

Dover v CPRE
The 3rd Party Objector Perspective

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OUTLINE



- Third party objectors, who do we mean?
- Influencing whether reasons are required and what reasons are required;
- Relevant factors when advising objectors on a JR reasons challenge;
- Particular issues arising in reasons challenges based on an officer's report;
- Other potential ground of challenge highlighted in *Dover v. CPRE*

Third party objectors, who do we mean?



- Promoters of rival schemes;
- Parish Councils;
- Statutory Consultees;
- Residents' Groups;
- CPRE, wildlife organisations, and other interest or pressure groups;
- Individual residents.

In fact anyone who does not want the proposed development to be permitted or to be built.

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How can an objector influence when reasons are required and what those reasons should cover?

- Common law duty to provide reasons more likely to be triggered where there is:
-“widespread public controversy” (para 57 *Dover v. CPRE*)
- Standard of reasons required includes explaining what conclusions were reached on the ‘principal important controversial issues’ (*S.Bucks DC v. Porter*, as applied by SC in *Dover v. CPRE*, para 41)
- So, put in strong and full objections at application stage, if possible with demonstration of wide public support.

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Relevant factors when considering a JR reasons challenge to a grant of planning permission (1)

Was there a duty to provide reasons?

YES, if EIA development;

YES, if a delegated officer's decision;

YES, if the common law duty has been triggered.

The common law duty is likely to have been triggered if vociferous objections were made at application stage which identified important issues to be determined.

Relevant factors when considering a reasons challenge JR to a grant of planning permission (2)

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Have reasons been provided?

- Check Minutes of Committee meeting;
- Any separate statement of reasons?
- Does officer's report represent the reasons?
- Any separate statement of reasons by delegated officer (as suggested by Lang J in *R (Rogers) v. Wycombe DC* [2017] EWHC 3317 (Admin))?

Relevant factors when considering a reasons challenge JR to a grant of planning permission (3)

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Are the reasons adequate?

- Are they intelligible; do they deal with the substantial points that have been raised?
- Useful to check against para 36 in *South Bucks DC v. Porter (No 2)* [2004] 1 WLR 1953;
- Do they leave room for 'genuine as opposed to forensic doubt as to what has been decided and why' (*Clarke Homes v. SS Environment* (1993) 66 P & CR 263).

Factors to consider when officer's report is relied on as representing the Council's reasons (1)

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- Is there material departure from the officer's reasoning in the decision taken and/or the minutes?
- Has any departure from the officer's recommendation been properly explained?
- para 36 in *South Bucks DC v. Porter (No 2)* and Clarke remain applicable when assessing whether officers' reports meet the required standard of reasons;

Factors to consider when officer's report is relied on as representing the Council's reasons (2)

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Reasons challenge to an officer's report need not be constrained by the familiar dicta in:

Oxton Farms v. Selby DC 1997 WL 1106:

"An application for judicial review based on the criticism of a planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters..." and

R v. Mendip DC ex p. Fabre (2000) 80 P & CR 500:

Bear in mind officers' reports are addressed to a "knowledgeable readership" (also see in *Mansell v. Tonbridge and Malling BC [2017] EWCA Civ 1314*)

Factors to consider when officer's report is relied on as representing the Council's reasons (3)

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This is because:

"On the authorities, there is a distinction between the latitude which the courts accord to the officers when giving advice to the decision-maker, and the more exacting standards required of decision makers who are under a duty to give reasons to the public for their decisions."

Per Lang J in *R (Rogers) v. Wycombe DC* [2017] EWHC 3317 (Admin), at para 56.

But Beware:

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- Discretion not to quash survives *Dover v. CPRE* – beware forensic as opposed to ‘genuine’ defects;
- S.31(2A) Senior Courts Act 1981, as applied in *R (Rogers) v. Wycombe DC* [2017] EWHC 3317 (Admin)
- Keep challenge under review as to whether adequate reasons are subsequently given – may result in denying claimant of a quashing remedy.

Other potential ground of challenge highlighted by Dover v. CPRE

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- Duty on decision maker to “take reasonable steps to acquaint [itself] with the relevant information” (*Secretary of State for Education and Science v. Tameside MBC* [1977] AC 1014, 1065B)
- That duty includes the need to allow the time reasonably necessary, not only to obtain the relevant information, but also to understand and take it properly into account (*Dover v. CPRE*, at para 62)
- But shortcomings in these duties only challengeable on a *Wednesbury* basis (*R (Hayes) v. Wychavon DC* [2014] EWHC 1987 (Admin) at para 35)

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CHAMBERS

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