Case Name: *Gladman Developments Ltd v Secretary of State for Housing, Communities And Local Government & Anor* [2019] EWHC 2001 (Admin) (24 July 2019)

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Commentary: A challenge under section 288 of the Town and Country Planning Act 1990 which was dismissed by the Court on all five grounds including the ground that the CJEU decision in People Over Wind concerning HRA was wrongly decided.

In May 2017 the Council refused planning permission for up to 225 residential dwellings due to accessibility issues and because of the adverse impact of the proposals upon the character and amenity of the local area. The Claimant appealed against the refusal and a public inquiry was opened in November 2017. No issues were raised in relation to any adverse nature conservation consequences arising from the proposal, and the inspector ultimately recommended that permission be granted in March 2018.

On 12 April 2018 the Court of Justice of the European Union ('the CJEU') handed down judgment in the case of People Over Wind and Sweetman v Coillte Teoranta [C-323/17]. In contrast to the position in domestic jurisprudence, the CJEU held that measures intended to avoid or reduce the harmful effects of a plan or project should not be considered when undertaking a screening assessment as to whether or not appropriate assessment is required under article 6(3) of Council Directive 92/43/EEC ('the Habitats Directive').

One of the Claimant's grounds was that the CJEU case had been wrongly decided as it conflicted with the domestic authorities which followed it and was inadequately reasoned and explained. The Claimant therefore sought for its own case to be referred to the CJEU to clarify the position.

However, the Court was unpersuaded that the People Over Wind case was wrongly decided. The Court was satisfied that taking account of mitigation measures at the screening stage would compromise the practical effect of the Habitats Directive by circumventing the full and precise analysis required by appropriate assessment, and it may also deprive the public of a right to participate in the decision-taking process. Thus, the Court concluded that the domestic authorities based upon R (on the application of Hart DC v Secretary of State for Communities and Local Government [2008] EWHC 1204 (Admin) should no longer be regarded as good law. The Court also held that that there was no justification for the reference of this case to the CJEU.

Further, the Court dismissed the three grounds relating to the technical consultation in which the Claimant contended that the Secretary of State had failed to apply his own policy rationally or as he had himself understood it, that he failed to have regard to the contents of the technical consultation and applied the policy in paragraph 177 of the National Planning Policy Framework in an illegitimately rigid fashion, and that he failed to consult the Claimant in relation to the technical consultation. The Court also dismissed the Claimant's ground that Secretary of State's conclusions in relation to the five year housing land supply and its impact

on the decision were erroneous.

For further discussion please see Simonicity

Case summary prepared by Safiyah Islam