Neutral Citation Number: [2013] EWHC 1138 (Admin)

Case No: CO/12831/2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Bristol Civil Justice Centre
2 Redcliffe Street
Bristol BS1 6GR

Date: 09/05/2013

Before :

MR JUSTICE KENNETH PARKER

- -

Between :

ANITA COLMAN	**Claimant**
- and -	
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**First Defendant**
- and -	
NORTH DEVON DISTRICT COUNCIL	**Second Defendant**
- and -	
RWE NPOWER RENEWABLES LIMITED	**Third Defendant**

- -
- -

David Cocks QC and Zack Simons (instructed by **Richard Buxton**) for the **Claimant**
Richard Honey (instructed by **The Treasury Solicitor**) for the **First Defendant**
John Litton QC (instructed by **Burges Salmon**) for the **Third Defendant**

Hearing dates: 19 April 2013

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Judgment

Mr Justice Kenneth Parker :

Introduction

1. This is a claim under section 288 of the Town and Country Planning Act 1990. The Claimant, Anita Colman, seeks the quashing of the decision of the Inspector, Mr R W N Grantham BSc(Hons) MRSC MCIWEM, appointed by the Secretary of State for Communities and Local Government, the First Defendant, contained in a decision dated 22 October 2012. The Inspector held an inquiry over 15 days from June to September 2012 and undertook both accompanied and unaccompanied site visits.

2. The Inspector granted planning permission for the construction of nine wind turbines of 103m in height to blade tip on land at Batsworthy Cross, Knowstone, North Devon.

Planning permission had been refused by the North Devon District Council, the Second Defendant, in July 2011.

The National Planning Policy Framework (March 2012) ("the NPPF")

3. Prior to the public inquiry, but after the Council had considered and refused the Applications, the Secretary of State published the National Planning Policy Framework (March 2012) ("the NPPF") setting out the Government's planning policies for England and guidance as to how it expects those policies to be applied. However, paragraph 2 of the Introduction to the NPPF makes clear that –

> "Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Policy Framework must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions… " (Footnotes omitted)

4. Paragraphs 11, 12 and 196 of the NPPF reiterate the approach required by s. 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), namely that a proposed development which is in accordance with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused *"*unless other material considerations indicate otherwise*"*. Paragraph 13 identifies the guidance in the NPPF as a material consideration to be taken into account in determining applications for development.

5. Paragraph 14 of the NPPF refers to a presumption in favour of "sustainable development" as a central feature of the NPPF in relation to both plan-making and decision-taking. In the context of decision-taking, the presumption in favour of sustainable development is given expression in two ways. The first is by approving development proposals that accord with the development plan. The second is to grant permission where the development plan is absent, silent or where relevant policies are "out-of-date" unless any adverse impacts of granting permission for the proposed development *"*would significantly and demonstrably outweigh the benefits, when assessed against the policies in the [NPPF] taken as a whole". Paragraph 211 in Annex 1 to the NPPF makes clear that for the purposes of decision-taking, the policies in the Local Plan should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF.

6. Transitional provisions in Annex 1 to the NPPF permit decision-takers, for 12 months from the date of publication of the NPPF, to continue to give full weight to relevant policies in development plan documents adopted since, and in accordance with, the 2004 Act even if there is a limited degree of conflict between those development plan policies and the NPPF (see paragraph 214). However, where relevant policies are contained in development plan documents which have not been adopted in accordance with the 2004 Act (or the policies have been adopted under the 2004 Act but there is more than a limited degree of conflict with the NPPF) the weight to be given to them depends on the consistency of those policies with the NPPF, with greater weight being given to development plan policies which are consistent with the NPPF's policies (see paragraph 215).

