

Case Name: *Coventry Gliding Club Ltd, R (On the Application Of) v Harborough District Council & Anor* [2019] EWHC 3059 (Admin) (14 November 2019)

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Commentary: The High Court allowed the judicial review challenge by Coventry Gliding Club ("Gliding Club") and ruled that the Harborough District Council ("LPA") decision to allow prior approval for a barn conversion unlawful.

The Gliding Club runs gliding events from its airfield site in Husbands Bosworth in Leicestershire. Airfield Farm is situated next to the airfield site. Prior approval was granted on 28 February 2019 for a proposal to convert Red Brick Barn ("Barn") on Airfield Farm into a dwelling. The change of use was permitted development under Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO").

In respect of Class Q, paragraphs Q.2(1)(a)-(f) identify matters to which a local planning authority must have regard. This includes whether the location or siting of the building makes it either impracticable or undesirable for the building to change from agricultural use to use as a dwelling (paragraph Q.2(1)(e)). Mr Justice Swift was satisfied that the impact of noise from the Gliding Club on those living in the Barn presented by the proximity of the Gliding Club to the Barn and the risk to safety to those living in or the Barn presented by the fact that the barn access track crossed the runway, were relevant considerations that the LPA should have had regard to and had failed to.

The obligation on the LPA to give notice is set out at paragraph W(8) of Part 3 of Schedule 2 to the GPDO and subparagraph (a) requires the notice to be displayed near the land to which the application relates. Mr Justice Swift set out that "Whether or not a notice has been displayed near the land is a question of objective fact to be determined by the court. The question is not whether the local planning authority reasonably concluded that the notice was near the land; rather, it is whether in fact the notice was near the land." However, "it is important not to conflate the requirement that the notice be near the land with a requirement that the notice be sited, for example, in the most suitable location". The court held that the notice advertising the prior approval application, 900 metres from the Barn (a considerable distance even in a rural location) and not near to the Barn access track, had not been placed where it should have been.

Mr Justice Swift allowed an extension of time for filing the Claim Form so that the claim was not time-barred. In reaching this decision it was material that the Council had failed to comply with the notice requirements. The judge said that the remedy will need to be considered at a further hearing and be the subject of a further judgment. As well as a quashing order, the Gliding Club is seeking a declaration that paragraph W(11)(c) of the GPDO, which states that if a local authority fails to deal with an application for prior consent within 56 days of receiving it the development concerned can be lawfully commenced, is

incompatible with its human rights to a fair hearing and to freely enjoy its private property.

Case summary prepared by Nikita Sellers