

Case Name: *Newey, R (On the Application Of) v South Hams District Council* 2018 EWHC 1872 (Admin) (27 July 2018)

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Commentary: The Council's approval of a construction method statement submitted pursuant to a condition was held to be unlawful because there was a breach of a statutory duty to give reasons (under the 2014 Openness Regulations). The Regulations were engaged because the effect of the decision to approve the CMS affected the rights of an individual (and not because the decision amounted to the grant of a licence or permission).

However, the Claimants also argued that the Council could not approve a CMS that would cause harm to the occupiers of adjoining premises because the reason given for the relevant condition was "to ensure that the construction phase of the development does not result in harm to the living conditions of occupiers of adjoining premises". The Judge dismissed this ground holding that the word "unreasonable" should be read in front of "harm" and therefore, the criticism of the officer's decision amounted to an attack on his planning judgment that the harm was not unreasonable. This could not found a claim for judicial review. (The harm was that the neighbouring properties had scaffolding towers and conveyors enclosed in plywood running in front of their first-floor windows (the only source of natural light to the habitable rooms on the upper floors) with projected noise levels of 75 decibels and the construction works intended to take 60 weeks).

The decision was also quashed on the basis that the Council had failed to have regard to paragraph 121 of the NPPF (suitability of the site taking into account ground conditions and land instability) as the Officer had not drawn the Committee's attention to this paragraph nor the fact that a retaining wall on the site had suddenly collapsed.

Case summary prepared by Town Legal LLP