

Case Name: *Hudson, R (On the Application Of) v Legoland Windsor Park Ltd & Ors* [2019] EWHC 3505 (Admin) (19 December 2019)

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Commentary: The Court found that Royal Borough of Windsor and Maidenhead (“the Council”) had failed to carry out an appropriate assessment as required by the Habitats Directive and Habitats Regulations 2017. No relief was ordered under section 31(2A) of the Senior Court Act 1981.

The Claimant acting in his capacity as chairman of the Berkshire branch of the Campaign to Protect Rural England judicially reviewed the decision of the Royal Borough of Windsor and Maidenhead (“the Council”) to grant planning permission to the first Interested Party (the “IP”) for the construction of a holiday village and other works at Legoland Windsor. The proposed development site includes significant and veteran trees and is bordered on three sides by the Windsor Forest and Great Park Site of Special Scientific Interest and Special Area of Conservation.

Mrs Justice Lang rejected the Claimant’s first and second grounds, that is that:

- i. the Council had failed to give adequate reasons as to why the Planning Committee Development Management Panel had departed from the recommendation in the Officer’s Report to reject the planning application, particularly in regard to the impact of the proposed development upon veteran trees; and
- ii. the Council’s failure to reconsider its decision in light of the more stringent protection of veteran trees in the revised NPPF .

In the course of the proceedings the Claimant had conceded that the Council was entitled to rely on the transcript of the proceedings of the committee meeting when assessing the adequacy of the reasons given and the Judge found that these were sufficient. Further, it was held that as the Council had concluded that the mitigating measures to be included in the planning conditions and planning obligation would ensure that there was no harm to veteran trees the relevant NPPF policies weren’t invoked.

The Claimant succeeded on its final ground, that the Council had failed to undertake an appropriate assessment under the requirements of the Habitats Directive and the Habitats Regulations. The Council conceded that an appropriate assessment was required but submitted that in essence the Officer’s Report amounted to such an assessment. The Judge agreed with the Claimant’s submission that the Officer’s Report was too brief and lacking in detail to meet the requirements of an appropriate assessment. Further, reliance couldn’t be had on the detailed assessments prepared by the IP as an essential feature of an appropriate assessment is that it is prepared by the “competent authority”. However, no relief was ordered applying the test under section 31(2A) of the Senior Court Act 1981 that the outcome would not have been substantially different if the appropriate assessment had been undertaken.