

Case Name: *Abbotskerswell Parish Council v Secretary of State for Housing, Communities & Ors* [2021] EWHC 555 (Admin) (11 March 2021)

Full case: [Click Here](#)

Commentary:

The case concerned an application for statutory review of the Secretary of State's (SS) decision to grant outline planning permission, with the Claimant alleging breach of environmental and habitats legislation. Mrs Justice Land dismissed the application, stressing the broad discretion afforded to local authorities when assessing the effects of a site on the environment and any nearby 'European sites' (in this case the South Hams Special Areas of Conservation (SAC)).

The third Defendant (the Rew family) had applied for outline planning permission for a major mixed use development on a site in Newton Abbot. After Teignbridge District Council failed to determine the application, they appealed to the SS, who allowed the appeal and granted planning permission.

The Claimant, the Parish Council for the nearby village and parish of Abbotskerswell, challenged the grant on the grounds that the SS erred in law by granting planning permission:

1. without having assessed any material environmental information relating to the assessment of greenhouse gas emissions and climate change in breach of Article 2(1) of Directive 2011/92/EU (the "EIA Directive 2011") and regulation 3(4) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("EIA Regulations 2011");
2. without having obtained the requisite information to assess the likely significant effects on biodiversity, in particular the Greater Horseshoe Bat (GHB) that resides in the SAC under Article 2(1) of the EIA Directive 2011; and
3. before first being satisfied that no development likely adversely to affect the integrity of the nearby SAC could be carried out under the permission, in breach of regulation 70(3) of the Conservation of Habitats and Species Regulations 2017 ("Habitats Regulations 2017").

Before considering each ground, the judge highlighted the three categories of consideration within the requirement for public authorities to take into account material considerations: (i) those clearly identified by statute for which regard must to be had; (ii) those clearly identified by statute for which regard must not to be had; and (iii) those to which the decision-maker may have regard, acting in their discretion (*R (Friends of the Earth Ltd & Ors) v Heathrow Airport Ltd* applied).

On the first ground, the judge noted that that the "description of the aspects of the environment likely to be significantly affected by the development" falls within Part 1 of Schedule 4 of the EIA Regulations 2011, and accordingly must only be included in an

environmental statement “as is reasonably required”. The judge considered this to clearly fall in the third category of consideration, meaning the SS had discretion to determine what to assess, and their decision was only subject to review on Wednesbury reasonableness grounds, on which the decision could not be successfully challenged.

On the second ground, while Article 2(1) requires environmental considerations to be taken into account at the earliest possible stage, case law makes clear that, following an initial assessment, an outline permission can legitimately set parameters through conditions that defer finalisation of the details until the reserved matters stage. Indeed, Regulation 8 of the EIA Regulations 2011 makes express provision for subsequent applications where environmental information has previously been considered. The judge held therefore that it was reasonable for the SS to delay submission of details around the GHB Mitigation Plan to be submitted with the reserved matter application, alongside the details around design and layout of the development would be provided

On the third ground, the judge rejected the Claimant’s argument that all details of matters affecting the integrity of the SAC must be assessed at outline stage, as this would be tantamount to requiring an application for full planning permission. It is within the authority’s discretion to determine what information is sufficient. In this instance the SS imposed a framework of planning conditions to ensure no adverse effects on the integrity of the SAC and to ensure compliance with a Masterplan, Design Code and ecological mitigation strategy – the SS’s planning judgments were not capable of being challenged on Wednesbury grounds.

Case summary prepared by Jed Holloway