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AC-2024-LON-003662

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 June 2025

Before :

Dan Kolinsky KC
(sitting as a Deputy Judge of the High Court)

- -

BETWEEN:

LONDON BOROUGH OF SOUTHWARK

Claimant

-and-

(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT
(2) BLOW UP MEDIA LIMITED

Defendants

-and-

TOWN HALL CHAMBERS LIMITED

Interested Party

Charles Merrett, instructed by London Borough of Southwark Legal Services for the Claimant.

Ben Fullbrook instructed by Government Legal Department for the First Defendant.

Hearing date: 20 May 2025

Approved Judgment

This judgment was handed down remotely at 2pm on 30 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Dan Kolinsky KC (sitting as a Deputy Judge of the High Court):

1. The London Borough of Southwark ("the Council"), challenges under s.288 of the Town and Country Planning Act 1990 ("the 1990 Act") the decision of the Secretary of State's Planning Inspector dated 26 September 2024, to grant express consent for the display of a temporary decorative printed scaffold shroud advertisement ("the Display") at Town Hall Chambers, 32 Borough High Street, London SE1 1XU ("the Site").

2. Permission to proceed with the statutory challenge was granted by Sir Peter Lane on 18 February 2025.

3. The Display was described as: "temporary decorative printed scaffold shroud advertising measuring 11.8 x 6.6 metres inset within a 1:1 image of the building façade depicted across the whole of the scaffolding".

4. The Inspector granted consent for a five-year period. His decision as to the duration of the consent is the subject of the first ground of challenge.

5. The second ground of challenge contends that the Inspector failed to properly consider the impact of the Display on the Borough High Street Conservation Area ("the CA") and/or was irrational in determining the impact of the Display on the CA.

6. This judgment is structured as:-

    a. Factual background

    b. Legal context

    c. Submissions

    d. Heritage assessment (ground 2)

    e. The duration of the consent (ground 1).

Background

(a) The Site and its context

7. The Site is located on an island of land bound by Borough High Street and Southwark Street. The Site has four main floors and an attic floor. There is an A3 (restaurant) use on the ground floor and a mix of commercial and residential uses on the upper floors.

8. The Site is a grade II listed building (32 and 34 Borough High Street). It is known as Town Hall Chambers. The building dates from 1862 and was designed by Frederic Chancellor in an Italianate style. It is finished in yellow London stock brick with ornate and highly decorative Portland stone dressings under a slate roof.

9. There is a small section of public space directly outside the building. The grade II listed monument (Saviour's Southwark War Memorial) occupies part of that public space. There are other listed buildings nearby.

10. The Site is within the CA. The significance of the CA lies in the pattern of the medieval street frontages, with tall, narrow property frontages, possessing good examples of Georgian through to early 20th century commercial architecture. The majority of buildings in the CA that define its character are 18th and 19th century buildings that follow Classical design principles. Whilst advertising is a common and prominent feature in the CA, existing advertisements tend to be positioned at fascia level above the ground-floor windows and shop fronts. Advertising signage above this level is rare.

11. The Display was linked to proposed renovation works at the Site. The Second Defendant (the applicant for the advertising consent) explained that scaffolding was required at the Site to facilitate renovation work, including façade work. The purpose of the Display was to shroud the scaffolding for the duration of these works. Advertising was proposed to be included on a section of the shroud as a means of funding the project, including the provision of the shroud itself, which was projected to cost in the region of £60,000.

(b) Planning history

12. A previous proposal had been the subject of an appeal decision dated 19 February 2021. That proposal was for "the display of a temporary scaffolding shroud (15m x 38.5m) with a static advertising inset (on the southern elevation) measuring 9.7 x

7.5". The previous Inspector had found that proposal unacceptable. He noted (in para 8 of his decision) that the advertising would be prominently sited facing towards the war memorial and public space. He concluded that the display harmed the amenity of the area which would outweigh the benefits of the benefits of the shroud (in para 10 of his decision). He thus concluded that the proposal would fail to preserve and enhance the character and appearance of the CA.

13. In the current proposal, the advertising is on the eastern elevation. The advertisement itself is slightly larger than previously proposed.

