Case No: C1/2015/1067

Neutral Citation Number: [2015] EWCA Civ 1243
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION, PLANNING COURT
MR JOHN HOWELL QC
[2015] EWHC 539 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/12/2015

Before :

LORD JUSTICE RICHARDS
LORD JUSTICE FLOYD
and
LORD JUSTICE SALES

- -

Between :

Aidan Jones
- and -

Appellant

Jane Margaret Mordue
- and -

First Respondent

Secretary of State for Communities and Local Government

Second Respondent

- and -

South Northamptonshire Council

Third Respondent

- -
- -

Mr Alistair Mills (instructed by **Wilkin Chapman LLP**) for the **Appellant**
Mr Juan Lopez (instructed by **Direct Access**) for the **First Respondent**
The 2nd Respondent did not appear and was not represented
The 3rd Respondent did not appear and was not represented

Hearing date: 28 October 2015

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Judgment

Lord Justice Sales:

1. This appeal relates to planning permission granted by an Inspector (Mr John Braithwaite) for the erection of a single freestanding wind turbine with associated hard standing, access road and electricity sub-station on land at Poplars Farm, Wappenham, Towcester. The land is owned by the appellant. The respondent is chairperson of a local group of objectors. She made an application to the High Court under section 288 of the Town and Country Planning Act 1990 ("the 1990 Act") to quash that grant of permission. Her application was successful before John Howell QC, sitting as a deputy judge of the High Court. The appellant appeals to this court.

2. The wind turbine will impinge to a certain extent on views of the Church of St Mary in Wappenham ("the Church"), which is a Grade II* listed building. It will also affect to a very limited degree the setting of certain other listed buildings: The Manor at Wappenham, which is located close to the Church of St Mary, and the Church of St Botolph at Slapton, which is located some distance away. Listed buildings and their settings are accorded special protection under the planning controls regime by virtue of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") and chapter 12 ("Conserving and enhancing the historic environment"), paras. 126-141, of the National Planning Policy Framework ("the NPPF").

3. Since the wind turbine would affect the setting of the Church and, to a lesser extent, the other listed buildings, the deputy judge correctly held that the Inspector was obliged to give considerable weight to that harm when considering whether planning permission should nonetheless be granted. Under Ground 2 of the respondent's application, the deputy judge held that the respondent could not show that the Inspector had in fact failed to give the considerable weight to any harm to the setting of the listed buildings which he was required to give: para. [42] of the judgment. The deputy judge also rejected a claim by the respondent (Ground 1 of her application) that the Inspector failed to apply properly the duty imposed by section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), which required the application for planning permission to be determined "in accordance with the [development] plan unless material considerations [indicated] otherwise".

4. However, the deputy judge allowed the respondent's application to quash the planning permission under a second limb of Ground 2, because he accepted her submission that the Inspector had failed *to demonstrate* in the reasons he gave that he had complied with his duty under section 66(1) of the Listed Buildings Act to have special regard to the desirability of preserving the setting of the Church and other listed buildings by giving considerable weight to the desirability of preserving that setting: see, in particular, para. [48] of the judgment. The deputy judge considered that he was bound to reach this conclusion by the decision of this court in *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137; [2015] 1 WLR 45 ("the *East Northamptonshire case"*), in particular at [29] per Sullivan LJ (with whose judgment Rafferty and Maurice Kay LJJ agreed).

5. The deputy judge, however, also gave what are to my mind excellent reasons for thinking that this result would be out of line with other high authority, *Save Britain's Heritage v Number 1 Poultry Limited* [1991] 1 WLR 153, HL. That in turn calls in

question whether he was right to interpret Sullivan LJ's judgment in the *East Northamptonshire case* in the way he did.

6. The deputy judge rejected a further claim by the respondent (Ground 3 of her application) that the Inspector had failed properly to consider the intrinsic significance of the heritage assets and the contribution which their settings made to their significance, as required by the NPPF. Finally, the deputy judge held that the claim by the respondent (Ground 4 of her application) that she had been substantially prejudiced by a failure on the part of the Inspector to give reasons for his decision was made out for the same reason that Ground 2 was made out, but added nothing material to that Ground.

