

# DAC BEACHCROFT

Our Ref: krnh/Park Crescent  
Your Ref: P18/V2651/HH  
8 March 2019

Kerry Street  
Development Management  
South Oxfordshire District Council  
135 Eastern Avenue  
Milton Park  
Abingdon  
OX14 4SB

**By e-mail only**

Dear Ms Street

**RE 5 Park Crescent Abingdon OX14 1DF  
Planning Application Reference P18/V2651/HH - Report to Planning Committee of 13 March  
2019**

We are instructed by Dr Marika Leino and Mr James Frost, the joint owners of 6 Park Crescent, Abingdon and are writing to express concern at the short comings of the officers' report to the Planning Committee of 13<sup>th</sup> March into the above application. The report fails to deal adequately or at all with the requirements of paragraphs 184-2002 of the NPPF when assessing the significance of the heritage assets and the harm caused to them. The report is also misleading in the way in which certain consultation responses, including those of the Conservation Officer, have been reported. As a result, any decision which the Planning Committee takes to approve this application is likely to result in an application for judicial review.

Whilst the committee report assesses the proposals against the requirements of section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990, which sets out the statutory approach that must be taken when assessing the effect of development on the conservation area, the report then considers only the guidance in paragraph 197 of the NPPF, which relates to the effect on non-designated heritage assets. Both Albert Park, which is a Grade II Registered Park and Garden and the Abingdon (Albert Park) Conservation Area, within which the above property lies, are designated heritage assets, as defined by Annex 2 of the NPPF. The report consequently should have assessed the significance of both Albert Park and the Conservation Area and the degree of harm that the proposed development would have on each, including the setting of each, in accordance with the requirements of paragraph 184, 190 and 193-196 of the NPPF. This is particularly important given the lack of any analysis of the revised proposals measured against the NPPF requirements in the Conservation Officer's final consultation comments as compared to her thorough consideration of the harm caused, leading to a recommendation that the application be rejected, in her first two consultation responses.

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In her original analysis response, upon which the Conservation Officer relied and appended to her second response, she noted that the Property lies within and together with the other properties in Park Crescent and Park Road and forms an integral part of the setting of Albert Park. The committee report also notes that the Property lies within the setting of Albert Park. However, despite this, there is no attempt in the committee report to assess the significance of Albert Park or the degree of any harm the development may have on its setting.

Paragraph 190 of the NPPF requires local planning authorities to identify and assess the particular significance of any heritage assets that may be affected by a proposal and to take this into account when considering the impact of a proposal on that heritage asset. As Annex 2 to the NPPF makes clear, the significance of an asset derives not only from its physical presence but also from its setting. The Planning Practice Guidance (PPG) notes that heritage assets may be affected by a change in their setting and therefore being able to assess the significance of the heritage asset and the contribution to its setting is very important to understanding the potential impact and acceptability of development proposals. Despite this clear guidance, there is no such assessment in the committee report.

In her original consultation response, the Conservation Officer assessed the Property as a non-designated heritage asset within the Albert Park Conservation Area and within the setting of the registered Park and Garden of Albert Park as:

- Part of the conscious town planning layout in design of Albert Park and the surrounding residential development
- An integral part of Park Town (sic) and the streets radiating outwards and around the Park
- Views of the villas from the front rear and side and as part of a designed composition of villas located around Albert Park
- In the setting of the registered Albert Park forming an integral part together with other dwellings around Park Crescent

The harm which she identified related not only to the three story extension and the wrap around extension which were originally proposed, but also to the porch, the details of which have remained unchanged since her first consultation response which commented upon the second set of plans submitted. The officer found views from Park Crescent would be harmed by the built form intruding into the space around the Property. Whilst the removal of the wrap around element and the reduction in height of the three story extension may have reduced the impact on views from Park Road and Spring Road, the intrusion into the space surrounding the Property as seen from Park Crescent is no different from before when the officer concluded that the new porch would have an impact on the identified significance of the Property, the Conservation Area and the setting of the registered park.

She also found that the proposals failed to make a positive contribution to the local character and distinctiveness and did not enhance or better reveal the significance of the heritage assets and their settings. These findings mirror specific requirements of the NPPF. Paragraph 192 instructs local planning authorities to take account of the desirability of new development making a positive contribution to local character and distinctiveness when determining applications. Whilst paragraph

200 states that local planning authorities should look for opportunities for new development within conservation areas and within the setting of heritage assets to enhance or better reveal their significance. It is telling that there is no analysis in the committee report as to how either of these objectives is achieved and, in the only report which considered these matters, there was found to be nothing in the proposals which met these objectives.