(c) The application for express consent

14. The application for express consent, pursuant to the Town and Country Planning (Control of Advertising) (England) Regulations 2007 ("the 2007 Regulations"), was made on 19 January 2024. It identified the period for which consent was sought as 10 June 2024 to 10 December 2024 (i.e. six months).

(d) The Council's decision

15. The Council refused consent on 22 March 2024. Its decision notice identified the reason for refusal as follows:

"The display of advertising on the proposed shroud would, by reason of its scale and prominence result in a conspicuous and discordant intrusion to the street scene and would fail to enhance or preserve the Borough High Street Conservation Area. The character and appearance of the development would result in detrimental impact with a loss of visual amenity for the area and also impact the setting buildings, which will be contrary to P19 – Listed Buildings and Structures and P20 – Conservation Areas of the Southwark Plan 2022, Heritage SPD (2021), Policy HC1 – Heritage conservation and growth of the London Plan 2021, Chapter 16 Conserving and enhancing the historic environment of the NPPF 2021 and the Planning (Listed Building and Conservation Areas) Act 1990"

(e) Grounds of Appeal

16. The Second Defendant challenged the refusal of consent in its grounds of appeal. These indicated as follows.

a. The proposal was linked to refurbishment works to the Site.

b. The advertisement had been relocated (to the eastern elevation) as a response to the previous Inspector's concerns.

c. *"The proposal is an alternative to the traditional appearance of scaffolding and its normal screening offering which lacks any visual interest and creates a negative feature in the conservation area harmful to its character and appearance. Whilst the long term display of such advertising may not be acceptable this does not form part of the application. The application seeks consent for a 6 month period related to building works and the scaffolding period. In the short term it would screen away building works and scaffolding"*

d. Without the Display, the scaffolding (which was not controlled by planning legislation) would "create a discordant and conspicuous intrusion [into the Conservation Area] during the works period" and would be "bland and ugly". By contrast, the Display "offers a novel and interesting temporary solution, which by showing the building façade on a printed page around the scaffold, can also contribute to amenity and townscape thus positively enhancing the streetscene and conservation area, as against the more negative effects associated with normal scaffold screening".

e. The Second Defendant referred to what it called the "public benefits" of the scheme in "assisting the public's temporary enjoyment of views in the area over the normal blank scaffolding".

f. The grounds of appeal contained several references to the duration of the proposed consent being six months and suggested how this could be secured by condition.

(f) The Inspector's Decision

17. The Inspector's decision ("DL") is dated 26 September 2024. It indicates that the appeal was assessed by an Appeal Planning Officer (APO) who undertook a site visit and assessed the proposal. Most of DL records the APO's analysis. The Inspector indicates in para 12 of the DL that he has "considered all the submitted evidence and my representative report and on that basis the appeal is allowed, and express consent granted". The Inspector thus adopts the APO's analysis.

18. Para 4 of DL identifies the main issue as being the effect of the proposed advertisement on the visual amenity of the listed building and CA.

19. The significance of the CA is appraised in para 6 of DL as follows:

"The Conservation Area has been formed around Borough High Street (Borough High Street Conservation Area (CA)), the significance of which is derived from the diversity of buildings with commercial frontages, which are tied together due to being similar in height and width. Town Hall Chambers, while of a similar vernacular, is larger than other buildings within the CA. Borough High Street is a vibrant and busy area, with a range of small-scale advertisements".

20. Mr Merrett, who appeared for the Council, made observations as to the limitations of this analysis of the significance of the CA. However, he confirmed that no part of his challenge was directed at this paragraph of DL.

21. The Inspector's evaluation of the main issue is set out in paras 7-10 of DL as follows.

(para 7) "The proposed advertisement would be placed on the east on a scaffold shroud which would display a full-size image of the building (which would wrap around all three sides of the building). Owing to the orientation of the building, the advertisement would not be seen front-on from long-ranging views. A Grade II listed war memorial sits on the triangular piece of land in front of the building, and is seen in the context of the decorative façade of Town Hall Chambers. As such, it would be viewed against the 1:1 image of the building on the scaffold shroud".

