

Case Name: *Smith v Castle Point Borough Council & Anor* [2020] EWCA Civ 1420 (29 October 2020)

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Commentary:

The Court of Appeal dismissed the Appellant's (Mr Glenn Patrick Smith) appeal against the High Court's decision not to quash a planning permission (the Permission) granted by the Respondent (Castle Point Borough Council) on 9 November 2018.

The applicant for the planning permission had been Benfleet Scrap Limited, an operator of a scrap metal and waste recovery yard in Essex; the planning application had been for a boundary wall at the yard. In the High Court, the Appellant had challenged the Respondent's grant of the Permission on the grounds (among others) that the Respondent had failed properly to consider land contamination in the area of the proposed boundary wall and intensification of use of the yard associated with the wall's development, including increased height of scrap metal storage. The High Court had dismissed the challenge on all grounds.

The Court of Appeal found the Appellant "to fail at every level of argument". It held that the Appellant's main argument rested on there being a critical error in the Officer's Report recommending grant of the Permission – specifically an error in relation to the issue of intensification in view of the following words of the Officer's Report: "there is no planning mechanism to prevent the operator of the [yard] storing scrap to the height he wishes, regardless of whether this application is approved".

The Appellant argued that those words of the Officer's Report showed the Respondent wrongly to have thought there was no power to impose a condition restricting the operation of the yard, and thereby to have erred in law because "the potential for restriction on the operation of the scrap yard ... was a potentially material consideration which, by reason of the erroneous understanding of the legal position, had been left entirely out of account [such that the Permission] was ... flawed and was to be quashed".

However, the Court of Appeal held that the Officer's Report as a whole conveys that the issue of intensification of use had been taken into account, but that weight was not accorded to it as a matter of planning judgment. The Court of Appeal did not identify any legal error on which it could uphold the Appellant's appeal. Therefore it decided that it "would ... unhesitatingly dismiss this appeal".

Case summary prepared by George Morton Jack