

BRIEFING NOTE



SUBJECT

B&Q Cricklewood Lane – Call-in Inquiry

LPA Ref. 20/3564/OUT

PINS Ref. APP/N5090/V/22/3307073

PREPARED BY

Montagu Evans LLP

DATE

21 February 2023

Note from Dr Chris Miele for the attention of the Inspector following the roundtable session on heritage held on 16 February 2023

During the design and heritage roundtable on 16 February, there was discussion between Dr Miele for the Applicant and Mr Evans for the Council on whether an assessment of harm to heritage assets there is a gradient running continuously from less than substantial (LTSH) to substantial harm (SH).

As requested by the Inspector at the roundtable session Dr Miele has prepared this note to provide a reference to a decision by the Secretary of State for Levelling Up, Housing and Communities to which he referred in the session which confirms that, in his view, there is such a continuum.

This note is provided to assist the Inspector and does not adduce any new evidence to the Inquiry.

The Scale of Less Than Substantial Harm and Substantial Harm

In the 16 February 2023 roundtable session Dr Miele referred to the decision of the Secretary of State for Levelling Up, Housing and Communities of 4 July 2022 in an appeal known as the “*Edith Summerskill House decision*”. This decision can be found at **CDG.08**. The Edith Summerskill House decision reflects Dr Miele’s understanding that there is a continuous gradient between LTSH and SH, such that a high level of LTSH comes close to being SH, and had to be understood in those terms, as a major impact on significance, seriously eroding it.

The relevant paragraph in the Inspector’s Report is set out below (**CDG.08/page 78**).

*“12.49 The point was not made in these terms at the Inquiry but for my part I see little between the decision of the High Court in Bedford, the Court of Appeal in Bramshill, and the PPG. Essentially, substantial harm is set at a high bar, such that a good deal (or all) of the significance of a designated heritage asset would have to be removed for it to be reached. **That means that the range for a finding of less than substantial harm is very wide indeed, from a harmful impact that is hardly material, to something just below that high bar.**”* [bold added for emphasis]

In the Decision Letter, the Secretary of State agreed with the above paragraph and with the general approach the Inspector took to setting impacts, as here set out below at paragraph 12 (**CDG.08/page 3**):

*“13. For the reasons given at **IR12.46-12.54**, the Secretary of State agrees with the Inspector that the Church of St Thomas of Canterbury does derive something of its significance from its setting, **but the overwhelming proportion***

is locked into its form and fabric (IR12.51) and that the harm that would be caused to the setting and thereby the significance of the church would be less than substantial, and very much at the lower end of the scale (IR12.52). He further agrees that the harm that would be caused to the setting and thereby the significance of the Central Fulham conservation area as a result of the proposal would be very minor indeed and even further toward the bottom of the scale of less than substantial harm than what would be caused to the significance of the church (IR12.53). The Secretary of State attaches great weight to the harm to the Church of St Thomas of Canterbury and the Central Fulham Conservation Area.” [bold added for emphasis].

Further, both Dr Miele and Mr Evans for the Local Planning Authority directed the Inspector to the PPG’s advice on the calibration of LTSH, at paragraph 018, which states:

*“... Within each category of harm (which category applies should be explicitly identified), **the extent of the harm may vary and should be clearly articulated** ... “ [bold added for emphasis]*

The Approach Taken In The Edith Summerskill House Decision To Setting by the Inspector (and as agreed, see above, by the SoS)

Dr Miele cited a paragraph of the Inspector’s decision in the Edith Summerskill House Decision at the start of the heritage roundtable session. This is set out below for the ease of the Inspector in this appeal.

“12.50 In cases where the impact is on the setting of a designated heritage asset, it is only the significance that asset derives from its setting that is affected. All the significance embodied in the asset itself would remain intact. In such a case, unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to see how an impact on its setting can advance a long way along the scale towards substantial harm to significance.” (CDG.08/page 78)

Dr Chris Miele, Montagu Evans LLP, 21 February 2023