Case No: C1 / 2010 / 1804

Neutral Citation Number: [2011] EWCA Civ 203
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE QUEEN'S BENCH DIVISION
(MR JUSTICE COLLINS)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 26th January 2011

Before:

LORD JUSTICE LAWS
LORD JUSTICE LONGMORE
and
LORD JUSTICE STANLEY BURNTON

- -

Between:

Great Trippetts Estate Limited

Appellant

- and -

Secretary of State for Communities and Local Government

Respondent

- -

(DAR Transcript of
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Mr D Forsdick (instructed by Treasury Solicitors) appeared on behalf of the **Appellant**.

Mr P Village QC and Mr Goodman (instructed by Messrs Beachcroft) appeared on behalf of the **Respondent**.

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Judgment

(As Approved by the Court)

Lord Justice Laws:

1. There are before the court an appeal and cross-appeal from orders made by Collins J in the Administrative Court on 23 June 2010. The issues before him and now before us arise out of a decision of the Chichester District Council to issue enforcement notices in respect of unauthorised development on the Great Trippetts Estate, which is owned by the Marquess of Milford Haven. The estate is within an Area of Outstanding Natural Beauty ("AONB") designated as such since the 1960s and known as the Upper Weald.

2. There were three unauthorised developments, a tennis court, an all-weather manège for the training of polo ponies and an exercise track. The Secretary of State's inspector upheld the notice in respect of the manège and refused the deemed application for planning permission relating to that. She permitted the exercise track but she refused permission for the tennis court. Collins J allowed the claimant's appeals as regards the manège and quashed the inspector's decision in respect of it. The Secretary of State appeals against that part of his judgment with permission granted by Jacob LJ on 20 August 2010. However, the judge declined to quash the inspector's decision on the tennis court, and that aspect of his judgment is the subject of a cross-appeal brought with permission granted by Sullivan LJ on 18 October 2010.

3. At paragraphs 3 to 6 of his judgment, the learned judge below provided a crisp description of the recent history of the estate. Lord Milford Haven is a leading figure in the sport of polo. In recent years he has become involved in what are called arena polo and snow polo. In August 2005 planning permission was granted for a change of use from farming to a mixed agricultural and equine use, the latter being specifically for the training and practice of polo ponies. A number of conditions were attached to the permission, which Collins J describes at paragraph 4. At the same time permission was granted for the retention and extension of what is called a manège. That is, as I understand it, a levelled area for the practice and training of the ponies. However, this proved unsuitable for use as an all-weather manège and it was too close to some stabling where the horses were distracted or as it is put, “spooked”, by the ponies on the manège. In addition it was too small for use as a manège for snow and arena polo practice. A new manège together with the exercise track was constructed without planning permission and in breach of a condition attached to the earlier change of use permission. Collins J described the new manège thus:

> "The manège itself is located within what is called Hilly Field, which is several hundred metres to the north east of the main farm complex and separated from it by the grass slope of the field. The level surface had been created by recessing it into the hill side on three sides and raising the ground level on one side. It is rectilinear, surrounded by a close boarded fence over two metres high, the top of

> which is at what is new ground level where the manège has been cut most deeply into the hill side. It is about 100m long and 55m wide and has an artificial surface comprising a mixture of recycled materials and sand."

The new manège is in a different location from the earlier smaller one.

4. The local planning authority decided to take enforcement action. It is convenient at this stage to describe, as Collins J did, certain of the provisions and planning materials relating to the fact that the estate falls within an AONB. The starting point may be taken to be section 85(1) of the Countryside and Rights of Way Act 2000, which provides:

> "In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty."

It is right, however, to notice, as Mr Village QC for the estate reminded us this morning, that AONBs first saw the light of day in 1949. See the National Parks and Access to the Countryside Act 1949 (section 5).

5. The Secretary of State's Planning Policy Statement 7 ("PPS7") provides at paragraph 21 :

> "Nationally designated areas comprising National Parks, the Broads, the New Forest Heritage Area and Areas of Outstanding Natural Beauty (AONB), have been confirmed by the Government as having the highest status of protection in relation to landscape and scenic beauty. The conservation of the natural beauty of the landscape and countryside should therefore be given great weight in planning policies and development control decisions in these areas."

