

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT IN WALES**

The Mansion House,
Severn Street,
Welshpool,
Powys.

12/06/2014

B e f o r e :

MR JUSTICE HICKINBOTTOM

Between:

**THE WORLD SOCIETY FOR THE
PROTECTION OF ANIMALS**

Claimant

- and -

**(1) THE WELSH MINISTERS
(2) POWYS COUNTY COUNCIL
(3) FRASER JONES**

Defendants

**Meyric Lewis (instructed by Bates Wells & Braithwaite London LLP) for the Claimant
Gwion Lewis (instructed by the Treasury Solicitor) for the First Defendants
The Second Defendant was not represented and did not appear
Niall Blackie (Solicitor Advocate, FBC Manby Bowdler LLP) for the Third Defendant
Hearing date: 5 June 2014**

Mr Justice Hickinbottom :

Introduction

1. This claim concerns a proposed development in the form of a substantial extension to an existing dairy unit at Lower Leighton Farm, Leighton, Welshpool. The proposal involves the erection of 16,000 square metres of new built floor space in five buildings, a rain water storage unit and two slurry storage units, together with the re-modelling of land form involving the excavation of some 83,000 cubic metres of spoil to provide platforms for the buildings and

screening embankments. It is proposed that a herd of 1,000 dairy cows will be housed in the buildings for nine months of the year.

2. The proposed development is located in the open countryside of the Severn Valley, in a landscape assessed by the Council as of “high sensitive value”, where it would be visible from the Offa’s Dyke Path (a Scheduled Ancient Monument of national importance, 273m away at its nearest point) and within the settings of the Grade I listed Powis Castle (about 2.3km away), its separately Grade I listed stepped terraces and the Grade II* listed Holy Trinity Church on the neighbouring Leighton Estate (350m away), all heritage assets accorded statutory protection under the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”). Grade I listed buildings are, of course, the most prized, comprising only 1-2% of the listed buildings in Wales. Both the gardens at Powis Castle as a whole, and the Leighton Hall Estate, are also on the Grade I Register of Landscapes, Parks and Gardens of Special Historic Interest in Wales.
3. The application for planning permission was made by the owner of the dairy, the Third Defendant (“Mr Jones”) to the Second Defendant (“the Council”) on 8 February 2011. The Council’s Planning Officer recommended refusal; but the Council’s Planning Committee was originally minded to approve the proposal, subject to the resolution of a number of outstanding matters.
4. However, on 24 January 2012, the application was called in for determination by the Minister for Environment, Sustainability and Housing, one of the Welsh Ministers (the First Defendants), by a direction under section 77 of the Town and Country Planning Act 1990 (“the 1990 Act”). The Minister was concerned that there was insufficient information to show that all the relevant policy considerations had been fully addressed by the Council, particularly as the application appeared to conflict with national planning policies relating to pollution control and the conservation of the historic environment, and it raised issues of more than local importance.
5. The constitution of the Council subsequently changed, and the proposal was then reconsidered by the new Regulatory Committee in October 2012. This committee decided that, had it been in a position to determine the application, it would have refused it on grounds of significant detrimental impacts to the character and appearance of the landscape setting, the setting of the heritage assets to which I have referred, and highway safety. Subsequently, however, the highway safety issue was resolved, and the Council withdrew its highway objection.
6. The Minister appointed Ms Katie Peerless Dip Arch RIBA (“the Inspector”) who held a public inquiry between 5 and 15 March 2013 and, in addition to informal visits, formally visited the site twice.
7. In the inquiry, the Inspector identified the main issues with which she had to deal, as follows (Inspector’s Report, paragraph 351):

“[T]he effect of the proposed development on the local environment with particular reference to:

 - (i) the character and appearance of the surrounding landscape
 - (ii) the settings of the heritage assets at Powis Castle and Gardens, the listed buildings and registered park and garden of the Leighton Hall Estate and the scheduled ancient monument of Offa’s Dyke
 - (iii) slurry spreading and disposal of waste water
 - (iv) the amenities of nearby residents in terms of odour, noise and the need for pest control

- (v) the health of local residents, including children at the primary school
- (vi) animal welfare
- (vii) human rights.”