(para 8) "The proposal would be significantly larger than the typical fascia level signage which is a common feature in the CA. However, as alluded to, it would not be seen in its entirety from long ranging views. When standing next to Town Hall Chambers on the east side, the advertisement will appear to be a large addition to the street scene, and would alter the character of this part of the CA. The appellant notes that the advertisement would help fund the rest of the scaffold shroud and the building works inside. The advertisement would be in place for a temporary period, and given that the street has a vibrant character, the shroud and advertisement would create interest while the building is scaffolded. As a result, the harm to the CA would be limited, and the overall benefits of adding interest into the CA during the period the building is scaffolded would benefit the area".

(para 9) " The advertisement and scaffold shroud would not harm the significance of the CA, which is derived from the diversity of buildings with commercial frontage. The building would still be seen as a landmark feature which forms an important view within the CA, and it is for this reason that the temporary advertisement located on the side of the building would be acceptable."

(para 10) "Consequently, the temporary advertisement would be in keeping, and would preserve the character and appearance of the Conservation Area. In accordance with the Regulations, I have taken into account policy P19 and P20 of the Southwark Plan 2022, Policy HC1 of the London Plan 2021 and chapter 16 of the

National Planning Policy Framework 2023, which collectively seek to ensure advertisements respect the visual amenity of the area. Given I have concluded that the proposal would not harm amenity, the proposal does not conflict with these policies".

22. As to the duration of the express consent granted, in para 1 of DL, the Inspector stated: "The consent is for five years from the date of this decision and is subject to the five standard conditions set out in Schedule 2 of the 2007 Regulations".

23. There was no other reference to or explanation of the duration of the consent granted. There was no discussion of the fact that the application had been made for a six-month period.

Legal Context

24. Section 220 of the 1990 Act empowers the Secretary of State to make regulations for restricting or regulating the display of advertisements.

25. The 2007 Regulations are made pursuant to this power.

26. Regulation 14 empowers local planning authorities to determine applications for express consent for the display of advertisements. Consent may be granted or refused; conditions may be imposed on any grant.

27. Regulation 3 sets out the factors that are to be taken into account in determining such applications:

"(1) A local planning authority shall exercise its powers under these Regulations in the interests of amenity and public safety, taking into account—

(a) the provisions of the development plan, so far as they are material; and

(b) any other relevant factors.

(2) Without prejudice to the generality of paragraph (1)(b)—

factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest".

28. Regulation 17 deals with appeals against such decisions. It modifies ss.78-79 of the 1990 Act for the purposes of advertisement appeals. One such modification is paragraph 2 of part 3 of schedule 4, which provides that:

> *"(1A) The Secretary of State may, in granting an express consent, specify that its term shall run for such longer or shorter period than 5 years as he considers expedient, having regard to the interests of amenity (including aural amenity) and public safety, and taking into account—*
>
> *(a) relevant provisions of any applicable development plan;*
>
> *(b) the factors referred to in regulation 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007; and*
>
> *(c) any period specified in the application for consent.*

29. The practice of involving an APO as part of the "internal machinery within the planning inspectorate" for enabling an Inspector to deal with an appeal was considered by the Court of Appeal in Secretary of State for Levelling Up, Housing and Communities v Smith (2023) 2 P&CR 11 (CA) (at para 22). It was not controversial in the present case.

Policy

30. The National Planning Policy Framework ("NPPF") states (para 57) that planning conditions *"should be kept to a minimum and only imposed where they are necessary"*.

31. Paragraph 141 of the NPPF states that "*advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts*".

Caselaw

(a) Approach to Inspector's Decisions

32. It is well-established that planning decision letters should be read as a whole and without excessive legalism. The approach is summarised by Lindblom LJ in Court of Appeal in St Modwen Developments Ltd v Secretary of State [2017] EWCA Civ 1643:

"In my judgment at first instance in Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin) (at paragraph 19) I set out the 'seven familiar principles' that will guide the court in handling a challenge under section 288. This case, like many others now coming before the Planning Court and this court too, calls for those principles to be stated again—and reinforced. They are:

(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J in Seddon Properties v Secretary of State for the Environment (1981) 42 P. & C.R. 26, at p.28).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in South Bucks District Council and another v Porter (No. 2) [2004] 1 W.L.R. 1953, at p.1964B–G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in Tesco Stores Limited v Secretary of State for the Environment [1995] 1 W.L.R. 759, at p.780F–H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J, as he then was, in Newsmith v Secretary of State for Environment, Transport and the Regions [2001] EWHC Admin 74, at paragraph 6).