6. Policy CH2 of the West Sussex Structure Plan 2001 to 2016 deals with AONBs and has this:

> "a) Development should not be permitted unless the natural beauty, distinctive character and remote and tranquil nature of the... (AONB) will be maintained and where possible enhanced. Development to meet proven local needs should be permitted provided that it is consistent with the purpose of AONB. Proposals for major development within AONB for any purpose should only be permitted in

> very exceptional circumstances and providing that they are consistent with national designation."

I interpolate that statement reflects what is in paragraph 22 of PPS7, which I have not read but to which Mr Village referred in the course of his submissions this morning.

7. CH2 continues:

> " (b) Local plans will include policies to ensure that:
>
> (i) within Areas of Outstanding Natural Beauty:
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> ...
>
> (ii) development is compatible with or enhances the distinctive character and quality of the landscape and that it is designed and sited to enhance visual quality and to minimise noise, light, or air pollution or disturbance... "

The closing words at (ii) are perhaps of particular importance having regard to the primary issue in the appeal.

8. Three grounds of appeal are advanced and there is also, as I have indicated, the cross-appeal. The first ground of appeal is that in quashing the inspector's decision relating to the manège the judge wrongly conflated an important distinction, namely that between the visual impact of a development and the impact of a development on the character of the landscape. This ground is said to raise an important point of principle. The second ground is that the judge wrongly overturned the inspector's planning judgment by trespassing on her considered views as to the balance to be struck between the need for the manège and the harm it might cause.

9. The third and last ground of appeal is that the judge interfered with the inspector's planning judgment in another respect, namely by founding his decision on a claimed inconsistency between the inspector's treatment of the exercise track and a large playing field just to the north of the manège and on the other hand her treatment of the manège itself.

10. Those formulations of the grounds of appeal are taken from the skeleton arguments, but as so often happens they have evolved in the course of submissions this morning and I will return to those shortly.

11. By the cross-appeal, which as I have said relates only to the tennis court, the respondents assert that the reasons the judge gave for quashing the inspector's decision in relation to the manège applied equally to the tennis court and the judge should have so found.

The first ground of appeal

12. I should notice first of all that Mr Forsdick in his skeleton for the appellant Secretary of State cites well-known authority as to the nature of the court's jurisdiction on a statutory appeal against a planning decision. It is enough to say that the process is akin to judicial review: see Seddon Properties Limited v SSE [1978] JPL 835. A feature given particular emphasis is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State: see Tesco Stores v SSE [1995] 1 WLR 759-780 per Lord Hoffmann.

13. The inspector describes the character and appearance of the manège at paragraphs 35 and following of her decision letter. I shall have to set out substantial passages. The starting point is the description given by the judge at paragraph 14 of his judgment, which I have read and which is substantially taken from paragraph 35 of the decision letter. The inspector proceeds to observe (paragraph 36) that there are no public views of the manège from the nearest public road but it could be seen from two footpaths, at any rate when the trees were not in leaf; and the appearance was incongruous, not least given the boarded sides of the manège (paragraphs 36 and 37). This, she concluded, was a harmful feature.

14. At paragraph 40 she says this:

> "The development is some distance from the nearest buildings, and appears isolated rather than an extension to existing development. The South Downs Integrated Landscape Character Assessment identifies as one of the landscape sensitivities of the area the irregular landscape mosaic of field, hedgerows, woodland blocks and shaws [wooded streams]. However, it is plain from the shape and design of the manège and its level surface that it is an artificial, rather than a natural, structure, failing to respect pre-existing ground levels, and these features together with the scale of the manège are at odds with the undulating landscape and the small-scale patchwork of irregular-shaped fields which are characteristic of this area. As a result, the manège appears poorly integrated and jars with the surrounding landscape. Consequently it fails to conserve the natural beauty of the landscape, and it does not maintain the character and distinctiveness of this part of the countryside."

