

Case Name: *Historic Buildings And Monuments Commission for England, R (On the Application Of) v Milton Keynes Council* 2018 EWHC 2007 (Admin) (30 July 2018)

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Commentary: Historic England applied to challenge by judicial review the decision to grant outline planning permission for a development on a site within Wolverton Conservation Area. Dove J dismissed the application on all three grounds.

In Ground 1, Historic England asserted that Milton Keynes Council had unlawfully failed to produce a statement containing the main reasons for the decision together with other information contrary to Regulation 24 (1) (c) of the EIA Regulations 2011. Dove J held that on this ground, Historic England's case was arguable but should be dismissed on the merits. Where the members accept the recommendations of the officer's report, this means that the members adopt the reasoning in that report. From looking at the minutes, the committee chose not to amend the reasons given by the officer in the report and therefore they endorsed those reasons (so the requirements under Regulation 24 (1) (c) (ii) are met). There was a breach of Regulation 24 (1) (c) (iv) because no statement was provided which gave information regarding the right to challenge the validity of the defendant's decision and the procedures for this, but the breach in these circumstances could not give rise to the grant of relief in the form of a quashing order.

Ground 2 was the contention that the officer's report had misunderstood the statutory purpose of the Conservation Area in asserting that rail use of the site was the main contribution made to the Conservation Area, and so the conclusion reached in the officer's report was irrational and unlawful. Ground 3 was the contention that the committee report failed to have regard for the reasons for the designation of the Conservation Area and for the identification of significance, and had irrationally concluded that the rail use of the site was its main contribution to the character and appearance of the Conservation Area.

Dove J addressed Grounds 2 and 3 together. Dove J considered the factors which make up the judgment which assesses the effects of a proposal on the "character or appearance" of a Conservation Area. The role of a "historic use" must be considered within this judgment because the word "character" broadens the test beyond purely visual experiences. There is no evidence in the statutory language that built fabric is to be regarded as pre-eminent over other dimensions of the historic interest of the area, such as historic uses. The weight to be attached to each for the historic dimensions or ingredients of the judgment is a matter for the decision maker in each case. Therefore officers in this case did not act irrationally in the way they evaluated the harm to the character and appearance of the Conservation Area and in giving weight to the historic railway use. The approach the officers took was not inconsistent with a proper understanding of the reasons for the designation of the Conservation Area and the identification of its significance.

Case summary prepared by Town Legal LLP