

Confidential:

Advisory Note responding to Reason for Refusal 2:

Murphy Associates have been commissioned by Brighton & Hove City Council to act as an expert witness and manage the appeal process in respect of the decision of the Council to refuse planning permission for the development of 'Land South of Ovingdean Road, Brighton' under reference BH2016/05530.

As a result of queries raised by the Appellant's Agents, and discussions during the case conference, Murphy Associates was asked to consider whether or not Reason for Refusal No. 2 could be successfully defending at appeal and under examination.

Reason for Refusal No. 2 states:

'The extent of the proposed development would result in the loss of part of the gap between the villages of Ovingdean and Rottingdean and have an adverse impact on the setting of the Ovingdean Conservation Area and Rottingdean Conservation Area, contrary to policy HE6 of the Brighton & Hove Local Plan.'

Dissecting Reason for Refusal No. 2 there are two parts to contained therein:

- loss of the gap between the villages of Ovingdean and Rottingdean
- adverse impact on the setting of the Ovingdean and Rottingdean Conservation Areas.

Prior to visiting the site and the area in which it is located, I familiarised myself with the location of each of the settlements and the relationship between the two. I took note of the location and boundaries of the respective Conservation Areas and their key characteristics. I also took note of the location of listed buildings and other heritage assets in the area.

The PLBCAA contains the primary legislation relating to the determination of planning applications relating to the historic environment. Section 72(1) of the Act sets out the statutory duty in respect of conservation areas in the exercise of planning functions. It states:

" In the exercise, with respect of any buildings or other land in a conservation area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

Courts have held that "preserve" in the context of the Planning Acts means ensuring that there is an absence of harm and if so, the minimum requirements of the Act would be met if this were to be achieved (South Lakeland DC v SSE & Carlisle Diocesan Parsonages Board [1992] AUE R 573) . Of course we also have had the Barnwell Manor judgment and more recent judgments since 2013 that have reinforced the fact that setting is a consideration and can contribute to the significance of a heritage asset.

This statutory requirement relates to designated heritage assets. However, the NPPF and Historic England's Good Practice Guide in Planning No. 3 - The Setting of Heritage Assets (Historic England, July 2015) [GPA3] makes it clear that the setting of a heritage asset in the surroundings in which a heritage asset is experienced is a material consideration. Attention is drawn to the fact that:

"The Courts have held that it is legitimate in appropriate circumstances to include within a conservation area the setting of buildings that form the heart of that area (R v Canterbury City Council ex parte David Halford, February 1992; CO/2794/1991) and NPPF paragraph 80, for example, makes it clear that historic towns are regarded as having a setting."
(GPA3, 'The extent of setting' Box 1, page 2)

And

"In primary legislation, the setting of conservation areas is not a statutory duty. However, the NPPF states that the setting of a designated heritage asset can contribute to its significance."
(GPA3, 'The extent of setting' Box 2, page 2)

Having taken account of the statutory duties set out in the PLBCAA and good practice advice and guidance notes from Historic England (and its predecessor) as well as Local Policy, and applying the stepped approach advised by GPA3, it cannot be said that the appeal scheme would have an adverse effect on the setting of the Conservation Areas.

Having regard to the subject of setting, the GPA3 sets out a stepped approach to assessing setting and the role that it plays in contributing to the significance of a heritage asset/s. Under the heading 'Views and setting' we note that the contribution of setting to the significance of a heritage asset is often expressed by reference to views which can be static, dynamic, include a variety of views across or including that asset, and views of the surroundings from or through the asset.

Section 2.1 expands on the explanation given in the introduction stating that the extent of setting

"... is not fixed and may change as the asset and the surroundings evolve' and that 'Elements of a setting may make a positive or negative contribution on the significance of an asset, may affect the ability to appreciate that significance or may be neutral'. (page 4)

Section 2.2 elaborates further on the "extent of setting" which can embrace:

"all of the surroundings from which an asset can be experienced or than can be experienced from or within the asset" as "setting does not have fixed boundaries "; "cannot be definitively and permanently described as a being spatially bounded area or as lying within a set distance of a heritage asset."

At the same time it is noted that one does not need to be in direct view of a heritage asset to be within its setting. It does not depend on public rights or the ability to access it. Surroundings can evolve. Diurnal, nocturnal and seasonal change are also considerations. It is within this document that we are reintroduced to the references such as "immediate" and "extended" settings of heritage assets which takes account of long distance views.

Section 2.4 at GPA3 explains that *"the importance of setting lies in what it contributes to the significance of the heritage asset"*. This can depend on *"a wide range of physical elements ... as well as perceptual and associational attributes, pertaining to the heritage asset's surroundings ."*

This process requires one to have an understanding about the significance of the asset/s in order to be able to determine if harm would arise. GPA3 recommends a stepped approach where matters of setting are concerned which have been tried and tested at appeal:

Murphy Associates (UK) Ltd registered in England, Trading as Murphy Associates.
Company No: 06993572. VAT No: 934 4436 20
18 Braemore Court, Kingsway Hove. BN3 4FG
www.murphyassociates.co.uk

- Step 1: identify which heritage assets and their settings are affected;
- Step 2: assess whether, how and to what degree these settings make a contribution to the significance of the heritage asset(s);
- Step 3: assesses the effects of the proposed development on that significance;
- Step 4: explore the way maximising enhancement and avoid minimising harm;
- Step 5: make and document the decision and monitor outcomes.

