

Case Name: *Risby v East Hertfordshire District Council & Ors* [2019] EWHC 3474 (Admin) (18 December 2019)

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Commentary:

This case was a judicial review of a decision by East Hertfordshire District Council (the "Council") to grant planning permission to itself for a multi-storey car park and other development on land in a conservation area in Bishop's Stortford. The claim was dismissed and the planning permission upheld.

The Council had previously granted itself planning permission for a very similar proposal which was quashed by the High Court with the Council's consent. This was on the basis that the Planning Officer's report to the relevant Planning Committee did not expressly deal with the requirement of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the 'appearance' of a conservation area when dealing with planning applications concerning land or buildings in conservation areas.

The claimant alleged that, in making the decision in respect of the amended scheme, the Council failed to take into account the fact that its previous grant of planning permission had found that there would be harm caused to the conservation area by the development and that there were no, or no adequate, reasons given for the conclusion that the new proposal would result in no harm to the character and appearance of the conservation area. Furthermore, the claimant alleged that members of the Council were misdirected on the issue of harm as the Planning Officer's report did not make it clear that, in weighing harm to the conservation area against the benefits of the proposal, the balance must be pre-weighted with a presumption against the grant of planning permission.

The judge held that the basis for the Council's original decision was a material consideration for the Council when determining the application for a similar scheme on the same site and in respect of which there was not a significant change to the governing planning policy. Further, the original decision was quashed on the basis that it was arguable that the original consideration of harm to the conservation area was flawed meaning that it was incumbent on the Council to recognise that it had based its original decision on this flawed advice from the Planning Officer and to 'grasp the intellectual nettle' of explaining any new view.

However, on the facts, the judge held that the Planning Officer's report on the original decision was so confused, seeming to reach inconsistent conclusions and failing to deal expressly with the effect on the 'appearance' of the conservation area, that it could not be concluded that the basis for granting planning permission was a clear finding of less than substantial harm to the conservation area. The judge was satisfied that the Council did adequately take into consideration the nature of the previous advice in the original Planning Officer's report (which led to the quashing of the earlier grant of permission) in determining the planning application for the amended scheme. Furthermore, the Planning Officer's report in respect of the amended scheme did provide an adequate explanation as to why the advice

now being given to members that no harm would be caused to the character and appearance of the conservation area was different from that contained on this issue in the original Planning Officer's report. There was no obligation on the Council to maintain any view previously expressed in the original Planning Officer's report which had led to the quashing of the grant of planning permission.

In addition, the judge held that the Planning Officer's report in respect of the amended scheme gave adequate and intelligible reasons for the advice that there would be no harm caused to the character and appearance of the conservation area by the amended proposals. The members were also given clear and accurate guidance on the nature of the duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in terms of balancing any harm to the conservation area against the public benefits of the scheme.

Case summary prepared by Victoria McKeegan