

Case Name: *Norman v Secretary of State for Housing Communities and Local Government & Ors* [2018] EWHC 2910 (Admin) (01 November 2018)

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Commentary: A s288 challenge to an Inspector's decision to uphold an appeal and grant planning permission for poultry buildings was dismissed on all grounds following a rolled up hearing.

Two of the grounds concerned the Inspector's reliance on the environmental permit that had already been granted for the operation. The position on the overlap between the planning and permitting regimes was set out in *Hopkins Developments Ltd v First Secretary of State* [2007] ENV LR 14: "the impact of air emissions from a proposed development is capable of being a material planning consideration but in considering that issue the planning authority is entitled to take into account the pollution control regime". Paragraph 120-122 of the NPPF expand on this. The Judge held that the Inspector had not abdicated responsibility for his decision making as he had paid close attention to odour and noise impacts and was entitled to have regard to the environmental permit. This ground was held to be unarguable.

The judgement sets out the legal principles which apply to the Court's consideration of inspector's decision letters.

The Claimant's other grounds asserting misunderstandings and deficiencies in the Inspector's report were also dismissed.

Although it was not necessary to decide the question of standing for the purposes of the claim, the judge found that the Claimant is not a person aggrieved within the meaning of section 288 of the 1990 Act. The Claimant was an elected Councillor and member of the planning committee of Herefordshire Council and the Chair of the North Herefordshire Green Party. She lived 10 miles away from the development site and did not have a private interest that would be affected. She had not participated in the appeal before the Inspector in a personal capacity, where, the Judge noted, she could have raised broader environmental concerns in light of her experience as chair of the local Green Party. It was argued that she would have had standing under judicial review and that her standing should not be dependent on the route by which she arrives at the Court but the Judge cited the stipulation of the Court in *Walton v Scottish Ministers* to look specifically at the statutory context in which the question of standing arises. The Judge also noted that the grounds advanced by the Claimant were the same concerns which the Council and neighbouring objectors had raised at the appeal. These parties would have been persons aggrieved but had chosen not to challenge the Inspector's decision.