7. The policies relevant to determination of the appeals considered by the Inspector were not in development plan documents adopted in accordance with the 2004 Act. Any inconsistency between those policies and the NPPF would render them out of date and cause the approach set out in paragraph 14 of the NPPF to be engaged. In that case the decision-taker would be required to consider whether any adverse impacts of granting planning permission for the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

The Inspector's Decision

8. At paragraph 19, the Inspector set out the planning policy context for the determination of the appeals noting that (a) the NPPF was a material consideration which could be given considerable weight if the relevant policies in the development plan were not adopted in accordance with the 2004 Act; and (b) the weight to be given to the NPPF would increase according to the degree of inconsistency between the relevant development plan policies and the NPPF (see paragraphs 214 and 215 of Annex 1 to the NPPF).

9. At paragraph 20, the Inspector identified the development plan as including RPG10 and the saved policies of the Local Plan (LP) and the Devon Structure Plan (SP) but noted that the development plan policies were not adopted in accordance with the 2004 Act. The Inspector stated that it was therefore necessary to consider the consistency of the individual relevant development plan policies with the policies of the NPPF for the purpose of deciding how much weight to give the development plan policies and those in the NPPF in his assessment of the merits of the development.

10. At paragraph 21, the Inspector noted that the NPPF replaced much of the previously published national planning policy guidance but that certain of the companion guides to those policy statements remained extant. At paragraph 22, he referred to the approach to be adopted in the assessment of on-shore wind farms in the context of the extant Overarching National Policy Statements for Energy (EN-1) and for Renewable Energy Infrastructure (EN-3).

11. At paragraph 23 the Inspector referred to the Government's commitment to reducing greenhouse gas emissions and increasing energy supply from renewable sources, including from on-shore wind farms. The Inspector also mentioned that not all renewable energy developments are sustainable and that the impacts of such developments (e.g. on the landscape) have to be taken into account.

12. At paragraph 26, the Inspector identified the main issues in relation to the wind farm as being the impact of the proposed development on the landscape, cultural heritage, living conditions of local residents, bats and highway safety and whether any impacts would be outweighed by the benefits of the scheme.

13. At paragraphs 30 – 214 the Inspector assessed the impacts of the proposed development against the identified issues in the context of the relevant development plan policies and arrived at his conclusions in relation to each of the relevant issues.

14. In addition to the impacts identified above, the Inspector considered the benefits of the scheme at paragraphs 215 – 229 and concluded that –

i) On-shore wind was essential to meeting the UK's need for energy security and reducing greenhouse emissions (paragraph 219).

ii) The savings in CO2 emissions were likely to be substantial and valuable over the lifetime of the scheme (25 years) (paragraph 227).

iii) There would be economic benefits from employment during construction and operation of the wind farm with possible expenditure of more than £1 million to the local economy (paragraph 228).

15. At paragraphs 230 – 236, the Inspector weighed the harmful impacts against the benefits of the proposed development and concluded as follows –

> "234. Some employment would be generated by the development, but this would be mostly during the construction phase. However, the benefits of reduced greenhouse gas emissions would be long lasting and the need for new renewable electricity generating projects is urgent. Whilst the CO_2 savings which this wind farm would achieve would not be as great as anticipated, they would nevertheless be valuable and, as such, would outweigh the limited harm which the scheme would cause.
>
> 235. Development plan policies which seek to promote renewable energy schemes provide no direct support for these proposals. This is because they only allow for the benefits of the scheme to be balanced against the harm, if the energy generated would contribute towards meeting the county's 2010 target of producing 151MW of electricity from renewable sources. That target no longer applies and the development plan's approach is outdated when considered against the Framework's presumption in favour of sustainable development.
>
> 236. This is not a case where the harm caused would significantly and demonstrably outweigh the benefits. Indeed, subject to putting suitable controls in place, the impact of the Batsworthy Cross Wind Farm would be acceptable and, on that basis, permission should be granted for the Appeal A proposals."