Then the next two paragraphs are critical:

> "41. The appellants propose a scheme of landscaping of the area immediately surrounding the manège and exercise track, to be the subject of a condition. I accept that in time this planting would

> conceal the manège from many close viewpoints. It clearly would not be effective for a number of years, and may not be wholly effective in preventing views of the manège from Footpath 3280, given the height of that viewpoint above the development.
>
> 42. However, even if the manège was entirely screened from view, that would not overcome the harmful effect of this substantial development on the character of the AONB. The purpose of landscaping is not to conceal a harmful development; this is an argument that could be used too often, leading to cumulative erosion of the landscape quality of the AONB. In this respect, I do not find the High Court decision in *Burroughs Day v Bristol City Council* [1996] 1 PLR 78 of assistance, as it is concerned with the interpretation of s55 of the 1990 Act, and not with the application of planning policy relating to AONBs. The benefits in general landscape and ecological terms of additional planting in this location would not, in my view, outweigh the harm to the natural beauty of the AONB caused by the manège."

15. The essence of the judge's conclusion is at paragraphs 24 and 25 of his judgment:

> "24. Visual harm is of course an important part of harm to an Area of Outstanding Natural Beauty. After all, the natural beauty lies in what is there, that is to say natural countryside. But its beauty may not be adversely affected if the development in question is such that it is not possible to see that there is any significant or harmful change to the natural appearance of the area in question. Thus, as it seems to me, the visual affect of any development is an important aspect to be taken into account in deciding whether there is indeed a failure to conserve or maintain the integrity of the AONB. But certainly the existence of the development in the terms that the Inspector has indicated is equally a factor that is material in deciding whether there is indeed in the particular circumstances harm. Mr Forsdick submits that, on a fair reading of paragraph 42, the Inspector is simply indicating that in this case the screening would not in her view mean that the harmful affect was overcome because of the nature of the development itself.
>
> 25. It seems to me that it is impossible to read the

> first two sentences of 42 as so limited. She is making the point that entire screening, once you have what is regarded as a development that is harmful in an AONB, cannot mean that that development can be acceptable. That, of course, would have a very important and general application which in my view is not justified I do not think that it is possible to say that the Inspector was simply limiting her observations to the nature of the development in that case."

16. In my judgment the Secretary of State is right to submit that there is a distinction, in a context such as that of the present case, between the impact of a development on the character of the landscape and its visual impact; though they are plainly related and indeed Mr Village does not dispute the existence of that distinction.

17. The Secretary of State is also right to submit (paragraph 3 of Mr Forsdick's skeleton) that visual impacts are as it were a subset of landscape impacts. In fact Collins J went some way, perhaps the whole way, to recognise this. At paragraph 23 of his judgment he stated:

> "That is subject only to this qualification in the AONB approach: Mr Forsdick makes the point, and it is correct, that the harm that is relevant is the harm to the intrinsic nature of the AONB. Thus, whether or not it can be seen by the public or there is visual harm, does not of itself necessarily mean that it can be regarded as not being harmful to the intrinsic character of the countryside."

This theme is followed up in paragraph 24, which I have read. Mr Village says that paragraph 24 represents the correct approach to the issues arising in this case relating to the manège.

18. The judge's criticism of the inspector's reasoning is set out at paragraph 25 and is directed at the first two sentences at paragraph 42 of the decision letter, which I have also set out. At paragraph 25 the judge holds that the inspector, at paragraph 42 of the decision, is making a point of general application to the effect that, even in an AONB, entire screening of a development can never cure what is otherwise regarded as harmful or unacceptable. Mr Village supports that reading of paragraph 42 and thus the judge's conclusion at paragraph 25.

19. If that is indeed what the inspector was saying I would agree with the judge and Mr Village that it constituted an error of law, because then the inspector would be stating a dogmatic or absolute rule for which there is no warrant in principle or statute or authority. But I do not consider she was saying anything of the kind. It is plain that, read fairly, paragraph 42 of the decision is referring to this particular development: see in particular the first and last

sentences. Mr Village submitted crucially, however, that the first and second sentences of paragraph 42 do amount to a statement of general application, not least having regard to the terms of the second sentence. He says the inspector has entirely sidelined the possible value of screening as such. He submitted also that policy in relation to AONBs is not to be equated with the policy relating to the Green Belt, where development may be intrinsically harmful whether it is visible or not. Now it is true that in paragraph 42 the inspector states that:

> "The purpose of landscaping is not to conceal a harmful development."

