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Case No: CO/2277/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING AT CARDIFF CIVIL JUSTICE CENTRE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/04/2020

Before:

MR JUSTICE SWIFT

Between

THE QUEEN

on the application of

(1) ADVEARSE
(2) LEWIS GEROLEMOU
(3) PHILLIP SUMMERTON

Claimants

- and -

DORSET COUNCIL

Defendant

-and-

HALLAM LAND MANAGEMENT LTD

Interested Party

MATTHEW HENDERSON (Leigh Day) for the **Claimants**

MATTHEW REED QC and MATTHEW FRASER (Dorset Council Legal
Department) for the **Defendant**

CHRISTOPHER KATKOWSKI QC (Addleshaw Goddard) for the **Interested Party**

Hearing dates: 28 and 31 January 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00am on the 6th April 2020.

MR JUSTICE SWIFT:

A. Introduction

1. On 2 May 2019 Dorset Council (“the Council”) granted planning permission to Hallam Land Management Limited (“Hallam”) for the development of land at Vearse Farm, Bridport. The Vearse Farm site is immediately to the west of Bridport and for the most part comprises agricultural land. It is within the Dorset Area of Outstanding Natural Beauty (“the AONB”). The planning permission is an outline permission for development comprising up to 760 dwellings, a 60-unit care home, a mixed-use local centre, a primary school and associated playing fields, areas of open space and allotments, and 4 hectares of land for employment (use Classes B1, B2 and B8), and other associated matters (“the Vearse Farm Development”).
2. The grant of planning permission followed from a decision taken by the Planning Committee of the then West Dorset District Council on 2 November 2017. (With effect from 1 April 2019 a number of District Councils including West Dorset District Council were reorganised to create the Council.) On 2 November 2017 the Planning Committee had before it a detailed report on the application for outline planning permission for Vearse Farm (“the Officer’s Report”). The Planning Committee decided to delegate authority to the Council’s Head of Planning to grant outline planning permission subject to a series of conditions set out in an annex to the minutes of the Committee meeting.
3. Advearse, the First Claimant in this application for judicial review, is a group formed by Bridport residents who were opposed to the planning application. The Second and Third Claimants are members of the group. In this judgment, simply for convenience, references to Advearse are references to all the Claimants, unless otherwise stated.
4. The grounds of challenge are directed to whether the Council properly considered the effect of the Vearse Farm Development on the Bridport Conservation Area, and the Toll House. The Bridport Conservation Area is adjacent and to the east of the Vearse Farm Development. The Conservation Area covers the market town of Bridport, a town that traces its origins to Saxon times. The Toll House (also known as Magdalen Farmhouse), is a Grade II listed property just outside the north east corner of the proposed development site.
5. The Council’s decision to grant planning permission was taken in exercise of the power at section 70 of the Town and Country Planning Act 1990 (“the 1990 Act”). When exercising the section 70 power, a local planning authority is required to have regard to the provisions of its Development Plan (as defined at section 38 of the Planning and Compulsory Purchase Act 2004), and “any other material considerations”. In this case, Advearse’s submission is that the Council failed to have regard to specific statutory provisions, and to material matters in the form of policies contained in the Secretary of State’s National Planning Policy Framework.
6. Three statutory provisions are relevant. First, section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Planning Listed Buildings Act”). Section 66 provides as follows:

“66 — General duty as respects listed buildings in exercise of planning functions.

(1) In considering whether to grant planning permission or permission in principle for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

(2) Without prejudice to section 72, in the exercise of the powers of appropriation, disposal and development (including redevelopment) conferred by the provisions of sections 232, 233 and 235(1) of the principal Act, a local authority shall have regard to the desirability of preserving features of special architectural or historic interest, and in particular, listed buildings.

(3) The reference in subsection (2) to a local authority includes a reference to a joint planning board.

(4) Nothing in this section applies in relation to neighbourhood development orders.”

Secondly, section 72 of the same act, which says this:

“72 — General duty as respects conservation areas in exercise of planning functions.

(1) In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

(2) The provisions referred to in subsection (1) are the planning Acts and Part I of the Historic Buildings and Ancient Monuments Act 1953 and sections 70 and 73 of the Leasehold Reform, Housing and Urban Development Act 1993.

(3) In subsection (2), references to provisions of the Leasehold Reform, Housing and Urban Development Act 1993 include references to those provisions as they have effect by virtue of section 118(1) of the Housing Act 1996.

(4) Nothing in this section applies in relation to neighbourhood development orders.”

The third provision is section 85(1) of the Countryside and Rights of Way Act 2000 (“the 2000 Act”):

“85 — General duty of public bodies etc.

(1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

(2) The following are relevant authorities for the purposes of this section—

- (a) any Minister of the Crown,
- (b) any public body,
- (c) any statutory undertaker,
- (d) any person holding public office.

(3) In subsection (2)—

“public body” includes

- (a) a county council, county borough council, district council, parish council or community council;
- (b) a joint planning board within the meaning of section 2 of the Town and Country Planning Act 1990;
- (c) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972;

“public office” means —

- (a) an office under Her Majesty;
- (b) an office created or continued in existence by a public general Act; or
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament.

“statutory undertaker” means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990.”

