

**Land known as Bull Field, Warish Hall Farm, Smiths Green,
Takeley
PINS Ref. No. S62A/2023/0019 [Redetermination]
Uttlesford District Council Ref. No. UTT/23/1583/PINS**

Legal Principles

Procedure

Hearing

1. Although the inspector has a discretion as to time limits for speaking in a section 62A hearing:
 - a. it remains the duty of the inspector to conduct the proceedings so that each party has a reasonable opportunity to adduce evidence and to make submissions on the material issues, whether identified at the outset or during the course of the hearing: ***R (oao Weston Homes Plc.) v SSLUHC [2024] EWHC 2089 (Admin) (“Weston Homes”)*** at [154];
 - b. a party is entitled to make an application for more time to be allocated where inadequate time has been allowed for discussion of a topic: ***Weston Homes*** at [158] and [162].
2. A party is entitled to know the case which he has to meet and have a reasonable opportunity to adduce evidence and make submissions on that case: ***Weston Homes*** at [155].
3. Elementary fairness requires an Inspector to raise with the Applicant at the hearing any concerns he has regarding the technical analysis carried out: ***Weston Homes*** at [148].

Generally

4. Given that there is no right of appeal from a section 62A decision, the PIN’s objective of achieving a high quality of decision-making is important. While the section 62A procedure is intended to be efficient and to avoid unnecessary delay, there is a risk of cases being conducted with more haste and less speed, which could affect the quality of decision-making and give rise to legal challenges that might otherwise have been avoided: ***Weston Homes*** at [176].
5. If, when making his determination, an inspector proposes to take into consideration any new representations or information (not being a matter of government policy) which was not raised at the hearing and which he considers to be material to his decision, the inspector

must not come to a decision without first— (a) notifying in writing the persons entitled to appear at the hearing of the matter in question; and (b) affording them an opportunity of making written representations to him.”: Rule 9(4) of The Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013 (“**the 2013 Rules**”).

6. Under section 288 a person aggrieved may apply to the High Court to quash the decision on the grounds that it is not within the powers of the TCPA 1990, or “*that any of the relevant requirements have not been complied with*” in relation to that decision and that person has been substantially prejudiced thereby (section 288(1) and (5)). Requirements applicable to a decision on an application made to the Secretary of State under section 62A contained in the 2013 Order, the 2013 Regulations and the 2013 Rules are “*relevant requirements*” for the purposes of section 288(1) and (5) (see section 288(9)). Accordingly, a breach of one of those requirements which relates to a section 62A decision may give rise to a ground for quashing that decision, subject to satisfying the substantial prejudice test: *Weston Homes* at [90].
7. Where a decision has been arrived at as a result of a breach of a duty to act fairly, it may be said that, in terms of section 288 of the TCPA 1990, the decision is not within the powers of the Act or that a “relevant requirement” has not been complied with, in that the requirements of natural justice are implicitly, “relevant requirements”: *Fairmount Investments Ltd v Secretary of State for the Environment* [1976] 1 WLR 1255, 1263C–E.

Reasons

8. The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the “principal important controversial issues”. An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 W.L.R. 1953 , at p.1964B-G): applicable to a decision under section 62A of the TCPA 1990 where a hearing has been held by virtue of *Weston Homes* at [92].

Other decisions

9. Previous planning decisions are capable of being material considerations in the determination of a subsequent planning application or appeal. It does not follow that alike cases must be decided alike. A subsequent decision-maker must always exercise his own judgment. He is free, upon consideration, to disagree with the judgment of another. But before doing so he should have regard to the importance of consistency and give reasons for his departure from, or disagreement with, the previous decision: *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P & CR 137, CA at p.145.
10. The principles in the *North Wiltshire* case are applicable to section 62A decisions made by an inspector following a hearing: *Weston Homes* at [135].
11. The Court of Appeal has confirmed that if a decision which would otherwise be a material consideration is quashed, that decision is not capable of giving rise to legal effect. But if the decision is quashed for reasons which do not affect the conclusions of the decision-maker on a specific issue, the conclusions on that issue may be a material consideration for subsequent decision-makers: *R (Kinnersley) v Maidstone BC* [2023] EWCA Civ 172 at [30].

JOEL SEMAKULA

Landmark Chambers

6 February 2025