



Planning Update

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Court Of Appeal Confirms Weight to be Given to the Desirability of Preserving the Setting of Listed Buildings.

Introduction

The Court of Appeal delivered judgment in Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council and others¹ which considered, amongst other things, the application of Section 66(1) of the (England & Wales) Planning (Listed Buildings and Conservation Areas) Act 1990 (the "1990 Act"). Section 66(1) requires 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 interest or historic interest which it possess..." (Emphasis added).

The Judge at first instance had quashed the grant of planning permission for a four turbine wind farm in the vicinity of a range of heritage assets, including Lyveden New Build, a site owned by the National Trust and widely considered to be of significant cultural heritage value. The developer appealed.

Northern Ireland Relevance and the First Instance Decision

Article 45(1) of the Planning (Northern Ireland) Order 1991 largely reflects Section 66(1) of the 1990 Act. Article 45(1) provides as follows:

"In considering whether to grant planning permission for development which affects a listed building or its setting, and in considering whether to grant listed building consent for any works, the Department 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."² (Emphasis added).

¹ [2014] EWCA Civ. 137.

² Article 45(1) of the Planning (Northern Ireland) Order 1991 is largely reflected in Section 91(2) of the Planning (Northern Ireland) Act 2011 which provides that: "In considering whether to grant planning permission for development which affects a listed building or its setting, and in considering whether to grant listed building consent for any works, a council or, as the case may be, the Department must 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."

At first instance, the Court had found that in order to give effect to Section 66(1), the decision-maker should give considerable weight to the desirability of preserving the setting of listed buildings when weighing this factor in the balance with other material considerations to reach a settled planning decision. In this context, where Section 66(1) was in play, Lord Hoffman's statement in Tesco Stores v Secretary of State for the Environment and others³ that the weight to be given to a material consideration was a question of planning judgment for the planning authority had to be qualified in line with the statute. The Judge at First Instance found that the Planning Inspector did not at any stage in the balancing exercise accord 'special weight', or considerable importance to 'the desirability of preserving the setting' and consequently the decision had to be quashed.

The Court Of Appeal

In Barnwell, the Court of Appeal fully endorsed the approach of the First Instance Judge when considering whether the duty under Section 66(1) of the 1990 Act had been met. The Court found that Parliament's intention in enacting Section 66(1) of the 1990 Act was that decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise. The Inspector had failed to expressly acknowledge the need, when he found that there would be harm to the setting of the many listed buildings, and had failed to give considerable weight to the desirability of preserving the setting of those buildings.

Implications

Given that the language in Section 66(1) of the 1990 Act largely mirrors that under both the current Planning (Northern Ireland) Order 1991 and the forthcoming Planning Act (Northern Ireland) 2011, the helpful confirmation by the Court of Appeal in Barnwell of the statutory duties on decision-makers when considering proposed developments which affect listed buildings (or their settings) is of assistance in the interpretation and application of Northern Ireland planning law.

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³ [1995] 1 WLR 759.