Case No: CO/3712/2014

Neutral Citation Number: [2015] EWHC 3 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday 5th January 2015

Before :

MR JUSTICE GILBART

- -

Between :

RICHARD HACKETT PUGH	**Claimant**
- and -	
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**Defendant**
- and –	
CORNWALL COUNCIL	**Interested Party**
- and –	
NICK MAIKLEM	**Interested Party**

- -

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

- -

Richard Harwood QC (instructed by **Richard Buxton**) for the Claimant
Richard Honey (instructed by **Treasury Solicitor**) for the Defendant
The Interested Parties did not appear and were not represented

Hearing dates: 9th December 2014

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Judgment

MR JUSTICE GILBART:

1. By a Decision Letter of 30th June 2014 an Inspector appointed by the Defendant allowed the appeal of the Interested Party Mr Maiklem against a refusal of planning permission by Cornwall Council, and granted permission for the erection of a single wind turbine with a maximum blade tip height of 75 metres, along with an associated access track, new field entrance, crane hardstanding, and an electrical switchgear house with associated underground cabling and temporary construction compound. The turbine was to be sited at Mr Maiklem's farm, namely Bocaddon Farm, Lanreath, near Looe in Cornwall.

2. The appeal had been conducted by the exchange of written submissions, and the Inspector had also made a site visit.

3. This case is concerned with the assessment of the impact of the development on the settings of Scheduled Ancient Monuments ("SAMs") and Listed Buildings in the vicinity.

4. The Claimant Mr Pugh had objected to the application, both to the local planning authority and to the Inspector. Mr Pugh lives with his wife at Trecan Farm, which consists of about 8 acres upon which they operate a holiday cottage business.

5. I shall deal with matters as follows

   i) the application for permission, the refusal, the cases before the Inspector and the Decision Letter

   ii) the Decision Letter

   iii) The nature of the challenge

   iv) Legal context

   v) Policy context

   vi) Mr Harwood's submissions for the Claimant

   vii) Mr Honey's submissions for the Defendant

   viii) Discussion and Conclusions.

The planning application and refusal, and the cases before the Inspector

6. The site lies in an arable field at about 150m AOD in countryside which consists of an open, medium to large scale rolling plateau, with a pattern of low irregular Cornish hedges, some hedgerows and sparse tree cover, gently sloping and undulating stream valleys with isolated farms and large modern houses scattered throughout. There are some overhead lines, a telecommunications mast, and two 18 m high turbines just under 2 km away, and another (of 45m) just over 7 km away. The site lies between Bury Down Camp (a SAM) 950 m to the north east and the linear boundary/earthworks of Giant's Hedge (a SAM) 1 km to the south and southwest. The area had been assessed by Cornwall Council as having a moderate sensitivity to wind

energy development with a landscape strategy being for small or medium clusters of turbines, or single turbines of up to heights of 100-150m, and for wind turbines to be clearly separated so that they do not have a defining influence on the overall experience of the landscape. (All taken from the Decision Letter paragraphs 13-15).

7. The planning application was submitted on 28th September 2012. It was accompanied by various detailed Statements and Reports. One was an Environmental Report consisting of just under 100 pages with appendices amounting to almost another 100 pages. Topics covered included a landscape and visual impact assessment, an assessment of cultural heritage and archaeology, ecology and ornithology, noise, hydrology and miscellaneous other impacts. There were also detailed reports submitted on Design and Access, and on Planning Policy. While some doubts were expressed to me because the qualifications and expertise of the authors was not identified (the document was submitted by a consultancy dealing with wind energy) it is obvious from reading it that it had been prepared by those with considerable expertise in the topics in question. I shall consider its contents so far as relevant to Listed Buildings and SAMs below.

8. Objections were received from the Council Landscape Architect relating to the effect of the proposal on the landscape. That objection raised no issues concerning SAMs or Listed Buildings. English Heritage ("EH") welcomed the fact that the application was accompanied by a cultural heritage assessment, but criticised it because it considered that the assessment of the impact on the Bury Down Camp SAM was inadequate, and therefore maintained an objection. It described Bury Down Camp as being a nationally important SAM.

9. Mrs Pugh, the wife of the Claimant, objected on the basis that the wind turbine would have an overbearing impact on "all the houses in the vicinity and will have a high impact on the AGLV" (Area of Great Landscape Value). The AGLV lies to the east of the site. She objected also because of the effects she considered that the presence of the turbine would have on the holiday cottage business.

10. As a result of the comments by EH the Appellant commissioned a report by a consultancy called Cotswold Archaeology. It was entitled "Bocaddon Wind Farm Turbine: Addendum to the Environmental Report: Archaeology and Cultural Heritage." It is a very full report written in accordance with a structured methodology, albeit one criticised by English Heritage. I shall refer to its contents below.

11. EH were again consulted. It maintained its objection, criticising the methodology of assessment and referring to what it considered were the adverse effects on the Giant's Hedge SAM and the Bury Down Camp SAM. There is no doubt whatever that the EH comments related to the Addendum report. One can say that with confidence because of the cross referencing to paragraph numbers. It also disagreed with the assessments of the degree of impact. EH raised no concerns about the effect of the proposal on any Listed Buildings or their settings, or those of any other SAM. Correspondence addressed to them later by the Appellant's heritage consultants on 18th June 2013 states that in discussion, EH had confirmed that it accepted the assessments in the Addendum on the other heritage assets that were addressed.

12. The application was recommended for refusal in the officer's report. While it considered that the benefits of the scheme (the provision of electricity and saving of

$CO^{2)}$ outweighed any harm to landscape character, it recommended refusal because of the effects on the settings of Bury Down Camp SAM and Giant's Hedge SAM. It did not consider that there were other reasons for refusal. It is to be noted that no suggestion was made in the report of any objection based on the effects of the proposal on the setting of any Listed Building.

