

Case Name: *Kenyon, R (On the Application Of) v Wakefield Council & Ors* [2018] EWHC 3485 (Admin) (18 December 2018)

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Commentary: A judicial review of the Secretary of State's screening direction that the proposed development was not EIA development was dismissed. The first ground concerned the Secretary of State's consideration of air quality and cumulative impacts and the second concerned reliance on conditions.

The first ground was that the Secretary of State ought to have considered the issue of air quality in the context of the longstanding failure to reduce air pollution and that the Secretary of State had failed to consider the likely cumulative environmental effects from this proposal, combined with actual and proposed development at other sites nearby. The judge held that screening assessments should be read in the same manner as planning decision letters (fairly and in good faith, and as a whole, in a straightforward manner, without excessive legalism or criticism). The Claimant's submissions were based on an unduly forensic and nit-picking reading of the assessments. The challenge on this ground was rejected.

The second ground was that the Secretary of State had placed undue reliance on conditions to mitigate the likely adverse environmental effects. As a matter of law, the Secretary of State was entitled to rely on identified measures and/or measures secured by condition in determining that a proposed development was not likely to give rise to significant environmental effects. The judge considered the Supreme Court judgment in *R (Champion) v North Norfolk District Council* [2015] 1 WLR 3710 in which Lord Carnworth held that "on the one hand, that there is nothing to rule out consideration of mitigating measures at the screening stage; but, on the other, that the EIA Directive and the Regulations expressly envisage that mitigation measures will where appropriate be included in the environmental statement. Application of the precautionary principle, which underlies the EIA Directive, implies that cases of material doubt should generally be resolved in favour of EIA". However, in this case the Claimant had not established an arguable case that the conclusions of the Secretary of State (or the Council) were wrong either in fact or in law.

Case summary prepared by Town Legal LLP