25 May 2022

Dear Andrew

**Planning application at Upper Heyford18/00825/HYBRID**

I understand that the application will shortly be reviewed to assess whether or not it will be returned to committee for determination 18months after the resolution to grant the permission. During that time I have explained why that resolution should not have been relied on then, and would not form the basis of a legal grant of permission now. There are other material changes in circumstances that should be taken into account when the application is finally determined.

Having reviewed the correspondence it seems that you have asked but never received a legal opinion on the principle claim that no 'adequate and intelligible', reasons were given in the officer report or the committee deliberations for the flagrant breach of para 190 (as was) of the NPPF.  The point made in national guidance, now NPPF paras 194 and 195 (see below), which is to be taken into account when the determination is made, is that the various heritage assessments must be based on “appropriate” and “necessary” expertise. It is difficult to
imagine a greater disparity than that arising in this case between the
accepted international importance of the heritage assets and the absence of any
recognised or claimed expertise of Dorchester Living (the apparent authors of the unaccredited heritage report) in heritage matters.  Your references to having taken the views of Historic England into account obscures the fact of their objections and those of the conservation officer were overridden. The committee supported an application that would have severe consequence for a site of international heritage importance without providing any reasons for the absence of the officially required evidence prepared by proportionate/appropriate/necessary expertise while, incidentally, rejecting the heritage advice which was available.

The case for the public (and the Council) to have adequate and intelligible reasons in order to understand the way such a decision was made could not be clearer. To the extent that the relevant international conventions have been interpreted in national law and policy bolsters the reasons why the clear policy guidance in NPPF should be given weight.

This is a case of a council, without explanation, failing to follow Government policy in making a decision that would result in diminishing the heritage value of a site agreed to be of international heritage value before the heritage use and impact have been expertly scoped and explored. A case that underlines the need to give reasons is Cross, R (On the Application of) v Cornwall Council [2021] EWHC 1323 (Admin) where Tipples J said, “… it was well established that although there was no statutory duty on local planning authorities to give reasons for planning permission, in certain circumstances there was a common law duty to do so.". This duty arises when the breach is blatant and has devastating consequences for the public interest; in this case the conservation of the most important UK heritage site of the modern era, i.e a determinative and not an incidental material consideration.

The Council must also consider whether there have been material changes of circumstances since November 2020.

1. The Written Ministerial Statement of 18 January 2021 has been summarised as describing the Government's position in respect of heritage assets as "retain and explain".  Clearly the demolition, intrusion and dilution/cleansing of the heritage assets being proposed in the Dorchester Living masterplan does not “retain” and only assists in
“explaining” the indifference being demonstrated by the Council to Cold
War heritage.

2. As the best preserved remains from the Cold War, the increased interest in this conflict (since November 2020) serves to underline the importance of realizing the heritage potential of Upper Heyford in the understanding of Cold War history. The previous indifference to the potential of the site and the advice in the relevant international conventions (Paris, Granada and Valletta), contrasts with the recent flurry of interest in the Cold War origins of the war in Ukraine.

3. Upper Heyford was one of the only three heritage sites in the county mentioned in the Oxfordshire 2050 Plan consultation (Blenheim and Rousham were the others). The inclusion of Upper Heyford in the Plan was a suggestion from CDC that could be taken as a sign that the LPA has started to acknowledge the wider importance of the site. Indeed the description of Upper Heyford in the latest local plan also contrasts with the way in which application(s) for its redevelopment have been dealt with.

I hope that this letter is of assistance to the Council in the proper determination of this application.

Yours sincerely

Daniel Scharf

NPPF 2021

**194.** In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

**195.** Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.