

**BRIDLINGTON TOWN CENTRE  
AREA ACTION PLAN 2011-2021  
EXAMINATION HEARING  
December 2011**

**OPENING STATEMENT ON BEHALF OF EAST RIDING OF YORKSHIRE COUNCIL**

1. East Riding of Yorkshire Council (“**the Council**”) promotes the Bridlington Town Centre Area Action Plan 2011-2021 (“**the AAP**”) because there is a pressing need to deliver a plan-led regeneration strategy for the town centre.
2. Bridlington is a very special seaside town which is a popular place to live, but as a place to visit, its heyday as a seaside resort is long past. Although the seaside will remain at the heart of Bridlington’s appeal, and tourism will continue to be important, the seaside and tourism are no longer the economic mainstays of the town. The town centre, and its focus, needs to be restructured and transformed in order to meet the economic and social challenges facing the town.
3. With that in mind, the AAP is a plan specifically for regenerating the town centre. It is not a set of general town centre regeneration policies but a specific plan for restructuring and transformation. The AAP follows a series of options for reversing decades of market failure and restructuring the town centre, to put in place the conditions that will allow the market to respond to its particular opportunities. It seeks to make better use of its assets, including the seaside and the Harbour, and to make them play a key role as part of the restructuring.
4. Bridlington’s communities and its businesses have responded well to the sharp contraction in the traditional economic base of the town. Many beneficial changes have been made (including the refurbishment of the Spa, the park and ride and improvements to public realm) and more will occur once the AAP has been found sound. To date more than forty properties have been acquired by agreement by the Council for the Burlington Parade site in order to facilitate the delivery of the AAP. However, the town recognises that more is needed to reverse its decline.

5. The greatest challenge facing Bridlington is its economy. The economy needs to grow, diversify and strengthen in ways that will enhance Bridlington's assets and restore Bridlington to its position as the jewel of the East Yorkshire coast. Bridlington needs new ways of generating wealth and creating jobs. Too few residents of working age are economically active and too many jobs in the town are poorly paid, casual or seasonal.
6. The town has a residential community of c. 40,000 people, and is the service centre for another 40,000 people who live closer to Bridlington than to any other settlement of Bridlington's size or importance. People should be choosing to shop and spend their leisure time in Bridlington town centre. They should also be choosing to live in and around the town centre. However, people do not do so in the numbers needed for the town centre to prosper, or to act as the engine for the growth of the local economy. As a result, the town centre is declining and a great deal of the expenditure of local residents is made out of the town.
7. The evidence base that supports the AAP demonstrates that the key to unlocking the potential for sustainable economic growth lies in regenerating the town centre. That regeneration requires a clear focus on Bridlington's strengths as a distinctive place to live as well as visit. Regeneration of the town centre will enable it to become an economic powerhouse for this part of Yorkshire.
8. Bridlington has two particular types of asset upon which to build a more prosperous future: the town's exceptional natural environment, special history and distinctive built heritage and its strong and committed local community.
9. The AAP sets out the strategy for the regeneration of the town centre and is the product of:
  - (1) The community's vision and priorities for Bridlington, first set out in the Town Centre and Regeneration Strategy [LD01, 2004] and since developed over time, in consultation with Bridlington's communities through the preparation of the AAP, the 2010 update of East Riding's Sustainable Community Plan [LD08] and the Town Charter [LD09, 2005]; and
  - (2) The detailed evidence as to Bridlington's economic capacity, special assets and distinguishing characteristics.
10. The AAP will enable the economy of the town to grow and change, by making available public sector resources to pump-prime the process and provide the necessary basis and incentive for existing and new householders, businesses and developers in the private

sector to make the needed investment in the town centre. The willingness of Bridlington's communities and different interest groups to work together will enable the AAP to deliver the common vision to regenerate and revitalise the town.

