

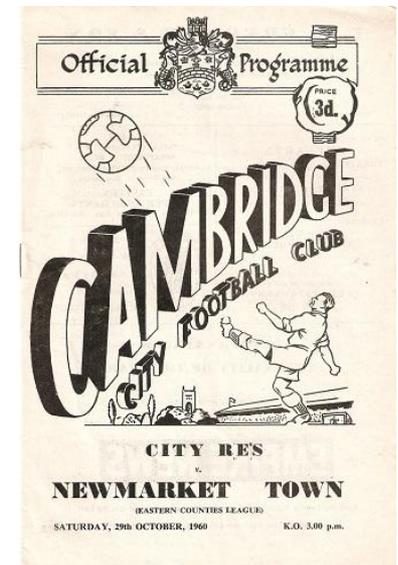
Oakley and the duty to give reasons

Breakfast seminar



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Landmark Chambers



A very brief history of reasons for granting PP...



- ***R v Aylesbury Vale DC ex parte Chaplin*** (1998) 76 P & C.R. 207:
 - No general duty to give reasons for granting PP.
 - Pill LJ “prepared to accept the possibility” that a duty *could* arise.
 - But not in ***Chaplin*** because “there was a good and obvious reason” for the LPA’s grant of PP.
- ***R v East Hertfordshire District Council, Ex p. Beckman*** (1998) 76 P. & C.R. 333: reasons required for LPA change of position.
- ***R. v Mendip District Council, Ex p. Fabre*** (2000) 80 P. & C.R. 500, no reasons required because fair inference that members followed OR.
- **Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003** (revoked 25.6.13).
- ***Hawksworth*** and ***Dover*** on the standard of LPA reasons: Rob and Richard to discuss.



Facts of Oakley



- CCFC applied for permission to erect 3,000 seat stadium on historic waste tip south of Cambridge in Sawston, within GB.
 - Relied on “appropriate development” exception at 2nd bullet in NPPF [89].
 - In any event, justified by very special circumstances including need, lack of alternatives, community benefits etc.
- LPA’s OR disagreed, recommending:
 - Inappropriate development.
 - Additional harm re landscape and lack of sustainable access.
 - No VSCs.

Facts of Oakley



- OR recommended refusal for 4 reasons:
 1. Inappropriate dev in GB contrary to South Cambridgeshire LDF.
 2. Additional harm to landscape.
 3. Unsustainable transport.
 4. Insufficient VSCs.
- LPA's planning committee granted permission against OR's advice.
- No reasons given in minutes or otherwise. Resolution noted departure from dev plan. **NB** contemporaneous notes of c'tee meeting did not disclose reasoning.

Jay J in High Court, [2016] EWHC 570 (Admin)



- No duty to for LPA to explain disagreement with OR.
- Not clear whether LPA thought “appropriate development” or inappropriate but justified by VSCs.
- But that did not matter, because members are entitled to disagree with OR. No evidence anything went wrong. Nothing “aberrant”.
- Judgment on the issues was for members.
- Members should, like “a jury in a criminal trial” be “deemed” to have engaged with the issues in the OR.



Court of Appeal, [2017] EWCA Civ 71



- Elias LJ “strongly attracted” to submission that reasons required wherever basis for decision cannot otherwise be understood.
- But upholds appeal on “narrower” argument, i.e. reasons required because (i) disagreement with OR, (ii) PP inconsistent with Local Plan and (iii) involves development in the GB.
- Duty imposed to protect interests of local people in their local environment. And to enable them to determine whether decisions lawfully made.
- An aspect of the “duty of fairness”. Requiring decisions to be “transparent” and (surprisingly?) relies on Aarhus convention.



Court of Appeal, [2017] EWCA Civ 71



- Patten LJ agreed with Elias LJ.
- Sales LJ rejected the “general submission”.
- Agreed with Elias LJ that reasons required because 3rd parties have reasonable expectation that local plan policies and national GB policy will usually be complied with.
- The fact that this PP contravened both (i) the statutory development plan & (ii) Green Belt policy generated a duty to give reasons.
- And *either* would have been enough.



Some unanswered questions after *Oakley*



- How broad is the CoA’s “narrow” answer?
- Are reasons now required any time there is a departure from the local plan?
- What other categories of policy can generate the reasons duty...
- We know AONB and GB are caught. Local countryside policies? Local green space? Development boundaries? Green wedges? Conservation areas? Listed buildings? National parks? High flood risk areas? SSSIs?
- When will it be “obvious” enough that no reasons are required, applying *Chaplin*?
- Does *Oakley* effectively re-introduce a general duty to give reasons for granting PP?

R. (Shasha) v Westminster City Council

[2016] EWHC 3283 (Admin)



- Openness of Local Government Bodies Regulations 2014.
- Reg 7(3)(b) requires written record of delegated LA decisions to contain “reasons for the decision”.
- John Howell QC found that requirement applied to “a decision taken under delegated powers to grant planning permission”.
- NB CoA in ***Oakley***, no duty to provide reasons under reg 7 for earlier c’tee resolution in principle to grant permission subject to s.106.
- On facts of ***Shasha***, no breach because officer can be taken to follow reasoning in previous officer’s report.
- Reasons under Reg 7 “may be briefly stated”, but need to “deal with substantial points that have been raised”. But wait and see re ***Dover v CPRE***.

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