Neutral Citation Number: [2015] EWHC 539 (Admin)

Case No: CO/4123/2014

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: March 9th 2015

Before:

JOHN HOWELL QC
(sitting as a Deputy High Court Judge)

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Between :

	JANE MARGARET MORDUE	**Claimant**
	- and -	
	SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (1) **AIDAN JONES (2)** **SOUTH NORTHAMPTONSHIRE COUNCIL (3)**	**Defendants**

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Juan Lopez for the **Claimant**
Charles Banner (instructed by **Wilkin Chapman LLP**) for the **Second Defendant**
Defendants (1) and (3) did not attend the hearing and were not represented

Hearing dates: February 18th 2015

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Judgment **John Howell QC:**

1. This is an application under section 288 of the Town and Country Planning Act 1990 to quash the decision of an Inspector, Mr John Braithwaite, granting planning permission for the erection of a free-standing wind turbine and certain associated development at Poplars Farm, Wappenham in South Northamptonshire. The wind turbine would be 60m high to its hub and 86.45m high to its top blade tip.

2. The application for planning permission was made Mr Aidan Jones, the owner of Poplars Farm. He appealed to the Secretary of State for Local Government and Communities against the failure of the local planning authority, South Northamptonshire Council ("*the Council*"), to determine his application within the prescribed period. The Secretary of

State appointed the Inspector to determine the appeal.

3.The appeal was conducted by written representations. Among those who objected to the development, in addition to the Council, was Jane Margaret Mordue ("*the Claimant*"). She is the Chair of the Wappenham Wind Turbine Action Group. She was concerned among other matters with the visual impact that she feared that the wind turbine would have. She was concerned that it would dominate the landscape for miles around and affect many of the local listed buildings including the Church of St Mary in Wappenham. This is her application to quash the Inspector's decision.

4.The Inspector found that the proposed wind turbine would have a significant adverse effect on the character of the landscape up to a distance of 0.5km, and a moderate adverse impact thereafter up to 1km, from its location and that it was, therefore, in conflict with two saved policies of the South Northamptonshire Local Plan. Those policies remain part of the development plan for the area. The Inspector also found that the proposed turbine would have a negligible effect on the setting of all the listed buildings in the area other than Church of St Mary in Wappenham, a Grade II* listed building. He considered that the harm to the setting of that listed building would be more than negligible but less than substantial. Cumulatively the harm to the settings of the listed buildings in his view would be less than substantial. He found that nevertheless the proposed development would be in conflict with another of the saved policies in the Local Plan, EV12. Against that the Inspector considered that the development would make a small contribution to meeting the effects of climate change, something which is an objective in the Secretary of State's National Planning Policy Framework ("*NPPF*") and in National Policy Statements. In his view the harm that the development would cause to the landscape and heritage assets in the area was outweighed by its environmental benefits. Accordingly the Inspector considered that material considerations, namely the environmental benefits of renewable energy, indicated in this case that the determination of the appeal should be made otherwise in accordance with the development plan. He, therefore, granted planning permission for the development for a period of 25 years subject to conditions.

5.There are two grounds on which the court may quash a decision under section 288 of the Town and Country Planning Act 1990 ("*the 1990 Act*"). The court may do so if it is satisfied either (i) that the decision "is not within the powers of this Act" or (ii) that the "interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it": see section 288(1)(b) and 288(5)(b) of the 1990 Act. Mr Charles Banner, who appeared on behalf of Mr Jones, did not dispute that the Inspector was subject to a requirement to give reasons for his decision.

6.On behalf of the claimant, Mr Juan Lopez contended that the Inspector's decision falls to be quashed on four grounds. He submits (i) that the Inspector failed to apply "properly" the duty imposed by section 38(6) of Planning and Compulsory Purchase Act 2004 which required the appeal to be determined "in accordance with the [development] plan unless material considerations [indicated] otherwise"; (ii) that the Inspector failed to apply "properly" or at all the duty imposed by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which required him to "have special regard to the desirability of preserving [any listed] building or its setting"; (iii) that the Inspector failed to deal with the intrinsic significance of the heritage assets affected by the

proposed development and the contribution which their setting made to their significance; and (iv) that the Claimant has been substantially prejudiced by the Inspector's failure to give reasons for his decision.

THE INSPECTOR'S REPORT

7.In order to understand some of the submissions made by Mr Lopez and Mr Banner, it is unfortunately necessary to set out some parts of the Inspector's decision letter ("*DL*") extensively.

8.The Inspector identified what he considered the main issues on the appeal as:

> "first, the effect of the erection of the turbine on the character of the landscape, particularly when seen from footpaths and viewpoints in the area; second, the effect of the development on heritage assets; third, whether the development would cause any other harm; and fourth, whether the harm caused is outweighed by the environmental benefits of the renewable energy scheme."

9.In addressing the first issue, the effect of the proposed development on the character of the landscape, the Inspector analysed its character and the effect it would have. His conclusion was that

> "9. The proposed turbine development, as generally accepted by both main parties, would have a significant adverse effect on the character of the landscape up to a distance of about 0.5 kms from its location and would have a moderate adverse effect on the character of the landscape between about 0.5 and 1.0 kms from Poplars Farm. The proposed development thus conflicts with saved policies G3 and EV1 of the South Northamptonshire Local Plan."

10.In relation to the effect of the development on heritage assets the Inspector stated that:

> "10. The nearest non-residential heritage asset to the location of the proposed turbine is the Church of St Mary in Wappenham, a Grade II* listed building. The immediate setting of the Church is its churchyard, an intimate area confined by buildings and vegetation. It is unlikely that the turbine would be visible from within the churchyard. The Church is at the heart of the village and it is a prominent feature particularly from the north within the village. The turbine would be more than 1 km from the church and it is unlikely that it would be visible in the background in these village views of the church. The tower of the Church is visible from outside the village from some directions and it is possible that the tower and the turbine would be seen in the same views. However, given the distance between them the turbine would not compete with, or detract from, the landmark feature