13. Two reasons of refusal were given in the decision of 11th June 2013:

> "1 The proposed turbine would by reason of its scale, elevation and siting project into the skyline in an important designated landscape in a prominent location between the two Scheduled Ancient Monuments of Bury Down Camp and the Giant's Hedge. In so doing it would introduce a modern vertical structure which would adversely impact upon the setting of both monuments individually and also their relationship to each other.
>
> 2 It is considered therefore what the proposal would have a detrimental impact upon the historic landscape character and would result in substantial harm to the setting of the Scheduled Ancient Monuments. The contribution which the wind turbine would make towards the provision of renewable energy has been given significant weight however it is considered that the harm described would in this case outweigh the benefits of the scheme. The proposal would therefore be contrary to Paragraph 132 of the National Planning Policy Framework, and Caradon Local Plan 1999 saved policies REN1 and REN2."

14. Mr Maiklem appealed against the refusal. He submitted written Grounds of Appeal which referred specifically to the Addendum Report, which was attached to the Grounds of Appeal as document BF 11. Paragraph 7 of the Grounds summarised the contents of that report as it related to the two SAMs and on the historic landscape. The Grounds also included an email exchange between EH and the Cornwall Council planning officer, although the date of the exchange was unknown. It was sent by Cornwall Council to the Appellant's Consultant in the weeks after the refusal of planning permission. EH's officer Mr Russell now described the harm as "borderline substantial" in the case of both SAMs, and then later said that he now considered that the harm at Giant's Hedge is " probably less than substantial" and as to Bury Hill that "it's one that could go either way."

15. Cornwall Council submitted its Statement of Case. It referred to Local Plan policy CL 19. It also referred to the National Planning Policy Framework ("NPPF") of March 2012 and included this submission:

> "4.23 Great weight is to be assigned to an asset's conservation (Para 132) and significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting noting substantial harm to scheduled monuments should be wholly exceptional.
>
> 4.24 Paragraph 133 requires that, where such assets are to be substantially harmed by a development, permission should be refused unless the harm is "*necessary to achieve substantial public benefits that outweigh that harm*

or loss…". This weighting exercise is also to be undertaken where the harm is less than substantial (Para 134)….".

16. It then went on at paragraph 5.6 to say

> "……Renewable energy is specifically covered by policies REN 1 and REN 2 of the (Local) Plan. These policies set out to maximise the environmental and economic benefits while minimising local impacts. …….These policies highlight the need for a careful balance to be struck between the provision of renewable energy and the effects upon the special features or qualities which justified the (SAM) designation."

17. It then went into some detail about the effects, and referred to both the original assessment submitted by the Appellant, but also to the Addendum, to whose assessments it referred in detail (see paragraphs 5.21 to 5.26). At no point in its Statement did the Council ever contend that there would be any adverse effects on any other SAM or any Listed Buildings or their settings.

18. The Appellant now submitted a Statement of Case in response. It addressed, inter alia, policies REN 1 and REN 2 of the Caradon Local Plan First Alteration 2007. It also addressed the reasons for refusal by addressing the impacts on the setting of the two SAMs at Bury Down Camp and Giant's Hedge. Having referred to the original assessment and the Addendum (see paragraphs 36-7) it then produced a further assessment of impacts on the two SAMs in question. It was drawn up after contact had been made with EH on the scope and methodology of any assessment. It concluded after a very detailed assessment of some 43 pages, following a clear structured and referenced methodology, that while there would be harm to the setting of Bury Down SAM "the level of harm falls considerably short of being substantial" and in the case of Giant's Hedge "the overall harm to the Giant's Hedge (SAM) is considered to be very limited."

19. Given the importance Mr Harwood ascribes to the assessments submitted by the Appellant, it is helpful to summarise the conclusions of each one, while observing that in each case a detailed and very full justification appears for the assessment reached. It is also important to note that the matrix used in the Addendum reached the conclusions it did on the level of harm by looking at both the magnitude of impact and the value of the heritage asset, so that the effect of a low magnitude impact on a high value receptor is greater than on a low or medium value receptor (see paragraph 1.2.24 and the application to each of the listed buildings and SAMs in question.)

SAM/LB	*Original assessment*	*Addendum*	*Further Assessment produced in appeal material*
<u>Bury Down</u> 1 km distant	High value Medium impact Overall impact	High value Low magnitude	Harm "level considerably less than

	"Minor/negligible"	change Effect "Slight adverse"	substantial"
Giant's Hedge 1.0 - 3.1 km distant	High value Low impact Overall impact "Minor"	High value Low magnitude change Effect "Slight adverse"	Very limited degree of harm "falls considerably short of substantial"
Bake Rings 3.6 km distant	High value Low impact Overall impact "Minor"	High value Low magnitude change Effect "Slight adverse"	
Trevawden Grade II 0.8km distant	Medium value Low impact Overall impact "Minor/negligible"	Low magnitude change Effect "Slight adverse"	
Pelyne Farmhouse and outbuilding Grade II 1.4 km distant	Medium value No change Overall impact "None"	Low magnitude change Effect "Slight adverse"	

20. Representations were received from some others. One supported the proposal, but there were a number of objections, including from the Claimant and his son. There also some detailed objections from a local resident Major Spreckley, from a holiday cottage concern at Talehay, and an objection by a Mr Bateman TechRTPI on behalf of a Mr Staughton, a local resident. In those various objections, arguments were raised about various matters including landscape impact, noise and planning policy. So far as SAMs were concerned, the impact of the development on Bury Down and Giant's Hedge were both referred to. The report from Mr Bateman referred to what it described as three "important settings:" those of the two SAMs and also the Grade 1 listed church at St Marnachs.

21. It is to be noted therefore that no one, whether EH, the Council or any objector, ever mentioned the settings of the Bake Rings SAM or of any Listed Building (other than the church at St Marnarchs) as being affected by the proposal. One of the objectors lived at Pelyne Farm, which is a Listed Building. He raised no objection about the effect of the proposal upon its setting.

22. The Appellant submitted a further document "Appellant's Final Comments" to which it is unnecessary to refer.

The Decision Letter

23. As is standard practice, it started by summarising the decision on the appeal. It then continued

"*Main Issue*

2 Whether the benefits of the scheme, including the production of electricity from a renewable source, outweighs any harmful impacts, having particular regard to the effects upon the character and appearance of the area, as well as the effects upon the sitting of the Scheduled Monuments (SM) know as Bury Down Camp and Giant's Hedge."