7. Advearse also relies on policies contained in the Secretary of State’s National Planning Policy Framework (“the NPPF”). The NPPF was first issued in 2012. It identifies itself

as containing a set of policies that must be considered in the preparation of local and neighbourhood plans, and which are material considerations for planning decisions. Two parts of the NPPF are material: the part headed “*Concerning and Enhancing the Natural Environment*”; and the part headed “*Concerning and Enhancing the Historic Environment*”.

8. In the 2012 version of the NPPF (“the NPPF 2012”), the version current at the time of the decision taken by the Council’s Planning Committee on 2 November 2017, the policies on conserving and enhancing the historic environment were in Part 12. The material paragraphs are paragraphs 129 and 131 to 134, which can be summarised as follows.

- (1) When determining planning applications, paragraph 131 required planning authorities to take three matters into account:

“the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;

the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and

the desirability of new development making a positive contribution to local character and distinctiveness.”

- (2) Local Planning Authorities must identify and assess the “particular significance” of any heritage assets that may be affected by a planning proposal.

- (3) “Heritage Asset” is a defined term and means

“A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing).”

“Designated Heritage Asset” is defined as including among other things, a conservation area. The significance of a heritage asset is defined as including its setting and the setting of a heritage asset is defined as “the surroundings in which a heritage asset is experienced”.

- (4) The assessment is to be taken into account so as to avoid or minimise conflict between conservation of the heritage asset, and any aspect of the planning proposal.

- (5) When considering the impact of a proposed development, great weight is to be given to conserving heritage assets. Harm or loss is only permitted if there is “clear and convincing justification”. The policy distinguishes between instances of “substantial harm or total loss of significance” and “less than substantial harm to the significance” of a heritage asset. In cases of less than substantial harm, the

planning authority must weigh the harm against the public benefits of the planning proposal which include securing the optimum viable use of the proposal.

9. The NPPF was reissued in 2018 and then again in 2019. The differences between the 2018 and 2019 versions of the NPPF are minor and none is material to any of the issues in this case. Part 15 of the 2019 version of the NPPF (“NPPF 2019”) is the part that corresponds to Part 12 of NPPF 2012. Paragraphs 190, 192 and 193 – 196 of Part 15 of NPPF 2019 are materially the same as the provisions in Part 12 of NPPF 2012 that are summarised above.
10. Adverse’s submission is that when considering the impact of the Vearse Farm Development on the Bridport Conservation Area and the Toll House, the Council did not apply the approach required by the NPPF, and in consequence failed to comply with the obligation under section 66(1) of the Planning Listed Buildings Act.
11. Part 11 of NPPF 2012 sets out policies on “Conserving and enhancing the natural environment” and paragraphs 115 and 116 are the material parts. The corresponding provision in NPPF 2019 is paragraph 172. This paragraph combines the previous paragraphs 115 and 116, but also contains one new sentence. The relevant text is set out below (see at paragraph 32). This change to the NPPF (first made in the 2018 re-issue) came after the Planning Committee decision in November 2017 and before the grant of outline planning permission in May 2019.
12. Adverse contends this change to the NPPF is material, and ought to have caused the Council to re-consider the planning application prior to the grant of planning permission. Adverse further contends that even if the new words did not comprise any material change to the Secretary of State’s policy, the Council nevertheless failed properly to apply paragraphs 115 and 116 of the NPPF 2012.
13. The submissions of all parties have focused on the way the effect of the proposed Vearse Farm Development on the Toll House and the Bridport Conservation Area were addressed in the Officer’s Report. In this case, as in many other planning cases, the contents of that Report have been taken as a guide to the way in which the Planning Committee approached its consideration of the listed building and conservation area issues, and as a proxy for the reasons of the Committee members for the conclusion that neither matter prevented the grant of planning permission for the Vearse Farm Development.
14. There is one further piece of the picture to mention which provides important context for the Officer’s Report provided to the Planning Committee. The premise for the application for planning permission was that the Local Plan identified the Vearse Farm site as a site allocated to meet part of the Council’s future housing need (see policy BRID1 in the Plan). The Local Plan had been the subject of an Inspector’s Examination and report. One of the principle issues during the Examination was whether the spatial strategy proposed, which included allocation of Vearse Farm as a site to meet the need for new housing, was appropriate and justifiable. The Inspector’s Report, dated 15 August 2015, recognised that the Vearse Farm allocation and others in the Local Plan, were within the AONB, and noted that there was widespread local opposition to these allocations. The Inspector’s general conclusion was that given a high proportion of the Plan area fell within the AONB it would be “unsustainable and perverse” to reject all options for allocation simply because they were within the AONB. When it came to

Vearse Farm, the Inspector's conclusion was that there were exceptional circumstances that justified identifying it as an area for new house building, including that this allocation was a crucial element in the Council's housing land supply allocation. See generally, paragraphs 172- 186 of the Inspector's Report. The Inspector's only recommendation in this regard was that the narrative that goes with policy BRID1 should be amended to include the following:

“13.3.3 ... Vearse Farmhouse is a Grade II listed building and there are a number of heritage assets (including Scheduled Monuments) close to, and visible from the site. For example the Bridgeport Conservation Area (including part of the Skilling Estate) is close to the site as are Grade I and Grade II* listed buildings, these include St Mary's church (Grade I), Town Hall (Grade I), Downe Hall (Grade II*), and St Swithun (Grade II*), in North Allington. The setting of these heritage assets and the impact of the development upon their significance, must be taken into consideration and be used to inform the distribution and scale of built form on these sites.”