> that is the Church tower. Nevertheless, the turbine would be a feature in the countryside setting of the Church and it would cause harm to this setting, though the harm would be less than substantial.
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> 11. The Manor, a dwelling that is a Grade II* listed building, is situated close to the Church of St Mary in Wappenham. It is within the tight core of mainly historic development around the Church and the effect of the turbine on its setting would be negligible. The same conclusion can be reached for other listed buildings within the village. Further afield is the Church of St Botolph at Slapston, a Grade I listed building. This Church is over 2 kms from the location of the proposed turbine and, though it is located on slightly elevated ground, views towards the turbine from its immediate surroundings would be filtered by a belt of trees to the south-west. It is possible even that the turbine would not be visible from the surroundings of the Church and, despite its high sensitivity, the potential harm to its setting can only be regarded to be negligible. The same conclusion can be reached for other listed buildings in the vicinity of the Church, such as Manor Farm and an associated barn.
>
> 12. The aforementioned listed buildings are all more than 1 km from the location of the proposed turbine and no other heritage asset, listed building or registered park and garden, would be any closer. The turbine would not cause harm, greater than negligible, to the setting of any of these other heritage assets.
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> 13. The proposed turbine would harm the setting of the Church of St Mary but the harm would be less than substantial. The turbine would have a negligible harmful effect on the settings of other heritage assets in the area. The cumulative harm to the settings of heritage assets is less than substantial. Nevertheless, the proposed development is in conflict with saved LP policy EV12."

11. The Inspector found in relation to the third main issue that the proposed development would cause no harm other than to the character of the landscape and to the setting of heritage assets.

12. In relation to the fourth issue, however, he found in terms of "environmental benefits" that "the development would make a small contribution to meeting the effects of climate change, an objective of the NPPF and of National Policy Statements." Paragraph [98] of the NPPF (to which the Inspector was to refer) states (as he was doubtlessly aware), the policy is to "recognise that even small scale projects provide a valuable contribution to cutting greenhouse gas emissions."

13. The Inspector then turned to the balancing exercise he needed to conduct, stating that:

> "23. Paragraph 134 of the NPPF states that "Where a development proposal would lead to less than substantial harm to

> the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal…". The public benefits of the proposal must also be weighed against public opposition to the proposal. In this regard over half of households in Wappenham have signed a petition against the turbine and some residents have suggested that the Localism Act 2011 and Ministerial Statements made in 2013 indicate that local opinion should be given considerable weight. Some have also pointed to paragraph 5 of Planning Practice Guidance for Renewable Energy which states that "…all communities have a responsibility to help increase the use and supply of green energy, but this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities". It is worth noting, with regard to responsibility, that some residents of the village have written in support of the proposed development of a wind turbine at Poplars Farm.
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> 24. Paragraph 98 of the NPPF states that local planning authorities should "…not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy…". There is no quota for the production of renewable energy and the proposed development would contribute to meeting the effects of climate change. The significant adverse effect of the development on the character of the landscape is limited to a small area and no heritage asset in the area would suffer substantial harm. In this case, the harm that would be caused by the development is outweighed by its environmental benefits.
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> 25. Saved LP policies G3, EV1 and EV12 are part of the development plan for the area. With regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, material considerations in this case, the environmental benefits of the renewable energy development, indicate that determination of this appeal must be made other than in accordance with the development plan."

14. The Inspector's overall conclusion was that "the harm that would be caused by the development is outweighed, in this case, by its environmental benefits."

GROUND 1: FAILURE TO APPLY SECTION 38(6) OF 2004 ACT "PROPERLY"

15. The basic statutory framework governing the substantive determination of applications for, or appeals relating to, the grant of planning permission is well known. By virtue of sections 70(2) and 79(4) of the 1990 Act, regard must be had to:

> "(a) the provisions of the development plan, so far as material to the application,

> (b) any local finance considerations, so far as material to the application, and
>
> (c) any other material considerations."

Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") then provides that:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

16. Mr Lopez contended that the Inspector failed properly to apply the duty imposed by section 38(6) of the 2004 Act. First he submitted that Inspector had failed to recognise that "the starting point is the [development] plan which receives priority" and that "the scales do not start off in even balance": see *South Northamptonshire Council and another v Secretary of State foe Communities and Local Government and another* [2013] EWHC 11 (Admin) per HHJ Mackie QC at [20]. Secondly, in order to conduct the balancing exercise required by section 38(6) of the 2004 Act properly, so Mr Lopez submitted, the decision-maker must first decide the weight to be afforded to each and all of the conflicts that a proposed development may have with the development plan. Thus, when a development plan policy contains a number of limbs, the decision maker must identify which limbs the proposed development does not comply with and/or the weight to be attached to the failure to comply with that policy. In this case saved Policies G3 and EV1 each had several limbs but the Inspector has not identified with which the proposed development was incompatible nor has he stated what weight he has given to the failure to comply with each of those policies or policy EV12.

17. In my judgment the first complaint is misconceived. In this case the Inspector plainly had regard to the presumption that section 38(6) of the 2004 Act creates in [DL25]. Having referred specifically to that provision, he recognised that the proposed development was not in accordance with the development plan. But he nonetheless thought that material considerations, in this case the environmental benefits of renewable energy development, indicated that the determination of the appeal should be made otherwise than in accordance with that plan. That was precisely what section 38(6) of the 2004 required him to conclude before granting planning permission.

18. Section 38(6) of the 2004 Act falls to be applied in the light of the conclusions which the decision maker has reached about the development plan and other material considerations. There was no requirement for the Inspector to state anything about where the balance was to be struck before anything was put in "the scales".

19. Further there is no requirement that a decision-maker must start any statement of his reasons with section 38(6) of the 2004 Act. How any reasons provided for a decision are organised and expressed is a matter for the decision-maker. What is required is that the decision complies with the requirement which that provision imposes. As Lord Clyde put it in *City of Edinburgh v Secretary of State for Scotland* [1997] 1 WLR 1447 at

p1459h-1460d,

> "it is undesirable to devise any universal prescription for the method to be adopted by the decision-maker, provided always of course that he does not act outwith his powers. Different cases will invite different methods in the detail of the approach to be taken and it should be left to the good sense of the decision-maker, acting within his powers, to decide how to go about the task before him in the particular circumstances of each case....In many cases it would be perfectly proper for the decision-maker to assemble all the relevant material including the provisions of the development plan and proceed at once to the process of assessment, paying of course all due regard to the priority of the latter, but reaching his decision after a general study of all the material before him. The precise procedure followed by any decision-maker is so much a matter of personal preference or inclination in light of the nature and detail of the particular case that neither universal prescription nor even general guidance are useful or appropriate."