Steps 1 and 2

In that regard, I have familiarized myself with the respective Conservation Areas by reading through the Council's Character Statements. I have undertaken my own research noting the fact that the setting where once quite distinct and separated by the surrounding countryside. The original settlement of Ovingdean which is within the defined Conservation Area, is quite distinct and contained particularly to its immediate south, north and west sides. Further to the south, south east and north east, development has risen up and over the ridge of the South Downs, engulfing the landscape and in parts dominating the hillsides. Equally, th wn that overtime, development has increased to the south, east and south east of Ovingdean, rising up the slopes of the South Downs landscape to the ridge at Longhill Road and down to The Vale and to the rear of Longhill School and Dean Leisure Centre where It meets the expansion of the settlement of Rottingdean.

The Rottingdean Conservation Area is generally based on the settlement as shown between the 1789 – 1805 Draft OS Map and the 1830 Tithe Map. Expansion was more prolific during the interwar and post war periods and today we see the two settlements practically merging but for the constraints of topography, the physical presence of the Leisure Centre, School and the appeal site

I went to each Conservation Area and walked to and from the appeal site. For Ovingdean, I parked close to the Church, and walked uphill in an easterly direction to the point where the public footpath/bridleway left Ovingdean Road. The distance between the closest point of the Conservation Area and appeal site was noted as being approximately 0.5km via a steep incline and then descent. Walking 1km northwards along the public footpath/bridleway to Mount Pleasant and then toward Old Parish Lane, views can be obtained of the settlement of Ovingdean and the Conservation Area from certain points. However, I was not able to view the Conservation Area and appeal site together. There are views along this public footpath/bridleway where the appeal site is experienced. Those views are progressive and sequential. Holding an impression of it in my mind as I moved through the immediate and wider landscape, I considered the Conservation Area had an extended setting but that did not encompass the appeal site. The perceptions of the area were such that the landscape of the South Downs LCA and South Downs Natural Park dominated. The impression of old Ovingdean, although memorable, was not lasting. That impression had diminished once in the vicinity of the appeal site and continued to do so when walking along Falmer Road toward Rottingdean.

Walking southwards along Falmer Road, it was noted that the distance between the nearest point of the appeal site and the start of the Rottingdean Conservation Area was approximately 1.3km. To the centre within the High Street was approximately 2km. Along this route, whether walking north to south or vice-versa, there is no perception or awareness of the setting of the Rottingdean Conservation extending physically, visually or perceptually to include the appeal site. Indeed, there is no perception that the setting of the Ovingdean Conservation Area would extend to include Rottingdean. There were other elements of built form and countryside that created positive receptors that drew attention to themselves.

A return route via Beacon Hill to Longhill Road and walking southwards toward the Windmill afforded wide views and vistas across the landscape including across to Roedean School to the west, the windmill to the

south, parts of Woodingdean to the north and north east. The views included long views of Ovingdean and its listed church. One had to walk further southwards along the paths to gain a view of the Rottingdean Conservation Area. The appeal site was not noted nor seen.

Step 3

Moving through the landscape in which the Conservation Areas are located and experienced did not lead to the impression that the appeal site was within their immediate or extended settings. The appeal site has as a role to play in contributing to the remaining sense of rurality that the area exhibits and the environs of the Ovingdean Conservation Area more so than Rottingdean. On that basis and even by a far stretch of the imagination, the appeal site would perhaps be on the very periphery of the extended perceptual setting of Ovingdean Conservation but this is a weak stance.

Therefore and bearing in mind Step 3 requires an assessment of the effects of the proposed development on the role that setting plays in contributing to the significance of the Conservation Area, the conclusion is that no harm would arise.

There is no requirement to proceed to Steps 4 and 5 as a result.

Conclusion

It is my opinion that whilst setting is an important consideration, in this case, the appeal site does not fall within the setting of either Conservation Area. As it does not fall within their respective settings, the site does not contribute to the significance of those Conservation Areas.

Based on my experience and by using this well-tested and accepted stepped approach, the second prong of Reason for Refusal No.2 could not be defended with any success.

In respect of this site, in dismissing the previous appeal on a greater area of the site, the Inspector did not raise a heritage objection. The Council's own Conservation Officer did not object on heritage grounds and did not consider that site affect either Conservation Area. I therefore consider that this prong of Reason for Refusal 2 is very weak and could not be defended. To attempt to do so would render the Council liable to an Award of Costs. On that note, I am reminded of the Public Inquiry at Land to the North of Old Guildford Road, Broadbridge Heath, W.Sussex (APP/Z3825/A/14/2224668) which related to the residential site within the setting of a listed building that had a proven relationship with the wider landscape. Despite a strong case, the Inspector, whilst not totally in disagreement with the Council considered the effects of a residential scheme on setting were overstated and even though less than substantial harm would arise, he considered this would be outweighed by the public benefits. In this case, the Inspector awarded the Appellant a full award of costs. That case was not straightforward as heritage was a matter raised late in the day. I attach the Costs Decision Letter for your attention.

I would therefore recommend that reference to the adverse impact on the setting of the Ovingdean and Rottingdean Conservation Areas be deleted from Reason for Refusal 2.

Eimear Murphy MRTPI IHBC
Murphy Associates