

Case Name: *Pratt & Anor, R (On the Application Of) v Exeter City Council* [2024] EWHC 185 (Admin) (02 February 2024)

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Commentary:

This was a successful judicial review claim of Exeter City Council's ("ECC") decision to grant Waddington Park Limited ("WPL") outline planning permission for the demolition of existing buildings and structures, and the phased development of up to 350 dwellings, associated infrastructure and open space at St Bridget Nursery, Old Rydon Lane, Exeter, Devon EX2 7JY ("the Site").

In granting planning permission, ECC approved the proposed access scheme which included restrictions on the vehicular use of Old Rydon Lane (partial closure and introduction of a one way street heading east which prevents the first claimant from turning left out of her drive) and for traffic to and from the proposed development to travel along Old Rydon Lane.

The grounds of challenge in this claim were as follows:

- I. Ground 1. The ECC failed to assess the impacts the access scheme had on the existing residents of Old Rydon Lane.
- II. Ground 2. The planning officer gave materially misleading advice to the ECC's Planning Committee on the feasibility of implementing the Masterplan access scheme, and failed to discharge its Tameside duty to investigate whether the relevant land (owned by the Second claimant) was available for sale, and if so, on what terms.
- III. Ground 3. The planning officer correctly advised that a Traffic Regulation Order ("TRO") "would be required for all the proposed works on Old Rydon Lane, and a condition would be required to ensure for these to be secured prior to commencement on site". However, ECC failed to secure this.
- IV. Ground 4. In the alternative, if it is found that a TRO was not necessary prior to commencement of development, then the payment of £15,000, as agreed in the s.106 agreement, was not for a planning purpose and did not relate fairly and reasonably to the development.

ECC filed an Acknowledgment of Service stating that it did not intend to contest the claim. In a subsequent consent order, it accepted that "the decision under challenge was unlawful on Grounds 2 and 3 for the reasons set out in the Claimants' Statement of Facts and Grounds and consents to judgment on that basis". It did not concede Grounds 1 and 4. It accepted that the grant of planning permission should be quashed.

WPL (as an interested party) contested the claim on Grounds 1 and 2. It addressed Ground 3 by entering into a s.106 unilateral undertaking, in which it covenants not to commence or permit the commencement of development until a TRO has been made.

The effect of the concessions made by ECC and WPL is that Grounds 3 and 4 fell away, and only Grounds 1 and 2 needed to be determined.

The planning history of the Site shows it to be part of the Newcourt Strategic Allocation and for about 30 years the ECC's approach has consistently been to avoid allowing additional traffic to access the Masterplan area using Old Rydon Road.

WPL's application for planning permission was accompanied by a Transport Assessment ("TA") which concluded that the proposed development would not have a severe impact on the local highway network. The access scheme was via Old Rydon Lane, and included closure of the highway and introduction of a one way system, as well as a cycle lane. The TA did not address the impact of these significant changes on the existing residents of Old Rydon Lane.

The Claimants submitted an objection to the proposed access scheme, demonstrating that there would be unacceptable adverse impacts on their amenity and gave reasons why the Masterplan access scheme was preferable to WPL's access scheme. Furthermore, it stated that no contact had been made to the Second Claimant to discuss the availability of the relevant land required to make this scheme work. Devon CC was a statutory consultee, in its capacity as highways authority, and its consultation response concluded that "the access for the proposed development would not represent a severe highway safety concern as outlined within the NPPF, ergo it would be unreasonable for the Highway Authority to raise an objection to the planning application". However, it did not consider the impacts of the proposed access scheme on the existing residents of Old Rydon Lane.

In his officer report, the planning officer submitted that "the proposed access strategy utilising Old Rydon Lane is considered to be suitable by the Highway Authority... Whilst the use of third party land for a connection would be beneficial it is not possible [to] require this through the planning system and measures are being provided to the site boundary should the third party land come forward for development. On balance, it is considered that the development in its current form is acceptable in relation to the access matters raised in the deferral and is therefore recommended for conditional approval, subject to the S106 agreement." In the light of this report, the Planning Committee voted in favour of the recommendation to grant outline planning permission.

In a claim for judicial review, the Claimant must establish a public law error on the part

of the decision-maker. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application and in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662 (Admin) it was held that a “public body has a duty to carry out a sufficient inquiry prior to making its decision. This is sometimes known as the 'Tameside' duty”.

Mrs Justice Lang concluded that the Claimants were successful on Ground 1 given that in determining the application, BCC was required by section 70(2) TCPA 1990 and section 38(6) PCPA 2004, to have regard to the provisions of the development plan and therefore to any detriment to local amenity and the safety and convenience of the local and trunk road network. The availability of highway access to and from the homes of existing residents of Old Rydon Lane, in particular any loss of amenity, was obviously a material consideration. However, the planning officer failed to assess these matters or weigh them in the planning balance.

In respect of ground 2, Mrs Justice Lang accepted that the planning officer's advice to the Planning Committee was seriously misleading, and members would understandably have been influenced by this advice. She said it was also significant that BCC itself has conceded that its planning officer gave seriously misleading advice to its Planning Committee, in the manner alleged by the Claimants. BCC failed to discharge its Tameside duty and query whether the relevant land was available, and if so, the asking price. Ground 2 was therefore successful.

The claim for judicial review was successful and the grant of planning permission quashed.

Case summary prepared by Amy Fender