

Approved on 30 July 2024 by: *Mrs Justice Lang*

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

AC-2024-LON-002245 30 Jul 2024



IN THE MATTER OF AN APPLICATION UNDER S.288 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AC-2024-LON-002245

BETWEEN:

REDWOOD SOUTH WEST LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

First Defendant

-and-

(2) WAVERLEY BOROUGH COUNCIL

Second Defendant

CONSENT ORDER

UPON the Claimant's application for permission for statutory review of the First Defendant's decision of 24 May 2024 to dismiss the Claimant's appeal under section 78 of the Town and Country Planning Act 1990 ("TCPA 1990") under appeal reference APP/R3650/W/23/3327643 ("Appeal Decision")

AND UPON the First Defendant conceding the claim for the reasons set out in the attached Schedule of Reasons and the Second Defendant not actively participating in the Claim

BY CONSENT IT IS HEREBY ORDERED THAT

1. Permission for statutory review is granted.
2. The Appeal Decision is quashed and remitted to the First Defendant for redetermination.

3. The First Defendant shall pay the Claimant's reasonable legal costs, to be subject to assessment if not agreed.

Dated: 16 July 2024

Signed on behalf of the Claimant

Name Kelly Rowley of Clarke Willmott LLP

Position Associate Solicitor

Date 12 July 2024

Signature *K Rowley*

Signed on behalf of the First Defendant

Name Gemma File, Government Legal Department

Position Lawyer

Date 16 July 2024

Signature *For the Treasury Solicitor*

Signed on behalf of the Second Defendant

Name Lewis Jones

Position Senior Planning Solicitor

Date 16 July 2024

Signature *L Jones*

SCHEDULE

1. On 24 May 2024, Tom Bristow BA MSc MRTPI AssocRICS (“Inspector”) dismissed an appeal by the Claimant in relation to a hybrid application consisting of an outline application (all matters reserved except access) for up to 110 residential dwellings accessed from the proposed access road (linking to Midhurst Road), associated landscaping, restricted access for emergency access, community growing space and associated infrastructure, including green infrastructure. A full application for the erection of 1 dwelling and associated works; a junction alteration from Midhurst Road, associated access road to serve the development (including the diversion of a public footpath), car park, associated landscaping and drainage; the erection of a scout facility/nursery (use class F) and an education facility (use class F); a Suitable Alternative Natural Greenspace (SANG) under section 78 of the Town and Country Planning Act 1990 (“Appeal”).
2. The Appeal was determined following the public inquiry procedure with sitting days from 9 January to 18 January 2024 and on 23 January 2024.
3. On or around 9 January 2024, the Inspector “liked” a post on the LinkedIn website which had been posted by Mr Collins, who was a planning witness for the Claimant. The Claimant and the First Defendant agree that the LinkedIn post was objectively written, made no comment on the merits, and was simply an update on Mr Collins’ attendance at the public inquiry and his role in it.
4. On or around 30 January 2024, a local news website published a story about the Inspector liking Mr Collins’ post. There were comments in response to that article which suggested that by liking Mr Collins’ post, the Inspector had showed a lack of impartiality.
5. On or around 5 February 2024, the Planning Inspectorate wrote to the local residents’ association, the Haslemere South Residents Association (“HSRA”), on behalf of the Inspector explaining the circumstances of the Inspector liking the post on LinkedIn and emphasising the Inspector’s impartiality.
6. In the Inspector’s decision letter dated 24 May 2024 the issue of impartiality was addressed at paragraphs 18 – 23. It was therefore a material matter.
7. The First Defendant accepts that Rule 18(3) of the Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000 required the Inspector to notify in writing the persons entitled to appear at the inquiry who appeared at it of the matter in question and to afford them an opportunity of making written representations to him or to ask for the re-opening of the inquiry. The Claimant was not notified of the issues, nor afforded an opportunity to make written representations, nor provided with the Planning Inspectorate’s correspondence to the HSRA.

8. A claim for statutory review was filed and issued on 1 July 2024, and served on the First Defendant and the Second Defendant on 2 July 2024.
9. In the circumstances set out in paragraph 7 above, the First Defendant accepts that the Appeal Decision was unlawful on Ground 2 of the claim and consents to the Appeal Decision being quashed on that basis. The Council also agrees that the Appeal Decision is unlawful on this basis.
10. For the avoidance of doubt, the Claimant reserves its position on Grounds 1, 3 and 4 of the claim and the First Defendant does not concede on any other grounds of the claim.
11. However, as the Parties are agreed that the Appeal Decision should be quashed on Ground 2, the Parties also agree that the other grounds are academic in the context of these proceedings as it is agreed the decision is to be quashed on Ground 2.

BY THE COURT