20. In my judgment Mr Lopez's second contention is an attempt to present a complaint about the reasons provided by the Inspector as a complaint about his compliance with section 38(6) of the 2004 Act. As Lord Hope stated, in *City of Edinburgh v Secretary of State for Scotland supra* at p1450f-h,

> "The only questions for the court [when reviewing compliance with this duty] are whether the decision-taker had regard to the presumption [created by the requirement it imposes], whether the other considerations which he regarded as material were relevant considerations to which he was entitled to have regard and whether, looked at as a whole, his decision was irrational.... That section... is addressed primarily to the decision-taker. The function of the court is to see that the decision-taker had regard to the presumption, not to assess whether he gave enough weight to it where there were other material considerations indicating that the determination should not be made in accordance with the development plan."

21. Mr Lopez's real complaint is that, in his reasons, the Inspector has not identified with which limb of saved Local Plan Policies G3 and EV1 the proposed development was incompatible and that he has not stated what weight he has given to the failure to comply with each of those policies or saved Local Plan policy EV12.

22. In my judgment the Inspector was under no obligation to do so. As Lord Brown of Eaton-under-Heywood stated in *South Bucks District Council and another v Porter (No 2)* [2004] UKHL 33, [2004] 1 WLR 33, at [36],

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached

> on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision...The reasons need refer only to the main issues in dispute, not to every material consideration."

23. There may, of course, be cases in which there is an issue whether, given certain findings, a proposed development will or will not be in conflict with a development plan policy or of a particular limb of it. If that is a main issue, the Inspector may need to state why he considers that there is, or that there is not, such a conflict. Here there appears to have been no issue, given the findings that the Inspector made about its impact on the landscape and heritage assets, whether the proposed development would be in conflict with saved Local Plan policies GV3 and EV1. In my judgment he was not obliged to specify which limbs of those policies the proposed development failed to comply with. (Had he been, I would have found that the Claimant has suffered no substantial prejudice in any event from the failure to do so, even if it could have been contended realistically that she was in any substantial doubt about it.)

24. I also reject Mr Lopez's submission that, whenever a proposed development conflicts with a development plan policy, a decision-maker must specify the weight accorded to each conflict and (logically by extension) to every other material consideration (including any such policy with which it may comply). That is plainly not what the requirement to provide reasons involves, even with regard to the main issues. What is required are reasons enabling the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial important issues", not the exact weight assigned to each consideration that may have been involved in reaching such conclusions.

25. This application, therefore, fails on Ground 1.

Ground 2: FAILURE TO COMPLY WITH section 66(1) of the Listed Buildings Act 1990 "PROPERLY" OR AT ALL

26. Mr Lopez contended that the Inspector did not comply with the duty to have special regard to the desirability of preserving the settings of the listed buildings that would be affected by the proposed development "properly" or at all. He submitted that the Inspector had applied a "simple planning balance" but that, consistently with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("*the Listed Building Act*"), a decision-maker may not balance any harm to a listed building or its setting that would result from a proposed development with the benefits of that development and grant planning permission on the basis that any such harm is outweighed by the benefits. Section 66(1) requires a strong presumption to be applied against any development that causes any harm to a listed building or its setting, something which must be given considerable importance and weight. The Inspector had not mentioned the duty imposed by section 66(1), although Mr Lopez accepted that of itself was not fatal. More significantly he had not demonstrated that he had attributed considerable weight to each of the harms to the settings of the listed buildings in the area which he found the

proposed development would cause. That was fatal: see *East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another* [2014] EWCA Civ 137, [2015] 1 WLR 137; *R (The Forge Field Society and others) v Sevenoaks DC and others* [2014] EWHC 1895 (Admin), [2015] JPEL 22; *North Norfolk District Council v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin); and *South Northamptonshire District Council v Secretary of State for Communities and Local Government* [2013] EWHC 11. In this case the Inspector only applied the policy in the NPPF, which is insufficient (so Mr Lopez submitted) to secure compliance with the duty under section 66(1), or at any rate he only applied the policy in paragraph [134] of the NPPF which by itself is insufficient.

27. In response Mr Banner accepted that section 66(1) of the Listed Building Act required the decision maker to afford considerable weight and importance to any harm to a listed building or its setting. But, so he submitted, that does not require any particular decision. Further the decision maker does not have to spell out or expressly state that "considerable weight and importance" has been given to the objective to which that subsection refers. What matters is whether in substance the requirement has been complied with. A challenge alleging that it has not been complied with should not become a semantic game: see *R (Residents Against Waste Site Ltd) v Lancashire County Council* [2007] EWHC 2558 (Admin), [2008] Env LR 27, at [35]-[36]. In this case, in treating the impact of the proposed development on the heritage assets as one of the main issues on the appeal, the Inspector had recognised its considerable importance. In addition, when a development plan policy embodies a particular consideration to which regard must be had, then regard to the policy will normally show that regard had been had to that consideration. In this case the Inspector plainly had regard to the relevant statutory duty as it is transposed in saved Local Policy EV12. Moreover the approach in the NPPF which the Inspector followed requires "great weight" to be given any harm to a listed building or its setting.

(i) The substantive law

28. Section 66(1) of the Listed Buildings Act provides that:

> "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."

29. As the opening words of the subsection make plain, the obligation it imposes arises when the local planning authority, or the Secretary of State (or the person appointed to determine an appeal on his behalf), is considering whether to grant planning permission. It must be complied with, therefore, as part of the same exercise that is also governed by section 38(6) of the 2004 Act.

30. Section 66(1) of the Listed Building Act requires the decision maker at least to start from the assumption that it is desirable to preserve any listed building and its setting. Preserving

them includes doing no harm to either: see *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141 per Lord Bridge of Harwich at p150. It may turn out, however, that, once regard has been had to all material considerations, preserving a listed building or its setting from any harm at all should not be insisted on and that, for example, planning permission may be given for the demolition of the listed building itself (as in *Save Britain's Heritage v Number 1 Poultry Ltd and others* [1991] 1 WLR153.) Nonetheless, in approaching any such decision, section 66(1) of the Listed Building Acts requires "special regard" to be had to the desirability of preserving any listed building and its setting.