7. In the event, Sullivan LJ himself granted permission to appeal in relation to Grounds 2 and 4 on the footing that the appellant had a good prospect of successfully persuading the Court of Appeal that either the deputy judge had misunderstood the judgment in the *East Northamptonshire case* or that that judgment had been decided *per incuriam* and was not to be followed. In relation to the first of these points, Sullivan LJ wrote:

> "The basis for the Deputy Judge's central conclusion in paragraph 48 of his judgment appears to be the short extract from paragraph 29 of my judgment in *East Northamptonshire* which he cited in paragraph 43 of his judgment. It is strongly arguable that paragraph 29 of *East Northamptonshire* should be read as a whole, in the context of the preceding paragraphs in the judgment referred to in the Appellant's Skeleton Argument; and if that is done, that it was clear from the Inspector's reasoning in his decision in *East Northamptonshire* that he had not given 'considerable importance and weight' to the 'detrimental effect' of the turbine array upon the setting of a group of designated heritage assets which he had found to have 'archaeological, architectural, artist and historic significance of the highest magnitude.'"

8. The respondent supports the deputy judge's decision for the reasons he gave and also, by a respondent's notice, seeks to uphold it on the basis that he should have accepted Ground 1 of her application (alleged failure to comply with section 38(6) of the 2004 Act).

The statutory and policy framework

9. By virtue of sections 70(2) and 79(4) of the 1990 Act, regard must be had to the provisions of the development plan for the area. Section 38(6) of the 2004 Act provides that:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

10. The relevant policies in the local development plan for the area were saved Policies G3 and EV1, which related to general design and landscaping and amenity considerations, and Policy EV12 in relation to Listed Buildings. Policy EV12 provides as follows:

> "When considering applications for alterations or extensions to buildings of special architectural or historical interest which constitute development the council will have special regard to the desirability of securing their retention, restoration, maintenance and continued use. Demolition or partial demolition of listed buildings will not be permitted. The council will also seek to preserve and enhance the setting of listed buildings by control over the design of new development in their vicinity, the use of adjoining land and, where appropriate, by the preservation of trees and landscape features."

11. The development plan also set out a paragraph of commentary on Policy EV12, which included the statement: "In accordance with the duty under the Planning (Listed Building and Conservation Areas) Act 1990, the Council will pay careful attention to the protection and improvement of Listed Buildings and their setting."

12. Section 66(1) of the Listed Buildings Act provides as follows:

> "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

13. The relevant paragraphs in the NPPF are as follows:

> "131. In determining planning applications, local planning authorities should take account of:
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> • the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
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> • the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
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> • the desirability of new development making a positive contribution to local character and distinctiveness.
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> 132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be

> harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.
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> 133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:
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> • the nature of the heritage asset prevents all reasonable uses of the site; and
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> • no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
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> • conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
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> • the harm or loss is outweighed by the benefit of bringing the site back into use.
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> 134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."

The decision of the Inspector

14. The Inspector made the relevant decision on behalf of the Secretary of State. The Inspector identified the main issues for consideration on the appeal at para. 3 of the Decision Letter, as follows:

> "3. The main issues are; first, the effect of the erection of the turbine on the character of the landscape, particularly when seen from footpaths and viewpoints in the area; second, the effect of the development on heritage assets; third, whether the development would cause any other harm; and fourth, whether the harm caused is outweighed by the environmental benefits of the renewable energy scheme."

15. He considered the second issue, the effect of the development on heritage assets, in these paragraphs of the Decision Letter:

> "10. The nearest non-residential heritage asset to the location of the proposed turbine is the Church of St Mary in Wappenham, a Grade II* listed building. The immediate setting of the Church is its churchyard, an intimate area confined by buildings and vegetation. It is unlikely that the turbine would be visible from within the churchyard. The Church is at the heart of the village and it is a prominent feature particularly from the north within the village. The turbine would be more than 1 km from the church and it is unlikely that it would be visible in the background in these village views of the church. The tower of the Church is visible from outside the village from some directions and it is possible that the tower and the turbine would be seen in the same views. However, given the distance between them the turbine would not compete with, or detract from, the landmark feature that is the Church tower. Nevertheless, the turbine would be a feature in the countryside setting of the Church and it would cause harm to this setting, though the harm would be less than substantial.
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> 11. The Manor, a dwelling that is a Grade II* listed building, is situated close to the Church of St Mary in Wappenham. It is within the tight core of mainly historic development around the Church and the effect of the turbine on its setting would be negligible. The same conclusion can be reached for other listed buildings within the village. Further afield is the Church of St Botolph at Slapston, a Grade I listed building. This Church is over 2 kms from the location of the proposed turbine and, though it is located on slightly elevated ground, views towards the turbine from its immediate surroundings would be filtered by a belt of trees to the south-west. It is possible even that the turbine would not be visible from the surroundings of the Church and, despite its high sensitivity, the potential harm to its setting can only be regarded to be negligible. The same conclusion can be reached for other listed buildings in the vicinity of the Church, such as Manor Farm and an associated barn.
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> 12. The aforementioned listed buildings are all more than 1 km from the location of the proposed turbine and no other heritage asset, listed building or registered park and garden, would be any closer. The turbine would not cause harm, greater than negligible, to the setting of any of these other heritage assets.
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> 13. The proposed turbine would harm the setting of the Church of St Mary but the harm would be less than substantial. The turbine would have a negligible harmful effect on the settings of other heritage assets in the area. The cumulative

harm to the settings of heritage assets is less than substantial. Nevertheless, the proposed development is in conflict with saved LP policy EV12."

16. The fourth issue identified by the Inspector, regarding the environmental benefits of the development, was considered in these paragraphs of the Decision Letter:

> "20. The landscape was formed by the most recent ice age and has been altered by man for farming and other purposes. These activities, such as an increasing reliance on motorised transport, have contributed to changes in the global climate that are having a detrimental effect on, amongst other things, the landscape. The landscape of South Northamptonshire is not immune from the effects of climate change. Flooding is a serious issue and will have affected South Northamptonshire as it has to devastating effect elsewhere in the country. This one effect of climate change causes erosion of the landscape and alters how the landscape can be farmed and used. It also causes hardship for those who suffer the direct consequences of climate change; flooding of their homes and businesses.
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> 21. A suggested condition would require the removal of the wind turbine within twenty-five years after it is brought into operation. Twenty-five years is a fraction of the history of the landscape of South Northamptonshire and if the landscape is not to suffer serious erosion in the long-term future then consideration must be given to accepting short-term harm to the character of the landscape. A low carbon future is at the heart of Government policy that seeks to meet the challenge of climate change, as set out in the National Planning Policy Framework (NPPF). In paragraph 93 it is stated that "Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure".
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> 22. The candidate turbine, an Enercon E53, is rated at 0.8 MW but would be operated to produce no more than 0.5 MW. It would be de-rated because supply to the National Grid of over 0.5 MW would require upgrading about 4 kms of electricity transmission lines and this would be financially prohibitive. Furthermore, de-rating a 0.8 MW turbine would produce a consistent output close to the limit of 0.5 MW whereas a 0.5 MW turbine could not produce such a consistent output, and an Enercon 0.5 MW turbine is not materially smaller than their 0.8 MW turbine. The specification of an Enercon E53 turbine maximises the potential for electricity generation at Poplars Farm within the limit set by existing transmission lines. The development would make a small

> contribution to meeting the effects of climate change, an objective of the NPPF and of National Policy Statements."

17. The Inspector then turned to the balancing exercise he had to perform, as follows:

> "23. Paragraph 134 of the NPPF states that "Where a development proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal…". The public benefits of the proposal must also be weighed against public opposition to the proposal. In this regard over half of households in Wappenham have signed a petition against the turbine and some residents have suggested that the Localism Act 2011 and Ministerial Statements made in 2013 indicate that local opinion should be given considerable weight. Some have also pointed to paragraph 5 of Planning Practice Guidance for Renewable Energy which states that "…all communities have a responsibility to help increase the use and supply of green energy, but this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities". It is worth noting, with regard to responsibility, that some residents of the village have written in support of the proposed development of a wind turbine at Poplars Farm.
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> 24. Paragraph 98 of the NPPF states that local planning authorities should "…not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy…". There is no quota for the production of renewable energy and the proposed development would contribute to meeting the effects of climate change. The significant adverse effect of the development on the character of the landscape is limited to a small area and no heritage asset in the area would suffer substantial harm. In this case, the harm that would be caused by the development is outweighed by its environmental benefits.
>
> 25. Saved LP policies G3, EV1 and EV12 are part of the development plan for the area. With regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, material considerations in this case, the environmental benefits of the renewable energy development, indicate that determination of this appeal must be made other than in accordance with the development plan."