…

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J in Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government [2012] EWHC 1419 (QB), at paragraph 58)".

(b) Evaluation of heritage impacts

33. Decision-makers are under statutory duties to pay special attention to the desirability of preserving or enhancing both listed buildings and their settings and the character

and appearance of conservation areas. These duties are set out in ss. 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("LBA 1990").

34. It is common ground that those provisions apply to a decision whether to grant advertising consent.

35. In East Northamptonshire DC & Barnwell Manor Wind Energy Ltd v Secretary of State [2015] 1 WLR 45 (CA) (at para 29), the Court of Appeal emphasised parliament's intention was that the decision maker should attach considerable importance to those duties. That decision was applied in R (Forge Field Society) v Sevenoaks DC [2015] JPL 22 at para 46 in which Lindblom J (as he then was) stated that a finding of harm to the setting of a listed building or to the character or appearance of a conservation area should be given 'considerable importance and weight'.

36. This is also reflected in paragraph 205 of the NPPF which requires great weight to be given to harm to a heritage asset.

37. The Court of Appeal has emphasised that there is no prescribed approach to carrying out the required heritage balance– see City & Country Bramshill v SSHCLG [2021] 1 WLR 5761 (CA) at paras 71-79. The judgment of Sir Keith Lindblom SPT confirms that:-

    a. Nether s.66 nor s.72 state how the decision maker must go about discharging the duty and there is no single, correct approach (para 72).

    b. A decision maker can (but does not have to) carry out a "net" or "internal" heritage balance, by weighing the heritage harms of the proposed development against its heritage benefits, and that only if overall harm emerged from that balance would the other public benefits of the development need to be weighed (para 71 and 73).

    c. What amounts to substantial and less than substantial harm under the NPPF will depend on the circumstances and will involve questions of planning judgment. There is no prescribed approach for assessing harm (para 74).

d. The identification of benefits will also be a matter for the decision maker as is the weight to be given to such benefits as material consideration. "Public benefits" do not need to have any connection to the heritage asset: *"there might be planning benefits of a quite different kind, which have no implications for any heritage asset but are weighty enough to outbalance the harm to the heritage asset the decision-maker is dealing with."* (para 78)

38. In Mordue v SSCLG [2016] 1 WLR 2682 (CA) at para 28, Sales LJ (as he then was) stated:

"the express references by the inspector to [heritage policies] 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 1990 in mind and complied with it……. Generally, a decisionmaker 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".

(c) Mandatory material considerations

39. A material consideration must be taken into account if it is expressly or implicitly identified by statute or policy as a consideration which is required to be taken into account as a matter of legal obligation or if on the facts it is "so obviously material" so as to require direct consideration (see R (Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council [2020] UKSC 3 at para 32).

(d) Duty to give reasons

40. The written representations procedure is governed by the Town and Country Planning (Appeals) (Written Representations) (Procedure) (England) Regulations 2009/452. There is no express requirement in those regulations for reasons to be given for the decision. Nevertheless, it is common ground before me that the Inspector was required to give reasons for his decision. That consensus is consistent with the observations of the Supreme Court in R (CPRE Kent) v Dover District Council [2018] 1 WLR 108 at para 26 as follows:

> *" There is no corresponding statutory rule applying to decisions following a written representations appeal. However, it is the practice for a fully reasoned decision to be given. It has been accepted (on behalf of the Secretary of State, and by the Administrative Court) that there is an enforceable duty, said to arise "either from the principles of procedural fairness … or from the legitimate expectation generated by the Secretary of State's long-established practice …": Martin v Secretary of State for Communities and Local Government [2015] EWHC 3435 (Admin) at [51] per Lindblom LJ".*

41. The applicable law on an Inspector's duty to give reasons is encapsulated by Lord Brown in Porter v South Bucks [2004] UKHL 33 at para 36 as follows:

> *" 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 reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision".*

(e) Relief and statutory planning challenges

42. In a planning statutory challenge, if there has been error of approach, the approach to the exercise of discretion set out by the Court of Appeal in Simplex GE (Holdings) v Secretary of State for the Environment (1989) 57 P&CR 306 (also reported at [2017] PTSR 1041) continues to apply. The Court should decline to quash if the outcome but for the error would necessarily have been the same.

