

Dear Chairman

Further to my previous letter, it has further occurred to us, looking again at the officer's recommendation,

- (i) That there is no reference in the officer report to the duty under Section 13 of the Planning (listed Buildings and Conservation Areas) Act 1990 to refer the matter to the Secretary of State, given that the works to the listed building constitute substantial demolition of a listed building (*DCLG Arrangements for handling Heritage Applications – Notification to the Secretary of State (England) Direction 2009* applies). In effect this direction means that the LPA cannot grant listed building consent - it can only make a resolution to do so, and must then notify the SoS.
- (ii) That there is no mention in the officer report of the objection to the Listing Building Consent application from the Ancient Monuments

Society – a statutory consultee.

I will add these two points to the formal, hard copy submission of our letter, which I will post tomorrow.

With thanks
Jonathan Bate

From: Jonathan Bate
Sent: 12 September 2013 17:35
To: cllrovannooijen@oxford.gov.uk
Cc: 'n.grigoropoulos@oxford.gov.uk'
Subject: West Area Planning: Ruskin College Site

To: Councillor Oscar Van Nooijen [cllrovannooijen@oxford.gov.uk]
Chair, West Area Planning Committee
Oxford City Council
St Aldate's Chambers
109-113 St Aldate's
Oxford OX1 1DS

Dear Sir

**Re: Application by Exeter College Oxford the planning permission and listed building consent
LPA Application References 13/00832/FUL and 13/01075/LBD**

I write further to the west area planning committee meeting held on 10th September. May I start by thanking you for giving us the opportunity to address the planning committee. You will recall that Peter Goatley, who spoke on behalf of the college, reiterated Worcester's concern regarding the scale and overbearing nature of the development proposed by Exeter. He also made clear Worcester's dismay at feeling the need to have to oppose the development. As you are aware, Worcester is and remains supportive of the aspiration of Exeter College to provide additional accommodation for its students and also of the principal of the reuse of the former Ruskin College site.

As a subsidiary point in his presentation, he identified that Worcester has a number of legal concerns regarding both process and how the matter has been progressed to date. As he indicated, those matters were to be addressed separately with the council out with the terms of his presentation. However, the chairman of the planning committee asked him to identify at the meeting what those concerns were. Quite properly, he sought to answer the chairman's question. As you may be aware, this led to the chairman moving the resolution, which was approved by committee, to defer the matter to a later date. We welcome the opportunity that that deferral may present both to the council, to Exeter (as the applicant for permission) and other parties, including Worcester and local residents, to further discuss the scheme. For our part, it is my sincere wish that Exeter can amend its scheme, particularly its western component, so as to produce a more sympathetic relationship with Worcester's adjacent buildings and designated heritage assets.

Be that as it may, the chairman appeared to be vexed as to the raising of the legal concerns which he asked Mr Goatley to identify. As was explained outside of the committee meeting subsequently, we had only recently been provided with a copy of the officer's report and it was at that stage that a review of the council's approach became relevant. As I also explained, given the controversial nature of this proposal, the interest

of a range of parties, including those of a community nature, obviously created the potential for some form of challenge subsequent to a determination. That would be in no one's interest given the prospect of prolonged uncertainty which with would thereby ensue. I further understand that the nature of this proposal is one which also would have the potential to fall within the scope of the Aarhus Convention. That would give rise to a clear prospect of costs protection in the event of an application for judicial review being made, perhaps by some community-based group.

Mr Goatley, when asked, stated that he had identified six principal points which gave rise to potential legal concern. He agreed on behalf of the college to set these out in writing, which I do below:

1. The planning application by Exeter College was screened by the Council as not being Environmental Impact Assessment (EIA) development requiring the submission of an Environmental Statement. That seems surprising. The reasons given are
 - a. that the development is of no more than local significance,
 - b. it is not proposed for an environmentally sensitive location nor does it give rise to unusually complex and potentially hazardous environmental effects.

The proposal involves the partial demolition of a grade 2 listed building, in a conservation area, adjacent to a grade 2* registered park and garden and setting of a grade 1 listed building. The summary comments of the officer carrying out the screening opinion was that "site falls below minimum size for an urban development project under 10b of schedule 2 of the 2011 Regulations. Although sensitive in conservation terms, an EIA is not required in this case". There is no explanation as to how this conclusion was arrived at. This decision appears arbitrary, unexplained and defective as a matter of law.

2. The officer's report to committee does not indicate how "special regard" in accordance with the statutory tests has been had to the various listed buildings and their settings and which will be affected. That appears to fail to follow the proper consideration set out in section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the judgment of Lang J in **East Northamptonshire –v Secretary of State for Communities and Local Government [2013] EWHC 473(Admin)**.
3. The work proposed to Ruskin College, a grade 2 listed building, is so significant that it cannot be regarded as causing otherwise than "substantial harm" for the purposes of paragraphs 132 to 133 of the NPPF. The policy dictates that such a step "should be exceptional". That policy requirement is not addressed in the officer's report.
4. Worcester considers that substantial harm to setting of the grade 1 listed Worcester College and its grade 2* registered park and garden would arise from the proposed development. If so that would fall to be regarded as "wholly exceptional". Whilst the officer takes a different view, the relevance and importance of the test is not addressed in the officer's report.
5. Further, (and in respect of all of the designated heritage assets) paragraph 133 of the NPPF provides that where a proposed development would lead to substantial harm to or total loss of significance of the designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public

benefits that outweigh the harm or loss, or (and so as Ruskin College is concerned) all of the following apply: the nature of heritage asset prevents all reasonable use of the site; and no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; conservation by grant funding or some form of charitable or public ownership is demonstrably not possible; and the harm or loss is outweighed by the benefits of bringing the site back into use. None of those matters appear to have been identified or properly addressed in the officer's report.

6. The officer's report (at paragraph 14) appears to suggest that the presumption in favour of sustainable development set out in paragraph 14 of the NPPF applies to this application. By reason of the operation of footnote 9 (within paragraph 14 of the NPPF) that cannot be so as "specific policies in this framework indicate development should be restricted". Those policies include policies relating to designated heritage assets set out in section 12 of the NPPF.

These are cogent concerns and it would have been remiss for them not to have been explained in the light of the chairman's question.

As I have indicated above, Worcester and its professional advisers remain wholly ready to engage both with the council and with Exeter to seek to explore a satisfactory way forward.

I look forward to hearing from you.

Yours sincerely

Jonathan Bate

Professor Jonathan Bate
Provost
Worcester College

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Hard copy follows by post