31. In *East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another* [2014] EWCA Civ 137, [2015] 1 WLR 137 ("*the East Northamptonshire case*"), the Court of Appeal held that the obligation to have "special regard" to the desirability of preserving any listed building and its setting did not mean that it should merely be given careful consideration by the decision-maker when considering whether a proposed development would cause any harm and to any harm it might cause. The Court of Appeal accepted that the decision-maker's assessment of the degree of harm to a listed building or its setting was a matter for the decision-maker's judgment. But, so it held, the weight to be given to that harm, when balancing the factors in favour of or against the grant of planning permission, was not: "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'": see per Sullivan LJ (with whom Rafferty and Maurice Kay LJJ agreed) at eg [19], [22] and [24].

32. Since the harm which may be caused by a development to a listed building or its setting may vary from the almost imperceptible to total destruction, the "considerable weight" that must, therefore, be assigned to any harm as a matter of law must presumably be the minimum weight that must be assigned however small any such harm may be, rather than an invariable weight to be given to any such harm regardless of its degree. The latter alternative would make no sense. The former makes some sense if section 66(1) of the Listed Building Act is to be interpreted (as the Court of Appeal has done) as requiring a specific weight to be given to any harm regardless of its degree as a matter of law (rather than as a matter for judgment in a particular case).

33. The Court of Appeal did not consider whether section 66(1) of the Listed Buildings Act 1990 also required considerable weight to be given to any positive contribution that a proposed development would make to the preservation of a listed building or its setting, however small that contribution may be.

34. In some subsequent cases section 66(1) of the Listed Buildings Act has been treated or referred to as creating a presumption. I do not propose to refer to it in that way for a two reasons.

i) A presumption can exist without requiring any particular weight to be afforded to the presumption in question. For example section 38(6) of the 2004 Act has been said to create a presumption in favour of the development plan, for example by Lord Hope in *City of Edinburgh Council v Secretary of State for Scotland supra* in the passage from his speech quoted in paragraph [20] above. But, as Lord

Clyde also emphasised in the same case, what the provision does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations: see at pp1458h-1459a. By contrast, although the Court of Appeal in *the East Northamptonshire case* also referred to section 66(1) of the Listed Building Act as creating a presumption, the flaw it found in the decision under review was the failure to accord "considerable weight and importance" to the harm to the setting of the listed buildings affected in that case: see at [29].

ii) Secondly referring to section 66(1) of the Listed Buildings Act as creating a presumption may in some cases lead to unnecessary confusion. There can be cases in which a proposed development accords with the development plan (and there is thus a "presumption" in favour of it) but the desirability of preserving the listed building may indicate that it should be refused permission (thus creating a "presumption" against it), as, for example, in *Heatherington (UK) Ltd v Secretary of State for the Environment and another* (1994) 69 P&CR 374. Asking which presumption outweighs the other would be unnecessary and unhelpful. What section 66(1) of the Listed Buildings Act requires is that special regard is had to the desirability of preserving any listed building and its setting when determining (in accordance with section 38(6) of the 2004 Act) whether material considerations indicate that planning permission should be granted otherwise than in accordance with the development plan. On the basis of the approach in *the East Northamptonshire case*, if a proposed development would cause any harm to a listed building or its setting, considerable weight would have to be accorded to any breach of a development plan policy that such harm involved and, if that harm does not lead to such a breach, it would have to be accorded considerable weight as a consideration counting against the grant of planning permission. Referring to each provision as creating a presumption is unnecessary and does not assist in formulating the relevant legal requirements or in applying them.

(ii) The nature of the challenge in this case

35.In my judgment it is important to be clear what the nature of the present challenge is.

36.In his decision letter the Inspector found that the impact of the proposed development on the setting of a number of listed buildings was "negligible". By that he plainly meant that in each case there was some harm but that it was very small, not that it was so small as to be not worth considering. As he made plain in [DL17], he took the "negligible" harm that he had found in a number of cases, together with the harm to the setting of the Church of St Mary in Wappenham, into account in determining what "the cumulative harm to the settings of the heritage assets" in the area was, which he found was "less than substantial".

37.Mr Lopez submitted that the Inspector was required to give "considerable weight and importance" to each case in which he had found "negligible harm" to the setting of a listed building. That must be correct as a matter of logic given the decision in *the East Northamptonshire case supra* (as explained in paragraphs [31]-[32] above). Mr Lopez

did not suggest that the Inspector was required in law to give more than "considerable weight" to the "less than substantial harm" that he found that the proposed development would cause to the setting of the Church of St Mary because that harm was greater than the "negligible harm" that would caused in other cases. It would be strange if more weight is required to be given to the same harm merely because the proposed development also causes less harm to the setting of another listed building. The apparent oddity, that the same weight may be given to a more serious case of harm than to a less serious case, follows from the requirement to give a minimum weight as a matter of law, even if that weight would not have been given on the merits as a matter of planning judgment. There are other apparently odd possible results of that requirement. I refer to one in paragraph [64] below.

38. But what is significant for present purposes is that Mr Lopez disavowed any contention that no reasonable Inspector could have granted planning permission in this case having assigned at least "considerable weight" to each of the adverse impacts on the settings of the listed buildings that he found that the proposed development would cause. It follows that the Inspector's decision is consistent with his having complied with section 66(1) of the Listed Buildings Act.

39. There may, of course, be something in the reasons given by a decision-maker that shows that considerable weight was not accorded to any harm that a proposed development may cause a listed building or its setting. In *the East Northamptonshire case*, for example, the Court of Appeal appears to have considered that it could be inferred, from the fact that the Inspector said that "significant weight" was accorded to renewable energy considerations but had made no reference to the weight accorded the harm to the settings of the listed buildings in that case, that considerable weight had not been given to that harm: see at [29]. Such reasoning would appear to be inconsistent with the decision of the Court of Appeal in *O'Connor v Secretary of State for Communities and Local Government* [2013] EWCA Civ 263. In that case the Inspector had referred to the substantial weight to be given to the fact that the proposed development would be inappropriate in the Green Belt but not to the fact that he had given substantial weight to the unmet need for gypsy sites (which should have been accorded with the policy at that time of the Secretary of State) when considering whether or not to grant a temporary planning permission for such a site. The Court of Appeal refused to infer that the Inspector had failed to have regard to the policy and Laws LJ regarded the contention that the reasons were inadequate, as they had failed to say that substantial weight had been accorded to the unmet need (although they did say substantial weight have been given to the fact that the development was inappropriate in the Green Belt), as involving reading of the decision letter with "exegetical sophistication". Which approach may be preferable, however, is not something that needs to be resolved in this case as the Inspector did not state what particular weight he had assigned to any particular consideration.