24. It then continued:

"Reasons

Planning Policy

3 The development plan includes 'saved' policies from the Caradon Local Plan 1999 (LP). Policy REN1 is permissive of the proposal for the generation of energy from non fossil fuel sources subject to specified criteria, including no unacceptable impact on the character and appearance on the landscape. Under policy REN2, wind turbines are only permitted if they would not cause, amongst other things, unacceptable damage to amenity and landscape, as well as no unacceptable effects on the amenities of neighbouring properties. My attention has also been drawn to policies CL2 (farm diversification) and CL19 (setting of Scheduled Monuments). These policies are broadly consistent with National Planning Policy Framework ("the Framework"), although policy CL19 lacks the 'cost benefit analysis' of weighing any harm with public benefits.

4 ….

5 ….

6 …..

7 In determining planning applications for wind energy development, footnote 17 of (NPPF) states the planning authority should follow the approach in the National Policy Statement for Renewable Energy Infrastructure (EN-3), which should be read with the relevant sections of the Overarching National Policy Statement for Energy (EN-1). Among other things, EN-1 states that the Government is committed to increasing dramatically the amount of renewable generation capacity and EN-3 states that onshore wind farms will continue to play an important role in meeting renewable energy targets. In addition, the (NPPF) amongst other things, seeks to increase the use and supply of renewable and low carbon energy.

8 I have also taken into account the Government's Planning Practice Guidance (PPG) for renewable and low carbon energy, as well as the Ministerial Statements of 6 June 3013. In addition I have had regard to the separate Ministerial Statement of 23 March 2011.

Other Documents

9 I have taken into account the provisions of various Acts, Directives, Strategies and Statements relating to renewable energy, including the 2007 energy white paper. Amongst other things, these set out and identify progress towards achieving a legally binding target of reducing UK emissions by at least 34% by 2020 and 80% by 2050, as well as achieving the UK's obligation of 15% of energy consumption from renewable energy sources by 2020. They reflect the Government's commitment to renewable energy. These are important matters to weigh in the planning balance. However, I also note the advice in the PPG that the need for renewable energy does not automatically override environmental protection or the planning concerns of the local community.

Benefits

10 The proposal would be used to offset the electricity costs on the appellant's 143 ha (354 acre) farm (predominantly arable). It would further assist in diversifying his farm enterprise (which includes holiday lets) and would increase the financial security of this existing rural business.

11 On behalf of the appellant, it has been calculated that the proposed wind turbine would generate 1,239,500 kWh per annum (based on a capacity factor of 28%) or the equivalent electricity that is consumed by approximately 276 average UK households. It has also been calculated that this would save approximately 550 tonnes CO^2/Year. The development would contribute to national renewable energy targets and aspirations for reducing greenhouse gas emissions and, in combination with other renewable low carbon energy schemes would assist in tackling climate change. (The NPPF) states that even small-scale renewable or low carbon energy projects provide a valuable contribution to cutting greenhouse gas emissions. In addition the scheme would add to the security of supply.

12 The above benefits can be given considerable weight in the overall planning balance and strongly support the argument for granting permission……"

25. After describing the character and appearance of the area the Inspector went on to say:

15 "The ALS identifies the land in this part of LCA 22 as having a moderate sensitivity to wind energy development. The landscape strategy is for occasional small or medium clusters with turbines, single turbines that may be up to and including sizing at the lower end of the 'large' category (100-150 metres high). Wind turbines should also be clearly separated so that collectively they do not have a defining influence on the overall experience of the landscape.

16. The Siting Guidance LCA 22 includes a requirement to ensure wind energy development does not dominate or prevent the understanding or appreciation of historic landmarks on the skyline including Iron Age hill forts such as Bury Down……..The siting guidance for LCA 23 includes assuring that wind turbines do not prevent the understanding and appreciation of historic landmarks such as the Giant's Hedge.

17…

18…

19. The above limited harm to the character of the area weighs against an approval. However with the exception of the loss of hedgerow, this would be reversible. Moreover the character of the countryside is likely to be eroded unless climate change is tackled.

20. The proposed wind turbine would occupy an elevated position on the landscape and would be visible over a wide area. It would be seen from many properties and numerous sections of public right of way and roads that bisect the landscape. From many properties and much of the public domain the turbine would be set back a considerable distance and topography and intervening vegetation and/or buildings would filter view. Whilst the development would be conspicuous in many views it would form part of a wide rural scene and would not have an overwhelming presence in the landscape.
21. However, from within about 1km of the site the turbine would appear as a very prominent addition to this area of the countryside and the movement of the blades would 'draw the eyes'. It would contrast awkwardly with the height and form of most existing landscape elements. Views from the roads would be transitory and, in all likelihood from fast moving vehicles. However when seen by 'high sensitivity receptors' using the public rights of way to the east of Bury Down hillfort, the public footpath to the south of Tregrove and the footpath to the south east of the site, the proposed turbine would attract from the very pleasant and largely unspoilt rural scene. From these parts of the public domain the turbine would intrude into the skyline and would be much taller than the existing pylons and the telecommunications mast. This harm to the appearance of the area also weighs against an approval.
22. The developments would not however intrude into or harm any important views to or from the AGLV or the Cornwall Area Outstanding Natural Beauty. It would also be set well apart from other wind energy developments and there would be no pronounced simultaneous or sequential cumulative impacts. The scheme would accord with the landscape strategy of the ALS.
23. The harm that I have identified to the appearance to the area would be for a limited period and some adverse visual impact is an almost inevitable consequence of accommodating wind turbines within the countryside. I note that the council's reasons for refusal is limited to the impact upon the setting of the SMs and historic character rather than the general character and appearance of the area. No conflict has been identified with LP policy CL2.

