

Case Name: *Felicity Irving, R (on the application of) v Mid Sussex District Council* [2019] EWHC 3406 (Admin) (12 December 2019)

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Commentary: Mid Sussex District Council had shut off public access to an open greenfield area in Cuckfield, Sussex, since around 2013, and had granted permission to itself on 18 January 2019 to build a dwelling house with garage on that land (the Site). The Claimant, a neighbour, applied for judicial review of the decision to grant permission. Permission to bring the judicial review was refused on the papers but granted at an oral renewal hearing on three grounds.

Mrs Justice Lang in the High Court granted the claim for judicial review on grounds one and two, and therefore the permission must be quashed.

The Claimant claimed that the grant of permission was unlawful, on the following grounds:

1. The Council failed to take into account relevant development plan policies and the officer's report was materially misleading for omitting the two policies (contrary to s.70(2) of TCPA 1990).
2. The Council's approach to the assessment of the 'public benefit' of a single dwelling house was inconsistent and unlawful.
3. The Council's conclusion that the very limited public benefit from one house outweighed the substantial weight to be accorded to the harm to the Conservation Area was irrational.

Before 2013, the Site had been used for decades for community activities, a play area for children, dog walking, church youth groups etc. Previous planning permissions have been granted on the Site and the Claimant had challenged those, some successfully.

Mrs Justice Lang considered the facts and the grounds in this case, and in relation to ground 1 considered that the omitted development plan policies were relevant and should have been taken into account by the Council in making their decision. The Site was in the 'countryside' as defined in policy DP12 and the Council should have therefore considered whether the proposal conflicted with this policy DP12 (protection and enhancement of the countryside) and policy DP15 (new homes in the countryside) and policy DP6 (settlement hierarchy). Policies DP12 and DP15 were, erroneously, not listed in the Officer's report under the text "the following policies are relevant to the determination of this application". Therefore the failure to consider these policies, plus the conclusion that the proposal complied with the development plan, meant that the report was misleading, as the Claimant claimed. When assessing the proposal in light of the omitted policies, the Council's decision could have been different. Therefore ground 1 succeeded and the permission must be quashed.

In relation to ground 2, the Claimant submitted that the Council assessed the extent of the

public benefit arising from the construction of the house on the Site inconsistently with its assessment in other comparable applications for single dwelling houses, with no explanation. Mrs Justice Lang agreed and considered that the assessment of public benefits which took into account the Council's previous decisions would probably have been different and therefore could have affected the outcome. Therefore ground 2 also succeeded.

Mrs Justice Lang did not agree that the Council's conclusion on the balance of public benefit against harm was irrational, so this ground 3 did not succeed.

Case summary prepared by Lucy Morton