11. It would be a serious mistake to assume, as some have suggested, that the town can rely on the market to address its weaknesses and reverse its decline and thus the policies of the AAP should be flexible and less focussed. The flaw in this approach is plain: if the enormously buoyant development and retail markets prior to 2008 (responsible for so many regeneration schemes throughout the UK) did not achieve the necessary degree of investment and redevelopment to tip the scales in Bridlington, it would be folly to expect the market to do so in the current economic climate. With the current state of the economy, the slowdown in development and regeneration schemes, and the prospects for the economy over the next 5-6 years bleak, if there is not an intervention directed in the public interest by the Council then the prospects of transformational change in Bridlington must be close to nil.
12. The only realistic way in which those failures will be corrected is through the intervention of the public sector. The Council's commitment to making the necessary interventions is the lynchpin of the AAP's deliverability and will provide essential new buildings, new public realm and new infrastructure. Further, the Council's investment equates to a very significant demand boost for the local economy. The development will be delivered in ways that will preserve and enhance the character of the town centre, and save its best assets for future generations.
13. The AAP therefore provides the very specific context in which the examination should take place. The AAP proposes very radical but essential changes. Tinkering at the margins of the diverse problems that exist in Bridlington will not tackle the continuing decline. Therefore, the AAP is a very particular plan that is all about delivering the right development in the right place to meet local needs and deliver the vision that Bridlington's communities have for their town.
14. The drivers of demand for new development in the town centre are already in place. Only long-entrenched market failures stand in the way of substantial progress. In particular:
  - (1) Bridlington is a popular place to live and the population is growing;
  - (2) The catchment's expenditure on retail goods and leisure services is rising, the town centre's share of this spending is low and the scope for claw back of trade leaking elsewhere out of town is substantial;

- (3) The appeal of the town centre as a place to live, its locally high levels of self-employment and rapidly advancing communications technologies provide a solid basis for developing the existing small business base;
- (4) The higher-spending non-seasonal sectors of the national tourism market are growing, as is the region's share of these markets. In particular, the Spa functions as a magnet and the local hotel market remains under-exploited;
- (5) There is substantial unmet demand for sailing berths on Yorkshire's east coast and Bridlington is well-located to capture this demand and has the assets in the town centre to enable it to do so;
- (6) The issues facing Bridlington are clearly identified. The structure of the AAP and the format of the policies result in a deliverable strategy that will be effective in transforming the economic performance of the town centre and also improve social and environmental wellbeing.

15. The issues are focused and carefully articulated. In particular they:

- (1) Identify the reasons why the town centre underperforms, so that the problems can be tackled;
- (2) Identify and build upon the under-exploited and distinctive assets that could enhance the performance of the town centre;
- (3) Identify and seize the opportunities available to the town centre to improve performance; and
- (4) Ensure that the scale and mix of the development planned is deliverable by establishing, and working within, the capacity of the local economy for growth.

16. There is a clear desire by Bridlington's communities and a demonstrable economic and environmental need to rebalance the focus and direction of regeneration efforts in favour of the role of the town centre for its residents, businesses and catchments.

17. This rebalancing needs to take place whilst also improving the town's more traditional appeal as a visitor destination, albeit for a more diverse market over the year. The Vision of the AAP clearly articulates this rebalancing as "Bridlington: a great place to live by the seaside. Visitors welcome!"

18. The objectives of the AAP are very clear and address all elements of the Vision, setting out a robust route to achieving the Vision. The six strategic objectives are

comprehensive statements setting out what the AAP's proposals must achieve to enable regeneration. The objectives acknowledge and tackle the cause of underperformance, build on assets, realise opportunities and accommodate the mix and scale of the development required. They do so within the capacity of the local economy to deliver regeneration, meet local needs and to diversify and strengthen the local economy, including the development of a high spending year-round visitor market.

19. The fourteen enabling objectives provide the more specific detail required if the strategy is to be effective in marshalling and targeting the resources needed to deliver the strategic objectives and to optimise benefits for local people and businesses.
20. The enabling objectives guide the AAP's use of resources and interventions so that they are efficient and effective in removing the market failures and other obstacles that require to be tackled. Further, the objectives identify the opportunities and measures required to ensure that the town centre economy prospers in future.
21. By way of example, the assembly of the Burlington Parade site overcomes a range of market failures, and makes possible the beneficial utilisation of the Gypsy Race for much needed high quality public open space, creating attractive settings for new development and enabling the unification of the Harbour with the station area.
22. Policies **Brid TC1-TC20** provide that the comprehensive means for securing the AAP objectives. As a spatial plan, the AAP uses the development of land to improve the economic, social and environmental wellbeing of the area.
23. However, the Council is clear that the role of the AAP needs to be distinct from the role of the type of policies found in a Core Strategy. (There are no issues arising with regard to the AAP being progressed in advance of the Core Strategy – the two are consistent.) The purpose of the AAP is specifically not to set broad principles to guide the market, by providing broad options where change and anticipated needs for future development may be accommodated. Regeneration is required for the reasons already stated and because there has been for a long time insufficient occupation and utilisation of land so that such investment as has occurred has often made no positive contribution to town centre performance and in some instances has undermined it. The collective inability of local businesses to capture the demand the local economy generates means that the demand (and expenditure) that exists from within the local catchment is lost to the benefit of other locations and to the disadvantage of Bridlington.
24. The AAP is the result of detailed research, consultation and evaluation as to the amount

of demand that might exist, if it were not frustrated by the current state of the town centre, and the identification of the factors that obstruct the market's ability to respond to demand and deliver development that will capture that demand.

