

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 December 2013

Before :

Mr Justice Lindblom

Between :

Forest of Dean District Council

Claimant

- and -

Secretary of State for Communities and Local Government

Defendant

- and -

Ricky Jones

Interested Party

Mr Anthony Crean Q.C. (instructed by **the Legal Team Manager of Forest of Dean District Council**) for the **Claimant**

Ms Lisa Busch (instructed by **the Treasury Solicitor**) for the **Defendant**

Mr Michael Rudd (instructed under the **Bar Council Direct Public Access Provisions**) for the **Interested Party**

Hearing date: 11 November 2013

Judgment

54. Section 66(1) did not oblige the inspector to reject the Appeal B proposal because he found it would cause some harm to the setting of the listed buildings. The duty is directed to “the desirability of preserving” the setting of listed buildings. One sees there the basic purpose of the “special regard” duty. It does not rule out acceptable change. It gives the decision-maker an extra task to perform, which is to judge whether the change proposed is acceptable. But it does not prescribe the outcome. It does not dictate the refusal of planning permission if the proposed development is found likely to alter or even to harm the setting of a listed building. Gauging the likely effects on the setting will always be part of a broader planning assessment, though a very important part. The result of that exercise will depend on the facts and circumstances of the case in hand. The change proposed in or to the setting of the listed building may not be great. The likely harm may be slight. If there are benefits in the proposal they may be powerful enough to justify the likely effects on the setting despite the desirability of its being preserved. Such questions will be for the decision-maker to judge when having “special regard” to the statutory aim. This is in no sense to diminish the duty in section 66(1), or to re-write the case law to which I have referred. It is merely to recognize that performing the duty is an aspect of planning decision-making in a relevant case, but not the only one.
55. I turn to the argument Mr Crean developed in his oral submissions.
56. I do not accept that the inspector misunderstood or misapplied government policy in paragraphs 131 to 134 of the NPPF. Nor do I accept that, when applying the policy, he came to an unlawful conclusion or expressed that conclusion unclearly.
57. As always, it is important to read the relevant findings and conclusions of the inspector fairly, in their entirety, and not in an overly legalistic way.
58. The inspector plainly had regard to the relevant policy. He introduced section 12 of the NPPF in paragraph 59 of his decision letter. He also referred, in the same paragraph, to the guidance on Policy HE10 of PPS5 in the Practice Guide, as well as English Heritage’s document “The Setting of Heritage Assets”.
59. In paragraphs 133 and 134 the NPPF distinguishes between cases in which the likely harm to the “significance of a designated heritage asset” is “substantial” and those in which it is considered to be “less than substantial” (see paragraph 40 above). There is, in my view, no doubt that the inspector was well aware of this distinction. It was partly for this reason that he took as much care as he did to establish the degree of likely harm to the setting of the listed buildings in each of the two cases before him.
60. As Mr Crean pointed out, the inspector found that the setting of the listed buildings extended beyond their curtilages, which were now private gardens (paragraph 62 of the decision letter). The buildings’ setting, in his view, included “some, if not all” of the gypsy site (*ibid.*). This does not seem to have been controversial at the inquiry.
61. The inspector saw the need to establish whether any “demonstrable harm” had been or would be caused to the setting (*ibid.*). He recognized that he had to approach this question having regard to the significance of the listed buildings and their setting and the way in which the development proposed would either enhance or detract from that significance and one’s ability to appreciate it. His reference to “demonstrable harm”, as I read it, meant harm that could be objectively demonstrated – rather than merely asserted. And I do not