



Appeal Decision

Hearing held on 12 July 2016

Site visit made on 12 July 2016

by **Cullum J A Parker BA(Hons) MA MRTPI IHBC**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 August 2016

Appeal Ref: APP/V2255/W/15/3141300

**Former Macknade Garden Centre, Canterbury Road, Faversham,
Kent ME13 8XE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Marston's PLC against the decision of Swale Borough Council.
 - The application Ref 14/504619/FULL, dated 13 October 2014, was refused by notice dated 2 October 2015.
 - The development proposed is described as '*demolition of existing structures and erection of a restaurant/public house, associated residential accommodation, car park, access, landscaping and ancillary works*'.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing structures and erection of a restaurant/public house, associated residential accommodation, car park, access, landscaping and ancillary works at Former Macknade Garden Centre, Canterbury Road, Faversham, Kent ME13 8XE in accordance with the terms of the application, Ref 14/504619, dated 13 October 2015, subject to the conditions set out in Appendix A.

Preliminary Matters

2. At the Hearing I sought clarity from the main parties on the drawings that formed the proposed development. These were agreed between the main parties, and are listed within the relevant planning condition in Appendix A of this decision. For the avoidance of doubt, it is these drawings which I have formed my decision upon.

Application for costs

3. At the Hearing an application for costs was made by Marston's PLC against Swale Borough Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the character and appearance of the street scene and area more generally, and;
 - Whether the proposed development would preserve the settings of the adjacent listed buildings.

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Reasons

Character and appearance

5. The appeal site is currently unoccupied, with its most recent lawful use as a garden centre ceasing a number of years ago. At the present time the site is unoccupied; and appears to have been so for some time with nettles, buddleias and other plants interspersed with areas of concrete aprons which served the earlier garden centre use. There are some structures on the appeal site, such as single storey buildings; which appear to be of relatively simple construction and served the previous commercial garden centre use.
6. The street scene is characterised by a terrace of cottages and Oast towers (the latter of which are Grade II listed buildings) to the south of the site, with some large barn-like buildings beyond. To the east is Selling Road, which, behind a large car parking area to its boundary with Canterbury Road, are buildings that form part of the Macknade Fine Foods complex. To the north of the appeal site is the A2 (Canterbury Road), which is the main trunk route between Faversham and Sittingbourne to the west and to Brenley Corner and the M2 to the east. On the opposite side of Canterbury Road is a petrol filling station, with a large canopy and illuminated fuel price sign, with residential estates beyond. To the west is Macknade Manor complex, which is Grade II listed, and includes buildings and structures such as the Coach House and a brick built garden wall.
7. The Council pointed me to the fact that the southern side of Canterbury Road is much less developed than the northern side. However, the immediate context of the appeal site visually is that it is wedged between two developed sites. I acknowledge the Council's assessment, that development present along the southern side of Canterbury Road is more sporadic than that the northern side. However, the specific context of the appeal site is that it reflects an urban fringe or edge of town location part of the countryside; being as it is wedged between built up environs to its south, north, east and west.
8. In terms of the site's layout, any built form would be set back a short distance from both Canterbury Road and Selling Road, allowing areas for both seating and landscaping. It would also be set back some distance from the wall serving the gardens at Macknade Manor to the west. In practice, this would allow views of this and both Macknade Manor and the listed Oasts to the south, whilst ensuring that the site does not appear visually 'hard up' against either; thus maintaining a degree of separation between the different buildings. Visually this is aided by the location of parking areas to the rear and along the garden wall to the west, which would add to the overall spacious nature of the development within its plot in relation to the wider context.
9. The Council's reason for refusal indicates that the amount of coverage in relation to built-up form would mean that opportunities for landscaping would not be possible. However, the submitted drawings show clear areas for landscaping around the site, with larger areas located on the northern and eastern sides of the site. These areas, together with the use of planning conditions, would enable the Council to ensure that landscaping provides an opportunity to promote and reinforce local distinctiveness. It would also be possible that such conditions could seek the materials to be used for surfacing the car park, so that it does not appear as a large area of asphalt. Given my findings in terms of the location of the site, its former built up use, and its context between existing built up elements of the street scene, I do not find

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that the proposal would result in harm to the rural character and appearance of the area.

