



FINAL COMMENTS

To: **The Planning Inspectorate**
From: **Iceni Projects on behalf of Universities Superannuation Scheme Limited**
Date: **23/09/21**
Title: **Hayes Park North PDR Appeal – Final Comments on LPAs Statement of Case**

a. Introduction

On the 30th July 2021 Iceni Projects submitted a planning appeal against the decision of the London Borough of Hillingdon (LB Hillingdon) to refuse the Prior Approval application (Ref. 12853/APP/2021/2202) at Hayes Park North, UB4 8EE (HPN) for:

“Change of use of offices (Use Class E(g)) to residential use (Use Class C3) to include 64 residential units comprising 6 x studios, 33 x one-bedroom units, 19 x two-bedroom units and 6 x three-bedroom units”.

In line with the timeline set out on the ‘Start Letter’ received from the Planning Inspectorate, Iceni Projects received LB Hillingdon’s Statement of Case on the 10th September 2021. This note encompasses the Appellants (Universities Superannuation Scheme Limited) final comments on the appeal.

Below we take sections of the LB Hillingdon’s Statement of Case in turn and set out what is stated in their Statement of Case, followed by the Appellants final comments.

b. Final Comments

Paragraph 2.3

LB Hillingdon’s Statement of Case

“This part of the GPDO says that development is not permitted by Class O if the building is a listed building (that is not the case here), or the building is within the curtilage of a listed building (which is the case here). The GPDO recognises that one building can be within the curtilage of another; and that there is no requirement that the building is an “ancillary” building. Had the GPDO intended the exclusion to apply only to “ancillary” buildings, it would have said so”.

Appellant’s Final Comments

It should be noted that the phrase in the GPDO clearly says that development is not permitted if the “building [...] **is**¹ within the curtilage of the listed building”. That is in the present tense. LB Hillingdon seems to be wrongly exclusively focusing on the past position not the present.

¹ Our emphasis

Additionally, we do not dispute the non-ancillary nature of the building either. Ever since the HPN building has been built, it has been under separate operation and as such not ancillary to the Heinz buildings.

Paragraph 2.4

LB Hillingdon's Statement of Case

In April 2011, the then DCLG released a public consultation document entitled 'Relaxation of planning rules for change of use from commercial to residential' which primarily formed the basis for the introduction of what is now Class O of the GPDO. Within this public consultation document was the following text which sought to exclude listed buildings from any future provisions. The text itself clearly states that the exclusion was solely 'Listed Buildings and Scheduled Monuments' (see extract below).

"Thresholds and exclusions

55. The Government believes that these changes should be made nationally in England. However we are proposing that the following types of development should be excluded from the permitted development right because they raise issues requiring further consideration

- listed buildings and scheduled monument*
- safety hazard zone*
- development where an environmental impact assessment is required*
- development on land affected by contamination.....*

Appellant's Final Comments

The Council's approach here is contrary to what the technical definition of curtilage is. The Council appear to wrongly interpret this as the land that falls within the curtilage, rather than the buildings. The associated test should surely be, in this instance, whether the change of use of these buildings will have a material impact on the significance of the listed buildings.

Paragraph 2.16

LB Hillingdon's Statement of Case

"Parking associated to the office building is shared with the Grade II Listed Building to the south of the Appeal site. Access to the lower ground parking area is located to the west of the Hayes Park North building".*

Appellant's Final Comments

This is not original parking, since the layout to the north was altered heavily at the time of construction of the HPN building- not part of the original layout and functioning of the listed buildings.

Paragraph 2.17

LB Hillingdon's Statement of Case

"HPN building forms part of the Hayes Business Park, with modern office buildings set within a parkland environment, relating to the original design intent of the Grade II Listed Building."*

Appellant's Final Comments

There is no indication/evidence on the design layout that there was ever any intention of an additional building to the north. The entire Park was purpose built for Heinz based on their requirements and adapting to the landscape of the greenfield site. Even at the time of listing, whilst Heinz was still in operation, there was no indication of the need for additional space. When the HPN building was constructed, it was solely for the purposes of United Biscuits, and has always remained under their

operation. As such, to conclude that the land on which HPN currently stands was part of the original design intent is wholly incorrect.

Paragraph 2.19

LB Hillingdon's Statement of Case

"The Grade II Listed Buildings comprise of the Former Heinz Administrative Headquarters and Research Laboratories. The former Heinz Administrative Headquarters is also referred to as the Hayes Park South (HPS) building. The former Research Laboratories building is also referred to as the Hayes Park Central (HPC) building."*

Appellant's Final Comments

This nomenclature is not included in the listing. In fact, the buildings are simply referred to as north and south buildings, since what is described as HPN now, didn't exist. This is again an indication of the fact that there was never any intention of creating a further building to the north.

Paragraph 2.40 – 2.41

LB Hillingdon's Statement of Case

"Paragraph 4.17 of the Appellant's Statement of Case misinterprets and misrepresents the initial Conservation Officer comments (dated:1st July 2021), in regard to the walled garden. For completeness they have been reiterated in full below:

'3.14. Historically the land in question was occupied by a historic walled garden, which was retained as part of the Heinz Office building development, when constructed and at the time of listing. The space had been used as car parking, ancillary to the Heinz Office Buildings. Remnants of part of the walls are still extant on site.'

In reading paragraph 3.14 in full, it clearly states that the space within the walled garden had been used as a car park and the present position is that remnants of the walls are still evident on site. This has also been reiterated under paragraph 2.2 of this statement".

