Case Ref No.CO/4357/2015

Neutral Citation Number: [2016] EWHC 1059 (Admin)
IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
Sitting in Manchester Civil Justice Centre

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/05/2016

Before :

THE HONOURABLE MR JUSTICE KERR

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Between :

The Queen
(on the application of)

Blackpool Borough Council	**Claimant**
- and -	
Secretary of State for Communities and Local Government	**First Defendant**
- and -	
Thompson Property Investments Ltd	**Second Defendant**

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Jonathan Easton (instructed by Blackpool Borough Council) for the **Claimant**
Sarah Reid (instructed by Government Legal Department) for the **First Defendant**
No appearance for the **Second Defendant**

Hearing date: 05/05/16

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Judgment

MR JUSTICE KERR:

1. This case is about the future use of a synagogue in Blackpool, which is not being used for Jewish worship at present. It is a heritage asset, of historic and architectural significance. The claimant (the council) applies under section 288 of the Town and Country Planning Act 1990, and under section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990 for an order quashing the decision of an inspector appointed by the defendant (the Secretary of State) to permit development of the site which the council considers detrimental.

2. The United Hebrew Synagogue in Leamington Road, Blackpool was built in 1916-1926. Its design and features are of considerable historic and architectural interest. It was extended in the 1950s and 1970s to accommodate more worshippers and add a kitchen, meeting rooms and classrooms. In 1998 it was "Grade II" listed and it is on the Heritage at Risk Register kept by Historic England (formerly known as English Heritage). It is not used for Jewish worship at the moment, though it could be taken up by a new congregation in future.

3. The synagogue was sold in 2011 or 2012, and deconsecrated on 13 May 2012. The second defendant (the developer), submitted applications for planning permission and listed building consent in September 2012. In the applications, the developer sought planning permission and listed building consent to modify the building and add five self-contained two bedroom flats at the back of it. The first set of applications was withdrawn before going before the council's planning committee.

4. In September 2013, the council obtained a report from a conservation and planning management agent, which recognised the national and in some respects international significance of the synagogue as a heritage asset, as well as its religious significance. The greatest threat to the building was recognised by the developers' agents (in a draft report, revised in December 2013) as redundancy, disuse and consequent loss of public access. It was agreed by all concerned that a strategy to conserve it required it to be returned to use, whether religious or secular.

5. Further identical applications were made by the developer in November 2013. Historic England (as I shall call it, though it had not yet changed its name) were consulted and wrote a letter of 11 December 2013, expressing concern at lack of integration of the synagogue with the residential part of the site; that the development would mean reduced floor area; that the development would endanger future use of the synagogue; and that the proposals would do more harm than good, applying criteria taken from the National Planning Policy Framework (NPPF) (paragraphs 131 and 134).

6. Historic England wrote again on 14 April 2014, saying the proposals would harm the national significance of the Grade II listed synagogue; that the degree of harm was less than substantial, and that the council should therefore weigh the harm against any public benefits, including securing future "optimum viable use". Historic England remained concerned that the benefits would not outweigh the harm, said it was still unable to support the application and recommended conditions requiring a schedule of repairs to be done if it were granted.

7. The council's planning officer reported to the planning committee on the proposals in August 2014, recommending refusal of the applications. The reason was the perceived negative impact on the site and on the future use of the historic building. The officer thought the proposals were contrary to various policies in the Blackpool Local Plan and the NPPF. The planning committee refused those applications on 11 August 2014, stating in its reasons that to grant the applications would breach certain policies set out in the Blackpool Local Plan.

8. The developer appealed to the inspector appointed by the Secretary of State, Mr John Gray, a registered architect. On 24 June 2015, the developer entered into a deed of obligation under section 106 of the Town and Country Planning Act 1990. It included a requirement to carry out works set out in an annex, or "such other works as shall have been specifically agreed in writing with the Council", as an alternative.

9. An informal hearing of the appeal and a site visit took place on 24 June 2015. There was a written statement of common ground, which recognised that, among other things, Part 12 of the NPPF was relevant. Part 12 is entitled "*Conserving and enhancing the historic environment*". It includes, so far as material here, paragraphs 128-134 which, it was agreed, were relevant to the issues in the appeal.

