

Case Name: *Millwood Designer Homes Ltd v Secretary of State for Communities Housing and Local Government & Anor* [2021] EWHC 3464 (Admin) (17 December 2021)

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Commentary: This decision by HH Judge Jarman QC related to a challenge of an inspector's dismissal of a planning appeal for the proposed demolition of a redundant riding school in Lower Kingswood, Surrey and the erection of four new dwellings, access and associated landscaping. The planning application boundary was limited to land on which the former school and ancillary buildings were situated, but did not include the paddocks and additional fields immediately to the east of the school which had been used for grazing the horses kept at the school when it was in operation. The riding school had closed because it was making a sustained loss. Evidence had been provided as part of the appeal that the owners (who lived next to the site) did not intend to reopen the facilities, and that they would seek to retain (through the option arrangement with the prospective developer) sufficient land for their own horses, and to maintain the views across open fields.

To seek to comply with local plan policies and the NPPF, the claimant had sought to demonstrate that the school site was surplus to requirement and the loss was justifiable by undertaking a nine month marketing exercise for the site. However because the additional paddocks and fields were not included as part of the marketing exercise, the inspector considered that this was a leading factor as to why no sale took place, and that had the additional land also been included within the offer there would have been interest for continued equestrian purposes. Consequently the inspector considered that site had not been adequately marketed and there was contravention with the relevant policy requirements.

The principle issue considered by the Court was whether the inspector had erred in law in concluding that offering the school for sale without the adjoining land had meant that the school had not been adequately marketed, and that it had not been demonstrated the operation of the school would not resume. The claimant advanced two grounds of challenge, firstly that the inspector had misinterpreted policy in relation to the retention of recreational facilities, and secondly that they had failed to have regard to a material consideration, namely whether there was a likelihood of the school re-opening upon refusal of the claimant's application.

In relation to the issue of misinterpretation of policy, the ground was dismissed on the basis that the inspector had applied the relevant policies with good sense and realism and was entitled to approach the question of conflict with policy in the way that they did. It was thought appropriate, given the school had been previously operated by using land to the east as grazing land, that the issue of whether the land was surplus to requirements should be considered in those circumstances. It was also considered that notwithstanding the school had ceased operation in 2017 that the open spaces and

recreational buildings which it comprises were within the meaning of paragraph 97 of the NPPF at the time of the application and appeal.

In relation to ground 2, however, HH J. Jarman QC found (at paragraph 35 of the judgment) that:

Benefits of the development were identified by the inspector in the context that the use of the school for recreation was not then being carried on. In such circumstances, the likelihood of resumption of that use, in my judgment, is obviously a material consideration to the balancing exercise undertaken by the inspector between loss of that use and the benefits of the development proposals. The evidence of the intention of Mr and Mrs Howell as to their wish to retain all the land to the east of the school was plainly relevant in that regard. The council had raised issues about that, but the inspector did not grapple with these issues, as in my judgment she should have done. [our emphasis]

It was considered that evidence at appeal had clearly been put forward as to why the school had been shut and reasons why the owners did not want to offer the adjoining land with the school. The key issue of the prospect of the school remaining redundant should the application fail had been set out on this basis. The Court considered that the inspector had failed to grapple with this material consideration and had focussed instead on the marketing exercise undertaken. The claim succeeded on this ground and the appeal remitted for reconsideration.

Case summary prepared by Chris Todman