10. In terms of development plan policy, the area to the north of Canterbury Road is contained within the built-up area boundary, whereas the appeal site does not lie in this area. The Council therefore considers that the appeal site lies within the countryside for planning policy purposes. Policy E6 of the *Swale Borough Local Plan 2008* (SBLP), seeks to restrict development within the countryside to specific categories which the proposed scheme does not meet. However, I heard from the Council that they seek the redevelopment of the appeal site from a pragmatic position, and pointed me to recent, but no longer extant, planning permission for a retail scheme. In this respect, whilst the proposed development does not necessarily meet the criteria set out in Policy E6, it reflects the policies of the Framework in that planning should be a creative exercise in finding ways to enhance and improve the places in which people live their lives, whilst taking account of the different roles and character of different areas.
11. It is also clear that the proposed development would result in considerable economic benefits to the local area as detailed in the appellant's case which is not disputed by the Council; both in terms of employment opportunities and the contribution financially to the local economy. In this respect, the proposal would help to contribute to building a strong, responsive and competitive economy by supporting growth and innovation. It would also see the redevelopment of a site, which in its current state is tired and overgrown in appearance, and its replacement with a building designed to reflect a public house that has evolved over time. The proposal would therefore help enhance the built and historic environment by ensuring that a currently derelict and prominent piece of land near to the entrance of the ancient town of Faversham is utilised.
12. These are all factors which point towards the granting of planning permission. Indeed, when Policy E6 of the SBLP is calibrated against the aims of national policy, the economic benefits of the proposal and the Council's desire to see the redevelopment of the site (albeit for a different development), it is clear that these support a redevelopment of the site. What is more, given my findings in respect of the impact on character and appearance within its context, I find that the proposal in this case is acceptable in principle.
13. I therefore conclude that the proposed development would not result in material harm to the character and appearance of the street scene and area more generally. Accordingly, the proposal would accord with Policies E1, E6 and E19 of the *Swale Borough Local Plan 2008* (SBLP), which, amongst other aims, seek to enrich the qualities of the existing environment by promoting and reinforcing local distinctiveness and strengthening the sense of place. It would also accord with the Policies of the Framework which include proactively driving and supporting sustainable economic development and always seeking to secure high quality design.

Heritage assets

14. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended (PLBCA), sets out that 'in considering whether to grant planning permission for development which affects a listed building or its

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setting...the Secretary of State¹ shall have special regard to the desirability of preserving the building or its setting. In this case, the appeal site is located adjacent to an existing brick built wall, which encloses a kitchen and lawned garden at the Grade II listed building Macknade. The appeal site is also located a short distance from a pair of conjoined Grade II Oast towers located to the south of the site. The main parties agree that for the purposes of the appeal, the Coach House and the garden wall serving Macknade Manor are curtilage listed and therefore, in essence, protected in the same manner as the listed building. Having seen the physical and associative relationship on site between the kitchen gardens and the manor house, I see no reason not to concur.

15. The appeal site is considered to contribute to the agricultural evolution of this part of Faversham, with the manor house at Macknade, the Oast towers and the overall farm complex intrinsically linked to the more bucolic nature of the south side of Canterbury Road. However, I saw that with the walled kitchen garden and boundary wall with Canterbury Road effectively forming a curtain wall, Macknade Manor is an introspective looking site. Indeed it is the ability to see the mixture of manorial buildings and agricultural buildings such as the cow sheds, stables and barns (which lie within and outside of the grounds of the listed building) that contribute towards the significance of the listed building and its setting. In this respect, the contribution that the appeal site makes, being an apron of plant-scrubbed concrete that has clearly been disassociated from Macknade Manor through use as a Garden Centre and more recently as a disused area, means that in practice the appeal site makes a very limited contribution to the setting of the listed building and, on the evidence before me, is principally based upon its visual relationship.
16. I heard concerns raised from interested parties relating to noise whilst in the gardens arising from the proposal. It is clear that areas of the walled garden are screened, in part, from the ambient noise level. Although the practical effect of the screening is much reduced by the established road noise emanating from Canterbury Road. Indeed, at the time of my site visit, at roughly 17:15 to 18:15, with wet weather, road noise was clearly audible from within the walled garden. On the basis of the evidence before me, it is unclear as to why the proposed development would increase noise levels to an extent that it would be detrimental to its setting or in a way that would harm its economic viability. I am reinforced in this view by the fact that I have been provided with no technical information that supports the assertion that the proposal would result in a degree of noise which would be specifically harmful to the significance of the heritage asset.
17. Whilst I acknowledge that the proposal seeks a measure of change to the setting of the nearby listed buildings in the form of Macknade Manor and the Oast towers, the degree of change in this instance does not equate to harm. Indeed, at the very worst, the proposal would result in a neutral impact on the significance of the settings the listed buildings. The redevelopment of the appeal site which has been unoccupied for a number of years with a scheme that would not be harmful to the character and appearance of the street scene or area more generally, as considered in the first main issue above, means that the proposal would preserve the setting of the listed buildings, for which I give

¹ In this case, the Inspector acts 'in the shoes' of the Secretary of State in exercising this special regard as their appointed person.

