

**Case Name:** *Shirley & Anor, R (On the Application Of) v Secretary of State for Housing, Communities and Local Government* 2019 EWCA Civ 22 (25 January 2019)

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

**Commentary:** This was an appeal against the dismissal of the appellants' claim for judicial review of the SSHCLG's decision not to call in under Section 77 TCPA 1990 an application for planning permission for 4,000 dwellings in Canterbury. The Court rejected all three of the appellants' grounds.

The appellants' first ground was that the preparation and implementation of an air quality plan complying with Article 23 of the Air Quality Directive was not a sufficient response to breaches of limit values. However, the Court held that Article 23 provides a specific and bespoke remedy to these breaches and that the Secretary of State was not obligated to respond beyond implementing an air quality plan.

The appellants also argued that the Secretary of State had a duty as "competent authority" to use his planning powers to avoid the worsening or prolongation of breaches of the limit values, and was therefore obliged to call in this application. Yet the Court found that the provisions of the Air Quality Directive and the Air Quality Standards Regulations 2010 did not constrain the Secretary of State's relatively wide discretion over the decision to call in or not call in an application when limit values have been breached. The Court rejected the assertion that the Air Quality Standards Regulations 2010 placed a duty on the Secretary of State as "competent authority" to use his own powers under the statutory planning scheme to avoid the worsening or prolongation of breaches of limit values.

Finally, the appellants argued that it was irrational for the Secretary of State to assume that any errors in the City Council's approach could be put right if the application was taken back to committee, or could be brought before the court in a claim for judicial review if planning permission were granted. The Court decided that it was not perverse for the Secretary of State to have these considerations in mind when making his decision not to call in the application.

The Court also refused to make a reference to the Court of Justice of the European Union.

*Case summary prepared by Safiyah Islam*