

*Dover v CPRE* and the duty to give reasons  
LPAs' perspective



**Zack Simons**  
**10.1.18**



**3 key questions for LPAs after *CPRE v Dover*:**



- 1. When must c'tee give reasons for granting PP?**
- 2. If reasons required, and c'tee intends to follow officers' advice, can c'tee rely on OR?**
- 3. How should meetings be managed to avoid JR?**



## Question 1



### When must LPA give reasons for granting planning permission?

#### What did we already know?



- Reasons required for:
  - **Refusals:** Town and Country Planning (Development Management Procedure) (England) Order 2015, art 35(1)(b).
  - **EIA cases:** Town and Country Planning (Environmental Impact Assessment) Regulations 2017, reg 30(1)(d)(ii).
  - **Delegated officer decisions:** Openness of Local Government Bodies Regulations 2014, reg 7 (see *R. (Shasha) v Westminster City Council* [2017] P.T.S.R. 306).
- No longer statutory duty to give summary of reasons for granting permission.
- If granting following OR, then reasons are in the OR. ***Aren't they?***.....



## Dover upsets the apple cart (1)

- There is now a further category of case which requires reasons – see Dover at 59:

“cases where, as in Oakley and the present case, permission has been granted in the face of substantial public opposition and against the advice of officers, for projects which involve major departures from the development plan, or from other policies of recognised importance (such as the "specific policies" identified in the NPPF [at fn9])”

- So we’re concerned with grants of planning permission which are...



## Dover upsets the apple cart (2)

1. Against substantial public opposition “and”
2. Against officer’s advice (*and?*)
3. Major departure(s) from the development plan “or”
4. Departure(s) (*only “major” ones?*) from other policies of recognised importance (such as fn9 NPPF).

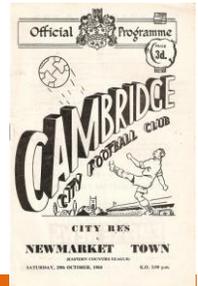


## What about *Oakley*? (1)

- CCFC applied for permission to erect 3,000 seat stadium on historic waste tip south of Cambridge in Sawston, within GB.
- LPA's OR recommended refusal, citing:
  - Inappropriate development.
  - Additional harm re landscape and lack of sustainable access.
  - No VSCs.



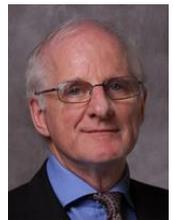
- LPA's committee granted permission against OR's advice.
- No reasons given in minutes or otherwise. Resolution noted departure from dev plan. **NB** contemporaneous notes of c'tee meeting did not disclose reasoning.



## What about *Oakley*? (2)



- 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.





## What about *Oakley*? (3)

- In *Dover* at para 57, Carnwath identified “**special circumstances**” of *Oakley* which gave rise to need for reasons as:
  - 1) widespread public controversy,
  - 2) departure from development plan and Green Belt policies, and
  - 3) members' disagreement with the officers' recommendation.
  
- *Dover* said to have the same features (AONB = Green Belt).

## Questions on the *Dover* para 59 tests



1. *Substantial public opposition “and”*
  2. *Against officer’s advice (and?)*
  3. *Major departure(s) from the development plan “or”*
  4. *Departure(s) (only “major” ones?) from other policies of recognised importance (such as fn9 NPPF).*
- **Cumulative** or **alternative** or bits of both? E.g. is public opposition enough?
  - When are reasons required even when following OR?
  - What does “major” mean? Ditto “recognised importance”?

## Question 2



**When following officers' advice, can a planning committee rely on the reasons in the Officer's report OR?**

### Members "assumed" to follow OR



- For many years, courts happy to assume that – when members follow officer's advice – they do so for reasons in OR: *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, *R. v Mendip DC Ex p. Fabre* (2000) 80 P. & C.R. 500.

#### **BUT**

- **Dover** suggests duty to give further reasons could arise even when c'tee follows OR.
- And distinction between Courts' approach to ORs when (a) advising c'tee, and (b) containing reasons for a decision: *R (Rogers) v Wycombe District Council* [2017] EWHC 3317 (Admin).



## 2 approaches to the same OR?

- Whether an OR is sufficient depends on what you're asking it to do.
- An OR simply advising c'tee is valid unless c'tee is “**materially misled in a significant or serious way**”: *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314 at 42, relying on *R. v Selby District Council, ex parte Oxton Farms* [1997] E.G.C.S. 60

↑ A low bar ↑

- An OR which sets out reasons for granting permission is valid unless there is “**genuine room for doubt on what has been decided and why**”: *Clarke Homes Ltd v Secretary of State for the Environment* (1993) 66 P & CR 263 and *South Buckinghamshire District Council v Porter (No 2)* [2004] 1 WLR 1953.

↑ A higher bar ↑

## Question 3



**How should meetings be managed to avoid JR?**

#### 4 headlines:



1. Reasons generally required for grants of PP (at least for now)...
2. **Unless** no/insubstantial opposition + no breach of policy + following OR advice.
3. When reasons given, best to agree and reach resolution on the terms of those reasons. Deferral may be required to next meeting.
4. If C'tee wants to grant for reasons in OR, it should resolve to do that, ideally identifying which parts of OR set out the reasons.



Landmark  
CHAMBERS

[zsimons@landmarkchambers.co.uk](mailto:zsimons@landmarkchambers.co.uk)