Case Name: *Anesco Ltd v Secretary of State for Levelling Up, Housing and Communities & Anor (Re Application for Planning Statutory Review) [2025] EWHC 1177 (Admin) (16 May 2025)*

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Commentary: The claimant, Anesco Limited, applied for the statutory review under section 288 of the Town and Country Planning Act 1990 ("the TCPA 1990"), of the Secretary of State for Housing, Communities and Local Government's refusal of a section 78 TCPA 1990 appeal in respect of development of a temporary solar farm and associated infrastructure on agricultural land. Following the refusal of permission on grounds relating to landscape and visual effects by the second defendant, West Northamptonshire Council ("the Council"), the Secretary of State appointed an Inspector who, following a four-day public inquiry, recommended that the appeal be allowed. That decision was then "recovered" by Simon Hoare MP, Minister for Local Government, on behalf of the Secretary of State, and the appeal was refused.

The application for statutory review on grounds relating to heritage policy and to consistency of decision making and adequacy of reasons was dismissed, with Mrs Justice Stacey emphasising that a statutory review is not an opportunity for a rehearing, and in the process providing a helpful summary on the correct approach to heritage asset cases and assessing harm to their setting, as well as harm to the asset.

The facts

The 49.72Mw solar farm was proposed on a site adjacent to the Grand Union Canal in the Grand Union Canal Conservation Area and near a Grade II-listed bridge over the canal known as the Turnover Bridge. The initial application was refused by the Council for one reason relating to likely landscape and visual effects. Following the four-day inquiry and a site visit, an Inspector concluded that the harm to the setting of the Grand Union Canal and the Turnover Bridge would be limited to the lower end of less-than-substantial harm. After the decision was recovered, the Secretary of State made similar factual conclusions to those set out in the Inspector's decision letter but instead judged that the harm to the setting of the heritage assets would fall in the lower to middle end of less than substantial harm. The claimant advanced two grounds of challenge: that the Minister failed to properly interpret and apply heritage policy; and that the Minister's refusal was inconsistent with approach and decision taken in another similar solar farm application.

The grounds of challenge

Ground 1 alleged that the Secretary of State misapplied and misinterpreted heritage policy, inasmuch as he conflated a change to the setting of two identified heritage assets from the development with harm to their significance. This was a conclusion that was not open to him without fuller reasoning, since it had been part of the claimant's case

that the impact on the setting of the two assets did not harm their significance. Under this ground, it was also alleged by counsel for the claimant that the first defendant failed to interpret properly and apply the National Policy Statement for renewable energy infrastructure ("EN-3"), Historic England's Good Practice Advice in Planning Note 3 ("GPA3") and the National Planning Policy Framework ("NPPF").

Under Ground 2, the claimant alleged that the Minister's decision was inconsistent with the decision in respect of a similar development, the Great Wymondley solar farm. Counsel for the claimant also alleged that the reasons provided by the Minister were inadequate and did not take into account EN-1 and EN-3 as material considerations, as well as other omissions in the reasoning.

The Parties' Submissions

Under Ground 1, counsel for the claimant focused on an apparent non-sequitur or inconsistency in the Secretary of State's decision, where it was noted that "the significance of the [Grand Union Canal] lies in its historic and architectural value" and, by implication, not its setting, and therefore change or harm to setting would not result in any harm to the significance of the Grand Union Canal Conservation Area. The Secretary of State could not have lawfully concluded that there would be moderate harm to the setting of the Grand Union Canal from the proposed development. It was submitted that the Secretary of State made numerous other errors: he offered no explanation of how the architectural and historic significance of the Canal maps onto the significance of the setting and why; he failed to go through the approach to evaluating heritage setting harm set out in *Catesby Estates Ltd v Steer* [2019] 1 P. & C.R. 5; he failed to adequately explain why he had found a higher level of harm to setting than the Inspector, nor did he address the claimant's evidence on the central point of dispute between the parties, or why he preferred other evidence; and he also made inaccurate and irrelevant references to "river valleys," which were not applicable to the proposed site of the solar farm but to other parts of the Conservation Area.

