

AHA! Affordable Housing In Arundel
"Seeking to Preserve Arundel"

Riverside House, 2 Fitzalan Road, Arundel, BN18 9JS

Monday 3rd Deecember 2018.

Dear Juan & Anita,

Re Blastreat , Fitzalan Road.

We are pleased that you have refused planning permission for most of the major grounds that we , our ward members and Town Council have been raising for many months and wish to thank you for your hard work. However, we wish to place on record that there are , in our view, some potential omissions or errors in the Officers Report ,and, in our view, it is paramount that these are corrected. Failure to urgently correct these will lead the applicants or future applicants to incorrectly use the Officers Report as a precedent/ guide for their next application. The potential areas that require clarity / enforcement are as follows:

1. **Swallow Brewery:** the report infers that the brewery building is the last remaining part of the now demolished brewery building. This is repeated by the conservation officer. This is , with respect, incorrect. On the opposite side of Fitzalan RD from the development site, inside the conservation area, remains some 10,000sqft of commercial premises dating from 1820-1840 including 2 chimneys (1820 and 1840), a forecourt and a malt house from 1890 . The threatened building is part of the complex and to harm part, harms all- including the conservation area. This point has been continuously ignored by all parties. Will you correct this aspect of your report?
2. **Setting of the Conservation Area/ ancient monuments / national parks and listed buildings:** Your report states that the setting of the conservation area will not be harmed. We question whether this is in partly because you have not taken point 1 (above) into account? Further, and contrary to your officer report, we attach the recent case law on settings which confirms that a new development does not have to be visibly connected to a heritage asset / conservation area/ monument / park to damage its setting, it only needs to be in the environment/ townscape. In this case, the site will be visible from the gates of the castle, the south downs nation park and many of the listed buildings in the conservation area of Arundel. The impact on the setting will be major and in direct breach of area policy 3 . Further, the NPPF contains firm policy restricting buildings visible from monuments and nation parks. To this end, we have taken photos from the national park and confirm that the roof of the proposed building will be visible from

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many important view points and indeed it would be the only roof (except Martlets Court) which would be visible from many areas of the protected flood plan (national park). We are unsure why south downs national park were not consulted , pls confirm. Nb. the National Park boundary is only circa 100 from the site. Will you review these aspects of your report?

3. **Trees:** the officer's report infers there is no objection regarding trees. AHA! spoke to Mark Warwick (Arun's tree officer) about 2 weeks ago and he stated he was unable to properly assess the tree report because the applicants had failed to show the RPA of the trees (under TPO's) in the garden of Martlets Court and/or on the side of the highway. Until this is done, in our view, it is incorrect to say there is no tree objection. Will you correct this?
4. **Windows and rights of light and daylight:** The officers report states that the daylight assessment is acceptable. However, there remain two major errors: first, since the daylight report was conducted, the applicants have submitted new plans confirming riverside house and ottmers quay are some 600mm closer to the development site (we say they are closer than that). That means the proposed building will impact on the windows and the report was based on incorrect plans so it is not credible. Secondly, and incredibly, the daylight report still completely fails to mention or assess the nearest window in the southern gable of riverside house which is some 7m from the proposed buildings. In this regard your report is also wrong because it fails to mention this window, states the nearest window is about 4m farther away than it is and states that the applicants daylight report is correct- which it obviously is not. Will you now correct it please?
5. **Southern Water:** we note that your report states that there is no risk of flooding. Our reading of the Southern Water reports is that they requested a Hydraulic Capacity Study (which was not forthcoming from the applicants) and, in the absence of that HCS, the desk top study that Southern Water have conducted stated that there would be a "serious risk of flooding". Will you now correct your report in this regard?
6. **Owner's Certificate :** please will you now confirm , (based on the Highways Officer's Report) that you accept the applicants committed a criminal offence pursuant to Section 65 . 5) & 6) of the Town and Country Planning Act 1990 by failing to correctly serve the Owner Certificate and confirm what steps Arun is taking against the applicants? As qualified Town Planners with an in house legal team being advised by Architects , it is inexcusable that the applicants refused to serve the Owners Notice correctly in spite of many requests. Further, this allegedly fraudulent conduct has led to vast costs being incurred by Arun District Council , Arundel Town Council, AHA! and the

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Statutory Consultees. The applicants are potentially liable for these costs if the costs have arisen as a consequence of alleged illegal/criminal conduct. Indeed, we believe Arundel have a duty to its rate payers in pursuing these costs.

