

APPEAL REF: APP/C1570/W/22/3296426

Outline planning application for the erection of up to 233 residential dwellings including affordable housing, with public open space, landscaping, sustainable drainage system (SuDS) and associated works, with vehicular access point from Radwinter Road. All matters reserved except for means of access

Land south of Radwinter Road (East of Griffin Place)

Opening submissions on behalf of the Rule 6 Party

1. Saffron Walden Town Council and Swards End Parish Council (together “the Rule 6 Party”) objected to application UTT/21/2509/OP (“the Appeal Application”), and fully supported both the recommendation of the professional officers set out in the officer’s report (“OR”) to the planning committee of Uttlesford District Council (“the LPA”) and the reasons for refusal set out in the decision notice dated 18th March 2022 (“the DN”).
2. The Rule 6 Party made the decision to participate in this appeal, and to seek Rule 6 status, in that context, and with the intention of providing supplementary evidence on, in particular, air quality.
3. However, the Rule 6 Party has been left high and dry by the changed position of the LPA; they do not agree that the reasons for refusal have been adequately addressed, and consider that:
 - a. Notwithstanding the progress made on addressing the reasons for refusal, the resultant position is one that should be considered in the planning balance exercise, and does not necessarily equate to a grant of permission;
 - b. In any event, there are shortcomings (1) to be addressed in the proposed conditions to be imposed in the event that the appeal is allowed, and (2) to be considered as part of the planning balance exercise in the proposed planning obligations; and
 - c. Most importantly, the proposed technical solution to highway issues – involving mitigation without which the Appeal Application cannot properly be allowed – gives rise to heritage considerations which have not been properly considered, and to harm which is sufficient to warrant dismissal.

4. In order to explain this last point, the Rule 6 Party will rely on the expert evidence of Corrie Newell. It is worth putting that evidence in a context:
 - a. When making a decision on a planning application for development that affects a listed building or its setting, a local planning authority must 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 (as per ss.16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990). **Barnwell -v- East Northamptonshire DC** 2014 made it clear that in enacting s.66(1) Parliament's intention was that 'decision makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise'. Although decision-making policies in the NPPF and in the development plan are to be applied, they cannot directly conflict with or avoid the obligatory consideration in these statutory provisions.
 - b. Likewise, when considering any planning application that affects a conservation area a local planning authority must pay **special attention** to the desirability of preserving or enhancing the character or appearance of that area. This duty goes beyond just decisions on permissions and applies to the exercise by the local authority of all its other functions under the planning acts. The **South Lakeland** case famously decided that the "statutorily desirable object of preserving the character of appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say preserved", so at face value development which merely maintains the status quo would satisfy the statutory consideration. However, the policies in the NPPF seek positive improvement in conservation areas. Most explicitly paragraphs 197 and 206 require that local planning authorities should take into account "the desirability of new development making a positive contribution to local character and distinctiveness", reinforced in the design policies (such as paragraph 134).
5. Therefore, whilst the South Lakeland case is still relevant to the interpretation of statute, policies in the NPPF encourage enhancement, and compliance with both the statutory consideration and the NPPF policies would require account to be taken of the desirability of taking opportunities to enhance the character and appearance of a conservation area.
6. In this case, the Rule 6 Party's position is that harm is identified to the settings of the listed buildings St Marys Church and Ponces Hall and to the setting of the Commons within the Conservation Area, and that there is no heritage benefit identified to weigh against that identified heritage harm.

7. Aside from “heritage”, the other “technical” evidence of the Rule 6 Party is presented in written form; it can be weighed in the planning balance exercise against the evidence of the Appellant and the LPA in the usual way.
8. However, the Rule 6 Party represents local democracy at a point where it is closest to the people it represents; this local perspective will be explained in evidence by a representative of the Rule 6 Party.
9. The Rule 6 Party recognises that there would be limited benefit resulting from the appeal proposal, most obviously in providing housing in a district with no 5YHLS. However, even with a “tilted balance”, that benefit is insufficient to outweigh the objections to the appeal proposals on heritage grounds when weighed in a planning balance exercise, especially in the context of greater emphasis on seeking beauty in, and the highest quality of, design because of the awful impact on an historic market town and its designated heritage assets. The other considerations are also to be weighed in that balance, and consideration given as to whether the conditions and planning obligations adequately mitigate other harm.
10. The Rule 6 Party’s objections are tellingly and appropriately reflected in the strength of local feeling against the development expressed in the third party representations, which are based on proper planning grounds.

Philip Kratz
GSC Solicitors LLP
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