

Neutral Citation Number: [2015] EWHC 76 (Admin)

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22/01/2015

**Before :**

**MR JUSTICE OUSELEY**

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**Between :**

**THE QUEEN (on the application of GRA  
ACQUISITION LIMITED)**

**Claimant**

**- and -**

**OXFORD CITY COUNCIL**

**Defendant**

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**Thomas Hill QC and Philippa Jackson** (instructed by **Asserson Law Offices**) for the  
**Claimant**

**Anthony Crean QC and John Hunter** (instructed by **Oxford City Council**) for the **Defendant**

Hearing dates: 8th December 2014  
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**Judgment**

MR JUSTICE OUSELEY :

1. On 9 April 2014 Oxford City Council designated Oxford Stadium, a former greyhound racing track and speedway stadium on the edge of Blackbirds Leys to the south-east of Oxford, as a conservation area pursuant to s69 Planning (Listed Buildings and Conservation Area) Act 1990. The owners seek to develop the Oxford Stadium site with the erection of 220 residential dwellings. The Claimant, one of its joint owners, challenges that decision on grounds that: i) the Stadium is not an “area” for the purposes of s69; ii) the designation was for the improper purpose of preventing or inhibiting its development for housing purposes; iii) the Council ignored material considerations and iv) the decision was irrational. The Council, the Defendant, responds that this was all a matter of reasonable planning judgment.

### **The Statutory Framework**

2. S69 (1) provides:

“(1) Every local planning authority—

(a) shall from time to time determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and

(b) shall designate those areas as conservation areas.”

3. S69(2) shows this not to be a once for all duty but is to be kept under review. Designation then imports the duty in s72(1):

“(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.”

4. The effect of s72 is to create a strong presumption against development which would conflict with that aim; *South Lakeland District Council v Secretary of State for the Environment* [1992] 2.A.C 141 at para 150, Lord Bridge, and *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council* [2014] EWCA Civ 137, para 23.

5. No appeal can be brought against the designation of a conservation area. Its justification would not normally be revisited by an Inspector or the Secretary of State hearing an appeal against the refusal of planning permission, on the ground of the harm it would do a conservation area. The designation would be taken as the basis for their consideration of the appeal, because the conservation area would be taken to have been lawfully designated under the 1990 Act by the local planning authority to which the statutory task of designation is allotted. The lawfulness of the designation would not be for the Secretary of State to decide.
6. Consent is required for the demolition of unlisted buildings within conservation areas. The entry of buildings, or an area, on to a local heritage list or “local list of buildings” may be a material consideration in development control but affords no statutory protection.

### **The Facts**

7. Oxford Stadium Conservation Area, as designated, covers 3.4 has. and has a roughly triangular shape with its base to the east. It comprises the greyhound racing and speedway tracks which surround a grassed central area upon which a go kart track has been laid out. That is still in use, though speedway ceased in 2007 and greyhound racing ceased in 2012. The track, with its lighting columns, is surrounded by buildings associated with the former uses: grandstand (rebuilt in its entirety in 2000), terraces, the Totalisator or Tote building, pits, traps, kennels and a paddock, yards, turnstiles, sheds and offices, kiosk, Nissen hut and a toilet block. No buildings are listed and the Council did not seek statutory listing for any, realistically recognising that it would be refused. There are two car park areas, with the larger to the west at the apex of the triangle. The hypotenuse is bounded by a freight railway line on banking, the base by industrial development and the third side by a road, Sandy Lane. The perimeters of the site are continuous in brick or other form of security fencing, except for the two entrances. There are no public views into the site except to a limited extent from Sandy Lane, which is bordered by a high concrete post and plank fence to the east and a high hedge to the west, and over the western car park. There are no public rights of way into the site or to adjoining areas for views of the site.
8. There was some issue, which is essentially irrelevant, about whether certain damage was caused by the Claimant or by its employees, disgruntled at the closure of the greyhound racing track. But it is not a visually attractive site on any view, and the Council’s Conservation Area Appraisal, CAA, is notable for its lack of photographs of the current condition of Oxford Stadium. The Claimant’s photographs, submitted as part of its consultation response to the proposal that Oxford Stadium be included in a register of local heritage assets, show the no higher than mundane quality of the design and fabric of the buildings which remain. I shall return to that in the context of the Council’s CAA, as that is a feature which it saw, perhaps unexpectedly, as helpful to the conservation area designation.
9. It was in 2009 that development of the site for housing was first mooted by the Claimant. In 2011, when the Council already knew of development proposals, it

proposed a new register of heritage assets outside conservation areas, the Oxford Heritage Assets Register (OHAR). The initial four trial areas for study had included the area adjacent to the Oxford Stadium but not the Stadium itself. The Claimant's planning application was being prepared in 2012; in July 2012 there was a two day public consultation exercise on that application, and extensive discussions with the Council, but no mention was made of any heritage interest.