7. **Invalid Application: Outline the site boundary:** please will you now accept that the applicants wholly failed to outline the whole site correctly in red (inclusive of visibility splays) in spite of being asked by Arundel and AHA! from circa April 2018 to do so properly and consequently the application should not have been validated and or should have been corrected. We still fail to understand how an application was validated when it did not show visibility splays and was not correctly showing the site area/ area outlined in red. Again, what steps is the LA taking against the applications to seek costs against the applicants in respect of submitting and then consistently allowing a false application to progress? If the above is the case, In our view, the fact that the applicants breached the rule but then refused to correct this and the fact that they presumably would have known that correcting it would lead to an immediate refusal on highway grounds shows the applicants to be thoroughly culpable, reckless and dishonest (and we use those words in their legal sense).
8. **Flint retaining wall :** the Conservation Officer has stated that there are no buildings on the site (other than part of the former Swallow Brewery complex) that are worthy of retention. We disagree and cannot understand why this would be stated. The CAAC stated in 2017 that the flint wall had merit and should be retained if possible. The wall starts some 200m away at Queens street and runs along the perimeter of much of Queens Lane (including the designated cottages on the corner of Queens Lane and Queens Street) and around Fitzalan rd incorporating Arden Guest House (a designated heritage asset some 20m from the site) and it is therefore an important part of the local character. Further, maps indicate it was part of the early boundary from circa 1840 and it may be appropriate to list it in its own right or declare it a Heritage Asset. What steps will Arundel take to correcting this and indeed preserving the wall which we believe should also be incorporated into the Article 4 Direction already on the site.
9. **Other:** since the applications on the site have been submitted since late early 2017, the site owners have noticeably allowed the Heritage Asset (part of the former swallow brewery) to fall into substantive disrepair. Windows are now broken, vegetation has been allowed to grow up the outside and an over flow pipe has now been permanently leaking for some 3 months (this will cause major damp and damage particularly during the winter). We say this is likely to be a deliberate attempt to render the building unviable. We note the NPPF states that heritage assets should not be condemned for demolition due to poor

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maintenance and applications to demolish should not take poor condition into account , but rather, LA's should take steps to ensure heritage buildings are maintained. Please will you now confirm what steps Arun will take to ensure the buildings does not become unviable due to wilful (and illegal) neglect?

Please would you confirm what steps the council will now take in respect of the above points. Please note there are some important points of law in this letter and we advice you place this before your in house counsel.

Suffice to say, AHA! remains committed to enforcing all aspects of this misconceived development and stands ready to defend this matter both at appeal or in the event a modified application be submitted.

Kind regards,

Adrian Burrows.

For the AHA! Campaign Group.

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Monday, 26 June 2017

Setting of a Listed Building

Not for the first time, the High Court has been called upon in *Steer v SSCLG* [2017] EWHC 1456 (Admin) to consider the duty of a decision-maker under section 66 of the Listed Buildings Act to have special regard to the desirability of preserving (among the other things listed in that section) the *setting* of a listed building. The glossary annexed to the NPPF defines the “setting of a heritage asset” as:

“The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”

Paragraphs 128 to 134 of the NPPF explain how section 66 is expected to work in practice, and further guidance is to be found in the government’s online Planning Practice Guidance, in addition to a publication by Historic England: “*The Setting of heritage Assets (Historic Environment Good Practice Advice in Planning: 3)*” Although the last of these does not constitute a statement of government policy, it is intended to provide information on good practice in implementing historic environment policy in the NPPF and PPG. I don’t propose to include quotations here from these documents, which will be found in the judgment.

The instant case concerned the setting of Kedleston Hall, Derbyshire - a Grade I Listed Building owned by the National Trust (who objected to the proposed development because, in its opinion, it would have a harmful impact on the setting and significance of the heritage asset, which would not be outweighed by the benefits of the housing). The NT, however, was not a party to these proceedings, but Historic England appeared by counsel as an interested party.

The claimant (a local resident) had objected to the two planning applications that had been the subject of appeals allowed by the Secretary of State’s planning inspector. The first application was for outline planning permission for the erection of up to 400 dwellings and a convenience store. The second application was for outline planning permission for the erection of up to 195 dwellings in the southern half of the same site.