10. These require, broadly, that the historic significance of heritage assets should be identified and assessed and the assessment taken into account when considering the impact of the proposals on a heritage asset (paragraphs 128-9); and that in determining applications relating to heritage assets, the authority should take into account the desirability of sustaining and enhancing their significance and putting them to viable uses consistent with their conservation, and the positive contribution their conservation can make locally (paragraph 131).

11. More specifically, paragraph 132 states that when considering the impact of development proposals on a heritage asset "great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be".

12. Paragraph 133 deals with cases of "substantial harm" to or "total loss of significance" of a heritage asset. It is agreed that the present case does not fall into that category.

13. Paragraph 134 is, it is agreed, relevant. It provides:

> Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

14. The written statement of common ground also acknowledged as relevant certain policies within the Blackpool Local Plan, which bear the references (so far as material) LQ1, LQ2, LQ9, LQ14 and BH21. "LQ" stands for "Lifting Quality" and "BH" stands for "Balanced and Healthy Communities". These were the policies

which (so far as relevant), the council had stated in its refusal notice, would be breached if permission were granted.

15. The policy LQ1 requires new developments to be of a high standard of design and to make a positive contribution to the quality of the surrounding environment. There must be a written "Urban Design Statement", with specified content, where the development occupies a prominent and/or sensitive location. Such a location includes one which directly affects "the fabric or setting of a Listed Building".

16. The policy LQ2 states that the design of new development proposals will be considered in relation to the character and setting of the surrounding area. Where a development is in a location with a "consistent townscape character", new developments should "respond to and enhance the existing character". Such locations include ones "affecting the setting of a Listed Building".

17. Policy LQ9 deals specifically with listed buildings. Where it is proposed to alter or extend such a building, consent will only be granted where "the essential character of the building is retained, including any features of architectural or historic interest which contribute to the reasons for the listing".

18. The council's policy LQ14 deals with extensions and alterations to buildings generally. They must be well designed and (to paraphrase) in harmony with the original building and other nearby buildings.

19. The policy labelled BH21 appears in a different part of the Blackpool Local Plan. It is entitled "*Protection of Community Facilities*". It seems to have been assumed by all concerned in this case that a synagogue (or other place of worship) is a community facility. The policy states that proposals which result in a loss of, or reduction in the size of, a community facility, will not be permitted unless the loss is made good or the applicant demonstrates that it is no longer needed.

20. The inspector decided that both appeals should be allowed and the development permitted to proceed, subject to conditions. There were three main issues arising on the appeal. The second and third are not relevant to this application (respectively, the issue of over-concentration of flat accommodation in the area, and a concern about the outlook and available sunlight in respect of the flats).

21. The first issue was "whether the proposed alterations … would be detrimental to its significance as a listed building or would prejudice its future optimum viable use" (paragraph 5 of the decision). The first part of that issue was the impact of the proposed alterations and extensions on the special architectural and historic interest of the listed building. The inspector noted that the property has been on the market for some time but was vacant and that prospective purchasers have been "put off by the conditions of the building and the expense involved in returning it to good order either as a place of worship or for a new use" (paragraph 9).

22. The inspector reasoned in paragraphs 10-14 that with "two important exceptions", the proposals would do "little harm" to the significance of the building as a synagogue because the rear part of the building is not the part of architectural significance. The two exceptions were, first, reduction in the size of the prayer hall

at ground floor and first floor level and, second, the requirement to remove or relocate (perhaps within the proposed flats) certain stained glass windows of historic significance.

23. As to the first, he noted that the reduction in the floor area would reduce the prayer hall to its original 1916 area, without the additional space created during the alterations and extensions done in 1955 and 1976. He commented that the reduction was therefore "not as dramatic as might first appear" and that it "could easily be argued as beneficial to the significance of the building rather than harmful". He thought the question how the alteration was done could be "satisfactorily controlled by a condition …".

24. As to the historically significant stained glass windows, the inspector commented that what to do with them "is potentially a more difficult problem". If left in situ, they would become part of a flat, which seemed to him "wholly inappropriate". He thought they would have to be moved, possibly as requested by the outgoing congregation which was said to be interested; or by moving them to what would become a function room; or by moving one or both of them "on the new rear walls, backlit so that they could be appreciated".

