

CAVERSHAM PARK, PEPPARD ROAD

APPLICATION REFERENCE: 220409

OPINION

1. Introduction

1.1 I am asked to advise Beechcroft Developments Limited in respect to Caversham Park, Peppard Road, Caversham, Reading RG4 8TZ ('the Site'). The Site falls within the jurisdiction of Reading Borough Council ('the Council') as the relevant local planning authority.

1.2 Beechcroft have submitted two applications to the Council in respect to the Site, as follows:

- i. Full planning application – ref:220409: *Redevelopment of Caversham Park for 64 assisted living units (Class C2) for the over 55's through the conversion of Caversham Park House, 64 bed care home (Class C2), 61 age-restricted retirement dwellings, including conversion of the existing buildings Bursars House, The Lodge and 2 Caversham Park Drive (Class C3), 5 market dwellings (Class C3), 28 affordable dwellings (Class C3), and refurbishment and extension of the existing pavilion to provide changing facilities, café/studio and sports provision comprising 2 no. croquet lawns, 2 no. bowling greens, an additional tennis court, refurbishment of the existing tennis court and associated parking and landscaping.*
- ii. Listed Building Consent – ref:220410: *Works associated with the redevelopment of Caversham Park to provide assisted living units including alterations to the main house and demolition of existing*

extensions. Works associated with the residential conversion of Bursars House, The Lodge and 2 Caversham Park Drive.

1.3 The following heritage assets are relevant to the Site:

- i. Caversham Park (a Grade II Registered Park and Garden);
- ii. Caversham Park House (Grade II listed);
- iii. Grade II listed ancillary structures.

1.4 Montague Evans have assessed the relevant heritage assets and found that there would be less than substantial harm to Caversham Park and benefits associated with Caversham Park House.

1.5 I am asked to advise in respect to the following:

- i. how relevant policies in the development plan pertaining to heritage should be applied (**Issue 1**);
- ii. whether there is any requirement for Historic England to be consulted in respect to the application for planning permission (**Issue 2**).

2. Relevant Policies

2.1 Policy CA2 of the Reading Borough Local Plan ('the Plan') says:

CA2: CAVERSHAM PARK

Caversham Park and Caversham Park House are key features of the heritage and landscape of Reading. Caversham Park is a Registered Historic Park and Garden, and the site contains a number of listed features. These assets will be conserved.

Conversion of the house from offices to residential and/or a cultural, community or heritage use, or other suitable use compatible with its heritage, will be acceptable if it sustains the significance of the listed building. It is currently estimated that up to 40-45 dwellings could be accommodated, but the figure will be dependent on more detailed historic assessment of the building and the precise mix of uses.

Any development or conversion proposals should open as much of the park as possible up to public access, including reinstatement of any historic public footpaths where possible and appropriate.

This policy does not allocate the site for additional development over and above conversion of the house. There may be scope for some limited development on previously developed land within the site, which will need to be justified at application stage. Such development must comply with the criteria below:

- No development will negatively affect the significance of heritage assets and their setting;*
- Development will not detract from the character or appearance of the important landscape; and*
- Development will not negatively affect significant trees or areas of biodiversity importance.*

2.2 Policy EN1 of the Plan says (with emphasis):

EN1: PROTECTION AND ENHANCEMENT OF THE HISTORIC ENVIRONMENT

Historic features, areas of historic importance and other elements of the historic environment, including their settings will be protected and where possible enhanced. This will include:

- Listed Buildings;*
- Conservation Areas;*

- *Scheduled Monuments;*
- *Historic parks and gardens; and*
- *Other features with local or national significance, such as sites and features of archaeological importance, and assets on the Local List.*

*All proposals will be expected to protect and where possible enhance the significance of heritage assets and their settings, the historic character and local distinctiveness of the area in which they are located. Proposals should seek to avoid harm in the first instance. **Any harm to or loss of a heritage asset should require clear and convincing justification, usually in the form of public benefits.***

Applications which affect Listed Buildings will not have an adverse impact on those elements which contribute to their special architectural or historic interest including, where appropriate, their settings.

Applications which affect Historic Parks and Gardens will safeguard features which form an integral part of the special character or appearance of the park or garden. Development will not detract from the enjoyment, layout, design, character, appearance, features or setting of the park or garden, key views out from the park, or prejudice its future restoration.

Applications which affect, or have the potential to affect, the significant features of heritage assets should be justified by a Heritage Statement.

The Council will monitor buildings and other heritage assets at risk through neglect, decay or other threats, proactively seeking solutions for assets at risk including consideration of appropriate development schemes that will ensure the repair and maintenance of the asset, and, as a last resort, using its statutory powers.

Where there is evidence of deliberate neglect or of damage to a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision.