The Conservation Officer's original report found that the harm caused would be less than substantial. Paragraph 196 of the NPPF states that where development will lead to less than substantial harm to the significance of a designated heritage asset, the harm must be weighed against the public benefits. The officer specifically found that there would be no public benefits. It is important to note this because the matter which she then subsequently considered to bring positive enhancement to the setting of the Property and the Conservation Area (and presumably therefore of public benefit) in her final report, namely the demolition of the garage and shed, was always a part of the proposals and has not been introduced at a late stage.

It is difficult to see how something which was always part of the proposals, and previously not considered to be a public benefit worthy of mention, should suddenly become so. It is notable that there is no consideration in this final consultation response of the impact of the amended proposals on the setting of the registered Albert Park. This despite the fact that the effect of the porch, the position and dimensions of which remain unchanged, was previously found to intrude into the space around the Property and to therefore to have a less than substantial adverse impact upon the setting of the registered Albert Park.

As members will be aware, a finding of less than substantial harm does not equate to a less than substantial objection. The Court of Appeal made this clear in the case of *East Northhamptonshire DC v The Secretary of State of Communities and Local Government* [2014] EWCA Civ 137, referring to the "considerable importance and weight" to be given to the desirability of preserving the setting of heritage assets. This was emphasised in the subsequent case of *R (on the application of Forge Field Society) Sevenoaks DC* [2014] EWHC1895 (Admin) where the High Court made clear that the obligation in section 72 of the Planning (Listed Building and Conservation areas Act) 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area means more than merely giving weight to those matters in the planning balance. Preserving means doing no harm.

In her final consultation response, the Conservation Officer continued to express concerns about the impact on the Albert Park Conservation Area, the setting of the registered Albert Park and the impact on non-designated heritage assets, including 4,5,6 and 7 Park Crescent and other houses aligned around Albert Park. She expressly regretted the removal of the side door canopy, given its contribution towards the character/appearance and visual interest of the side elevation. Nowhere in this response, or in the subsequent report to committee, is there any re-appraisal of the extent of harm or any assessment of these matters, which were previously unacceptable. Indeed, there is no mention of the loss of space around the Property due to the construction of the porch, which was considered so important previously and led to the finding of less than substantial harm. In the absence of a re-appraisal of the degree of harm, contrary to the requirements of the NPPF, members must conclude

that it is the Conservation Officer's view that the harm to the Property, the Conservation Area and Albert Park continues to be less than substantial and that paragraph 196 of the NPPF therefore applies to any assessment of these proposals. However, as noted above, none of this is set out in the report and members are therefore left without proper guidance on how the effects have been assessed and what they should be taking into account when assessing whether or not planning permission and conservation area consent should be granted.

The porch and its previously unacceptable intrusion into the space around the Property, previously considered to be so important to the setting of the designated and undesignated heritage assets, is justified by the Conservation Officer on the basis that side entrances have been permitted at other properties in Park Crescent. However, each application must be considered on its own merits. The amount of land surrounding the dwellings on Park Crescent is not uniform, numbers 5 and 6 being more closely positioned to each other than other properties in Park Crescent. A porch of the proposed dimensions therefore, would not have the same impact on the perception of space between other properties or the gap between other properties as is the case here. Similarly, the physical location of the proposed porch 3 metres forward of the immediately adjacent entrance to number 6 creates a uniquely adverse visual, and hence heritage, impact. This is extremely important when considering the effect on setting, particularly on Albert Park, because it is the setting of Albert Park which would be particularly affected by this aspect of the development. The assessment is woefully deficient in failing to consider this.

This matter was considered in detail in Mr. Frost's objection dated 11 February. That letter drew considerably on the Heritage Rebuttal Report prepared by the renowned heritage expert, Dr. Stephen Bond, which Dr. Leino had commissioned and considered in detail the side porches which had been constructed in Park Crescent over the years and the impact of each on the Conservation Area. Had the Conservation Officer paid due regard to the requirement to consider the effects of each application on the heritage assets then she could not have come to the conclusion that she did, namely, that because porches had been permitted previously, then the current proposal could not be refused. This response entirely ignores her previous assessment of the less than substantial harm caused by the porch but also the fact that a number of other side entrance developments permitted in the past would not necessarily be permitted now.

