

**Case Name:** *Rickards, R (On the Application Of) v East Hertfordshire District Council* [2025] EWHC 2278 (Admin) (05 September 2025)

**Full case:** [Insert](#) link

**Commentary:** The Claimant's judicial review against the grant of prior approval in respect of agricultural permitted development rights by East Hertfordshire Council for the erection of three polytunnels and related works was successful on the basis that certain designations in the vicinity (a listed building and ancient woodland) were not appropriately considered by the Council in making the decision to grant prior approval.

## Facts

The Interested Party applied to East Hertfordshire District Council (the "**Defendant**") for prior approval to erect three polytunnels and undertake related works ("**Works**") on a plot of agricultural land at Bucksbury Farm, Bucks's Alley, Hertfordshire ("**Property**").

The land in the vicinity of the Works includes an open and forested area called Bayford Wood, which has been designated by Natural England as an "ancient woodland". The Works are also located within an area designated as Metropolitan Green Belt.

The extent of the Works was significant. The polytunnels are large and measure 32 metres long by 8 metres wide, with eaves the height of 3.2 metres and a ridge height of 4.9 metres. The purpose of the Works was to provide a suitable environment for tomatillos to be grown at the Property. This would supplement the existing agricultural uses of the Property including fields for grazing and hay production, bee hives for honey production, and the cultivation of specialist wood-grown mushrooms.

Prior approval was obtained by the Interested Party and the Works were undertaken in reliance upon the permitted development rights conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The Claimant lives to the west of the Property in a Grade II listed building known as the Gage. Despite the authorising officer ("**Officer**") granting prior approval on 25 April 2024, no site notice was erected by the Interested Party and so nobody was aware of the Council's decision until 18 June 2024 when a local resident noticed heavy machinery at the Property. The Claimant states he did not become aware of the prior approval until 4 July 2024. The Claimant then filed the claim for judicial review on 26 July 2024.

## Grounds

The Claimant challenged the Defendant's decision on five grounds:

- Ground 1: unlawful conclusion that the agricultural unit in question was at least 5 hectares.

- Ground 2: failure to require sufficient information to allow a lawful decision to be made on the application.
- Ground 3: failure to take account of the potential impact of the development on the Bayford Wood ancient woodland.
- Ground 4: failure to take account of the potential impact of the development on the setting of the Claimant's listed building.
- Ground 5: failure to provide adequate reasons for the decision.

On 14 October 2024, Mr CMG Ockelton (sitting as a Deputy Judge of the High Court) refused permission to bring the claim on all grounds by order. The Claimant then renewed his application for permission to an oral hearing. On 7 February 2025, Mr Dan Kolinsky KC (sitting as a Deputy High Court Judge) granted permission to proceed with judicial review on Grounds 1 to 4 but refused permission on Ground 5.

### **Judgment**

In this decision, Mr Tim Smith sitting as a Deputy High Court Judge considered the submissions of the parties in relation to the four remaining grounds pursued.

The Claimant's case for Grounds 1 and 2 largely focused on deficiencies of the application material. Specifically, regarding Ground 1, that the application did not include appropriate plans to substantiate the agricultural unit was at least 5 hectares (a requirement for the relevant PD right) and the Officer erred by treating requested supplementary plans as sufficient evidence without visiting the Property. In relation to Ground 2, the Claimant argued that despite there being "obvious deficiencies" with the planning statement and other application documents, the Officer failed to request additional information that would overcome these deficiencies. Judge Smith was not compelled by these grounds and subsequently both failed.

Judge Smith consolidated Ground 3 and 4 and considered them together as the underlying basis of the arguments were substantially similar. Both grounds are concerned with the Officer failing to have regard to a protective designation when deciding whether to grant prior approval.

Counsel for the Defendant submitted that the Officer had regard to the impact of the development on the listed building and the ancient woodland. Judge Smith deemed this was ambitious on the basis there is no mention of either designation in any of the application material or confirmation in the witness evidence of the proceedings the Officer was aware of these designations. Counsel for the Defendant argued references in the Officer's report to an assessment of impacts "on the character and appearance of the site and surrounding area" must be taken to include impacts on the listed building and ancient woodland. Judge Smith did not accept this submission and ultimately concluded the Officer was unaware there was a listed building and ancient woodland to

be considered and therefore the Officer could not have had proper regard to them when forming the decision to grant prior approval. Grounds 3 and 4 both succeeded.

While Judge Smith acknowledged that the Interested Party as the applicant did not highlight the existence of these designations, he was highly critical of the Council who should have knowledge of the designations in its local area and take these into account as a material consideration as part of the prior approval decision making process.

*Case summary prepared by Poppy Mitchell-Anyon*