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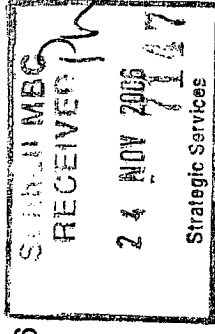


ENGLISH HERITAGE

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Our Ref: CP/SB/LEG  
  
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22 November 2006



Dear Mrs Davis

**PLANNING INQUIRY  
PROPOSED MOTORWAY SERVICE AREAS, SOLIHULL, WEST MIDLANDS**

The Chief Executive of English Heritage has asked me to reply to your letter of 31 October enclosing a legal opinion from Anthony Crean QC. I thank you for agreeing an extension of time within which to respond.

English Heritage have made written representations on the Catherine de Barnes MSA scheme at various stages during the appeal. These are summarised in a letter of today's date to the Planning Inspectorate which we attach. It may be of particular interest to your clients that we commented on the effect of the proposal on the setting of Walford Hall Farmhouse in letters of 26th March and 23rd April 2001 to the Government Office for the West Midlands. Our letter also corrects the erroneous references in our 8th November 2005 letter to a training college use of the Hall. The proposal accords with English Heritage's long stated aspiration that residential use of the Hall be reinstated. English Heritage have fully addressed the revised proposals for Walford Hall Farmhouse which were identified as a main issue for the inquiry.

Having fully considered Mr Crean's opinion we do not intend to attend the planning inquiry.

English Heritage does not accept the points raised in that opinion.

Mr Crean's opinion does not consider the power of the Inspector under section 250(2) of the Local Government Act 1972<sup>1</sup> to compel a person to attend to give evidence at the inquiry (on payment of his expenses). This is the appropriate course for Shirley to pursue if they want to force English Heritage to attend. It provides an alternative remedy to judicial review and the High Court would consider it inappropriate to judicially review English Heritage's decision to attend for this reason. The Inspector is far better able to judge whether English Heritage's attendance is required.

It appears from Mr Crean's opinion that Shirley seek the attendance of English Heritage to establish that the Catherine de Barnes proposals harm the setting of the listed building, that the Shirley proposals do not, that the offer of £100,000 by Shirley is a relevant and achievable benefit and that a comparison shows that the Shirley proposal is better in historic environment terms than the Catherine de Barnes proposal. These propositions, if correct, can all be advanced by Shirley's advocate and witnesses. There is no obvious good reason why the Inspector should compel English Heritage to attend, or the High Court should quash English Heritage's decision not to attend, simply because one party believes they will provide supportive opinion evidence.

Your client's criticism of the Catherine de Barnes scheme on heritage grounds appears to be because of its effect on the setting of Walford Hall Farmhouse. Mr Crean's opinion does not refer to the English Heritage letters of 26th March and 23rd April 2001 which deal explicitly with this point. He appears to be unaware of these documents as paragraph 27 of the opinion says that English Heritage see change to the setting as inevitable.

The Pre-Inquiry Meeting notes see the setting of the listed building as a matter addressed at the previous inquiry. Whilst it was not completely addressed within that inquiry, as shown by the 2001 correspondence, it is not a main issue at the new inquiry. The English Heritage position is, however, clear.

Mr Crean says that English Heritage should compare the effect on the setting of Walford Hall Farmhouse of the Catherine de Barnes and Shirley proposals. If, as the material implies, the Shirley proposals have no effect on the setting of the listed building, then once the effect of the Catherine de Barnes proposals has been determined, the comparison becomes obvious. Your clients should be perfectly capable of drawing any comparison themselves, without seeking to require English Heritage to do so.

