Procedural Fairness

Statements of Common Ground

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“Procedural fairness and regularity are of the indispensable essence of liberty”
- Robert Jackson (US Supreme Court Judge)
Preston New Road Action Group v SSCLG and Cuadrilla [2017] Env LR 33
Lessons to Learn

SPREAD THE WORD!
Statements of Common Ground


“14. — Statement of Common Ground

(1) The local planning authority and the applicant shall—

(a) together prepare an agreed statement of common ground; and

(b) ensure that the Secretary of State receives it and that any statutory party receives a copy of it not within 6 weeks of the starting date.

...”
Statements of Common Ground


“15 – Procedure at inquiry

... 2) At the start of the inquiry the inspector shall identify what are, in his opinion, the main issues to be considered at the inquiry and any matters on which he requires further explanation from the persons entitled or permitted to appear.

...”
General Principles

- Distillation of principles in *Hopkins Development Ltd v SSCLG* [2014] EWCA 470, para 62 (Jackson LJ) – followed in *Engbers v SSCLG* [2016] EWCA Civ 1183:
  - All parties entitled to know case to meet and reasonable opp to respond;
  - Material prejudice may be good ground for quashing;
  - Rules not a complete code for achieving procedural fairness;
  - Inspector does not have to give regular updates about thinking;
  - Inspector will consider sig issues raised by 3<sup>rd</sup> parties; and,
  - If main party resiles from SOCG, other party must have reasonable opp to deal with issue.
Inspector

A-------------------B

3rd party
Inspector

A-------------B

3rd party
Policy EP11 (Fylde Local Plan)

“New development in rural areas should be sited in keeping with the distinct landscape character types identified in the landscape strategy for Lancashire and the characteristic landscape features defined in Policy EP10. Development must be of a high standard of design. Matters of scale, features and building materials should reflect the local vernacular style.” (emphasis added)
Preston New Road Action Group v SSCLG and Cuadrilla [2017] Env LR 33
Preston New Road Action Group v SSCLG and Cuadrilla [2017] Env LR 33

- Cuadrilla: not relevant

- Inspector: “Policy EP11 cannot sensibly be applied to these schemes”

- Secretary of State Decision Letter: Agreed
PNRAG’s argument in High Court

- Change came out of the blue
- No opp to make submissions
- Limited resources: barrister could not be there full-time
Secretary of State’s and Cuadrilla’s argument

Cuadrilla’s position clear from:

- Cuadrilla’s expert’s proof of evidence;
- Cross-examination of Cuadrilla’s expert by PNRAG;
- Cross-examination of Cuadrilla’s expert by Council
- Cuadrilla’s cross-examination of Council’s witness
- Cuadrilla’s closing submissions
Dove J’s judgment

• *Hopkins Development Ltd*, paras 84-90 (Beatson LJ)

“88. The question is thus whether Hopkins had a reasonable opportunity to put its case on sustainability and character and development at the inquiry...

...

90. The authorities on planning inquiries considered by my Lord show that in this context what is needed is knowledge of the issues in fact before the decision-maker, the Inspector, and an opportunity to adduce evidence and make submissions on those issues”
Dove J’s judgment

Relied on:

• Cuadrilla’s expert’s proof of evidence; and,
• Cross-examination of Cuadrilla’s expert by PNRAG

“110...Within that exchange Mr Smith makes plain his position that the policy was principally aimed at new permanent built development and not mineral development, and counsel on behalf of the first claimant brought Mr Smith’s attention back to the presence of that policy within the SOCG as a relevant policy. Thus, embedded within this exchange, is clearly an issue as to the relevance and applicability of Policy EP 11. That was a live issue and one with which this cross-examination engaged. When the questions are asked as to whether or not the first claimant knew that there was an issue about the relevance and applicability of EP11 and had an opportunity to provide evidence and submissions on that issue it is absolutely clear in my view that on all counts they did.” (emphasis added)
Dove J’s judgment

- Relevance of closing submissions?

- “112...In my view there are very good reasons, in particular the interests of transparency and the need to secure closure of the proceedings, for the practice of the Planning Inspectorate not to receive unsolicited further submissions after the close of a public inquiry... I have no doubt that had the first claimant sought to provide further closing submissions after the close of the inquiry to the Inspector they would have been rightly refused.” (emphasis added)
Points to take away

• Importance of Statement of Common Ground;

• Deviations can be challenged by all parties;

• Review at regular intervals;

• SPREAD THE WORD; and,

• Closing submissions will not cure.
WATCH THIS SPACE!