25. The radical changes proposed by the AAP will restructure the town centre and endow it with a scale and quality of benefits not otherwise achievable, including:
  - (1) The two key structural changes proposed by the AAP are the linking of the centre to the Marina through the development of the Harbour Top [TC4] and the creation of Burlington Parade (TC3] with associated infrastructure improvements;
  - (2) The physical benefits of the principal developments: Burlington Parade [BridTC3]; Bridlington Marina [BridTC4]; Strategic Public Realm [Brid TC5]; the Town Centre Seafront Strategy [BridTC6]; the Town Centre Access and Movement Strategy [BridTC7]; and the Town centre Parking Strategy [BridTC8];
  - (3) The creation of c.1,900 long term jobs, in Burlington Parade alone, across a wide range of occupations;
  - (4) Several hundred person years of construction employment;
  - (5) New housing choices and new residents of all types and ages, creating sustainable, inclusive, mixed communities and providing further trade and general vitality in the area;
  - (6) The stimulus for the growth of local small business to supply the new customers, employees and residents;
  - (7) The retention of up to 47% of the comparison goods shopping catchment, enabling the creation of a sustainable town centre; and
  - (8) a "plan form" arrangement of land uses and infrastructure, to facilitate and improve the economic, social and environmental wellbeing of the area.
26. Flexibility has been built into the policies to enable the AAP to adapt to changing circumstances, as required. However, because the AAP is specifically targeted at regeneration following a protracted period of market failure, it is necessary that the issue of flexibility is approached in that specific context and not as if it were a more general set of permissive policies. The focus of the AAP is therefore on delivery.
27. The policies make provision for a number of specific requirements necessary in order to achieve the impetus required to reverse the decline of the town. A general set of

flexible permissive policies, which would allow a broad market approach, would simply not be sufficient. The failure of the market to come forward and address the decline of the town over many years provides the strongest evidence of the need for targeted intervention and of the inadequacy of a generally permissive approach.

28. The AAP makes robust provision for monitoring the policies in a way that focuses on the delivery of the physical developments proposed by BridTC3-8 because these are the means of delivering the AAP's objectives. The monitoring framework sets out in detail the delivery milestones, the principal progress triggers, the output targets and the timetable for delivery, whilst clearly identifying the outcomes sought and the measures that will establish whether those outcomes have been achieved.
29. There is considerable consensus in the community and amongst stakeholders as to the vision, objectives and policies of the AAP. There are some remaining objections, but it is the Council's case that none of the objections, either individually or cumulatively, warrant a finding that the AAP is unsound. The Council's detailed case in relation to each of the Matters and Issues identified by the Inspector is set out in the Council's Written Statements and Response to Objections Documents ED19 and ED22.
30. With regard to the main objectors, detailed responses have been made and it is considered that their concerns are capable of being accommodated within the scope of the AAP policies and with a degree of cooperation. However, the Council has also recognised that it may be necessary to rely on compulsory powers in order to deliver the AAP if negotiation should not lead to a satisfactory solution in the public interest.
31. With regard to Mr Seymour's questioning of the jurisdiction of the Council with regard to the Harbour and Marina, this has already been addressed in the Council's Response to Objections. Further for the sake of completeness, there can be no doubt of the extension of the Council's planning jurisdiction to the Harbour and Marina. Under s. 72 of the Local Government Act 1972 any accretion from the sea forms part of the parish (and therefore falls within the power of the local authority) which the accretion joins:

**"72.— Accretions from the sea, etc.**

(1) Subject to subsection (3) below, every accretion from the sea, whether natural or artificial, and any part of the sea-shore to the low water-mark, which does not immediately before the passing of this Act form part of a parish shall be annexed to and incorporated with—

(a) in England, the parish or parishes which the accretion or part of the sea-shore adjoins,

(b) [Wales] ...

in proportion to the extent of the common boundary.

(2) Every accretion from the sea or part of the sea-shore which is annexed to and incorporated with a parish under this section shall be annexed to and incorporated with the district and county in which that parish is situated. ...”