10. In December 2012, however, a progress report on the OHAR identified Oxford Stadium as a possible focus for study and consideration as a heritage asset.
11. On 12 February 2013, the Claimant submitted its planning application. On 11 February 2013 the Council emailed the 20<sup>th</sup> Century Society seeking its views on the Tote building in particular and sending details of the Stadium. The Society's reply in March concluded that the Tote building was not of listable quality: it was not and had not been of high quality, it was too altered to support listing and had suffered from recladding and loss of internal fittings. There were better examples elsewhere of such a building.
12. The Claimant submitted in April 2013, as the Council required, an application for prior approval to the demolition of Oxford Stadium buildings. The Claimant also applied to the Council for screening directions that neither the application for planning permission for the development of Oxford Stadium for housing nor the prior approval application for the demolition of Oxford Stadium, required EIA, Environmental Impact Assessment, on the grounds that neither would be likely to have significant environmental effects. The Council rejected those applications by letters dated 25 April 2013. It said that the site may meet the criteria for inclusion on the OHAR, and prayed in aid its heritage significance and its historic and communal value, much as featured later in the report for the Council members' Executive Board, CEB, on 10 July 2013. In about March 2013, it appears that a community group in the Blackbird Leys area had nominated the Stadium for inclusion on the OHAR. There was a local consultation on possible assets for inclusion in the OHAR, with an exhibition for a month from April to May 2013. The Claimant's consultants put in considerable representations about this, including the photographs of the site which I have referred to.
13. On 14 May 2013, the Claimant's housing developer applied to the Department of Communities and Local Government for it to issue the screening directions which the Council had refused. There is a note of a meeting between the Claimant and Council Officers in which the Claimant records the officers as accepting that the Stadium was not of the quality required of a conservation area. That is disputed by the Council.
14. On 10 July 2013, the CEB met, and decided to include Oxford Stadium on the OHAR, as a "building of local interest". Mr Hill QC, for the Claimant, put some emphasis on those words. The report said that the Stadium met the four criteria for entry on the OHAR, the first of which was that it should be "A building...site, place, area, landscape... identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest". The Stadium was a "group of buildings and a landscape or place". Its heritage interest could be conserved or enjoyed: it had historic connections with greyhound racing and speedway, with associated teams and competitions of local and national note. It

had local community connections with Blackbird Leys and Cowley through their attendance at Oxford Stadium. The architectural interest lay in the vernacular style of the group, and the local landscape associated with two historic pastimes, sufficiently well preserved to be understood. It contributed to the character of Blackbird Leys by providing associations with a considerable sporting heritage. The buildings and layout illustrated the sports' associations with the area. "The simple aesthetic of the buildings provides illustrates [sic] the historic status and role of the sports". Included in the assessment of communal value was this:

"4.4.7 As a venue for their social activities and pastimes for over seventy years the stadium has become valued as a symbol of the community of Cowley and Blackbird Leys. It is noted as having a particular association with the people of East Oxford and is recognised as contributing to their identity as a community with artisan and working class origins who have enjoyed a particular range of pastimes and recreational and social activities. Its use contributed to the interaction and cohesiveness of the community. "

15. Meanwhile, the Secretary of State considered the Claimant's applications for screening directions. He received responses from the Council and others. He consulted English Heritage which responded that "the site was not well enough proven as a heritage asset for us to advise on the EIA". On 10 October 2013 the Secretary of State concluded that no EIA was needed, taking account of both the environmental effect of demolition itself, and "the cultural impacts from the loss of the existing and previous uses of the stadium". The letters said:

"Whilst it is apparent that the proposals will result in the loss of any opportunity to resurrect the historic activities, including speedway and greyhound racing, which are regarded by the local authority and some members of the public as being of historic cultural importance, these activities have not been undertaken at the site for some time and are also available in a nearby town. The Secretary of State has considered the impact the demolition of the stadium will have on these cultural activities, and concluded that whilst there will be some impact, it is local in nature and is not considered to be of such significance to warrant EIA."

16. On 6 December 2013, the Claimant appealed to the Secretary of State against the failure of the Council to determine the prior approval application. On 8 January 2014, the Council refused the planning application for seven reasons, including the loss of the heritage interest, the loss of community facilities, and various design related issues. The majority of letters of objection were from community users, and motor sports and greyhound racing supporters. This decision was appealed on 10 January 2014. The designation of the conservation area, to which I now come, has led to the appeals being withdrawn.