40. Mr Lopez submitted that there was one positive indication that the Inspector had not complied with section 66(1) of the Listed Building Act. In [DL13] the Inspector had said that the cumulative harm to the settings of the heritage assets was less than substantial but "nevertheless" the proposed development was in conflict with saved Local Plan policy EV12. The use of the term "nevertheless" indicated, so Mr Lopez submitted, that the Inspector had not given such harm "considerable weight". In my judgment that

submission has no merit. The Inspector was merely saying in effect, notwithstanding the limited harm to the setting of the listed buildings concerned, the proposed development was still contrary to that policy. He was not then attributing weight to such harm. That would be a matter that would arise later when considering the balancing exercise involved in determining the appeal.

41. By contrast I accept Mr Banner's point that the fact that the Inspector treated the question, whether there would be any harm to any listed building or its setting, as a "main issue" indicates that he attached "considerable importance" to that matter. But that, of itself, reveals nothing about what weight he may have assigned to any such harm that he identified.

42. It follows, therefore, that there is nothing in the result or in the terms of the decision letter itself that shows that the Inspector did not give at least "considerable weight" in each case to the harm that the proposed development would cause to the setting of each of the listed buildings it would affect. Accordingly the Claimant cannot show that the Inspector in fact failed to give the considerable weight to any harm he was required to give. It is also the case that there is nothing in the decision letter which states what weight he did give in each case or cumulatively. The challenge, therefore, must be one directed at the reasons that the Inspector gave for his decision and in particular at their silence on this point.

(iii) Whether reasons given by a decision maker must demonstrate that the "considerable weight" was given to any harm to a listed building or its setting

43. In *the East Northamptonshire case* Sullivan LJ (with whom the other members of the Court of Appeal agreed stated (at [29])) that:

> "It is true that the inspector set out the duty in para 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision"

44. Mr Lopez did not submit that a failure to state expressly that considerable weight had been given to each harm to the setting of all the listed buildings affected by the proposed development was of itself, despite this statement, a fatal flaw. That was perhaps understandable given repeated judicial statements, when dealing with the adequacy of reasons in planning contexts, that what matters is substance, not form, and that the court would not wish to lay down a test which meant that decision-makers have to jump through a series of verbal hoops: see eg *Heatherington (UK) Ltd v Secretary of State for the Environment and another supra* at p382; *Residents Against Waste Site Ltd v Lancashire County Council* [2007] EWHC 2558 (Admin), [2008] Env LR 27, at [29]-[31], [35], and [48]. But Mr Lopez did rely on the view expressed by Lindblom J that a decision-maker can only properly balance any harm to a heritage asset and planning benefits that a proposed development would produce "if [he] demonstrably applies" considerable weight to that harm: see *R (The Forge Field Society and others) v*

Sevenoaks District Council and others [2014] EWHC 1895 (Admin) at [49], [55], [56] (and as reported [2015] JPEL 22 at [47], [53], [54]). This formulation (similarly expressed in terms of "the presumption") was also adopted by HHJ Waksman QC in *R (Hughes) v South Lakeland District Council* [2014] EWHC 3979 (Admin) at [53]. This formulation, like that of Sullivan LJ, is one that applies to the reasons provided for a decision. A decision-maker can in fact give considerable weight to any harm to a listed building or its setting in reaching a decision (thus complying with the legal obligation imposed by section 66(1) of the Listed Building Act as interpreted by the Court of Appeal in *the East Northamptonshire case*) but fail to demonstrate in the reasons provided that that weight was applied in reaching the decision.

45.I have great difficulty in reconciling this approach (and *a fortiori* any requirement that the decision-maker must expressly state that considerable weight has been given to any harm to a listed building or its setting) with the guidance about reasons given by the House of Lords in *Save Britain's Heritage v Number 1 Poultry Limited and others* [1991] 1 WLR 153. This approach assumes that a decision, which is compatible with a requirement to give "considerable weight" to any such harm and in relation to which there is nothing to indicate that such weight has not been accorded to it, is flawed unless the reasons provided demonstrate that "considerable weight" was in fact given. In other words the decision is flawed unless the court is satisfied that silence on this point in the reasons could not conceal a flaw in the decision-making process. But, as Lord Bridge of Harwich stated in *Save Britain's Heritage* at p168b-e,:

> "this reverses the burden of proof which the statute places on the applicant to satisfy the court that he has been substantially prejudiced by the failure to give reasons. When the complaint is not of an absence of reasons but of the inadequacy of the reasons given, I do not see how that burden can be discharged….unless the applicant satisfies the court that the shortcoming in the stated reasons is of such a nature that it may well conceal a flaw in the reasoning of a kind which would have laid the decision open to challenge under the other limb of section [288]. If it was necessary to the decision to resolve an issue of law and the reasons do not disclose how the issue was resolved, that will suffice. If the decision depended on a disputed issue of fact and the reasons do not show how that issue was decided, that may suffice. But in the absence of any such defined issue of law or fact left unresolved and when the decision was essentially an exercise of discretion, I think that it is for the applicant to satisfy the court that the lacuna in the stated reasons is such as to raise a substantial doubt as to whether the decision was based on relevant grounds and was otherwise free from any flaw in the decision-making process which would afford a ground for quashing the decision."

Thus, if there was a defined issue of law for the decision-maker to resolve, for example whether the decision-maker was or was not obliged to accord at least considerable weight to any harm to a listed building or its setting (however small that harm might be), then the decision maker may have to explain how that issue had been resolved. But, absent any such defined legal issue, as Lord Brown of Eaton-under-Heywood put it (in *South Bucks District Council and another v Porter No 2* [2004] UKHL 33, [2004] 1

WLR 1953, at [36]), having referred to this and other passages in Lord Bridge's speech,

> "the reasoning must not give rise to substantial doubt as to whether the decision maker erred in law…such an inference will not readily be drawn".

