

Case Name: *HFAG Ltd (Hampden Fields Action Group), (R On The Application Of) V Buckinghamshire Council* [2022] EWHC 523 (Admin) (11 March 2022)

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Commentary:

This unsuccessful claim for judicial review sought to challenge the decision of Buckinghamshire Council to grant outline planning permission for a 3,000-home mixed-use sustainable urban extension (the “Development”) in Buckinghamshire on 24 June 2021 (the “Decision”). The central issue was whether the Council acted lawfully in making the Decision on the basis that the only health provision secured in the Development was a doctor’s surgery contrary to representations from interested parties that further financial contributions were required.

The claim was brought on three grounds relating to primary healthcare and three in relation to secondary and tertiary services.

Primary Healthcare

The first ground argued that the Decision was unlawful as it failed to take into account relevant considerations (that the proposed surgery provided insufficient mitigation); took into account irrelevant considerations (that the proposed floorspace exceeded the equivalent floorspace used to calculate the financial contribution required to deliver a larger healthcare centre); and it was irrational (based on the reference to equivalent floorspace and a failure to reflect NHS Buckinghamshire Clinical Commissioning Group’s (‘IP4’) representation that the proposal was not viable or deliverable). The officer’s reasoning was also inadequate as it failed to demonstrate how the proposed surgery would meet the primary healthcare needs of the Development.

The second ground argued that the officer’s report misled members in stating that the surgery would be secured through section 106 agreement. The surgery was not secured due to a cap on cost in the sum of £1.5m, was not marketed to relevant health providers and was without assurance that it would be made available to IP4 in preference of other healthcare providers.

The third ground contended that members acted upon misleading advice and took into account an irrelevant factor, the lateness of IP4’s representations seeking a financial contribution, rather than deferring a decision to adequately consider IP4’s representations.

The court concluded that there was sufficient material to justify the advice provided by officers and the Decision itself. IP4’s representations were considered but not accepted. In dismissing the first ground, the court held that IP4’s representations were taken into account by officers and there was a wealth of material provided to officers regarding the estimation of the required size of the health centre. Officers made a rational decision

that the mitigation could not exceed what was properly required to mitigate the impact of the Development.

The second ground was also dismissed. A financial cap on an obligation is unobjectionable in principle as an uncapped obligation would be overly risky for developers and difficult to justify in terms of the Regulation 122 test. The marketing process for the surgery was sufficient and incorporated IP4.

The third ground was dismissed as oral evidence was provided to consider IP4's late submissions and the request to delay the Decision was outweighed by legitimate concerns relating to viability.

Secondary and Tertiary Services

Ground four proposed that the officer's report wrongly advised that Buckinghamshire Healthcare NHS Trust's ('IP3') request for a financial contribution had to be refused as revenue costs are outside of the scope of Regulation 122. Such statement was deleted from the committee report. Officers had misled members by failing to advise of this outstanding request for funding.

Ground five argued that members were misled that a CIL-compliant methodology had not been agreed for the calculation of the financial contribution sought by IP3 because of the lateness of the request when proceeding to grant permission instead of delaying the Decision.

Ground six argued that officers misled members as to the consequences of the failure to secure any planning obligation to mitigate the impact of the Development on IP3's services, the Council therefore failed to take into account a material consideration, the adverse effect on IP3's health services.

Ground four was dismissed as the officer's advice had regard to IP3's requests for contributions and such requests were appended to the officer's report. The Council therefore had regard to the request but made a rational exercise of judgment that it could not be satisfied that the financial contribution met the CIL tests.

Ground five was dismissed together with ground 3; the Council's decision not to defer its decision was not an error of public law.

Ground six was dismissed as members were aware the financial contribution related to offsetting the potential impacts of the Development on secondary health services.

In its concluding remarks the court noted that this claim was no more than "thinly-veiled disagreements with the Council's lawful exercise of planning judgment"

Case summary prepared by Matt Speed