

**Case Name:** *G, R (On the Application Of) v Thanet District Council* [2021] EWHC 2026 (Admin) (19 July 2021)

**Full case:** [Click Here](#)

**Commentary:**

A pro bono legal challenge to the decision of Thanet District Council ('TDC') in October 2020 to grant planning permission for a development of a 3 storey block of 15 flats and 23 houses ('Development') in Ramsgate, brought to protect the interests of pupils at an adjacent SEN school, has succeeded on all 6 grounds of challenge with the planning permission quashed.

The development site, immediately adjacent to the SEN school, was owned by a JV in which TDC and Kent County Council were its two partner members and part of land allocated for mixed business and residential uses in the Thanet Local Plan. The developer applied for planning permission for the Development pursuant to a contract between the JV and the developer which required the submission of a planning application.

Ground 1 was that TDC should have taken the application to its planning committee, as required under its scheme of delegation where an application was "by or on behalf of" TDC. The High Court agreed with the Claimant that, as one of two partners in the JV, the planning application was clearly in the interests of TDC, having regard to the potential for dividend payments by the JV to TDC as a result of the development.

Ground 2 concerned the adequacy of the appropriate assessment ('AA') under the Habitats Regulations prepared and relied upon by TDC. The High Court concluded that the AA was legally deficient, among other things, as it was not comprehensive, information was not up-to-date, and it had not assessed the effectiveness of the mitigation strategy.

Ground 3 concerned construction noise impact. The High Court concluded that TDC had not grappled in its decision with either the EHO consultation and/or the relevant development plan policy.

Ground 4 concerned highway safety which were highly material given the proximity of the SEN school and the sensitivity of the pupils and their vulnerability in highway safety terms and specifically identified in the headteacher's representation to TDC. The High Court concluded that TDC's consideration of the issue was inadequate and incomplete.

Ground 5 concerned Air Quality. This ground was allowed as no air quality assessment had been undertaken by the developer and/or requested by TDC, despite the site's location within an AQMA and the relevant development plan policy requiring an assessment.

Ground 6 concerned apparent bias. Applying the relevant test, the High Court concluded that that a fair-minded observer would have thought there was a real possibility that the decision-maker was biased with the circumstances giving rise to an appearance of bias including: the circumstances of the contract between the JV and the developer; that the application ought

to have been determined by planning committee; the lack of any explanation as to why it had initially been scheduled for committee and then withdrawn; and the matters subject of grounds 2-5 of the challenge.

Comment- While this case is quite fact specific it is a useful application of the apparent bias test. The High Court also reminded Councils, at paragraph 24 of its judgment, that where it has an interest in development sites for which it is considering planning applications, that it is under an enhanced duty to engage with planning objections thoroughly, conscientiously, and fairly.

*Case summary prepared by Paul Arnett*