17. The precise trigger for the process of considering designation of Oxford Stadium as a conservation area was not explicitly the lodging of the appeals, but is not otherwise clear. However, by a document which bears two inaccurate dates, but is probably January 2014, a Project Initiation Document, PID, consideration of designation began. By way of background, the PID noted that the future of the stadium remained very uncertain, and to ensure that its architectural and historic interest was properly understood “and its preservation made a priority in any decisions about change, it is proposed to assess this site’s suitability for designation as a conservation area, for which there is considerable local support”. The leader of the Council and Portfolio holder had “made clear their request to pursue designation and have asked officers to investigate and action”. A “High Level Milestone” for the project was its completion within two to three weeks, “otherwise the threat of demolition may be realised and the heritage significance of the site compromised.” Options were considered in these terms: “To do nothing would result in the loss of the asset and be counter to the expressed wishes of members. The work to designate is part of an existing commitment to protect and manage the heritage asset. To do nothing would undermine and negate the investment already made”.
18. On 28 February 2014, shortly before consultation began on the proposal, an internal Council email, obtained after a Freedom of Information request, and I infer from Mr Worlledge, its Team Leader for Heritage and Specialist Services, said:

“We have not asked English Heritage to consider listing any of the structures at the Stadium. In our professional view we considered the utilitarian form of the buildings, and the degree of alteration of the larger ones was such that the buildings would not fulfil the criteria for listing (there is EH selection guidance on sport and leisure buildings). I took a view that to request to list which failed may not serve our purposes. Identifying it as a locally designated heritage asset registers the heritage significance we consider the site holds.”
19. Shortly afterwards, on 11 March 2014, a consultation process opened over the potential designation of the Stadium as a conservation area. That same day the officer in charge of the consultation process emailed the Project Initiation Board saying that he was concerned about the two week or so duration of the consultation period.

“Apparently the reason for not being advised sooner is because the request to turn the Stadium into a conservation area has only just been proposed (by the community); and the reason for needing to go to CEB in April is because there is a risk that the Stadium will be demolished.”
20. On 14 March 2014, the Council’s Leader was quoted in the press:

“Having had the focus on it that we have had for the planning application, it has been evident that the stadium has a very important heritage and conservation aspect to it.

Having realised that, we thought we should use what powers we have to protect it. This will be another clear obstruction to it being a housing development.”

21. Mr Hill emphasised the last sentence. There was no dispute as to the words used.
22. The CAA is a thorough document and, as if to rub salt in the wound, stated that it had been informed by the Heritage Assessment prepared by the Claimant’s developers’ consultants for the purpose of its planning application. There is much general information about the development of greyhound stadia, and the role of greyhound racing as a working class entertainment, which is then analysed in relation to Oxford Stadium, the Cowley works and the 1950s suburb of Blackbird Leys. The events, competitions, the dogs and speedway racers are recorded. The way the site and its buildings evolved is explained. The character of the site is described by reference to a number of areas: the racetrack and the centre of the Stadium, greyhound paddock, speedway pits, western and southern car parks, and the relationship to Sandy Lane. The individual component structures are described and assessed. The suitability for designation relied on four features as contributing to the “area’s special historic and architectural interest”: which are covered in the Conclusions. The buildings in the Stadium were regarded as of interest, notably the Tote building, the grandstand, the terraces and their relationship to the track, and ancillary buildings. Architectural interest was provided by the way in which they illustrated the “historic materials and building forms that characterised the early days of the stadium and its “ephemeral” architecture”.” It concluded:

“The site is an area suitable for area protection, containing buildings, structures and spaces enclosed by those buildings. The analysis of the history of the site and the contextual analysis provide sufficient evidence to determine the heritage significance the site holds. This shows that character and appearance of the area derives from this interest and provides physical evidence that represents the collective memory of those working communities and their leisure pursuits. The area does hold sufficient historic and architectural interest to be considered for designation as a conservation area. The following factors are considered to make the preservation and enhancement of the area’s character and appearance desirable:

- Sustaining community value: The stadium is valued by both the local community of Oxford and a wider, national and international community of supporters

of both greyhound racing and Speedway as a source of their community cohesion and identity.

- Local distinctiveness and identity: As an important historic site of sporting competitions with strong associations for the local community, but also providing connections with teams who have represented Oxford and as a focus for visitors to the city the area, including its use, its historical and architectural interest and the character and appearance that flow from them makes an important contribution to the distinctiveness and identity of Blackbird Leys and Oxford as a whole. It is representative of the development of Oxford and its communities in early and later 20<sup>th</sup> century.
- Rarity: The area is an example of a nationally rare form of development and retains an example of a totalisator or tote building that is one of only nine original examples in the UK which preserves its historical association with the track and surrounding stands.
- Importance of spatial character to understanding of significance: The ability to understand the area as a heritage asset is dependent on preserving its spatial character including not only the individual buildings but also the spaces between them such as the tracks, pits and greyhounds paddocks that illustrate the purpose of the buildings and contribute to the special historic interest and character and appearance of the area.”

23. The Claimant’s consultation response presented a rather different picture of the Stadium and its value.

24. During this period, the Council sought informal feedback from English Heritage, emailing it the CAA, and explaining that the Stadium was:

“...an important surviving reminder of our interwar and post war working communities of Oxford and thus holds historic interest as part of Oxford’s more recent and very important history associated with the car industry, which at present has little recognition in heritage management policy and practice.

