

Our Ref: EAJL/317769.0001
Date: 18 July 2017

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Dear Sirs

Application Reference C/5007/16/CC: Land between Coldham's Lane and River Cam, through Coldham's Common, Barnwell Junction Pastures and Ditton Meadows ("the Application")

We write to make representations on behalf of our client Mr Chris Smith, in relation to the Application. We understand that the Application is due to be determined by the Joint Development Control Committee (Cambridge Fringe Sites) ("**the Committee**") on 19 July 2017.

Our client has a number of concerns relating to the administration of the Application, in particular relating to the treatment of listed buildings, conservation areas and Environmental Impact Assessment matters. For ease of reference, I deal with each of these in headed sections below.

Listed Buildings

Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) ("**the Listed Buildings Act**") states:

"In considering whether to grant planning permission or permission in principle 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."

Paragraph 134 of the National Planning Policy Framework ("**the NPPF**") states that:

"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 securing its optimum viable use."

The importance of local planning authorities taking the correct approach in respect of the special duty under s.66(1) Listed Buildings Act in addition to undertaking the balancing exercise under Paragraph 134 of the NPPF has been highlighted by a stream of recent case law, in particular the Court of Appeal's decision in *Barnwell Manor* [2014] EWCA Civ 137.

As is required, the County Council has consulted with Historic England (a statutory consultee) in relation to the application. In a letter of 2 November 2016, Historic England stated:

"We would recommend that further consideration is given to bringing the Desk Based Assessment in line with the NPPF, with a greater emphasis on professional judgment and less reliance on matrices as detailed in our letter of the 15 March 2016. We would also recommend that the plans and sections are amended in order to fully understand the impact of this proposal on the Leper Chapel. This updated information will enable us to fully assess the effect of the proposal on the significance of the application site. We would therefore be grateful if you could clarify the information supplied."

In a follow up letter of 10 January 2017, Historic England continued to raise concerns about the approach taken by the applicant; particularly in relation to the approach taken towards the setting of the Grade I listed Leper Chapel of Saint Mary Magdalene:

"The revised Landscape and Visual Assessment does provide views in the vicinity of the Leper Chapel (Viewpoints 2 and 3). However these views do not illustrate the likely impact on the setting of the chapel itself, only land in the vicinity of. We would ask that a similar visual assessment is carried out which clearly shows the impact upon the Leper Chapel."

This is followed by a clear request: "Please let Historic England have any additional information in time for us to comment again before the application is determined". As at the time of writing, we have not seen further correspondence with Historic England contained on the County Council's online planning portal however a further letter dated 7 July 2017 and an email dated 14 July 2017 were provided to us by way of email timed 16.09 on 18 July 2017 received from Vikki Etheridge.

Historic England's original concerns were briefly referenced at paragraph 8.77 of the original Committee Report which states:

"Paragraph 134 of the NPPF states that "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 securing its optimum viable use." Historic England does not consider that this weighing cannot be carried out, as the assessment of the impact of the Leper Chapel has not been quantified."

The Committee Report has now been amended at paragraph 8.77 to state that:

"Following clarification of the version of the Heritage Impact Assessment that had been submitted as part of this application, Historic England revised their comments to confirm that the appropriate assessment had been carried out, and that they were supportive of the proposals."

However in its letter of 7 July 2017, Historic England does include an important reservation:

"We note that the information discusses the potential for a future scheme removing the hedge and enabling greater access to the Leper Chapel from the Chisholm Trail. We would expect to be consulted on such a scheme in due course."

The Committee Report also states at paragraph 8.78 that:

"It is considered by the County Council Historic Environment Team and assessment by City Council officers that there would not be a significant adverse impact on the setting of the Leper Chapel or The Roundhouse subject to appropriate replanting" (emphasis added).

It is not clear from the above how decision makers can have the statutory special regard as is required by s.66 (1) of the Listed Building Act in respect of the setting of the Grade I listed Leper Chapel and the Grade II listed Round House, particularly given that the assessment in the Committee Report that there would not be a significant adverse impact on the setting of these assets, is conditional on "appropriate replanting" with no further exploration as to what that may mean.

