Case Name: *McLennan, R (on the application of) v Medway Council & Anor* [2019] EWHC 1738 (Admin) (10 July 2019)

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Commentary: The High Court has quashed a decision by Medway Council (the 'Council') to grant planning permission for a household extension on the basis that interference with a neighbour's solar panels was not considered to be a material planning consideration.
The claimant was granted planning permission for the installation of solar panels on his property and objected when his neighbour sought planning permission for a household extension on a number of grounds, including that the proposed development would adversely effect his ability to generate electricity from his solar panels.

Notwithstanding the claimant's objection, the Council granted planning permission and noted that any overshadowing was not considered to result in a detrimental impact on neighbouring properties. The Council only expressly considered the impact of the proposed development on the claimant's solar panels in an officer's report in respect of a subsequent (almost identical) planning application. In this report, although the Council maintained the position that 'potential interference with the solar panels on a neighbouring property' was not a material consideration on the basis that 'it involves a purely private interest which does not require protection in the public interest', the Council considered the matter 'for completeness' in this instance and concluded that any additional overshadowing of the solar panels would be 'negligible'.

In overturning the Council's grant of planning permission, the Court considered matters which are capable of being a material consideration for planning purposes, noting that these encompass, in principle, any consideration bearing on the use or development of land. In this particular case, the judge noted that both the local plan and, more recently and particularly, the NPPF recognise the positive contribution that can be made to climate change by even small-scale renewable energy schemes. Both sets of policies indicate that mitigation of climate change is a material planning consideration which applies to specific development proposals and does not become immaterial once a development has been carried out.

The judge noted that the claimant's solar panels relate to the use of his land and play a part in addressing (however modestly) issues of climate change; as such, they are not a purely private interest and it was irrational for the Council to reject the effect that a development proposal has upon a renewable energy system as immaterial. The judge commented that the solar panels 'make a contribution to the reduction in reliance on non-renewable energy' and 'the fact that, viewed on their own, they do so in a very modest way does not entitle the first defendant to treat the matter as immaterial (as opposed to giving the matter little or, indeed, no weight).'

In response to the defendant's argument that it would be academic to quash the initial grant of planning permission on the basis of there being a subsequent grant of planning permission, the Court held that the conclusion in the second officer's report that the effect of

the proposed development on the solar panels was 'negligible' lacked reasoning. As such, there was no assistance to be gained from the 'alternative' basis on which the second officer approached the issue.

Case summary prepared by Town Legal LLP