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considerable importance and weight to the statutory duty to have 'special regard to preserve'.

18. Contrary to the views of the main parties, I conclude that the proposal would not result in any material harm to the setting of the nearby heritage assets, for the reasons set out above. Accordingly, the proposal would accord with Policies E1 and E14 of the SBLP, which, amongst other aims, seek to ensure that proposals preserve the setting(s) of listed buildings. It would also accord with the Policies of the Framework which include that planning should conserve heritage assets in a manner appropriate to their significance.

Other Matters

19. A number of other matters have been raised by interested parties, both at the Hearing and in writing prior to the event. I now consider these matters raised, (beyond those already considered above), before coming to an overall conclusion.
20. In terms of the vitality of the town centre, it has been asserted that a public house/restaurant in this location would reduce demand to similar outlets within the town centre of Faversham. I have not been provided with any cogent evidence that this would be the case here and it is not clear as to why the commercial activity in this location would deter customers from visiting the historic heart of Faversham, or that it would unnecessarily detract from the economic vitality of the town centre.
21. Concerns have been raised in terms of highway safety, with regard to traffic movements, congestion, parking and vehicle numbers. The building would be served by car park and cycle parking, with nearby bus stops and footpaths connecting the site to the residential areas to the north of the site, which would provide alternative modes of transport to access the site. The site has an existing access onto Selling Road, which would not be dissimilar to the previous location in its previous commercial use. What is more, no objections have been raised by the local highways authority or Highways England in that they consider the proposal would result in objectionable harm to highway safety. Given all these factors, I see no reason not to concur with the views of these highway bodies.
22. I also heard at the Hearing from neighbours with concerns over noise; both from car movements and bottles being disposed of. The noise assessments undertaken by the appellant are not contested by the Council's own Environmental Health Team. It would also be possible to use a planning condition to ensure that the recommendations of the noise assessments are incorporated into the development. With no substantive evidence to the contrary, I see no reason to find that these measures would mitigate any impact from noise arising from the appeal site. When considered either individually, or cumulatively, I do not find that these other matters amount to justification for the dismissal of the appeal scheme.

Conditions

23. In considering the conditions suggested by the Council and appellant, I have had regard to Paragraph 206 of the Framework and also the Guidance in respect of the use of planning conditions.

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24. A condition requiring the proposal to be carried out in accordance with the submitted drawings is necessary for the avoidance of doubt. Details of materials (including surfacing materials), landscaping, joinery, eaves and ridges, plant installation area and site levels are necessary for the avoidance of doubt and to protect the character and appearance of the area. A number of conditions have been suggested in terms of matters such as controlling dust, construction parking and hours of construction. These are matters which should be controlled through conditions in order to protect the living conditions of nearby residents and businesses. However, this could be better expressed in a single construction management plan condition. In a similar manner, a condition requiring the noise assessment findings and conclusions to be carried out is necessary in order to minimise the potential noise arising from the site and any impact on adjoining occupiers.
25. A condition requiring an archaeological watching brief is necessary and reasonable given that remains of archaeological may be present on the appeal site. Such a condition would allow their observance and recording before any building is erected on the site. Conditions controlling surface water run-off and that the building should be built to BREEAM 'Good' standard or equivalent are reasonable so as to reduce any impact on the natural environment.
26. A condition requiring details of external lighting to be submitted is necessary in order to reduce any impact of light pollution. Conditions requiring the provision and retention of vehicle and cycle parking, access and vision splays are necessary to mitigate any potential impact on the local highway network. The suggested condition to restrict the use class to A3 and A4 of the Use Classes Order, as amended, (with ancillary living accommodation for a member of staff at first floor level) is necessary to provide certainty as to the intended use. Lastly, a condition controlling opening hours is reasonable and necessary in order to protect the living conditions of nearby residents. At the Hearing the appellant recommended different hours than those in the suggested conditions, which the Council agreed were acceptable. I have therefore adopted these hours rather than the ones originally suggested.