32. In ***R. v. Easington DC ex parte Seaham Harbour Dock Company Ltd*** [1999] PLCR 225, the High Court held (applying ***Barwick v. South Eastern and Chatham Railway Co.*** [1921] 1 K.B. 187) that a pier built into the sea came within the jurisdiction of the local authority for the purposes of designation as part of a local conservation area. Owen J read s. 72 as including not just accretions from the sea, but accretions into the sea. The Bridlington Marina is an accretion into the sea in the same way as the pier in the ***Easington*** case, or the reclaimed land in Dover Harbour in ***Barwick***, and therefore falls within the scope of its jurisdiction as local planning authority.
33. In conclusion, for the reasons set out in the evidence, and in the statements produced for the Examination, the AAP complies with the requirements of s. 20(5)(a) of the Planning and Compulsory Purchase Act 2004. Further, the AAP is demonstrably sound within the meaning of s. 20(5)(b) of the Act, the Town and Country Planning (Local Development) (England) Regulations 2004 and the Planning Inspectorate *Examining Development Plan Documents: Soundness Guidance* (August 2009).
34. The AAP is justified, effective and consistent with national policy. The Council will in due course request that the Inspector find the AAP sound and so enable the Council to get on with the regeneration that is essential to the future of Bridlington.

**DAVID ELVIN QC**

**GRAEME KEEN**

For East Riding of Yorkshire Council

Landmark Chambers,  
London EC4A 2HG  
5 December 2011

**\*225 R. v Easington District Council Ex Parte Seaham Harbour Dock Company Limited**

Queen's Bench Division

22 October 1998

**[1999] P.L.C.R. 225**

( Owen J. ):

October 22, 1998

*Judicial review—conservation area—jurisdiction—material considerations on designation*

The Applicant applied for judicial review of the Respondent's decision to designate Seaham Port ("the Port"), which the Applicant owned and operated, as part of a conservation area. The Applicant pleaded in its application that the Port existed in a highly competitive market where small price differentials could have significant effects on competitiveness.

The Applicant argued, firstly, that the Respondent had no jurisdiction to designate the Port as a conservation area since it was not, for the purposes of section 72 of the Local Government Act 1972, "an accretion from the sea". Had it been such an accretion, the 1972 Act would have rendered it part of the Respondent's district. The Respondent relied upon the terms of the Seaham and Harbour Dock Act 1898 which created the Applicant and which provided that "the works herein before referred to and authorised by this Act will be situated in the township of Dalton and the parish of Dalton Odell in the parish district of Seaham Harbour in the county of Durham".

The Applicant's second contention was that, even if the Port had been lawfully made part of a conservation area, the Respondent wrongly took into account the fact that, on designation of the area, statutory funding may become available for works in the conservation area. The members of the Respondent should not have been told of the possibility of alternative funding. Putting the possibility of financial benefit before the members of the Respondent was like placing hearsay evidence before a jury: it would have affected them improperly.

The Applicant also raised in its skeleton argument (without subsequent argument) that it was unreasonable to allocate an area of the Port which did not contribute to the conservation area and which was not accessible to it, and that the Respondent had failed to have regard to the Applicant's obligations under the Act which had created the Applicant.

Held, dismissing the application:

(1) As to the jurisdiction argument, the natural meaning of the 1898 Act, which created the Applicant, was to give the Respondent jurisdiction **\*226** over the Port. The natural meaning was to be followed. Even had it been necessary to look at the 1972 Act, the Port would have been an "accretion from the sea". An "accretion from the sea" was properly construed as an "accretion into the sea".

(2) As to the financial argument, it would be folly and indeed misleading not to indicate what the possible results are of designating the Port as a conservation area. While the designation of the Port should be made on the basis of its architectural or historic interest and whether it is desirable to preserve or enhance those interests, it was also necessary to consider what the difficulties in such designation may be. There was nothing which indicated that the real questions which the Respondent had to consider were not considered.

(3) As to the remaining arguments, the decision to allocate the whole of the Port, including inaccessible areas, was a matter for the Respondent and it was inevitable that the Respondent would have had the obligations of the Applicant under the 1898 Act put before it.

## Cases referred to:

- Simplex (G.E.) Holdings v. Secretary of State for the Environment (1989) 57 P. & C.R. 306 .
- Blackpool Pier Co. v. Fylde Union (1877) 46 L.J. (M.C.) 189 .
- Barwick v. South Eastern and Chatham Railway Co. [1921] 1 K.B. 187 .
- R. v. Selby District Council ex p. Oxton Farms [1997] E.G.C.S. 60 .

## Representation

Ian Dawson for the Applicant.

