Landmark Chambers

The Planning ‘Game of Life’: Legal challenges update

Heather Sargent

Consistency in planning decision-making

DLA Delivery Ltd v Baroness Cumberlege of Newick [2018] PTSR 2063

Court of Appeal, 8 June 2018

- Three general propositions (*per* Lindblom LJ at [34]):
  - There will be cases in which the Secretary of State must take into account a recent appeal decision of his own, even though he has not been asked to do so.
  - No limit on the circumstances in which a previous decision can be a material consideration (e.g. same site; same / similar form of development and same development plan policy)
  - The court will consider whether the Secretary of State was aware, or ought to have been aware of, the previous decision and its significance for the appeal now being determined

Consistency in planning decision-making

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- Endorses the following observation made by the High Court:

> "[it] can only undermine public confidence in the operation of the development control system for there to be two decisions of the Secretary of State himself, issued from the same unit of his department … within 10 weeks of each other, reaching a different conclusion on whether or not a development plan policy is up-to-date without any reference to, or sufficient explanation in the later one[,] for the difference"

Consistency in planning decision-making

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R (o.a.o. Davison) v Elmbridge BC [2019] EWHC 1409 (Admin)

Thornton J, 2 May 2019

- Second legal challenge to the grant of planning permission for new football and athletic stadium in Green Belt
- First planning permission quashed by Supperstone J in January 2017
- Sole ground of challenge: LPA contravened principle of consistency in decision-making in departing, without reasons, from its previous finding (re. first planning permission) that proposed development would have an adverse impact on the openness of the Green Belt to deciding (re. second planning permission) that it would not have an adverse effect
- LPA contends that it was not required to consider its previous planning judgement on the point because its first decision had been quashed

Consistency in planning decision-making

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- Thornton J: consistency principle applies to LPA decision-making as well as decision-making by SSHCLG / his inspectors on appeal
- Five principles (see [56]):
  - Principle of consistency not limited to formal decision: extends to the underlying reason
  - Of itself, a decision quashed by the courts is incapable of having any legal effect on the rights and duties of the parties. The subsequent decision-maker is not bound by it and starts afresh, taking into account the development plan and other material considerations
  - However, the previously quashed decision is capable in law of being a material consideration. A failure to take into account a previously quashed decision will be unlawful if no reasonable authority could have failed to take it into account

Consistency in planning decision-making

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  - Difficulties with identifying what (of the previous decision) has been quashed and what has been left could be a reason not to take the previous decision into account (but this must be explained)
  - The greater the apparent inconsistency between the decisions, the more the need for an explanation of the position

- On the facts: the LPA was required to take into account its previous decision and unlawfully failed to do so
- Planning permission quashed notwithstanding that the development had been constructed and had been operational since September 2017

Time limits for statutory challenges

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Croke v SSCLG [2019] EWCA Civ 54

- Is the six-week time limit for bringing a challenge under s. 288 TCPA 1990 to a decision on a planning appeal absolute?
- [7]:
  - Time starts to run on the day after the date of the decision letter itself
  - It expires at midnight on the 42nd day (although in practice, must file the document before court office closes)
  - It continues to run over a weekend or Bank Holiday – but if the last day falls on a weekend or Bank Holiday, time is extended to the next day on which the court office is open

Time limits for statutory challenges

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- On the final day of the six-week period the Claimant misses a train, mistypes an e-mail address and his agent is turned away from the Royal Courts of Justice by security guards at 4.25pm

- Argues that the court's own action (the security guard) has deprived him of the full six-week period: his agent was inside the court building within normal court working hours. That day should be treated as being a *"dies non"* (like a Bank Holiday or weekend day)

Time limits for statutory challenges

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- Court of Appeal: no: there is no room for the exercise of judicial discretion (save for any limited scope there might be on human rights grounds for the court, in exceptional circumstances, to countenance proceedings being brought after a statutory time-limit has passed)

- N.b. no discretion even where e.g. there is a fire alarm at the court / there is an IT failure

Satnam Millennium Ltd v SSHCLG

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CO/384/2019 – Listed for substantive hearing on 16 July 2019

- Challenge, on grounds including apparent bias, to the Secretary of State's decision to dismiss the appeal
- Inspector's conduct outside of formal inquiry sessions and on the accompanied site visit
- Case-law is clear e.g. ***R (o.a.o. Tait) v SSCLG*** [2012] EWHC 643 (Admin)
- Question: has the appellant (claimant) lost the ability to challenge the decision for apparent bias because it "failed to complain" during the inquiry?

Thank you for listening

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