

Case Name: *Pagham Parish Council v Arun District Council* [2019] EWHC 1721 (Admin) (04 July 2019)

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Commentary: Pagham Parish Council was unsuccessful in its claim for judicial review of Arun District Council's decision to grant outline permission for the development of a portion of land allocated for up to 400 dwellings. The Court dismissed the claim on both of the Parish Council's grounds.

The first ground was that the District Council's Development Control Committee failed to have regard to its duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and that the planning officer materially misled the Committee in omitting from his report the heritage consultant's opinions on how this duty should be approached.

Section 66(1) states that when considering whether to grant permission for development which affects a listed building or its setting, local planning authorities must have special regard to the desirability of preserving (i.e. doing no harm to) the building, its setting or any features of special architectural or historic interest it possesses.

The Court held that the planning officer was entitled, having taken all relevant factors into account, to take the view that the development would cause no harm to the setting of a listed building situated near the development site. The Court added that the planning officer was therefore entitled to advise the Committee accordingly, and it was enough that he drew the Committee's attention to the legal test they had to apply if they disagreed with his assessment. Further, the Court found that the District Council did discharge its duty under s66(1) because it accepted that there was no relevant harm to weigh in the balance.

The second ground was that planning officer materially misled the Committee by inadequately summarising the views of Historic England. The Court considered that Committee would not have been left in any doubt as to the importance of the view in question, and the source of this information did not matter. The Court concluded that the Committee would only have been given the impression that Historic England did not raise any specific objection to the development, which was true.

Finally, the Court stated that even if it had decided that the decision was susceptible to judicial review, it would have refused any relief as a matter of discretion pursuant to s.31(2A) of the Senior Courts Act 1981. This is because it was satisfied that the Committee would have made the same decision in any event and that the outline permission would still have been granted.