

**Case Name:** *Simmonds, R (On the Application Of) v Venture Properties Group & Ors* [2023] EWHC 2217 (KB) (15 September 2023)

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

**Commentary:** This was a successful appeal to the High Court by Geoffrey Simmonds (“Claimant”) to set aside the decision of Blaby District Council (“Defendant”) to grant planning permission and listed building consent for the demolition of an old milking shed and the construction of 13 dwellings in Braunstone Town (“Application”).

### **Background**

Braunstone Town Council (“BTC”) held a Planning Committee meeting to debate the Application. At the beginning of this meeting, Councillor Moitt (who was also on the Defendant’s Planning Committee) declared his interest in the Application and abstained from voting. It was resolved at the meeting to lodge an objection to the Application on several grounds (“First Meeting”).

Reference to the Application was included in the Minutes for a BTC meeting held several months after the First Meeting; this was only for administrative purposes to confirm BTC’s objection had been sent to the Defendant and the merits of the Application was not considered. Councillor Moitt attended this meeting in full (“Second Meeting”).

On the wrongly held assumption that the Second Meeting had considered the merits of the Application, a planning officer of the Defendant had a telephone conversation with Councillor Moitt to advise him that attending the Defendant’s Planning Committee Meeting to decide the Application (“PC Meeting”) could be a problem based on his involvement at the Second Meeting. On this basis, Councillor Moitt did not attend the PC Meeting.

The old milking shed is contained within the curtilage of a Grade II listed farmhouse. Paragraph 196 of the NPPF provides that “evidence of deliberate neglect or damage to a heritage asset should not be taken into account in any decision”. This paragraph was not specifically mentioned in the Reports, as officers did not consider there was any evidence of deliberate neglect. However, at the PC Meeting, a Councillor raised the issue about the state of the condition of the listed building. Officers told Councillors that the maintenance of the building was not something they “get involved in” and did not advise Councillors of paragraph 196.

### **Grounds**

The Claimant challenged the decision on four grounds and was successful on grounds 1 and 4.

1. The Officer reports (“Reports”) misled Councillors at the PC Meeting by failing to consider paragraph 196 of the National Planning Policy Framework (“NPPF”).

2. The Reports failed to apply section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("LBA").
3. Councillors were misled as officers told them disregard or give no weight to an emerging Conservation Area designation for the Application site.
4. The decision was procedurally unfair as Councillor Moitt was wrongly told by a planning officer that he could not attend the PC Meeting given a purported predisposition.

## **Judgment**

### **Ground 1**

Worster J held that once the issue of condition of the building was raised and debated at the PC Meeting, officers should have advised Councillors about paragraph 196.

Whilst the Court found the condition of the building was a minor matter, given Councillors were met with advice that the condition of the building was not material, when (potentially at least) it was, the Defendant had fallen into legal error. The Defendant argued section 31(2A) of the Senior Courts Act should apply as but for the error, the decision would not have been substantially different, however, the high threshold for relief under this section (see *Pearce v SSBEIS*) was not made out.

Given the above, ground 1 succeeded.

### **Grounds 2 & 3**

In relation to the second ground, Worster J found section 66(1) of the LBA had been applied correctly. Despite the words "considerable importance and weight" (see interpretation of section 66(1) in *R. (Forge Field) v Sevenoaks DC*) not being used, when reading the Reports in context, the LBA was given considerable weight. This was due to references to section 66(1), the importance of listed buildings and the relevant paragraphs of the NPPF, including assessment of the balancing of less than substantial harm to the listed building as required by paragraph 202.

In relation to the third ground, Worster J was satisfied Councillors had not been misled as the Defendant's Historic Buildings expert considered the emerging Conservation Area and those views were referred to in the Reports. The view was the Conservation Area added nothing of any significance, as the weight to be given to the buildings currently listed status would have always been greater than any weight to be given if the site was in a Conservation Area.

For the above reasons, both these grounds were dismissed.

#### **Ground 4**

To determine this ground, it was appropriate to cross-examine witnesses given the factual background outlined above.

It was held that Councillor Moitt was significantly misled by the officer given he was wrongly advised not to attend the PC Meeting due to his involvement in the Second Meeting. Worster J found that the decision was procedurally unfair, as he was plainly entitled to attend the PC Meeting and but for the mistaken advice received from the officer, he would have contributed to the debate and voted on the Application.

Worster J remarked that with hindsight, Councillor Moitt should have taken his concerns to the Chair of the PC Meeting or looked at the Minutes of the Second Meeting once he received the call from the officer. However, Worster J found this placed an unrealistic duty on a Councillor.

The decision was found to be procedurally unfair, and this ground succeeded.

#### **Commentary**

This was a rare judicial review case where the factual complexities led to the cross-examination of witnesses being allowed. It also provides a reminder that when issues are raised at a committee meeting, these need to be addressed and clarified by officers by reference to the specific statute or policy, in this case the NPPF.

*Case summary prepared by Jack Curnow*