

**Case Name:** *Blacker, R (On the Application Of) v Chelmsford City Council (Rev1)* [2023]  
EWCA Civ 25 (17 January 2023)

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

**Commentary:** This Court of Appeal case concerned a judicial review from a local resident, who challenged the decision of Chelmsford City Council (the “Council”) to refuse to grant planning permission for a housing development, which was then dismissed by Thornton J in the High Court. The Court of Appeal (the “Court”) found there was no substance in any of the grounds and that Thornton J in the High Court (the “Judge”) was right to dismiss the claim. The case clarified the “consistency principle” and the Planning Code provisions on committees making a decision contrary to officer recommendation.

The planning application was for development of a site made up of roughly half “brownfield” land (allocated for employment use in the Chelmsford Local Plan), and half “greenfield” land. Part of the brownfield land was being used to carry out a waste disposal business in a manner which was in breach of planning controls, and which had resulted in the accumulation of a mound of waste that was aggrieving local residents.

The planning officer report recommended refusal, but at the initial planning committee meeting members were largely in favour of the development and were minded to grant permission. A motion was carried to defer the decision to a future committee meeting, in accordance with the Council’s constitution and Part 5.2 of the Planning Code, which states that if a planning committee wants to make a decision contrary to the officer’s recommendation, “the application should be deferred to the next meeting of the Committee for consideration of appropriate conditions and reasons and the implications of such a decision clearly explained in the report back”.

By the time of the second meeting, based on a further objection and further information received, various members had changed their minds, and subsequently a motion to refuse the application was carried with an overwhelming majority

The applicant challenged this decision in the High Court, where the Judge dismissed the claim. The applicant then appealed to the Court on the following three grounds:

- 1) The judge misdirected herself as to correct interpretation of the resolution passed at planning committee to consider the application on 3 Nov 2020;
- 2) The judge erred in law in concluding that “consistency principle” was not engaged;
- 3) The judge wrongly or unreasonably concluded that there was not a real risk that the minds of members of the planning committee were closed at the meeting on 12 January 2021

The Court considered the first two grounds to be inextricably interlinked. The applicant argued that a deferral of committee decision such as this necessarily involved a rejection of the officer's recommendation. He sought to rely on the "principle of consistency" established in case law (North Wiltshire DC v Secretary of State for the Environment and Clover (1993) P&CR 137, and St Albans City & District Council v Secretary of State for Communities & Local Government [2015] EWHC 655 (Admin)). He tried to portray the initial motion and resolution as an earlier decision to grant, which must be engaged with as a material consideration (see para 22).

The Court disagreed with this interpretation, and held that the point of the deferral was "plainly to give the decision-maker an opportunity to stand back and think twice about the implications of going behind the recommendations of the planning Officer before committing itself to doing so". Being minded to grant the permission was not a decision in itself, and the whole point of a deferral was that a decision had not yet been made – in fact the constitution prevented them from making a decision (contrary to the officers' recommendation) at the initial meeting. Therefore, was no previous decision to which the consistency principle would apply.

Regarding the third ground, the relevant question was whether the circumstances gave rise to a real risk of closed minds such that the impugned decision ought not to be upheld. The applicant would need to identify "clear pointers" of such in the minds of the Councillors. The Court found no such pointers; rather, the members' changes of mind indicated open rather than closed minds. Furthermore, it was made expressly clear at the second committee that all options were on the table.

Accordingly all grounds failed and the appeal was dismissed.

*Case summary prepared by Jed Holloway*