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Handle with care: the impact of heritage assets on planning applications

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The recent Court of Appeal case of *City & Country Bramshill Ltd* v *Secretary of State for Housing, Communities and Local Government and others* ([2021] EWCA Civ 320; [2021] PLSCS 49) has re-emphasised the need to take care where a proposed development may impact on heritage assets (eg listed buildings, conservation areas, scheduled monuments, etc).

Impact on heritage is a relatively easy hook for an objector to hang a judicial review on if not dealt with correctly, so it must be handled delicately. This article explores the impact of heritage assets on planning applications and offers some practical tips on how to reduce the risk of a challenge.

1. Statutory duties

In determining planning applications, the main duties to be aware of are those set out in the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990. Section 66(1) requires local planning authorities and the secretary of state, "in considering whether to grant planning permission… for development which affects a listed building or its setting", to "have special regard to the desirability of preserving the building or setting or any features of special architectural or historic interest which it possesses". Section 72(1) contains a similar duty for conservation areas.

Ultimately, there is a statutory presumption against planning permission being granted if the relevant heritage asset is not preserved. This means permission should not be granted if the development does not make a positive contribution to the asset's preservation or causes harm to it (*South Lakeland District Council* v *Secretary of State for the Environment* [1992] 2 AC 141; [1992] EGCS 154). The presumption is rebuttable and can be outweighed by other material considerations.

The National Planning Policy Framework sets out the broad approach to be undertaken in assessing the impact of a proposed development on heritage assets and the consequences of this on planning applications – summarised below. The Court of Appeal has, helpfully, clarified that if a local planning authority follows this approach, then the section 66(1) duty is likely to have been properly performed (*Jones* v *Mordue* [2015] EWCA Civ 1243; [2015] PLSCS 346). This is the case even if the LPA has only referred to one but not all of the relevant paragraphs of the NPPF in its decision, provided that there is not some positive indication to the contrary.

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