Submissions

43. Mr Merrett contends that, as the application was made for a temporary period of six months, it was incumbent on the Inspector to at least consider whether to grant consent for a period of six months rather than the standard five-year period.

44. He contends that para 2(1A) of schedule 4 of the 2007 Regulations creates a duty on the Inspector to consider the period specified in the application for which consent is sought.

45. In addition, Mr Merrett contends that the Inspector was in breach of his duty to give reasons for his decision. He submits that this duty was breached and Southwark suffered substantial prejudice because the temporary nature of the Display was central to its acceptability. Southwark cannot understand from the decision what consideration, if any, was given to the duration of the consent.

46. Further, Mr Merrett contends that the heritage balance struck was flawed. He submits that the Inspector found harm which he did not afford great weight to and instead improperly weighed against public benefits.

47. On behalf of the Secretary of State, Mr Fullbrook emphasised the limited focus of advertising control. It could only be exercised on grounds of public safety (not relevant here) and in the interests of amenity. He argued that the duty to consider the period specified in the application contained in para 2(1A) of schedule 4 of the 2007 Regulations applied only when an Inspector was deciding to apply a shorter or longer period than the five-year standard period. That had not occurred here.

48. Mr Fullbrook highlighted that the nature of the Display permitted was linked to the presence of scaffolding. He contended that the relevant legal question was whether it was a mandatory material consideration to address the sixth month period. It would only be so if it were irrational not to consider it. That was not the case here, he submitted.

49. Mr Fullbrook argued that there was no breach of a duty to give reasons as the Inspector was only required to deal with the principal controversial issues. He also argued that the decision would necessarily be the same as there was no amenity basis for restricting the duration of the Display on the Inspector's (heritage) reasoning.

50. On the heritage issue, Mr Fullbrook submitted that the Inspector did not find harm to heritage assets. The Inspector had acknowledged that the advertisement part of the Display would cause harm but there were benefits to the CA from the shroud. Thus, a lawful decision made was that there was no harm after an internal balancing exercise.

Discussion

51. I consider the Inspector's approach to heritage issues (ground 2) first. This provides relevant context for assessing whether the Inspector erred in his approach to the duration of the consent and/or failed to give adequate reasons for his decision (ground 1).

The Inspector's heritage assessment (ground 2)

52. It is apparent from the Second Defendant's grounds of appeal and the factual context, that the Display was inextricably bound up with the presence of scaffolding at the Site. The description of the development for which consent was sought (and granted) was a temporary scaffolding shroud with advertising inset. By definition this can only be displayed if there is scaffolding in place at the Site.

53. The Inspector's heritage assessment (in para 8 of DL) was as follows:

"When standing next to Town Hall Chambers on the east side, the advertisement will appear to be a large addition to the street scene, and would alter the character of this part of the CA"

"The advertising would be in place for a temporary period, and given the street has a vibrant character, the shroud and advertising would create interest while the building is scaffolded"

Pausing there, I observe that the Inspector discusses (in a differentiated way) the impact of the advertising and the effect of shroud.

He continues:

"As a result the harm to the CA would be limited, and the overall benefits of adding interest into the CA and during the period the building is scaffolded would benefit the area".

54. His next sentence (the opening sentence of para 9) expresses his view that the advertisement and the scaffold shroud would not harm the significance of the CA. His analysis continues that the proposal would preserve the character and appearance of the CA (para 10) and would not harm amenity (para 10).

55. The coherence of this analysis was the focus of debate.

56. Mr Merrett argued that in paragraph 8 of DL the Inspector identifies harm to the CA. But the Inspector then failed to attach considerable weight to this harm. Rather, the Inspector (Mr Merrett submits) set harm off against public benefits. This, he submits, was an erroneous approach.

57. Mr Fullbrook puts forward a different analysis as follows.

58. He contends that there is a consistent thread running through the Inspector's decision. The Inspector's analysis is: (a) the advertising (by itself) is harmful; but (b) the shroud is beneficial to the CA. Overall, the impact of the advertising plus the shroud does not harm the CA while the building is scaffolded.