25. All these options seemed to the inspector realistic. He concluded that the proposals "would not involve loss of or alteration to any significant historic fabric and would involve very little change to the external appearance of the listed building". He decided that nothing in the proposals would cause "harm to the architecturally or historically significant fabric of the building that could not be satisfactorily controlled by attaching conditions to the planning permission and listed building consent".

26. The inspector then went on to consider the issue of "[o]ptimum viable use", in paragraphs 15-21 of his decision. He referred first to the concern that the reduced prayer hall size could deter purchasers and users, either for worship or some other community use. He reasoned that as a potential place of worship, the previous congregation had found it too large; and a new congregation, which was reported to be interested, "would seem unlikely to require all of the existing floorspace". He thought the area that would remain would probably suit the religious needs of a new congregation.

27. A proposed alternative community use, he reasoned, would be an advantage but the disadvantage would be, "whatever amount of floorspace was on offer, of requiring alteration to, or removal of, features that contribute strongly to the building's architectural and historic significance". He saw no "compelling conflict" with BH21, on avoiding loss of community facilities. His view was that the scheme coupled with the obligations under section 106 "offers the opportunity of preserving what is important about the building and enabling considering of re-use either as a place of worship or of a new use as some sort of community facility ….".

28. He went on to discuss the repair and other works that would have to be done, commented that these needed updating and that, subject to that, "are no more than what may legitimately be required in the interests of preserving that part of the synagogue which would remain as a place of worship or potentially adaptable to a

new community use …". He said the works to be required by planning conditions, should "control the detail of the reduction in size of the prayer hall and … secure the future of the stained glass windows".

29. Having considered the second and third issues, which do not concern me in this application, he stated his overall conclusions thus, so far as material:

> 30. On the first main issue, the proposed alterations and extensions would cause no harm, subject to conditions, to the architecturally or historically significant fabric of the building; and the schedule of works …. suitably updated and amplified, would secure the works to the remaining place of worship that are necessary in terms of preserving its architectural and historic significance. The reduction in the area of the prayer hall would be to its original size, which would not be too small for effective re-use or a new use. There is no compelling conflict with Policies BH21, LQ1, LQ2, LQ9 or LQ14 …. .
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> ….
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> 33. In the light of those three conclusions, the appeal may be allowed and planning permission and listed building consent granted, subject to conditions. Also, even if a balanced judgement were thought to tip against the proposals on the second and third issues [which are not material here], a marginal transgression is something that could be accepted because of the benefits for the listed building of securing an effective use for part of it which could substantially enhance the prospect of finding an appropriate re-use or new use for the remaining part, the core of the architecturally and historically important synagogue.

30. The grounds of challenge can be summarised as follows:

(1) failure to have any regard at all to the requirements set out in Part 12 of the NPPF;

(2) failure to have special regard to the desirability of preserving the building and its features of special architectural or historic interest, as required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990;

(3) failing to have regard to Historic England's objections or, alternatively, failing to give adequate reasons for disagreeing with its assessment of the proposals; and

(4) misapplying section 38(6) of the Planning and Compulsory Purchase Act 2004 requiring that the determination be made in accordance with the Blackpool Local Plan "unless material considerations indicate otherwise".

31. It was common ground between the parties that it was not incumbent on the inspector to mention every material consideration or argument; that an omission to do so did not raise a presumption that he had failed to take something relevant into account; that national policies are well known and can be taken to have been in the inspector's mind unless the contrary is indicated; and that what matters is whether the inspector has dealt with the principal controversial planning issues and whether

it appears from his treatment of them that he must have misunderstood or misapplied or failed to apply a relevant policy.