Appellant's Final Comments

The site was part of a manor house, but this house nor the gardens nor the walls were ever listed. That the original design incorporated parts of a non-designated albeit historic wall therefore does not directly have the same weight as the retention of a listed wall. Nor should they be considered part of the curtilage. Further, the Heinz buildings were not listed because they incorporated fragments of an earlier wall, but for their own merit in terms of design and function.

Paragraph 2.43

LB Hillingdon's Statement of Case

"Whilst the layout of Hayes Park has significantly changed since the loss of the original historic house, the matter at hand is the physical layout of the site associated to the curtilage of the Listed Buildings. The key dates in this matter would be 1960, when the buildings were constructed and 1995 when they were added to the National Heritage List for England. The Appellant's Statement of Case, under paragraph 4.17, incorrectly refers to the landscape associated to the historic Hayes Park manor house. The relevant matter is the parkland landscape in which Bunshaft has set his brutalist buildings within".

Appellant's Final Comments

This statement is directly contradictory to the text in paragraph 2.40-2.41 of LB Hillingdon's Statement of Case. If the consideration is only the parkland landscape designed by Bunshaft then the 'historic wall' should bear no significance here and neither should its incorporation within the landscape design.

Paragraph 2.46

LB Hillingdon's Statement of Case

"Whilst it is difficult to evidence the thought process of retaining the walls to the former walled garden, they would have provided a means of obscuring the car park from the original buildings, maintaining the illusion of a quintessential English landscape parkland."

Appellant's Final Comments

This is almost entirely a speculation. The alignment of the buildings and the associated parking originally envisages is such that the walls run along the parking and the buildings. Therefore, it is impossible that the walls were retained to hide the parking from the buildings. Even if we assume that the parking was intended to be hidden from the main vehicular access, this arrangement was altered entirely when HPN building was given consent for development.

Paragraph 2.50

LB Hillingdon's Statement of Case

"The Appellant's Statement of Case refers to the theory of 'visiting' respective premises, under paragraph 4.6. This is an entirely irrelevant discussion, as you may be on land within the curtilage of a listed building however not necessarily enter the listed building itself".

Appellant's Final Comments

This is not an irrelevant discussion, this is deduced from Buckley LJ in *Methuen-Campbell v Walters* [1979] 2 QB 525 ("*Methuen-Campbell*"), which is well established case law on this matter. It's an accepted legal principle that one tries to understand things in simple, straightforward terms. Therefore, understanding the approach if one was 'visiting' is clearly helpful where it allows a consideration of whether the two are 'intimately connected', as they themselves quote.

Paragraph 2.53 - 2.54

LB Hillingdon's Statement of Case

"At the time of listing (24th November 1995) the Listed Buildings and Appeal site was under the same ownership."

At present, it is understood that the Listed Buildings and Appeal site are under the same ownership".

Appellant's Final Comments

Para 4.18 of the Appellants original Statement of Case states that *"In terms of ownership, past and present, it is noted that the original site was under one ownership at the time of listing and that appears to remain the case today. We do not disagree with the Council on this point. This circumstance, however, has no effect on the outcome of the other two tests, the first of which is failed as explained above."*

Paragraph 2.64

LB Hillingdon's Statement of Case

"The application submitted for the HPN building was established under the premise that Heinz required further office space, who occupied and owned the site at the time".

Appellant's Final Comments

United Biscuits were the first and only occupier of HPN. This point is reiterated in the QC Letter submitted with the appeal.

Overall Conclusion on Heritage / Curtilage Matters

The Appellant remains of the opinion that the Council's assessment of curtilage land and curtilage site appears to be extremely confused and strained. Curtilage is about buildings; it is not about land; yet they are rigorously emphasising it to be about land. The GDPO does not alter the definition of what 'curtilage' means and clearly intends to replicate and reflect the wording of S66 and S16 etc.

To our mind, the case is very simple. The GDPO's intention to exclude 'curtilage' of listed buildings was clearly to protect buildings within the curtilage of listed buildings. **Blackbushe** makes it plain that the test for curtilage is no different for the listed building case than generally. Whilst the Council correctly agree that "the building is not to be considered to be curtilage listed", it seeks to suggest HPN is within the curtilage 'land' of the listed buildings.

The approach focuses on a time before that building even existed, which does not assist as to whether the HPN building is within the curtilage. Ever since that has been built it is separate and not within the curtilage of the listed buildings. Again, Blackbushe makes it clear, that understanding a building's curtilage is to understand its intimate relationship with the host building.

Paragraph 3.3

LB Hillingdon's Statement of Case

"In the event that a UU is submitted and agreed, the Council would be in a position to agree that this reason for refusal can be removed from the future appeal hearing discussions".

Appellant's Final Comments

As per the details set out in the draft Statement of Common Ground, the Appellant would be happy to agree to the necessary S106 contributions to resolve the matters associated with Reason for Refusal No. 2. A draft Unilateral Undertaking has been drafted and submitted alongside these final comments.

c. Conclusion

We hope the above final comments are clear and make the case that the HPN building is not within the curtilage of the nearby Listed Buildings. On this basis, Reason for Refusal 1 can be overcome. The Unilateral Undertaking and Statement of Common Ground clearly show that the Appellant is agreeable to the proposed development contributions. On this basis, Reason for Refusal 2 can be overcome.

Overall, it is considered that the evidence presented by the Appellant demonstrates that both reasons for refusal can be overcome and as such this appeal should be allowed and Prior Approval granted.