

Case Name: *Flaxby Park Ltd v Harrogate Borough Council* [2020] EWHC 3204 (Admin) (25 November 2020)

Full case: [Click Here](#)

Commentary:

The High Court, in a wide-ranging judgment by Mr Justice Holgate, has concluded that Harrogate Borough Council ('HBC') acted unlawfully in deciding to adopt the Harrogate District Local Plan on 4 March 2020 because the full Council did not take into account the full SEA material and consultation responses. The High Court has remitted the local plan back to HBC to reconsider its adoption. The judgment provides helpful guidance, among other things, on (1) the interrelationship between the local plan provisions in the PCPA 2004 and the SEA provisions in the SEA Directive/ SEA Regulations, (2) the equal treatment of 'reasonable alternatives' and the preferred location for SEA purposes and the standard of review and (3) the scope of the remittal power in the PCPA 2004.

The case concerned the new settlements policy within the local plan (Policy DM4), which seeks to identify 'a broad location for growth' and HBC's preferred location for the new settlement at Green Hammerton/Cattal ('GHC') which is promoted by developers Oakgate Yorkshire Limited and CEG Land Promotions III (UK) Limited. The Claimant, Flaxby Park Limited ('FPL'), argued throughout the examination of the local plan that HBC had not properly considered its 'reasonable alternative' proposal for the new settlement to be located at the former Flaxby Golf Course.

While the detailed chronology is set out at length in the High Court's judgment, in summary, the local plan inspector agreed with FPL that HBC should carry out further sustainability appraisal work to consider reasonable alternatives to the preferred GHC broad location, including broad locations at Flaxby. HBC carried out such further sustainability appraisal work consulted upon it, and then reported this and the consultation responses to the local plan inspector who concluded that the plan (including the GHC new settlement policies) was sound. HBC subsequently adopted the local plan.

FPL's legal challenge to the adoption of the local plan was brought on three grounds relating to the adequacy of the sustainability appraisal work and the extent to which it had been taken into account by HBC. Ground 1 was that the full council of HBC had unlawfully failed to take into account the outcome of the further sustainability appraisal work undertaken with officers purporting to carry out that consideration rather than the full council itself. Ground 2 was that HBC had failed to compare the broad locations of Flaxby and GHC on an equal basis, among other things, because it did not include in the additional sustainability appraisal work the 630 ha of additional land which had been identified by consultees during the consultation process. Ground 3 was that HBC had unlawfully failed properly to examine the viability and deliverability of the GHC broad location. Grounds 2 and 3 were dismissed by the High Court but in dismissing Ground 2, the High Court, following a review of the SEA authorities on reasonable alternatives, stated that both the identification and treatment of alternatives is a matter of "evaluative judgment" for the decision maker which Courts will be

slow to interfere with.

FPL partly succeeded on Ground 1. The High Court concluded that the full council owed a 'non-delegable' duty to consider the SEA at the adoption stage of the local plan process and this had not been complied with and it was not 'inevitable' that councillors would still have resolved to adopt the local plan, complete with Policy DM4, if they had taken into account the full SEA material and consultation responses.

As to remedy, as the High Court considered that the legal error affected only the adoption stage of the local plan process it declined to quash the whole or part of the local plan. Instead, the High Court has used the remittal power in the PCPA 2004 to remit the whole of the local plan, firstly, to Cabinet to re-consider whether or not to accept the Inspector's recommendations in so far as they related to the GHC new settlement policies, and secondly, to the full Council to consider the Cabinet's decision, whether or not to accept the Inspector's recommendations in so far as they related to the new settlement policies, and whether or not to adopt the local plan with those policies.

Case summary prepared by Paul Arnett