Case Name: *City & Country Bramshill Ltd v Secretary of State for Housing, Communities And Local Government & Ors* [2021] EWCA Civ 320 (09 March 2021)

Full case: Click Here

Commentary:
This unsuccessful case in the Court of Appeal concerned the proposed development of Bramshill Park in Hampshire which contains a grade I listed Jacobean mansion and a grade I registered park and garden. The proposed development included the conversion of the mansion to 21 apartments, a single dwelling or class B1 office space; the construction of 235 houses in place of some of the other existing buildings and 25 more houses elsewhere on the site; and the use of 51 residential units as separate dwellings, retaining those against which Hart District Council had taken enforcement action alleging a material change of use without planning permission.

City & Country Bramshill Ltd (the 'Appellant') had appealed to the Planning Inspectorate against 33 refusals of planning permission and enforcement notices issued by the Council in relation to the site. Following a long inquiry into the appeals which ended in February 2018, the Inspector issued two decision letters on 31 January and 14 March 2019 allowing some of the appeals. Refusing the others, the Inspector decided that those proposals would create isolated housing in the countryside and that they would be harmful to the character and appearance of the area and would not preserve the special qualities of the listed buildings, their settings or the registered park and garden.

The Appellant challenged the Inspector's refusals, and the High Court allowed part of the claim but upheld two of the Inspector's appeal decisions.

The main issues before the Court of Appeal were the interpretation and application of the NPPF to the development of "isolated homes in the countryside" and the assessment of harm and benefit to heritage assets required by paragraphs 195 and 196, which apply where a proposal will lead to substantial or less than substantial harm.

Regarding whether the Appellant's proposals would create isolated housing in the countryside, the Appellant argued that the Inspector had misinterpreted paragraphs 78 and 79 of the NPPF by failing to consider that the proposal was a cluster of dwellings forming a settlement on previously developed land within the curtilage of an existing permanent structure. However, the Court of Appeal was satisfied that the Inspector had made no error of law in applying this policy. It was considered that the concept of isolated homes in the countryside was not one of law but an undefined part of planning policy in the NPPF that did not lend itself to rigorous judicial analysis: its application should depend on the facts of the case.

Turning to the heritage issue, Historic England and the National Trust had argued that paragraphs 195 and 196 of the NPPF would always be engaged where any element of harm was identified. In contrast, the Appellant's case was that an "internal heritage balance" should

be carried out where elements of heritage harm and heritage benefit were first weighed to establish whether there was any overall heritage harm to the proposal, and paragraphs 195 and 196 would only be engaged where there is residual heritage harm which should then be weighed against the public benefits of the scheme. In other words, the Appellant argued that it was only if "overall harm" (i.e. net harm) emerged from the weighing of heritage harms against heritage benefits that the other public benefits of the development would need to be considered and weighed against that "overall harm".

Rejecting this submission, the Court of Appeal held that section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 did not require a decision-maker to undertake a "net" or "internal" balance of heritage-related benefits and harm as a self-contained exercise preceding a wider assessment of the kind envisaged in the NPPF, nor was there any justification for reading such a requirement into the policy. While decision-makers may choose to carry out this separate balancing exercise when performing the section 66(1) duty and complying with the corresponding policies of the NPPF, the Court could not see how this approach could ever make a difference to the ultimate outcome of an application or appeal.

For further useful commentary regarding the s66(1) duty and the concepts of 'harm' in the NPPF, see Simonicity.

Case summary prepared by Safiyah Islam