

Case Name: *Village Concerns, R (On the Application Of) v Wealden District Council* [2022] EWHC 2039 (Admin) (29 July 2022)

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Commentary: This was an application for judicial review of the decision by Wealden District Council (the “Council”) to grant outline planning permission for the demolition of a stables and change the use of the land to provide up to 205 C3 dwellings (including 35% affordable provision) and associated infrastructure. The claimant’s grounds of challenge were as follows:

- 1) On a proper interpretation of the development plan policies there was a policy requirement for a mix of size and type of market homes which was not detailed in the officers' report and was overlooked in the decision-making process. The Council therefore failed to discharge its statutory duties under section 70(2) of the TCPA 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, as it failed to have regard to the requirements of policy from the development plan when reaching its conclusions.
- 2) Committee members were provided with misleading advice in relation to whether the Council could insist in principle on the numbers of units being reduced to accommodate environmental constraints at reserved matters stage. The planning permission granted outline consent for “up to” 205 units, and an application for 205 units at reserved matter stage could therefore not be refused simply on the basis that it proposed too much development. It could only be refused if the application was not satisfactory in the sense that it did not provide the most appropriate layout for 205 units.

In relation to the first ground, Dove J held that there was in fact no development plan policy to be applied in relation to open market housing mix, rather the policies that the claimant had been relying on related specifically to affordable housing proposals or those elements of a proposal that are affordable housing. There was, therefore, no legal error in the approach that was taken in the officers' report and the claimant's first ground of challenge failed.

In relation to the second ground of challenge, it was held that, in assessing whether committee members were significantly misled leading to a legal error in their decision, it was important to first consider the written advice they received in the form of the officers’ report and to then approach the transcripts of the committee discussion with realism, noting that these are not as carefully formulated as officer’s reports and reflect a context of debate. In the case at hand, the officers’ report concluded that there was capacity both in environmental and infrastructural terms to accommodate 205 dwellings. Similarly, the committee’s observations relating to the potential capacity of the site did not conclude the site did not have such capacity, but rather indicated that

the reserved matters application would further consider the landscape constraints of the site. Taking the officers' report as the starting point, and examining the general tenor of the committee's debate, Dove J therefore concluded that committee members had not been misled. Ground 2 of the challenge therefore also failed and the application for judicial review was dismissed.

Case summary prepared by Emma McDonald