

Case Name: *Soilleux v Secretary of State for Levelling Up Housing and Communities* [2023] EWHC 204 (Admin) (02 February 2023)

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Commentary: This case concerns linked claims for judicial review and statutory review of the local authority's and Secretary of State's decisions to grant outline planning permission and reserved matters approval, brought by a local resident (the Claimant). Both the judicial review and the statutory review failed, and the planning permission and reserved matters were upheld.

South Cambridgeshire District Council granted outline planning permission on 26 October 2017 for a "residential development of up to 110 dwellings with areas of landscaping and public open space and associated infrastructure works" and the Secretary of State's Inspector granted reserved matters approval on appeal on 10 June 2022, following an inquiry which ran from 24 May 2022 to 1 June 2022.

The statutory review was brought on six grounds.

The sixth ground concerned the compatibility of the reserved matters application with the outline planning permission, in particular relating to the inclusion of a pumping station and electricity substation within an area defined by the Parameters Plan as "open space".

Mr Justice Fordham rejected this ground. He noted that the Inspector had applied the test in line with case law, namely whether or not there was departure in any "significant respect" from the outline planning permission or conditions (*Heron Corporation v Manchester City Council* [1978] 1 WLR 937) and what the objectively correct meaning of "in accordance with" was when included in a planning condition (*R (Swire) v Canterbury City Council* [2022] EWHC 390 (Admin)). He held that the Inspector had correctly interpreted the case law in deciding that the reserved matters application remained in "broad conformity and harmony with the outline planning permission including the Parameters Plan".

The rest of the grounds for statutory review and judicial review all related to the increased risk of off-site flooding.

The first ground of the statutory review claim was that the Inspector had made an error of law in considering that the flood risk management was not a reserved matter. This ground also failed: Mr Justice Fordham held that not only was the Inspector correct in stating that flood risk "in principle" had been settled at the outline planning permission stage, but also that the Inspector had in fact considered flood risk at the reserved matters stage and had recorded in his decision that he was "satisfied that the proposal would not result in a flood risk to neighbouring land or properties". He also considered that the Inspector's decision not to impose further conditions "requiring the delivery of the landform which was the basis of the modelling on which he was persuaded of flood risk

acceptability” did not arguably cross “the threshold of unreasonableness in the context of the planning judgment and evaluation entrusted to him”.

Under the third ground of the statutory review claim, the Claimant alleged that the Inspector had erred in his approach to the definition of “flood risk”. Mr Justice Fordham held that the Inspector was correct in his approach and that, in applying both local and national policy, “flood risk” must bring about “harmful consequences” and not simply be an increase in probability of flooding. There was no real “risk” on the facts as the gardens of the properties affected were not “sensitive receptors” and there was no evidence of any risk to the “dwellings” themselves.

In relation to the judicial review claim, Mr Justice Fordham held considered that the delay of four to five years at the time when the judicial review proceedings were commenced was too extreme, and he did not accept that the Claimant “could not” have brought her claim more promptly. In respect of the delay, Mr Justice Fordham also refused to accept that the Claimant could pursue the issue of off-site flood risk in the way that she did: by deciding to raise points related to flood risk at the reserved matters stage rather than by bringing judicial review at the outline planning permission stage, and then seeking to bring a judicial review after the Inspector considered the issue of flood risk and decided contrary to her opinion in order to reopen the discussion, claiming that the delay was due to the fact that she did not appreciate the impact of the modelling data until much later (October 2019), when the concerns “crystallised”. Accordingly, the claim was refused.

In both the statutory review and judicial review challenges, Mr Justice Fordham considered that there was no realistic prospect of success.

Case summary prepared by Sophie Bell