

Court rejects Basildon golf course redevelopment

Court correspondent, PlanningResource, 15 December 2010

A group of protestors has won its Court of Appeal fight to stop a redevelopment scheme for Basildon Golf Course, which would have seen almost 500,000 tonnes of waste buried underneath it.

Three Appeal Court judges yesterday quashed the planning permission granted by Basildon District Council for the first phase of the scheme.

The plan involved a new clubhouse, maintenance shed, golf driving range and landscaping at the course at Clayhill Lane and would have involved burying 180,000 tonnes of waste.

The overall plan comprised two phases, with a total of 468,000 tonnes of waste to be buried.

Lord Justice Pill ruled that the council's decision was based on "legally defective" advice in a Screening Opinion from a council officer that stated that only 50,000 tonnes of waste a year would be brought onto the site.

The council will now have to reconsider the matter in the light of the court's ruling that a full environmental impact assessment (EIA) may be required before planning permission should be granted again.

The local residents, who banded together as the Friends of Basildon Golf Course, persuaded Lords Justices Pill, Carnwath and Waller to overturn a January 2009 ruling by High Court judge Mr Justice Wyn Williams, who found that the council had done nothing unlawful in granting permission for the scheme in October 2007.

The council owns the course, is the joint developer for the scheme with Jack Barker Group and is the local planning authority for the area

Opening the protester's case in October, their lawyer, Charles George QC, said that this was one of a number of applications made between 2005 and 2007 to redevelop golf courses using large quantities of waste, on the grounds that, as "golf course improvements" they were in a more favourable position in planning terms than ordinary waste disposal measures.

Such schemes he said, were regarded by critics as a "planning scam", in which developers would bury more waste than was required to improve golf courses.

He argued that it was irrational for the council's officer, Clive Simpson, to conclude in a screening opinion that an EIA was not required prior to the grant of planning permission.

He claimed that, rather than the 50,000 of tonnes per year Mr Simpson had said would be involved, the importation of material was to be at the rate of 135,000 tonnes per year during phase one and 156,000 tonnes per year overall.

He also claimed that the High Court judge failed to take into account an ecological report submitted with the planning application which had concluded that, while the first phase would not cause significant ecological effects, the Second Phase covered land of much greater ecological value and could have an impact on great crested newts, lizards, bats and badgers.

Allowing the appeal today, Lord Justice Pill said that Mr Simpson's screening opinion was "legally defective" in its treatment of the imported waste.

He said: "The amount of waste to be deposited on the site was grossly understated in the opinion which, as a result, was seriously misleading.

"Moreover, the impact on the local environment of the deposit of large quantities of waste forming massive and extensive bunds was not mentioned or considered in the opinion.

"Mr Simpson issued the opinion on the same day as the planning application was submitted.

"If he was aware of the impact of the development at that time, which I respectfully doubt, his consideration of it was legally inadequate.

"I would quash the planning permission on this ground, there having been no sufficient consideration as to whether an EIA was required."

He also ruled that ecological considerations had not been properly considered, adding that whilst he was "far from saying that an EIA will always or routinely be necessary when protected species such as great crested newts are found on a site" he ruled that, on the evidence in this case "an assumption that an EIA was not required because concerns could be left to appropriate mitigation measures was not in the circumstances justified".

He said he had difficulty in understanding why "colours have been nailed so firmly to the mast of declining an EIA", and why a decision that an EIA was necessary "should present the psychological barrier it appears to have done" to the council.

He added: "The need for an EIA may of course involve delay, and there may be other factors of which I am unaware, but on any view it was arguable that an EIA was required in this case and the sensible and convenient course might well have been to require one