

**Case Name:** *Shave, R (On the Application Of) v Maidstone Borough Council* [2020] EWHC 1895 (Admin) (15 July 2020)

**Full case:** [Click Here](#)

**Commentary:** The Claimant was successful in her claim for judicial review of Maidstone Borough Council's (the "Council") decision to grant planning permission for the change of use of land for the stationing of 18 holiday caravans. The planning application site comprised 2.3 hectares of land divided into two paddocks, with the western paddock in use for the past few years as a site for caravan and camping, providing pitches for touring caravans and tents. The eastern paddock had been used for horse grazing.

The decision to grant planning permission was challenged on two grounds.

The first ground was that the Council had erred in law in the manner in which the status of the site as EIA Development had been reported to its Planning Committee (the "Committee") members. It was common ground between the parties that the application fell to be screened to see whether the "development would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location", and would constitute EIA Development, with the responsibility to decide this (via a screening opinion) being delegated to Council officers. The Claimant drew attention to the first officer's report of May 2019 which stated that "the proposal is not Environmental Impact Assessment development", when in fact the negative screening opinion was only issued on 3 December 2019. The "urgent update" of the officer's report provided to members of the Planning Committee for its meeting on 5 December 2019 stated that a negative screening opinion had been adopted on behalf of the Council, but members were given no further explanation as to how this decision had been reached by officers. The court held that there was no legal requirement for the members to be given any details about the screening opinion, and as such it was impossible to say that the members were misled in any significant way which could possibly have affected their determination of the application for planning permission. Ground 1 was therefore dismissed.

The second ground was that the grant of permission should be quashed because the officer's reports to Committee were significantly misleading in a number of respects. The criticisms of the report related to sustainability, the design of the holiday lodges, the holiday occupancy condition, and the use of permitted development rights as a fallback position. The Claimant's submissions in respect of sustainability, the holiday occupation condition and the use of permitted development rights as a fallback position were dismissed. However, the Court found that in respect of design, the Council had erred in law in its assertion that it was not justified for the planning authority to seek more details of the lodges because planning permission was only required for the change of use of the land to station or accommodate the lodges for holiday purposes, as had been set out in the officer's report. In effect, the Committee was told that it could not control design beyond the dimensions given in the Caravan Sites and Control of Development Act 1960 ("the 1960 Act") when determining the planning application for the proposed change of use. Over the course of the hearing, the parties agreed that merely because an application seeks permission for a change of use, a

planning authority is not precluded from exercising planning control in relation to the design or appearance of structures or objects the siting (and retention) of which will be authorised by the permission. The court held that the only control which the authority can exercise in relation to design matters under the 1960 Act is the power to impose conditions on the site licence contained in s. 5, and stated that although the powers under the 1960 Act and the planning statutory framework overlap to some extent, it is necessary for an authority to be careful about assuming that any aspect of design which could be controlled under planning legislation can or should be left to the 1960 Act.

Accordingly in relation to the second ground, the court held that it was an error of law for the Committee to be advised that the planning authority could not require appropriate design details to be provided, and so could not exercise planning controls in relation to the design of the lodges by deciding whether or not to grant permission or by the imposition of conditions on any permission. The decision to grant planning permission was therefore quashed.

*Case summary prepared by Rebecca Craig*