The buildings on the site are rudimentary. It is this basic architectural and ephemeral quality that gives them interest and raises the question in our minds about how that interest



and their association could be identified and sustained. One of the key “sensory” qualities of a greyhound track is when the dogs are paraded, (as well as the race) with the lights used as if on a stage. The simple character of our buildings makes an important contribution to the character (atmosphere) of the place in use. The buildings individually and as a group have visual qualities that go beyond the absence of architectural pretension.”

The feedback was that Oxford Stadium “hit local characterisation boxes”.

25. The Council produced a report dated 7 April 2014 summarising the consultation responses, together with its reply. The report dealt fairly with the Claimant’s responses. As Mr Hill pointed out, the Officer’s Report for the CEB meeting of 9 April 2014 is dated 15 March 2014, well before the consultation closed.
26. The background section of the Officer’s report noted that, after the inclusion of the Stadium on the OHAR, “officers have been considering how to best manage the area so that its heritage values can be enjoyed by present and future generations.” The report set out s69 of the 1990 Act, and referred to guidance from English Heritage in 2010, “Understanding Place: Historic Area Assessment in a Planning and Development Context” which explained the variety of types of special architectural and historic interest which could lead to an area being designated. The report then commented on the national context, pointing out that English Heritage, in guidance of 2012, recognised that twentieth century buildings were undervalued, under-recorded and less well understood than those of earlier eras. Other English Heritage guidance of 2012 on selecting sports and recreation buildings for listing said that they were only now beginning to be understood. Certain facilities, it said, were reasonably well researched though others “particularly those that incorporated more ephemeral and short lived structures remain less well understood”. The Officer’s report continued, drawing on listing descriptions: “The Greyhound stadium is a nationally loved building type expressive of developments in interwar mass culture and entertainment... which with speedway was for a period the 2<sup>nd</sup> most popular leisure pursuit”. But there had been a sharp decline in their numbers with only 25 (now 24) licensed stadia. Oxford Stadium therefore “should be considered as an important representative of a form of development that is at risk nationally”.
27. The 20th century in Oxford, with the coming of the motor industry, and the related suburban housing for its workers, was not represented to any significant extent in the existing regime of heritage protection. The survival rates of such buildings and their lack of architectural distinction meant that a greater degree of selection was required to avoid devaluing the principles of heritage management. “However, where appropriate in the identification of elements of our built environment that hold special interest it is desirable to ensure cross cultural representation.” Interwar suburban housing was supported by a range of entertainment and leisure facilities evidencing how those communities spent their leisure time. It continued:

“16. The stadium is one such facility that holds interest in part because of the rudimentary and ephemeral nature of the building- this represents so effectively the attraction of both

greyhound racing and Speedway as a high thrill short-lived leisure experience for those working in the motor and associated industries. The nature of the materials also reflects the central consideration of the speculative commercial developer where expediency and speed of construction were essential in securing a financial return. The simplicity of the structures is part of the modernist ideal of absence of elaboration and decoration. The surviving structures embody the collective memory of those communities and how the site has adapted to changing circumstances. This adaptability to changing audiences and local community needs is reflected in the way the site is valued by present communities.”

28. Much of what then followed in the Officer’s Report is taken from the CAA, summarising the suitability of the area for designation, the character and appearance of the Stadium, describing the location and context of the Stadium, and the desirability of preserving or enhancing its character and appearance. I have set these out already; the report repeated what was in the CAA.
29. The justification for designation then followed:
  - “21 The architectural and historic interest of the site has already been recognised in its designation as a local heritage asset. This has been assessed as being of special history interest locally and, indeed, nationally.
  - 22 The collective interest of the buildings, illustrating the past use and development of the site as a regionally and at times nationally important sporting venue is considered to cumulatively provide a special architectural interest.
  - 23 The site is not a single building but a group of buildings around a central open space. This needs to be recognised as an area rather than a single object, with a character that is largely a result of the relationship between the buildings and spaces reflecting the past history of use.
  - 24 The area sustains features of character and appearance that flow from the special historic and architectural interest and are considered desirable to preserve and enhance due to the importance of the spatial relationship between the features of the area to understanding their individual and cumulative historic and architectural interest, their rarity, their contribution to local distinctiveness and identity and their value to the local community as a heritage asset.”
30. The section on the justification concludes with a paragraph on the effects of designation on the consideration of planning applications.

31. The report concluded that the Stadium had “intrinsic historic interest as a rare survival of a greyhound and speedway stadium that represents the collective memory of the local communities, past and present.” Officers were satisfied that the special interest was sufficient for designation “as a representative of Oxford’s C20th social and economic history”, complementing other parts of Oxford already designated.

