Case Name: *Save Britain's Heritage, R (On the Application Of) v Herefordshire County Council* [2022] EWHC 2984 (Admin) (25 November 2022)

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Commentary: Save Britain's Heritage ("the Claimant") challenged the prior approval granted by Herefordshire County Council ("the Defendant") for the demolition of the Old School located in Garway, Herefordshire ("the School").
Background

The School was bought by Mr Gerard Davies ("the Interested Party") in 1981 and is deemed as non-designated heritage asset. Following the purchase, the School became agricultural and commercial workshops, and this use continued till 2002, after which the School was left vacant.

The Interested Party applied twice for prior approval for demolition, in February 2022, the planning officer recommended that prior approval be granted ("the Approval Decision") since the School did not fall within the exception to the permitted development (i.e. permitted demolition) under Class B, Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GDPO Order 2015").

The relevant exception under the GDPO Order 2015 is that demolition of a building is not permitted development if the following three-stage test is satisfied:

a) The building has been rendered unsafe or uninhabitable;

b) Due to the action or inaction of any person having an interest in the land; and

c) It is practicable to secure safety or health by works of repair or works for affording temporary support (see [58]).

The Claimant challenged the decision on two grounds:

1. The Defendant had misinterpreted the exception under the GDPO Order 2015 for demolition of buildings.

2. The Defendant failed to provide clear reasons for its decision to grant prior approval as required by the Openness of Local Government Regulations 2014.

Ground 1

On the first ground, the judge held that the planning officer had partially misinterpreted the exception under the GDPO Order 2015, in that he erred in including the word

"intentional" when assessing whether the person having an interest in the land rendered the School unsafe or uninhabitable. The judge clarified that "intention" was not a part of the test for whether the exception applies. However, the judge held that this misinterpretation was immaterial since the planning officer had correctly applied the first limb of the test and concluded that the School had not been rendered unsafe or uninhabitable. The first limb of the test was not met, therefore, the approach of the planning officer on the second or third limbs of the test was found to be immaterial (see [63]).

Ground 2

On the second ground, the judge refused permission as she held that the Defendant had provided sufficient reasons for the Approval Decision, which were outlined in their report. The fact that the letter sent by the Defendant's solicitor to the Claimant (in response to issues raised by the Claimant) dated 24 March 2022 contradicted the Approval Decision, was not relevant. This was because, although the Defendant did accept the letter dated 24 March 2022 contained numerous errors, the letter did not contain the reasons for the Approval Decision; these were to be found in the Report (see [73]-[75]).

Application of s.31 of the Senior Courts Act 1981 ("the SCA 1981").

The Defendant additionally argued that the claim was only academic and therefore should be dismissed under s.31 of the SCA 1981. S.31(2A) and (3C) of the SCA 1981, in essence, states that the High Court must refuse to grant leave for judicial review or grant relief on an application for judicial review if:

"it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred".

The Defendant argued that it is highly likely that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred since the Approval Decision was given outside of the 28-day time limit within which the local planning authority should respond to applications for prior approval and failing to do so meant the Interested Party was permitted to continue with the proposed development.

The Court applied the guidance provided in the case of Keenan v Woking Borough Council [2017] EWCA Civ 430, as to the expiry of the 28-day time limit. Under GDPO Order 2015 (B.2(b)(vii)(cc), Part 11 of Schedule 2), an applicant is allowed to commence development if, within 28 days of receipt of the application for prior approval, the local planning authority has not made any determination as to whether such approval is required. In this case the 28-day time limit had expired therefore the Defendant argued

that in any event the Interested Party was able to continue the development, notwithstanding whether the Approval Decision was considered to be valid by the Court. However, the Court held that although the expiry of the 28-day limit allowed the Interested Party to proceed with the proposed development, the Interested Party did not gain a planning permission by default as a result of the expiry of the 28-day limit; the Interested Party only had permission for development that was "permitted development". Therefore, if the Court were to quash the Approval Decision and order the Defendant to reconsider the decision and, as a result of this reconsideration, the Defendant were to find that the demolition proposed by the Interested Party was not "permitted development", it could take action against the Interested Party to prevent the demolition (see [42-44]).

Case summary prepared by Chatura Saravanan