The Grounds of Challenge

16. For reasons that are apparent from the foregoing analysis it was common ground at the inquiry and in this appeal that the Inspector had first to identify and analyse the relevant policies in the development plan and, secondly, to determine the extent, if any, to which a relevant policy was consistent with the NPPF. The central ground of challenge in this appeal is that the Inspector failed properly to analyse a number of relevant policies and also reached conclusions on consistency that were wrong. Also the challenge was presented under two separate heads. The points are closely

interlinked, and I shall deal with them together. I shall look in turn at the relevant policies.

A. Landscape Character

17. At paragraph 60 the Inspector stated:

> "The impact would also be limited to a period of 25 years, or less. Although this is a matter to be considered in the overall balance, it does not reduce the degree of harm or alter my conclusion that the proposals run contrary to LP Policy ENV1 and SP Policy CO1. However, the Framework requires a judgment to be made as to whether an adverse impact, such as this, would be outweighed by the scheme's benefits. This approach is unlike that set out in Policies ENV1 and CO1; it therefore carries substantial weight."

18. Given the background and earlier references it was plain that the Inspector was in the above paragraph concluding that relevant policies LP Policy ENV1 and SP Policy CO1 were significantly inconsistent with the NPPF and to that extent the overall "cost/benefit" approach of the NPPF was to be preferred.

19. Mr David Cocks QC, on behalf of the Claimant, submitted that there was no significant inconsistency between the relevant policies. At first sight that is a curious submission, given the express terms of the relevant policies. For example, SP CO1 expressly provides:

> "**Policy SP CO1**
>
> **Landscape Character and Local Distinctiveness**
>
> The distinctive qualities and features of Devon's Landscape Character Zones, illustrated in Map 5, should be sustained and enhanced … Policies and proposals within each part of Devon should be informed by and be sympathetic to its landscape character and quality." (My emphasis)

20. The supporting text to Policy SP CO1 also refers to "conservation" and "maintenance".

21. LP Policy ENV1 states:

> "Policy ENV1 (Development in the Countryside) Development in the countryside will only be permitted where:
>
> A rural location is required.
>
> It provides economic or social benefits to the local community: and
>
> It protects and enhances its beauty, the diversity of its landscape and historic character, the wealth of its natural

> resources and its ecological, recreational and archaeological value."

22. These policies are, in my view, on their own express terms very far removed from the "cost/benefit" approach of the NPPF. The policies as such do not permit any countervailing economic or similar benefit to be weighed in the scales. A submission that such benefits may be implicitly taken into account would be immediately rejected as running directly contrary to both the language and rationale of the relevant policies. Mr Cocks QC sought to meet this formidable objection by submitting that such benefits, recognised as central to the NPPF, would always constitute a "material consideration" relevant to the grant of development permission, and should, therefore, be "read into" the relevant policies.

23. I reject that argument on two grounds. First, the NPPF in referring to "relevant policies" is plainly directing the mind of the decision maker to the express terms of the relevant policies and requiring the decision maker to compare, for consistency, the express terms with the "cost/benefit" approach of the NPPF. Secondly, and perhaps more importantly, it is a fundamental and long established principle of planning law that something identified as a "material consideration" (such as the putative economic and environmental benefit in the present context) is conceptually distinct from considerations identified in the development plan and does not *ceteris paribus* carry the same weight as an aim or consideration identified in the development plan itself. It is, therefore, essential, both analytically and in policy terms, to separate objectives or considerations specifically set out in the development plan from something else that can count only as another "material consideration". Mr Cocks' argument confounds elements that fall within different relevant categories, and which have a different character for planning purposes, and it cannot rescue the inconsistency that is obvious on its face between the relevant policies and the NPPF.

24. For these reasons I conclude that the Inspector properly directed his mind in the present context to the relevant policies and correctly analysed the inconsistency between those policies and the NPPF.