18. Accordingly, the Inspector granted planning permission for the development.

Discussion

19. As the deputy judge correctly pointed out, *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 WLR 153, HL, is authority regarding the standard of reasons to be expected where a planning decision is taken granting permission for development which has a detrimental impact upon listed buildings. In that case, permission was granted by the Secretary of State, on the recommendation of his inspector, for a redevelopment scheme involving the demolition of eight Grade II listed buildings. The merits of the redevelopment scheme were assessed to override the Secretary of State's stated policy of the time, that listed buildings capable of economic use should not be demolished. An objector applied to quash the permission. At first instance, the application was unsuccessful; but the applicant was successful in the Court of Appeal, on the grounds that the court was not satisfied from the reasons given for the decision that there had been no error of approach on the part of the Secretary of State. The House of Lords, however, overturned that decision on appeal. Lord Bridge of Harwich gave the leading speech. At pp. 167C-168E he said this:

> "Whatever may be the position in any other legislative context, under the planning legislation, when it comes to deciding in any particular case whether the reasons given are deficient, the question is not to be answered in vacuo. The alleged deficiency will only afford a ground for quashing the decision if the court is satisfied that the interests of the applicant have been substantially prejudiced by it. This reinforces the view I have already expressed that the adequacy of reasons is not to be judged by reference to some abstract standard. There are in truth not two separate questions: (1) were the reasons adequate? (2) if not, were the interests of the applicant substantially prejudiced thereby? The single indivisible question, in my opinion, which the court must ask itself whenever a planning decision is challenged on the ground of a failure to give reasons is whether the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given. Here again, I disclaim any intention to put a gloss on the statutory provisions by attempting to define or delimit the circumstances in which deficiency of reasons will be capable of causing substantial prejudice, but I should expect that normally such prejudice will arise from one of three causes. First, there will be substantial prejudice to a developer whose application for permission has been refused or to an opponent of development when permission has been granted where the reasons for the decision are so inadequately or obscurely expressed as to raise a substantial doubt whether the decision was taken within the powers of the Act. Secondly, a developer whose application for permission is refused may be substantially prejudiced where the planning considerations on which the decision is based are not explained sufficiently clearly to enable him reasonably to assess the prospects of succeeding in an application for some alternative form of development. Thirdly, an opponent of development, whether the local planning authority or some

> unofficial body like Save, may be substantially prejudiced by a decision to grant permission in which the planning considerations on which the decision is based, particularly if they relate to planning policy, are not explained sufficiently clearly to indicate what, if any, impact they may have in relation to the decision of future applications.
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> Here again, I regret to find myself in disagreement with Woolf L.J. who said, *60 P. & C.R. 539*, 557:
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> > "Once it is accepted that the reasoning is not adequate, then in a case of this sort it seems to me that, apart from the exceptional case where it can be said with confidence that the inadequacy in the reasons given could not conceal a flaw in the decision-making process, it is not possible to say that a party who is entitled to apply to the court under section 245 has not been substantially prejudiced."
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> The flaw in this reasoning, it seems to me, is that it assumes an abstract standard of adequacy determined by the court and then asserts, in effect, that a failure by the decision-maker to attain that standard will give rise to a presumption of substantial prejudice which can only be rebutted if the court is satisfied that the inadequacy " *could not* conceal a flaw in the decision-making process." But this reverses the burden of proof which the statute places on the applicant to satisfy the court that he has been substantially prejudiced by the failure to give reasons. When the complaint is not of an absence of reasons but of the inadequacy of the reasons given, I do not see how that burden can be discharged in the way that Woolf L.J. suggests unless the applicant satisfies the court that the shortcoming in the stated reasons is of such a nature that it may well conceal a flaw in the reasoning of a kind which would have laid the decision open to challenge under the other limb of section 245. If it was necessary to the decision to resolve an issue of law and the reasons do not disclose how the issue was resolved, that will suffice. If the decision depended on a disputed issue of fact and the reasons do not show how that issue was decided, that may suffice. But in the absence of any such defined issue of law or fact left unresolved and when the decision was essentially an exercise of discretion, I think that it is for the applicant to satisfy the court that the lacuna in the stated reasons is such as to raise a substantial doubt as to whether the decision was based on relevant grounds and was otherwise free from any flaw in the decision-making process which would afford a ground for quashing the decision."