Setting of Scheduled Monuments

24. In assessing the impact scheme upon the above noted SMs I have had regard, amongst other things, to advice published by (EH) in respect of wind energy development and the setting of heritage assets. This guidance does not preclude wind turbines within the setting of SMs.
25. Bury Hill Camp is a small multivallate hill fort (and potential Neolithic enclosure). The significance of this designated heritage asset is derived primarily from its archaeological value. However, the surrounding landscape, including the appeal site, forms part of the setting of this SM. The lower lying, open, agricultural qualities of the surrounding countryside contribute to an appreciation of the historical value of this hill fort, enabling it to be discerned as an important and prominent feature within this rural landscape. The extensive views to/from this capital SM maintain its commanding presence and exposed location. The appeal site forms part of a much larger area of countryside which makes a positive contribution to the significance of this important heritage asset. Whilst the nearby telecommunications mast and row of pylons approximately 750 metres to the south detract from its setting, this does not justify permitting further harmful erosion to the significance of Bury Hill Camp.

26. The significance of the Giant's Hedge SM (probably early medieval) is derived primarily form the archaeological value of the remaining sections of this extensive linier monument. However the surrounding undulating agricultural landscape of medieval farmland divided by Cornish hedgerow (this includes the appeal site) forms part of the setting of this SM and makes positive contributions to its historical significance as territorial boundary to defend the areas between the Rivers Looe and Fowey. Unlike Bury Hill Camp, there is little to distinguish this monument and the landscape. However it is of no lesser importance than the hill fort. Whilst there are views to/from the Giant's Hedge, including incidental views towards Bury Hill Camp, it is a largely unassuming feature. (In all likelihood, only the 'trained eye' or very keen observer would detect the significance of Giant's Hedge.)
27. The proposed wind turbine would be prominent in views to/from the above SMs. The tips of the turbine blades would exceed the height of Bury Down Camp and the movement of the blades would be a distracting element within these views. This tall, modern addition to the area would detract from the rural setting of the capital SMs. It would diminish the commanding presence of the Down Camp and, to a limited extent, erode an appreciation of its historical significance within the landscape. To a lesser extent, the height of the turbine and its blades would also detract from an understanding of the boundary significance of the Giant's Hedge and its historical role from the landscape. This would be contrary to an aspect of the siting guidance within the ALS. I note the concerns of EH regarding the impact to the scheme and I am mindful that these assets are of considerable importance. The scheme would be at odds with LP policy CL19 and DLP24.
28. However the settings of these SMs have changed over time, including the addition of buildings, poles/masts and road traffic (noise and movements). I concur with the appellant's detailed 'Cultural Heritage Setting Assessment', but the siting of the turbine, its slender form and off white colour would ensure that it did not interrupt an appreciation of key lines of sight of Bury Down Camp or the Giant's Hedge. The proposal would not dominate or change the general character of the settings of these SMs which would remain overwhelmingly agricultural.
29. The hill fort would continue to be seen as having a prominent and exposed position within the landscape and those who were alert to the presence of the Giant's Hedge would still be able to appreciate its significance. A degree of separation from other wind turbines would also ensure that there was no cumulative harm to the setting of these SMs or to the historic character of the landscape.
30. The harm that I have identified with the setting of these heritage assets as would, in the context of the (NPPF) is less than substantial. It would also be limited to a 25 year period. Nevertheless, this weighs against an approval.

Other Matters

31. …
32. …
33. I also note the concerns of some interested parties regarding the effect of the setting of some listed buildings. This includes the grade I listed St Manarch and St Dunstans church at Lanreath, the Grade II* listed Court Barton Farm and the Grade II listed Trevawden Farm. During my visit I noted the relationship between some of these building and the appeal site. Whilst it may be possible to see parts of the development in some views to/from these listed buildings there is no cogent evidence to demonstrate that the appeal site forms part of the setting of any listed building or that the scheme would harm the significance of any listed building or the obelisk at

Boconnoc. The likely impact upon the setting of listed buildings is assessed as part of the appellant's Environmental Report. I see no reason to disagree with that assessment and note that no objections were raised by either the Council or EH in respect of such matters.

34. - 42…..

Planning Conditions

43 – 45…

Planning Balance/Overall Conclusion

46. When all the above is weighed in the balance, the benefits of the scheme, including the public benefits to be derived from tackling climate change, out weigh the limited harm to the character and appearance of the area and the setting of the SMs. In this instance I find that the proposal would not have an unacceptable impact upon the character or appearance of the landscape the setting of heritage assets or amenities of neighbouring residents.
47. Whilst I found conflict with LP policy CL19 and DLP24 the scheme would accord with the provisions of LP policies REN1 and REN2 and DLP policy 15. It is not unusual for planning policies to pull in different directions and, when assessed in the round, the scheme would accord with the development plan as a whole. I have also noted above that there is much support for this type of development within various 'Other documents'. Moreover its contribution towards reducing CO^2 emissions and the 'in combination' effect with other renewable low carbon energy schemes in tackling climate change lead me to find that overall the proposals satisfy the environmental dimension to sustainable development as set out in the (NPPF).
48. I do not set aside likely the concerns of those who oppose the scheme and I recognise that my decision will disappoint some members of the local community. However, making a 'more popular' decision would not, in this instance, equate to the correct planning decision. Having considered all the evidence dispassionately and spent considerable time viewing the site and surroundings from the public domain and some neighbouring properties, I conclude that the appeal should succeed."

The nature of the challenge

26. The Claimant seeks to challenge the Decision Letter under s 288 of the *Town and Country Planning Act 1990* ("*TCPA 1990")* on the basis that :

    i) The Inspector failed to take account of the harm which the Appellant's own consultant had said would be caused to the settings of two Listed Buildings (Trevawden and Pelyne Farm), and irrationally, or without giving reasons, found that there would be no harm. In consequence he had failed to apply the duty under section 66(1) of the *Planning (Listed Building and Conservation Areas) Act 1990* ("*PLBCA 1990");*

    ii) In failing to have regard to a material consideration, namely the harm which the Appellant's own consultant had said would be caused to the setting of the SAM at Bake Rings, he had failed to apply local development plan policies (REN 1, REN 2 and CL19) and national policy to this impact;

iii) He misinterpreted Policy REN 2 (or overlooked it or applied it irrationally) when he failed to treat adverse impact by a development on SAMs as being in breach of the policy;

iv) He failed to have regard to national policy in paragraph 132 of the National Planning Policy Framework (or alternatively misinterpreted it or misapplied it) by failing to identify a clear and convincing justification for the harm to the SAMs which would be affected by the development.