20. This sentence is at the heart of Mr Village's submission. I, however, do not read the paragraph as indicating that concealment by way of landscaping may never facilitate the grant of a planning permission in AONBs. The inspector was I think right to observe that an argument based on concealment of harmful development "...could be used too often, leading to accumulative erosion of the landscape quality of the AONB". In the second sentence, on which Mr Village especially focuses, the inspector was I think describing what is no doubt generally the purpose of landscaping, but I do not accept Mr Village's submission that she was thereby also stating a general rule that landscaping cannot ameliorate the effects of a harmful development to the point where planning permission might properly be given. The last sentence of paragraph 42 is to my mind also of some importance, for inherent within it is the rejection of the proposition that in this particular case the landscaping, by virtue of its concealment of the development as well as by virtue of its own merits, would outweigh the harm to the AONB caused by the manège . The construction or the interpretation of paragraph 42 is at the heart of the case. It seems to me a fair reading of that paragraph and does not support paragraph 25 of the judge's judgment for the reasons I have given.

21. Generally speaking, I would suggest that the true position surely is that landscaping may mitigate the visual impact of a harmful development to the point where permission may be granted notwithstanding that there is harm to the intrinsic nature of the landscape. Whether it does so or not would be a matter of planning judgment. It will most certainly not do so in every case, even in every case where the concealment effected by the landscaping is total. In such cases, as in others, the landscape's intrinsic beauty will or will usually be diminished by a harmful development whether it can be seen or not. I accept Mr Forsdick's submission that the intrinsic character of the landscape is not to be confused with visual impact. Indeed, as I have already indicated, as a proposition that is not really in dispute.

22. In my judgment the inspector did not adopt any approach that was different from this or otherwise impermissible; and in these circumstances I would uphold the first ground of appeal.

23. I turn to the second ground, the balance between need and harm. The central passages in the decision letter are at paragraphs 51 to 53, 55 and 56, which I should set out:

"51. There is nothing in the planning and design statement provided with the planning application for the change of use, which also makes reference to the application for retention and extension of the permitted manege, to suggest that the smaller facility proposed at that time would be inadequate. Furthermore, although West Sussex has a concentration of polo-playing facilities, private or public, according to the evidence none of the other polo-playing establishments in the area have an arena of the type provided at Great Trippetts Estate. In my view it is not therefore implicit in the planning permission granted for the mixed use, with its significant restrictions, that there would be a need for such a facility.

52. The appellants have also argued that the manege is essential for the permitted equestrian use of Great Trippetts Estate. The planning permission for mixed use restricts the equine use to the occupiers of Great Trippetts Farmhouse and conditions restrict commercial uses and prohibit polo or horse jumping events or shows without the Council's consent. The polo facilities on the estate are used for practice and training horses and players, and the teams based at Great Trippetts Estate play competitively elsewhere. These teams play polo at all levels, including 'high goal', the highest, and the evidence indicates that the facilities that have been provided are of a very high standard.

53. The evidence of Mr Woodd was that the best polo teams cannot compete at the highest level without access to private training grounds of the type provided at Great Trippetts Estate, with 18 out of the top 20 teams having them. However, only 7 of those teams have a manège of the type provided here. I recognise the advantages for the Great Trippetts Estate teams in terms of training and bringing on large numbers of horses of having access to a large manège where they could be trained for speed and manoeuvrability, and it would also permit the playing of arena polo and preparation for snow polo tournaments abroad. I also acknowledge Mr Woodd's belief that in future years such a manège will be regarded as necessary for success at the highest level. However, I am not satisfied on the basis of the evidence before me that a facility of this size is essential in order to support

> high-goal polo teams, given that the majority of high-goal teams do not have them, although it may be desirable. Nor is it essential to enable the polo use at Great Trippetts Estate to continue."

24. The judge's criticisms of this reasoning are first (see judgment paragraph 29) that to attach importance to the fact that only seven of the top polo training teams have a manège of the type constructed here is a false comparison unless one knows how many of the top teams go in for arena or snow polo. That point is taken up again with the paragraph where the judge collects his principal reasons for holding that the inspector had made errors of law in striking the balance between harm and need, paragraph 32:

> "It seems to me that in her findings on need she has failed properly to recognise the need for the facility such as exists and, insofar as she has relied on its absence in other training grounds, that is a false comparison. Furthermore, the existence of screening and the fact that it would, so far as the eye was concerned, mean that there was no detriment apparently in visual terms to the AONB are highly material in deciding whether the harm was outweighed. It seems to me that the Inspector, once she decided that there was harm in the manner that she has indicated, has failed to take properly into account the way in which the screening can reduce that harm and in those circumstances has applied a standard to the harm which is altogether unjustifiable in the circumstances of this decision."