In addition, she recognised that there were advantages to the proposal that weighed in favour of granting the application, in terms of new jobs, the financial investment, benefits for the wider dairy industry in Wales, and reduction of cattle movements (see, e.g., paragraphs 443-6).

8. The Claimant is an international animal welfare organisation active in over 150 countries worldwide, and has consultative status at both the United Nations and the Council of Europe. It was concerned about the impact of the proposal on the welfare of the dairy cows due to be housed within the new buildings, and consequently it applied to be represented before the Inspector as a Rule 6(6) party, i.e. on the same footing as the main parties. It supported the Council on other grounds for refusal, notably the harm the development would cause to the heritage sites and their setting, but the Claimant’s own grounds of objection were based on animal welfare and risk to human health.
9. The Inspector recommended refusal of the proposal. She found that concerns relating to animal welfare, noise and health risks could satisfactorily be dealt with by conditions (paragraphs 383 and following). However, the harm to the setting of the heritage assets was to be accorded “special weight” (paragraph 449); and, in this case, that harm would be significant and therefore carried “great weight” (paragraph 450). The harm to those settings and the landscape quality of the surroundings would need to be clearly outweighed by other material considerations (paragraph 442). There were “clear economic benefits associated with the proposal, not only for the applicant but for the wider dairy industry in Wales”, namely (i) the creation of employment, both permanently on the farm and temporarily during the construction phase, (ii) seven-figure financial investment and (iii) increased milk yield (paragraphs 443-6); but those benefits were not enough to outweigh the “considerable harm” to the landscape and heritage asset setting (paragraph 451). Therefore, on balance, the proposed development would be unacceptably harmful to the setting of the heritage assets and to the character and appearance of its surroundings, and contrary to the development plan and national policies that regulate such development (paragraph 454).
10. However, in his decision letter of 30 October 2013, the Minister declined to follow the Inspector’s recommendation. He accepted that she had properly identified the main considerations (paragraph 4); and he agreed with the Inspector’s conclusions in terms of slurry spreading and disposal of waste water, odour, noise, the need for pest control, health issues, animal welfare, human rights, impact on the school and village life, highways issues and alternative sites (paragraph 7). He also agreed with her analysis and conclusions with regard to the harm the proposed development would cause in respect of the landscape and heritage assets, saying (again, paragraph 7):

“I also agree with the Inspector that, in respect of the landscape and heritage issues, and having particular regard to the need to accord considerable importance and weight to the desirability of preserving the setting of listed buildings when carrying out any balancing exercise, the proposed development would cause considerable harm.”

11. But, he continued:

“I do not agree with the Inspector, however, as to the weight she has attached to the economic issues arising from this application and the bearing they have on the determination of this application.”

He elaborated as follows:

- “8. The proposed development would accord with the requirement in Planning Policy Wales (November 2012) paragraph 7.1.3 to support economic growth and the guidance in paragraph 7.2.2 of Planning Policy Wales has to be taken into consideration:-

“Local planning authorities are required to ensure that the economic benefits associated with a proposed development are understood and that these are given equal consideration with social and environmental issues on the decision-making process, and should recognise that there will be occasions when the economic benefits will outweigh social and environmental considerations.”

In taking this guidance into account I agree with the Inspector’s comments at IR 448 that it does not override the statutory duty to have particular regard to the protection of listed buildings and their settings.