The Legal and Policy context

(a) Decision making

27. It is sensible at this stage of the judgment to note the statutory basis for decision making by an Inspector appointed to conduct a planning appeal. S/he must :

i) have regard to the statutory development plan (see section 70(1) *TCPA 1990*);

ii) have regard to material considerations (section 70(1) *TCPA 1990*);

iii) determine the proposal in accordance with the development plan unless material considerations indicate otherwise (section 38(6) Planning and Compulsory Purchase Act 2004 ("*PCPA 2004*"));

iv) apply national policy unless he gives reasons for not doing so- see Nolan LJ in *Horsham District Council v Secretary of State for the Environment and Margram Plc* [1993] 1 PLR 81 following Woolf J in *E. C. Gransden & Co. Ltd. v. Secretary of State for the Environment* [1987] 54 P & CR 86;

v) give proper, intelligible and adequate reasons which dealt with each of the substantial points raised by the parties (*Save Britain's Heritage v. No. 1 Poultry* [1991] 1 WLR 153 and *South Buckinghamshire DC. v. Porter (No. 2)* [2004] 1 WLR 1953);

vi) proceed on a proper understanding of the development plan: see Lord Reed in *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 at paragraphs 17-23. A failure by a decision maker to interpret policy properly makes the decision open to challenge – see *City of Edinburgh Council v Secretary of State for Scotland* [1998] SC (HL 33, [1997] 1 WLR 1447 at 44 /1459 per Lord Clyde. Policy statements must be interpreted objectively in accordance with the language used, and always in its proper context. But as *Tesco Stores Ltd v Dundee City Council* makes plain, the application to the facts before it is a matter for the decision making authority;

vii) if it is shown that the decision maker had regard to an immaterial consideration, or failed to have regard to a material one, the decision will be quashed unless the Court is satisfied that the decision would necessarily have been the same: see *Simplex GE (Holdings) Ltd v. Secretary of State for the Environment* [1988] 57 P & CR 306.

28. In the case of an appeal where a question arises of the effect on Listed Buildings, then section 66 of the *PLBCA 1990* applies. In considering whether to grant planning

permission for development which affects a listed building or its setting, an Inspector 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. A decision maker should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the exercise under section 66 - per Sullivan LJ in *Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council & Ors* [2014] EWCA Civ 137 [2014] 1 P & CR 22 at paragraph 29 (on this issue, a case about a Grade I Listed Building).

29. No equivalent statutory duty exists with regard to SAMs, but they are by definition of national importance- see section 1(3) of the *Ancient Monuments and Archaeological Areas Act 1979.*

(b) The NPPF and its interpretation

30. In March 2012 the National Planning Policy Framework ("NPPF") was issued by the Secretary of State. It deals, inter alia, with the way in which decisions should be approached about Listed Buildings and SAMs and the effects of proposed development upon them. The glossary to the NPPF shows that both fall within the description "designated heritage assets." The parts of NPPF relevant to this claim read as follows, together with a footnote to paragraph 126 which reads:

> "The principles and policies set out in this section apply to the heritage-related consent regimes for which local planning authorities are responsible under the *Planning (Listed Buildings and Conservation Areas) Act* 1990, as well as to plan-making and decision-taking."

"*Conserving and enhancing the historic environment*

126. Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment including heritage assets most at risk through neglect, decay or other threats. In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance. In developing this strategy, local planning authorities should take into account:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
- the desirability of new development making a positive contribution to local character and distinctiveness; and
- opportunities to draw on the contribution made by the historic environment to the character of a place.

127……...

128. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate

expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

129. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

130. …….

131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

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.

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:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term
- through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public
- ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back
- into use.

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."

31. It follows that the same policy tests for assessment of impact are applied to Listed Buildings and SAMs. It is important in my judgment that one reads the policy as a whole. The elements relevant to this case are :

i) great weight must be attached to the asset's conservation. The more important the asset the greater the weight should be (paragraph 132);

ii) any harm or loss which would be caused by a development to the significance of a designated heritage asset requires convincing justification (paragraph 132);

iii) substantial harm which would be caused by a development to the significance of a Grade II listed building should be exceptional (paragraph 132);

iv) substantial harm which would be caused by a development to the significance of a SAM should be wholly exceptional (paragraph 132);

v) in the event of an assessment that substantial harm would be caused by a development to the significance of a designated heritage asset, the decision maker should apply the criteria in paragraph 133;

vi) in the event of an assessment that less than substantial harm would be caused 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 (paragraph 134).

32. I shall consider in due the submissions I received on the application of that policy.

33. I should also refer to Annex 1, which deals with (as a matter of policy) the weight to be given to Development Plan policies dating from before the publication of NPPF:

> "209. The National Planning Policy Framework aims to strengthen local decision making and reinforce the importance of up-to-date plans.
> 210. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
> 211. 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 this Framework.
> 212. However, the policies contained in this Framework are material considerations which local planning authorities should take into account from the day of its publication. The Framework must also be taken into account in the preparation of plans.
> 213. Plans may, therefore, need to be revised to take into account the policies in this Framework. This should be progressed as quickly as possible, either through a partial review or by preparing a new plan.
> 214. For 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework.
> 215. In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

(c) Relevant Development Plan Policy

34. The Caradon Local Plan First Alteration (part of the statutory Development Plan) contains four policies to which I need to make reference. In REN 1 and REN 2 I have italicised words which assumed some importance in the argument before me. I shall set out the respective contentions below.

i) Policy CL 19 deals with Buildings of Archaeological Significance.

