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**Airport Runway Extension Survives High Court Challenge**

Objectors to major infrastructure developments often contend that planning consent has been granted prematurely or in breach of a legitimate expectation. However, in a case concerning a hugely controversial proposal to extend a regional airport's runway, such arguments failed to convince the High Court.

A local authority resolved, by a majority, to grant planning consent for the 164-metre extension following a tense, 20-hour meeting. The decision followed an extensive public consultation exercise. Planning permission was not formally granted at the meeting, but was issued to the airport's operator some weeks later.

Challenging the permission, a campaign group argued that the council had breached objectors' legitimate expectation that its final decision would be delayed. It asserted that the council was obliged to stay its hand pending the decision of the Secretary of State for Levelling Up, Housing and Communities whether or not to call in the application for central government determination, thereby triggering a public inquiry.

Rejecting that argument, the Court found that the council had never given any clear and unequivocal promise that it would follow that course. Although it had informally consented to delaying its final decision whilst the Secretary of State considered the matter, its agreement to do so was not open ended. The council made it plain that it was not agreeing to any further delay beyond a particular date, by which time the Secretary of State would have had six weeks to consider his position.

The Court ruled that the council in any event had no power to give an irrevocable undertaking or promise that it would delay its decision indefinitely. To do so would have been inconsistent with planning legislation and, in particular, the council's duty to determine the planning application before it. Other arguments put forward by the campaign group were also rejected and its challenge was dismissed.

For advice relating to planning consent disputes, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*R on the Application of Goesa Ltd v Eastleigh Borough Council [2022] EWHC 1221 (Admin)*

**Extraction of Sustainable Products and Green Belt Policy – Guideline Ruling**

In upholding planning permission to extract millions of tonnes of pulverised fuel ash (PFA) from a prominent slag heap, the High Court addressed important issues concerning recovery of sustainable products from the Green Belt and what constitutes the 'very special circumstances' required to justify such developments.

The heap was for many years used to deposit waste from two coal-fired power stations and formed a prominent feature of the landscape. PFA is used in the manufacture of cement and concrete and is classed as a sustainable, recycled aggregate in the UK. Its extraction reduces the need for the mining of virgin raw materials, including limestone, sand and clay.

By the casting vote of the chairman of its planning committee, the local authority resolved to grant planning permission for the extraction of 23 million tonnes of saleable PFA from the heap, in seven phases over a 25-year period. The project included construction of, amongst other things, processing plants and upgraded access arrangements.

The decision was based on a report prepared for the committee by the council's corporate director of business and environmental services. It stated that, on balance, the benefits of using PFA as a secondary aggregate outweighed the negative aspects of the proposal. Impact on local residents, in terms of noise, dust emissions, visual appearance and traffic disturbance, could be effectively mitigated and controlled by planning conditions.

In rejecting a judicial review challenge to the permission brought by the local parish council, the Court noted that the report expressly acknowledged that the proposal was for inappropriate development in the Green Belt. In concluding that very special circumstances nevertheless prevailed in favour of the project, the report took into account all relevant considerations, including the effect on the amenities of local residents. So far as the impact of new-built elements was concerned, the report was entitled to have regard to existing buildings on the site.

The Court acknowledged that, in advising the committee on local planning policy considerations, the wording of the report was to some extent infelicitous. However, councillors were not specialist judges and the report was not to be read as if it were a commercial contract or statute. Any flaws in the report could have been addressed by making minor changes and had made no difference to the outcome.

**Partner Note**

*R on the Application of Whitley Parish Council v North Yorkshire County Council [2022] EWHC 238 (Admin)*

**Inconsistent Planning Permissions – Case Focuses on Solar Farm**

It may seem counterintuitive, but there is nothing wrong in principle with a council granting two planning permissions that are mutually inconsistent. The High Court made that point in upholding planning consent for a solar electricity substation.

A developer was granted permission in 2017 to develop a 72-hectare solar energy farm in the countryside, together with associated equipment and a 33kV substation to house switching gear. Crucially, a condition attached to the permission required that the development was not to be carried out other than in complete accordance with approved plans, which showed the substation located to the west of some overhead power lines.

It was, however, subsequently realised that the proposed substation would not be capable of connecting the farm to the grid via the power lines. In response to that difficulty, a further planning application was made to construct an enlarged 132kV substation in a new location to the east of the power lines. The local authority granted planning permission for that development in 2021.

In mounting a judicial review challenge to the 2021 permission, a local resident argued that the council erred in having no regard to the fact that it was inconsistent with the 2017 permission and could not be implemented without breaching planning control. That was because, if the 2021 permission were implemented, the project authorised by the 2017 permission – on which work had already begun – could not be carried out in complete compliance with the approved plans.