Overall Conclusion

27. For the reasons given above, and having taken into account all matters raised, I conclude that the appeal should be allowed.

Cullum J A Parker

INSPECTOR

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APPEARANCES

FOR THE APPELLANT:

Peter Goatley	Counsel instructed by Nathaniel Lichfield Partners (NLP)
Gareth Morgan	NLP
Sarah Moorhouse, MRTPI	NLP
Iain Rhind, MRTPI, IHBC	NLP
Andrew Rowe, RIBA	Axiom Architects
John Burgess	Swan Paul Partnership Ltd
John McElholm	Marston's PLC
Karen Smith	Sanderson Associates
Philip Hankin	Cole Jarman

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Spiers	Planning Officer
Simon Algar	Design and Conservation Manager
Cllr James Hunt	Council Member
Cllr David Simmons	Ward Member and member of Faversham Town Council
Cllr Duncan Dewar-Whalley	Cabinet Member for Finance and Performance

INTERESTED PERSONS:

Margaret Hibbs	Local resident
Joan Tovey	Local resident
John Charman, FRICS, FRRV	Local resident
Rona Pitchford, HCIMA	Local resident
David Pitchford, RACA	Local resident

DOCUMENTS SUBMITTED AT HEARING:

By appellant, copies of:

- a) Aerial Photo of site and surrounds
- b) Decision notice and some drawings re: Planning permission reference SW/13/1576, Development at Mackande Fine Foods, dated 3 July 2014
- c) Drawing 3251/P116 Rev D – Site Sections
- d) Drawing 3251/P100 Rev B – Site Location
- e) Drawing J49.06/02 Rev A – Tree Protection Plan
- f) Drawings J49.06/01 – Tree Constraints Plan
- g) Policy B18 (and associated proposals map) of the *Swale Local Plan 2008* showing polygon of land to south of site allocated for employment use

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- h) High Court transcript relating to 'Forest of Dean District Council' judgement; Neutral Citation Number: [2016] EWHC 421 (Admin), dated 4 March 2016
- i) Court of Appeal transcript relating to 'Mordue' judgement; Neutral Citation Number: 2015 EWCA Civ 1243, dated 3 December 2015
- j) Drawings contained of Appendix 3 of SOCG printed to scale, relating to earlier scheme on appeal site
- k) Premises licence number FAV/SWALE/189/0621 (submitted by email after the hearing by agreement with main parties)
- l) Extracts of national Planning Practice Guidance on applications for costs

By local planning authority, copies of:

- m) Policy extracts from the *Swale Borough Local Plan 2008*
- n) Policy extracts from the *Bearing Fruits 2031: The Swale Borough Local Plan, Proposed Main Modifications June 2016*
- o) Copy of Decision Letter Ref APP/V2255/W/16/3144387, dated 17 June 2016 (submitted in relation to costs application made by appellant)

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Appendix A – List of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3251/P100 Rev B, 3251/P103 Rev A, 3251/P104 Rev O, 3251/P105 Rev J, 3251/P106 Rev D, 3251/P107 Rev J, 3251/P112, 3251/P115, 3251/P116 Rev D, 12089: SK02A and 12089:SK09A.
- 3) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall take place until drawings at a scale of no less than 1:5 showing all external joinery and fitting, together with sections through glazing bars, frames and mouldings are submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.
- 5) No development shall take place until drawings at a scale of no less than 1:5 showing constructional details of eaves and ridges are submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of the flat roof plant installation area, at a scale of no less than 1:100, are submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.
- 7) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) a statement setting out the design objectives and how these will be delivered;
 - ii) earthworks showing existing and proposed finished levels or contours;
 - iii) details of plant species, sizes, numbers and locations, including those both existing and proposed, and shall include species likely to encourage wildlife and biodiversity;
 - iv) means of enclosure and retaining structures;
 - v) boundary treatments;
 - vi) vehicle parking layouts and surfacing materials;
 - vii) other vehicle and pedestrian access and circulation areas;
 - viii) hard surfacing materials;
 - ix) minor artefacts and structures [for example furniture, play equipment, Pergola, arbours, and signs, etc.] including their location; and,
 - x) an implementation programme, which shall include the phasing of work where relevant.

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The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use in accordance with the agreed implementation programme.

- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) No development shall take place until the following information has been submitted to and approved in writing by the local planning authority:
- i) a full site survey showing: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals and floor levels of adjoining buildings or sites;
 - ii) full details of the proposed finished floor levels of all buildings and hard landscaped surfaces.