The committee report and Conservation Officer's comments also fail to consider, as required by the PPG, the implications of cumulative change. This was something which The Garden Society specifically drew attention to in its first consultation response. In this respect the committee report is again misleading. The Garden Trust did not expressly state that it was concerned with cumulative impact but rather urged the local planning authority to consider the cumulative impact of a further side porch. This is the very thing which the Conservation Officer and the committee report have failed to do. In addition, the committee report fails to refer to the two objection responses which The Garden Trust made to the proposals. This is important because The Garden Trust is a statutory consultee where proposals may affect a Registered Park or Garden. Great weight should therefore be given to its response. In this case those responses have not even been reported to the committee.

Paragraph 194 of the NPPF is clear – any harm to a heritage asset from development within its setting must require clear and convincing justification. There is nothing in the Conservation Officer's report to

suggest that the harm has changed from the previously assessed less than substantial, yet the only justification for the porch appears to be that others have been permitted (without any consideration of the specific circumstances including design setting and cumulative impact).

Moreover, paragraph 5.3 of the committee report does not accurately record the Conservation Officer's final consultation response. Nowhere in her final response does she say that, in terms of the overall balance, the proposal would preserve the character and appearance of the Conservation Area. Her conclusion rather is that, on balance the scheme is now acceptable. This is not the same as saying that it would preserve the character and appearance of the Conservation Area. On the contrary, she expressly noted with regret the partial demolition of the monopitch rear outbuilding and the side door canopy, both of which *contribute towards the character/appearance and visual interest or the rear elevation and side elevations respectively*. These comments directly contradict her advice as reported in the committee report. Without a careful re-appraisal, as required by the NPPF, and in the light of what the Conservation Officer actually said in her final response, members cannot be satisfied that there will be anything other than harm to the various heritage assets. As noted above, where less than substantial harm is identified, paragraph 196 of the NPPF requires that the harm be balanced against any public benefit resulting from the development.

The only attempt at the balancing exercise required by paragraph 196 of the NPPF is not in the committee report but in the Conservation Officer's final consultation response. The one matter identified in that response which she considered to be of public benefit and therefore to be weighed in the balance against the less than substantial harm, namely the removal of the garage and garden shed (itself entirely hidden from public view), was not new to the revised proposals and had not been deemed to be of public benefit previously. In any event, members can no longer take the removal of the garage into account because it has already been demolished. Accordingly, there is no public benefit to offset the less than substantial harm previously identified.

The balancing exercise which has been carried out is therefore based on an erroneous application of the law. A public benefit cannot exist if the "harm" has already been removed and development cannot be permitted on the sole basis that development has been permitted elsewhere without first examining the impact of this particular development, including any cumulative impact that there may be on harm to the designated and non-designated heritage assets and their settings. It is not sufficient to say that the frontage of the Property is more important in heritage terms, as appears in the Conservation Officer's final response. She clearly identified the encroachment into the space surrounding the Property as a factor which led her to conclude that less than substantial harm would be caused by the proposals. On the side elevation, as seen from Park Crescent and therefore from the registered Albert Park, the proposals are no different than previously and the porch will erode the important gap between the properties. There are no grounds on which she can now come to a different conclusion, particularly in the light of her further comments about the harm caused by the removal of the existing side door canopy.

In the light of the previous findings of the Conservation Officer that the porch would cause less than substantial harm and her identification of harm to the character/appearance and visual interest of the side elevation caused by the removal of the existing side door canopy, there are no grounds on which the committee can safely conclude that the proposed development would preserve the character and

appearance of the Conservation Area and would have no detriment on the setting of the designated and non-designated heritage assets. The requirements of section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 have not been met.

Further, given the deficiency in the analysis of significance and the degree of harm to the identified designated and non-designated heritage assets in both the Conservation Officer's final consultation response and the committee report; the failure to consider at all the degree of harm caused to the setting of the grade II registered Albert Park; and the failure to draw members attention to the need to assess the proposed development against the requirements of paragraph 196 of the NPPF because of the less than substantial harm which has been found, it would be unsafe for members to rely upon the officer's recommendation and to grant planning permission. Based on the Conservation Officer's own assessment of the proposals, the only correct option open to members would be to refuse permission on the grounds that the proposals do not preserve the character and appearance of the Abingdon (Albert Park) Conservation Area and cause less than substantial harm to heritage assets, which harm is not outweighed by any public benefits (there being none). To do otherwise would invite an immediate judicial review challenge.

Yours sincerely



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