

Case Name: *Kay, R (on the application of) v Secretary of State for Housing Communities and Local Government & Anor* [2020] EWHC 2292 (Admin) (21 August 2020)

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Commentary:

This case considered the proper interpretation of paragraph 196 of the NPPF and the appropriateness of an Inspector issuing a partial permission without first consulting with the parties.

The claimant submitted applications for planning permission and listed building consent in relation to the Grade II listed Great Mitton Hall, which is located close to the Grade I listed Church of All Hallows. Part of the development proposals included the removal of a pointed arch opening of the modern extension to Great Mitton Hall and its replacement with a window to match the others. The applications were refused by Ribble Valley Borough Council (the "Council") and the claimant subsequently appealed. The Inspector dismissed the appeal.

The claimant pursued two ground of challenge:

1. The Inspector erred in law when he held that there were "no public benefits to be weighed" against such harm as he had identified from the proposals to the special historic interest of Great Mitton Hall.
2. The Inspector was entitled to issue a partial permission but he had a legal obligation to consult with the parties before adopting that course, which he did not do.

In relation to ground 1, the claimant submitted that the Inspector failed to interpret the relevant paragraphs of the NPPF by failing to take account of a material consideration, namely the benefits which he had concluded would arise to the heritage assets from the improvement that would arise from the removal of the pointed arch. The claimant alleged that these elements of improvement were matters which the Inspector should have recognised as public benefits of the proposal and taken into account in striking the overall balance. His overall failure to do so was an error of law.

Mr Justice Dove applied the interpretation of paragraph 196 of the NPPF from *Safe Rottingdean Limited v Brighton and Hove City Council* [2019] EWHC 2632. It was incumbent upon the Inspector to establish the nature and extent of the harm to the significant of a designated heritage asset at the first stage of the analysis – "It is only after that level of harm has been fixed that any beneficial effect upon the building which, in accordance with the PPG would properly be considered to be a public benefit, is to be taken into account in assessing whether or not the overall balance to be struck in applying the policy, including any other public benefits, enables the conclusion to be reached that the proposals do not conflict with the policy."

In paragraph 9 of his decision letter, the Inspector made a clear finding that the removal of the pointed arch and its replacement with a window matching the other fenestration "would be a positive alteration that would benefit the architectural and historic interest of the listed building". Mr Justice Dove concluded that this gave rise to public benefits which ought to have been taken into account. The Inspector fell into error in this case by concluding (in paragraph 13) that "the harm that would be caused to the listed building by the new extension and the re-painting of the gable would be less than substantial but there are no public benefits to be weighed against the harm caused" as this was inconsistent with his paragraph 9.

Ground 2 was dismissed. Mr Justice Dove held that there was no justification for the claimant's complaint that the Inspector behaved unfairly in reaching a split decision, or issuing partial permission, without first consulting the parties. In submitting an application which is comprised of a number of works in relation to the same building, the possibility of a split decision will almost always exist, as it did in this case. The Inspector was entitled to assume that any difficulties that would arise from a split decision would be raised as part of the parties' submissions and in this case, there was nothing before the Inspector to give cause for concern.

The claim succeed under ground 1 and the Inspector's decision to dismiss the appeal was quashed.

Case summary prepared by Nikita Sellers