

Case Name: *Thurston Parish Council, R (On the Application Of) v Mid Suffolk District Council & Anor* [2022] EWCA Civ 1417 (28 October 2022)

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Commentary:

This case concerned an appeal made by Mid Suffolk District Council ("MSDC") and Bloor Homes Limited ("Bloor"), following the decision by the High Court to allow the judicial review of grant of planning permission brought by Thurston Parish Council ("TPC"), and the consequent quashing of that permission. The Court of Appeal allowed the appeal and set aside the quashing order, finding that the High Court's decision incorrectly strayed beyond questions of interpretation of policy and into application of policy.

In July 2019, Bloor made an application for outline planning permission for the development of up to 210 dwellings and associated works in Thurston, Suffolk. TPC successfully challenged this decision in the High Court on the following grounds:

1. Committee members were materially misled by the planning officers' advice that Bloor's proposals were not in conflict with Policy 1 of the Thurston Neighbourhood Development Plan ("Neighbourhood Plan"), which stated that "new development in Thurston parish shall be focused within the settlement boundary of Thurston village". The High Court Judge was convinced that this policy posed a "fundamental locational objection to the development" to Bloor's proposal for development as it lies outside the settlement boundary;
2. the application of the "titled balance" in para 11(d) of the NPPF was legally flawed as it would only be engaged if the policies which are most important for determining the application were out of date – and Policy 1 was relevant and not out of date; and
3. the Judge erred in law in his approach to para 14 of the NPPF, which sets out the circumstances needed for the adverse impact of allowing development that conflicts with a neighbourhood plan to weigh significantly against the presumption in favour of sustainable development under para 11(d).

The Court of Appeal considered whether the High Court judge was correct to uphold the appeal on these grounds. Considering the first ground, the court emphasised that, while interpretation of policy is a question of law and for the court to determine, application of a policy is not a question of law and entrusted to the decision-maker (subject to irrationality). The High Court Judge's articulation of the key question as "whether it was in accordance with Policy 1 of the Neighbourhood Plan to release the Site for a general housing development" was held to raises questions of both interpretation and application of policy. It was then held that the officer's Report did not offer anything by way of interpretation (let alone misinterpretation) of Policy 1. Nor was the officer required to go further and set out a correct interpretation of the policy – applying South

Somerset District Council [1993] 1 PLR 80. In their report, a planning officer must simply “set out what they consider to be important in a practical way for the benefit of committee members, who will be familiar with their local area”. The MSDC Chief Planning Officer’s view, that there was not a “conflict” but a “tension” between Policy 1 and the proposal, was supported – the policy requirement for development to be “focused” in the settlement boundary did not absolutely preclude development outside the boundary.

Grounds 2 and 3, were held to be parasitic on Ground 1: Ground 2 depended on the legal error found by the High Court Judge under Ground 1, and para 14 only applies to situations where development “conflicts with the Neighbourhood Plan”. Accordingly, these two grounds fall away alongside Ground 1

Case summary prepared by Jed Holloway