The development shall be carried out in accordance with the approved details.

- 10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials, and that this shall take place wherever possible on the appeal site;
 - iii) the storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) details of delivery, demolition and construction working hours; which shall not exceed Monday to Friday 07:30 to 19:00, Saturdays 07:30 to 13:00, and that no works shall take place on Sundays and Public or Bank Holidays.
 - ix) measures to be put in place to ensure that all operatives on site are aware of what is statutorily listed near to the appeal site, the protection that this affords such structures, and how they shall be protected from any direct or indirect harmful outcomes directly related to construction works that may arise.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

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- 11) The noise mitigation measures set as out in the Planning Noise Assessment Report 14/0389/R1-5 dated 21 December 2015 shall be installed and maintained in accordance with these approved details prior to occupation of the building, and thereafter shall be operated in accordance with the Planning Noise Assessment Report 14/0389/R1-5 dated 21 December 2015.
- 12) No demolition/development shall take place on the appeal site until a programme of archaeological work is submitted to and approved in writing by the local planning authority. Such details shall include methods and areas of excavation, and a timetable of such works, ensuring at least 14 days prior notification to the local planning authority of when such works would take place on site and afford access to a representative of the local planning authority to observe any archaeological works.
- 13) No building hereby permitted shall be occupied until the full details of the method of disposal of surface waters have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented before the first use of the building and shall be retained thereafter.
- 14) Notwithstanding condition 13, provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway; details of which shall be submitted to and approved in writing by the local planning authority.
- 15) The building(s) shall achieve a BREEAM Level Good (or equivalent) in accordance with the requirements of the relevant BREEAM scheme. Within six months of occupation, a Final BREEAM Certificate which has been issued for the appeal building shall be submitted to the local planning authority certifying that BREEAM Level Good (or equivalent) has been achieved.
- 16) No external lighting shall be installed or operated on the site, other than in accordance with details submitted to and approved in writing by the local planning authority. Such details should include, but are not limited to;
 - a) a statement of why the lighting is required, the proposed frequency and hours of illumination of such lighting, and the means by which such measures would be controlled;
 - b) a site plan showing the location of any lights, which should include details of the areas to be lit relative to the light, indicating parking or access arrangements where appropriate, and highlighting any significant existing or proposed landscape or boundary features;
 - c) details of the number, location and types of lighting columns and other such fixtures;
 - d) the type, number, location and mounting height and alignment of the luminaries;
 - e) the beam angles and upwards waste light ratio for each light;
 - f) an isolux diagram (or similar) showing the predicated luminance levels at critical locations on the boundary of the site and where the site abuts residential properties.

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- 17) The building shall not be occupied until space has been laid out within the site in accordance with drawing no. 3251/P104 Rev O for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear, and that space shall thereafter be kept available at all times for those purposes.
- 18) The building shall not be occupied until space has been laid out within the site in accordance with drawing no. 3251/P104 Rev O for bicycles to be parked, and that space shall thereafter be kept available for the parking of bicycles only.
- 19) The building shall not be occupied until the access detail shown on the approved drawings is completed. The access shall be retained thereafter.
- 20) Before the building hereby approved is first occupied, the area between the nearside carriageway edge and lines drawn between a point 2.4 metres back from the carriageway edge along the centre line of the access and points on the carriageway edge 43 metres from and on both side of the centre line of the access shall be cleared of obstructions to visibility at and above a height of 0.9 metres above the nearside carriageway level. Thereafter, this area shall be retained and kept free of any such obstructions at all times.
- 21) The premises shall be used for a public house/bar and/or restaurant (with ancillary residential accommodation for staff at first floor level) only and for no other purpose (including any other purpose in Classes A3 and A4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 22) The premises shall only be open for customers between the following hours:
10:00 to 23:30 Mondays to Thursdays;
10:30 to 23:30 on Fridays and Saturdays; and
11:00 to 23:30 on Sundays, Public and Bank Holidays.