Normally, therefore, the mere failure to state what weight is being given to a consideration when a material planning policy specifies what it should be does not mean that the reasons provided are inadequate: see eg *O'Connor v Secretary of State for Communities and Local Government* [2013] EWCA Civ 263 (referred to in paragraph [39] above); see also *South Somerset District Council and another v David Wilson Homes (Southern) Ltd* (1993) 66 P&CR 83 per Hoffmann LJ at p85 et seq. As Aldous LJ has said (applying the approach in planning cases), "it is not incumbent [on a decision-maker] to demonstrate in their reasons that the conclusion has been reached by an appropriate process of reasoning from the facts": *R v Criminal Injuries Compensation Board ex p Cook* [1996] 1 WLR 1037 at pp 1043, 1045, 1046; see also per Hobhouse LJ at p1051.

46. *Save Britain's Heritage supra* was a case directly concerned with the demolition of eight Grade II listed buildings in the determination of which what is now section 66(1) of the Listed Buildings Act was applicable. One of the main issues for decision by the Secretary of State was characterised by Lord Bridge (at p157f) as being whether "the merits of the proposed new building…were sufficient to outweigh whatever importance did attach to the preservation of the existing buildings. These were issues of planning policy and aesthetic judgment." The question of whether there was any minimum weight that had to be attached to the loss of each building as a matter of law was not the issue (so that the decision in *the East Northamptonshire case* is not necessarily incompatible with this characterisation of the nature of the issue). What was of relevance in that case was the Secretary of State's policy with respect to the demolition of listed buildings. Further the question that the Appellate Committee addressed was whether the Secretary of State had incorporated the substance of the Inspector's reasoning in his own reasons. The guidance given about reasons by Lord Bridge in that case, therefore, did not specifically address the question whether a decision may fall to be quashed if the reasons given for it do not demonstrate that the decision-maker has accorded the minimum weight to a consideration that he is required to give it by law (rather than by a policy) in circumstances in which there is nothing which gives rise to substantial doubt whether the decision maker has done so.

47. I can see no reason in principle, however, why there should be any special rule with regard to compliance with any such legal requirement (as opposed to any other legal requirement such as a failure to take into account a material consideration). There is a presumption that decisions are validly made, sometimes expressed in the maxim *omnia praesumuntur rite esse acta* or as the presumption of regularity. There is no reason why a requirement to give reasons should reverse that presumption, placing a burden on the person taking or defending a decision to demonstrate that it has been validly made.

48. Nonetheless, given the decision of the Court of Appeal in *the East Northamptonshire case* on this specific point in relation to section 66(1) of the Listed Building Act and subsequent

decisions that have taken it as requiring the decision-maker to demonstrate in the reasons provided that considerable weight has been given to any harm to a listed building or its setting, I do not consider that I am at liberty to depart from that approach or that, if I am, it would be appropriate for me to do so, notwithstanding the guidance in *Save Britain's Heritage* and other cases.

49. Accordingly the reasons given by a decision-maker must demonstrate that the "considerable weight" was given to any harm to a listed building or its setting.

(iv) Whether compliance with the NPPF is sufficient to demonstrate that considerable weight has been given to any harm to a listed building or its setting

50. The Secretary of State has published guidance about how the historic environment should be conserved and enhanced in plans and development control. The NPFF provides that:

> "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."

"Significance" in this advice (as the glossary to the NPPF states) refers to "the value of a heritage asset to this and future generations because of its heritage interest."

51. This advice recognises (in paragraph 132) that any harm or loss to the value that a listed building has by virtue of a development within its setting requires clear and convincing justification as "great weight" should be given to the asset's conservation since it is irreplaceable. The advice then distinguishes between cases in which a proposed development will lead to less than substantial harm to the value of the listed building (in paragraph 134) and other cases in which it will result in greater harm (dealt with in paragraphs 132 and 133). Where the proposed development will lead to less than substantial harm to that value (for example by development within its setting), that harm should be weighed against the public benefits of the proposal (as paragraph 134 states) but, in doing so, the requirement to give "great weight" to any harm and the need for clear and convincing justification for it (as stated at the outset in paragraph 132) remains.

52. In my judgment the correct interpretation of paragraphs 132 and 134 requires them to be read together in this manner. This was also the interpretation of them preferred by HHJ Waksman QC in *R (Hughes) v South Lakeland District Council* [2014] EWHC 3979 (Admin) at [52]-[53] and Gilbart J in *Pugh v Secretary of State for Communities and Local Government and others* [2015] EWHC 3 (Admin) at [49].

53. In my judgment, a decision-maker who follows the guidance given in paragraphs 132 and 134 of the NPPF (when dealing with a case in which the proposed development will result in less than substantial harm to the value of a listed building (for example by development within its setting) will comply with the obligation imposed by section 66(1) of the Listed Buildings Act as interpreted by the Court of Appeal in the *East Northamptonshire case*. When a proposed development will result in harm to the value of a listed building (for example by development within its setting) but that harm is less than substantial, however, then a decision maker following the guidance will give "great weight" to any such harm. Giving any such weight to any such harm must at least involve giving "considerable weight" to it.

54. Further, as the policy itself illustrates, it cannot be inferred from the fact that the decision-maker considers that the proposed development will cause less than substantial harm that he or she necessarily regards such harm as having less than "considerable weight".

55. It is true that the advice refers to the significance, that is to say the value, of a listed building, a term not found in section 66(1) itself. But that in my judgment is of no material significance. What section 66(1) is concerned with are buildings of special architectural or historic interest. Operations on a listed building that do not result in any harm or loss

to the value of a listed building will preserve what is of value in the building for conservation purposes (and indeed, in certain circumstances, such operations may enhance or better preserve it rather than harming it). Preservation of that interest is not necessarily the same as the absence of change. Similarly a development within the setting of a listed building that involves no harm or loss to the value of the listed building will preserve whatever in its setting is of value for conservation purposes.

56.In this case it is clear, from the fact that the Inspector considered whether or not the harm to the settings of listed buildings would be "less than substantial" and from his reference to paragraph 134 of the NPPF at the beginning of his consideration of the planning balance in [DL23], that the Inspector was intending to apply the guidance in that document.

