STAFFORD BOROUGH COUNCIL

Appeal Ref: APP/Y3425/W/23/3315258

Stafford Education and Enterprise Park, Weston Road, Stafford

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ADVICE

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1. I am instructed on behalf of the Borough Council. By decision letter dated 26 June 2023 ("the Decision") an inspector appointed by the Secretary of State allowed Serco's appeal against the refusal by the Council of its planning application to change the use of buildings on the Stafford Education and Enterprise Park from student accommodation to asylum seeker accommodation.

2. The Decision has come as a disappointment to many in the Borough – not least the local MP whose letter dated 30 June 2023 to the Council's Chief Executive I have read. In it she encourages the Council to make an application for judicial review to the High Court. Such an application can only be on the basis that the inspector has erred in law in reaching the decision he did. I am asked to advise.

3. The general principles applicable to a legal challenge by statutory[1] judicial review to an inspector's appeal decision are well established. They were summarised by Lindblom LJ in *St Modwen Developments Ltd v Secretary of State for Communities and Local Government [2017] EWCA Civ 1643, [2018] PTSR 746, at [6] – [7]* :

   "6. In my judgment at first instance in *Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin) (at paragraph 19)* I set out the "seven familiar principles" that will guide the court in handling a challenge under section 288 . This case, like many others now coming before the Planning Court and this court too, calls for those principles to be stated again – and reinforced. They are:

   "(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way.

[1] The claim is issued under s288 of the Town and Country Planning Act 1990.

Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment (1981) 42 P. & C.R. 26, at p.28*).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2) [2004] 1 WLR 1953* , at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment [1995] 1 WLR 759* , at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for Environment, Transport and the Regions [2001] EWHC Admin 74, at paragraph 6*).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council [2012] PTSR 983, at paragraphs 17 to 22*).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment (1993) 66 P. & C.R. 80* , at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government [2012] EWHC 1419 (QB), at paragraph 58*).

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. in *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government [2013] 1 P. & C.R. 6, [2012] EWCA Civ 1198, at paragraphs 12 to 14* , citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment [1992] 65 P. & C.R. 137* , at p.145)."

7. Both the Supreme Court and the Court of Appeal have, in recent cases, emphasised the limits to the court's role in construing planning policy (see the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd. [2017] UKSC 37, at paragraphs 22 to 26* , and my judgment in *Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314, at paragraph 41*). More broadly, though in the same vein, this court has cautioned against the dangers of excessive legalism infecting the planning system – a warning I think we must now repeat in this appeal (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council [2017] EWCA Civ 893, at paragraph 50*). There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that this court has always rejected – whether of decision letters of the Secretary of State and his inspectors or of planning officers' reports to committee. The conclusions in an inspector's report or decision letter, or in an officer's report, should not be laboriously dissected in an effort to find fault (see my judgment in *Mansell* , at paragraphs 41 and 42, and the judgment of the Chancellor of the High Court, at paragraph 63)."

4. As to the second principle derived from *South Buckinghamshire District Council v Porter (No 2)* *[2004] 1 WLR 195* Lord Brown stated in that case at [36]:

"36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference

will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

5. The "main issues" identified by the inspector at paragraph ("¶") 3 in the Decision were agreed in advance of the inquiry.

6. In respect of "fear of crime" the inspector:

   a. Agreed (¶4) that it was a material consideration as the Council had urged.

   b. But gave it limited weight (¶19) because he was:

      (1) Not satisfied that it many cases it amounted to more than a "genuine concern" (¶5);

      (2) While accepting that crime and anti-social behaviour by asylum seekers does occur, it is not more prevalent than in the general population (¶6 & 7);

      (3) Accepted that fears may be "real, they were not "well founded".

      (4) Noted that developers are not required to guarantee an absence of criminal activity by new residents (¶9);

      (5) Noted a lack of concern by "management teams of local schools, the local education authority or the police" about any "compelling evidence" that asylum seekers "pose a greater risk to children or indeed any other group" (¶10);

      (6) Noted that although there were recommendation from the police, he did not interpret them as implying that the development would have significant (adverse) effects (¶11);

      (7) Held that the imposition of a condition requiring the approval of a site operational management plan would assist (14);

      (8) Distinguished other appeal decisions on their facts (¶15);

      (9) Noted that there was an incentive for the residents to behave well (¶16);

(10) Determined that any disorder that resulted from activity by off-site groups could be managed if it occurred (¶17);

(11) Overall decided (¶16) that "any effect that the appeal use might have on the behaviour of local people as a result of fear of crime would either be likely to be limited or short-lived once the use had started and its real, rather than feared, effects had been experienced and understood. Accordingly, it would also be unlikely to have a significant effect on engagement with activities that promote healthy and sustainable lifestyles, such as walking and cycling."

7. These matters were all planning judgments for the inspector having heard and read the evidence before the inquiry and are adequately reasoned. In particular, those instructing me will recall that when putting together the Council's evidence we discussed whether the police at an operational level might be persuaded to attend and express concerns to the inspector, but that after enquiries it was found that this would not be possible. In my opinion, the inspector cannot be said to have fallen into any error of law on this issue.

8. In respect of "social inclusivity" the inspector:

a. Assumed the site would be used at full capacity (¶20);
b. Judged that asylum seeks would be accepted once the existing community had effectively 'got used to their presence' (¶21);
c. Held that the additional funding to the Council in respect of hosting asylum seekers (¶44) could be used to fund social inclusivity programmes (¶23).

9. Again, while the inspector's conclusions are contrary to those urged upon him by the Council's case, they result from the exercise of his planning judgment. In my opinion, the inspector cannot be said to have fallen into any error of law on this issue.

10. In respect of the effect on local public health resources, the inspector:

a. Noted that there would be additional demand on off-site medical services (¶26 & 27);

b. But also noted that asylum seekers (like any new patient) would attract additional funding (¶28);

c. Noted that while there was some evidence of a shortage of physical space in GP surgeries to serve the existing population, there were no formal requests for additional funding from the development (¶28) which suggests that there is not a significant concern (¶29).

11. Once again, while the inspector's conclusions are contrary to those urged upon him by the Council's case, they result from the exercise of his planning judgment. In my opinion, the inspector cannot be said to have fallen into any error of law on this issue.

12. The inspector therefore found that there were not material considerations of sufficient weight to outweigh the compliance with the development plan as a whole (¶42) and that overall "the planning balance is very firmly in favour of the appeal scheme" (¶45).

13. I regret to inform the Council that in all the circumstances of this case there are no reasonable prospects at all of a successful application for statutory judicial review. In my opinion any application would not get through the permission stage.

14. The letter from the local MP suggests a tactical advantage of doing so as part of a campaign to persuade the government to change its plans with respect to the use of the appeal site. I can see no such advantage. Any High Court claim would be defended by DLUHC and Serco. If the Home Office is to be persuaded to abandon the appeal site scheme, then that is a political matter best handled by the local MP.

15. For the moment, nothing further occurs.

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