9. The proposed development would create new jobs, on the farm (permanently) and during the construction phase. When the scheme is fully operational the applicant will employ 10 herdsmen, a manager and a secretary as well as sub-contracting regularly to a veterinary surgeon (who might possibly be taken on as a full time employee), a foot trimmer and a pest control operative. At present the applicant employs 3 herdsmen, a manager and a part-time secretary. The Inspector did not consider that great weight could be attached to this increase in jobs but, in my view, comparing the number of jobs to be provided locally against the number of jobs in the dairy industry as a whole does not provide for a realistic assessment of the benefits that would arise from the creation of those jobs. Similarly, comparing the milk yield from the proposed development with that produced nationally does not provide for a realistic assessment of the benefits that would arise from the increased production at the site. In my view the weight to be attached to the benefits arising from increased jobs and milk yield should be far more substantial than that afforded to them by the Inspector. As to the Inspector’s reference to the confirmation by the applicant that he would not be reducing the price of his milk if the proposed development went ahead, I do not consider it carries any weight in the determination of this application.
10. The Inspector acknowledges that the financial investment in the proposed development would run into 7 figures and concludes that this must be of some importance. In my opinion an investment of this size, and the confidence it infers from the business perspective, is of more than ‘some importance’ and something to which great weight should be attached. The Inspector also acknowledges that the proposed development would result in an improvement in the existing farm operation and have benefits in terms of reducing cattle movements across the road, upgrading the current slurry storage and manure spreading systems and reducing the traffic accessing the farm.
11. As I have indicated above, and after having particular regard to the need to accord considerable importance and weight to the desirability of preserving the setting of listed buildings when carrying out any balancing exercise, I acknowledge the adverse effect that the proposed development would have on the landscape and the various heritage assets. In the light of my comments above, however, I disagree with the weight the Inspector has attached to the economic benefits arising from the proposed development and consider that they, together with the other benefits identified, are such, in this case, as to override the objections to it in relation to the landscape and heritage assets. The Inspector concluded that the perceptions of local residents in terms of their anxiety about health risks and concerns about the impact on the quality of village life are also matters that, although not determinative, add to the objections to the proposal. I acknowledge those concerns but do not consider that they affect my conclusions.

12. For these reasons I consider that, in this case, the economic benefits of the proposed development outweigh the social and environmental objections and, as such, I propose to allow the application and grant planning permission for the proposed development...".
12. In this application under section 288 of the 1990 Act, the Claimant seeks to quash that decision.
13. At the hearing, Mr Meyric Lewis appeared for the Claimant, Mr Gwion Lewis for the Welsh Ministers and Mr Niall Blackie for Mr Jones. I thank them at the outset for their helpful and focused submissions.

The Legal Background

14. The relevant law is well-established and uncontroversial, as follows.
15. A planning decision-maker must, as a matter of law, take into account all material considerations (section 70 of the 1990 Act), including national and local planning policy included in the development plan (*E C Gransden & Co Limited v Secretary of State for the Environment* [1986] JPL 519 at page 521).
16. A decision-maker must interpret policy properly. The true interpretation of such policy is a matter of law for the court (*Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13).
17. The development plan is not merely a material consideration, because section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") provides that:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

In other words, there is a presumption that any decision on an application for planning permission will be taken in accordance with the development plan, but that presumption can be rebutted by "other material considerations".
18. Whilst he must take into account all material considerations, the weight to be given to such considerations is a matter of planning judgement for the decision-maker, who is generally entitled to give a material consideration whatever weight, if any, he considers appropriate (see, e.g., *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 at page 780F-G, and *Newsmith v Secretary of State for the Environment, Transport and Regions* [2001] EWHC 74 (Admin)). That general proposition is, however, subject to two qualifications.
19. First, a decision-maker may be required to give particular priority or weight to certain material considerations. That requirement may derive from policy (e.g. paragraph 115 of the National Planning Policy Framework requires that "great weight" should be given to conserving landscape and scenic beauty in Areas of National Beauty in England). Such guidance as to weight is itself a material consideration to be treated as any other policy guidance, e.g. the decision-maker can depart from that guidance if there is good reason for doing so (*R (Mevagissey Parish Council) v Cornwall Council* [2013] EWHC 3684 (Admin) at [41(vii)]). Or the requirement may derive from statute, in which case the decision-maker is bound to treat the particular material consideration in the manner required by Parliament (e.g. section 38(6) of the 2004 Act quoted at paragraph 16 above; and see *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447 at page 1459D-H per Lord Clyde).
20. Section 66(1) of the Listed Buildings Act is such a statutory provision. It provides:

“In considering whether to grant planning permission 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.”