In *Barnwell Manor* it was found that the decision maker had taken a flawed (and ultimately unlawful) approach in applying the balancing exercise from Paragraph 134 of the NPPF without also explicitly having regard to the duty contained within s.66 (1). Similarly, here the exercise required by Paragraph 134 has been attempted at paragraph 8.81 of the Committee Report, but there is no evidence that considerable importance and weight has been attached to the impact on the two listed buildings by the author in drawing conclusions in relation to listed buildings. Paragraph 8.75 of the Committee Report is nothing more than a plain statement of the law.

The circumstances here are also distinguishable from the case of *Mordue* [2015] EWCA Civ 1243, as unlike in *Mordue* it is not clear from the Committee Report that genuine and proper regard has been paid to the statutory duty contained in s.66 (1).

It is also important to note that the Committee Report completely fails to reference the impact of the proposals on the setting of the Grade II listed St Mary the Virgin Parish Church in Fen Ditton, as brought to the County Council's attention at Part 2 paragraph 4 of Fen Ditton Parish Council's response to the Application dated 6 October 2016 as well as the Grade II listed Papermills and Globe Public House referenced in the EIA Screening Opinion dated 22 May 2017. This provides decision makers with no opportunity to have regard to the duty contained in s.66 (1) in respect of those heritage assets and their settings.

Accordingly, our client considers that the application should not be considered by the Committee until the applicant and the local planning authority have undertaken a comprehensive assessment of the impact of the proposals on listed buildings (including the Grade II listed St Mary the Virgin Parish Church in Fen Ditton as well as the Grade II listed Papermills and Globe Public House) to the satisfaction of Historic England, and the local planning authority has reviewed this, showing evidence of proper consideration of its duties as contained within s.66(1) of the Listed Buildings Act and Paragraph 134 of the NPPF.

Conservation Areas

Parts of the development proposed under the Application fall within the Central Cambridge Conservation Area and are also in the vicinity of the Fen Ditton Conservation Area. Concerns have been raised by Fen Ditton parish Council that the proposals will have an impact on the Fen Ditton Conservation Area (see paragraph 8.71 of the Committee Report and Part 2 paragraph 4 of Fen Ditton Parish Council's response dated 6 October 2016).

Section 72(1) of the Listed Buildings Act states:

"In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area"

The recent case of *Forge Field* [2014] EWHC 1895 (Admin) has highlighted the need of local planning authorities to have appropriate regard to the duty contained in s.72 (1).

The conclusions in respect of the conservation areas contained in the Committee Report are brief:

"Therefore, the public benefit of the proposal would outweigh any perceived harm to the conservation area as a result of the removal of vegetation and installation of the path as it would increase the opportunities for access to the landscape."

It should also be noted that paragraph 8.67 incorrectly identifies the proposals as falling within "the Riverside and Stourbridge Common Conservation Area". There is in fact no such conservation area, and we believe the Committee Report should instead be referencing the Riverside and Stourbridge Common Area of the Central Cambridge Conservation Area.

The approach taken with respect to conservation areas in the Committee Report is at best 'light touch' and it is far from clear how this can be sufficient to allow decision makers to meet the statutory requirements of s.72(1). Additionally, the balancing exercise undertaken in paragraph 8.72 of the Committee Report falls foul of the law as highlighted by the case of *Forge Field* [2014] EWHC 1895 (Admin). Having "special regard" or paying "special attention" to the desirability of preserving conservation areas and their setting requires more than simply undertaking the balancing exercise required by Paragraph 143 of the NPPF.

Accordingly, our client considers that the application should not be considered by the Committee until the applicant and the local planning authority have undertaken a comprehensive assessment of the impact of the proposals on relevant conservation areas including the Central Cambridge Conservation Area and the Fen Ditton Conservation Area and the local planning authority has reviewed this showing evidence of proper consideration of its duties contained within s.72(1) of the Listed Buildings Act and Paragraph 134 of the NPPF.

Environmental Impact Assessment

A screening opinion in respect of the Application was issued under Regulation 7 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("**the 2011 Regulations**") on 22 May 2017 ("**the Screening Opinion**").