**Ground 1: was Oxford Stadium an “area” for the purposes of s69 of the 1990 Act?**

32. A “conservation area” has no further definition than in s91 where it is ... “an area for the time being designated under section 69”. There is no very useful authority on what constitutes an “area”. I note the contrast for these purposes with s1 of the 1990 Act, which deals with listed buildings, and applies only to buildings. A building can be listed having regard to the interest of any man-made object fixed to the building or forming part of the land within the curtilage of the building. English Heritage has listed some sports pavilions and stands, and a lido, both pool and changing rooms, but has not listed a whole stadium with curtilage as a building.
33. Mr Worlledge gave examples of other conservation areas, small in size and of one, Daventry Reservoir Conservation Area, focussed on a single prominent space with ancillary structures. These do not advance matters since they might only represent occasional misapplications of the law, which no one was concerned to challenge. Mr Crean QC for the Council pointed to the designation of the Brooklands racetrack, and all the land it enclosed, with its large modern warehouses as well as older buildings associated with early motor racing and aviation use, former runway and open land, as illustrating a not dissimilar conservation area, which survived a rationality challenge in *R v Surrey County Council ex p Oakimber* [ 1995] 70 P&CR 649. That too has its different features.
34. Mr Hill submitted that *Metro Construction Ltd v London Borough of Barnet* [2009] EWHC 2956 (Admin) showed that a building and its curtilage could not be designated as a conservation area, and that this case was akin to it. There were however, in my judgment, no more than rather inconclusive indications in that case about whether a former monastery set in a garden of about 1 hectare behind high walls, to which few outsiders had gained access, could be a conservation area. The building itself was on a local list. It was argued that the “area” was no more than an unlisted building and its curtilage. Collins J said, paragraph 37, that the designation was no more than an attempt to achieve what the refusal by English Heritage to list had frustrated, adding: “That was in truth the purpose of the designation and the site could not properly be regarded as forming a conservation area”. Two thoughts are run together there. There is no clear and separate finding that the site could not have been a conservation area if the purpose of designation had been a proper one. In paragraph 39, Collins J says that “even if in the end designation may be supportable”, the manner was unlawful since the purpose was improper.
35. Mr Hill submitted that here the Stadium, like the monastery, was enclosed on all sides, in private ownership, not publicly accessible, and with limited visibility into it from public land. An “area” had to be something which the public could appreciate. The Grandstand building, plainly the main building on the site to

which others were ancillary, was of a scale which meant that the rest of the Stadium site was its natural curtilage. The existence of other buildings did not necessarily create an “area” either. Mr Crean submitted that whether a site was an “area” for the purposes of s69 was a matter of fact and degree for the Council, subject only to a rationality challenge. The Council was not obliged to treat the Stadium site as the curtilage of the grandstand. The main part of the Stadium had been the open area surrounded by the tracks; but even if the area had been seen as the grandstand and its curtilage, that would not have precluded the designation of the conservation area, since “area” was given a very wide meaning.

36. In my judgment, the designation is of an “area” for the purposes of s69. The question is not one of rationality in the first place. The question of what the lawful requisites are for an area to be an “area” for the purposes of s69 must be established; the Council must then approach the application of those requisites to the facts rationally. It is plain that the word “area” has a very wide scope. It connotes some size unspecified but going beyond a mere mathematical square footage. There is sound practical sense of general application behind Mr Hill’s contention that a single building with curtilage is not intended to be designated as a conservation area. The provisions governing conservation areas are to be contrasted with those governing listed buildings, to avoid undermining the clear distinction between the protections given to each. A conservation area is not a form of inferior protection to be bestowed on a single building with a curtilage, which simply fails to make the listing grade. However, if as a general proposition, the single building and its curtilage signpost the distinction between the two regimes, there is no exclusive or exhaustive statutory rule to that effect, good for all single buildings and their curtilages, whatever their nature, scale or relationship to each other. The fact that the proposed area is enclosed as a single entity, albeit now in disparate uses or abandoned, does not prevent in law the enclosure, and the land and buildings within being an “area” for s69 purposes. The absence of public access or visibility goes only to the desirability of preserving or enhancing the area. Single ownership is irrelevant other than perhaps to that issue. The Council did not err in its understanding of the concept of an “area” for the purposes of s69.
37. Its approach to the application of that concept to the question of whether this was an “area” rather than a single building with curtilage was not irrational either. Paragraph 2.3 of the justification for designation in the Officer’s Report, set out above, deals with this aspect. The tracks and open space are not truly the curtilage of the grandstand nor of the stands and other buildings. Rather, the race tracks are the central feature, which necessarily create the large open central area; the grandstand, other stands and buildings are but an important part of the whole. This is quite distinct from the monastery and its garden.
38. That is why I emphasise that Parliament has not defined “area” as distinct from “a building and its curtilage”. Had it done so, then whatever the circumstances, and for all the variety of forms and purpose of spaces and buildings which are to be found, the question of whether a site was an “area” for the purposes of s69 would have had to be answered by pigeonholing the site into one or other category, however artificial that would have been. But it has not done so, and such artificiality should not be imposed on the statutory provisions. This case illustrates

how difficult such an exercise would have been and how it would have distracted from the main purpose of s69 and its test.