25. While I would, with Mr Village, be inclined to acquit the learned judge of descending into the planning merits as such, nevertheless I do not accept this reasoning. In particular I do not accept the judge's conclusion that there was a false comparison between the fact that only seven out of 20 top polo training teams had a manège of this kind without knowledge as to how many of the 20 played arena or snow polo. As a general point, that comparison was a perfectly reasonable aspect of the matter to which to draw attention. More important, perhaps, the inspector was clearly well aware that a claimed virtue of this manège was that it would permit arena polo and training for snow polo and that was very much part of the interest being pursued on this estate: see paragraphs 53 and 55, which I will not repeat.

26. Mr Village reminded us of Mr Woodd's evidence called for the estate, and indeed some of it is set out by the learned judge. For my part I consider that the inspector plainly had in mind what he had had to say. Nor do I accept the judge's point (paragraph 32) that in drawing the balance between harm and need the inspector has failed to take account of the ameliorative effects of screening. The inspector balanced the desirability of the larger manège against the harm that she had identified (see decision paragraphs 55 and 56)

and the harm which the inspector had identified took account of the effects of the proposed landscaping. Accordingly she did not perpetrate the error which the judge laid at her door, and it goes without saying that it was not for the judge to strike the balance differently. I have, however already acquitted him of descending into the planning merits.

27. For the reasons I have given I would uphold the second ground of appeal.

28. The third ground (as drafted) alleged that the judge was wrong to find an inconsistency in the inspector's approach to the polo field to the north of the manège and the exercise track on the one hand and to the manège itself on the other. The local planning authority had granted permission for the polo field. The inspector said this on the subject of that field:

> "The construction of the very large playing field at Kiln Field, just to the north of the manege and exercise track, has involved a significant amount of excavation to from the level surface, as a result of which a large terraced and grassed bank has also been formed along its southern edge. Not all of that bank appears to be within the site the subject of the planning permission. But nonetheless, although the bank is clearly visible at close quarters, and can be seen from footpath 3280, and whilst it does not reflect the characteristics of the surrounding landscape, it does not appear as obtrusive or incongruous as the manege because the grass covering allows it to blend to an extent into the landscape. I am not satisfied that the Council has been inconsistent in its approach to the two developments, or that the playing field forms a precedent that would justify allowing the manege."

29. And as to the exercise track:

> "The exercise track runs around the perimeter of the manege, and appears to follow the natural contours of the ground for much of its extent, although I saw on my site visit that on the east side the track has been constructed on ground which has been raised over a metre above the natural ground level. It too has an artificial surface similar to that of the manege, although it appeared to be slightly darker in colouring. In views from Footpath 1178 there were glimpses of the rails and surface of the exercise track, but these did not stand out, and if the manege had not been there it would probably have been inconspicuous. Once the trees are in leaf, as with the manege, I doubt that the exercise track would be visible from this footpath. When seen from Footpath 3280 the exercise track is much less

> obtrusive than the manege and blends more into the landscape. In these public views, I consider that the impact of the exercise track is slight and that it does not look out of place, given the approved uses of Great Trippetts Estate.
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> 58. The exercise track is also clearly visible from close to. However, in the main it follows the natural contours, and although the dark-coloured plastic rails were visible from a distance when they caught the sun they were otherwise unobtrusive, as were the track's surface, post and rail fence and the low boards which in places mark its edge. The track is not dissimilar in appearance to tracks in the ground surface formed by the frequent exercising of horses, and so does not appear out of place. Even though it has been constructed partly on recontoured ground, this area of recontouring is not obtrusive because of its limited extent and because it is so close to the hedgerow which forms the field boundary. Subject to the provision of suitable planting the exercise track and its railings, post and rail fence and timber boards would be reasonably well integrated into the landscape, and would conserve and not harm the natural beauty of the AONB."

