

Case Name: *Farnham Town Council v Secretary of State for Levelling Up Housing & Communities & Anor* [2024] EWHC 2458 (Admin)

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Commentary: This was an unsuccessful claim for statutory review of the decision of an Inspector to grant outline planning permission for 146 dwellings. The judgment deals primarily with the procedural law for filing statutory review claims, before addressing the grounds of challenge.

Turning firstly to the substantive legal issues, the claim had been brought on two grounds:

1. There had been a failure to take into account a material consideration, in that the Inspector had not identified a conflict with part of a policy within the neighbourhood plan; and further or alternatively,
2. The Inspector had failed to give reasons for allowing the appeal given that there was a conflict with the policy.

The policy in question dealt with the protection and enhancement of land within the countryside, and listed a number of criteria. It had been common ground between the parties to the appeal that not all of the criteria had been met, and the Inspector duly recorded in her decision that the proposed development would conflict with the policy. The Claimant complained that one particular criterion was not mentioned by the Inspector in her decision. The judge found that that was unsurprising, given that:

- none of the parties had mentioned this criterion at the inquiry; and
- the Inspector had concluded that there was a conflict with the policy in any event, and so expressly mentioning the relevant criterion would not have made any difference.

The judge observed that a conflict with planning policy is binary: there is either a breach, or there is not. There is, said the judge, no consequence arising from multiple conflicts with a single policy.

The Inspector had gone on, in her exercise of the tilted balance, to give significant weight to the harm arising from the conflict with the neighbourhood plan policy. She ultimately found that, notwithstanding this harm, the adverse effects of the proposal would not significantly and demonstrably outweigh the benefits and she therefore went on to grant planning permission. The judge held that the exercise of the Inspector's planning judgment in doing so was "both rational and lawful".

Procedural requirements

The greater part of the judgment is focused on the procedural requirements for lodging such a claim. The claim had been filed with the court within the requisite six-week period, but it had not been served on the defendants on time. The Claimant made an application to extend the time for service of the claim, but there was a dispute between the parties as to whether or not the court had the power to grant such an application.

Having thoroughly traversed the authorities, the judge found that he could not extend the time limit for service: the Claimant was unable to satisfy the criteria in rule 7.6 of the Civil Procedure Rules, which, following *Good Law Project v Secretary of State for Health and Social Care* [2022] EWCA Civ 355 and subsequent cases, he found applied to statutory review cases as well as claims for judicial review.

The judge further noted that, even if he had the power to extend time, he would have declined to exercise it in these particular circumstances: there must be “powerful grounds to justify an extension of time”, and in this case the error on the part of the Claimant’s advisors did not satisfy him. This part of the reasoning (though not determinative of the case) was also clearly influenced by the merits of the claim, which the judge remarked did not weigh in favour of the application to extend time.

Case summary prepared by Aline Hyde