

Case Name: Greenfields (IOW) Ltd, R (On the Application Of) v Isle of Wight Council & Anor [2025] EWCA Civ 488 (16 April 2025)

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Commentary: This was an appeal against the judgment of the High Court, which had upheld the decision of the Isle of Wight Council ("the Council") to grant permission for development comprising 473 homes and related infrastructure.

The appeal succeeded on the ground related to the failure of the Council to publish the section 106 agreement on its planning register. The Court of Appeal found that, had it had sight of the section 106 agreement, the Claimant would have been highly likely to make representations to the Council on its contents. In particular, the Claimant was concerned with the adequacy of the financial sum to be secured to provide for certain highways works. The Claimant had been unable to establish from any information in the public domain what that sum would be, and indeed the sum which was eventually secured was substantially lower than the developer's estimate of the cost of the relevant works.

Comment: There has long been a duty on a local planning authority to display a copy of a section 106 agreement on its planning register, though many are missing even years after the date on which the decision was issued. Contrary to much recent commentary, however, a failure on the part of the local planning authority to display the section 106 agreement prior to issuing a planning permission will not necessarily be fatal to the grant of permission. The Court of Appeal reiterated that the relevant question was the consequence of non-compliance with the statutory duty, rather than the mere fact of the breach of the duty, it having reached this conclusion having regard to the intention underlying the duty to publish the section 106 agreement.

In this case, the permission might have been saved at the amount of the financial contribution to the highways works been known at the time that the heads of terms for the section 106 agreement were set out in the report to the Planning Committee. The amount was not known, and remained unknown to the Claimant until after the issue of the permission. The Claimant was therefore deprived of the opportunity to make representations as to its adequacy.

Facts

The Council had first resolved to grant permission at a meeting of its Planning Committee in July 2021. The negotiations on the section 106 agreement were protracted, and so the application was considered again at a Planning Committee meeting in April 2023, whereupon it was resolved again that permission should be granted.

Grounds

The Claimant had initiated its challenge to the grant of permission on five grounds, of which none were successful in the first instance judgment of HHJ Jarman KC in August 2024, in which he declined to quash the Council's decision to grant permission. The grounds which were pursued at appeal were, briefly, as follows:

- Ground 1 – related to the failure of the Council to publish the section 106 agreement on its planning register;
- Ground 2 – related to the Council's failure to have regard to material considerations (those being a lapsed outline permission for an alternative development, and the stalled progress in reviewing some related highways works);
- Ground 3 – related to the conduct of a councillor and whether this gave rise to the appearance of bias; and
- Ground 4 – related to the exclusion of a councillor at the Committee meeting in July 2021, and whether this had affected the validity of the resolution made at the April 2023 meeting.

Judgment

The appeal succeeded on ground 1 only. It was agreed between the parties that the section 106 agreement had not been published on the planning register before the decision was issued: the issue before the court was what the failure to publish it meant for the lawfulness of the grant of permission. The Court of Appeal found that, had it had sight of the section 106 agreement, the Claimant would have been highly likely to make representations to the Council on its contents. In particular, the Claimant was concerned with the adequacy of the financial sum to be secured to provide for certain highways works. The Claimant had been unable to establish from any information in the public domain what that sum would be, and indeed the sum which was eventually secured was substantially lower than the developer's estimate of the cost of the relevant works. It was submitted on behalf of the Council that this didn't matter, as the remainder of the cost would be recoverable from other developments in the area, but the Court disagreed.

The remaining grounds failed, the Court concluding briefly as follows:

- On ground 2, that the lapsed outline permission referred to by the Claimant was irrelevant to the Planning Committee's decision making, and that the review of the highways works was not critical to the decision being made by the Planning Committee;

- On ground 3, that the conduct of the Councillor in question did not give rise to the appearance of bias; and
- On ground 4, that if there had been any procedural irregularity this had not affected the second of the Committee's two resolutions to grant permission.

Having found for the appellant on ground 1, the Court allowed time for the parties to make representations as to the appropriate remedy. The Court has now issued its final order, which confirms that the permission has been quashed. The order also confirms that the Council's second resolution to grant permission remains valid and lawful.

Case summary prepared by Aline Hyde