

**Case Name:** *Murtagh v Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 2991 (Admin) (25 November 2022)

**Full case:** [Click Here](#)

**Commentary:** This was a claim for statutory review under s.288 of the Town and Country Planning Act 1990 of an inspector's decision to award planning permission on appeal for a 15m high 5G mast on Kingston Hill, Coombe. The claimant owned and lived in a cottage abutting the pavement where the proposed mast would be sited.

The claimant challenged the inspector's decision on two grounds:

- 1) The inspector failed adequately to consider alternative sites, particularly an existing mast on the same street 100m away from the proposed site, contrary to paragraphs 115 and 117 of the NPPF, or failed to give adequate reasons.
- 2) The inspector failed to address the impact of the proposed mast upon a yew tree within the claimant's property which was subject to a Tree Preservation Order (TPO), or failed to give adequate reasons,

In relation to the first ground, Judge Jarman KC found that the inspector had failed to expressly consider the existing mast on the same street. This was an issue specifically raised by the claimant and should have been grappled with by the inspector. In any event, the inspector's decision left a real doubt as to how he reached the conclusion that the proposed mast was justified at this site – the inspector had concluded that alternative sites submitted by the appellant “would have greater effect” but it was not clear how he had reached this view or what effects he was referring to. For these reasons, the inspector's decision did not permit an understanding as to why the appeal was decided as it was, and what conclusions, if any, were reached in respect of the existing mast.

In relation to the second ground, it was noted that an objection had been raised based on the basis that the mast could cause potential damage to the roots of the tree subject to the TPO. There was also a specific local plan policy (DM10) which stated that development should not adversely affect trees covered by TPOs and the inspector had failed to consider this. The defendant submitted that there was a distinct regime for the protection of trees by means of the imposition of a TPO and it was therefore not necessary for the inspector to consider policy DM10. The court accepted that there was a separate regime for TPOs but found that policy DM10 remained a material consideration and the policy indicated that the authority did expect it to be shown that development, which the proposed mast would be, would not adversely affect the yew tree. The inspector should have dealt with this issue, particularly as an objection had been raised in relation to this. It would have been open to him to do so by giving reasons why this issue could not justify dismissing the appeal, but he should have dealt

with it.

On the basis that each of the grounds of review were made out, Judge Jarman KC quashed the inspector's decision and ordered that the appeal be remitted for redetermination.

*Case summary prepared by Emma McDonald*