Christopher Katkowski for the Respondent.

OWEN J.:

This is an application for judicial review of a decision of Easington District Council. Leave to move was granted on November 4, 1997 by Potts J. on a consideration of the papers. The review which is sought is of a decision which was made on May 6, 1997 designating the centre of Seaham a conservation area pursuant to section 69 of the Listed Buildings Act 1990 . It is said that this should be quashed or quashed in part especially as it relates to those parts of the harbour which are owned and operated by the present applicant and used by the present applicant in furtherance of its statutory duties and powers.

The applicant is a statutory company established in 1898 for the purpose of running the port of Seaham. The proposed conservation area includes part of the port and it also includes parts outside the port. The concerns, as I understand them, of the applicant are at least in part economic. There is a summary in the skeleton argument which has been supplied to me on behalf of the applicant which indicates the scope of the present operation of the applicant and it indicates why there is concern. **\*227**

The closure, it says, of the Durham coalfield radically changed the business of the port. That closure finished in the 1980s. As a result of the finish it became necessary to find new markets, new cargoes for import and exportation. That, it is pleasing to see, has largely been done. It is a tribute to those who have been running this company that not only has the amount of tonnage gone up year by year but in addition the projected tonnage has gone up for the present 12 months.

This port, which is small and quite clearly a working port operates, it is said, in a highly competitive market. There are other ports nearby which supply strong competition. The result of that is that small price differentials can drive cargoes from one port to another. Therefore, says the applicant, it is essential that it should be allowed to run its business unhindered by considerations which do not affect its competitors. It is essential for that reason that works of repair should be carried out in a fashion which is economic: although it is accepted that they would have to be safe, they must be economic. That may very well mean that some repairs will not be done in the most accurate or historically appropriate manner and therefore may not incur the pleasure and the sanction of English Heritage. One can see that this fear could be a real fear and certainly it is a fear which, in the light of its experience, the applicant does feel.

There are two main objections to the order. Those are set out in the skeleton arguments and have been produced in the argument which has been put before me. They may be described, as Mr Dawson described them, as the jurisdiction argument and the finance argument. As to the jurisdiction argument, the way in which that is approached is this. First, it is said that the council may only lawfully include within the conservation area areas which are within its administrative area—as to that there can be no doubt. It is then said,

in relation to this port, the port only falls within the district of the council if it comes within the words of section 72 of the Local Government Act 1972 . That section provides:

“(1) Subject to (3) below, every accretion from the sea whether natural or artificial, and any part of the sea-shore to the low watermark, which does not immediately before the passing of this Act form part of a parish shall be annexed to and incorporated with (a) in England, the parish or parishes which the accretion of the sea-shore adjoins, and [insofar as it is relevant (b)] in proportion to the extent of the common boundary.

(2) Every accretion from the sea or part of the sea-shore which is annexed to and incorporated with the parish ... under this section shall be annexed to and incorporated with the district and county in which that parish ... is situated.” **\*228**

Based on those words the applicant argues that in order to have jurisdiction the respondent has to show that the dock which it has designated is an accretion from the sea, whether natural or artificial, above low watermark. The answer put forward by the respondent to that is to say “not so”. The applicant refers to what has been called “the Blackpool case” which was decided in 1887, a decision of the common Pleas Division relating to Blackpool Pier. The Act under which that case was considered is set out in the judgment. It is Act 31 and 32 of the reign of Victoria, c. 122 and section 27 which includes words which are similar to those which have been quoted from the recent Act “every accretion from the sea whether natural or artificial” and so on. There may be some guidance as to what was thought to be the meaning of those words at that time. In the analysis, the ultimate analysis, the judges, Lord Coleridge C.J. and Grove J. found that Blackpool Pier, the Blackpool Pier of the day, did not come within the definition of an accretion of the kind mentioned in the Act. Lord Coleridge said:

“The pier is carried out to sea over the space between high and low watermark, and for about 500 hundred feet beyond low water-mark, and therefore beyond the realm of England, unless parliament has by some enactment made it a part of the realm.”

Lord Coleridge's judgment contained these words:

“It is said that if this pier had been a solid structure instead of being supported by iron pillars it would have been within the term ‘accretion’. I think not, for a building thrown from the land into the sea cannot be said to be an accretion from the sea, but it is unnecessary to determine that, as this pier is not a structure of that kind.”

That was an obiter dictum of Lord Coleridge which I am asked to accept as being binding upon me. Grove J. dealt with the matter in a similar way save that he went on to say:

“The second part of the section which deals with accretions from the sea was intended I think to deal with accretions from the sea to the land which, whether formed by natural or artificial means, might cause a variation in the low watermark.”

