

Case Name: *Wingfield, R (On the Application Of) v Canterbury City Council* [2019] EWHC 1974 (Admin) (24 July 2019)

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Commentary: A claim for judicial review of the Council's decision to grant approval for reserved matters on grounds relating to Habitat's Regulation Assessment was dismissed (having been granted permission in a rolled-up hearing).

The Claim concerned an outline planning permission granted in July 2017 for a development of 250 houses on a site near to European designated sites. The Claimant also challenged the grant of outline permission for the neighbouring site and this claim was heard at the same time but the cases were not linked.

The Council had not carried out an HRA in relation to the grant of outline planning permission relying on the domestic case law that mitigation could be taken into account at the screening stage. Following the CJEU's judgment in *People Over Wind* in April 2018 that mitigation measures should not be taken into account at the screening stage, the Council decided to carry out an HRA of the impact of the reserved matters development on the integrity of the nearby European sites when deciding whether to approve the reserved matters application.

The Claimant argued that following the *People Over Wind* judgment, the Council should have treated the outline permission as a nullity or revoked it and reconsidered the planning application and that it was unlawful for the Council to have instead conducted the HRA at the reserved matters stage. The Court held that treating the decision as a nullity was wrong and contrary to authority as a decision made by a public body is valid unless and until it is quashed. The Council was not required to revoke the outline permission because the requirement following the CJEU judgment in *R (Wells) v Secretary of State for the Environment Transport and the Regions* the requirement was to "nullify the unlawful consequences of the breach of Community law" which would not require revocation in all cases.

The Court observed that "unlike the EIA Directive, the Habitats Directive has no stated objective that appropriate assessment is expected at the "earliest possible stage". The distinction is that the EIA regime seeks to ensure consideration of relevant information at the first decision-making stage, whereas the HRA regime is focussed on ensuring the avoidance of harm to the integrity of protected sites.". The judge also took into account that the consequences of revoking planning decisions long after they have been made, and the time limits for challenge have expired, are disruptive and undermine the principle of legal certainty.

It was held that the Council's decision to remedy its earlier error by conducting an appropriate assessment at reserved matters stage was permissible under EU and domestic law, and it was a proportionate and effective remedy for the breach of EU law and the claim

was dismissed.

The Claimant's ground that the HRA itself was deficient was also dismissed.

Case summary prepared by Susannah Herbert