The Claimant’s principal ground of challenge was that the Inspector erroneously applied a narrow interpretation when determining the setting of Kedleston Hall, in which a physical or visual connection was needed, despite the existence of an historical, social and economic connection between the Hall and its agricultural estate lands. This approach, it was claimed, was inconsistent with the broad meaning given to “setting” in the NPPF, the PPG and Historic England’s ‘Good Practice Advice’. At the Inquiry, there was a body of expert evidence stating the historical connection did bring the appeal site within the setting of the Hall.

In her conclusions, Mrs Justice Lang noted that there was a significant amount of material before the Inspector in support of the submission that the appeal site formed part of the setting of both Kedleston Hall and the Park because of the historical, social and economic association between the Hall and the agricultural lands of its Estate and drew attention to Historic England’s observations on the issue of the setting of Kedleston Hall and its Park, the significance of that setting and the impact of the proposals on the significance of the setting, which Historic England had set out in a written response to consultation by the LPA. English Heritage’s position was that the proposed housing development would harm the significance which Kedleston Hall and the Grade 1 registered Park and Garden derives from its setting.

The National Trust had also drawn attention to the significance of Kedleston Hall’s setting, a point that was also reiterated by the Gardens Trust, who had pointed out that

“.....the setting of a heritage asset is a much wider concept than mere visibility” and that *“Historic England defines setting as the surroundings in which [the asset] is experienced [their emphasis]. Views, while they may be an important part of this experience and clearly identify the presence of a setting, do not constitute its totality, or even the greater part of it..”*. The Development Control Archaeologist at Derbyshire County Council expressed a similar view.

Mrs Justice Lang pointed out that the Inspector was required to address this evidence in his decision letter, whether or not he agreed with it. It related to a main issue in the appeal, on which the developer disagreed with the objectors. Much of the evidence was given by experts. Historic England was a statutory consultee and a *“decision-maker should give the views of statutory consultees ... ‘great’ or ‘considerable’ weight. A departure from those views requires ‘cogent and compelling reasons’*. (See *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin), at [72].)

The Inspector accepted the evidence as to the historic social and economic connections between the Hall and Park and the area in which the appeal site was situated, but he rejected the evidence and submissions that the appeal site was part of the setting of the Hall, despite the historic social and economic connections. The Inspector concluded that the appeal site was not part of the Hall’s setting because of the lack of a physical or visual connection, which he treated as essential to the identification of *“surroundings in which a heritage asset is experienced”* (NPPF definition of “setting”). The Inspector recorded that it had been argued that the historical, social and economic connection - the appeal site being part of the estate of which the Hall and Park were the hub - brought the appeal site within the setting of the Hall. He determined, however, that there has to be more of a physical or visual connection than that, otherwise land completely remote from the Hall could be deemed within its setting.

In the judge’s view, the Inspector’s findings clearly indicated that his focus was upon identifying a visual connection, and assessing the proposal’s impact upon it. The historic social and economic connections were set to one side in this exercise. (The judge did not therefore accept the Secretary of State’s submission that the Inspector merely formed a planning judgment that the historic social and economic factors were of insufficient weight, as there was no assessment of the weight to be accorded to them in the Inspector’s decision-making process. In her view, the Inspector’s approach to the other heritage assets also confirmed that he treated the physical and visual connection as determinative.)

Thus the Inspector had adopted a narrow interpretation of setting which was inconsistent with the broad meaning given to setting in the relevant policies and guidance which were before him. Whilst a physical or visual connection between a heritage asset and its setting will often exist, it is not essential or determinative. The term setting is not defined in purely visual terms in the NPPF which refers to the *“surroundings in which a heritage asset is experienced”*. The word *“experienced”* has a broad meaning, which is capable of extending beyond the purely visual (as confirmed by the policy and practice guidance that had been referred to).

Mrs Justice Lang therefore agreed with the submission of the claimant and Historic England that the Inspector had adopted an artificially narrow approach to the issue of “setting” which treated visual connections as essential and determinative. In adopting this approach, the Inspector made an error of law, and his appeal decision was accordingly quashed.

This case is clearly important in establishing the wide scope of the term “setting” where it is used in section 66 of the Listed Buildings Act, and in the various advice on this issue published by ministers and by Historic England.

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