Rejecting her arguments, however, the Court noted that there is, in principle, nothing objectionable about a local authority granting two permissions that are inconsistent with each other. Such a course enables developers to choose which development to carry out. It was not inevitable that the developer would implement the 2021 permission, thus breaching planning control. There were other options available, including a fresh application for a composite permission to permit the solar park and substation as currently proposed.

The Court acknowledged that it might well be that the potential difficulties arising from the incompatibility of the two permissions were simply not considered by the developer before it submitted the 2021 planning application. It was, however, unsurprising that planning a project of such magnitude should be an evolving process.

The incompatibility between the two permissions was a matter for the developer to resolve and it was not something the council was compelled to grapple with or speculate upon. It was for the developer to decide how to complete the solar farm in a way that would not involve a breach of planning control.

We can advise you on any matters relating to planning law. Contact us for guidance.

**Partner Note**

*R on the Application of Fiske v Test Valley Borough Council CO/2347/2021*

**Stamp Duty, Multiple Dwellings Relief and Apportionment**

When buying properties that comprise more than one residence, multiple dwellings relief (MDR) is available against Stamp Duty Land Tax (SDLT). As a First-tier Tribunal (FTT) ruling showed, however, both the availability and extent of such relief is often hotly contested by HM Revenue and Customs (HMRC).

The case concerned a substantial property that was purchased by a company for £875,000 with a view to converting it into a care facility. It comprised a main house, an annexe that was laid out as two apartments, an office block and a summerhouse. Following the acquisition, the purchaser paid £33,750 in SDLT.

HMRC's initial view was that SDLT at 15 per cent – a total of over £130,000 – was payable on the transaction. Following negotiations, however, they accepted that the annexe contained two dwellings separate from the main house and that MDR was therefore at least partially available. That, however, was not the end of the matter in that there was no agreement as to how the purchase price should be apportioned between the different dwellings comprised in the property.

HMRC took the view that the main house, the office block and the summerhouse comprised a single dwelling that accounted for more than £500,000 of the purchase price. That sum being the relevant threshold at the time, HMRC asserted that MDR could not be claimed in respect of that dwelling. Overall, they contended that £82,388 in SDLT was payable on the transaction.

The purchaser argued that the main house was a stand-alone dwelling and that the office block and summerhouse formed part of the annexe. The value of the main house being below £500,000, it argued that MDR was available in respect of the entire transaction, giving rise to an SDLT liability of £23,750.

Ruling on the matter, the FTT found that the property comprised three dwellings of equal importance to the purchaser's business, all of which qualified for MDR. It ruled on the evidence that the main house included the summerhouse but not the office block. It was just and reasonable to apportion the purchase price between the dwellings in accordance with their respective floor areas. On that basis, SDLT payable on the transaction came to £13,749. It followed that the purchaser was entitled to an SDLT refund of £20,001.

The law surrounding Stamp Duty Land Tax can be complex. Our specialist team is here to advise.

**Partner Note**

*Marcus and Marcus Ltd v The Commissioners for Her Majesty's Revenue and Customs [2022] UKFTT 145 (TC)*

**Upward Extension of Residential Blocks – Guideline High Court Ruling**

Advances in building techniques have made it possible to build additional storeys on many blocks of flats. Such developments may not be popular with existing residents but, as a High Court case showed, the pressure on housing stocks is such that planning permission for them is frequently forthcoming.

The case concerned planning consent granted for a one-storey upward extension to a four-storey block. The development, which included five exterior elevators, would provide 16 additional residential units in an area of high housing demand. The block's residents' association was united in opposing the scheme.

The association's core concerns were that the extension could not be safely built and that top-floor residents might have to vacate their homes during the construction works. A local authority planning officer's report, however, praised the proposal as a high-quality, attractive development of appropriate scale. It stated that there would be no harm to a nearby conservation area, that the project accorded with the local development plan and that, despite some loss of sunlight, the effect on local residents' amenities would be negligible to minor.

In rejecting the association's judicial review challenge to the planning permission, the Court found that the council had properly addressed the issue of whether the block was structurally capable of accommodating an additional storey. It was entitled to conclude that structural issues would be more appropriately dealt with under the building control, rather than the planning, regime.

The developer's representatives had expressed confidence that solutions to any structural challenges could and would be found and that temporary displacement of existing top-floor residents was highly unlikely. That chimed with the professional experience of planning officers and the council was not required to insist on the developer submitting a full structural survey.

Our expert team has experience in all aspects of property law, including planning permissions. Contact us for advice.

**Partner Note**

*R on the Application of Vanbrugh Court Residents' Association v London Borough of Lambeth [2022] EWHC 1207 (Admin)*

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