## **Ground 2: Rationality of the designation as a conservation area**

39. Although this was Mr Hill's fourth ground, logically it comes next. He contended that no rational planning authority could have regarded Oxford Stadium as having a special architectural or historic interest, the character or appearance of which it was desirable to preserve or enhance.
40. Mr Hill referred to English Heritage's guidance on listing "Sports and Recreation Buildings". This advises that the historical associations, which sites of sporting renown may have with past events and people, do not make the sites really appropriate for extra control through the planning system where the actual buildings or structures which witnessed these events have gone. These associations can only be accorded "so much consideration". But there may be other factors such as rarity, structural interest, or their early date to go with historical associations. The buildings or structures should have some merit of their own. It notes of greyhound stadia that they were seen as speculative ventures, and so little money was spent on architecture; speedway tracks were similarly basic, though some had impressive Totalisator boards and other distinctive features.
41. So greyhound stadia, submitted Mr Hill, bore none of the hall marks of architectural quality; and there was nothing special, or distinctive about the Oxford Stadium. The buildings were of poor quality, the Grandstand was of recent origin; the original uses had ceased; the area was unattractive as evidenced by the lack of photographs in the CAA. The justification placed too much weight on community associations and interest, which could justify a place on the OHAR, but no more.
42. I accept that this is one of the more unusual conservation areas I have considered in any capacity. The justification is unusual in the emphasis placed on the importance of the "ephemeral" quality of the buildings. But they do not just have a short life-span, which is what that word as used here by the Council is intended to convey; they were not intended to have a longer span. They are of a mundane quality at best. But these are features which are acknowledged in the CAA and officer's report, and are part of the historic interest and character which the Council sees as worth preserving or enhancing, not just for the sporting associations but for their associations with the surrounding factory, suburban developments and their residents' leisure and sports. I also accept that it is not just the buildings individually or together which are the focus of designation but the whole, i.e. tracks, central open area, stands, paddocks, kennels, pits, and other buildings and areas which give the Stadium site the interest and character which lie behind designation.
43. I have set out above extensive extracts from the CAA and officer's report. Assuming that there is no improper purpose behind the designation, I cannot hold it to be irrational, very unusual though the justification is. I cannot hold that the planning judgment, explicit and reasoned, is not one to which a reasonable planning authority could come. The fact that this can be distinguished from Brooklands racing circuit is not to the point. The fact that no building within it is

of listable quality does not show the decision to be irrational. The fact that officers may have thought that the area was best dealt with by entry on to the OHAR does not preclude a rational judgment that Oxford Stadium met the criteria for designation. Nor do I see English Heritage's guidance as preventing a rational decision to designate the stadium site: the decision did not turn on historic sporting association with great events or participants alone; that was every part of it. The relationship to the surrounding area was very important in the judgment, and that relationship gave the existing site interest and character beyond the intrinsic qualities of the buildings alone. It was also seen as a good example of the basic, "ephemeral" style of this sort of stadium.

### **Ground 3: errors and omissions in the officer's report**

44. Although the premise for Mr Hill's contention under this head was that the designation decision was motivated by a desire to prevent the demolition and redevelopment of the Stadium site, and was therefore unlawful, I consider that the asserted failings in the report need to be considered independently of that premise. Mr Hill contended that the report was significantly misleading, contained material omissions and was "woefully one-sided", designed to support designation. If he succeeds in making those points good, the report would have led to an unlawful decision, based on the tests set out in *R v Mendip District Council ex p Fabre* (2000) 80 P&CR 500 at 509, Sullivan J and *R v Selby District Council ex p Oxtun Farms* [1997] EGCS 60, Judge LJ.
45. He gave as his chief examples of these failings: (1) the absence of recognition anywhere in the report that the Stadium buildings had no architectural merit because of their utilitarian design and the degree of alteration, with the special interest derived from precisely that rudimentary and ephemeral quality and the "high thrill short-lived leisure experience", an approach unsupported by English Heritage; (2) the absence of recognition of the degree of alteration to the buildings, creating the impression that the Stadium was largely intact in its original state; (3) the views of the 20<sup>th</sup> Century Society on the Totalisator Building were ignored, with the report referring to it as being one of only nine such structures remaining in the country; (4) the CEB was not told that no other sporting stadia had been designated as conservation areas, and so this proposal was unprecedented, or if Brooklands was a precedent designation, then extremely unusual; (5) the CEB was not told that English Heritage had not been consulted because officers anticipated an unhelpful response, instead saying that the Stadium had been assessed as of special historic interest both locally and nationally; (6) there was no acknowledgment that the proposal was not driven by the heritage professionals; (7) the elements were described only in positive terms, with the unimpressive quality of the buildings not stated, though previously acknowledged by officers.
46. Although this designation of the Stadium as a conservation area is one of the more unusual ones that I have come across, I did not find the officer's report to be as deficient as Mr Hill submitted. On the contrary, it was a thorough report, taken with the CAA which was appended to it, which laid out the case for designation clearly. It set out the relevant legal framework and the issues to be considered, and reasons, which are not irrational, why the officer made the recommendation for

designation. It does not suggest that inhibiting development which for other reasons the Council might wish to prevent was a proper consideration.