Again, that is an obiter dictum and does not help a great deal.

The history goes on to consider next the Act of Parliament which set up the applicant company. Upon this the respondent relies. Section 6 of the Seaham and Harbour Dock Act of 1898 provides:

“The company may make and maintain in the lines or situation and according to the level shown on the deposited plans of the **\*229** section for the harbour dock and other works shown on the deposited plans together with all proper approaches, works and conveniences connected therewith; the works herein before referred to and authorised by this Act will be situated in the township of Dalton and parish of Dalton Odell in the parish district of Seaham Harbour in the county of Durham.”

It then sets out the works which are to be considered and the area which is to be considered. Those words, it is argued on behalf of the respondent, are clear and quite clearly, in the light of the fact that the Blackpool case would have been known to the draftsman, it must be taken to be so that the proper construction is to give the council here the jurisdiction which they claim because, specifically by Act of Parliament, this area is included in the urban district as indicated. That is not the end of the matter. There is one other case which I am asked to look at in the history. That is the decided case of *Barwick and Others v. South Eastern and Chatham Railway Company* 1920 C.A. I quote from the judgment of Scrutton L.J.:

"The substantial question which these proceedings were intended by the plaintiffs to decide is whether some eleven acres of made up soil which has been created by reclaiming land in Dover Harbour from the sea by walls, and levelling the surface up with chalk, is part of the parish of Dover. This depends under section 27 of the Poor Law Amendment Act, 1868, on whether the eleven acres are 'an artificial accretion from the sea', in which case they are to be for all civil parochial purposes annexed to the parish to which such accretion adjoins, which is in this case the parish of Dover."

It then deals with the possible implications of the terms "accretio" or "alluvio" and continues:

"But Parliament has thought fit to talk of artificial accretions, a term which excludes the idea of latent additions, and clearly covers defined and intentional reclamations adjacent to fixed boundaries. I think it is clear that this area of eleven acres is such an 'artificial accretion'. Indeed the only reason suggested to us for holding the contrary was the decision in the Blackpool Pier Case (2) that a wooden decked pier resting on iron pillars was not an accretion from the sea. I think no one would ever speak of such an erection as land. Whether a stone jetty was such an accretion would depend on the particular facts, but when a plot of land so large as eleven acres with a large station upon it results from the reclamation, the case is clearly within the statute. In my opinion \*230 by virtue of this Act, this particular plot of eleven acres is within the parish of Dover."

It can be seen from that quotation that the obiter dicta of the Lord Chief Justice and Grove J. were not accepted as such. The question becomes, it is said on behalf of the applicant: is this similar to a Blackpool Pier, or is it similar to that which was erected in or near Dover?

So far as the respondent is concerned, it relies on its two arguments, those which I have indicated. First, the Act of Parliament which created the present applicant makes it clear that the natural meaning is to give the council jurisdiction and I should take that natural meaning. I do see that as the natural meaning and I do so construe that Act of Parliament and, in these circumstances, it is not necessary for me to consider that matter further. Nevertheless, bearing in mind that it is been argued before me and argued well, on behalf of the applicant, I think it is right merely to say that if I had to say whether this was an accretion from the sea, I would say that I have no difficulty in saying that it is an accretion from the sea. I would not accept, if I may say so with proper humility, the obiter dictum of the Lord Chief Justice in the Blackpool Pier case. It seems to me that an accretion from the sea is properly construed as an accretion into the sea.

In that manner I would say that this is akin to the stone jetty and is accordingly such as to give the respondent jurisdiction, if it does not already have it as a result of the Act of Parliament which constituted and created the present applicant. That is the first argument.

The next argument is based on what was said, correctly said, as to the result of the area being declared a conservation area. A conservation area has to be designated, if at all, under the statutory observations imposed by section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990. That 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.”

The applicant says that the section does not refer to matters of finance at all and nor do the planning policy guidance notes which have been issued in respect of planning and historic environment. Accordingly, it is said that the decision whether or not to designate an area is on a proper reading of that section, to be made on an assessment of the criteria therein referred to namely, architectural or historic interest and of course whether it is desirable to preserve or enhance those interests. **\*231**

With that, as I see it, there cannot be any quarrel. However, the applicant goes one stage further. He says that it is not permissible to put before the council, which has to make the decision, matters which undoubtedly in other respects would be relevant. Such matters are the possible financial advantages which come or may come as a result of a declaration of the kind which was made in this case and against which now there is this appeal. My attention has been drawn to a number of sections, section 77, for instance, which deals with recovery of grants, section 79 grant scheme agreements, section 80 grants for repairing the buildings in town schemes. What is said is that monies can become available: there is a potential availability of funds. They might be received from English Heritage, English Heritage being in charge of this scheme. But, says the applicant, this must be hidden from the council members who must make a decision.