B. Decision

(1) Ground 1: The Conservation Area and the Toll House

15. One of the matters referred to in the Officer's Report was the report by the Council's Senior Conservation Officer. In all, she produced three versions of her report. In the final version, dated 31 July 2017, she accepted that the Vearse Farm Development would leave both the Conservation Area and the Toll House intact. Her conclusion was that the impact of the Development on the setting of the Conservation Area and the Toll House would for the purposes of the categorisation in the NPPF, be “less than substantial”.
16. Paragraphs 13.1 – 13.7 of the Officer's Report considered the effect of the proposed development on the Bridport Conservation Area.

“13. **HISTORIC ASSETS**

CONSERVATION (CA and LBs)

13.1 It should be remembered that the site forms a development allocation in the Local Plan as indicated by Policy BRID1 which allocates the site for comprehensive, mixed use development, and that the application is in outline only, apart from the fixing of the proposed points of access. The use of the site has been subject of public scrutiny at the Local Plan Inquiry and the Inspector concluded that on balance there were exceptional circumstances to justify the identification of Vearse Farm in the Local Plan.

Impact on the character and appearance of the Conservation Area

13.2 The Environmental Statement indicates that the residual impact of the development on the Downe Hall, Downe Park & West Allington and Skilling sub-divisions of Bridport Conservation Area, would be ‘minor/adverse’; and, the significance of this would be ‘slight/adverse’.

13.3 The site lies outside the Bridport Conservation Area, however, the Conservation Area is extensive and its western boundary runs north-south close to part of the sites eastern boundary along Magdalen Lane and cuts through Pine View to the east. Both roads contain residential development. In respect of part of the sites northern boundary, a small section of the Conservation Area boundary runs along the northern side of West Allington opposite the Medical Centre, and contains properties in West Gables Close. Given the large area of the site and its undulating nature, it is acknowledged that due to the relatively close proximity of the western part of the Conservation Area, and the large area and scale of the proposed development, there would be some effect on the setting of and views into and out of the Conservation Area.

13.4 In this regard the Masterplan indicates a degree of separation between the proposed built elements of the development and the Conservation Area boundary. In respect of the area of the CA sited opposite the Medical Centre, there is a degree of separation and an area containing buildings on the south side of West Allington between the site and the CA boundary sufficient to result in little visual impact on the character, and views in and out of this part of the CA.

13.5 There is one point where the site boundary and CA boundary meet. This is the proposed point of access to the north eastern part of the site from Magdalen Lane at its bridging point with the River Simene. In this area, the access is to be non-motorised and would be into an on-site area of public open space away from any built development. The access will provide pedestrians, wheelchair users, and cyclists a safe route from the development to the town centre and local facilities. Officers consider that whilst the development will be seen from certain public vantage points within the CA, views into it from the development, and outwards from the CA will not be unacceptably harmed. The proposed landscape strategy, which forms an integral part of the development proposals will assist in minimising any visual impacts arising from the development on the character and appearance of the CA.

13.6 Officers are satisfied that there would be no adverse impact on the character and appearance of the Conservation Area arising from the development. Any views to and from it will be distant and will result in an awareness of the development proposal, rather than any adverse visual impact. The details of design for the built form of the development will be determined at the Reserved Matters stage. Conditions attached to any outline permission granted should provide sufficient design and visual impact safeguards to ensure that any visual impact on the character of the CA is minimised.

13.7 The proposal accords with the provisions of Local Plan Policy ENV4 and the requirements of the NPPF in respect of the impacts on the Conservation Area.”

Local Plan Policy ENV4 is a policy that paraphrases Part 12 of the NPPF on Conserving and Enhancing the Historic Environment.