59. On this basis, the conclusion in the first sentence of para 9 of DL follows naturally from the evaluation which precedes it in para 8. The practical reality that the Display will necessarily be associated with the scaffolding informs the Inspector's approach. It leads to his conclusion that the character and appearance of the CA would be preserved by the proposal (and the proposal would not harm amenity).

60. Mr Fullbrook submits there was no harm to the CA to which considerable weight must attach. This is because (Mr Fullbrook submits) the Inspector undertook a net balance of assessing the effect of component parts of what is proposed and expressed

an overall conclusion that the proposal would not cause harm to the CA. Mr Fullbrook submits that this is a permissible (albeit not mandatory) approach – applying Bramshill (see para 37 above).

61. Mr Fullbrook submits that the Inspector weighed the effects of the component parts of what is proposed on the CA. When he did so he was considering heritage impacts (and undertaking a net balance assessment as discussed in Bramshill). He was not eliding (impermissibly) heritage benefits and wider public benefits.

62. On this analysis, the Inspector deals with relevant issues in a logical and consistent way. The Inspector found no overall harm to the character and appearance of the CA from the proposal. Accordingly, there was no heritage harm to which he must apply considerable weight.

63. I am satisfied that Mr Fullbrook's contentions are correct. They are consistent with a straightforward reading of the Inspector's decision. Read in this way, DL is an internally consistent document.

64. By contrast, there are a number of difficulties with Mr Merrett's analysis.

65. First, his analysis of para 8 does not fit with the remainder of DL. The first sentence of para 9 would on this reading contain a non-sequitur (rather than a logical next step in the reasoning as it does on Mr Fullbrook's analysis).

66. Mr Merrett submitted that the first sentence of para 9 mirrored a mistake of approach identified by Gilbart J in R (Irving) v Mid-Sussex District Council [2016] PTSR 1365 at para 58. In assessing the impact of a proposal on the conservation area, Gilbart J observed as follows:

"*[i]f there is harm to the character and appearance of one part of the Conservation Area, the fact that the whole will still have a special character does not overcome the fact of that harm. It follows that the character and appearance will be harmed. … it cannot be right that harm to one part of a Conservation Area does not amount to harm for the purposes of considering the duty under s.72*"

67. However, this logic does not apply to a fair reading of the Inspector's conclusions in the present case. In para 8 of DL, the Inspector differentiates between the advertising per se and the combined effect of the advertising and the shroud. As above, his net assessment is that there is no harm to the CA.

68. Mr Merrett argued that the Inspector had impermissibly balanced public benefits against harm to the CA (without attaching considerable weight to the heritage harm). However, as I read DL, the Inspector focussed on the effect on the CA. He did not bring public benefits into his assessment.

69. Mr Merrett referred to the Second Defendant's grounds of appeal which did rely on to public benefits. However, the Inspector did not mention public benefits in the DL. The Second Defendant's grounds of appeal had also referred to the heritage benefits of the shroud masking the scaffolding. It is that part of the analysis which is reflected by the Inspector in the para 8 of the DL. The Inspector's evaluation does not (contrary to Mr Merrett's submissions) elide public benefits and heritage benefits. The Inspector focuses on the relationship of the shroud with the CA. This is akin to what has been described as an internal balancing exercise of the component parts of the proposal to form an overall view about whether the proposal caused harm to the CA or preserved its character and appearance.

70. Further, it is impossible to reconcile Mr Merrett's reading of DL with the Inspector's conclusions in para 10 that the character and appearance of the CA would be preserved. Mr Merrett contended that the decision letter was "all over the place". I disagree. The fair reading of the analysis is that he is discussing the net impact on the CA in para 8 and this leads to his finding in paras 9 and 10 that there is no harm to the character and appearance of the CA or adverse impact on amenity.

71. Mr Merrett submitted that the Inspector did not make any comparison between the relationship of the Display with the CA without scaffolding. I do not consider that the Inspector can be criticised for this in his heritage assessment. The Inspector focussed on the relevant relationships. The theoretical possibilities as to the state of the CA are: (a) there is no scaffolding at the Site (but in this situation, there is no possibility of implementing the consent granted which requires scaffolding and so no harm to the CA from the grant of consent); (b) there is scaffolding in place at the Site and (c)

there is scaffolding in place and the Display. Thus, it was realistic and sensible for the Inspector to focus on evaluating the difference between situations (b) and (c) – which is what he did and how the argument had been advanced before him in the Second Defendant's grounds of appeal.

