

Case Name: *Kinnersley, R (On the Application Of) v Maidstone Borough Council* [2023]
EWCA Civ 172 (22 February 2023)

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Commentary: This was a claim for judicial review in relation to a proposed residential development in Maidstone. The claimant was unsuccessful in the High Court and so appealed to the Court of Appeal. The appeal concerned the proper interpretation of a Policy DM5, in the Maidstone Borough Local Plan ("the Local Plan") which deals with development on previously developed land, referred to in the policy as brownfield sites. The policy provides that the residential development of brownfield sites in the countryside would be permitted if certain criteria were met, including a criterion that the "site is not of high environmental value".

The Council had, in December 2020, resolved to grant planning permission for the development of two dwellings on such a brownfield site. The officer's report had concluded that the area on which the residential development was to take place was not a site of high environmental value and the proposal would result in significant environmental improvement, the proposed development was therefore found to be in accordance with policy DM5 of the adopted Local Plan,

The appellant, a neighbouring property owner, challenged the Council's decision on two grounds:

1. The Council had wrongly interpreted Policy DM5 - the appellant argued that the use of "site" in Policy DM5 meant the whole of the site which is the subject of the application for planning permission whereas the Council alleged that the definition was limited to the land where the residential development is to take place.
2. The Council had failed to have regard to earlier views of the conservation officer which were said to be a material consideration.

In relation to Ground 1, the Court of Appeal held that planning policies should be interpreted objectively, in accordance with the language used, read in its proper context. Lewis LJ (with whom Moylan LJ and Bean LJ agreed) held that in accordance with the natural interpretation of the words of Policy DM5, read in context, "site" meant the whole of the application site. That is how the word "site" was used in other parts of the Local Plan E.g. Policy DM1 indicated that proposals should incorporate "natural features such as trees, hedges and ponds worthy of retention within the site". The reference to "site" there must have meant an area wider than the residential development. The court therefore found that the Council had failed to adequately consider the environmental value of the entirety of the site where the proposed development was to take place but had instead focused on the area on which residential development was to take place. This was an error of law and meant that the Council had failed to properly interpret

Policy DM5, the court quashed the planning permission and remitted the matter back to the Council to consider whether the site as a whole had high environmental value and whether the other criteria in Policy DM5 were satisfied.

In relation to Ground 2, the court unanimously held that earlier views given by the conservation officer in relation to a different proposed development in the area did not amount to a material consideration. The second ground of appeal was therefore dismissed.

Case summary prepared by Emma McDonald