English Heritage has not been consulted on the Shirley planning application and has seen no details of the proposed offer of £100,000. Legal questions may then arise as to the terms of the offer, how it will be secured, accepted and used on the property when that is outside the control of Shirley, and the extent to which the development of the Shirley MSA will be conditional upon the money being used for refurbishment. There will also be questions whether the offer is relevant as a matter of law and in accordance with Circular 05/05. There is also the practical question of what will be

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<sup>1</sup> As applied by section 320(2) of the Town and Country Planning Act 1990. The power to request the attendance of government departments and other bodies under Rule 12 of the Town and Country Planning (Inquiries Procedures) (England) Rules 2000 does not apply to English Heritage where the inquiry is into a planning application.

achieved by the £100,000. No doubt these are matters which your clients and others will address at the Inquiry. The Secretary of State will be able to make a decision on those matters without needing the assistance of English Heritage.

Section 33(1) of the National Heritage Act 1983 provides:

"It shall be the duty of [English Heritage] (so far as practicable)-

- (a) to secure the preservation of ancient monuments and historic buildings situated in England,
- (b) to promote the preservation and enhancement of the character and appearance of the conservation areas situated in England,
- (c) to promote the public's enjoyment of, and advance their knowledge of, ancient monuments and historic buildings situated in England and their preservation,

in exercising their functions conferred on them by virtue of subsections (2) to (4) and section 34; but in the event of a conflict between those functions and that duty those functions shall prevail."

Subsection (2)(b) provides that English Heritage:

"may give advice to any person in relation to ancient monuments, historic buildings and conservation areas situated in England, whether or not they have been consulted."

The duty therefore arises when English Heritage exercise their discretionary functions under section 33(2) and other provisions. English Heritage has a discretion whether to give advice. Implicit within that is a discretion whether to give that advice in writing or to attend a public inquiry. English Heritage are not obliged to advise on all planning applications relating to ancient monuments, historic buildings and conservation areas, even where, on consideration, they might be harmful. In this case English Heritage has given advice.

Mr Crean's opinion contains several flaws on this issue:

- (i) the quotation of section 33(1) in paragraph 5 is incomplete, containing only the introductory words and sub-paragraph (a). The assessment therefore leaves out the provision that the duty is concerned only with the exercise of English Heritage's functions and that those functions are discretionary;
- (ii) paragraph 21 misunderstands the English Heritage position as Shirley appear unaware of English Heritage's representations on the setting of the listed building;
- (iii) to the extent there is any complaint about the substantive views of English Heritage (or that English Heritage have not considered matters the way Shirley want them to), the decision maker is the Secretary of State, not English Heritage. The remedy for Shirley's complaint is not judicial review but for Shirley to persuade the Secretary of State of the merits of their view.

In summary I consider that English Heritage has fully and properly discharged its statutory duties under legislation and relevant associated documents (in particular PPG15 and Circular 01/2001). English Heritage does not consider that it has misconstrued the Secretary of State's letter of 19 April 2006, or paragraphs 40 and 41 of the Inquiry Inspector's letter of 6 July 2006.

Yours sincerely



**Mrs Ceri Pemberton**  
**Head of Legal Department**

Cc: Planning Inspectorate  
Solihull MBC  
RPS Planning

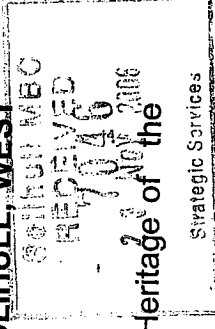
The Planning Inspectorate  
Room 4/04 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol, BS1 6PN

Direct dial: 0121 625 6848

22 November 2006

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990  
APPEALS BY BLUE BOAR MOTORWAYS LTD/EXECS OF SIR JOHN  
GOOCH AND SHIRLEY ESTATES (DEVELOPMENTS) LTD  
SITES FOR MSA BETWEEN JCTS 3A AND 6 OF M42, SOLIHULL, WEST  
MIDLANDS  
APP/Q4625/1/98/1013084; APP/Q4625/A/06/1199380**



Thank you for your letter of 3 November notifying English Heritage of the forthcoming pre-Inquiry meeting on 27 November.