B. Historic Buildings and Ancient Monuments (Cultural Heritage)

25. SP policy CO7 is as follows:

> "**Historic Settlements and Buildings**
>
> The quality of Devon's historic environment should be conserved and enhanced. In providing for new development particular care should be taken to preserve the historic character of settlements, the character and appearance of conservation areas, the historic character of the landscape, listed or other buildings of historic interest and their settings and parks and gardens of special historic interest and their settings." (My emphasis)

26. LP policy ENV17 is as follows:

> "**Policy ENV17 (listed buildings)**

> Development affecting a listed building will only be permitted where it preserves the architectural or historic interest of the building and its setting." (My emphasis)

27. The relevant development plan policies are, therefore, expressed in very restrictive terms. Any harm, or anything less than preservation of the status quo, should lead to permission being refused. The policies admit of no express exceptions. They leave no room to accommodate harm without breaching the policy. Any development which did not at the least preserve the status quo would run counter to the relevant development plan policies.

28. On cultural heritage, the NPPF states that planning should "conserve heritage assets in a manner appropriate to their significance". (My emphasis; paragraph 17; paragraph 126).

29. The NPPF also applies a threshold of "substantial harm" and provides different tests where the impact of a development is above or below that threshold. Harm or loss can be allowed where there is clear and convincing justification (paragraph 132). Substantial harm should be exceptional (paragraph 132) but can be allowed where it can be demonstrated either that it is "necessary to achieve substantial public benefits that outweigh that harm" or where certain criteria apply (paragraph 133). Where there is less than substantial harm, the "harm should be weighed against the public benefits of the proposal" (paragraph 134).

30. The NPPF also provides that it is necessary to "avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal" (paragraph 129; my emphasis added).

31. It is clear from the foregoing that, unlike the highly restrictive relevant development plan policies, the NPPF takes a far more balanced approach, allowing an analysis of the significance or, where appropriate, of the substantiality of harm to the identified cultural interests, and a weighing of the identified harm against the actual benefits that could be expected to result from the benefits. Again I reject, for the reasons given above, the argument that the inconsistency that emerges from an evaluation of the express terms of the relevant development policies, as against the balanced approach of the NPPF, can be rescued by seeking to "read into" the relevant policies a corresponding balance as a "material consideration".

32. The Inspector summed up the position at paragraph 99 of the decision as follows:

> "Development plan policies simply seek to protect the setting of listed buildings, and of scheduled monuments, against harm, whatever the circumstances. There is no suggestion here that such harm would be substantial, in terms set out in the Framework. Considerable weight therefore attaches to the Framework's requirement that any harm should be balanced against the public benefits of the proposals; a matter that I return to later." (Footnotes omitted)

33. In the light of the matters that I have set out at length above, I endorse that summary as a fair and accurate statement of the position, and entirely reject the Claimant's criticisms of it.

Renewable Energy Developments

34. The main relevant policies of the development plan on renewable energy developments are SP Policy CO12 and LP Policy ECN15.

35. Policy CO12 states:

> "**Renewable energy development**
>
> Provision should be made for renewable energy developments, including offshore developments, in the context of Devon's sub regional target of 151MW of electricity production from land based renewable sources by 2010, subject to consideration of their impact upon the qualities and special features of the landscape and upon the conditions of those living or working nearby." (My emphasis)

36. Thus the Policy's support for renewable energy developments had to be assessed against the background of the target referred to which would determine whether permission would be granted.

37. Policy ECN15 states:

> "Provision should be made for renewable energy developments to contribute towards Devon's sub regional target of 151MW of electricity production from renewable sources by 2010. In considering proposals for renewable energy, the benefits of the developments in meeting this target will be balanced against the impact on the local environment. A proposal for the generation of energy from a renewable source will be permitted where:-
>
> > The proposal, including any associated transmission lines, access roads and other related works does not adversely affect the visual character of its surroundings; it does not significantly affect the living conditions of the occupants of residential properties or the amenities of other users of the locality." (My emphasis)

38. Accordingly, the relevant development plan policies not only supported renewable energy development only against the background of the 2010 target, but also expressly provided that planning permission should be refused where there was significant harm to important identified interests, including visual character, living conditions and landscape character. The central aim of the policies was to avoid such significant harm.

