

***R (on the application of Spedding) v Wiltshire Council* [2022] EWHC 347 (Admin)**



March 2022

What are the practical implications of this case?

There are various practical implications and points to note arising from the judgment. Firstly, plans submitted for the purposes of prior approval applications should be clear and accurate. The High Court expressly commented that the various plans submitted as part of the application were vague and contradictory. This case highlights the need for plans submitted in support of a prior approval application to clearly and consistently identify the area subject to the application. Careful thought must also be given to ensure that the relevant parcel of the land subject of the application falls within the relevant requirements of the permitted development class an applicant is intended to rely upon.

Secondly, on a more practical level, the judgment highlights the need for local planning authorities to demonstrate that it has grappled with the substance of the proposed change of use in prior approval determinations. The Council in this case did not undertake the comparative exercise required by Paragraph X of Part 3 of Schedule 2 of the GPDO ("Paragraph X") to determine whether the land was within the curtilage of the building.

Thirdly, this judgment is another illustration of the overarching importance of local planning authorities having regard to material considerations and not taking account of immaterial decisions in reaching their development management decisions. In the present case, the High Court concluded that the Council had failed to consider whether there was a real prospect of the poultry operation resuming rendering the comparison using the previous traffic movements related to the agricultural use of the Farm to be immaterial.

Fourthly, and the biggest takeaway point of the judgment, is that the decision confirms that local planning authorities are not empowered to issue decisions that prior approval is not required if the strict permitted development criteria in the GPDO are not satisfied.

What was the background?

Wiltshire Council decided in March 2021 that prior approval was not required for the proposed change of use of land at Nursery Farm, Stock Lane, Landford, Wiltshire ("the Farm") from agricultural building to flexible commercial use pursuant to Class R of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("Class R").

The Farm lies within the Special Landscape Area and Flood Zone 1 for the River Test catchment area. Until 2018, the Farm had been used by the previous owner as a poultry farm. The claim concerned a poultry house and hardstanding (approximately 1595m² of internal floor area). The Claimant had owned the Farm since 2020 and proposed using the poultry house for storing household goods (the Claimant owned a removals company) and using the hardstanding for storing elevated shipping containers.

From mid-November 2020, the Claimant started storing a number of shipping containers on the hardstanding. Due to the containers arriving on large HGVs and there being an increase in traffic down the narrow track accessing the farm, several local residents complained, and the local MP also became involved.

What did the court decide?

The Court found in support of the Claimant on grounds 1, 1A and 2.

Ground 1 succeeded on the basis that the Council had failed to consider whether the proposed use was within the curtilage of the agricultural building. In particular, the Council failed to undertake the comparative exercise required by Paragraph X and/or demonstrate that this exercise had taken place as the officer's report was wholly silent on the issue. The Court also described the present case as directly analogous to the judgment in *R (Sasha) v Westminster City Council* [2016] EWHC 3283 (Admin) in deciding that any evidence from the officer about what was in his mind at the time of writing the officer's report was inadmissible as *ex post facto* evidence.

Ground 1A (which was being dealt with on a rolled-up basis) also succeeded. Under this ground, the Claimant submitted that the Council was under a statutory duty to give reasons and failed to give any or any adequate reasons for its decision. The Court found for the Claimant stating that reasons were required under the statutory scheme for delegated decisions under Regulation 7 of the Openness of Local Government Regulations 2014.

Ground 2 also succeeded on the basis that the Council took into account a consideration that was not material, namely the number of traffic movements which would be experienced for the operation as a farm.

With regards to ground 3, this alleged that the Council had unlawfully concluded in November 202- that the pre-existing B8 use at the Farm was lawful permitted development within Class R. The Claim was unsuccessful on this ground. The High Court concluded that this ground was, in essence, a vehicle for seeking to challenge the lawfulness of something that occurred more than four months earlier (November 2020) than the decision in March 2021 which was the subject of the legal challenge. In this regard, the High Court noted that "It is not the function of the Planning Court to come to a conclusion regrading the lawfulness of the existing use of the site, where the Council has specifically itself concluded as a result of its own enforcement procedures that the use was lawful."

Case details

- Court: Queen's Bench Division (Planning Court)
- Judge: Fraser J
- Date of judgment: 18/2/2022