32. The following further propositions of law were likewise common ground and not contentious:

(1) That the relevant parts of the NPPF are material considerations for the purpose of an appeal such as this (see e.g. *Tewkesbury v. Secretary of State for Communities and Local Government* [2013] EWHC 286 (Admin) per Males J at paras 11-14);

(2) that the concept of "preserving" the setting and features of a building in what is now section 66(1), means merely "doing no harm to" its setting and features (*ibid.* paragraph 20, citing from Lord Bridge's speech in *South Lakeland DC v. Secretary of State for the Environment* [1992] 2 AC 141, at 146E-G);

(3) that the assessment of the degree of harm to the listed building and its features of special architectural and historic interest was a matter for the inspector's planning judgment, but he was not free to give that harm such weight as he chose when balancing it against countervailing public benefits (*Barnwell Manor Wind Energy Ltd v. East Northamptonshire DC* [2014] EWCA Civ 137, per Sullivan LJ at paragraph 22);

(4) that a finding of harm to the setting or features of a listed building is a consideration to which the decision-maker must give "considerable importance and weight" (*ibid.*, paragraph 22, citing from Glidewell LJ's judgment in *The Bath Society v. Secretary of State for the Environment* [1991] 1 WLR 1303, 1318F-H.

(5) The reasons for a decision must be intelligible and adequate, though they can be briefly stated; they must not give rise to a substantial doubt about whether the decision maker erred in law, e.g. by misunderstanding some relevant policy or other important matter or failing to reach a rational decision (*Jones v. Mordue* [2015]EWCA Civ 1243, per Sales LJ at paragraph 20, citing from Lord Brown's speech in *South Bucks DC v. Porter (No. 2)* [2004] 1 WLR 1953, at paragraph 36).

(6) Sullivan LJ's judgment in the *Barnwell Manor* case (see above) and in particular paragraph 29 thereof, is not authority for any special onus on the decision maker requiring him to demonstrate positively that he has given considerable weight to the desirability of preserving the setting and features of a listed building (per Sales LJ in *Jones v. Mordue*, paragraphs 23-26).

(7) Generally speaking, a decision maker who works through the *fasciculus*[1] of paragraphs in Part 12 of the NPPF (paragraphs 131-134) in accordance with

[1] Diminutive of Latin *fasces*, "*[a] bundle of rods bound up with an axe in the middle and its blade projecting. These rods were carried by lictors before the superior magistrates at Rome as an emblem of their power*" (Oxford English Dictionary).

their terms, will have complied with the section 66(1) duty (per Sales LJ, *ibid.*, paragraph 28).

33. In my judgment the council's four grounds of challenge do not, in substance, raise separate and distinct arguments. Taken together, they boil down to the proposition that the inspector failed to give the requisite "considerable importance and weight" to the desirability of preserving, i.e. avoiding harm to, the synagogue and its features of special architectural and historic interest, which would be damaged if the proposals were allowed to proceed.

34. Mr Easton submitted that the inspector fell into the error of downplaying the amount of weight to be given to that matter. The four different ways in which the grounds of appeal are formulated seem to me, in substance, to amount to points which, in the council's submission, demonstrate the presence of that vitiating feature in the decision, rather than separate and substantive grounds of challenge in their own right.

35. The first ground of challenge is that the inspector nowhere in his decision made any reference whatever to the NPPF. He was not obliged to refer to it by its name, as is accepted; but his failure to mention it at all is said to be a pointer towards the conclusion that he overlooked the need to give "great weight … to the asset's conservation", in the words of paragraph 132. Such is Mr Easton's argument.

36. The second ground of challenge is an alleged failure by the inspector to perform the section 66(1) duty. That challenge, in practice, amounts to the same as the first ground, since as Sales LJ pointed out in *Jones v. Mordue*, a decision maker who works through the steps in the relevant NPPF paragraphs will, generally, have performed the section 66(1) duty.

37. The third ground of challenge is the failure to engage with and deal with Historic England's objections. They are not mentioned by name in the inspector's decision, but the two letters in which their objections were made are referred to as source material at the end of the decision (with one immaterial date error). Mr Easton, realistically, accepted that he could not argue that the inspector had overlooked them. Rather, he said, the inspector did not adequately say why he disagreed with Historic England's opposed view of where the balance of public interest lay.

38. The fourth ground of challenge was that the inspector did not correctly apply the requirement under section 38(6) of the Planning and Compulsory Purchase Act 2004 to decide the issues in accordance with the Blackpool Local Plan policies "unless material considerations indicate otherwise". Mr Easton took issue with the inspector's use of the verb "compel" and its participle "compelling" when stating, at paragraph 30 of the decision, that: "[t]here is no compelling conflict with Policies BH21, LQ1, LQ2, LQ9 or LQ14 ….".