39. By contrast, the NPPF's policy is that the development of renewable energy is to be encouraged (paragraph 17) and supported (paragraph 93). The NPPF states that "this is central to the economic, social and environmental dimensions of sustainable development" (paragraph 93).

40. In particular, the NPPF says that policies should:

> "maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts." (My emphasis)

41. The NPPF states that when determining planning applications a decision-maker should "approve the application if its impacts are (or can be made) acceptable" (paragraph 98).

42. In the same way, the Overarching National Policy Statement for Energy (EN-1), (applied by footnote 17 to paragraph 97 of the NPPF) provides at paragraph 5.9.12 that it is necessary to "judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project".

43. As already mentioned, the Inspector noted the approach of the NPPF to renewable energy developments at paragraphs 22-23, including the encouragement for renewable energy, the requirement that the impact need only be "acceptable" and that the delivery of renewable energy infrastructure was central to the presumption in favour of sustainable development.

44. At paragraph 235 the Inspector stated:

> "Development plan policies which seek to promote renewable energy schemes [LP Policy ECN15 and SP Policy CO12] provide no direct support for these proposals. This is because they only allow for the benefits of the scheme to be balanced against the harm, if the energy generated would contribute towards meeting the county's 2010 target of producing 151MW of electricity from renewable sources. That target no longer applies and the development plan's approach is outdated when considered against the Framework's presumption in favour of sustainable development."

45. Given the context, as explained above, the Inspector was in this paragraph making two separate points. First, policies ECN15 and CO12 are drafted so as to relate to the 2010 target of 151MW. As the Inspector noted, that target no longer applies. Secondly, "the development plan's approach is outdated when considered against the Framework's presumption in favour of sustainable development".

46. Mr Cocks QC submitted that the Inspector in the present context did not have regard to all the relevant policies in the development plan, did not analyse these policies correctly and wrongly concluded that the policies were inconsistent with the NPPF and/or outdated. I reject that submission. It is clear from the foregoing that at a number of points in the decision the Inspector identified the relevant development plan policies. It would have been astounding if he had not done so: they were central to the relatively lengthy inquiry and were referred to, particularly in closing submissions, by the experienced advocates at the enquiry. Furthermore, there is nothing in the Inspector's description or analysis of the relevant policies that points to any misunderstanding by the Inspector. The 2010 target was no longer applicable.

The whole thrust of the relevant development policies was restrictive, intended to ensure that any significant harm to important identified interests was avoided, and to that extent they were in substance discouraging; by contrast the NPPF encouraged and supported the development of renewable energy schemes, so long as any adverse impacts could be "addressed satisfactorily" and were "acceptable" – a wholly different framework.

47. The inconsistency that is plain between the relevant development plan policies and the NPPF cannot again be avoided by an appeal to any implicit limitation that could be read into the relevant policies (see paragraphs 22-24 above).

The second principal ground of challenge: the application of paragraph 14 of the NPPF was irrational/unlawful

48. This ground of challenge is closely related to the first principal ground of challenge.

49. Mr Cocks QC submitted that the Inspector:

> "failed to observe the presumption in favour of the development plan and failed to give individual policies that conflicted with the proposal their proper weight."

50. The high point of this submission was that the Inspector did not specifically mention section 38(6) of the 2004 Act. There was no legal requirement for him to do so: see *South Northamptonshire Council v Secretary of State for Communities and Local Government* [2013] EWHC 11 (Admin), paragraph 64. The test is one of substance, namely, whether the Inspector failed to apply the approach that is mandated by section 38(6).

51. In this case the Inspector began, as he was required, with the relevant policies set out in the development plan. As explained above, he assessed the planning application in respect of each of the main issues against the relevant policies. However, as also explained above, he correctly concluded that in material respects some of the relevant policies were inconsistent, indeed strikingly inconsistent, with the NPPF and were to that extent also out of date.

