

Case Name: *Campaign To Protect Rural England, R (On the Application Of) v* [2019] EWHC 3458 (Admin) (18 December 2019)

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Commentary:

A challenge to the grant of planning permission for 37 hectares of polytunnels and caravan accommodation for 350 seasonal workers was dismissed. The grounds of challenge concerned legitimate expectation, flaws in the Officer's Report and procedural unfairness.

The first ground was that the Officer had wrongly advised the Committee that no weight could be given to the Council's Polytunnels Planning Guide (POPG) because it was not an SPD. However, it was clear in the context of the report that the officer's meaning was that although the POPG's purpose was to give guidance, it did not have a special status as would a formal SPD. This meaning was rational and justified and precluded argument that failure to comply with something in the POPG of itself would be a breach of policy or procedure.

The second limb of this ground was that the contents of the POPG gave rise to legitimate expectations which had been breached by the Council in terms of evidence that would be required when considering an application for polytunnels. The Court held that the relevant statements did not give rise to enforceable legitimate expectations. They were not framed as prescriptive policy requirements that had to be satisfied in all cases. In any event, the substance of the concerns had been met by the information provided.

The second ground concerned the adequacy of the Officer's Report in how it dealt with "valued landscape" and bats. Although NPPF paragraph 170 on valued landscape was not expressly referenced, the report had dealt adequately with the value of the landscape and with bats and this ground was dismissed.

The final ground was procedural unfairness on the basis of the late availability of certain documents and that confidential commercial information provided by the fruit farm had not been published as a background document pursuant to s. 100D of the Local Government Act 1972. This was dismissed. No formal time limits had been breached and there had been no prejudice as a result of the late publication of the documents. In respect of the commercial information, it was fully justified to consider the level of detail provided as commercially sensitive and confidential and it was not required to be included in the list of background documents or made available for inspection by the public.

Case summary prepared by Susannah Herbert