These consequences should not be put before members. It is similar, it is argued, to a payment into court. A payment into court is to be hidden from the judge because if the judge knows it has been made then he will be affected by it. This possibility of financial benefit is similar, it is said, to hearsay evidence. It may be a judge's professional training will lead him to say that he cannot rely upon such evidence but you could not give it to a jury because the jury would be affected by it improperly. In this case the council is to be seen as similar to the jury. It goes further than that, says the applicant, because not only was the possibility of the availability of funds indicated in the various documents which were put before the council but, in addition, it was made clear that there could be some loss unless the order was made in the manner in which it was made. In other words, if you do not agree, then there may be other schemes which could be affected. If you do not agree, English Heritage will not support the Council. That is the argument which is put forward.

So far as the arguments as to not revealing the consequences are concerned, I say straightaway, I do not accept those. Indeed, it seems to me that it would be a folly and indeed misleading not to indicate what are the possible results and one can go further than that. What would be the situation if one council member only happened to know that which is in fact the case as to possible grants or for that matter a possible withdrawal of grants? That particular councillor might very well pass it on and indeed it would seem to me that nobody could criticise him or her for having done so. The question that I have to consider, as I see it, is: is there anything which indicates that the way in which the matter was put before the council members was such as to withdraw from them the real questions which they had to ask (which I have already indicated) or which would have led them to take into account in answering those questions, any financial matters? I am quite satisfied that financial matters have no part in **\*232** whether the area may be so designated but, equally, thereafter, in considering what difficulties there may or may not be, it then seems to me that they must be of relevance.

I have been taken through the reports and the minutes. I am not going through them all again. But what I have seen and I have read them before coming into court is that the council members could not have been in doubt about what questions they were to answer in relation to the designated area. It is perfectly true that in the Minutes it appears, for instance, that a councillor asked a question and the Director of Development stated:

"He understood that there was a dilemma regarding relations with the Dock Company. The financial considerations of the Council having to defend their position were also relevant but if designation of the Conservation Area were not pursued, the financial situation could be worse due to the gaps created in funding."

Perfectly true it is that that was said, but that does not in any way detract from the questions which I have indicated which had to be answered. It is true also [at page 88] that it appears that a further councillor stated that:

"He felt that negotiations with the Dock Company should continue but was concerned that more finance could be lost should the designation of the Conservation Area not be agreed to."

That again, as it seems to me, is a matter which, as long as it is not said that it affects the consideration of the questions which had to be considered, is not a matter of which complaint can be made. The questions were there and it is right to say that the questions were to be considered after a consultation exercise which had involved many different public bodies. They included English Heritage, the Victorian Society, the National Trust, the Seaham Environmental Association. They were all in favour. In general terms the County Archeology Officer was also involved. He, it seems, was in favour of more of the port being included. But, again, broadly in favour. When these bodies were considering the matter they could not have been considering it in the light of any possible financial considerations and yet they came to the decisions which I have indicated. I see no legal error in what was said or what was done. There was no blurring of what the true question is and I see no reason to question this order on the grounds of finance.

I have had my attention drawn to a decision in Oxton Farms (a decision of the Court of Appeal on April 18, 1997) and in particular to the short judgment of Judge L.J. who said:

"The report by a planning officer to his committee is not and is not \*233 intended to provide a learned disquisition of relevant legal principles or to repeat each and every detail of the relevant facts to members of the committee who were responsible for the decision who are entitled to use their local knowledge to reach it."

There were some 39 people at the Committee to consider this matter. I assume all were local people. What is to be avoided, said Judge L.J., is:

"textual analysis appropriate to the construction of a statute or the directions provided by a judge when summing a case up to a jury.

...

In my judgment, an application for judicial review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken."

That is of relevance in indicating the general approach. As I have said, I am quite satisfied that the proper questions were left to the Council and the proper questions were answered and I see no reason to doubt the answers which have been given.

