

Case Name: *Widdington Parish Council, R (On the Application Of) v Uttlesford District Council* [2023] EWHC 1709 (Admin) (07 July 2023)

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Commentary: This is a decision on Widdington Parish Council's application for judicial review of Uttlesford District Council's decision to grant planning permission for the development of a field partly within the Widdington Conservation Area with four dwellings ("the Planning Application"). The claim succeeded on two grounds.

Ground 1 related to the Planning Application's asserted fallback position for constructing an access road to the site. This was the same as the access road required by the Planning Application but it had been secured by way of a Lawful Development Certificate under Part 2, Class B of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This permitted the access road on the basis that it was required for a market to be held on the site up to 14 days per calendar year.

The Court considered whether or not the Defendant – in its decision on the Planning Application – had properly concluded that such a market (or other lawfully permitted uses) was a "real prospect" (following the test in *R (Mansell) v Tonbridge and Malling BC* [2017] EWCA Civ 1314). The Court found that the planning officer's guidance to members had not correctly set out the legal framework as to the likelihood of the market occurring nor any separate legal considerations for the access for other asserted fallback uses. Furthermore, associated statements made by officers at the committee meeting had amounted to "materially misleading legal simplification".

Ground 2 related to the assessment of heritage impacts in the officer's report. The Court found that there had not been any error of fact in relation to whether the site was within or without the Widdington Conservation Area. However, the report's assessment of impacts on listed buildings was found to be "internally inconsistent". The discussion identified less than substantial harm to various listed buildings but the conclusion stated that the significance of all listed buildings would be preserved – which equates to no harm having been caused. Furthermore, there was a failure to carry out the test in NPPF paragraph 202 (weighing less than substantial harm to designated heritage assets against public benefits) in advance of applying the "tilted balance" under NPPF paragraph 11(d).

The Court was not satisfied that the outcome would not have been substantially different if the legal errors had not occurred. As such the Defendant's decision to grant planning permission was quashed.

Case summary prepared by Tom Brooks