39. He pointed out that the same verb is used elsewhere in the decision and he submitted that it indicated a tendency on the inspector's part illegitimately to weaken the statutory requirement to decide the issue in accordance with the relevant development plan unless material considerations indicate otherwise, by proceeding

on the basis that a breach of the policies in the development plan had to be "compelling" in order to influence the decision.

40. In my judgment, the real issue in this application is whether, on a fair reading of the decision and the language used in it, the cumulative force of those points is sufficient to persuade the court that the inspector must have fallen into the error of giving less than "considerable importance and weight" to the finding of harm to the synagogue and its features of special architectural and historic interest (in Glidewell LJ's words in the *Bath Society* case) or that he gave less than "great weight" to the conservation of the synagogue (in the words of paragraph 132 of the NPPF).

41. Ms Reid, for the Secretary of State, submitted that the inspector did not so err. She contended that the inspector properly identified and resolved the key controversial planning issues in the case. He resolved them in a way which gave the full amount of weight required to the need to preserve the historic and architectural features of the synagogue. He was entitled to find, she submitted, that the proposals would not do damage to it and thus that it would be preserved for religious or other use. He did not overlook relevant policies or misapply any of the statutory tests, she said.

42. Ms Reid reminded me that the inspector did not need to mention the NPPF by its name; everyone involved plainly knew its content. Part 12 of the NPPF was mentioned expressly in the statement of common ground and the material paragraphs within Part 12 were cited in the two letters from Historic England. Furthermore, the written decision included mention of language directly derived from the NPPF, such as "optimum viable use", which appears within paragraph 134.

43. Ms Reid submitted that the inspector found there would be no harm to the heritage asset which could not be controlled by appropriate planning conditions. Indeed, she submitted more fundamentally that the inspector had found the proposals would cause no harm to the historically and architecturally significant features of the synagogue at all. The synagogue would not be harmed by implementing the proposals; it would be preserved thereby, in the statutory sense of the term as interpreted by the House in the *South Lakeland* case.

44. It followed, as I understood Ms Reid's submission, that the balancing exercise in paragraph 134 of the NPPF did not fall to be carried out: there was nothing to weigh in the scales against the public benefits which implementing the proposals would deliver. These were: creating a smaller, more viable, prayer room space either for worship or new community use; and thereby mitigating the risk of vacancy and enhancing the likelihood of finding a willing purchaser and willing users.

45. As for the statutory requirement to decide the issue in accordance with the Blackpool Local Plan unless material considerations indicated otherwise, Ms Reid submitted that the council was reading too much into the use of the verb "compelling" in paragraph 30 of the decision. Read in context, she submitted, the inspector was simply saying that there was no conflict with the relevant policies because the heritage asset would be preserved by the proposals and not damaged by them: redundancy of the building was a greater enemy than physical alterations, according to the council's own report.

46. As regards the Local Plan "LQ" policies regarding historic buildings, Ms Reid pointed out that they were considered expressly and mentioned in the decision document. The judgment of the inspector simply entailed the proposition that they were not violated by granting permission to the proposals. As to loss of a community facility and the policy BH21, Ms Reid submitted that the inspector found the prayer hall was not fully needed as it had been found too large and that reducing its size would be beneficial not harmful, since it would promote community use.

47. I turn to my reasoning and conclusions in this application. The starting point is the question of harm. I remind myself that this was a case in which it was common ground that the proposals entailed some harm to the historic and architectural features of the synagogue. That was why the statement of common ground mentioned Part 12 of the NPPF. It is not realistic to suppose that the inspector was unaware of its provisions, and I bear in mind that he did not need to cite the paragraph numbers. But I have to consider whether he applied the policies properly.

48. This case was, moreover, one in which the parties appeared to be in agreement that this was a case where the harm to the heritage asset was less than substantial, but more than de minimis. That was also the expressly stated view of Historic England. That common ground is not surprising, given that the proposals required a reduction in the size of the prayer hall and the displacement of stained glass windows of historic significance, which could not stay where they were if the proposals were to be implemented.

49. It follows that this was a case in which, everyone agreed, the inspector needed to apply his mind to the balancing exercise mentioned by Historic England in its letter of 14 April 2014 ("[t]he degree of harm appears to be less than substantial (NPPF 134) and accordingly the local planning authority should weigh the harm against any public benefits to be gained from the project, including securing the optimum viable use").