47. The case for designation explains, indeed makes a virtue of, the mundane quality of architecture and materials. That is part of the special architectural interest. They are not said to be impressive buildings at all; and it is difficult to see how any one could have thought that they were from their descriptions. The positive features are not suggested to be their architectural merits. The detailed history of the Stadium and the description of the surviving buildings as they stand are presented in the CAA. I cannot believe that any CEB member thought, from the report and CAA, quite apart from any personal knowledge which they might have, that the Stadium had survived intact since its use for greyhound racing and speedway began or ceased. The report points out that the grandstand is the third one on site, and that the Tote building has been altered. The CAA describes each structure in detail, including its condition and changes, deliberate or through dilapidation. These descriptions were accepted as accurate by the Claimant. The report's reference to historic interest "nationally" relates to the specific point that there are only nine surviving greyhound stadia with their Totalisator building relatively intact. Granted, the report did not refer to the 20<sup>th</sup> Century Society's view that the Totalisator building was not of listable quality, but did not suggest either that any buildings were of listable quality. And as Mr Crean pointed out, that does not mean that the unlistable buildings cannot contribute to the interest or character of the proposed conservation area.
48. The report contains nothing which is positively misleading, expressly or by implication, about English Heritage's attitude. The report might have said that English Heritage had not been asked about listing any buildings because it was thought that it would refuse to recommend any for listing and that refusal would not help the preservation of the Stadium. But English Heritage, informally, was not so cold about the proposed conservation area designation. I do not see the omission of the expectation that there would be no listing of any buildings on the site as a significant omission from the report. The emphasis is on the place of the Stadium in the history of the surrounding interwar and post war development of Oxford, when greyhound racing and speedway flourished, and the preservation of what are unusual stadia precisely because of their transient nature. It is a matter of debate as to how far Brooklands conservation area was designated simply for its historic interest as a motor racing venue, as opposed to an area with historic aviation interest as well. But it is difficult to see that it ought to have been mentioned, and then no doubt Mr Hill would have contended that the differences ought to have been pointed out, or that the CEB ought to have been told that the proposal was unprecedented. The fact that the professionals were not the instigators of the proposal is not set out, but I am not prepared to infer that members were unaware of that. I do not see these as omissions making report significantly misleading.
49. The results of consultation were reported at the meeting, since the consultation period had not concluded when the report was prepared. No specific complaint is made in this context about that fact, but it means that the report itself did not include the contrary views of consultees. However, the contrary views of the Claimant had been part of the response to the CAA and were the subject of

tabulated responses which were before the CEB. The CEB also had at the meeting the Claimant's report itself, which was its consultation response to the CAA. (The Claimant also had the opportunity to ask questions and to address the CEB briefly, but did not take it, not even to make the points it now makes).

50. The report can seem unbalanced because of the absence of reference to what objectors, notably the Claimant, had to say but that omission was adequately made up for by the inclusion of the CAA and the Claimant's report, and the reference in the officer's report to the fact that the consultation responses would be reported on at the meeting.
51. I do not accept this third ground of challenge.

#### **Ground 4: Designation for an improper purpose**

52. Mr Hill submitted, in this his second ground, that the Stadium had been designated for the improper purpose of preventing its demolition. Mr Hill made it clear that he was not alleging bad faith by either officers or members of the Council. It would not have been right to do so without the allegation being clearly made, with a proper evidential basis; and those who faced such allegations would need a full opportunity to have their contrary evidence tested under cross-examination. Mr Hill was not alleging that the designation decision was recommended by officers or taken by members who did not honestly believe that the area was fit for designation as a matter of reasonable planning judgment applying the statutory criteria.
53. He said that his point was more that the officers and CEB had taken account of an immaterial consideration, namely that designation would prevent or impede development of the Stadium. In that sense, the decision had been taken for the improper and dominant purpose of trying to achieve an object which in law fell outside the scope of the powers used, namely preventing or inhibiting the Claimant's proposed development.
54. But this argument must fail on the facts. I have already concluded that the Stadium is lawfully seen as an "area" for the purpose of s69 of the 1990 Act, that the designation decision was not an irrational planning judgment, and that the report on which the designation decision was based identified the relevant issues, was not significantly misleading, nor did it contain material omissions of fact or evaluation of such a nature as to make it unlawful. It is in those circumstances, that the question of improper purpose or more aptly, reliance upon an immaterial consideration, falls to be considered. The desire to prevent the demolition of an "area" cannot be relevant to the question of whether it has any special architectural or historic interest, nor to whether it has any character worth preserving or enhancing. It can only be relevant to any further question as whether it is appropriate in those circumstances to designate it, for example because of the extent of equivalent areas in its area and the resource implications which that may have for the Council. But at that point, the desire to prevent the demolition of an area which a Council has concluded fits the statutory criteria with a character worth preserving or enhancing, is a proper purpose of designation.