"High priority will be given to the protection, preservation and enhancement of nationally important scheduled……monuments and other buildings of …..historic significance in the plan area through the following measures;

i) development proposals *which would prejudice* the preservation of nationally important archaeological remains, whether scheduled or not, and their settings, will not be allowed unless the development is of national importance and there is no alternative site;

ii) ……

iii) ……

iv) ……"

ii) ENV 3 deal with Listed Buildings and Conservation Areas. The part relevant to this proposal reads:

"All proposals for works (……) which would directly affect the fabric or setting of a listed building must have special regard to the desirability of preserving the building or its setting……."

iii) Policies REN 1 and REN 2 deal with Non-Fossil Fuel Sources and On-Shore Wind Energy respectively :

"REN 1
Planning proposals for the generation of energy from non-fossil fuel sources will be permitted subject to the following criteria:
(i) the proposals must not have an *unacceptable impact* on the character and appearance of the immediate and wider landscape, and of areas of natural, cultural, historical or architectural interest:
(ii)-(iv)…….

REN 2
In AONBs[1], HC[2], SSSIs[3], NNRs[4], SAM (sic) and best and most versatile agricultural land, wind turbines and wind farms will only be permitted if the proposal would not have an *unacceptable impact* on the specific features or qualities which justified such designation
In other areas, wind turbines and wind farms will only be permitted if the proposal would not cause *unacceptable damage* to amenity, landscape, scientific, archaeological nature conservation or historic interests, *and there is*

[1] Areas of Outstanding Natural Beauty
[2] Heritage Coast
[3] Sites of Special Scientific Interest
[4] National Nature Reserves

no adverse impact on land falling within the designations given in the above paragraph.
In all cases, proposals must comply with the criteria set out in Policy REN 1, and to the following:
(i) the development must not *unacceptably detract* from the visual amenity of landscapes that make an important contribution to the setting of towns or villages;
(ii) the development will not *unacceptably affect* the amenities of neighbouring properties …….
(iii) ……..”

Mr Harwood QC’s submissions for the Claimant

35. On Ground 1 he submitted that :

i) The inspector had failed to address the harm which would be caused to the Listed Buildings at Trevawden and Pelyne Farm, which had been noted in the Addendum assessment. He was under a duty to address what had been said there. His reference at paragraph 33 to the Appellant’s Environmental Report shows that he had not considered the Addendum assessment. His failure to refer to it and his failure to consider what was said about those Listed Buildings amounts to a failure to have regard to a material consideration and/or a lack of adequate reasoning. It also amounted to a failure under s 66 of *PLBCA 1990;*

ii) The reason why the Claimant had not hitherto raised the effect on Bake Rings SAM, Trevawden or Pelyne Farm is because the Addendum assessment was not available on the Council website.

36. On Ground 2 he submitted that the effect on the Bake Rings SAM was never addressed by the Inspector. He should have addressed it given the findings of the Addendum assessment. His failure to do so affects the balance he struck.

37. On Ground 3 he submitted that the Inspector had misinterpreted policies REN 1 and 2. The phrase “*and there is no adverse impact on land falling within the designations given in the above paragraph*” in the second paragraph in REN 2 implied that any adverse impact on the setting of a SAM amounts to an *unacceptable impact* for the purposes of the first paragraph and of REN 1. That is consistent with the “prejudice” test in policy CL 19. The misinterpretation of REN 1 and REN 2 would affect his conclusions at paragraph 47 of the Decision Letter that the proposals complied with REN 1 and REN 2, and therefore his conclusion in the same paragraph that they complied with the development plan as a whole.

38. On Ground 4 he submitted that :

i) in applying the tests in NPPF, although he accepted the Inspector’s assessment that there would be less than substantial harm to the setting of the two SAMs at Bury Camp and Giant Hedges, one could not simply apply the test in paragraph 134 (the balance test) but had to attach greater weight because of their significance in the context of paragraph 132. He contended that the

Inspector had failed to follow that approach. He cited a decision of HH Judge Waksman QC, sitting as a Judge of this Court, in the very recent unreported case of *R (Hughes) v South Lakeland District Council* [2014] EWHC 3979 (Admin). There Judge Waksman said at paragraphs 49-53 (in a case about the effect on a Conservation Area)

> 49. "It is common ground that the Site was located within a heritage asset being the local Conservation Area. To the extent that it is relevant here I set out in paragraph 78 below in the context of Ground 3, the nature and status of the NPPF.
> 50. The Court of Appeal in *E Northants DC v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137 ("*Barnwell*") made clear that the duty imposed by s72 (1) meant that when deciding whether harm to a conservation area was outweighed by the advantages of a proposed development the decision-maker should give particular weight to the desirability of avoiding such harm. There is a "strong presumption" against the grant of permission in such cases. The exercise is still one of planning judgment but it must be informed by that need to give special weight to maintaining the conservation area. See paragraphs 22, 26 and 29 of *Barnwell*.
> 51. This was then followed by Lindblom J in *R (Forge Field)v Sevenoaks DC* [2014] EWHC 1895. See in particular, paragraphs 48-51.
> 52. It is clear that the first part of paragraph 132 seeks to express the s72 (1) presumption. The remaining provisions then give guidance on how it may be applied in a case involving a heritage asset. So if there would be substantial harm to a listed building permission would have to be either exceptional or wholly exceptional. See the second part of paragraph 132. If there was to be substantial harm to a non-listed heritage asset, then consent should be refused unless that harm was necessary to achieve substantial public benefits or the particular matters set out in [a] to [d] apply. See paragraph 133. Finally if the harm is less than substantial it must be weighed against the public benefits including its optimum viable use. See paragraph 134.
> 53. As is made clear in paragraph 45 of *Forge Field*, even if the harm would be less than substantial so that paragraph 133 did not apply but paragraph 134 did, the harm must still be given considerable importance and weight. That of course is doing no more than following the injunction laid down in s72 (1). The presumption therein needs to be "demonstrably applied" – see paragraph 49 of *Forge Field*. Put another way, in a paragraph 134 case, the fact of harm to a heritage asset is still to be given more weight than if it were simply a factor to be taken into account along with all other material considerations, and paragraph 134 needs to be read in that way. By way of contrast, where non-designated heritage assets are being considered, the potential harm should simply be "taken into account" in a "balanced judgment" - see paragraph 135. It follows that paragraph 134 is something of a trap for the unwary if read - and applied - in isolation."

ii) He argued that while the Inspector gave weight to the benefits of the scheme at paragraphs 10-12 of the Decision Letter, and while he did refer to the two SAMs as "assets of considerable importance" in paragraph 27, he did not

describe the weight he gave to the harm to their settings, and had not provided a "clear and convincing justification" as per paragraph 132 of NPPF. In paragraph 46 he simply described the balance as being that the benefits would outweigh the limited harm to the character and appearance of the area and setting of the SAMs. It was also in conflict with the *Barnwell Wind Energy v E Northants* approach.