We need to make two corrections to our letter to the Inspectorate dated 8 November 2005. In correcting that letter, we are taking the opportunity to clarify our advice to the Inquiry in response to paragraph ix of your letter of 6 September 2005 namely "*the extent to which the revised proposals for Walford Hall farmhouse and its outbuildings... are consistent with advice set out in PPG15...*". We do not offer any further comment on the impact of the proposed MSA on the listed building and its setting in accordance with paragraphs 40 and 41 of the Inspector's pre-Inquiry letter dated 12 July 2006 on the basis that this is not an outstanding issue having been examined and considered at the original inquiry.

Our previous letter inadvertently refers to "*The proposed change of use of Walford Hall Farmhouse to training centre...*". The letter should of course have referred to "*The proposed reuse of the farmhouse for residential purposes...*". The final paragraph refers to the 'adaption of the building from residential to a training centre' and the advice in PPG15, paragraph 3.10. This again is incorrect as the use is to remain residential. This confirms the position which we had supported since 2001 in correspondence with GOWM, and in discussions and correspondence with Solihull Metropolitan Borough Council about the future of the listed building. We apologise for this mistake.

**English Heritage involvement with Walford Hall Farm since 2001**

In its letter to Government Office for the West Midlands dated 26 March 2001, English Heritage said that the MSA development would be seriously harmful

to the setting of the listed building. We concurred with the first Inquiry Inspector's view at paragraph 19.84 of his report that reinstatement of residential use would be the best option for the farmhouse. We did not object to the Secretary of State's indication that he was minded to exclude the use of the listed building as a training centre from any planning permission issued (para 25 of GOWM letter of 6 March 2001) but were concerned that, if the listed building were excluded from the red line application site, its repair or restoration might be overlooked. We also advised that if planning permission for the MSA were granted appropriate planning conditions should be attached to ensure that the listed building was properly maintained. We reiterated these views in a letter to GOWM dated 23 April 2001, saying that the removal of a link road would not mitigate against the overall adverse impact of the development on the setting of the listed building.

In summer 2003 English Heritage was consulted direct by Michael Reardon Associates, conservation architects who had been commissioned by the applicants to prepare a scheme for the restoration of the listed farmhouse. English Heritage expressed its agreement with Reardon and Associates' proposals for the house in a letter to Solihull Metropolitan Borough Council dated 4 August 2003 but agreed with concerns expressed by the Local Planning Authority in their letter to the architects dated 31 July 2003 regarding clarification of the property boundary in relation to the MSA; the intended use of the associated farm buildings; and clarification of the intended use of the house for residential purposes. In particular English Heritage stressed the need for the farmhouse to be reoccupied for a suitable use when repaired and not left vacant and at risk of vandalism; and for the outbuildings to remain within the curtilage of the listed house.

English Heritage received copies of subsequent correspondence from [Reardon and Associates dated respectively 5 August and 21 August 2003 which indicated a) delineation of a separate boundary for the listed building outside the MSA site; b) that the associated farm buildings would remain with the house; and c) that a schedule of repairs had been prepared for repair of the farm buildings. It was also indicated that the farmhouse would be used for domestic purposes, possibly as a residence for the MSA manager. English Heritage also received a copy of a letter from the local planning authority to Reardon and Associates dated 4 September 2003 confirming their acceptance of these revised proposals; noting English Heritage's verbal concurrence with them; and agreeing that they could be submitted for incorporation in a draft S106 agreement.

English Heritage received a letter from RPS Planning dated 27 August 2004 enclosing a copy of a letter of the same date to the Government Office for the West Midlands enclosing inter alia a copy of the draft S106 agreement with its provision at paragraph 6.1 (b) (i) and in schedule 4 attached thereto to restore Walford Hall Farm before the opening of the MSA. By letter dated 6 September 2004 to RPS, English Heritage confirmed it would not be making any additional representations on the basis of this information on the basis that its concerns with regard to the revised proposals for the farmhouse appeared to have been met.

English Heritage received a copy of the letter dated 21 October 2004 from GOWM to Solihull Metropolitan Borough Council concerning changes which had taken place since issue of the interim decision letter in 2001. In inviting further written representations from all parties to the previous Inquiry on matters including "iii. *The revised proposals for Walford Hall Farmhouse and its outbuildings for residential use*" the Secretary of State noted English Heritage's letter to RPS of 6 September 2004 concerning additional representations but considered it appropriate to invite them to submit any views as part of his further consideration of the planning application. English Heritage had no further comment to make.