72. I also reject Mr Merrett's argument that there are indications in DL of a flawed analysis. The Inspector refers to the heritage section of the NPPF. It is true that there is no express reference to the need to give considerable weight to heritage harm but that is explained by the fact that on a fair reading of the Inspector's decision he concluded that no such harm arose. This is not a case where the inference described by Sales LJ in Mordue (see para 38 above) is needed. It is clear from a fair reading of his decision that the Inspector decided that there was no harm to the character and appearance of the CA.

73. It follows that I reject the Claimant's argument that the Inspector failed to properly consider the impact of the Display on the CA. I also reject the related contention that the Inspector was irrational in his determination of the impact of the Display on the CA. The Inspector lawfully considered the impact of the Display on the CA. He concluded that it would not cause harm (when all of what was proposed was considered). Accordingly, the Inspector lawfully decided that the character and appearance of the CA would be preserved.

74. I therefore reject ground 2 of the Claimant's claim.

The Duration of the Consent (ground 1)

75. I turn then to ground 1.

76. The application for consent was made on the basis that the Display would be in place for six months.

77. The Inspector did not refer to this in his decision. He decided that the standard five-year condition should apply without explanation.

78. The Claimant's case is that the Inspector failed to have regard to the material consideration of the shortened time period specified in the application. This, Mr Merrett submits, was contrary to the requirements of para 2(1A) of schedule 4 of the 2007 Regulations. Moreover, there was a failure to give reasons for his decision.

79. In response, Mr Fullbrook submits as follows:-

    a. The application for Display was inextricably linked to scaffolding being in place.

    b. There are no relevant planning controls on the erection of scaffolding.

    c. As analysed by the Inspector, the effect of the proposal (taking the advertisement and the shroud in combination) is to preserve the character and appearance of the CA and therefore have no adverse impact on amenity.

    d. Planning control over advertising can be exercised in the interests of public safety (not in issue here) and in the interests of amenity (as to which there is no adverse impact on the Inspector's specific findings).

    e. As the Inspector found that there was no impact on amenity, he could not impose a shorter period under para 2(1A) of schedule 4 of the 2007 Regulations.

    f. If the condition was not necessary in the interests of amenity, there was no basis for imposing it. This was especially so given the guidance (in the NPPF) that conditions should be kept to the minimum.

80. Mr Fullbrook submits the real question is whether it was a mandatory material consideration to refer to the time limited period specified in the application. He submitted that it was not in this case. It was not irrational to leave out of account something which (as he submitted) could not have made a difference to the decision.

81. In considering these submissions, the starting point is para 2(1A) of schedule 4 the 2007 Regulations which provide that:-

> *"The Secretary of State may, in granting an express consent, specify that its term shall run for such longer or shorter period than 5 years as he considers expedient, having regard to the interests of amenity (including aural amenity) and public safety, and taking into account—*
>
> *..... (c) any period specified in the application for consent".*

82. It is plain that in considering whether to grant a different period to the five-year period, the Inspector is directed to consider (amongst other things) the period specified in the application for consent.

83. The power is expressed in permissive terms (i.e. he "may" shorten or lengthen the standard period) but the Inspector would necessarily have to consider the period applied for in considering whether to change the standard period.

84. Mr Fullbrook submits that there is no requirement to consider the period applied for unless consideration is being given to departing from the standard period. That submission is consistent with a literal reading of the provision but its logic risks cutting across the purpose of this provision. If the Inspector does not even have to think about the period applied for, this would be surprising. I consider that the question of whether there is a duty to consider the period applied for has to be evaluated in the factual circumstances of the case at issue. As the statutory provision is drafted, there is not a mandatory material consideration explicitly imposed by statute, but it may be implicit in the provision and/or obviously necessary in the factual circumstances of the case for the period specified in the application to be considered.

85. I turn then to consider the factual context of the present case.

86. The parties participating in this appeal did so on the common understanding that what was being sought was consent for six months.

