CPRE Kent v Dover and the duty to give reasons

Breakfast seminar

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Landmark Chambers
Quality of reasons in planning: lead case *South Bucks v Porter*

- **South Bucks v Porter (No 2) [2004] 1 WLR 1953**, re: the quality of reasons:
  - Intelligible and adequate;
  - Reader must know why the matter was decided as it was;
  - Reader must know what conclusions were reached on the “*principle important controversial issues*”;
  - Reasons can be briefly stated;
  - Degree of particularity required depends on “*the nature of the issues falling for decision*”;
  - Disappointed developer must be able to assess prospects of obtaining some alternative permission;
  - Unsuccessful opponents must know impact upon future applications.

- **BUT**: judgment concerned statutory duty to give reasons as was an inspector’s decision

- **Rule 19(1) of the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000** must “*notify his decision... and his reasons for it, in writing*”
CPRE Kent v Dover DC [2016] EWCA Civ 936

• 2003-2013:
  – statutory duty on LPAs to give:
    • a summary of the reasons for granting PP;
    • a summary of the policies and proposals in the development plan relevant to decision to grant PP

• Now that there is no longer a **statutory duty** to give reasons when granting PP (removed by Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013/1238 art.7(a) (June 25, 2013)), when do reasons need to be given? And when they are given to what extent do the **South Bucks** standards apply?

• High Court had its say in **Hawkesworth** (Richard covered this)
CPRE Kent v Dover DC, facts:

- Subject matter was a major development in Dover within AONB
- NPPF paras 115 and 116 engaged: “exceptional circumstances”
- Officers’ report recommended refusal of PP, but recommended modifications to reduce the number of dwellings
- Developer’s advisors: economically unviable with modifications
- LPA Committee granted PP for unmodified scheme: influenced by advisor’s report, sought to avoid collapse of scheme
Dover’s Western Heights: AONB

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www.doverpast.co.uk
South Bucks and Hawksworth applied

• Issues CA considered:

  – Do the South Bucks standards apply to LPAs’ decision (as well as to inspectors’ decision)?

  – Does Hawksworth’s narrow approach to reasons still apply?

• Held:

  – Hawksworth too narrow

  – Per South Bucks “the degree of particularity required depends entirely on the nature of the issues falling for decision”
“Degree of particularity”

- Held: more detailed reasons required in this particular case, as:
  1. AONB has highest status or protection;
  2. Officers’ recommendation not followed;
  3. LPA owed a statutory duty to give reasons.

- LPA Committee had failed, in minutes, to give legally adequate reasons

- “such reasons as are given for the resolution” derived from the minutes of meeting.

- “Unusual case” due to unprecedented scale of development in AONB
Source of duty?

• Reg. 24(1)(c) of the Town and Country Planning (EIA) Regulations 2011
  “Where an EIA application is determined by a local planning authority, the authority shall— ...
  (c) make available for public inspection at the place where the appropriate register (or relevant section of that register) is kept a statement containing—
  (i) the content of the decision and any conditions attached to it;
  (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
  (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
  (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”

• How does Dover fit with CA in R (Richardson) v N Yorks CC [2004] 1 WLR 1920? Considered predecessor of reg. 24; held this applied to position after PP granted and was concerned with the availability of information to the public of basis for decision rather than laying down requirements for decision-making process; and to remedy it need not quash PP only need a mandatory order requiring statement to be put on register.
Some unanswered questions after *CPRE v Dover*

- How do LPAs know the “*degree of particularity*” needed to provide “*legally adequate*” reasons?

- Does the duty to give reasons apply only when there is a statutory duty? (Zack to address this shortly)

- “*Unusual case*” only because subject matter was in AONB and “*unprecedented scale*”? 

- More detailed reasons needed for every grant contrary to officers’ report?

- “*Where the Planning Committee is disposed to disagree with the Council’s officers – especially in an AONB case – it must (“if but briefly”) engage with the officers’ reasoning*” (para. 22)

- NB *CPRE v Dover* concerned a [statutory duty](#)

- Common law duties exist too (Zack to address in a moment)
Permission to appeal

• On 2nd March 2017, the Supreme Court granted permission for Dover District Council and China Gateway International Ltd to appeal against the judgment of the Court of Appeal.

• The panel (Lady Hale, Lord Carnwath and Lord Hodge) has indicated that the Supreme Court “will wish to consider the source, nature and extent of a local planning authority’s duty to give reasons for a grant of planning permission”. 