21. In respect of that provision, the following are worthy of note:

- i) Local government was substantially devolved to Wales by the Government of Wales Act 1998. For Wales, rather than the Secretary of State, the relevant national authority was the National Assembly, until the relevant powers were transferred to the Welsh Ministers by the Government of Wales Act 2006.
- ii) “Preserving” here means simply doing no harm (*South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141 at page 150).
- iii) Paying “special regard” requires the decision-maker to attach “considerable importance and weight” to harm to the setting of a listed building that he or she finds will result from the proposed development (*Bath Society v Secretary of State for the Environment* [1991] 1 WLR 1303 at 1318F-H per Glidewell LJ; and *Barnwell Manor Wind Farm Energy Limited v East Northamptonshire District Council* [2014] EWCA Civ 137 at [22] per Sullivan LJ). There is thus a “strong presumption” against planning permission for such development, which requires “strong countervailing reasons” for grant (*South Lakeland* at page 146E-G, *Garner v Elmbridge Borough Council* [2011] EWCA Civ 891 at [7]). For there to be a grant of permission, there must be considerations of such weight as to override the special status given by Parliament to the preservation of listed buildings and their setting.

22. The second qualification to the proposition that the weight to be given to such considerations is a matter of planning judgement for the decision-maker, is that neither weight given to a particular consideration nor the ultimate decision must be irrational in the sense of *Wednesbury* unreasonable. In *Newsmith* (a case concerning a challenge to a planning inspector’s decision), Sullivan J (as he then was) said (at [6]-[8]):

- “6. An application under section 288 is not an opportunity for a review of the planning merits of an Inspector’s decision. An allegation that an Inspector’s conclusion on the planning merits is *Wednesbury* perverse is, in principle, within the scope of a challenge under section 288, but the court must be astute to ensure that such challenges are not used as a cloak for what is, in truth, a rerun of the arguments on the planning merits.
7. In any case, where an expert tribunal is the fact finding body the threshold of *Wednesbury* unreasonableness is a difficult obstacle for an applicant to surmount. That difficulty is greatly increased in most planning cases because the Inspector is not simply deciding questions of fact, he or she is reaching a series of planning judgements. For example: is a building in keeping with its surroundings? Could its impact on the landscape be sufficiently ameliorated by landscaping? Is the site sufficiently accessible by public transport? et cetera. Since a significant element of judgement is involved there will usually be scope for a fairly broad range of possible views, none of which can be categorised as unreasonable.
8. Moreover, the Inspector’s conclusions will invariably be based not merely upon the evidence heard at an enquiry or an informal hearing, or contained in written representations but, and this will often be of crucial importance, upon the impressions received on the site inspection. Against this background an applicant alleging an Inspector has reached a *Wednesbury* unreasonable conclusion on matters of planning judgement, faces a particularly daunting task...”

23. A planning decision letter cannot be subjected to the exegesis that might be appropriate for a statute or a deed. It must be read as a whole and in a practical and common sense way, in the knowledge that it is addressed to the parties who will be well aware of the issues and the arguments deployed at the inspector's inquiry, so that it is not necessary to rehearse every argument but only the principal controversial issues. Reasons for a decision must be sufficient to enable a party to understand why the matter was decided as it was and how the principal important controversial issues, of fact or law, have been resolved (*Seddon Properties v Secretary of State for the Environment* (1981) 42 P&CR 26 at page 28 per Forbes J; *South Somerset District Council* [1993] 1 PLR 80 at page 83 per Hoffman LJ; and *South Bucks District Council v Porter (No 2)* [2004] UKHL 33 at [36] per Lord Brown).
24. Although a claim under section 288 is in the form of a statutory application to quash, it is determined on traditional judicial review grounds.

