

Case Name: *Swire, R (On the Application Of) v Canterbury City Council* [2023] EWHC 1533 (Admin) (22 June 2023)

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Commentary: This case concerns a claim for judicial review relating to an outline planning permission ("the OPP") supported by an Environmental Statement ("the ES") for a mixed use development comprising up to 400 new homes at Thanington, near Canterbury ("the Site). This was the claimants ninth claim for judicial review relating to the Site, with the previous eight have been refused, dismissed, or withdrawn.

Here, the claimant challenged the decision to grant reserved matters approval for a spine road pursuant to a condition of the OPP. The application for judicial review was refused by Mr Justice Chamberlain who held that it was "not reasonably arguable that there is a public law flaw in the decision and that permission should therefore be refused."

Two grounds were forwarded by the claimant.

The first ground was that Canterbury City Council ("the Council") had failed to consider whether certain changes to infrastructure anticipated by the new draft local plan which, it was argued by the claimant, were "key" to granting the OPP, amounted to a change of circumstances such that a revised EIA was required. The success of the claim turned on regulations 9(2) and (3) of the EIA Regulations, with Mr Justice Chamberlain noting that "the question of whether the environmental information is adequate is one for the local planning authority, subject to challenge on public law grounds only."

This ground failed for the following four reasons:

- The aspects of the infrastructure relied upon by the claimant were not key to the grant of the OPP and the possibility that they may not be delivered had been adequately contemplated by the Council and the local highway authority, with the scheme being found to be acceptable whether or not those aspects were brought forward.
- No condition sought to make the development's commencement or continuation dependent on the construction of the relevant infrastructure.
- The Council had considered, pursuant to regulation 9 of the EIA Regulations, whether a further ES was required - it wasn't - and this was addressed in the officers' report .
- The interested party - Redrow Homes Limited - did voluntarily submit an additional ES following the challenge to the approved matters consent which concluded that the changes since the OPP were not significant. Despite this, it offered up possible mitigation measures in case the Council took a different view on the basis of their further ES submission. The Council did not need to consider

these measures given that it had already decided that there were no significant changes requiring further ES information to be submitted.

The second ground, which alleged that the application for reserved matters was in breach of the EIA regulations because it amounted to "salami slicing" (as explained in *R (Ashchurch Rural Parish Council) v Tewksbury Borough Council* [2023] EWCA Civ 101, at [78]), was also refused as no such "slicing" had occurred given that the spine road was considered at the time when the OPP was granted, on the basis of a full ES, and the continuing adequacy of that ES was considered at the reserved matters stage.

Case summary prepared by Charlie Austin