

Your ref: 181930



Mr J Markwell
Planning Department
Civic Offices
Bridge Street
Reading
RG1 2LU

SUBMITTED BY EMAIL

10th May 2019

Dear Mr Markwell,

PLANNING APPLICATION: 181930 29 STATION ROAD, READING

HERITAGE STATEMENT FURTHER RESPONSE

With reference to the most recent Memorandum from the Council's Historic Buildings Consultant (Additional Comments 3-4-19), the below sets out the applicant's final comments on the subject of heritage in order to assist you in formulating your recommendation and concluding your Committee Report.

Clearly there is a difference of opinion between the applicant and your consultant in relation to the heritage impacts of the proposal. The Heritage Statement Addendum (March 2019) sought to clarify some of the points raised in the initial consultation response and was not intended to stimulate a back-and-forth discussion. Our reference to other Committee Reports, notably that of Thames Tower and the previous approvals on the application site were intended to highlight that Reading Council have already assessed the impacts of a tower on this site and found them to be acceptable. We have always sought to work with Reading Borough Council officers as it is in the best interest of our client but also the interest of good planning. Clearly the submitted Heritage Statement is only one of a suite of important documents that you are considering in the balance of planning matters before you.

The Heritage Statement has followed guidance from Historic England, and this of course included all relevant documents; including both Historic Environment Good Practice Advice Notes 2 and 3. It is also important to note that the NPPF quoted in those Notes has since been replaced by the new NPPF in July 2018. Similarly, the importance of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the 1990 Act") containing relevant sections has also been considered and further discussed here. Therefore, we acknowledge that there have been changes in the heritage position, including case law which will continue to influence decision making; but the *actual* position on the ground, and the relationship between the Site and the heritage assets has not changed.



The importance of the setting of a listed building has been considered by a number of cases, notably the Barnwell Manor case (as commented on by your consultant), the Mordue case (*Mordue v Secretary of State for Communities and Local Government and others* [2015] EWCA Civ 1243), and further the High Court Challenge in *Forest of Dean DC v Secretary of State for Communities and Local Government* [2016] EWHC 2429. These cases primarily provide clarity on the duty of the decisionmaker and how to correctly apply the tests of the NPPF working through the relevant heritage paragraphs.

The significance and indeed the setting of a Heritage Asset has been considered appropriately in our Heritage Statement following the methodology set out in Historic England guidance (although they also note there is no one set way of assessing these impacts and hence why there will often be a differing matter of opinion, as is the case here). For example, in the most recent memorandum the Council's consultant considers that the '*potential overshadowing of Malmaison's hotel rooms from the proposed building should also be considered as it could lead to the building being unattractive as a destination venue*'. Conversely the existing building on the Site is derelict, unattractive and has been the target of arson which, in our view, is not attractive and is in itself detrimental to the heritage asset.

The further comment that the '*design is not considered to be of high quality or to make a positive contribution to the setting of the Listed Buildings or the setting of the Conservation Area*' is at odds with the comments from Reading's Design Review Panel. This strong judgement should not be made in isolation, and further demonstrates the importance of the planning application being assessed holistically, with consideration given to all disciplines, notwithstanding the above case law.

The significance of the heritage assets assessed has been found; in the Heritage Statement; to be affected by the visual presence of the proposed development, from the Conservation Area above the roofscape in Market Place and also, in the case of Malmaison Hotel, by the increase in height above the existing 6-storey building on the Site. However, the nature of the impact on the majority of heritage assets is found to be neutral rather than prominent, dominating or distracting.

This opinion differs from that of the Council's consultant who concluded in the first memorandum that the height of the proposed development, amongst other matters, would harm the significance of the heritage assets. The degree to which that harm results is not concluded by the consultant; however, we acknowledge that the Council has a duty under section 66(1) of the 1990 Act to make a full assessment having special regard to the heritage assets. Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:

"(1) In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

A finding of harm to the setting of a listed building is a consideration to which the Council, as the decision maker, must give "*considerable importance and weight*" (*The Bath Society v Secretary of State for the Environment* [1991] 1 W.L.R. 1303).



Therefore, should you consider there is less than substantial harm created by the development, then the NPPF, as confirmed by case law (amongst others Barnwell Manor, Mordue and Forest of Dean), expects a two-staged test, based on the presumption in favour of sustainable development, to further assess the development here. This was formerly known as paragraph 14 [of the NPPF] but the wording has been altered in the revised NPPF in 2018 at paragraph 11. If less than substantial harm is considered here, that being the conclusions of your heritage consultant, then the Council will apply the provisions of paragraph 11 and therefore properly apply the heritage paragraphs of 196 and 197 of the NPPF to this proposal.

Clearly any heritage impact must be given its correct level of importance and weight against the public benefits this proposal brings. There is therefore a clear procedure for finding the development to be acceptable on balance which considers both heritage legislation, case law and policy.

It is our opinion that whilst the development will marginally change the setting of heritage assets this does not translate into harm and therefore the effect on the heritage assets themselves is neutral. As such the effect of the development for the purposes of the NPPF will be no harm. However, if you feel the development will lead to less than substantial harm then this needs to be weighed against its clear public benefits.

I trust the above is of assistance. Please do get in touch if it would be useful to discuss any of these matters further.

Kind regards,

Stephen Birrell

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