The Relevant Policies

25. The relevant national policy at the time of the decision was found in Planning Policy Wales (5th Edition) (2012) ("PPW"). Chapter 6 covers "Conserving the Historic Environment". Reflecting section 66 of the Listed Buildings Act, paragraphs 6.5.8-6.5.9 state:

"6.5.8 There should be a general presumption in favour of the preservation of listed buildings...

6.5.9 Where a development proposal affects a listed building or its setting, the primary material consideration is the statutory requirement 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."
26. The relevant local development plan document was the Powys Unitary Plan adopted in March 2010 ("the UDP").
27. Policies specific to the environment are dealt with in Section 4. Policy ENV2 requires account to be taken of the "high quality of the landscape throughout Powys", and requires proposed development to be "appropriate and sensitive to the character and surrounding landscape". Policy ENV14 states:

"Proposals for development unacceptably adversely affecting a listed building or its setting will be refused. In considering proposals for development affecting a listed building and its setting, account will be taken of the following:

 1. The desirability of preserving the listed building and its setting.
 2. The importance of the building, its intrinsic architectural and historic interest and rarity.
 3. The effect of the proposals on any particular features of the building which justified its listing.
 4. The building's contribution to the local scene and its role as part of an architectural composition.

Policy ENV16 provides that development proposals which unacceptably adversely affect the character or appearance of historic parks and gardens and their setting will be opposed; and Policy ENV17 provides that development which unacceptably affects the site of setting of a scheduled ancient monument will not be permitted. Consistent with these policies, Policy EC9 requires agricultural development not to "cause any unacceptable adverse effects on Powys's landscape"; and Policy EC10 (which applies to "large scale proposals for intensive livestock

units”) requires compliance with relevant criteria in Policy EC1, which themselves include the requirement that the proposal would “not have an unacceptable impact on the environment and would be sited and designed to be sympathetic to the character and appearance of its surroundings”.

28. Chapter 7 of PPW covers “Economic Development”. Paragraph 7.1.3. states that “the planning system should support economic and employment growth alongside social and environmental considerations within the context of sustainable development”; and paragraph 7.2.2 (quoted in paragraph 8 of the decision letter, recited in paragraph 11 above) requires local planning authorities to ensure that:

“... economic benefits... are given equal consideration with social and environmental issues in the decision-making process, and should recognise that there will be occasions when the economic benefits will outweigh social and environmental considerations”.

29. In addition, the Minister’s Strategic Action Plan for the Welsh Dairy Industry (November 2007), whilst not a planning policy as such, sets out policy on land use issues and was thus a material consideration. This is supportive of development of the means of milk production, and provides a vision of a “sustainable, profitable, efficient and innovative Welsh dairy sector which benefits the people of Wales”.

The Grounds of Challenge

30. Mr Meyric Lewis for the Claimant relied upon four grounds of challenge, namely:

Ground 1: The Minister failed to take into account several material considerations, notably the uncertainty as to the amount and nature of the jobs that would be generated by the development.

Ground 2: The Minister misunderstood and/or misapplied the requirements of section 66(1) of the Listed Buildings Act.

Ground 3: The Minister’s decision was irrational: he could not rationally have concluded that the economic benefits of the proposed development outweighed the harm that the development would cause to the listed buildings and their settings.

Ground 4: The Minister failed to give adequate reasons.

I will deal with these in turn.

Ground 1: Failure to take Material Considerations into Account

31. Mr Meyric Lewis’s primary submission under this ground was that the Minister failed properly to take into account the uncertainties as to the number of new permanent jobs that would be created, and the fact that the jobs were likely to be low paid and taken by migrant labour.
32. The planning application indicated that the farm had three existing employees, and the number of proposed employees was seven, i.e. a net increase of four. However, in Mr Jones’ rebuttal evidence with regard to the economic benefits of the proposal, he said that the current position was three full-time herdsman, a full-time manager and a part-time secretary. Relying on evidence that suggested that one herdsman per 100 cattle was reasonable, he gave a post-development projection of ten herdsman, a manager, and a secretary all full-time, together with regular subcontractors for veterinary surgeon, foot trimmer and pest controller. Those figures were related by the Inspector in her Report (paragraph 443), which was itself recited in the Minister’s decision-letter (paragraph 6).

