

Case Name: *Stride, R (On the Application Of) v Wiltshire Council* [2022] EWHC 1476 (Admin) (17 June 2022)

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Commentary: Judge Jarman QC sitting as a judge of the High Court, found that the public was not wrongly excluded from part of a council committee meeting and did not find that the public consultation was flawed.

Background

This judicial review challenge concerned the masterplanning of the scheme called 'Future Chippenham' following Wiltshire Council's (the Council) executive committee meeting in July 2021 which resolved to commence such masterplanning. The scheme proposed 7,500 new homes and other mixed development on land owned by the Council but also on land in private ownership. The scheme proposed a new distributor road to serve the development that would also connect the major road networks to the south and north of the town. It was envisaged that the new road connection would ease traffic congestion in the town centre. Consultation occurred on three alternative routes for the distributor road – the inner, middle and outer routes. 75% of consultees rejected any distributor route.

The executive committee resolved to approve the distributor road substantially along the outer route from the south to the east of the town, ultimately not connecting the major south-north road networks. The reasons for this change were not made public at the time. It subsequently became clear that after the consultation process on the three routes an agreement with a landowner to deliver a road bridge needed for the northern section of the new road was unlikely to be reached within an appropriate timeframe. The public was excluded from part of the committee meeting that had a likelihood of information relating to agreements in principle with landowners and outstanding issues on the basis that this information was likely to relate to the financial or business affairs of a particular person being disclosed. Ultimately, the executive committee resolved to progress the southern part of the scheme only.

The grounds of challenge

The Claimant, who is a local resident, challenged the decision on three grounds:

- i) The public were unlawfully excluded from part of the meeting at which the decisions were made, and information was unlawfully not made public contrary to paragraph 9 of schedule 12A (Paragraph 9) of the Local Government Act 1972.
- ii) The public were not consulted on the proposed development on land owned by the Council and therefore in public ownership.

Ground 1

In dismissing ground 1, Judge Jarman QC looked at the purpose of Paragraph 9 as being for the promotion of public access, balanced with the need to safeguard the financial and business interests of anyone, including the Council. It was noted that “once the authority is applying for planning permission for development on its own land, then such safeguards should no longer apply, and the public should have access to relevant financial and business information.” Judge Jarman QC went on to say that “it is not difficult to see why proposals may be prejudiced by the early disclosure of such information”. Consequently, ground 1 failed and it was found that the Council did not act unlawfully by withholding information from the public as exempt under Paragraph 9.

Ground 2

Ground 2 failed because it was held that the strategy was developed at such a preliminary stage that the consultation and timescale references were qualified in terms of flexibility and subject to change. Judge Jarman QC found that the references did not amount to a clear and unqualified assurance. It was also noted that the consultation in the local plan review and in respect of any planning application would mean the public would have sufficient opportunity to scrutinise and comment on development proposals.

Ground 3

Ground 3 was not made out. It was found that the promise in the strategy was to consult on road options and not a “no road option” and that in doing so, it was fair to identify three routes over five different zones. Notably, Judge Jarman QC found that the Council was not tied to only one of those routes. Although the preferred route does not achieve the envisaged connectivity between the road networks to the north and south of the town, this was not found to make the consultation unfair.

It was also found that there was no duty to reconsult on the preferred route as the changes do not amount to a “fundamental change”. In this case the preferred route was for half the length of the options consulted on. This distinction was made by Judge Jarman QC who noted that if the route “had been double the length of the options consulted, that might have represented a fundamental change”.

Conclusion

The claim failed and the issue of relief did not arise. The Court did not find it necessary to deal with the Defendant’s arguments on delay or whether the result was highly likely to have been the same even if the decision was flawed.

Comment:

This case is of interest because of the Court's approach towards the duty to reconsult and what does or does not amount to a fundamental change to a consulted proposal.

iii) The public were not consulted on the route of the new road as agreed at the executive meeting.

Case summary prepared by Amy Carter