

Case Name: *Ashchurch Rural Parish Council, R (On the Application Of) v Tewkesbury Borough Council* [2022] EWHC 16 (Admin) (07 January 2022)

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Commentary: This case was an unsuccessful challenge of the grant of permission of a road bridge over the Bristol to Birmingham railway, north of Ashchurch which was required for access to a future garden town for 826 homes.

The claimant challenged the lawfulness of the grant of planning permission of the bridge on three grounds.

The first ground was that the defendant's Planning Committee was wrongly informed by the officer's report that the committee could, on the one hand, take into account the benefits of the bridge, as facilitating proposed large-scale development (in particular, the construction of 826 homes) but that, on other hand, it was not to take into account any harms that might arise from that proposed development. The claimant contended that this legally erroneous advice vitiated the granted permission.

The second ground argued that the defendant failed to comply with the EIA Regulations as the screening report relating to the bridge concluded that it would not be likely to have significant effects on the environment and did not consider the environmental effects of the wider large-scale development. As a result, the defendant reached an unlawful decision that an EIA assessment was not required.

The third ground argued that involvement of certain members and officers of the defendant in the development and implementation of the proposed Tewkesbury garden town, constituted a breach of the defendant's EIA duties regarding objectivity and bias and that a fair-minded observer would conclude that there was a real possibility of bias.

The first ground was dismissed. Lane J found that it was rational for the report to reference the bridge's facilitation of the garden town and that the bridge would deliver planning benefits even if delivered before the garden town. As Lane J found no irrationality in relation to the report, the claimant had to identify a public law error in order to succeed. No such error in law existed and furthermore, the claimant failed to demonstrate that the harm caused by the garden town was 'so obviously material' as to demand consideration by members.

The second ground was also dismissed as the claimant failed to show any error of public law in the screening report. The applicant had not sought to 'salami-slice' elements within a masterplan to evade proper scrutiny under the EIA Regulations. The EIA Regulations will properly govern the planning application for the garden town, and its associated highway works. At the time of such future applications, the effects of the bridge may be taken into account.

In relation to the third ground, Lane J refuted the submission that regulation 64 of the EIA Regulations was relevant to this case as at the time the Planning Committee considered the application for the bridge, the development was not EIA development and so the Planning Committee was not performing any duty under the EIA Regulations. Further there was no evidence that the person responsible for the screening report was involved in promoting or assisting in the promotion of the bridge project.

Lane J held that councillors who sat on the garden town member reference panel who were also on the planning committee were not biased in favour of the granting permission for the bridge. Such argument failed as several of the members sitting on the reference panel voted against the application in the planning committee, demonstrating the planning committee's ability to remain open minded and unbiased. Accordingly, ground 3 was dismissed.

Case summary prepared by Matt Speed