33. Mr Meyric Lewis submitted that the Minister failed to take into account that these figures – which the Minister took as firm (“... the applicant will employ 10 herdsmen, a manager and a secretary as well as subcontracting regularly to a veterinary surgeon (who might be taken on as a full-time employee), a foot trimmer and a pest control operative...”: paragraph 9 of the decision-letter) – were in fact merely uncertain projections. The jobs were not secured by any planning permission requirement. Mr Jones, of course, would wish to employ as few people as he could, to maximise his profits – and the whole purpose of the scale of the project was to obtain the benefits of a large scale enterprise so far as employees are concerned.
34. However, as Mr Meyric Lewis accepted, employment figures for a proposed development can be no more than projections. Although the Inspector made no firm finding of fact as the number of new permanent jobs that would be created by the development, she did not suggest that the evidence as to new jobs was less than credible, and appears to have worked on the basis that there would be 8-9 new jobs (Inspector’s Report, paragraph 446). It was open to the Minister to work on the basis that Mr Jones’ projections were credible, and indeed reliable. There was clear evidence upon which he could do so. It is also noteworthy that the economic benefits of the development were not restricted to increased employment. There is nothing in this criticism.
35. Second, Mr Meyric Lewis submitted that the Minister failed to take into account that it was likely that the new employees would not be local people, but migrant labour. The Claimant’s expert at the inquiry (Professor John Ikerd, Emeritus Professor of Agricultural and Applied Economics, University of Missouri) said that lower-skilled jobs in such enterprises are often low paid, and therefore they are often taken, not by local agricultural workers, but by migrant labourers who are willing to work at low rates of pay.
36. However, I do not see any force in this submission either. The Minister did not arguably err in law. He gave weight to the fact that the development would create jobs in the local area (not jobs for workers who now lived in that area), which he was entitled to do. In line with the general obligation of freedom of movement of workers under EU law, paragraph 7.1.3 of PPW (quoted at paragraph 28 above) required development to “support economic and employment growth”, without restricting the jobs created to local people.
37. Although he did not press them at the hearing, Mr Meyric Lewis relied upon four other material considerations in his written submissions, which he contended had also not been taken into account by the Minister. I can deal with them shortly.
- i) He submitted that the Minister failed to take into account the fact that the construction jobs would only be temporary. There is nothing in this point: it is necessarily and obviously implicit in the nature of construction jobs that they are temporary. There was no need for the Minister to spell that out expressly.
 - ii) The Minister failed to take into account that the main beneficiary of the development would be Mr Jones, and not the wider Welsh dairy industry. Again, this was obvious. It is usual for the applicant for planning permission to be the main potential benefactor of a grant. That does not diminish the public benefit from development, such as it might be.
 - iii) The Minister failed to take into account the fact that the development would not result in any reduction in the price of milk charged by Mr Jones. However, Mr Jones did not rely on a cheaper price for his milk in support of his application. The Minister did take into account the public benefits of the development as he saw them to be. He was under no duty to take into account the absence of public benefits not relied upon.
 - iv) The Minister failed to take into account the knock-on consequences of the development, e.g. that the fall in tourism as a result of the development potentially rendered the local school less attractive and possibly not viable with potential loss of jobs etc. Leaving

aside the point made by Mr Gwion Lewis that there was no evidence of a potential fall in tourism as a result of the development – nor, as I understand it, was it suggested at the inquiry that that the development would reduce tourism – the Minister did take into account the adverse impact on the quality of village life (see paragraph 11 of the decision letter). Although he referred to the issue in general terms, he expressly referred to the Inspector’s conclusion on local residents’ concerns about the impact on village life, which included the impact on the school (which the Inspector considered too speculative to be accorded any more than minimal weight).

