

SPEAKING NOTE ON BEHALF OF THE OBJECTOR



1. It is frankly astonishing that the Officer would rely upon the general wording of the Stewart High Court case (at para 9.57) and only mention the relevant policy Court of Appeal case in passing at para 9.50.
2. The analysis is in any event misconceived.
3. The Court of Appeal decision on the Conservation Area stated:

[25] The main argument on the appeal centred round head (c), on which the judge found in favour of the respondents. The Development Control Group, whose conclusions were accepted by the Department, had decided that the ratio between the "footprint" of the development proposal and the "original dwelling" could correctly be based by looking at the coverage of the house together with its post-1970s accretions, rather than that of the house as it was originally built. This appears not only from the minutes of the Group to which we have referred, but also from the averment in paragraph 5(e) of Ms O'Toole's affidavit of 29 May 2002 where she says:

"It was the view of the Development Control Group that we should take account of the existing situation at 3 Malone Park including the extensions approved and implemented. To have made calculations on a built form which has not existed for a considerable number of years would have been unreasonable."

The judge said, in a passage at page 12 of his judgment with which we agree:

"I do not consider that such an interpretation of the policy set out in the Conservation Area document was either lawful or reasonable bearing in mind the whole ethos of the document which was to protect and enhance the historical heritage of this area. In the words of the Minister of the Environment and the Economy introducing the document `... within this wider area Malone and Adelaide Parks retain much of their original character and remain as fine examples of a turn of the century housing environment of some distinction'. As noted earlier in this judgment it was common case between the parties that the existing extensions and outbuildings were unsightly, unsympathetic and of poor quality and clearly would not have complied with the requirements of paragraph 1 of the Conservation Area Development Guidelines. Nevertheless, it appears that these were preferred as the basis for calculations by the Department rather than `a built form which has not existed for a considerable number of years' a view which, in my opinion, runs the risk of missing the point of the development guidelines altogether."

We would only add that if the Department's construction were correct, one or more developers could by a series of planning applications increase the footprint of the premises by 150 per cent each time until it became substantially larger than the original, which would completely stultify the object of the provision. We accordingly hold, as did the judge, that the Department has misinterpreted and misapplied its policy in an important respect. It was clearly a material part of the Department's consideration in giving planning permission for the development, and it could not be regarded as having been so tangential or peripheral that it would have made no difference to the outcome if it had been correctly approached.

[26] On this ground alone we would affirm the judge's decision and quash the planning decision made by the Department, but when the other issue relating to single family dwelling is added to it we have no hesitation in holding that it cannot stand. We therefore dismiss the appeal.

(emphasis underlined)

4. Following from that, it is manifestly unsatisfactory that a 20-page Case Officer Report fails to address the wording of the applicable policy.
5. The Case Officer instead relies upon a generalized assertion of a "dwelling" – see para 9.51 and ignores the policy altogether.
6. The fact that the Case Officer Report expressly identifies an "outbuilding" distinguishes that from "a dwelling".
7. Page 23 of the policy states:

"In order to allow landscape to remain dominant the established relationship between building mass and gardens should be respected and retained where possible. In no circumstances should building coverage be more than one and a half times that of the original dwelling."

(emphasis underlined)

8. As noted, the officer report concedes the distinction between "dwelling" and "outbuilding" (para 9.50). Even if correct in terms of the original buildings, the approach to policy is wrong. It opens up the same precedent that the Court of Appeal warned against.
9. Moreover, the Committee should have been advised that it is hard to think of any planning policy on these islands that is more strictly worded. The proposition that a decision maker can set that aside using a general statement of principle in an unrelated case is unacceptable.
10. Furthermore, that policy is underpinned by the statutory duty that is (again) mentioned in passing without explanation, and in particular fails to address the context of a hard-edged policy against development.
11. The statute states:

(11) *Where any area is for the time being designated as a conservation area, **special regard must be had, in the exercise, with respect to any buildings or other land in that area, of any powers under this Act, to the desirability of–***

(a)preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise;

(b)enhancing the character or appearance of that area in cases where an opportunity to do so does arise.

12. As a matter of Law the decision maker is required to consider the statutory intention in enacting section 104 was that decision-makers should give "**considerable importance and weight**" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise.
13. Apart from the policy context of the statute, the Officer misstates the approach as para 9.28 when saying:

The alterations and additions, will not on balance, adversely impact the character and appearance of the surrounding area.

14. It also ignores the **SPPS** that says that **PPS 6 BH12** is modified by **SPPS Para 6.18** insofar as it introduces a '*guiding principle*', consistent with the statutory duty to pay '*special regard*' to the desirability of enhancing the character or appearance of a Conservation Area where an opportunity to do so exists, or to preserve its character or appearance where an opportunity to enhance does not arise.