I am asked by the Respondent, even if I do not come to that decision, to say in accordance with the reported decision of Simplex, using a discretion which is in the court that nevertheless this order should be supported. I do not see that that is necessarily a finding for me. There are various other matters which are in the skeleton argument which have not been dealt with by way of argument such as that it is said to be unreasonable for the Council to have taken the decision to include the east quay with its modern buildings and general utilitarian appearance which do not contribute to the conservation area. It is said

that that was part of a unified remainder of the south dock and it was unreasonable to make a decision to include this area within the conservation area simply on the grounds of its appearance, its history and its forming part of a greater whole which is in the main excluded from the conservation area. The argument goes on to point out: "The east quay is not accessible to the remainder of the conservation area nor is it generally visible from the conservation area." That, as it seems to me, is a matter upon which the members of the committee were well able to make a decision. As I am satisfied and am fully satisfied that they were given the right questions to consider and they had local knowledge and advice, then it seems to me that I should make no criticism of that aspect of the order.

Another matter which it is said that the respondents did not have in \*234 mind, although they should have had it in mind, arises out of the obligations of the applicant in respect of the harbour which was set up by the Act which I have mentioned. I see no reason to think that those obligations were not considered. It seems to me inevitable that they would have been put before the Council by the applicant and in any event, one only has to look at the Act to see that there are obligations. I only add that I trust that in due course the conservation order leads to, as presumably is hoped, more visitors to the area. I would also of course hope that more visitors to the area will be coming to the dock. Doing the best I can, I see no reason to grant this application which must be dismissed.

I am obliged to counsel. I would like to say this. Often it is not the case, but these were two very good skeleton arguments and were extremely helpful to me. I sit in this court and often find that I do not get skeleton arguments at all. These were here in good time and they were very helpful. Thank you both.

*Solicitors* —Eversheds, Newcastle-upon-Tyne; Easington District Council.

*Reporter* —Matthew Reed.

## Commentary

This decision raises two rather contrasting issues. The first is not so important as it concerns the rather obscure point of interpretation as to what is an "accretion from the sea". Although the phrase appears in the Local Government Act 1972, it goes back at least to Victorian times as it is to be found in section 27 of the Act 31 and 32 of the reign of Victoria. The judgments in the Blackpool Pier case suggest that the phrase does not cover the creation of buildings on land covered by the tides where the building is thrown from the land and so the accretion does not come from the sea. This interpretation puts too much force on the word "from" indicating the direction from where the accretion is coming. The more natural meaning is that the "from" indicates that the accretion is reclaimed from the sea whether naturally or artificially. Thus the creation of stone jetties and other parts of the harbour that are solid and rise from the sea are the equivalent of land reclaimed from the sea. It then follows that those parts of the harbour are within the jurisdiction of the council.

The next point, the finance issue, is more important as it concerns the factors that can or cannot be taken into account in designating a conservation area. In the case of Special Protection Areas under the Birds Directive the European Court of Justice has held that economic interests are not relevant at the stage of deciding whether to designate an area of land; see *R. v. Secretary of State for the Environment, ex parte Royal Society for the Protection of Birds* [1995] J.E.L. 245. In the case of conservation areas under the Planning (Listed Buildings and Conservation Areas) Act 1990, perhaps surprisingly, \*235 this would appear to be the first judicial decision where the court has been asked to decide the relevancy of financial implications. As with the Directive there would seem to be little doubt that in deciding whether it is *desirable* to designate land as a conservation area the only factors should be the area's special architectural and historic interest and the need for its enhancement and protection. In this regard PPG 15 on "Planning and the Historic Environment" makes no mention of the financial implications. On the other hand the availability of grants could be indirectly relevant in that this could help to effectively enhance and protect buildings in the conservation area. Owen J. however held that "financial matters have no part to play in whether the area may be so designated" but he

nevertheless found that the members of the committee could be informed about the financial implications of the designation. The result would seem to be that in deciding whether to designate the committee must somehow separate the merits of the area and the need to enhance and conserve from the means by which the area will be enhanced and conserved. In practice this must be quite a difficult exercise and from the facts of this case it does seem hard to believe that the committee was not influenced to some extent by the financial implications of designation.

The other side of the coin of course is whether the adverse financial effect on Seaham Harbour is relevant. There was no attempt by the applicants to argue this and it must follow from Owen J.'s judgment that such consequences are not proper material considerations. On the other hand in deciding whether to grant a conservation area consent, it is more arguable that financial aspects are material. Thus PPG 15 at paragraph 4.16 states that planning policies in conservation areas should "be designed to allow the area to remain alive and prosperous and to avoid unnecessarily detailed control over businesses and householders ...".

*Commentary* by—Michael Purdue. **\*236**

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