38. For those reasons, this ground – in all its aspects – fails.

Ground 2: Section 66(1) of the Listed Buildings Act

39. Section 66(1) is quoted above (paragraph 20). It requires a planning decision-maker to have “special regard” to the desirability of preserving a listed building and its setting. Mr Meyric Lewis submitted that, like the decision-maker in *Barnwell Manor*, the Minister did not do so.
40. However, this case is very different from *Barnwell Manor*. In that case, although the decision-maker (the inspector) set out the statutory duty, he never acknowledged the need, if he found that there would be harm to the setting of the listed buildings affected, to give considerable weight to the desirability of preserving the setting of those buildings. That was a fatal flaw (see *Barnwell Manor* at [29]). In this case, the Minister clearly had the right statutory test in mind: he quoted paragraph 448 of the Inspector’s Report in which she referred to the “special weight” accorded to harm to listed buildings and their setting (paragraph 6); and, although Mr Meyric Lewis criticised his later use of the phrase “particular regard” (in paragraphs 7 and 11 of the decision letter), I do not see that there is any significant difference between the words “special” and “particular” in this context. Importantly, unlike the decision-maker in *Barnwell Manor*, the Minister here stated that he had had “particular regard to the need to accord considerable importance and weight to the desirability of preserving the setting of listed buildings when carrying out any balancing exercise” (paragraphs 7 and 11); but, even having given it that weight and status, he found that the (primarily economic) benefits he identified overrode those considerations (paragraph 11).
41. Mr Meyric Lewis’s submissions on this ground shaded into his wider and main ground that the Minister’s decision was *Wednesbury* irrational. I deal with that ground immediately below. However, in respect of the submission that the Minister misunderstood and hence misapplied section 66(1), there is in my judgement no basis for such an assertion. This ground consequently fails.

Ground 3: Wednesbury Irrationality

42. Mr Meyric Lewis was undaunted by the generally daunting task of challenging a planning decision on the grounds that, on the available material, no decision-maker could reasonably have come to the decision in fact made. He submitted that there was simply no basis upon which the Minister could properly have concluded that the economic and other identified benefits outweighed the harm to the listed buildings and their settings, given the considerable importance and weight that harm attracts in the balancing exercise.
43. The Inspector found that the “harmful impact” on the setting of the Powis Castle listed terraces would be “considerable” (paragraph 376); “the appreciation of the careful positioning of [Holy Trinity Church] would... be significantly diminished “ (paragraph 377); “the impact on the landscape setting [of the registered park and garden of the neighbouring Leighton Hall Estate]... would be adverse” (paragraph 380); and there would be “a detrimental, although limited, impact on the setting of Offa’s Dyke” (paragraph 382). The harm to the settings of the terraces of Powis Castle and Holy Trinity Church in particular would be “significant” and, as

such, a factor which “carries great weight”. She noted the benefits of the development in terms of economic benefits (notably additional jobs (paragraph 443-6), and financial investment (paragraph 444)) and operational benefits (notably less animal movements) (paragraph 445). However, she concluded that these benefits were insufficient to outweigh the considerable harm to the setting of the heritage assets at Powis Castle and the Leighton Hall Estate (paragraphs 451-4).

