

**Case Name:** *Bates, R (On the Application Of) v MALDON DISTRICT COUNCIL* [2019] EWCA Civ 1272 (23 July 2019)

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

**Commentary:** The Court of Appeal dismissed an appeal concerning the Council's determination of a planning permission for the conversion of a barn into a single three-bedroom dwelling. In 2018 permission was granted for this development by the officer, predominantly on the basis that permission was granted for the same development in 2015 and this was a material consideration.

The appellant claims that the judge, in considering the judicial review of the grant of the 2018 permission, was wrong to conclude that the Council's treatment of the 2015 permission was lawful.

Lord Justice Hickinbottom set out the relevant law here, in short:

i) Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise (section 38(6) of the Town and Country Planning Act 1990).

ii) A previous planning decision in relation to the same land is capable of being a material consideration, because (a) if the permission is capable of implementation, it may provide a fall-back position, and (b) in any event, there is a public interest in consistency of decision-making. However, there are circumstances where this is not appropriate.

iii) An officer's report must be read as a whole and in a straightforward and common sense way, and on the basis that it is drafted for an informed readership (*R (Siraj) v Kirklees Metropolitan Council* [2010] EWCA Civ 1286), recently confirmed in *Mansell v Tonbridge and Malling District Council* [2017] EWCA Civ 1314 at [42] per Lindblom LJ).

iv) In respect of a planning decision taken under delegated powers, there is a duty on the planning officer to give reasons for his or her decision (regulation 7 of the Openness of Local Government Bodies Regulations 2014 (SI 2014 No 2095)).

v) Where a planning decision is taken in line with an officer's report, then there is an assumption that the reasons for that decision are those set out in the report (*Palmer v Herefordshire Council* [2016] EWCA Civ 1061 at [7] per Lewison LJ).

The appeal was dismissed, considering the above and in the main because a planning officers' report must not be read in an overly critical spirit or with an unrealistic view of what needs to be set out in assessing the proposal on its merits. The Court will only intervene if there is some distinct and material defect in the report, such as a clear misunderstanding of relevant national or local policy. The decision here made no such error and is not open to criticism on any public law grounds.

*Case summary prepared by Amy Bennett*