52. Where relevant policies of the development plan are outdated, paragraph 14 of the NPPF provides that planning permission should be granted unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole. There is a valuable and recent consideration of paragraph 14 by Males J in *Tewkesbury BC v SSCLG* [2013] EWHC (Admin). The learned judge observed at paragraph 13 that the weight to be given to a development plan would depend upon the extent to which it was up-to-date and at paragraph 19 that paragraph 14 of the NPPF provides for what should be done when an existing plan was out-of-date. The result in practice would be that the relevant policies would be regarded as carrying little weight, and there would be a presumption in favour of granting permission (see paragraphs 20, 29 and 49).

53. Lest it be thought that the approach in paragraph 14 represents some fundamental shift in planning law or policy, it is perhaps worth recalling some general and well established principles. In *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, the House of Lords considered the approach to the development plan in equivalent

Scottish legislation. Their Lordships contemplated that there could well be a departure from the development plan where that policy had become outdated because of more recent national planning policy.

54. Lord Hope said at 1450B-G that a planning decision-maker:

> "is at liberty to depart from the development plan if material considerations indicate otherwise. No doubt the enhanced status of the development plan will ensure that in most cases decisions about the control of development will be taken in accordance with what it has laid down. But some of its provisions may become outdated as national policies change, or circumstances may have occurred which show that they are no longer relevant. In such a case the decision where the balance lies between its provisions on the one hand and other material considerations on the other which favour the development, or which may provide more up-to-date guidance as to the tests which must be satisfied, will continue, as before, to be a matter for the planning authority."

55. And Lord Clyde said at 1458E-F:

> "If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted. One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance. Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given. "

56. If the decision is read fairly as a whole, there was no arguable legal flaw in the Inspector's approach. For the reasons already given, he was entitled to conclude that the relevant policies in the development plan were outdated and that the provisions of the NPPF should be given decisive weight.

57. In that context it is also worth recalling that, where the provisions of the development plan become outdated, "the balance between the provisions of the plan and the considerations pulling against it is for the decision-maker to strike": *Cala Homes v SSCLG* [2011] EWHC 97 (Admin) at paragraph 48, my emphasis. In this case the Inspector followed the appropriate legal approach and his ultimate decision, which it was for him to make as an expert planning judgment, cannot be impugned as irrational.

The Third Principal Ground: the Inspector was wrong to conclude that the proposed development did not conflict with Policy CO2

58. This is a discrete ground of challenge. The Claimant contends that the Inspector was wrong to conclude that the development would not conflict with Policy CO2 in

relation to the Exmoor National Park. In essence it is argued that because at paragraph 71 of the decision the Inspector found that "the turbines would have an impact in views from the National Park" there was a clear conflict with Policy CO2.

59. The proposed development lies outside the National Park by more than 7km. Policy CO2 provides that development outside Devon's National Parks should not be permitted if it would "damage the natural beauty, character and special qualities" of the Parks.

60. At paragraph 70 of the decision the Inspector found that the development site was outside the setting of the National Park and also that the ridge on which the turbines would be seen lay "beyond Exmoor's obvious influence". The question was then whether in these circumstances any impact in views from the National Park would tend significantly to undermine users' enjoyment of the Park's qualities and so cause damage to the Park's "natural beauty, character and special qualities". That value judgment called for a classical application of planning expertise, which could be impugned only on grounds of legal error or irrationality. In my view, there is nothing to suggest that the Inspector misunderstood the reach of the relevant policy or that he came to a conclusion on its application that was not rationally open to him. It might be conceded that for an individual user the impact on the view from the Park might reduce that user's enjoyment of the Park's qualities, but the Inspector had to consider the matter more broadly and to assess whether, on such a broader consideration, the impact was so significant as to damage the Park's special character.

The Fourth Principal Ground: the Inspector failed to apply section 66 of the Planning (Listed Buildings and Conservation Areas Act) 1990 ("the PLBCA Act 1990")

61. This is a new ground of challenge, for which permission to amend the grounds of appeal is required. I shall first deal with the substantive merits of this new ground.