17. Advearse submits that the conclusion at paragraph 13.6 that there would be “no adverse impact on the character and appearance of Conservation Area...” is a mis-statement, and suggested to the Committee Members that paragraph 134 of NPPF 2012 was not in play such that there was no need to consider the public benefits of the proposed development and weigh them against the harm to the Conservation Area (identified by the Senior Conservation Officer as amounting to less than substantial harm for the purposes of this part of the NPPF). Thus, goes the submission, the final conclusion at paragraph 13.7 of the Officer’s Report is at the very least, ambiguous. It is as possible to read it as meaning that no balancing process was required, or to read it as meaning that a balancing process was required but came out in favour of the public benefits of the Vearse Farm Development.
18. Both the Council and Hallam contend that a fair reading of this part of the Officer’s Report is that the report accepted that there would be less than substantial harm to the Conservation Area but concluded that that harm was outweighed by the public benefit of the proposed development. They point to the references at paragraph 13.3 to “some effect” on the Conservation Area, and at paragraph 13.6 to the conclusion that views into and out from the Conservation Area would not be “unacceptably harmed”. Hallam points to references in other parts of the report to adverse impact on the Conservation Area, for example at paragraph 13.19 and 13.21 in the section on Vearse Farm. Hallam also points out that the public benefits of the development are apparent from Section 10 of the Officer’s Report and (again) at paragraph 13.21 of the Report, the part of the Report that considers the position of Vearse Farm. Hallam went so far as to suggest that although paragraph 13.6 might be confusing it was irrelevant, and that paragraph 13.7 would be rendered meaningless unless it was understood to mean that although there was less than substantial harm to the Conservation Area that was outweighed by the public benefits of the Vearse Farm Development.
19. These competing submissions demonstrate that there are defects in this part of the Officer’s report. At the very least this part of the Officer’s report is unclear. Both the Council and Hallam have referred me to the well-known principles which apply when the adequacy of a planning officer’s report is put in issue. The adequacy of any part of an officer’s report cannot be assessed without considering the report in the round. Reports are to be read as common-sense documents prepared for an informed audience of local councillors, and are not to be construed as if they were legal instruments. Nit-picking is not allowed. The issue for the court on an application for judicial review is whether the report has significantly misled councillors about one or more material matters, which are then not corrected before councillors take their decision. This standard sets the bar high for any challenger, and rightly so. The premise is that planning decision-making should be the responsibility of locally-elected councillors. The role of the court is no more than to ensure that the decision and the decision-making process meet basic legal standards. In this instance, when considering the likely impact

of the Vearse Farm Development on the Conservation Area the councillors had to have regard to the policy at Part 12 of NPPF 2012. The Claimants also contend that the duty at section 72(1) of the Planning Listed Buildings Act also applied, but I accept the submission to the contrary made by Hallam that because the proposed development was of land adjacent to a conservation area, and not development of any part of the Conservation Area, the section 72 obligation did not arise. In any event, given the policy at Part 12 of NPPF 2012, it does not seem to me that the application or not of section 72 of the Planning Listed Buildings Act has any material bearing on the outcome in this case.

20. Notwithstanding the latitude which is to be given to the writer of any officer's report I do not consider that the report in this case properly addressed what Part 12 of NPPF 2012 required. As summarised above, what the Council was required to do was to assess the significance of the Conservation Area (and as the NPPF explained, the significance of the Conservation Area included its setting) and consider the extent of the impact of the proposed development on the significance of the Conservation Area. If, as in this case, the conclusion reached was that the proposed development would result in less than substantial harm to the Conservation Area then the Council needed to weigh that harm against the public benefits of the development. The Officer's Report does not address those matters in any coherent way. Even though what is required of an officer's report is not demanding, a report must meet some basic standards of good public administration. Planning decisions are entrusted to councillors because they are important local decisions. Planning issues are often controversial, all those affected by them deserve to be reassured that the officer's reports that inform councillor's decisions are sufficient to identify how any particular proposal is affected by specific statutory obligations which may apply (for example, the provisions of the Planning Listed Buildings Act said by Advearse to be material in this case), and by material policies such as those contained in Local Plans and the Secretary of State's NPPF.
21. Officer's reports must meet a basic level of coherence. No detailed legal exposition is required. In most instances any such approach will be best avoided. But if, as in this case, a relevant policy requires a particular matter to be addressed systematically, the report should include some narrative as to what the system is and how it applies to the case in hand. None of this is sophisticated. In this case, the Report needed to do no more than identify the conclusion as to the extent of the impact of the Vearse Farm Development and the reasons for that; explain that that harm needed to be assessed against the public benefits of the proposed developments; and then either state a reasoned conclusion on the matter or leave councillors to undertake the assessment for themselves.
22. This Report does not meet that bare minimum standard. The Report did identify some adverse impact of the proposed development on views into and from the Conservation Area; see paragraph 13.3 as further explained in 13.4 and the first part of paragraph 13.5. However, by the end of paragraph 13.5 and into paragraph 13.6, the Report loses its way. Rather than simply identifying the harm as falling into the less than substantial harm category and then making it clear that this needed to be balanced against the public benefits of the development, the Report speculates as to what the effect of the landscape strategy, one of the reserved matters, might be in terms of mitigating any adverse impact on the Conservation Area. This leads to the conclusion at the beginning of paragraph 13.6, of "no adverse impact on the character and appearance of the Conservation Area".

Pausing there, the difference between this conclusion and the conclusion at paragraph 13.3 that there would be “some effect on the setting of and views into and out of the Conservation Area”, is confusing. What is not made clear by the end of the passage up to and including paragraph 13.7 is whether the question for councillors is (a) whether adverse impacts could be minimised or removed by future steps, or (b) whether adverse impact was justified by the public benefits of the proposed development. This lack of clarity is not removed by the references at paragraph 13.7 to “... the provisions of local plan policy ENV4 and the requirements of the NPPF...”. The proposal might accord with those policies either because there was no adverse impact or because at this stage the impact was justified. This itself flags a further difficulty with the Report. Because the application before the Committee was a request for outline planning permission, if the permission were granted a range of important matters would remain outstanding. This included the layout of the site, the landscaping of the site, and the scale and appearance of any buildings constructed. As written, the Report suggests councillors should assume that when those matters are decided each will be decided so as to minimise adverse impact. That is an incorrect approach. At this stage councillors should make no assumption on the outcome of those reserved matters one way or the other. They should recognise that each was a future known unknown matter. In the present case the balance required by paragraph 134 of NPPF 2012 needed to be struck by the councillors in the knowledge that decisions remained to be taken on matters such as landscaping and scale, but without assumptions as to what the outcome of those future decisions would be. When those matters, in future, come to be determined, paragraph 134 will fall to be applied once again. In this regard too, the latter part of paragraph 13.5 and paragraph 13.6 of the Officer’s Report is confusing.

