

Case Name: *Gladman Developments Ltd v Secretary of State for Communities And Local Government & Ors* [2019] EWCA Civ 1543 (12 September 2019)

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Commentary: The Court of Appeal dismissed Gladman's appeal against the High Court's ruling that an inspector had properly determined two section 78 appeals. The Court of Appeal unanimously found that the inspector had dealt lawfully with the likely air quality impacts of Gladman's proposed housing development, and thereby had properly refused Gladman's section 78 appeals against Swale Borough Council's failure to determine an application for outline planning permission for housing development.

Gladman's proposed housing development included up to 470 dwellings on farmland in Kent. Gladman's proposals to mitigate the development's air quality impacts had included electric vehicle charging points for each dwelling. However, the inspector found no specific evidence that these measures would likely reduce use of private petrol and diesel vehicles. Accordingly, the inspector found that the proposed development would have at least a moderate and possibly a substantial adverse impact on local air quality, likely worsening exceedances of the annual objectives for legal minimum nitrogen dioxide emissions in the local air quality management areas (of Newington and Rainham), with a significant effect on human health. As a result, the inspector concluded that approval of the proposed development would be inconsistent both with the EU Air Quality Directive (as transposed into English law and implemented locally in England since 2010 to protect human health and the environment as a whole), and with the National Planning Policy Framework's (NPPF) paragraph 124 requiring local limitation of pollutant emissions.

In upholding the High Court's ruling that the inspector had dealt lawfully with the likely air quality impacts of Gladman's proposed development, the Court of Appeal emphasised that the inspector had correctly applied the High Court's 2016 decision in *ClientEarth (No.2)* – in which the High Court confirmed the government duty, via local authorities' air quality plans and management areas, to comply with national air quality pollutant limits by securing air quality improvement within the shortest possible time and by identifying the most effective pollutant emission reduction measures, without excessive optimism for future vehicle emissions being within the limits to secure such improvement.

In addition, the Court of Appeal found that the inspector was correct in other respects: in considering the proposed development's air quality impacts as material to whether or not planning permission should be granted; in not identifying a duty to formulate a planning condition to make Gladman's proposed development acceptable; and, compliant with NPPF paragraph 122, in not treating the EU Air Quality Directive as a pollution control regime separate from the English planning system.

For further discussion see *Simonicity*.

Case summary prepared by George Morton Jack