

# Woman wins High Court fight over model aircraft noise

2 December 2013 by Court reporter, [Be the First to Comment](#)

**A woman who is tired of the noise from model aircraft flying over a neighbouring Basingstoke farm today won a High Court ruling quashing the local council's decision to rubber stamp the activity as lawful.**



Model

airplanes: noise complaint succeeds

Deputy Judge Ockleton upheld Alison Sellars' claim that Basingstoke and Deane Borough Council was wrong to grant a "lawful use certificate" clearing the Aldershot Model Club and its chairman Peter Carter to fly up to five model aircraft during daylight hours seven days a week at Blacklands Farm, Newnham Lane, old Basing, Basingstoke.

As a result, the council will have to reconsider the issue, which Sellars hopes will ultimately lead to the club's activities being curtailed.

Though the judge rejected her claims that there had been an intensification of model aircraft flying on the farm that constituted a material change of use in planning terms, he found that the council had wrongly considered a 100 square metre area of the farm, known as the "red line area", when in fact the aeroplanes fly over a larger area.

He found that, as a result, it had failed in its definition of the "planning unit" it was

being asked to consider.

He said that the identification of the appropriate planning unit is an "essential part" of the decision whether to grant a lawful use certificate under the 1990 Town and Country Planning Act, but that reports from planning officers "clearly excluded consideration of activities anywhere outside the red line area".

He added: "It is perfectly clear that the decision not to attempt to identify an appropriate planning unit but to confine consideration to the assessment of the evidence of use of the red line area was erroneous in law and must have had a significant effect on the decision-making process.

"In those circumstances the remedy is quashing of the decision under challenge and remittal of the application to the defendant for it to make a lawful decision."

The certificate granted in February 2012 allowed the club members to fly model aircraft from 10am until dusk Monday to Saturday and from 10am until 7pm or dusk, whichever is earlier, on Sundays and Bank Holidays.

Sellars claims that, since she moved near to the farm in August 2010, she has been directly affected by the environmental consequences, including noise impact, of model aircraft flying at the site.

Among her grounds of challenge to the decision, she had claimed that the use of the land had intensified so as to constitute a material change of use without planning permission, but the judge said that the evidence before the council's planning committee was "wholly insufficient" to support that claim.

He said that the position on the undisputed facts was that there had been flying from the red line area for many years, and it could not realistically be suggested that the flights themselves had only recently strayed beyond that area.

Sellars had also argued that the council granted a certificate of lawfulness on the erroneous basis that the club had used the farm for model aircraft flying for ten years, and thus had become immune from planning enforcement, when there could not have been ten years of continuous use because in 2001 and 2002 all use of the land ceased as a result of restrictions arising from the foot-and-mouth disease outbreak.

The judge said that, in relation to this ground of challenge, the assessment of the evidence was for the council and he could not see any basis for saying that it was not entitled to reach the conclusion it did on this issue.