Mr Honey's submissions for the Defendant

39. Mr Honey submitted for the Defendant on Grounds 1 and 2 that :

i) neither the local planning authority, nor EH, nor any objector, had ever suggested that there would be harm to Bake Rings SAM, Trevawden or Pelyne Farm;

ii) all material in the Appellant's assessments, including the Addendum, were before the Inspector and taken account of by him;

iii) the Inspector at paragraphs 24-30 of the Decision Letter had carefully addressed the degree of harm which would be caused by the proposals to the settings of the two SAMs, and concluded that it would be less than substantial. He had expressly had regard to the NPPF – see paragraphs 3 and 30;

iv) he had assessed the effect on all listed buildings to which he was referred and has made his own assessment, as well as accepting that of the Appellant, and noted the lack of objection from the local planning authority and EH - see paragraph 33;

40. On Ground 3 he submitted that

i) Mr Harwood QC's approach to the interpretation of Development Plan policy was in conflict with the principles appearing in the *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 at paragraphs 18-21 per Lord Reed that:

a) one must avoid a legalistic approach

b) one must construe the language in context

c) one must retain a measure of flexibility

d) judgment on the application of the policy is for the decision maker.

ii) "*no adverse impact"* in the context of REN 2 only makes sense if one reads it as meaning "*no unacceptable impact.*" A balance can be struck. Were it otherwise the test would be more stringent for development outside one of the designations than it would be for development within it. The Local Planning Authority in its Statement of Case accepted the interpretation that there is a balance to be struck. In any event, the approach advocated by Mr Harwood conflicts with that in the NPPF, and the Inspector was bound to apply the test there rather than that in REN 1 or 2 as Mr Harwood interpreted them. It was a matter for the Inspector as decision maker whether the effect was acceptable. He drew support from another unreported case (*Colman v Secretary of State*

for Communities and Local Government & Ors [2013] EWHC 1138 Kenneth Parker J.)

41. On Ground 4, he submitted that

i) one should not draw readily an adverse inference that the Inspector had applied the wrong approach. In fact he had expressly taken the NPPF into account (see paragraph 30 of the Decision Letter). A fair reading of the Decision Letter as a whole shows that the correct approach was applied;

ii) NPPF paragraph 132 is not a freestanding test. Reference was made to Jay J in the similarly unreported *Bedford Borough Council v SSCLG* [2013] EWHC 2854 (Admin) at paragraph 17;

> "Two principal points arise here. First, it is clear that the test for the grant of planning consent varies according to the quantum of harm to significance. There is a presumption against granting consent if the harm to significance is substantial, or there is a total loss to significance; see paragraph 133. But if the harm is less than substantial, it is simply a question of weighing that harm against the public benefits of the proposal; see paragraph 134. I say that without prejudice to other issues which might arise under different statutes, for example section 66(1) of the 1990 Act."

He also referred to Judge Waxman in the *Hughes v S Lakeland* judgment at paragraph 56.

iii) here the Inspector had addressed the degree of weight to be ascribed to the harm.

Discussion and Conclusions

42. As to Ground 1, I shall start with the issue of what it was that the Inspector had regard to. I regard it as impossible to argue that he was unaware of, or had overlooked, the Addendum assessment. It had been referred to on several occasions by both the local planning authority and the Appellant in the documentation, and also by EH in its representations to Cornwall Council, which were also before him.

43. However it was for him to form his own view of the effect of the development on heritage assets. He addressed this issue at paragraph 33. He was perfectly entitled, if he wished to do so, to adopt the assessment in the original Environment Report, if that coincided with his own. He was not required to say why he preferred it to another assessment.

44. In any event, it is hard to see how adoption of the assessment in the Addendum would have altered the outcome of the appeal. At worst, the changes were low magnitude changes which would have a "slight adverse impact." In the case of the listed buildings to which Mr Harwood refers, no-one objecting to the proposal had ever seen fit to suggest that the effects were adverse, let alone unacceptable. The Claimant had not done so. While I accept that the Claimant was unaware of the Addendum, he would not have been unaware of the buildings on which reliance is now placed.

45. It is correct of course that he has not spelled out the effects of the s 66 PLBCA duty with regards to the two listed buildings. Given his conclusions, he had no need to do so, as he found no cogent evidence of any adverse effects on any listed building or its setting. But even if he should have spelled it out in more detail, I cannot conceive that the result would have been any different in the context of this case. This is not the same set of facts as in *Barnwell Wind Energy v East Northants* which considered the effect of four turbines on a Grade I Listed Building, where the Inspector had failed to assess the contribution made by the setting in that case, and had also applied an improper "reasonable observer" test when addressing the effects. By contrast this Inspector has assessed the relevant matters with care, and I note that Mr Harwood QC makes no criticism at all of the assessment made by this Inspector.

46. As to Ground 2, which relates to Bake Rings, it is of course true that the Inspector did not address it in terms. Neither the local planning authority nor EH nor any objector, let alone the claimant, invited him to do so. Had the Inspector done so, given the finding of low magnitude impact with an overall slight adverse effect (on a SAM over 3 kilometres away), it is again very hard to see how it would have affected the outcome of the appeal.

47. I turn now to Ground 3, which raises the issue of the interpretation of REN 1 and REN 2. No doubt the drafters of policy REN 2 did not expect the scrutiny which it has attracted, but it does not need much attention for one to realise that, as written, it contains a serious inherent conflict. The use of the word "unacceptable" means that the issue is not simply whether there would be harm, but whether, taking all relevant matters into account, it would be acceptable or not. As Mr Honey pointed out, if one reads the policy literally the test for development *outside* an AONB, a SAM or one of the other designations (the test of there being no adverse impact) is more onerous than for development *within* them, but which has an effect on them (the test that it must not cause unacceptable damage). Whether that has come about through the omission of the adverb "*unacceptably*" before "*adverse*" or because changes were made to one part and not the other during the Local Plan process, or because of some other reason one knows not, but what is clear is that as written, it presents very real problems of application, and must be applied with some flexibility.

