

Case Name: *Mills v The Secretary of State for Housing Communities and Local Government*
[2019] EWHC 3476 (Admin) (18 December 2019)

Full case: [Click Here](#)

Commentary: The High Court dismissed a claim made under s.288 Town and Country Planning Act 1990 challenging the Inspector's decision to dismiss the appeal of a refusal to grant a change of use from a holiday cottage to a residential dwelling.

The case concerns Hawkern Cottage, an annexe to Hawkern House in Otterton, Devon, which is used as a holiday cottage, and restricted to use by individuals and groups for no longer than four consecutive weeks. The Claimant applied to East Devon District Council for permission for change of use of Hawkern Cottage to use as a self-contained residential dwelling. Permission was refused as it was deemed unsustainable development and conflicted with strategies 7 (Development in the Countryside) and Policies D8 (Re-Use of Rural Buildings Outside Settlements), E18 (Loss of Holiday Accommodation) and TC2 (Accessibility of New Development) of the East Devon Local Plan.

The Claimant appealed under s.78 TCPA and the Inspector dismissed the appeal for two principle reasons. The first being that local facilities and services are not sufficiently accessible in relation to the site and the change of use would promote an undesirable pattern of development, the proposal therefore conflicted with Strategy 7 and Policies D8 and TC2 of the local plan. The Inspector's conclusion on this point was not challenged.

The second reason given was that the proposed development conflicted with Policy E18 (Loss of Holiday Accommodation). The Claimant challenges this point on the basis that the Inspector was wrong to apply this policy to the site as the first paragraph of the policy references holiday accommodation "in the seaside resorts of Exmouth, Budleigh Salterton, Seaton and Sidmouth". Otterton lies well outside of these areas and is not referenced in the policy.

The High Court in this case considered the law relating to challenge of this sort. In making her decision the Inspector was required to have regard to the Development Plan, and her determination had to be made in accordance with the plan unless material considerations indicated otherwise. The meaning of a policy in the Development Plan is a matter of law for the Court (*Tesco Stores v Dundee City Council* [2012] UKSC 13). The Court's approach to an Inspector's decision letter is that it should be read fairly and as a whole, not as though it was required to be a comprehensive answer to an exam question, nor with undue regard to the Inspector's choice of words.

Interpreting the wording of Policy E18 the High Court found that it did not apply to a wider area than stated in the first paragraph and therefore did not apply to the proposed development. The Inspector had erred in deciding that it did. However, the Inspector's conclusion that the proposed development conflicted with Strategy 7 and Policies D8 and TC2 was not and could not have been affected by her error as to the meaning of Policy E18.

Even if she had concluded that the development was not inhibited by Policy E18 she would still have concluded that the development was not in accordance with the Development Plan and that there were no material considerations indicating that there should be a departure. The Inspector's decision, therefore, is not quashed and the claim is dismissed.

Case summary prepared by Amy Fender