

Neutral Citation Number: [2014] EWHC 1895 (Admin)

Case Nos: CO/735/2013  
CO/16932/2013

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 12 June 2014

**Before :**

**Mr Justice Lindblom**

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**Between :**

**The Queen (on the application of**  
**(1) The Forge Field Society**  
**(2) Martin Barraud**  
**(3) Robert Rees)**

**Claimants**

**- and -**

**Sevenoaks District Council**

**Defendant**

**- and -**

**(1) West Kent Housing Association**  
**(2) The Right Honourable Philip John Algernon**  
**Viscount De L'Isle**

**Interested Parties**

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**Mr James Strachan Q.C. (instructed by Winckworth Sherwood) for the Claimants**  
**Mr Alexander Booth (instructed by the Council Solicitor of Sevenoaks District Council) for**  
**the Defendant**  
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Hearing dates: 24 and 25 March 2014

## **Judgment**

**Mr Justice Lindblom:**

*Introduction*

then free to give that harm such weight as he chose when carrying out the balancing exercise. In my view, Glidewell L.J.'s judgment [in *The Bath Society*] is authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give "considerable importance and weight".

51. That conclusion, in Sullivan L.J.'s view, was reinforced by the observation of Lord Bridge in *South Lakeland* (at p.146 E-G) that if a proposed development would conflict with the objective of preserving or enhancing the character or appearance of a conservation area "there will be a strong presumption against the grant of planning permission, though, no doubt, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest". Sullivan L.J. said "[there] is a "strong presumption" against granting planning permission for development which would harm the character or appearance of a conservation area precisely because the desirability of preserving the character or appearance of the area is a consideration of "considerable importance and weight"' (paragraph 23). In enacting section 66(1) Parliament intended that the desirability of preserving the settings of listed buildings "should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given "considerable importance and weight" when the decision-maker carries out the balancing exercise" (paragraph 24). Even if the harm would be "less than substantial", the balancing exercise must not ignore "the overarching statutory duty imposed by section 66(1), which properly understood ... requires considerable weight to be given ... to the desirability of preserving the setting of all listed buildings, including Grade II listed buildings" (paragraph 28). The error made by the inspector in *Barnwell* was that he had not given "considerable importance and weight" to the desirability of preserving the setting of a listed building when carrying out the balancing exercise in his decision. He had treated the less than substantial harm to the setting of the listed building as a less than substantial objection to the grant of planning permission (paragraph 29).
52. I think there is force in Mr Strachan's submission that in this case the Council went wrong in a similar way to the inspector in *Barnwell*.
53. I bear in mind the cases – and there are many of them – in which the court has cautioned against reading committee reports in a more demanding way than is justified (see, for example, the judgment of Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Council* [2010] EWCA Civ 1286, at paragraphs 18 to 21).
54. Mr Strachan did not submit that the officer ought to have reached a different view about the degree of harm that the development would cause to the setting of the listed building and to the conservation area. He recognized that such criticism would have been beyond the scope of proceedings such as these, unless it could be supported on public law grounds. He pointed out that the Council's Conservation Officer seems to have misunderstood the relevant statutory provisions and the relevant policy and guidance, apparently thinking that there is a "test" of "substantial harm or loss of significance" to heritage assets both in the legislation and in the NPPF. But the main thrust of his argument went to the Chief Planning Officer's treatment of the acknowledged harm to heritage assets in the balancing exercise which he undertook. This, as Mr Strachan submitted, was the crucial part of the advice given to the members on this matter.
55. It is true, as Mr Booth stressed, that the committee report referred to the statutory provisions and also recited the relevant policy in the NPPF, including the guidance in paragraph 132 which says that "great weight" is to be given to the conservation of a designated heritage