48. I cannot accept Mr Harwood's approach to Policy REN 2, which seems to me in its reference back to REN 1 (a test again of whether the effect is *unacceptable*) to require that one redraws REN 1 as well. I also regard it as significant that the approach of the Inspector and Mr Honey accords with the interpretation put on it by the local planning authority, which is that a balance must be struck. I therefore reject Mr Harwood's contention that the development should have been found to be in conflict with the Development Plan. But in any event, it is inconceivable that, even if Mr Harwood's approach is the right one, the Inspector would have given it any weight in the light of the subsequent NPPF and its more nuanced approach.

49. I turn now to Ground 4. Like Judge Waksman QC in *Hughes v South Lakeland*, in my view paragraph 134 of NPPF can be a trap for the unwary if taken out of context. I agree with his approach that the significance of a heritage asset still carries weight at the balancing stage required by paragraph 134, and to the extent that Kenneth Parker J in *Colman v Secretary of State for Communities and Local Government & Ors* [2013] EWHC 1138 and Jay J in *Bedford Borough Council v SSCLG* [2013] EWHC 2854 suggest otherwise, I prefer the approach of Judge Waksman QC. Thus, the value and

significance of the asset, whatever it may be, will still be placed on one side of the balance. The process of determining the degree of harm, which underlies paragraph 132 of NPPF, must itself involve taking into account the value of the heritage asset in question. That is exactly the approach that informed the Addendum Assessment upon which Mr Harwood relies. The later assessment also addressed the value of the asset, and then the effect of the proposal on that value. Not all effects are of the same degree, nor are all heritage assets of comparable significance, and the decision maker must assess the actual significance of the asset and the actual effects upon it.

50. But one must not take it too far so that one rewrites NPPF. It provides a sequential approach to this issue. Paragraphs 126-134 are not to be read in isolation from one another. There is a sequential approach in paragraphs 132 -4 which addresses the significance in planning terms of the effects of proposals on designated heritage assets. If, having addressed all the relevant considerations about value, significance and the nature of the harm, and one has then reached the point of concluding that the level of harm is less than substantial, then one must use the test in paragraph 134. It is an integral part of the NPPF sequential approach. Following it does not deprive the considerations of the value and significance of the heritage asset of weight: indeed it requires consideration of them at the appropriate stage. But what one is not required to do is to apply some different test at the final stage than that of the balance set out in paragraph 134. How one strikes the balance, or what weight one gives the benefits on the one side and the harm on the other, is a matter for the decision maker. Unless one gives reasons for departing from the policy, one cannot set it aside and prefer using some different test.

51. So far as the Inspector was concerned, he addressed the value and significance of the two SAMs at paragraphs 25-26. He referred to the importance of Bury Down Camp within the landscape, and the historical significance but lack of landscape significance of Giant's Hedge. At paragraphs 27-9 he considered the degree of harm which would be caused by the proposals to the value of each, and considered whether and to what degree the character of the settings of the two SAMs would be affected. He endorsed aspects of the Cultural Heritage Assessment which accompanied the Appeal Statement.

52. In my judgement he had taken a great deal of care in his assessment of their value, significance and settings. He had followed the sequential approach indicated in the NPPF. Throughout his assessment he uses qualitative descriptions which show that he has formed a judgement on the value, significance and effect of both features. He also reminded himself of their "considerable importance." (paragraph 27). He described in detail how the presence of the turbine would affect the particular valuable and significant features of each. In my judgement it is a thorough professional assessment which gives full weight to the value of the SAMs in question.

53. Mr Harwood points out that paragraph 132 uses the phrase "clear and convincing justification." It might be thought difficult to be convincing without being clear, but it seems to me that the author of NPPF is saying no more than that if harm would be caused, then the case must be made for permitting the development in question, and that the sequential test in paragraphs 132-4 sets out how that is to be done. So there must be adherence to the approach set out, which is designed to afford importance in the balance to designated heritage assets according to the degree of harm. If that is

done with clarity then the test is passed, and approval following paragraph 134 is justified.

54. Here the Inspector placed considerable value on the benefits of the scheme. He was entitled to do so as the decision maker. His weighing of those benefits at paragraph 46 is not done in isolation, but draws on what is set out earlier in the Decision Letter. His approach is clear, and he gives reasons for his striking the balance as he does.

55. I therefore conclude that Ground 4 must fail.

56. Looked at overall, I have concluded that

    i) He was entitled to, and did, accept the conclusions of the original Environmental Report about the effects on Listed Buildings;

    ii) Had he addressed the effects on the Bake Rings SAM (which no-one had asked him to) he would have reached the same overall conclusion.

    iii) The Inspector did not misinterpret the Development Plan. Even if he did, he would have been bound to give it little weight given the terms of NPPF, and a different interpretation would have made no difference to the decision;

    iv) He did not misinterpret NPPF, nor apply it improperly.

57. Both Mr Harwood and Mr Honey developed thoughtful, succinct and well structured submissions, for which I am very grateful. However despite the skill with which Mr Harwood deployed his arguments, I have no doubt that they must fail. This application is therefore dismissed.

58. I sent Counsel my draft judgment. I am grateful to Mr Harwood and Mr Honey for their prompt and helpful corrections to the infelicities of my typography. I have adopted almost every suggestion they have made.

59. They have also agreed on the form of Order , which is as follows

    i) The claim is dismissed.

    ii) The Claimant do pay the First Defendant’s costs agreed in the amount of £8,139.00 inclusive of disbursements and VAT.

    iii) Any application for permission to appeal be made to the Court in writing by 4pm on 16 January 2015, and any response to such an application be made by the First Defendant by 4pm on 26 January 2015.

    iv) The time limit for filing an Appellant's Notice is extended by 21 days from the date of decision of the High Court on permission to appeal.