Case Name: *James Hall and Company Ltd, R (on the application of) v Co-Operative Group Ltd & Anor* [2019] EWHC 2899 (Admin) (01 November 2019)

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Commentary: The claimant challenged the grant of planning permission for the demolition and development of the old Haworth fire station on Station Road in Haworth (the "Site") on three grounds. The Site is adjacent to, but not within, the Haworth Conservation Area ("HCA"). Her Honour Judge Belcher clarified some important points concerning heritage policies and found all three grounds proved.

The grounds of challenge were as follows:

1. The Council's approach to the development's impact on the HCA was flawed;
2. The inclusion of "unless otherwise agreed in writing with the local planning authority" contained in the planning conditions 3, 7, 12 and 13 (the "Tailpieces") was unlawful;
3. The Council failed to comply with the requirements of paragraph 189 of the NPPF in that the relevant Historic Environment Record ("HER") was not consulted in considering environmental impacts.

The court held that there are only three categories of harm recognised in the NPPF – substantial harm, less than substantial harm and no harm. Therefore, the categories of substantial harm and less than substantial harm "cover a broad range of harm" and it is a "matter of planning judgment as to the point at which harm moves from substantial to less than substantial". The court went on to conclude that "minimal harm must fall to be considered within the category of less than substantial harm".

Citing extracts from Mrs Justice Andrews' judgment in Pagham Parish Council v Arun District Council and Other [2019] EWHC 1721 (Admin), the court held that the evaluation of harm was ultimately a matter for the decision-maker, the Area Planning Panel ("APP") in this case, having been furnished the with necessary information by the planning officer. With the planning officers pre-determining that there was no heritage impact and not including it in the officer's report to the APP, the court concluded that the APP was furnished with no necessary information and was in no position to assess whether there was any harm, or to carry out the balancing exercise of any harm found against the public benefits of the development as required by the NPPF. In these circumstances, the Judge found that ground 1 was proved.

The defendant accepted the unlawfulness of the Tailpieces and ground 2 was proved. However, the defendant rejected that the unlawfulness of the Tailpieces should lead to the quashing of the whole planning permission, submitting instead that the appropriate form of relief would be severance of the offending Tailpieces.

Paragraph 189 NPPF provides that in undertaking a heritage asset assessment, as a minimum the relevant HER should have been consulted and the heritage assets assessed using appropriate expertise where necessary. There was no dispute that the HER was not consulted in this case. The defendant submitted that the fact that the HER was not consulted was of no substantive consequence in this case because the HER is simply a database and the applicant's statement considered the heritage impacts in more detail than is included in the

HER. In the absence of the HER having been produced in evidence, the Judge concluded that there was nothing from which to properly make a judgment as to whether the failure to consult the HER was of no consequence to the final decision. Accordingly, the Judge also found that ground 3 was proved.

Having found all three grounds proved, the court ordered that the planning permission be quashed. In obiter, the Judge said that had ground 2 been the only successful ground, the appropriate relief would have been excision of the Tailpieces.

Case summary prepared by Nikita Sellers