

Case Name: *Wilbur Developments Ltd, R (On the Application Of) v Hart District Council* [2020] EWHC 227 (Admin) (11 February 2020)

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Commentary:

The High Court dismissed the Claimant's challenge to Hart District Council's decision in August 2019 to accept the examiner's report and recommendations to put the modified Hook Neighbourhood plan ('NP') to a referendum. The Claimant wished to promote development at a site between the settlement of Newham and Hook. The 'green gap' and 'identified views' policies of the NP adversely affect the prospects of development at the site.

This case is important for clarifying that like appeal decisions, reports by examiners of neighbourhood plans should be read fairly and in good faith, and as a whole, and in a straightforward down-to-earth manner, without excessive legalism or criticism. It is also important in stating that Courts should recognise the expertise of neighbourhood planning examiners and work from the presumption that they will have correctly understood the relevant policy framework, applying Lord Carnwath's comments about planning inspectors in *Hopkins Homes*,

The legal challenge was brought on 3 grounds. Ground 1 was that the Council's conclusion that the draft 'green gap' policy met the "basic conditions" was unlawful as it failed to (i) have regard to para 31 of the NPPF which requires an adequate evidential basis for a policy (ii) take into account the conclusion of the Inspector examining the Council's emerging local plan that a green gap policy between Hook and Newnham was not supported by adequate evidence; and (iii) provide legally sufficient reasoning for approving the green gap policy contrary to national policy and guidance. Ground 2 was that the Council's conclusion that the draft NP policy providing that development must not adversely impact on certain views met the "basic conditions" was unlawful as : (i) it failed to have regard to paragraph 31 of the NPPF (ii) it acted irrationally in accepting the proposed modification, and failed to recognise that the proposed amended policy failed to meet the "basic conditions"(iii) the reasoning for approving the green gap policy contrary to national policy and guidance was legally deficient. Ground 3 was that the Council's decision breached its obligations under the SEA Directive due to the failure of the NP's SEA to adequately consider reasonable alternatives.

As to Grounds 1 and 2 which were considered together, the High Court held that: (a) The Report provided a sufficient basis upon which the Council could properly conclude that the NP met the "basic conditions" and they were entitled to rely on the Report's reasoning; (b) Read fairly and as a whole, the Report's reasoning was intelligible and adequate and even if they were weaknesses in the Report's reasoning that the Claimant was not substantially prejudiced by it : (c) as to the green gap policy that the Council correctly directed themselves on the statutory scheme and were entitled to conclude, in their planning judgment, that the green gap policy was underpinned by adequate evidence; (d) as to the identified views policy, the Council were entitled, in the exercise of his planning judgment, to recommend a modified policy, supported by adequate evidence, which balanced the

competing requirements of protecting important views across the landscape, and achieving sustainable development, having regard to the NPPF and the “basic conditions”. As to Ground (3), the High Court held that (a) the Council were entitled, in their planning judgment, to conclude that the SEA assessment complied with the SEA Directive by confining its “high level” reasonable alternatives assessments to 2 development options within or outside existing settlement boundaries, which was appropriate and proportionate as the NP did not allocate housing; and (b) that there was no obligation on the Council to give reasons for not including “reasonable alternatives” for the boundaries of the proposed gaps as part of the SEA as this was not considered to be a “principal important controversial issue” for which reasons were required.

Case summary prepared by Paul Arnett