Costs Decision

Hearing held on 12 July 2016

Site visit made on 12 July 2016

by **Cullum J A Parker BA(Hons) MA MRTPI IHBC**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 August 2016

Costs application in relation to Appeal Ref: APP/V2255/W/15/3141300 Former Macknade Garden Centre, Canterbury Road, Faversham, Kent ME13 8XE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Marston's PLC for a full award of costs against Swale Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission described as '*demolition of existing structures and erection of a restaurant/public house, associated residential accommodation, car park, access, landscaping and ancillary works*'.
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Decision

1. The application for an award of costs is refused.

The submissions for Marston's PLC

2. The applicant indicated at the start of the appeal process they were minded to submit an application for costs and the Inspectorate sought clarity on this matter prior to the event. Nevertheless, it was only at the Hearing the appellant presented their application orally.
3. Put simply, the applicant considers that a full award is necessary on a substantive matter as the Council acted unreasonably, with reasons for refusal that did not stand up to scrutiny and thereby causing undue delay. In support they pointed me to three bullet points contained within the national Planning Practice Guidance (the Guidance) which indicate that costs may arise when a local planning authority prevents developments, fails to produce evidence to support its case and rely on vague generalised, or inaccurate assertions which are unsupported by analysis.
4. The applicant indicated that the Council was relying upon out of date policies and that the assertion by the Council that the proposal would harmfully impact the countryside was not supported or justified in respect of the National Planning Policy Framework (the Framework). What is more, the Council had given no definition of the significance of the setting of the nearby listed buildings and where the harm arises. The appeal scheme was refused by Councillors against officer recommendation, and on the basis of no clear, and only vague, generalised assertions in terms of harm.

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The response by Swale Borough Council

5. Following an adjournment, the Council provided an oral rebuttal of the applicant's application for costs. Put simply, the Council contended that the evidence was given by experienced officers and members. Whilst it was agreed that the development plan is not entirely up to date for the purposes of the appeal scheme, it is broadly in agreement with the Framework; for example in terms of seeking to protect listed buildings. In support, the Council submitted a copy of a decision letter¹ and referred me to its stance on Policy E6 of the SBLP. The Council also stated that there has been no unnecessary delay by the local planning authority and clear reasons were given as to why development should not be permitted and the reasons for refusal have been clearly defended in terms of the evidence presented.
6. The objections in this case relate to the countryside and listed buildings, and this is not a case that is liable to objective analysis. The Guidance states that costs can only be awarded if unnecessary or wasted expense has occurred, but in this case there are no new arguments above those cited in the reason for refusal. The local planning authority contended that whilst the decision may not have been to the liking of the applicant, ultimately elected councillors made their decision. The Council therefore considered that there was no justifiable basis for the costs claim.

Reasons

7. The main parties broadly agree that the refusal of planning permission followed a committee 'overturn'. That is the Planning Officer recommended the grant of permission, whereas the planning committee considered that permission should be refused. It is open to the decision-maker, which in this case was the Planning Committee, acting in its capacity for the Council as the local planning authority, to concur or to disagree with the recommendation. However, when doing so, it is well-established practice that clear and concise reasoning is required.
8. In this case, some aspects of the Council's defence of its case were somewhat muddled. For example the differences between the 'substantial' harm found at the Committee meeting (see minutes 24 September 2015), which translated into 'significant' harm in the reason for refusal, and was then clarified to mean 'less than substantial' harm in the most recent evidence. However, the fact remains that the statutory test requires, *inter alia*, that special regard be paid to the desirability of preserving the setting of listed buildings.
9. The Council found there to be harm in this respect, and to some extent such considerations are subjective. What is more, it is clear from the Council's written submission that recent case law, and its application in relation to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, including cases such as Barnwell, were considered and their implications in relation to the harm found by the planning committee understood.
10. Whilst I agree that the Council's case was not entirely well-expressed in some areas, I do not find that the Council's reasoning was unreasonable in the ordinary sense of the word. The Council considered there to be harm and then

¹ PINs reference: 3144387

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balanced this against the public benefits, as national policy requires. I note the applicant points to concerns over the applicability of local development plan policies. However, in the main, the Council did consider the harm arising and found that, in their view, it outweighed the benefits. It is unclear as to how such a position would alter substantially were less weight afforded to the development plan policies.

11. In any case, the Council were represented by both professional officers and elected Councillors who explained the reasoning behind the Council's decision. Whilst the appellant may disagree with the Council's decision, this does not amount to unreasonable behaviour when the local planning authority is exercising its democratic function and has fully reasoned its case.
12. I acknowledge that the appeal decision did not find the degree of harm identified by either of the main parties, but this in itself does not equate to unreasonable behaviour on the Council's part. In summary, the Council did not act unreasonably as it presented a reasoned and robust defence of why it took the decision it did.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. The application for costs is therefore refused.

Cullum J A Parker

INSPECTOR