

Wiltshire Council

Strategic Planning Committee

31 January 2018

Planning Appeals Received between 24/11/2017 and 19/01/2018 relating to Decisions made at Strategic Committee

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
14/08060/OUT	Land at Marsh Farm Coped Hall Royal Wootton Bassett Swindon, Wiltshire SN4 8ER	LYDIARD TREGOZ	Mixed Development of up to 320 Dwellings, Community Hub Comprising of 500sqm of A1/A2/A3/A4/A5/D1 &D2 Uses, Public Open Space, Landscaping, Extension to Approved Sports Hub & Access	SPC	Inquiry	Refuse	20/12/2017	No

There are no Planning Appeals Decided between 24/11/2017 and 19/01/2018 relating to Decisions made at Strategic Committee

Information Report from the Head of Service for Development Management – Mike Willmott

The legal duty to state the reasons for making decisions on planning applications

A recent Court case (Dover District Council v CPRE Kent – December 2017) has set out more clearly the need for Councils to give reasons for their decisions when making planning decisions. Whilst this has been well known in relation to refusals of planning permission, the judgment adds more clarity as to what is required when decisions are taken to approve applications, and particularly when the decision is to approve an application against officer recommendation. This note looks at the implications of that court decision.

1. Refusal of applications and the addition of conditions

It has long been the case that local planning authorities must give reasons for refusing permission or imposing conditions. This is because there is a statutory right of appeal against the refusal or the imposition of conditions. Article 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 states that the authority in their decision notice must 'state clearly and precisely their full reasons'.

Members will be aware that in both delegated and committee reports, reasons for refusal are clearly set out by officers, and where members wish to refuse an application against officer recommendation, officers will prompt them for 'clear and precise' planning reasons. There is nothing new in this aspect. Members will also be aware that when officers are issuing delegated approvals, or recommending applications to committee for approval, the reasons for any conditions to be attached are identified in the decision notice or committee report.

2. Approval of planning applications

In relation to delegated decisions, there is a duty to produce a written record of the decision 'along with the reasons for that decision' and 'details of alternative options, if any, considered or rejected' (regulation 7, Openness of Local Government Bodies Regulations 2014). The Council complies with this requirement in relation to planning applications by issuing a decision notice and preparing a separate delegated report. Both of these are then uploaded to the Council's web site so that any interested person can discover both the decision on the application and the reasons that the decision has been made. The judgment re-affirms that what is required is an adequate explanation of the ultimate decision.

In relation to committee decisions, where an application is recommended for approval by officers, the judgment makes it clear that if the recommendation is accepted by members, no further reasons are normally needed, as the Planning Officer's Report will set out the relevant background material and policies before making a reasoned conclusion and it will be clear what has been decided and why.

The Judgment breaks new ground by providing greater clarity on what is required in the circumstances where members of a planning committee choose to grant planning permission when this has not been the course recommended by officers in the Planning Officers Report.

In short, the Judgment makes it clear that there is a principle of 'fairness' that needs to be applied, so that those who may be opposed to the decision can understand the planning reasons why members have arrived at their decision. There is no question that members are of course entitled to depart from their officers recommendation for good reasons, but the judgment makes clear that these reasons need to be 'capable of articulation and open to public scrutiny'. The Judgment cites an extract from 'The Lawyers in Local Government Model Council Planning Code and Protocol (2013 update) as giving the following 'useful advice':

'Do make sure if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge'

A further paragraph of the Code is cited that offers the following advice:

'Do come to your decision only after due consideration of all the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse'

The underlying purpose of the judgment is to ensure that members can demonstrate that when granting permission they have properly understood the key issues and reached a rational conclusion on them on relevant planning grounds. The Judgment notes that this is particularly important in circumstances where they are doing so in the face of substantial public opposition and against the advice of officers for projects involving major departures from the development plan or other policies of recognised importance. This enables those opposing the decision to understand how members have arrived at their decision.

3. Practical Implications of the Judgment

The judgment re-affirms that the Council's existing practices and procedures are suitable to meet the legal duties imposed on it in relation to decision making on planning applications. The two key points are that where significant new information is provided shortly before a decision is due to be made, it is appropriate for members to ask for it to be explained, or if they consider that more time is required for themselves or officers to assess and understand it, to consider deferring a decision to provide suitable time. Secondly, when approving applications against officer recommendation, particularly those that are in sensitive areas or are controversial, the reasons why members consider that the harm identified can either be suitably mitigated or the reasons why a departure from policy is justified must be explained and recorded to demonstrate to those opposing the development how the Council has reached a rational conclusion. Members need to engage with the recommendations of the officer and explain the reasons for departure from those recommendations. If no rational explanation on planning grounds is recorded, any such decision could be at risk of challenge in the Courts.

Mike Wilmott - Head of Development Management