

'Mordue'

Neutral Citation Number: [2015] EWCA Civ 1243

Paragraph 28 states that generally, a decision-maker who works through the paragraph of the NPPF which relates to the public benefit test for less than substantial harm to a designated heritage asset, they will have complied with the section 66(1) duty.



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Case No: C1/2015/1067

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEENS BENCH DIVISION, PLANNING COURT**  
**MR JOHN HOWELL QC**  
**[2015] EWHC 539 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 03/12/2015

**Before :**

**LORD JUSTICE RICHARDS**  
**LORD JUSTICE FLOYD**  
and  
**LORD JUSTICE SALES**

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**Between :**

**Aidan Jones**  
- and -

**Appellant**

**Jane Margaret Mordue**  
- and -

**First Respondent**

**Secretary of State for Communities  
and Local Government**  
- and -

**Second Respondent**

**South Northamptonshire Council**

**Third Respondent**  
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**Mr Alistair Mills** (instructed by **Wilkin Chapman LLP**) for the **Appellant**

**Mr Juan Lopez** (instructed by **Direct Access**) for the **First Respondent**

The 2nd Respondent did not appear and was not represented

The 3<sup>rd</sup> Respondent did not appear and was not represented

Hearing date: 28 October 2015  
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**Approved Judgment**

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

26. With respect to the deputy judge, I think he read too much into para. [29] of the judgment of Sullivan LJ in the *East Northamptonshire case*. I do not consider that, read in the context of the judgment as a whole, Sullivan LJ and the court intended to state an approach to the reasons required to be given by a decision-maker dealing with a case involving application of section 66(1) of the Listed Buildings Act which was at variance from, and more demanding than, that stated in *Save Britain's Heritage and South Bucks DC v Porter (No. 2)*. Sullivan LJ's comments in para. [29] were made in the context of a decision letter which positively gave the impression that the inspector had *not* given the requisite considerable weight to the desirability of preserving the setting of the relevant listed buildings, where as a result it would have required a positive statement by the inspector referring to the proper test under section 66(1) to dispel that impression. In my judgment, the relevant standard to be applied in assessing the adequacy of the reasons given in the present case is indeed the usual approach explained in *Save Britain's Heritage and South Bucks DC v Porter (No. 2)*, which is what the deputy judge correctly thought it ought to be.
27. Mr Lopez, for the respondent, took us to first instance authorities - *The Forge Field Society and North Norfolk District Council v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin) - in which the reasons for decisions in cases involving application of section 66(1) of the Listed Buildings Act had been found to be inadequate and invited us to compare them with the reasons given by the Inspector in this case. I did not find this a helpful exercise. Reasons for planning decisions have to be read as a whole in their proper context, and there will inevitably be differences of context, expression and nuance between cases which may be highly relevant. Reading other decision letters (and the judgments in relation to them) can take up considerable time and effort without adding value for the determination of the particular case before the court. The relevant principles in relation to the giving of reasons are well-established and very well known, and it should be sufficient for a judge to be reminded of them and taken to the reasons in the case before him or her to assess them in light of those principles, without any need for exegetical comparison with reasons given in relation to other planning decisions. I would add, however, that on my reading of them the judgments we were taken to concerned reasons for decisions which, as in the *East Northamptonshire case* itself, contained positive indications that the decision-maker had failed to comply with the duty under section 66(1) of the Listed Buildings Act: see *The Forge Field Society* [2015] JPL 22, at [42] and [53], and *North Norfolk DC v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin), at [72]-[73]. Such indications would have had to have been dispelled by a countervailing positive reference to the relevant duty in the reasons themselves in order to avoid the conclusion that the decision-maker had erred as a matter of substance in the test being applied. Although *Save Britain's Heritage and South Bucks DC v Porter (No. 2)* were not referred to, there is nothing in the judgments themselves to show that the familiar basic principles laid down in them were departed from on the facts of these cases.
28. If one applies the correct approach in the present case, as set out in *Save Britain's Heritage and South Bucks DC v Porter (No. 2)*, it cannot be said that the reasoning of

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

29. The Inspector was lawfully entitled to assess that the harm to the setting of the listed buildings identified and discussed by him at paras. 10-13 of the Decision Letter, giving that factor the weight properly due to it under section 66(1) of the Listed Buildings Act and paras. 131-134 of the NPPF, was outweighed by the environmental benefits from the turbine identified and discussed by him at paras. 20-22 of the Decision Letter.
30. For these reasons, I would allow the appeal and uphold the decision of the Inspector.
31. The additional contention raised in the respondent's notice, namely that the Inspector failed properly to comply with the duty in section 38(6) of the 2004 Act, is wholly devoid of merit and should be dismissed. The Inspector clearly considered that there were good reasons to depart from the relevant policies in the development plan, for the reasons he explained. That was an entirely lawful exercise of planning judgment by him.

**Lord Justice Floyd:**

32. I agree

**Lord Justice Richards:**

33. I also agree.