

**Turbine ruling sets  
the standard for  
heritage assets**

**DLP BRIEFING NOTE 149**

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## Introduction

Planning permission for development that may affect heritage sites could become more difficult after the Appeal Court blocked a decision to permit a wind farm due to insufficient consideration given to its impact upon important heritage assets.

In a ruling earlier this month, the Court of Appeal upheld a High Court decision to refuse the Barnwell Manor Wind Farm scheme in Northamptonshire.

A Renewables developer had proposed four turbines on the site, which was in the vicinity of 40 designated heritage assets, including the Grade I National Trust property Lyveden New Bield.

East Northamptonshire District Council, the National Trust and English Heritage had opposed the scheme, but it was granted permission by a planning inspector in March 2012. The inspector had concluded that, while the four turbines would appear as an "alien and incongruous feature in the landscape, especially one with such historic and literary association", the renewable energy benefits of the proposal would outweigh the harm to the setting of the assets, which he deemed "less than substantial".

Paragraph 132 of the National Planning Policy Framework (The Framework) states that as heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of designated heritage assets of the highest significance, notably grade I listed buildings should be wholly exceptional."

Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, paragraph 133 states that Local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve public benefits that outweigh that harm or loss.

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## **Court of Appeal Decision**

Following a High Court battle, the case reached the Court of Appeal in February 2014, where top judges described the planning inspector's decision as "fatally flawed". The Court of Appeal cited the Planning (Listed Buildings and Conservation Areas) Act 1990, which says decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out a balancing exercise in planning matters.

Lord Justice Sullivan said he agreed with the High Court that the inspector did not give "considerable importance and weight" to this factor and took a strict stance on the policy position within The Framework regarding heritage assets.

A barrister who represented the local authority, English Heritage and National Trust said the Court of Appeal ruling was an important decision and the Court of Appeal has confirmed that, in considering whether or not to grant planning permission to developments, decision-makers must give considerable weight to any harm caused to a listed building or its setting.

He added: "By drawing attention to the need to give considerable weight to harm to the setting, it will probably have made it harder for some developers to obtain planning permission within the setting of listed buildings than had previously been thought to be the case."

Morag Ellis QC, who also represented the council and conservation bodies, added that the judgement could be considered a test case, and its impact will be applicable to any development in the setting of a listed building. She added that the ruling could also lead to more appropriate developments near to heritage sites in the future.

She said that the judgement endorsed the "contextual approach to design", through which developments fit within their context and surroundings. "If you want to put up a new building in a conservation area or in the vicinity of a listed building then you are really going to have to work out very clearly what your design rationale is for it," Ellis added.

This Court of Appeal decision is likely to affect a number of windfarm sites currently in the process of determination and developers of any sort of scheme near heritage sites will also have to take the considerations of the appeal decision on board.

## **How can DLP Help?**

DLP Planning Consultants has considerable knowledge of the national planning system and have experience and a proven track record in the promotion wind farm applications and appeals, as well as providing expert guidance to community groups and stakeholders. If you wish to utilise DLP's considerable planning expertise to maximise your opportunity, please contact us. Senior staff within the practice would be very happy explain its potential implications for you.

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