On 6 September 2005 GOWM wrote to English Heritage and other parties to the original inquiry advising that the Secretary of State had decided to reopen the public inquiry to consider further evidence arising from material changes in circumstances since the original public inquiry. Under the heading PPG15 – *Planning and the Historic Environment* the letter posed the question at paragraph ix. of the extent to which the revised proposals for Walford Hall Farm and the S106 agreement were consistent with advice given in PPG15.

English Heritage wrote to the Planning Inspectorate on 8 November 2005 confirming that we had been fully consulted by Solihull MBC on the revised proposals and the S106 agreement and of our agreement to them.

On 27 April 2006 English Heritage was consulted by Solihull Metropolitan Borough Council on listed building consent application 2006/882 for restoration to habitable use (residential domestic). English Heritage replied to the local planning authority by letter dated 11 May 2006 raising no objection to the proposals.

On 12 September 2006 English Heritage was consulted by SMBC on related proposals for repair of the listed barns (application 2006/1737). Our consultation response of 28 September 2006 indicated our broad acceptance of the proposals but suggested the need for a more detailed schedule of works indicating more precisely materials and methods of repair and the areas and extent of any intervention.

#### **The consistency of the proposals with PPG15**

English Heritage is satisfied that the revised proposals for Walford Hall Farmhouse are consistent with advice given in PPG15. Our position on setting is as set out in 2001. However the applicants' agreement to retain and repair the farm buildings associated with the listed farmhouse (as provided in the draft S106 agreement) does now clearly maintain the integrity of the historic farmyard group.

English Heritage consider that the retention of the farmhouse in residential use is consistent with the advice given at paragraphs 3.8 and 3.10 of the PPG: namely that the best way of securing the upkeep of listed buildings is to keep them in active use; and that the best use will very often be that for which

the building was originally designed. The works proposed to the listed farmhouse in the Reardon Associates scheme of 2003 and those which were granted listed building consent in 2006 (application 2006/882) minimise the alterations to the property to those necessary to bring it up to a habitable modern standard. English Heritage is fully satisfied that the repair works approved to date will conform to best conservation practice as set out in Annex C of the PPG.

English Heritage consider that the terms of the Deed of Planning Obligation by Undertaking (dated October 2004) and the works specified in schedule 4 thereto provide an adequate framework to ensure that the listed building and its outbuildings are appropriately restored prior to the opening of the MSA in the event of planning permission being granted for development of the adjacent site for this purpose. We remain concerned that the historic buildings do and may continue to lie vacant and at risk of vandalism until such time as the MSA is constructed at this site. We understand verbally that the applicants are intending to market the property for residential use in the near future. While this may create a situation in which the historic property is properly restored and reused at an earlier date than might otherwise pertain, we would hope that the intent or relevant provisions of the legal obligation to secure a binding requirement to restore the listed building be transferred to any new owner should a sale occur prior to construction of the MSA.

English Heritage considers that the comments set out in this letter and preceding correspondence (copies of which are before the resumed inquiry) fully set out our position in relation to paragraph ix of your letter of 6 September 2005. In these circumstances we are not intending to attend the inquiry itself.

Yours sincerely,

Alan Taylor  
Inspector of Historic Buildings

Cc: Solihull Metropolitan Borough Council  
RPS Planning  
Davis Planning Partnership

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Minicom: 0121 704 8058

Katherine Kerswell, Chief Executive

**WITH COMPLIMENTS**

*DM*

*See attached letter from English Heritage. Nothing now since then as has  
started their position. Nothing now since then as has  
in answer.*

**SOLIHULL**  
METROPOLITAN  
BOROUGH COUNCIL



RECEIVED  
17 OCT 2001  
URBS-IN-RUE

To: Hannah Dawson / Tony Barber  
From: David Wright