50. Against that background, it would be surprising indeed if the inspector had found, contrary to the position of the parties and the statutory consultee, that the proposals would not do any harm at all to the heritage asset. If that had been the inspector's finding, he would have been going further than the position of the developer. Furthermore, he would not have had to carry out the balancing exercise ordained by paragraph 134 of the NPPF and section 38(6) of the 2004 Act. Yet, on a fair reading of the decision, he did undertake that balancing exercise.

51. I therefore reject as unrealistic Ms Reid's submission that the inspector found that the heritage asset would be preserved and not harmed by the proposals. It is difficult to see how you preserve a building by reducing its floor space and moving or removing its historic stained glass windows. And that is not what the inspector said. He said at paragraph 10 that the proposals for the rear of the building would "do little to harm" its significance as a synagogue. He did not say they would do no harm to its significance as a synagogue.

52. He did not stop there. His proposition that the proposals for the rear of the building would do "little harm" to its significance as a synagogue were then stated to be subject to two important exceptions: reduction in the floor space and the question of the stained glass windows. It follows that his perception of those two matters was that they *increased* the otherwise *little* harm the proposals would do to the significance of the synagogue.

53. The harm that was found meant that, in agreement with the position of the parties, the inspector had to carry out the balancing exercise provided for in paragraph 134 of the NPPF. As I have said, it is clear he did so. He weighed the harm he had found against the public benefits he judged the development would deliver, including the securing of optimum viable use of the site. He was right to do so.

54. But the question remains whether he gave the required considerable importance and weight to the finding of harm to the synagogue and its features of special architectural and historic interest, and whether he gave great weight to the conservation of the synagogue. After careful reflection, I find myself driven to the conclusion that he did not. In my judgment, the inspector fell into the error of regarding the harm to the significance of the synagogue as relatively slight and, because it was relatively slight, he decided that the weight to be given to that harm should also be relatively slight.

55. I find support for this regrettable conclusion not just in the points deployed by Mr Easton in argument, as his grounds of challenge; but also, in the language used in the decision document. At paragraph 11, the inspector was dismissive of the significance of the reduction in the floor space comprising the prayer hall. He took as his benchmark the original 1916 amount of floor area, rather than the larger area after the alterations and extensions carried out in the 1950s and 1970s. Yet, when the building was listed in the late 1990s, it was listed in the state it was in as at 1998, not 1916.

56. He even went as far as to characterise the reduction in floor space as arguably beneficial to the significance of the building rather than detrimental. This statement is not fully explained: is it because if the prayer hall is too big, it is less likely to be used in future? Or because a new congregation is likely to number fewer worshippers? Either way, the issue of future use is not one that goes to harm; it goes on the other side of the balance, under the rubric of public benefit. It cannot but harm a heritage asset to reduce its stature.

57. Next, in dealing with the stained glass windows, the reasoning appears to be that as long as they are preserved and not destroyed, it does not matter very much whether they are preserved in situ or moved. That does not seem to me to be giving great weight to this historic feature of the synagogue. It seems to me to be downplaying the amount of weight to be given to the harm caused by disturbing the stained glass windows, which must necessarily happen if the development proceeds.

58. When, in paragraph 14, the inspector goes on to say that nothing in the proposed alterations would cause harm to the architecturally or historically significant fabric of the building which cannot be controlled by conditions, that is a conclusion that can only be reached by dismissing as unimportant the reduction in floor space and

the disturbance to the stained glass windows. Those two matters cannot be controlled by conditions. There are no conditions that could save the stained glass windows in their current position, nor keep the amount of floor space the same.

59. For those reasons, I accept that the council's application is well founded, and I will quash the inspector's decision. I am grateful to counsel for their eloquent written and oral arguments.

60. The parties agreed that costs should follow the event and that, if I were to find in the council's favour, I should summarily assess costs in the amount set out in the council's schedule of costs. Subsequently, it was drawn to my attention that VAT should be deducted from that figure (though if the council disagrees about that it has liberty to apply). The VAT-free figure in the schedule is £10,551.50. I therefore summarily assess costs in that sum, which the Secretary of State must pay to the council.