

Case Name: *Hewitt, R (on the application of) v Oldham Metropolitan Borough Council & Anor* [2020] EWHC 3405 (Admin) (18 December 2020)

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Commentary:

This was an unsuccessful challenge to Oldham Metropolitan Borough Council's decision to grant hybrid planning permission ("the permission") for 265 dwellings, open space and landscaping, a new link road and associated works ("the application scheme"). The claimant was a local councillor and a former Vice Chairman of the Council's Planning Committee.

Permission had been granted primarily on the basis of the "tilted balance" presumption in favour of sustainable development (para 11 (d) (ii) of the NPPF), because the Council was unable to demonstrate a five year housing land supply. It is noteworthy that the application scheme was materially identical to a scheme that had been refused at planning committee in 2018, contrary to the planning officer's recommendation for approval.

In considering the challenge, the High Court analysed the officer report ("the 2019 report") for the application scheme, with particular focus on its conclusions regarding: the lack of a five-year housing land supply; the out-of-date status of a 2006 policy pertaining to part of the site; the fact that the site was not within a Landscape Character Area (this was contrary to the Council's position during determination of the 2018 scheme, that the site was in such an area); and the economic, social and environmental benefits of the application. Some heritage harm was identified and considered per NPPF para 196, with less than substantial harm to significance being outweighed by public benefits ("whilst giving the heritage harm great weight"). Adverse landscape impacts were also identified as weighing against the proposal. Nonetheless, the scheme was recommended for approval on the strength of its benefits and the planning committee followed that advice.

The claim was brought on four grounds, all of which were rejected by the court. The first two grounds were that the 2019 report misled the committee about the landscape value of the site per NPPF para 170 and the weight to be given to landscape harm in the tilted balance per NPPF para 11 (d)(ii). The court held that both the location of the site outside the Landscape Character Area and the out-of-date policy context permitted the Council to give less weight to landscape harm in the balancing exercise than would otherwise be the case. Ultimately, in relation to both grounds, the weighting of landscape harm was said to be a matter of planning judgment for the Council.

The third ground was that members erred in law in their consideration of heritage impacts: by failing to properly discharge their statutory duty under s 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990; by finding no harm to the Lydgate Conservation Area where harm had been found as a result of the materially identical 2018 scheme; and by failing to give adequate reasons. The Court held that, while far from exemplary in the clarity of its reasoning that the less than substantial harm would be outweighed by the public benefits, including in relation to the Lydgate Conservation Area, the heritage assessment

carried out in the 2019 report was “tolerably clear [...] when read in context” (paras 231-232).

The fourth ground related to the failure to consider the energy requirements of the development under NPPF para 153 and the impacts of climate change (Ground 3). The court found that it was appropriate, and moreover necessary, for some aspects of this to be dealt with at reserved matters stage, “once the detailed designs for the development have been worked out” (para 242) rather than when considering the present, hybrid application.

Case summary prepared by Tom Brooks