development comprising business, retail and residential.'

'The plan includes 300-400 new homes, a food store and a range of office and business accommodation – extending to 80,000 sq ft, as well as a new road, which will be accessed via the A339.'

The proposals were also publicised at the Newbury Vision Conferences held in 2014 and 2015 and copies of the presentations are attached at Appendices 1 and 2, which clearly show that the area to be redeveloped included the Football Ground. I understand that you were present at the 2015 Vision Conference, held at Newbury College. In addition, the regeneration plans for LRIE are published on the Council's website and can be found at <https://info.westberks.gov.uk/lrie>

I have also attached the following documentation, which provides evidence to show that the whole process has been in the public domain, as has the legal challenge from Faraday Development Ltd:-

- Appendices 3 and 4: Letters sent to the occupants in LRIE in June 2013 and January 2016 advising them of the proposals and the appointment of St Modwen.
- Appendix 5: Minutes of meeting held on 30 January 2015 with representatives from NFC to discuss the proposals and the efforts by the Council to facilitate a ground share with Thatcham Football club.
- Appendix 7: Email trail between you and Nick Carter prior to the meeting held on 18 April 2016 at which agreement was reached to extend the lease at the Football Ground until June 2018. Attendees included

yourself, Nick Carter, Bill Bagnell, Nick Kay from St Modwen, Councillors Alan Law, James Frederickson and Jeanette Clifford, as well as representatives from NFC, Sport England and Berks and Bucks Football Association.

The Seven Principles of Public Life

Finally, you have complained that WBDC has failed to act in accordance with aspects of the Committee on Standards 'The 7 Principles of Public Life'. I have considered each of these aspects and provided my comments below.

Selflessness: As the aim of the redevelopment of the LRIE is to protect employment opportunities for the area and to provide much needed housing, it seems to me that the Council has been acting solely in terms of the public interest. I can also see that every attempt was made by WBDC to secure a ground share with TFC and correspondence to support this is provided at Appendices 8-10, as well as the minutes of the meeting held on 30 January 2015 provided at Appendix 5

Integrity: This is the basis of the way in which the Council operates as all officers and elected members have to comply with the Council's Code of Conduct. Furthermore, the appointment of St Modwen as the Council's development partner was in line with the Council's procedures and EU Procurement Regulations.

Objectivity: Before any outline planning consent to redevelop the LRIE is granted, the Council will have to prove that it has the right to close the Football Ground and that the redevelopment will be of greater benefit to the public. Therefore, any planning consent will be subject to a full consultation process which will include the National Planning Casework Unit which is a branch of the Ministry of Housing, Communities & Local Government. This body decides whether development proposals should be 'called-in' and referred to the Secretary of State.

Accountability: West Berkshire Council officers and elected members are aware that they are accountable to the public for their decisions and actions. Consequently, I hope the attached documentation will help to show that the Council has been completely open and transparent in relation to the proposals for the LRIE. In addition, before any outline planning consent for the redevelopment can be granted, due processes and procedures will have to be followed, which will include full consultation and determination by the Area Planning Committee.

Openness: As stated above, I hope the attached documentation will provide you with the reassurance that all decisions undertaken by the Council have been made in an open and transparent manner and this will remain the case for any future decisions.

Honesty: I am of the opinion that the Council has been completely truthful about its proposals to redevelop the LRIE and that this will include the Football Ground. This is supported by the attached documentation and the commitment to integrate the Ground into the LRIE Business Quarter, as set out in the Newbury 2025 Visions published in November 2003 and September 2006.

Leadership: The fact that the Council's Chief Executive has been heavily involved in the proposals for the redevelopment of the LRIE, which I believe have been handled in line

with the other six principles, shows that these behaviours have been actively promoted. This is supported by the fact that the meeting held with you on 18 April 2016 included representation at the highest level in an attempt to reach some form of agreement with NFC and NCFG

This concludes my examination of your complaints and my overall assessment is that the Council was not at fault in the way it has handled the temporary closure and potential redevelopment of Newbury Football Ground. Consequently, I do not believe there has been any maladministration causing you or the NCFG any injustice.

As a result, I do not believe there is anything more to be gained by holding any further meetings with the Council on the subject, as it is very unlikely that any agreement is going to be reached between the parties. Therefore, although I believe I have provided a fair and objective response, if you remain dissatisfied and consider you have suffered an injustice, you should contact the Local Government Ombudsman using the information available at: <http://www.lgo.org.uk/making-a-complaint/>

Yours sincerely



Rachel Craggs
Principal Policy Officer (Information Management)

Attachments:-

- Appendix 1 Presentation by St Modwen at the Newbury Vision Conference in 2014
- Appendix 2 Presentation by Nick Carter at the Newbury Vision Conference in 2015
- Appendix 3 Letter sent to the occupants of LRIE in June 2013.
- Appendix 4: Letter sent to the occupants of LRIE in January 2016.
- Appendix 5: Minutes of meeting held on 30 January 2015 with NFC.
- Appendix 6: Emails between you and Nick Carter dated February 2016, prior to the meeting held on 18 April 2016, which you attended.
- Appendix 7: Emails between Bill Bagnell and Ron Renton dated October 2014
- Appendix 8: Letter from Thatcham Town Football Club (TTFC) received on 25 November 2014 agreeing in principle to a ground share with NFC.
- Appendix 9: Emails between Bill Bagnell and Ron Renton dated 25 and 26 April 2017 confirming that the offer of a ground share with TTFC was still in place.