

Legitimate expectation, consultation and fairness

Richard Turney

Legitimate expectation

- Promises to consult (“procedural” expectations)
- Promises to continue to apply existing policy in respect of a specific person or persons who would be substantially affected by any change in policy (“substantive” expectations)
- Established policy (without an express promise) substantially affecting a specific person or persons who, in the circumstances, reasonably relied on its continuance (the secondary case of procedural expectation)

R (Vieira) v Camden

- Failure to publicise revised plans and officer's report on planning application
- “Procedural” expectation arising from Statement of Community Involvement
- Absence of any good reason for not publishing officer's report
- Legitimate expectation that application would be referred back to panel to decide whether to send to Committee
- Relief granted despite argument that would have made no difference

R (Godfrey) v Southwark LBC

- Difficulty in establishing a substantive expectation in planning cases
- A “rigorous standard is to be applied when a substantive legitimate expectation is claimed”
- Council bound by s 70 TCPA 1990 and s 38 PCPA 2004
- In the absence of specific policy commitment to an outcome, no expectation could be relied upon
- See also *Keevil v SSCLG* and *R (St John’s School) v LB Hillingdon*

Consultation



- ***R (Halebank PC) v Halton BC***
 - Unfair consultation on distribution centre
 - Need for fairness and effectiveness of consultation enshrined in EIA Directive
 - Relevance of Cabinet Office guidance

- ***R (Wakil) v LB Hammersmith & Fulham***
 - Inadvertent failure in consultation process on SPD
 - Failure cured by later opportunities to participate

Consultation (2)

- ***R (Milton Keynes) v SSCLG***
 - Consultation on changes to GPDO on HMOs
 - Scope of consultation on principally political decision
- ***R (Buckinghamshire CC & ors) v SST***
 - Consultation challenges in respect of HS2
 - Decisions in respect of compensation quashed due to unfairness in consultation

Fairness



- ***Tait v SSCLG***
 - Risk of bias/procedural unfairness in respect of site visit in the presence of only one part
- ***Wainhomes (South West) Holdings Ltd v SSCLG***
 - Late representations to PINS
- ***PNH (Properties) v SSCLG***
 - Alleged procedural failings did not cumulatively undermine the decision
- ***R (Ashley) v SSCLG***
 - Unfairness in written representations appeal

Conclusion

- Standard to be applied
- Would it have made a difference
- Difficulties for decision makers in responding to representations
- Inspectors on a frolic?