20. The guidance in *Save Britain's Heritage* was followed by Lord Brown of Eaton-under-Heywood in his speech in *South Bucks District Council v Porter (No. 2)* [2004] UKHL 33; [2004] 1 WLR 1953, leading to his very familiar summary of the relevant principles at [36] as follows:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

21. In the *East Northamptonshire case* the local planning authority refused the developer's application for planning permission to erect wind turbines in a location where this would have a detrimental effect on the setting of listed buildings. An inspector appointed by the Secretary of State allowed the developer's appeal and granted planning permission. The local planning authority applied to quash that decision on the ground that the inspector had failed to give sufficient weight to the desirability of preserving the setting of the listed buildings as required by section 66(1) of the Listed Buildings Act, and was successful at first instance. The appeal to this court was dismissed.

22. This court held that the judge had been correct to rule that section 66(1) requires the decision-maker to give "the desirability of preserving the building or its setting" not merely careful consideration for the purpose of deciding whether there would be some harm, but considerable importance and weight when balancing the advantages of the proposed development against any such harm: [22]-[24] per Sullivan LJ. The judge found that the inspector had failed to comply with this duty, as evidenced by the reasoning in his decision letter, and had instead downplayed the desirability of preserving the setting of the listed buildings. This court agreed.

23. At para. [29] Sullivan LJ said this:

> "For these reasons, I agree with Lang J's conclusion that Parliament's intention in enacting section 66(1) was that decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed

> buildings when carrying out the balancing exercise. I also agree with her conclusion that the inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield, as a less than substantial objection to the grant of planning permission. The second defendant's skeleton argument effectively conceded as much in contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the inspector's planning judgment. In his oral submissions Mr Nardell contended that the inspector had given considerable weight to this factor, but he was unable to point to any particular passage in the decision letter which supported this contention, and there is a marked contrast between the "significant weight" which the inspector expressly gave in para 85 of the decision letter to the renewable energy considerations in favour of the proposal having regard to the policy advice in PPS22, and the manner in which he approached the section 66(1) duty. It is true that the inspector set out the duty in para 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision even if grounds 2 and 3 are not made out."

24. In the present case, the deputy judge treated this passage as authority for the proposition that there is an onus on a decision-maker positively to demonstrate by the reasons given that considerable weight has been given to the desirability of preserving the setting of relevant listed buildings, notwithstanding that this is contrary to the general position explained in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*: see [43]-[49], [58] (where he said that "the normal burden of proof is reversed in respect of the requirement to give considerable weight to any harm to a listed building or its setting which section 66(1) of the Listed Buildings Act is taken to impose"), [65] and [73]. The deputy judge also drew support for this conclusion from the first instance decisions in *R (The Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895; [2015] JPL 22 and *R (Hughes) v South Lakeland District Council* [2014] EWHC 3979 (Admin): see [44].

25. Accordingly, the deputy judge found that the complaint in Ground 2 (failure to comply with the duty in section 66(1) of the Listed Buildings Act) was made out, because the Inspector had failed positively to demonstrate in his reasons that he had referred to and applied that provision. He also found that the complaint in Ground 4 regarding the alleged inadequacy of the reasons given was made out for the same reason. The deputy judge was correct to treat these two grounds as being in substance the same, since the only evidence as to whether the Inspector had failed in fact to comply with the duty in section 66(1) was what was contained in the reasons he gave in the decision letter. The deputy judge reached the conclusion that the decision should be quashed only because he regarded himself as bound to do so by the *East*

Northamptonshire case and with considerable reluctance, as he explained at para. [73], not least because in his judgment "it is clear in this case why the Inspector decided to grant planning permission". I agree with this last comment.

