

Case Name: *Swainsthorpe Parish Council, R (On the Application Of) v Norfolk County Council* [2021] EWHC 1014 (Admin) (23 April 2021)

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Commentary:

This was a successful challenge to Norfolk County Council's response as local highway authority to the consultation on a planning application for land near the A140 highway in Swainsthorpe, Norfolk.

The claimant's first ground of challenge was that the decision and the consultation response were ultra vires because they were contrary to (a) the County Council's constitution and (b) the requirements of the statutory consultation. The claim succeeded on the second limb of this ground.

The Claimant submitted that the County Council was consulted in its capacity as local highways authority to provide its expert view on the highways impact of the application so that South Norfolk District Council could decide whether to grant planning permission, balancing the benefits and harms of the application in the exercise of its planning judgment as local planning authority. It argued that the County Council instead improperly sought to exercise its own planning judgment on the application.

In response the County Council submitted that there was no legal constraint on the content of its response; it was entitled to express its view that the economic benefits of the proposed development would outweigh the highways objection that had been expressed by its highways officers and it was for the District Council to decide whether or not it agreed.

Allowing the claim, the court held that the County Council improperly took into account the economic benefits of the proposed development when responding to the consultation. It noted that article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 did place a legal constraint on the local highways authority's consultation response which should not have extended to its wider views on the benefits of the development to the local economy.

The court also found that the County Council submitted an incomplete and inadequately reasoned consultation response in breach of its duties under section 54 of the Planning and Compulsory Purchase Act 2004, article 22 of the 2015 Order and the Planning Practice Guidance.

Since the claimant was successful on the second limb of its first ground, the court did not go on to consider the 3 other grounds which were that the County Council failed to give adequate lawful reasons for the decision and response, that the County Council took into account immaterial considerations when making the decision and providing the response, and that the decision and the response were irrational.

The County Council submitted that the claimant had an alternative remedy so the claim should have been dismissed as judicial review was a remedy of last resort. The alternative remedy relied upon was that the claimant could have made representations direct to District Council as to whether or not the balance of considerations weighed in favour of the grant of permission. The court rejected this submission as it considered that representations by the claimant were no substitute for a statutory consultation response by the highways authority.

Case summary prepared by Safiyah Islam