

Case Name: *Wyeth-Price, R (On the Application Of) v Guildford Borough Council* [2020] EWHC 3355 (Admin) (08 December 2020)

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Commentary:

This was a successful challenge to Guildford Borough Council's decision to grant planning permission for the erection of 73 dwellings in Ash Green, Guildford brought by a local resident who was formerly the chair of the Ash Green Residents' Association.

The 3.87-hectare application site was adjacent to Grade II* listed building Ash Manor and several Grade II listed dwellings. According to Historic England, the current agricultural and open character of the setting of Ash Manor had existed since the 13th century, and it advised that the proposed development would cause less than substantial harm to the building's setting. Numerous objections about the impact of the scheme on Ash Manor were made and the Council's planning committee requested a site visit owing to the proximity of the proposed development to significant heritage assets, but the Council's planning officer wholeheartedly recommended the grant of permission.

The claimant's first ground of challenge was that the Council had failed to apply section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and to take account of paragraphs 193 and 194 of the NPPF.

In his report, the planning officer set out section 66(1) but did not explain that a finding of harm to a listed building is a consideration to which the decision-maker must give "considerable importance and weight" when carrying out the balancing exercise. He failed to refer at all to paragraph 193 of the NPPF, which requires "great weight" to be given to the asset's conservation and that the more important the asset, the greater the weight should be. He also failed to refer to paragraph 194 which requires a "clear and convincing justification" for any harm caused.

Allowing the claim, the court held that in carrying out the balancing exercise, the planning officer had treated the less than substantial harm that would be caused to the heritage assets as "a less than substantial consideration". The court was satisfied that the planning officer had seriously and materially misled the planning committee by failing to advise members on the weight to be given to the harm to heritage assets so, on the balance of probabilities, the planning committee could have reached a different decision if it had been properly advised. On that basis, the court quashed the planning permission.

The claimant's two other grounds (that the Council failed to have regard to the advice of Surrey Wildlife Trust in respect of a veteran tree at the site and to considerations concerning flooding at the site) were dismissed.

See *Simonicity* for further discussion.

Case summary prepared by Safiyah Islam