2.3 Paragraphs 200 and 202 of the National Planning Policy Framework say:

200. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional⁶⁸.*

202. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

3. **Law**

The development plan and material considerations

3.1 Section 70(2) of the Town and Country Planning Act 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

- 3.2 In **City of Edinburgh Council v Secretary of State for Scotland** 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of this provision, beginning at 1458B:

"Section 18A [the parallel provision in Scotland] has introduced a priority to be given to the development plan in the determination of planning matters....

By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed. If it is thought to be useful to talk of presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission..... By virtue of section 18A if the application accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted....

Moreover the section has not touched the well-established distinction in principle between those matters which are properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on

which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell L.J. observed in *Loup v. Secretary of State for the Environment* (1995) 71 P. & C.R. 175, 186:

"What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations."

Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues.

.....

In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. **He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of**

them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse."

- 3.3 This statement of the law was approved by the Supreme Court in **Tesco Stores Limited v Dundee City Council** [2012] UKSC 13, [2012] PTSR 983, per Lord Reed at [17].

Heritage Policies

- 3.4 In **City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government** [2021] EWCA Civ 320, the Court of Appeal held as follows:

... The absence of an explicit reference to striking a balance between "harm" and "public benefits" in the local plan policies does not put them into conflict with the NPPF, or with the duty in section 66(1). Both local and national policies are congruent with the statutory duty. The local plan policies are not in the same form as those for "designated heritage assets" in the NPPF. They do not provide for a balancing exercise of the kind described in paragraphs 193 to 196 of the NPPF, in which "public benefits" are set against "harm". But they do not preclude a balancing exercise as part of the decision-making process, whenever such an exercise is appropriate. They do not override the NPPF policies or prevent the decision-maker from adopting the approach indicated in them. They are directed to the same basic objective of preservation.

4. **Issue 1: how relevant policies in the development plan pertaining to heritage should be applied**

4.1 Policy CA2 precludes development that, *'will negatively affect the significance of heritage assets and their setting'*.

4.2 Given Montague Evans have identified harm to the Country Park, it follows that there is conflict with policy CA2.

4.3 However, policy CA2 does not allow for a balancing exercise in respect to heritage assets. That does not render the policy as being out of date, for the reasons expressed by the Court of Appeal in the **Bramshill** judgment cited above. But, it means that policy CA2 does not dictate the outcome as to whether there is conformity with the development plan. Indeed, as was found in the **City of Edinburgh** judgment, what the decision maker is required to do is ascertain whether there are points in the plan that support the proposal and whether there are considerations pointing in the opposite direction. One is required to assess all of these considerations in coming to an overall consideration as to whether there is conflict with the development plan.

4.4 That is relevant here in that whilst policy CA2 precludes any heritage harm, Policy EN1 does not. Indeed, Policy EN1 adopts an approach that reflects paragraph 202 of the NPPF, wherein harm to a heritage asset may be permissible, where there is a *'clear and convincing justification, usually in the form of public benefits'*.

4.5 That is relevant here in that, whilst Montague Evans identify harm to the registered park, they identify benefits to the Country House. Thus, these benefits (alongside other benefits identified in the planning statement) need to be weighed against the identified heritage harm.

4.6 As the Court of Appeal held in **Bramshill**, the policy does not, *‘preclude a balancing exercise as part of the decision-making process’* nor does it, *‘override the NPPF policies or prevent the decision-maker from adopting the approach indicated in them’*.

4.7 Thus, policy CA2 does not preclude a decision maker from conducting a balancing exercise between harms and benefits, as is required by paragraph 202 of the NPPF and policy EN1. If this balance points in favour of the development proposal, it follows that:

- i. the decision maker can conclude that there is compliance with the development plan as a whole and grant permission; or
- ii. the decision maker can conclude that notwithstanding any conflict with the development plan, there are material considerations (namely the NPPF and paragraph 202) which indicate that permission can be granted.

5. **Issue 2: whether there is any requirement for Historic England to be consulted in respect to the application for planning permission**

5.1 In my view, there is no legal requirement for Historic England to be consulted in respect to the application for planning permission.

- 5.2 Regulation 5A(3) of the Town and Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 requires Historic England to be consulted on applications for planning permission for development that would affect the setting of a Grade I or Grade II* listed building.
- 5.3 Article 18 and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015 requires Historic England to be consulted likely to affect a registered battlefield or a grade I or II* park or garden on Historic England's Register of Historic Parks and Gardens of Special Historic Interest in England.
- 5.4 As neither Caversham Park nor Caversham Park are either grade I or II* listed heritage assets, neither of the above provisions require Historic England to be consulted.

I advise accordingly.

KILLIAN GARVEY
Kings Chambers
17 December 2022