In undertaking the assessment required to deliver its opinion, the County Council deemed the Application to be a Schedule 2 application within the meaning of the 2011 Regulations. Accordingly, an assessment was carried out under Schedule 3 of the 2011 Regulations. Our client considers that the Screening Opinion was not properly assessed against the requirements of Schedule 3. Our client's concerns in this regard are set out below:

1. Part of the assessment related to the impact of the proposals on the existing land use and addressed the impact of the proposals on biodiversity. The assessment concluded that although there would be a net loss of habitat totalling 6,391 sqm, this loss would result in no loss of biodiversity. It is our client's contention that the approach taken in preparing the Screening Opinion was flawed and that there was a failure by the County Council to have proper regard to the ecological impacts of the proposed scheme. Our client considers that the ecological supporting data is particularly weak. Given the scale of the habitat loss, it is surprising that this is considered to lead to no loss of diversity.
2. In applying the approach required by Schedule 3 of the 2011 Regulations, the County Council deal with landscapes of historical, cultural or archaeological significance very briefly. Making reference to the Grade I listed Leper Chapel and the Grade II listed Round House there is a simple statement that "it is not considered that the path will affect the setting of these listed buildings." No consideration is given to the Grade II listed St Mary the Virgin Parish Church in Fen Ditton, the Grade II listed Papermills or the Grade II listed Globe Public House. The Screening Opinion is, therefore, deficient in its consideration of these matters.

3. There was no consideration in the Screening Opinion under Schedule 3 Paragraph 2 of the 2011 Regulations that part of the site is a flood plain and therefore prima facie a wetland.
4. Schedule 3 paragraph 3 (e) of the 2011 Regulations requires that consideration is given to "the duration, frequency and reversibility of the impact". Our client considers that the works involving extensive tree felling and replanting for mitigation over an area of approximately 1.7 ha, as per the applicant's reports, could lead to impacts in the region of 15-20 years and should therefore be considered to be long-term.
5. Our client considers the Screening Opinion to contain an apparent lack of critical approach applied by the author. On a number of occasions words such as "what is considered by the applicant" are used in the Screening Opinion to precede information that then appears to be taken at face value by the author. As a result, it is not clear that the document meets the standards of independence and objectivity required from a decision making body. This is particularly significant given that the Application is being determined under Regulation 3 of the Town and Country Planning General Regulations 1992. The Screening Opinion was also issued in accordance with the transitional provisions contained within Regulation 76 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations"). Regulation 64 of the 2017 Regulations puts a requirement on local planning authorities to carry out their duties "in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest".

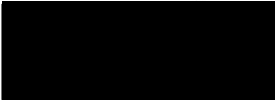
Conclusion

As is set out above, there are a number of shortcomings in the way the application has been handled with regard to listed buildings, conservation areas and EIA screening that may very well mean that any decision taken before they are fully addressed, is susceptible to successful judicial review challenge. Our client therefore requests that the Committee delay its determination of the Application until the matters referred to in this letter have been properly addressed by way of:

1. a comprehensive assessment of the impact of the proposals on listed buildings (including the Grade II listed St Mary the Virgin Parish Church in Fen Ditton as well as the Grade II listed Papermills and Globe Public House) to the satisfaction of Historic England and showing evidence of proper consideration of the duties contained within s.66(1) of the Listed Buildings Act and Paragraph 134 of the NPPF;
2. a comprehensive assessment of the impact of the proposals on relevant conservation areas including the Central Cambridge Conservation Area and the Fen Ditton Conservation Area and showing evidence of proper consideration of the duties contained within s.72(1) of the Listed Buildings Act and Paragraph 134 of the NPPF; and
3. production by the County Council of a new screening opinion under the Town and Country (Environmental Impact Regulations) 2017 which properly deals with:
 - the potential ecological impacts of the proposed scheme;
 - the potential impacts of the proposed scheme on landscapes of historical, cultural or archaeological significance, with a particular focus on the impact on the Grade I listed Leper Chapel, the Grade II listed Round House, the Grade II listed St Mary the Virgin Parish Church in Fen Ditton, the Grade II listed Papermills and the Grade II listed Globe Public House; and
 - the apparent appearance of bias/lack of critical analysis that is present in the current Screening Opinion with clear regard to the duties contained within Regulation 64 of the 2017 Regulations.

Should you have any queries relating to this letter, please contact Edward Long of this firm.

Yours faithfully



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