55. The significance of those factors explains why I have taken this ground last. In order for Mr Hill to make good his submission, he needs to point to evidence that the desire to prevent demolition was taken into account in the assessment of the interest of the area or in the worth of its character. But there is no evidence in the report to that effect nor in the CAA. There is no inference to be drawn from the mere fact of designation that account must have been taken of an irrelevant consideration or that an improper purpose was afoot, since the decision followed a rational assessment of the interest and character of what was lawfully seen as an “area”.
56. I understand, and have set out the comments of the leader of the Council which could suggest an improper motive, and the way in which the progress of the planning application seems to have stimulated thoughts of heritage and conservation interest, the latter gaining in strength and urgency as the decision on the merits of the planning application loomed, as the Secretary of State ruled that the demolition and development did not require EIA, and it was recognised that no buildings were of listable quality. I can also see that the reasons for refusal might have been thought unpersuasive on appeal, and in need of strengthening. I accept that the drive for designation appears to come from members or “the community” and not from officers. But all that does is show that this desire to protect the area meant that officers and members cast around for the means to do so.
57. As I said in *Trillium(Prime) Property GP Ltd v Tower Hamlets LBC* [2011] EWHC 146 Admin at paragraphs 15-20, the fact that such a wish is father to the thought that a conservation area should be considered does not make the thought or the subsequent process necessarily illegitimate. The question is one of fact: did the Council reach its conclusion, regardless of what stimulated the thought in the first place, on the basis of the statutory criteria alone? At paragraph 20, I said:

“It is a question of fact, in my judgement, whether the Limehouse Cut Conservation Area was designated for the improper purpose of preventing the demolition of 307 Burdett Road, or whether the Council genuinely considered that the area designated met the statutory criteria. The decision would not be unlawful merely because the wish to protect 307 Burdett Road from demolition was father to the thought that a Conservation Area should be designated; what matters is whether the Council then genuinely thought that the area met the criteria. The undesirability of the demolition of an unlisted building which makes a positive contribution to the character of an area cannot of itself make designation lawful. The existence of the building however may lawfully play a part in the decision that the area has a special character worth preserving and enhancing, especially given the contribution that such buildings can make to the character of conservation areas. But the desirability of preventing demolition is not itself what the Council must consider. It has to consider the

simple one of whether the statutory criteria are met by the area it proposes to designate.”

58. I was concerned in that passage to deal with the lawfulness of the designation of a conservation area for the purpose of protecting one building within it, for its own intrinsic qualities, rather than because of its contribution to the special interest of an area the character of which needed preserving or enhancing. But that is not the issue here. The Stadium is not the equivalent of 307 Burdett Road; the Totalisator building might have been its equivalent if the Stadium had been designated in order to prevent the demolition of that one building. Here, once the Stadium itself is lawfully seen as an area, and is lawfully adjudged to be one with special architectural or historic interest, the character or appearance of which should be preserved or enhanced, it is perfectly proper to designate it as a conservation area to prevent the demolition of the buildings and the development of the area, which possesses the interest and which is worth preserving.
59. As the officer’s report set out the statutory criteria, advised on the relevant facts and proposed a rational planning decision, the factual question here, identified in *Trillium*, comes back to whether or not the Council members of the CEB genuinely concluded that the designation met the statutory criteria, or whether they took into account, in concluding that it did, the irrelevant desire to prevent development or demolition. The report on the responses to consultation included the Officer’s response to the assertion that designation has been proposed in response to the planning application. The response correctly says, and it was before the CEB, that the making of a planning application does not suspend the duty to consider designation “from time to time”, but that designation must not be made “for the purpose of opposing a planning application”; which would be “an unlawful ulterior purpose”.
60. In light of the CAA and officer’s report, and the rationality of the CEB’s conclusion, I do not see a sound basis upon which such an inference can be drawn, essentially from the timing and sequence of events together with the leader’s comments. It would amount to the drawing of an inference that those documents did not record or reflect the real thinking of the CEB on this issue, and that there was a further factor about which they largely kept silent, the odd remark of the leader apart, knowing of its legal irrelevance. That would be an allegation of bad faith, which Mr Hill disavowed.

## **Conclusion**

61. This application is accordingly dismissed.