57.In *R (Hughes) v South Lakeland District Council supra*, the officer's report on which the decision impugned was based had referred both to paragraphs 132 and 134 of the NPPF. In HHJ Waksman's view, however, that did not save the decision when paragraph 134 on its own was apparently being followed "unless there is clear and express recognition – and application – of" the weight required to be given to any relevant harm: see at [55]-[58]. There may, of course, be cases in which it is evident that the decision maker has misunderstood what the NPPF requires, as in *R (The Forge Field Society and others) v Sevenoaks District Council and others supra* where the officer's report stated that the test in the NPPF was whether the development would cause substantial harm or whether the harm was overriding: see [2014] EWHC 1895 (Admin) at [36], [39], [41]-[43], [55] and [59]; [2015] JPEL 22 at [34], [37], [39]-[41], [53] and [57]. Whether it is right, however, to infer that a decision-maker has failed to give effect to paragraph 132 of the NPPF (when the decision-maker has in fact set it out) merely because it is not set out again expressly later when paragraph 134 is applied, I need not consider. In this case the Inspector referred only to paragraph 134 in [DL23]. He made no reference to paragraph 132.

58.Once it is accepted that the reasons given by a decision maker must demonstrate that the "considerable weight" was given to any harm to a listed building or its setting, however, it follows that applying paragraph 134 alone is not sufficient of itself, as the application of the approach stated in that paragraph does not of itself demonstrate that the required weight has in fact been given. Normally, if an Inspector refers to a policy on a particular matter, the fact that he does not refer explicitly to the weight that some part of the policy recommends should be attributed to a consideration would not of itself give rise to substantial doubt that he has departed from that guidance: see eg *O'Connor v Secretary of State for Communities and Local Government* (referred to in paragraph [39] above). As Hoffmann LJ said in *South Somerset District Council and another v David Wilson Homes (Southern) Ltd* (1993) 66 P&CR 83 at 85,

> "The inspector is not writing an examination paper….Sometimes his statement of the policy may be elliptical but this does not necessarily show misunderstanding. One must decide…..whether it appears from the way he dealt with [the main planning issues] that he must have misunderstood a relevant policy…."

So, in that case, for example, there was no need to set out a relevant policy in extenso

and the failure to do so did not raise any substantial doubt that he may have overlooked a qualification it contained: see p86. But, as I have explained, the normal burden of proof is reversed in respect of the requirement to give considerable weight to any harm to a listed building or its setting which section 66(1) of the Listed Buildings Act has been taken to impose. Thus, in *North Norfolk District Council v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin) a decision was quashed in which paragraph 134 of the NPPF was applied, "whatever account [the Inspector] took of the earlier advice in…paragraph 132", given that he had not shown that he had attached considerable importance and weight to the harm to the setting of the listed buildings affected: see at [65]-[73], [81]-[84].

59. It follows, therefore, that, although the Inspector considered the harm to the listed buildings affected in accordance with paragraph 134 of the NPPF, that of itself is insufficient to demonstrate that the Inspector attached considerable weight to such harm.

(v) The significance of the finding that the proposed development was contrary to saved policy EV12

60. Mr Banner submitted that when a development plan policy embodies a particular consideration to which regard must be had, then regard to the policy will normally show that regard has been had to that consideration and that in this case the Inspector plainly had regard to the relevant statutory duty as it is transposed in saved Local Policy EV12 (with which he found the proposed development to be in conflict).

61. Policy EV12 provides that:

> "When considering applications for alterations or extensions to buildings of special architectural or historical interest which constitute development the council will have special regard to the desirability of securing their retention, restoration, maintenance and continued use. Demolition or partial demolition of listed buildings will not be permitted. The council will also seek to preserve and enhance the setting of listed buildings by control over the design of new development in their vicinity, the use of adjoining land and, where appropriate, by the preservation of trees and landscape features."

In interpreting this policy regard may be had to the text explaining it: see *R (Cherkley Campaign Ltd) v Mole Valley DC and another* [2014] EWCA Civ 567 per Richards LJ at [19] and [21]. In this case that text stated that:

> "In accordance with the duty under the Planning (Listed Building and Conservation Areas) Act 1990, the Council will pay careful attention to the protection and improvement of Listed Buildings and their setting."

62. Mr Lopez did not accept that this policy accurately transposed the duty imposed by section 66(1) of the Listed Buildings Act insofar as it related to the setting of listed buildings,

contrasting the language in the first and last parts of the policy. Mr Banner invited me to read the policy in the light of the explanatory text which shows that the intention was plainly to give effect to the relevant duty, since there is no difference between "attention" and "regard" in this context: see *Heatherington (UK) Ltd v Secretary of State for the Environment and another* (1994) 69 P&CR 374 at p380.

63. In my judgment I do not need to resolve this dispute. It is scarcely credible in any event that a member of the Planning Inspectorate (who is also in this case a member of the Royal Institute of British Architects and a Member of the Royal Town Planning Institute) would not be familiar with the duty now imposed by section 66(1) of the Listed Building Act, a duty that has been in existence and central to the determination of planning applications affecting listed buildings and their settings since 1968: see section 40(3) of the Town and Country Planning Act 1968. But, even assuming that the Inspector required to be reminded of this duty and assuming that EV12 had set it out in terms, that would not be sufficient to demonstrate that he had attached considerable weight to any harm that the proposed development would cause the settings of the listed buildings affected in this case. In *North Norfolk District Council v Secretary of State for Communities and Local Government supra,* the Inspector was expressly set out the relevant duty, but that was not sufficient: see at [63(i)]. Even in those cases where the Inspector has set out the duty himself, that has not been regarded as being of itself sufficient: see eg *the East Northamptonshire case supra* at [29] (quoted in paragraph [43] above); *Heatherington (UK) Ltd v Secretary of State for the environment and another supra* at p382.

