

Case Name: *Ashchurch Rural Parish Council, R (On the Application Of) v Tewksbury Borough Council* [2023] EWCA Civ 101 (07 February 2023)

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Commentary: This was an appeal to the Court of Appeal of the judgment of the High Court dismissing a claim for judicial review of Tewksbury District Council's decision to grant planning permission for a bridge over a railway in the middle of a field. The bridge was subject to a grant from the government's Housing Infrastructure Fund which had a spending deadline of 31 March 2022. As such, its planning application had been brought forward out of sequence, in advance of the Council's consideration of the contiguous applications for housing development, which would rely on the bridge.

The appeal was brought on three grounds: that the Judge erred in (1) his interpretation of the planning officer's report; (2) his application of the principle in *R (Samuel Smith Old Brewery) v North Yorkshire CC* [2020] UKSC 3 ("*Samuel Smith*") to that report; and (3) his finding that the bridge was a "single project" for the EIA regulations rather than part of a larger single project with the associated housing developments.

The appeal succeeded on all three grounds, the Court finding unanimously that:

(1) It was irrational for the Council, following its officer's report, to place substantial weight on the benefits arising from the contingent housing developments, but not to place the same – or, in fact, any – weight on the concurrent harms.

(2) The principle in *Samuel Smith* – that a decision maker is entitled to determine which matters are material to its decision on a planning application – was not relevant. The Court emphasised that such a determination must arise from "an unfettered discretion to leave something out of consideration". In this case the officer's report had expressly directed the planning committee that the harms of the associated housing developments must not be taken into account, which was unlawful.

(3) The bridge was not a "single project" for EIA purposes. The Court referred to the potentially relevant criteria in *R (Wingfield) v Canterbury City Council and another* [2019] EWHC 1975 (Admin) including "whether the sites are owned or promoted by the same person, functional interdependence, and stand-alone projects". While the identification of the EIA project was a matter of planning judgment for the decision maker, the lack of formal planning status for the housing developments did not justify their exclusion from that project. The Council had not concluded that assessment of that wider project was impossible, and so the bridge application should have assessed the associated housing developments – albeit high-level where necessary – as part of its own EIA project. This applied even if further environmental assessment would be carried out when the later developments were brought forward.

This case, and particularly ground (3), will be of interest to all those promoting developments as part of wider masterplans, although it should be noted that it turns on very particular facts. For a wider discussion of the judgment alongside other recent cases, see [Simoncity](#).

Case summary prepared by Tom Brooks