

Case Name: *Cemex (UK) Operations Ltd v Richmondshire District & Anor* 2018 EWHC 3526 (Admin) (19 December 2018)

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Commentary: The grant of a planning permission for the conversion of a barn to a dwelling in proximity to a quarry and asphalt plant operated by the Claimant was quashed.

The Claimant was concerned that the impact of noise from its operations on the new dwelling would result in additional conditions being imposed on its Minerals Permission when it was reviewed in 2025 which could have a serious impact on the quarry operations.

The conversion to a dwelling had been carried out unlawfully (due to breach of pre-commencement conditions on a previous permission). The first two grounds concerned whether the Officers' had unlawfully constrained their consideration of the application in light of the fact that the development had already taken place. These grounds were dismissed.

The third ground, the failure to have regard to the policy and guidance in the PPG relating to the reliance on keeping windows closed as a mitigation strategy, was accepted. There had been no indication in the EHO's report of the Officer's Report that the EHO had made a separate assessment of her own as to the noise impacts in light of the policy guidance as to the undesirability of managing noise by keeping windows closed. Although not an absolute requirement, the Defendant should have ensured either that appropriate mitigation measures were in place or have taken the policy into account and balanced it against other considerations to justify any position which did not seek to avoid the unacceptable noise levels.

The fourth ground, the failure to take into account the impact on the claimant of the fact that the minerals permission is due to be reviewed in 2025 and that, at that time, onerous conditions could be imposed on the claimant's operation as a result of the grant of planning permission was also accepted. Although the EHO set out to consider the future impact on the Quarry, there was nothing to suggest that any consideration was in fact given as to whether a condition limiting noise levels at the property was likely to be imposed at ROMP, or that any consideration was given as to the risks such a condition would pose to the future operation of the Claimant's business, all matters which should have been considered as part of the consideration under paragraph 123 NPPF.

The final ground of challenge, the irrational failure to take into account all relevant considerations when deciding not to include all the conditions recommended by the IP's own noise consultant, also succeeded.

The Court considered whether the two witness statements provided by the planning officer could be taken into account. It was held that they amounted to evidence seeking to plug the gaps in the decision-making process and therefore were of no assistance.

For both the third and fourth ground it was not possible to conclude that the outcome would not have been substantially different if the conduct complained of had not occurred (section 31(2A) of the Senior Courts Act 1981 so relief was not refused and the permission was quashed.

Case summary prepared by Susannah Herbert