

Case Name: *Moakes, R (on the Application Of) v Canterbury City Council* [2025] EWCA Civ 927 (Admin) (21 July 2025)

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Commentary: On 8 September 2023, Canterbury District Council ("the Council") granted planning permission for a winery and associated warehousing on agricultural land within the Kent Downs National Landscape (referred to as "AONB" in the appeal judgment and this summary). Moakes brought a claim for judicial review of that decision in the High Court which was dismissed. This was an unsuccessful appeal of that dismissal.

Background

Ahead of the planning committee meeting to consider the application, representatives of the Campaign to Protect Rural England ("CPRE") and Natural England ("NE") were informed by Council officials that they could only speak against the proposals in a personal capacity as under the Council's constitution only one group was allowed to speak, and that group slot was taken by the Kent Downs AONB Unit. As the representatives had no personal connection to the site, they decided not to speak against the proposals in their personal capacities. It was established at first instance that the Council had misinformed the representatives, all of whom could have spoken against the proposals on behalf of their organisations.

Ms Moakes, a local resident who could have spoken against the proposals in a personal capacity, chose not to speak at the committee meeting as she had expected a representative of CPRE to speak and express the same concerns she had in mind.

Ms Moakes sought judicial review on grounds including the following that were of relevance to this appeal:

1. The Council failed to follow its constitution and/or acted in a manner that was procedurally unfair by denying representatives of CPRE and NE the chance to address the Committee;
2. The Council failed to give reasons for disagreeing with the views of expert consultees; and
3. The Council failed to give clear reasons for departing from an appeal decision involving similar considerations ("the Medway Appeal")

The Judge dismissed these grounds of challenge as follows:

1. There was a breach of the Council's constitution which led to the CPRE and NE representatives not speaking, but this did not justify quashing the decision as it was not established that the claimant had suffered material prejudice as a result of such procedural unfairness;

2. The officer's report had summarised the objections of the expert consultees and given adequate reasons for disagreeing with them; and
3. The present development and the Medway Appeal development were materially different and the decision makers were making evaluative judgments, so it was unnecessary for the Council to give reasons for departing from the decision in the Medway Appeal.

Ms Moakes (henceforth "the Appellant") appealed the dismissal of these grounds.

Appeal Decision

Andrews LJ, giving the leading judgment with which Lewis LJ and Stuart-Smith LJ agreed, found as follows.

Ground 1 – Procedural Unfairness

The Appellant argued that the Judge has been wrong to find no material prejudice resulting from the procedural unfairness. Andrews LJ disagreed, finding that Ms Noakes herself had not been prevented from speaking and should have been aware of the risk that a CPRE representative may not have spoken for whatever reason. Furthermore, all of her objections were before the committee as they had been articulated in any event by the representative of the Kent Downs AONB Unit, and set out in the officer's report together with the Appellant's own written representation commenting on the report. Ground 1 was therefore dismissed.

Ground 2 – Absence of Reasons

The Appellant's case here was that the Judge was wrong to find that adequate reasons had been given as the Council should have given express reasons for rejecting the views of NE and the Kent Downs AONB Unit. Andrews LJ rejected this, summarising the relevant case law – intelligible and adequate reasons must be given for conclusions, but there is no requirement to give express reasons or a higher standard of reasons when disagreeing with a statutory consultee. On the facts of the present case, considering the officer's report as a whole, adequate reasons had indeed been given, so this ground also failed.

Ground 3 – The Medway Appeal

The Judge had held that the Council was not obliged to give reasons for departing from the Medway Appeal, as the Medway Appeal was distinguishable – the levels of harm to the AONB were lower in the present case, and the present application was supported by a sound economic benefits assessment, while the equivalent assessment in the Medway Appeal case was defective. The Appellant argued that the judge had misunderstood the Medway Appeal, and so in fact it was not distinguishable in the relevant respect. The Appellant's case rested on a comparison of phrases in the Medway Appeal and the officer's report in the present case, but Andrews LJ found that these phrases had been taken out of context and was dismissive of argument the Appellant founded on that comparison. Applying her own analysis, Andrews LJ ruled that when the Medway

Appeal was read as a whole, it was clear that the Judge had not misunderstood the Medway Appeal and been right to distinguish the cases for the reasons she gave. As the Judge's reasoning was found to have been without error on this point, this ground also failed.

All grounds having failed, the appeal was dismissed.

Case summary prepared by Dougal Ainsley