

Case Name: *Liverpool Open And Green Spaces Community Interest Company, R (On the Application Of) v Liverpool City Council* 2019 EWHC 55 (Admin) (18 January 2019)

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Commentary: This was a judicial review brought by Liverpool Open and Green Spaces Community Interest Company of the City Council's decisions to grant planning permissions for the relocation of a miniature railway and for the building of 39 new dwellings and the conversion of a historic house into 12 apartments. The challenge was successful, and the two permissions were quashed on two grounds.

The first ground was that the Council failed to apply the statutory presumption against harmful development in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 or to apply the relevant UDP policy. As set out in *R (Palmer) v. Hertfordshire Council* and *Jones v Mordue*, where the decision-maker refers to the statutory duty, the relevant parts of the NPPF and any relevant policies in the development plan there is an inference that he has complied with the duty, absent some positive indication to the contrary. Following *R (Forge Field Society) v. Sevenoaks DC* the decision maker must avoid the error of equating less than substantial harm with a limited or less than substantial objection. In this case, the judge was left with, at the very least, a substantial doubt that the officer's report had not watered down the section 66(1) duty. The report had omitted to mention that the Council's own conservation officer had responded with strong conservation objections. It had also focussed on the test in paragraph 134 of the NPPF where less than substantial harm should be weighed against the public benefits of the proposal without emphasising the great weight that should be given to an asset's conservation as set out in paragraph 132.

The judge also held that the Council had misinterpreted the UDP Policy on "Green Wedges". The officer's report had acknowledged that the proposed development would harm openness and therefore it should have concluded that the development was, as a matter of meaning, in conflict with the policy. The officer's report had failed to address this conflict under section 38(6) of the PCPA.

The other grounds advanced were that there had been a material error of fact as to whether the site fell within the park; and that the Council should have taken into account the evidence of recreational use in the village green application. These were dismissed.

Case summary prepared by Town Legal LLP