

**Case Name:** *Council of the City of Newcastle Upon Tyne v Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 2752 (Admin) (01 November 2022)

**Full case:** [Click Here](#)

**Commentary:** In this case Holgate J found that the inspector in granting planning permission had taken into account a legally irrelevant consideration in assessing the level of harm caused to the neighbouring Grade I listed St Ann's Church (paras 60-79). The inspector's decision had accounted for the fact that the level of harm to the Church could not be further minimised by a different design. The court held however that even if the level of harm was "minimised" by the current design, this said nothing about what that "minimised" level of harm amounts to - harm to a heritage asset might be "minimised" by the design proposed but nevertheless still be "substantial".

The Judge dismissed two further grounds of challenge, including a challenge that the inspector had wrongly considered the likely deliverability of the scheme. Holgate J held that there was no reason why deliverability could not be a material consideration in the determination of a planning application/appeal if relevant to the merits of the proposal – in this case, the site was owned by Homes England and this was relevant to the likelihood of delivery given its statutory function to promote regeneration.

*Case summary prepared by Emma McDonald*