Counsel for the claimant also submitted that the Minister had inadequately dealt with the import of EN-3 and GPA-3, inasmuch as his decision failed to attach sufficient relevance to the temporary nature of solar projects when assessing heritage assets, regardless of size or scale, and it also failed to make any reference to climate change, energy security, and the urgency of meeting net zero targets.

Counsel for the Secretary of State submitted that the Minister was entitled to rely upon and adopt the Inspector's report in the Decision and that the Inspector had dealt with all matters comprehensively. The different planning judgment reached by the Secretary of State to that of the Inspector did not invalidate the Inspector's considerations and analysis. The two documents together provided legally adequate reasons so that the

Decision was cogent, logical and internally consistent and in sufficient detail following the correct legal approach. There had been no conflation or confusion between the harm to a heritage asset and that of its setting. In addition, while EN-1 and EN-3 were agreed to be relevant and a material consideration they were not determinative since the size of the Development fell just below the threshold for a Nationally Significant Infrastructure Project to which EN-1 and EN-3 would apply as a determinative factor.

Under Ground 2, counsel for the claimant submitted that the fact that permission was granted in the Great Wymondley planning application, a materially similar proposed scheme, and not in the decision under challenge demonstrated that the Secretary of State had failed to have regard to the importance of consistency in decision-making and failed to give reasons for his departure. To the extent that there were differences between the proposals, the harm caused by the Great Wymondley proposal was considerably greater, making it all the stranger that permission was refused in this decision. Counsel for the Secretary of State submitted that the Great Wymondley application was distinguishable and different in many ways from the facts relevant to decision under challenge, and so a different outcome did not impinge upon the rationality of the Secretary of State's decision.

The Court's findings

The Court found that, on a fair reading of the decision letter as a whole, including the adoption of the Inspector's analysis, the Secretary of State had not equated harm to setting with harm to significance. In addition, the references to sensitive river valley areas did not indicate that he had misunderstood the geographic location of the Site. It was an observation about the whole of the 26-mile stretch of the Conservation Area to provide context. Therefore, the Secretary of State had not committed the errors of law alleged and was entitled to form his own judgment that the harm to the Great Union Canal Conservation Area was moderate, falling in the lower to middle end of less than substantial harm.

Having come to a lawful conclusion on the extent of harm to the setting of the heritage assets, the Secretary of State then considered whether that harm was outweighed by the public benefits of the proposal. While the Court noted that the canal was now "now sandwiched between main roads, the west coast mainline railway with an abattoir and sewage works nearby and others may consider that the addition of solar panels in the setting of the GUC CA would not have quite the detrimental effect that the Secretary of State considered would be the case," this was nevertheless "a value judgment for the Secretary of State to make."

The Secretary of State also identified and addressed all the material considerations. The proposed development fell just below the scale necessary for it to be a nationally

significant infrastructure project and it fell to be determined under TCPA 1990. So whilst EN-1 and EN-3 were relevant considerations they were not determinative or binding and it was for the first defendant to taken them into account, which he did, and make a planning judgement on the Development proposed. Others might not have reached that decision and might have concluded that the importance and urgency of reducing reliance on fossil fuels would be of substantial, rather than merely significant weight and tip the balance the other way, but having correctly directed himself it was open to the Minister to arrive at that decision.

The Court dealt with Ground 2 much more swiftly. The claimant's submissions were predicated on both proposals being sufficiently similar for the different decision in this case to amount to a departure from a previous decision. However, the Court found that the Great Wymondley application was not sufficiently similar to be a material consideration that was ignored and only to be departed from with a properly reasoned explanation, as the Great Wymondley application was not in conflict with the development plan, unlike the solar farm proposed next to the Grand Union Canal. This was "an important distinguishing feature that did not require a detailed explanation for the discrepancy in outcome of the two planning applications."

Conclusion

Both grounds were dismissed, and with it the application for statutory review.

Case summary prepared by Gregor Donaldson