Case Name: *White Waltham Airfield Ltd, R (On the Application Of) v Royal Borough Of Windsor And Maidenhead* [2021] EWHC 3408 (Admin) (17 December 2021)

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Commentary:
This was a claim by way of judicial review of the decision by the Royal Borough of Windsor and Maidenhead (the "Council") to grant planning permission to the interested party (Sorbon Estates Limited) for the erection of up to 79 dwellings and a nursery building at Grove Park Industrial Estate in White Waltham (the "Site"). The claimant was the owner and operator of White Waltham Airfield (the "Airfield"), which lies adjacent to the Site.

The interested party applied for outline planning permission in November 2016, with access, layout and scale to be decided at outline stage and all other matters reserved. It subsequently submitted a noise assessment which identified the activities of the Airfield (which is not subject to any planning conditions or controls) as one of the principal sources of noise affecting the Site.

The claimant challenged the grant of outline planning permission on three grounds:

(1) Firstly, the Council failed to take into account of, and reach a decision on, the issues raised by the Claimant regarding deficiencies in the noise assessment, which were material considerations. Further, it was a material error of law for the officer's report (the "OR") not to report the Claimant's detailed objections to the Planning Committee. Alternatively, the conclusion in the OR that the noise survey results were robust was irrational, and inadequate reasons were given for the conclusion.

(2) Secondly, contrary to the Planning Practice Guidance (the "PPG") (and, in particular, the 'agent of change' principle), in failing to recognise the limitations of the noise assessment, the Council failed to take into account all the activities which the Airfield is permitted to carry out, as opposed to only the activities which were occurring on two days in September 2016 when the assessment took place.

(3) Thirdly, the Council applied 66dB LAeq (16 HOURS) as a threshold above which there would be an amenity impact from the Airfield without considering the qualitative impacts together with the noise threshold of 55dB LAeq (16 HOURS), as set out in up- to-date guidance and policy and as used in the interested party's own noise assessment. The lower threshold was clearly material.

It is notable that the claimant stated at the hearing that the challenge only related to the external impact on prospective residents (e.g. when sitting in gardens) and accepted that a condition attached to the permission would reduce the internal noise impact to an acceptable level and would not give rise to a risk of restrictions being imposed on the

use of the Airfield.

The claim failed on all three grounds and so was dismissed.

On the first ground, Lang J agreed with the Council that the claimant's objections were clearly referenced in the OR and given due regard. In addition, she found that the criticisms of the noise assessment did not come close to establishing that it was irrational for the planning officer to find that the methodology employed was acceptable and the results robust. No technical or scientific flaw in the methodology was identified and it was reasonable for the assessment to be undertaken over a continuous period of two days as this was likely to be reasonably representative; the interested party could not be expected to possess the claimant's knowledge of different activities which take place at the airfield at different times. The claimant did not commission its own noise assessment to counter the findings of the noise assessment and so there was no alternative technical basis for the Council's decision. As to whether the Council should have required further inquiries or assessments, Lang J noted that the court should only intervene if no reasonable authority could have been satisfied on the basis of the information before it and this high threshold was not reached. Ultimately, it was plain from the OR that the officer accepted the analysis and conclusions in the noise assessment (which found that noise levels in adjacent gardens would be acceptable by reference to the relevant policy thresholds) and that she was entitled to do so on the basis of the material before her; this was an exercise of planning judgment.

On the second ground, Lang J noted that the starting point is that a planning officer and planning committee can be assumed to take into account, and properly apply, the NPPF and the PPG unless there are positive indications to the contrary. She indicated that the claimant was seeking to elevate the PPG into a binding code which strictly prescribes the steps which a local planning authority must follow when undertaking its assessment (in this case, taking into account permitted activities as well as current activities) in order to avoid acting unlawfully. However, this was a mistaken approach since the PPG is merely guidance designed to support the NPPF. In this case, the Council was entitled to rely on the noise assessment and was not acting irrationally in concluding that the methodology employed in the noise assessment was robust and that it had sufficient information to enable it to reach a decision.

On the third ground, Lang J referred to the conclusion of the OR that the noise assessment confirmed that gardens adjacent to the airfield would have an unscreened outdoor noise level of approximately 54dB and so the proposal would be acceptable by reference to relevant guidance. On this basis, she found that the planning officer specifically referred to and applied the advice in the noise assessment which was based on the most up-to-date guidance. The planning officer and the Planning Committee were entitled to reach this conclusion on the material before them; again, this was an exercise of planning judgment.

Comment: this case is another salutary reminder of the need to distinguish, in judicial review claims, between errors of law and matters which concern the exercise of planning judgment.

Case summary prepared by Victoria McKeegan