23. Overall, paragraphs 13.1 – 13.7 fail to address the relatively straightforward approach required by Part 12 of NPPF 2012. I do not accept the submission made by Hallam that this part of the Report can be saved by drawing in information from other parts of the Report. In particular, Hallam relied on paragraphs 13.19 and 13.21 which appear in the part of the Report that deals with Vearse Farm. Paragraph 13.9 includes the words “there will clearly be an adverse impact on ...” the Conservation Area. Paragraph 13.21 applies, so far as concerns Vearse Farm, the balancing approach required by paragraph 134 of NPPF 2012. I do not consider either of these matters addresses the problem. What is unclear from paragraphs 13.1 – 13.7 is whether the writer had applied paragraph 134 of NPPF 2012 or simply concluded that the Vearse Farm Development would have no adverse impact on the Conservation Area. What is said at paragraph 13.19 (not in the context of the Conservation Area) simply amplifies this lack of clarity: the express application at paragraph 13.21 of the test at paragraph 134 of NPPF 2012 to Vearse Farm serves only to suggest there was no need to strike any such balance when it came to the Conservation Area.
24. There is also a general point to make. As the authorities demonstrate, officers’ reports are to be read in the round and are not to be nit-picked or construed as statutes. But these principles must apply both ways. In this case the submissions by the Council and by Hallam have come close to suggesting that this Officer’s Report should be read as if it were a statute, in the sense of drawing together disparate passages spread across the document. It is one (entirely legitimate) matter to read an Officer’s Report in the round. It is another qualitatively different exercise to attempt to piece together unconnected comments as if using pieces of a jigsaw to produce a picture that does not appear on the front of the box. The submissions by the Council and Hallam do not point to fair

reading of the Officer's Report, but rather to the need for the councillors to engage in a somewhat unnatural exercise, identifying and drawing together paragraphs from across the Report if they are to make sense of the part of the Report expressly directed to the Conservation Area. I am not satisfied that this is the way that councillors, albeit experienced and familiar with local issues, are likely to have read or understood this part of the Report. For these reasons I have concluded that Advearse's criticisms of the Council's decision so far as it concerns the Conservation Area, are well-founded. The Report did not properly address the application of paragraph 134 of NPPF 2012, a matter material to the decision the Council had to take.

25. The second part of Ground One concerns the approach taken in respect of the Toll House. Between paragraphs 13.8 and 13.25 the Report considers, in turn, the position of each of three Grade II listed buildings. The section on the Toll House reads as follows:

“The Toll House

13.22 The Toll House is a detached, 2-storey, red brick dwelling under a slate roof that stands directly adjacent to the southern side of the West Allington road carriageway. It is noted that a mature roadside boundary hedgerow abuts the corner of The Toll House and runs in a westerly direction from it along the West Allington road frontage.

13.23 The Conservation Officers concerns that the setting of The Toll House will be harmed as a result of the existing hedge being removed and the proximity of the row of dwellings to the west as shown on the Masterplan, are noted. The setting of The Toll House is already compromised by the proximity of it immediately to the east of West Road Garage, with the modern garage building showroom, workshops to the rear, flat roofed former petrol filling station forecourt canopy, and attendant car sales on the open forecourt, all compromising its setting. The mature roadside boundary hedgerow abuts the corner of The Toll House and runs west along the West Allington road frontage. It presently screens The Toll House from public views from the road to the west.

13.24 In one respect, the setting of The Toll House would be improved by the removal of the hedge as this would open up its west facing side to views from the west along West Allington. The row of dwellings is shown as being set back from the road frontage on the masterplan providing a further degree of openness to the Toll House when viewed from the west. As indicated above, design details will be determined at the Reserved Matters stage, and conditions attached to any outline permission should provide sufficient design and visual impact safeguards to ensure that any impact on the character and setting of The Toll House is minimised.

13.25 Despite understandable concerns having been raised by the Conservation Officer, the fact remains that these considerations have previously been assessed through the allocation of the site. At this stage, given that the plans are indicative only, Officers are satisfied that the character and setting of the Listed dwellings at The Toll House, Vearse Farm, The Gatehouse and Providence Cottage can all be satisfactorily addressed and will not be adversely affected to an unacceptable degree as a result of the development. Any other impacts on Listed Buildings will be negligible. As such, the proposal accords with the provisions of Local Plan Policy ENV4 and the requirements of the NPPF.”

