Case Name: *Wingfield, R (On the Application Of) v Canterbury City Council* [2019] EWHC 1975 (Admin) (24 July 2019)

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Commentary: A claim for judicial review challenging the grant of outline planning permission by the Council on grounds relating to EIA and HRA was dismissed.

The outline planning permission was granted in November 2018 for a mixed use development including 370 dwellings on a site part of which was a Local Wildlife Site and near to a European designated site. The Claimant also challenged the approval of the reserved matters for the neighbouring site (a development of 250 dwellings granted outline permission in July 2017) and this claim was heard at the same time but the cases were not linked.

The first ground was that the Council should have treated the site as part of a single project with the neighbouring site. The question as to what constitutes the 'project' for the purposes of the EIA Regulations is a matter of judgment for the competent authority, subject to a challenge on grounds of Wednesbury rationality or other public law error. Relevant factors may include common ownership, simultaneous determinations, functional interdependence and whether they are stand-alone projects. Applying these factors to the facts, the Judge was satisfied that the two development were separate developments. The Claimant identified overlapping environmental effects as a factor pointing to a single project and it was accepted that there were overlapping environmental effects between the two Sites, because they are adjacent sites. The Judge held that this was a relevant factor but not a determinative one as two independent projects may have cumulative effects which may need to be assessed as contemplated by the Directive. It was also important to distinguish this type of challenge from a challenge to a screening decision where an applicant avoids EIA thresholds by salami slicing. In this case, both proposals had been subject to full EIA with both projects assessing the cumulative effects of each other so there was no suggestion of artificial project splitting in order to avoid EIA scrutiny.

Permission was refused on the Claimant's second ground concerning the lawfulness of the HRA.

The Claimant had raised additional matters in a document entitled "C Reply to D and IP SGR's" which was not a reply, but instead raised new points and extensively challenged the adequacy of the Council's assessment of the cumulative environmental effects of the two Sites. The Court held that it was impermissible for the Claimant to seek to add to her grounds in this manner and she should have applied to amend her Statement of Facts and Grounds. The Administrative Court Judicial Review Guide 2018 advises that Claimants must apply for the Court's permission to amend their grounds and should follow the interim applications procedure by filing an application notice and a draft of the amendments sought. Although CPR 54.15 and PD 11.1 require notice to be served, but do not refer to a draft of the amendments sought, the Judge considered that a party applying to amend a judicial

review claim should file a draft amended pleading so that there is no doubt about the nature of the amendments which are sought and, where appropriate, granted. A paragraph in the skeleton argument stating that the Claimant seeks formally to amend grounds to cover the following points was insufficient to meet the requirements of the Administrative Court Judicial Review Guide 2018 or CPR 54.15.

Case summary prepared by Susannah Herbert