64. The problem is that the duty in section 66(1) of the Listed Buildings Act makes no reference whatever to the weight that is to be assigned to the fact that a proposed development does not preserve a listed building or its setting. That a specific minimum amount of weight, namely considerable weight, has to be assigned to that fact as a matter of law, even if less would be assigned as a matter of planning judgment, would not be self-evident to a person merely from reading the relevant enactment. Indeed, when the settings of a number of listed buildings are harmed by a proposed development, albeit in each case to a very small degree, it is possible that the accumulation of the considerable weights attaching to each such harm on its own as a matter of law might lead to a balance being struck against the development which no reasonable person would have struck as a matter of planning judgment, given the planning merits of the development and having had meticulous regard to the desirability of preserving the settings of each of the listed buildings. Knowledge of the terms of the duty cannot simply be equated, therefore, with knowledge of what the courts have held that it requires.

(vi) Conclusion

65. For the reasons given above, it follows that in this case the Inspector failed to give reasons demonstrating that he had given considerable weight to the harm to the settings of each of the listed buildings that he found would be harmed to some extent by the proposed development. Accordingly, given the reversal of the normal burden of proof inherent in the requirement to provide such a demonstration, it follows that the Claimant has suffered substantial prejudice.

GROUND 3: THE INTRINSIC SIGNIFICANCE OF THE RELEVANT HERITAGE ASSETS AND THE CONTRIBUTION TO IT OF THEIR SETTINGS

66.Mr Lopez contended that the Inspector had failed to summarise the intrinsic significance of the heritage assets affected by the proposed development and the contribution which their settings made to their significance, with the result that he had failed to approach the assessment of harm as the NPPF requires.

67. The Inspector's decision in this case assumes that any effect that the proposed development would have on the setting of any of the listed buildings in the area would detract from its value. That is why he described such an effect as involving harm to their setting. Mr Lopez has not suggested that there was any substantial dispute about that matter, much less (as Mr Banner pointed out) that it was one of the main or principal controversial issues on this appeal.

68. In my judgment the Inspector was under no obligation in the circumstances to include in his reasons a description of the particular value of each relevant listed building whose setting would be affected by the proposed development and a description of the contribution which its setting made to each. Equally I do not accept, as Mr Lopez submitted, that the Inspector was under an obligation to list each of the listed buildings within the village of Wappenham to which he was referring in the third sentence of [DL11]. The Inspector has expressed his conclusion on the extent of the harm to the settings of the listed buildings that would be adversely affected as well as his conclusion on the extent of the cumulative harm. In my judgment the Claimant has not shown that she has suffered any substantial prejudice from the manner in which the Inspector dealt with the issue of the effect of the development on heritage assets.

69. The application, therefore, fails on Ground 3.

GROUND 4: FAILURE TO PROVIDE REASONS

70. This ground adds nothing material to the first three grounds.

CONCLUSION

71. For the reasons given above, the application fails on Grounds 1 and 3.

72. I have found, however, that the Inspector failed to give reasons demonstrating that he had given considerable weight to the harm to the settings of each of the listed buildings that he found would be harmed to some extent by the proposed development and that the failure to provide such reasons has caused the Claimant substantial prejudice. The application succeeds, therefore, to that extent on Grounds 2 and 4.

73.I have reached this conclusion, as I regard myself as bound to do so in the light of *the East Nothamptonshire case* and subsequent decisions, but with reluctance, for a number of

reasons.

i) As Sir Thomas Bingham "felicitously observed" in *Clarke Homes Ltd v Secretary of State for the Environment* (1993) 66 P&CR 263 at 271-2 (as Lord Brown said in *South Bucks District Council supra* at [33]), when there is a dispute about the adequacy of the reasons given for a decision,

> "the central issue…is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved…on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication."

In my judgment it is clear in this case why the Inspector decided to grant planning permission. He thought that the environmental benefits of the renewable energy development proposed outweighed its adverse impact on the landscape (which he found to be significant up to a distance of 0.5km, and moderate thereafter up to a distance of 1km, from its location) and its impact on the settings of various listed buildings (which was less than substantial in the case of the Church of St Mary, Wappenham, negligible in other cases and less than substantial cumulatively). The benefits of the development in his view indicated that planning permission should be granted otherwise than in accordance with the development plan. The Claimant and others who opposed the development may very well disagree with the judgments that the Inspector reached about the benefits and adverse impacts of the proposed development, about the balance to be struck between them and the justification for departing from the development plan. But why the Inspector decided to grant planning permission is clear. The basic purpose of the requirement to give reasons was satisfied.

ii) There is nothing in the decision letter that indicates that the Inspector gave less than considerable weight to the harm to the setting of each of the listed buildings that would be affected by the proposed development. Mr Lopez disavowed any suggestion that the decision was one that could not reasonably have been taken having given such weight to such harm. The requirement that a decision maker must "expressly recognise" that considerable weight is to be given to any harm to a listed building or its setting, or that the decision-maker must have "demonstrably" applied that weight, when striking any balance when there is nothing to indicate that he has not done so appears to me to be inconsistent for no good reason with the presumption of regularity and the general guidance from the House of Lords that the burden is on the applicant to show that any silence or lacuna in the reasons for a decision is such as to raise a substantial doubt that the decision was invalid, in a case such as this on the ground that the weight required has not been given.

iii) Further, even if a decision-maker expressly states that considerable weight is to be, or has been, given to any such harm, the reversal of the normal burden of proof may mean that such a statement may not suffice. It is, of course, insufficient merely to pay lip service to any relevant requirement, as this court

has said on a number of occasions. The logical consequence of this reversal of the normal burden of proof would be to require decision-makers, when striking any balance, to "demonstrably apply" the weight that they have said that they are giving to such harm. This may be problematic in practice. What weight can be regarded as "considerable", or as being not less than "considerable", is at least to some extent indeterminate. Moreover the weight in fact given may not be capable of being determined from the conclusion reached. Planning decisions often reflect a judgment on the balance to be struck in the circumstances between inherently incommensurable considerations, such as the need for a development and the harm to the environment, rather than the result of a calculation involving the addition and subtraction of precise weights assigned to particular considerations. A requirement that it must be demonstrated that a particular weight has been given to a particular consideration, therefore, is likely to generate exegetical sophistication in the interpretation of decision letters (and of officers' reports to local authority committees) in order to raise the possibility of a concealed error. Such a requirement may also encourage claims that further requirements need to be satisfied before it can be concluded that the reasons given *could not* conceal any error, requirements that are likely to involve excessive legalism but which will not lead to any better explanation of any decision.

74. Nonetheless, for the reasons that I have given, this application succeeds and the decision impugned is quashed.