26. The obligation at section 66(1) of the Planning Listed Buildings Act applies to listed buildings such as the Toll House. Thus, the Council was required to have “special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”. It is common ground that this obligation is sufficiently discharged if the decision is taken consistently with the requirements of Part 12 of NPPF 2012.
27. What Part 12 of NPPF 2012 required was an assessment of the extent of the harm and where, as in this case, the conclusion was that the harm will be “less than substantial”, the NPPF 2012 required the Council to weigh that harm against the benefits of the proposal. Paragraphs 13.22 – 13.25 of the Officer’s Report do not evidence such an approach. Although paragraph 13.23 starts with the “concerns” of the Conservation Officers being noted, the two paragraphs that follow do not grapple with the required balancing exercise. First, (at paragraph 13.24) the Report floats the idea that in some respects the proposed development might improve the setting of the Toll House; next (at the end of paragraph 13.24 and in paragraph 13.25) the Report turns to whether steps could or might be taken when reserved matters are decided to mitigate any adverse impact, resulting in a conclusion that “... the character and setting of ... the Toll House... can ...be satisfactorily addressed and will not be adversely affected to an unacceptable degree as a result of the development”. This suggests a sort of wait and see approach focussed on whether, when all the details of the Vearse Farm Development are settled, harm to the Toll House or its setting can either be mitigated or avoided altogether. While there could be no objection at all to a planning authority wishing to take reasonable steps to avoid new development adversely affecting listed buildings, that is not the approach set out in NPPF 2012. Instead of ruling out new development that might adversely affect designated heritage assets, or requiring permission for any new development to be given only where possible steps have been taken to mitigate any possible harm, the approach required is an assessment of the harm that might be caused by the proposed development, and evaluation of that against the public benefits of the proposal. This approach is not clearly set out in paragraphs 13.22 – 13.25 of the Officer’s Report.
28. The position is not saved by the final sentence of paragraph 13.25; the bland statement that “the proposal accords with the provisions of local plan policy ENV4 and the requirements of the NPPF”. The Council submitted that this statement should be taken as a good enough indication that the approach specified by the NPPF had been at the forefront of consideration. In my view the optimism of that submission is not realistic.

The suggestion is that the defect in a narrative that proceeds somewhat at a tangent is cured by a simple statement that what is proposed is consistent with the NPPF. It is just as, if not more likely, that any councillor reading this Report would assume it was the reasons in the preceding paragraphs that explained why the proposal was consistent with the policies set out in the NPPF.

29. Both the Council and Hallam pointed out that the preceding part of the Report, on Vearse Farm (paragraphs 13.13 to 13.21) correctly considered the approach specified in Part 12 of NPPF 2012. However, I do not consider that this is to the point. Correct application of the NPPF in respect of Vearse Farm does not provide the Council with immunity from criticism in respect of its approach to the Toll House. It is neither unreasonable, nor an exercise in nit-picking to expect a planning authority to be able to show it has correctly understood and applied policies in the NPPF as they apply to all parts of a proposed development. For these reasons Advearse's case on the second part of ground one also succeeds.

(2) Ground 1. Section 31 (2A) of the Senior Courts Act 1981

30. By section 31(2A) of the Senior Courts Act 1981 ("the 1981 Act") a court must refuse to grant relief on an application for judicial review "... if it appears ... to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred". In this case "the conduct complained of" is the errors in the part of the Officer's Report which deals with the Bridport Conservation Area and the Toll House.
31. I am satisfied that it is highly likely that, absent the failure in each part of the Officer's Report to spell out the requirements in Part 12 of the NPPF and the way in which those requirements were met in the circumstances of this case, the councillors would have reached the same conclusion on the application for planning permission for the Vearse Farm Development. The public benefits of the Vearse Farm Development are clearly apparent from the Inspector's Report on the Local Plan. That explains the reason why it is necessary to allocate the land at Vearse Farm as available for house building. The material parts of the Inspector's Report are set out at paragraph 10.3 of the Officer's Report. Both for the Conservation Area and the Toll House the impact was assessed as falling into the less than substantial bracket. In this case, the information relevant to the proper application of Part 12 of the NPPF is contained in the Officer's Report. There is no need for additional material to be obtained. If that information is applied to the policy set out in Part 12 of the NPPF, there can be only one realist outcome, namely a conclusion that the public benefits of the proposed development do outweigh the level of harm likely to occur either to the Conservation Area or the Toll House. In these circumstances, section 31(2A) of the 1981 Act applies in respect of both parts of Ground One. Although Advearse succeeds on this part of its claim I do not grant any relief in respect of it.

(3) Ground 2: Failure to take account of the amendment to the NPPF

32. The focus of this ground of challenge is the difference between paragraphs 115 and 116 of NPPF 2012, and paragraph 172 of NPPF 2019. The latter paragraph combines the content of the two earlier paragraphs with the addition of a new sentence ("the new words") in between what had been the end of paragraph 115 of NPPF 2012 and the

beginning of paragraph 116. The wording of paragraph 172 NPPF 2019 is as follows; the new words are underlined.

“Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status in protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major developments for these designated areas except in exceptional circumstances and where it can be demonstrated that they are in the public interest. Consideration of such applications should include an assessment of:

- (a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- (b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- (c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”

33. There is no dispute that the Vearse Farm Development is a major development. As such it follows that it could only proceed consistent with the policy set out in the NPPF if there were “exceptional circumstances”, and it could be demonstrated that the development is in the public interest, and taking account of the three criteria ((a) – (c)) at the end of what is now paragraph 172 of NPPF 2019.
34. Advearse submits that the new words place a further restriction on major development in the designated areas; that the scale and extent of any such development must also be limited. Advearse relies on the consultation document published by the Secretary of State in March 2018 that first set out the new words in what was at that stage, paragraph 170 in Part 15 of a new draft NPPF. The material part of the narrative in that consultation document said this

“This chapter has been updated to align with the 25-year Environmental Plan. It includes additional policy on strengthening existing networks of habitats (paragraph 169) and taking air quality fully into account (paragraph 180), clarifies that development within National Parks and Areas of Outstanding Natural Beauty should be limited (paragraph 170); and also clarifies the implications for policy on areas defined as Heritage Coast (paragraph 171)”.

35. I do not accept Advearse’s submission that the new words amount to any material change of policy relevant to the Council’s decision on the application for planning permission for the Vearse Farm Development. Paragraph 172 of NPPF 2019, like its predecessor paragraph 116 of NPPF 2012 treats major development as a discrete class of development. In NPPF 2019, Footnote 55 to paragraph 172 states that it is for the decision-maker to decide whether or not an application before it is an application for major development “*taking account of its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area had been designated or defined.*” That explanation was not on the face of NPPF 2012 but it is no more than a natural explanation of the application of what was then paragraph 116 of NPPF 2012. Since “major development” was not a defined term what amounted to major development could only have been a matter of assessment for the decision-maker. Even without the new words it was clear from NPPF 2012 that major development would be “exceptional”. Further, it was clear from sub-paragraphs (a) – (c), which set out mandatory considerations, that no permission should be given for major development save to the extent the development was needed in the public interest, met a need that could not be addressed elsewhere or in some other way, and met that need in a way that to the extent possible, moderated detrimental effect on the environment, the landscape, and recreational opportunities. Those mandatory considerations, of themselves, embodied (and in paragraph 172 of NPPF 2019 continue to embody) a principle of limited development.
36. Reading paragraph 172 of NPPF 2019 as a whole, it is clear that the new words are not directed to the class of major development. Rather, those words are directed to development outside that class, and apply to such development the same principle of limited development that already applied to major development. Hence the description in the consultation document of the new words as “clarifying” what was already implicit in paragraph 115 and 116 of NPPF 2012.
37. In its submissions Advearse referred me to the judgment of Holgate J in *Monkhill Ltd v Secretary of State for Housing Communities and Local Government* [2019] EWHC 1993 (Admin) and in particular paragraphs 8, 9 and 51 of that judgment. However, I can see nothing in that judgment which is at odds with anything I have said above. If the present paragraph 172 NPPF 2019 were notionally divided into two parts to reflect the previous division between paragraphs 115 and 116 NPPF 2012, the function performed by the new words is only to make clear that a principle of limited development applies to developments regardless of whether the development is or is not classed as major development.
38. The consequence in this case is that Advearse’s second ground of challenge fails. I do not consider that the words added into paragraph 172 NPPF 2019 when compared to the previous paragraphs 115 and 116 of NPPF 2012 identified any material change of policy within the NPPF that affected the Vearse Farm Development. At the Committee meeting on 2 November 2017 the Officer’s Report approached the decision on the premise that the proposed development of Vearse Farm amounted to major development for the purposes of what was then paragraph 116 of NPPF 2012. I accept that this was also the basis on which the Planning Committee reached its decision at its meeting. Therefore, there was no need as at 2 May 2019 when the planning permission was granted, for the Council to revisit the decision the Planning Committee had taken on 2 November 2017 because of any change in the NPPF.

(4) Ground 3: Failure to apply the major development policy (paragraph 116 NPPF 2012; paragraph 172 NPPF 2019)

39. Advearse contends that the Officer's Report does not include assessment of the matters specified in sub-paragraphs (a) – (b) at the end of 172 of NPPF 2019 (previously listed in bullet points at the end of paragraph 116 of NPPF 2012). Advearse further contends that when the Officer's Report addressed sub-paragraph (c), it misrepresented representations made by the Dorset AONB Team. (The Dorset AONB Team is part of the Dorset AONB Partnership which comprises groups representing local and environmental interests, local landowners, businesses, and local and central government.)
40. I do not accept that Advearse's submissions on this ground of challenge. Sub-paragraph (a) is "*the need for the development, including in terms of any national considerations, and the impact of permitting it or refusing it upon the local economy*". These matters are addressed in the Officer's Report. At paragraph 10.3 of the Report, the material parts of the Inspector's Report on the Local Plan are summarised. Whether there was a need for the land at Vearse Farm to be allocated for housing development had been one of the focal points of the examination undertaken by the Inspector. In his Report he concluded that given the need to provide homes and to adhere to sustainable development principles it was inevitable that some areas in the AONB would be need to be allocated for development. He went on to state his agreement that the "delivery" of Vearse Farm as a site for development was a crucial element in the Council's housing land supply calculation. Thus, the need for development of the Vearse Farm site in order to comply with the housing land supply policy contained in the NPPF had been considered and determined by the Inspector. This was recognised in the Officer's Report. The Inspector's Report had been finalised on 14 August 2015, following examination hearings in November and December 2014. There was no suggestion in the evidence before me that there had been any material change of circumstances between then and either November 2017 when the Planning Committee took its decision or May 2019 when planning permission was granted.
41. Sub-paragraph (b) is "*the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way*". These matters too were the subject of conclusions reached by the Inspector. He had concluded that some allocation within the AONB area was inevitable. His report also considered the specific allocation at the Vearse Farm site, and concluded that that allocation was justified. Earlier in his report at (paragraph 28) the Inspector also accepted that in the course of preparation of the draft Local Plan, reasonable alternatives had been considered. The Council was entitled to rely on that assessment when considering the application for planning permission for the Vearse Farm development.
42. Sub-paragraph (c) is assessment of "*any detrimental effect on the environment, the landscape and recreational activities, and the extent to which that could be moderated*". In this regard Advearse submits that paragraphs 5.6.1 to 5.6.3 of the Officer's Report failed properly to explain the matters set out in the report to the Council of the Dorset AONB Team.
43. The response of the Dorset AONB Team to the proposed development began as follows:

“Thank you for consulting the Dorset AONB Team regarding the latest outline application at for an urban extension at Vearse Farm. I have now been involved in discussion regarding the development of an appropriate masterplan for some years, during which time there have been a number amendments to the proposals. Although these changes have largely served to improve the design there are some matters that I consider could be improved further. As you will appreciate a development of this scale and this location will produce a range of adverse effects that conflict with the primary purpose of the designation, this being the conservation and enhancement of the Area’s natural beauty. Recognising that, through the examination of your Local Plan, the principle of the development has been considered to meet some key elements of the exceptional circumstances test contained within section 116 of the National Planning Policy Framework, the AONB Team has subsequently focused on discussion regarding moderation of the landscape and visual effects that will inevitably arise from the Vearse Farm development.” (sic) (emphasis added)

The AONB Team’s response then set out the Team’s substantive points.

44. In the Officer’s Report this opening part of the AONB Team’s response was reported in this way:

“5.6.1 The Dorset AONB Team has been involved in discussion regarding the development of an appropriate masterplan for some years, during which time there have been a number amendments to the proposals. Although these changes have largely served to improve the design, there are some matters that it considers could be improved further.

5.6.2 Recognising that, through the examination of the Local Plan, the principle of the development has been considered to meet some key elements of the exceptional circumstances test, contained within section 116 of the National Planning Policy

5.6.3 Framework, the AONB Team has subsequently focussed on discussion regarding the moderation of the landscape and visual effects that will inevitably arise from the Vearse Farm development.” (sic)

The words emphasised in the passage quoted at paragraph 43 above were omitted from the Officer’s Report.

45. I can see no explanation for that omission beyond sloppiness on the part of the authors of the Report. However, nor can I see how the omission of the emphasised words is

material. The Officer's Report did set out the substantive matters raised by the AONB Team: see at paragraphs 5.6.4 to 5.6.11 of the Officer's Report. The omission of the emphasised words makes what is said at paragraphs 5.6.1 to 5.6.3 of the Report more difficult to understand, but it does not either detract from or result in any misrepresentation of the views of the AONB Team, as set out in the paragraphs of the Report that follow. In the context of the decision under consideration by the Council, whether or not to grant outline planning permission, consideration of the matters explained at paragraphs 5.6.4 to 5.6.11 of the Officer's Report was sufficient. For these reasons Ground Three of Advearse's challenge fails.

46. Before leaving this ground of challenge there is one further point to make. Consideration and application of a policy such as the one stated at (what is now) paragraph 172 of NPPF 2019 will not always be a one-off event. The expectation is that policies in the NPPF will be considered at successive stages: for example, not only at the time a Local Plan is formulated, but also when subsequent decisions are taken on applications for planning permission. As the decisions in issue become more specific, the information relevant to the application of any particular policy is likely to change. In this case, for example, Advearse contended that when it came to sub-paragraphs (a) and (b) of paragraph 172 it was not good enough for the Council simply to rely on conclusions already reached by the Inspector. I did not agree with that specific argument because so far as concerns need for the development and the possibility of alternatives, there was nothing to suggest that when the Council came to consider its decision on the application for outline planning permission it was in public law terms unreasonable for it to continue to rely on the conclusions reached by the Inspector. Realistically, on those matters, events had not moved on. Nevertheless, the principle that policies in the NPPF will often need to be applied progressively as a proposed development makes its way through different stages of the planning process, plainly does hold good. In this case, and in the context of sub-paragraph (c) at paragraph 172, the Officer's Report expressly recognises (at paragraph 12.1) that this matter will require detailed further consideration at the stage when decisions are taken on the reserved matters. This same point is illustrated by the decision of the Inspector to require amendment to the text that supports policy BRID1 in the Local Plan (see above at paragraph 14). Thus, while for the purposes of the decision on outline planning permission it was sufficient for the Council to consider the matters set out in the AONB Team report, when the reserved matters are considered the requirement to consider how detrimental effects might be moderated will fall to be looked at with a different level of detail, and in much more specific terms. That, however, is a matter for the future.

C. Disposal

47. For the reasons set out above: (a) Ground One of the challenge succeeds, although by reason of section 31(2A) of the 1981 Act I grant no relief in respect of it; and (b) Grounds Two and Three of the challenge fail.