26. With respect to the deputy judge, I think he read too much into para. [29] of the judgment of Sullivan LJ in the *East Northamptonshire case*. I do not consider that, read in the context of the judgment as a whole, Sullivan LJ and the court intended to state an approach to the reasons required to be given by a decision-maker dealing with a case involving application of section 66(1) of the Listed Buildings Act which was at variance from, and more demanding than, that stated in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*. Sullivan LJ's comments in para. [29] were made in the context of a decision letter which positively gave the impression that the inspector had *not* given the requisite considerable weight to the desirability of preserving the setting of the relevant listed buildings, where as a result it would have required a positive statement by the inspector referring to the proper test under section 66(1) to dispel that impression. In my judgment, the relevant standard to be applied in assessing the adequacy of the reasons given in the present case is indeed the usual approach explained in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*, which is what the deputy judge correctly thought it ought to be.

27. Mr Lopez, for the respondent, took us to first instance authorities - *The Forge Field Society* and *North Norfolk District Council v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin) - in which the reasons for decisions in cases involving application of section 66(1) of the Listed Buildings Act had been found to be inadequate and invited us to compare them with the reasons given by the Inspector in this case. I did not find this a helpful exercise. Reasons for planning decisions have to be read as a whole in their proper context, and there will inevitably be differences of context, expression and nuance between cases which may be highly relevant. Reading other decision letters (and the judgments in relation to them) can take up considerable time and effort without adding value for the determination of the particular case before the court. The relevant principles in relation to the giving of reasons are well-established and very well known, and it should be sufficient for a judge to be reminded of them and taken to the reasons in the case before him or her to assess them in light of those principles, without any need for exegetical comparison with reasons given in relation to other planning decisions. I would add, however, that on my reading of them the judgments we were taken to concerned reasons for decisions which, as in the *East Northamptonshire case* itself, contained positive indications that the decision-maker had failed to comply with the duty under section 66(1) of the Listed Buildings Act: see *The Forge Field Society* [2015] JPL 22, at [42] and [53], and *North Norfolk DC v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin), at [72]-[73]. Such indications would have had to have been dispelled by a countervailing positive reference to the relevant duty in the reasons themselves in order to avoid the conclusion that the decision-maker had erred as a matter of substance in the test being applied. Although *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)* were not referred to, there is nothing in the judgments themselves to show that the familiar basic principles laid down in them were departed from on the facts of these cases.

28. If one applies the correct approach in the present case, as set out in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*, it cannot be said that the reasoning of

the Inspector gives rise to any substantial doubt as to whether he erred in law. On the contrary, the express references by the Inspector to both Policy EV12 and paragraph 134 of the NPPF are strong indications that he in fact had the relevant legal duty according to section 66(1) of the Listed Buildings Act in mind and complied with it. Policy EV12 reflects that duty, and the textual commentary on it reminds the reader of that provision. Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs, set out above, which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of provisions (as the Inspector referred to paragraph 134 of the NPPF in the Decision Letter in this case) then – absent some positive contrary indication in other parts of the text of his reasons - the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned. Working through these paragraphs, a decision-maker who had properly directed himself by reference to them would indeed have arrived at the conclusion that the case fell within paragraph 134, as the Inspector did.

29. The Inspector was lawfully entitled to assess that the harm to the setting of the listed buildings identified and discussed by him at paras. 10-13 of the Decision Letter, giving that factor the weight properly due to it under section 66(1) of the Listed Buildings Act and paras. 131-134 of the NPPF, was outweighed by the environmental benefits from the turbine identified and discussed by him at paras. 20-22 of the Decision Letter.

30. For these reasons, I would allow the appeal and uphold the decision of the Inspector.

31. The additional contention raised in the respondent's notice, namely that the Inspector failed properly to comply with the duty in section 38(6) of the 2004 Act, is wholly devoid of merit and should be dismissed. The Inspector clearly considered that there were good reasons to depart from the relevant policies in the development plan, for the reasons he explained. That was an entirely lawful exercise of planning judgment by him.

Lord Justice Floyd:

32. I agree

Lord Justice Richards:

33. I also agree.