30. Mr Village founded his argument this morning not so much on a bare assertion of an inconsistency but rather on the proposition that this aspect of the inspector's reasoning, in contrast to her treatment of the manège, shows a correct approach to the decision she had to take, and this (I apprehend he would say) lays emphasis on the error she made in relation to what has become ground 1 of the notice of appeal. For his part the learned judge held (paragraphs 33 and 34) that for the inspector to conclude so to speak that the polo field and the exercise track were saved by screening, whereas the manège could not, amounted to an objectionable inconsistency. With respect to the judge I do not think there is any force in this. The inspector plainly believed as regards both the polo field and the exercise track that the deleterious effects of those developments were in a different and much lower category than those which flowed from the manège . She was perfectly entitled to make these distinctions. Moreover, and I suggested this point to Mr Village in the course of argument, the fact that the inspector was prepared to give weight to the beneficial effects of screening in these two instances may be said to support the conclusion on ground 1 to the effect that the inspector was not at paragraph 42 stating a general rule that screening can never cure harmful development in an Area of Outstanding Natural Beauty.

31. I would for these reasons uphold the third and final ground of appeal and would accordingly allow the appeal.

32. There remains the cross-appeal relating to the tennis court. The central

paragraphs in the decision letter are paragraphs 17 to 20:

> "17. The tennis court is not visible from any public viewpoint. In fact, the areas from which the tennis court surface and retaining wall can be seen are limited to a small area immediately adjoining the court itself. The netting surrounding the tennis court can be seen from a somewhat wider area, including the tennis court can be seen from a somewhat wider area, including the private track running from the farm to Canhouse Cottage, but because of its dark colour it tends to blend in with the backdrop of trees and hedges, and is not particularly obtrusive.
>
> 18. However, when seen from close quarters it is quite clear that the character and appearance of this part of the field has now changed significantly as a result of the substantial engineering works that have been carried out. What was a countryside sloping down to the stream is now a recontoured area containing a significantly engineered artificial structure in the form of the tennis court and its surrounds. As a result the field has a very different character from the remaining part of the field, being now far less rural, with through pasture shown on the aerial photographs being replaced by the tennis court and manicured grass and appearing to be part of the garden of the farmhouse rather than part of the countryside.
>
> 19. The development has led to the creation of an unnatural structure in the form of the tennis court with its retaining walls and terraced sides, as well as leading to a significant change in the natural landform. The artificial nature of the tennis court and its retaining walls and recontoured surrounds is incongruous and jars with the surrounding landscape and detracts from the rural character and appearance of the reminder of the field and the natural environment and beauty of the area. I do not agree with the appellants that the limited area of visibility of the tennis court means that there is no adverse impact at all; if this were the case, tennis courts could be constructed anywhere in the countryside in similar circumstances, detracting cumulatively from and ultimately seriously detracting from rural and countryside character over a large area.
>
> 20. The appellants have proposed a landscaping scheme, which would further conceal the tennis

> court from view, particularly outside the winter months. However, this would not alter the essential change of character that has taken place. Indeed, even if the tree planting proposed did not include the suggested fruit trees, it would result in an area with the character of a garden extension, not only in the immediate environs of the tennis court but also on the land between the tennis court and the track. This would reinforce and extend the change from rural to domestic character over a relatively substantial area of land, thus consolidating rather than mitigating the harm that I have identified above."

33. Then at paragraph 27 she upheld the enforcement notice. The respondent's case, recorded by the judge at paragraph 39, was and is that the inspector perpetrated the same error in relation to the tennis court as she had in relation to the manège, namely by applying a presumption or rule that a harmful development in an AONB could not be made acceptable by being screened from view. But for my part I have already held in relation to ground 1 of the appeal that the inspector made no such mistake. She was entitled, indeed obliged, to deal with the tennis court on its own merits as she saw them and that is what she did . Moreover the judge stated (paragraph 39) that she was dealing with the impact of the tennis court on its own terms and so she was.

34. Mr Village has certain further subsidiary points. First, he says the tennis court offered no affront to the public interest, but the inspector did not acknowledge as much. There is in my judgment no separate point here. The value of the AONB is itself an important public interest. Nor is there anything in the suggestion that the inspector should have given express consideration to the limited character of the tennis court's effects. It is plain that the inspector dealt with the issue relating to the tennis court in the general context of the overall area's quality and that is what she had to do.

35. In those circumstances I would dismiss the cross-appeal.

Lord Justice Longmore :

36. I agree.

Lord Justice Stanley Burnton :

37. I also agree.

Order: Appeal granted; cross-appeal dismissed