44. Mr Meyric Lewis submitted that the Minister erred in failing to address the correct issues, and particularly he failed to grapple with the specific harm to the setting of the Powis Castle terraces, unlike the Inspector who dealt with that issue comprehensively.
45. This submission has superficial attraction, because a planning decision-maker is required to consider all material considerations in the round and consequently, depending on the circumstances of a particular case, it might be arguable that, by failing to address and analyse fully one element, the balancing exercise as a whole is compromised.
46. But I do not consider that that is so in this case. The Minister’s approach is clear. He fully accepted the Inspector’s analysis and conclusions with regard to the harm the development caused to the historic sites and their settings. She concluded that the harm to the setting of the Powis Castle terraces and Holy Trinity Church was “considerable” (paragraph 451). The Minister, in terms, agreed: he said, in respect of the landscape and heritage issues, “The proposed development would [he said] cause considerable harm” (paragraph 7). When looked at fairly and as a whole, it is clear that the Minister agreed with the Inspector’s analysis which led to that conclusion, which he set out verbatim and at length in paragraph 6 of his decision letter. However, he disagreed with the weight the Inspector attached to the economic and operational benefits of the development which, he considered, outweighed that harm, even though that harm attracted considerable importance and weight.
47. Mr Gwion Lewis frankly accepted that this conclusion might be unpopular and even “deeply surprising”; but, he submitted, it was not legally irrational. I agree. The Minister’s approach cannot be faulted; and, having given the harm to the heritage assets and their settings the special status required by Parliament, it was open to him lawfully to conclude that the considerable harm caused to those assets and their settings was outweighed by the economic benefits of the development. This challenge is, in substance, a challenge to the merits of the Minister’s decision. However, no matter how fundamentally a party disagrees with a decision, an application to this court cannot cloak such a challenge.
48. Dealing with two of Mr Meyric Lewis’s discrete submissions:
 - i) He submitted that some of the benefits were uncertain and/or incalculable. That is so. I have already dealt with uncertainty as to the prospective new jobs. In addition, the Minister for example took into account the confidence in the Welsh dairy industry that would be generated by such an investment as this. That benefit is incapable of precise calculation; but the Minister was undoubtedly entitled to take it into account, and give it the weight he considered to be appropriate.
 - ii) Mr Meyric Lewis submitted that the Minister had not visited the site, as the Inspector had done. He even suggested that it was a prerequisite for a decision-maker to visit the site, before making a decision as to the planning balance involving harm to settings. However,
 - (i) there is no legal requirement for a planning decision-maker to visit the relevant site;
 - (ii) Powis Castle is a monument of national significance, and the Minister may in any event have known the area;
 - (iii) the Minister had the advantage of visual aids in respect of the area; and
 - (iv) the Minister accepted the analysis and conclusions of the Inspector as to harm to the historic assets and their settings, and the Inspector had been on site visits.

49. For those reasons, despite his best and able efforts, Mr Meyric Lewis has failed to surmount the formidable mountain there is to climb when seeking to challenge a planning decision on *Wednesbury* grounds. I do not consider it is arguable that the Minister's decision was irrational.

Ground 4: Reasons

50. In my view, this is not at root a reasons case. The principal controversial issue was clear: despite the considerable importance and weight attracted by the harm the development would cause to the heritage sites and their settings, did the (primarily economic) benefits of the development outweigh that harm? The way in which the Minister resolved that issue is equally clear: he considered that it did, because, although he agreed with the Inspector as to the harm the development would cause, he considered the weight to be given to the economic benefits was greater than that given to those benefits by the Inspector and indeed sufficient to outweigh that harm.
51. However, Mr Meyric Lewis made a number of discrete complaints about the decision letter, as follows:
- i) He submitted that the Minister did not explain why he considered the Inspector's approach of comparing the number of jobs to be provided with the number of jobs in the dairy industry nationally to be invalid. However, as Mr Gwion Lewis observed, the Minister did not say that that was an invalid comparison; but only that it "does not provide a realistic assessment of the benefits that would arise from the creation of those jobs". That is so, because the comparison may mask the real benefits that would be created locally. The point made in the decision letter is, at least, adequately clear. Similarly, the comparison made by the Inspector between the additional milk yield and the national milk yield.
 - ii) Mr Meyric Lewis criticised the Minister's reasons for not explaining why he attached no weight to the fact that the price of the milk produced by the development would not be reduced. For the reasons I have given (see paragraph 37(iii) above), he did not need to do so.
 - iii) He also criticised the Minister's failure to explain why a seven-figure investment was, in itself, a benefit of the development and indeed "of great importance". However, he did: he explained that such investment is a sign of economic confidence which it is one purpose of the planning system to promote (see paragraph 11 above).
 - iv) Mr Meyric Lewis criticises the Minister for giving weight to the operational benefits of the development, because "they are just functions of the intended operation". However, even benefits that are inherent or coincidental are benefits.

52. Consequently, there is in my view no merit in the reasons challenge.

Conclusion

53. For those reasons, I do not find any of the grounds made good; and I dismiss the application.