87. Their representations on amenity impact (including heritage impact) were framed around the short-term nature of the Display (which was expressed as being for a six-month period only). That point was central to case that was put to the Inspector by both the Second Defendant and the Council.

88. I acknowledge that the Inspector was not bound by that consensus. However, the existence of the consensus and the way in which the argument was put, does provide the context for considering what was expected of the Inspector in this case.

89. Mr Fullbrook argued that it was obvious why the Inspector applied the standard condition. He submitted that it followed inextricably from the Inspector's conclusions that there was no harm to the CA.

90. However, I consider that this submission oversimplifies the position.

91. The Inspector's reasoning (which I have discussed in respect of ground 2 above) was that there was no adverse impact because the harm of the advertising was offset by the benefit of the shroud.

92. However, this does not mean that amenity considerations were irrelevant. The Inspector reached a nuanced conclusion that the net balance was acceptable to the CA (compared to the effect of scaffolding without the shroud on the CA).

93. In this context, there was scope for debate as to whether a condition limiting the duration of the Display was necessary or otiose.

94. On the one hand, it could be said that the Display would only be present when the scaffolding was also there. When this was so, its impact did not harm the CA compared to the impact of the scaffolding without the shroud. This might support the conclusion that a time limited condition was unnecessary in the interests of amenity.

95. However, another perspective could be advanced. The Council could have said that the Display would be less satisfactory than the ordinary appearance of the Site and that there should be no incentive or opportunity for the Display to remain in place for longer than it was needed to mask the impacts of the scaffolding during the renovation works. On this basis, the condition would serve a legitimate amenity purpose.

96. The difficulty is that there is no indication in the decision as to whether (or how) the Inspector thought about this.

97. This brings me to the related question of how the Inspector's duty to give reasons applies. It is common ground that the Inspector was subject to a duty to give reasons for his decision. Mr Fullbrook contends that the duration of the consent was not a principal controversial issue.

98. It is correct that the duration of the consent was not identified as a main issue in the decision letter (see para 4). However, the context for that was, so far as the parties were concerned, this was not a controversial issue at all.

99. The Inspector's decision does not inform the Council why the Inspector imposed the standard period in preference to the period that the main parties addressed their submissions to.

100. I consider that in the circumstances of this case that omission was significant. The Council do not know the basis on which a six-month duration condition (which the Council regarded as an important but not sufficient control) was rejected. This is not an academic point. The consent granted allows the Display to stay (with the scaffolding) for a period longer than the envisaged duration of the renovation works. It allows the Display to be reinstated without further consent say four years later (assuming that it was taken down after six months as envisaged). That flexibility might be justified, but it was not explained. The Council were not told in the decision what the Inspector's rationale was for rejecting the consensus before him on the duration of the advertising consent.

101. In my judgment, the duration of the consent was something which, in the circumstances of this case, needed to be addressed. The basis for rejecting the consensus required an explanation. I am satisfied that duration was a mandatory material consideration which needed to be addressed given the period specified in the application, the consensus before the Inspector and the way that each party put its case in the appeal.

102. I conclude that there was an error of law in the Inspector not addressing the period of the consent in departing from the common understanding of the parties to the appeal (that they were debating whether express consent should be granted for a six-month period).

103. The Inspector also failed to give adequate reasons. This caused the Council substantial prejudice. The Council do not know whether the Inspector considered the question of duration and the basis on which he departed from the consensus before him.

104. I must consider the question of relief in respect of these related errors.

105. Mr Fullbrook submitted that, applying the Simplex test (see para 42 above), the outcome would necessarily be the same if the error (failure to address the duration specified in application and/or failure to give reasons) had not been occurred.

106. I do not accept this. I accept that the Inspector might have reached the same conclusion. However, I do not consider he would necessarily have done so. He may well have reflected that it was better to clarify that the Display should be of limited duration and impose a time limited condition as he had been requested to do.

107. I have concluded that the absence of any reference to the six-month period specified in the application was an error of law. The Inspector failed to address a mandatory material consideration (in this case) and failed to give reasons for his decision which caused the Claimant substantial prejudice.

108. It is therefore appropriate to grant the Claimant the relief sought namely the quashing of the Inspector's decision.

109. The claim succeeds on ground 1.

110. I am grateful to Counsel for their helpful oral and written submissions.