62. Section 66(1) of the PLBCA 1990 provides:

> "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."

63. Section 66(1) was recently considered in *East Northants DC and others v SSCLG and Barnwell Manor* [2013] EWHC 473 (Admin) where Lang J said at paragraph 39:

> "In my judgment, in order to give effect to the statutory duty under section 66(1), a decision-maker should accord considerable importance and weight to the "desirability of preserving … the setting" of listed buildings when weighing this factor in the balance with other 'material considerations' which have not been given this special statutory status. Thus, where the section 66(1) duty is in play, it is necessary to qualify Lord Hoffmann's statement in Tesco Stores v. Secretary of State for the Environment & Ors [1995] 1 WLR 759, at 780F-

> H, that the weight to be given to a material consideration was a question of planning judgment for the planning authority."

64. In fact the Inspector gave careful and detailed consideration to the effects of the development on the settings of listed buildings at paragraphs 98-115 of the decision. He noted that the SEI identified significant impact on five such buildings (paragraph 102) and he focussed his attention on these buildings and on three others and a SAM.

65. In respect of five listed farmhouses that are less than 2km from the appeal site, the development would have no material effect on the asset's significance (paragraph 106). The Inspector found that the development would have "minimal impact" on the landscape in which the grade II* listed farmhouse at Shapcott Barton, 3km from the nearest turbine, was set (paragraph 108). The Inspector then closely examined the setting of the Church of St Michael, a listed grade II building, converted to a dwelling now known as All Angels. At paragraph 113 he concluded as follows:

> "… the wind farm would be harmful to the rural valley setting of All Angels and thereby to the historic significance of this heritage asset. This would be contrary to LP Policy ENV17 and SP Policy CO7. Nevertheless that harm would be less than substantial in terms of the Framework's requirements."

66. In respect of other buildings he concluded that there would be no harm or that the harm would be minor (paragraphs 114-119).

67. At paragraph 231 under the heading "Balance", the Inspector stated:

> "There would also be some harm to the setting of designated heritage assets and, in particular, to the historic significance of All Angels in Creacombe, but this would be less than substantial."

68. That conclusion has, of course, to be read against the detailed findings that, apart from All Angels, insofar as there was any harm at all, it was "minimal" or "minor". It is also notable that the Inspector concluded that the overall harm that would arise from the development was "limited" (paragraph 234). In my view, the Inspector did give in this case "special regard" to the consideration referred to in section 66(1) of the PLBCA. He did so by carrying out a careful and detailed assessment of the impact on the setting of the listed buildings in question. In all instances but one there was no such impact or the impact was such that it could in effect be discounted in the decision making. The Inspector did have real concern about one listed building and found that the impact was significant. However, he was then required, first, to evaluate the extent of that impact and to weigh the negative impact against the substantial benefits of the development in accordance with the NPPF. The impact on the one building was less than substantial, and even if special weight were attached to that impact, the overall negative effects were limited and could not outweigh the benefits of the development.

69. I conclude, therefore, that the proposed ground relying on section 66(1) is without merit, and I refuse permission to amend for that reason. There was, furthermore, no good explanation for not including this proposed further ground in the original claim.

Bearing in mind the strict time limit in section 288 and the public interest in having claims of this nature dealt with expeditiously, I would in any event have been reluctant to allow the amendment.

70. For completeness there was an additional ground advanced in respect of alleged inadequacy of reasoning in the Inspector's decision. As is very apparent from this judgment, the Inspector addressed each relevant issue, set out the material considerations in relation to each issue and explained how he reached his assessment in each case. The Claimant can be in no doubt why the issues were resolved adversely to the arguments put by the Claimant, and was in a position to challenge, albeit unsuccessfully, both the reasoning and conclusions in the decision.

71. This claim is accordingly dismissed.