

Case Name: *Visao Ltd v The Secretary of State for Housing, Communities And Local Government* [2019] EWHC 276 (Admin) (14 February 2019)

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Commentary: The High Court quashed a decision by the Secretary of State's planning inspector to dismiss an appeal against a refusal of planning permission by Chiltern District Council. The claimant, Visao Limited, had applied for planning permission for a development of six dwellings that would require the use of an existing sub-standard private vehicular access. One of the reasons for refusal was the sub-standard access to the site. Various drawings were submitted showing a sequence of proposals for access to the development. In the appeal documentation, the applicant made clear that its appeal was on the basis of the most recent of these drawings, which showed a wider access.

The appeal inspector agreed with the local planning authority that the access was not suitable. There was some ambiguity in the decision letter as to which drawings showing the access arrangements the inspector had had regard to in determining the appeal. The claimant applied to have the inspector's decision quashed on the grounds that the inspector had had regard to a superseded access drawing and, in addition, had as a result failed to give adequate reasons for his decision. The defendant Secretary of State filed a witness statement on behalf of the inspector stating that the inspector had had regard to both the superseded and the revised access drawings.

The court held that an objective reading of the inspector's decision letter showed that the inspector had had regard to the incorrect and superseded access drawing. The court distinguished the case of *Ermakov*, which considered the circumstances where a decision maker seeks to supplement the reasons for its decision after the fact through the use of a witness statement or affidavit. This was a case where the inspector's witness statement went not just to reasons but also to the matters taken into account in the determination. The court agreed that the decision should be quashed on this basis alone, but in any event, the reasons ground was also made out as the inspector's decision letter did not enable the claimant to assess its prospects of obtaining some alternative planning permission.

Case summary prepared by Town Legal LLP