

Case Name: *Cross, R (On the Application Of) v Cornwall Council* [2021] EWHC 1323 (Admin)
(21 May 2021)

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Commentary:

This was a successful challenge to Cornwall Council's decision to grant permission against officer recommendation for the development of a detached two-storey agricultural dwelling near Rame Head within the Cornwall Area of Outstanding Natural Beauty ("AONB").

The claimant challenged the decision on two grounds. The first was that the Council's planning committee failed to give adequate reasons as to why it departed from the officer's recommendations and those made by the AONB officer. He argued that adequate reasons could not be discerned from the minutes of the committee meeting on 17 August 2020 or from the transcript of that meeting.

The Council submitted that there was no statutory duty to give reasons and that this was not a case in which the common law duty to give reasons arose, but that in any case the Council did provide adequate reasons, as set out in the minutes of the meeting and supported by the transcript of the meeting.

The court was satisfied that this was a case where the common law duty to give reasons (established in cases such as *CPRE Kent v Dover CC*) applied because the committee had granted permission for development in a highly sensitive area, contrary to strong advice from the planning and AONB officers, and in the face of substantial public opposition. The court agreed with the claimant that the reasons given by the committee did not articulate why it had departed from the planning officer's recommendation, so ground 1 was made out.

The second ground of challenge was that the committee failed to determine whether, and the extent to which, the proposed development accorded with the development plan and to reach any conclusion on the extent to which the proposed development would conserve and enhance the character and natural beauty of the landscape and AONB.

The Council argued that the committee did not misinterpret or fail to apply any applicable policies and had fully understood the issue of the impact on the landscape and the special weight to be applied to it, but nevertheless had reached a different view to the AONB officer on the extent of that impact and gave more weight to an exception in the plan which provided that the development of new homes in the open countryside could be permitted where there were special circumstances. In this instance the committee considered the applicant's need for an additional farm workers dwelling to be a special circumstance.

The court also upheld the claimant's second ground, finding that beyond the "essential need" criteria for proposals in the open countryside, the proposal should also have met the requirement of conserving and enhancing the landscape, character and natural beauty of the

AONB. Therefore it held that the committee had indeed failed to properly interpret the local plan in respect of the AONB proposal.

As a preliminary point, the Council raised the question of whether the claimant had sufficient standing to bring the claim since his property was a second home which he had recently sold and was located more than a mile from the site. The Council also argued that the claim was a “technical challenge” in which the claimant had not suffered any prejudice and, as a result, the decision to grant permission should not be quashed.

The court considered it obvious that the claimant had standing: he had filed a detailed objection to the application and formed the Rame Protection Group, and the nature of the proposed development in the AONB was a point of wider public interest. It said the fact that the claimant would be unable to see the proposed development from the property he owned a mile from the site was “neither here nor there”. Further, it was satisfied that the defects in reasons went to the heart of the justification for permission and undermined its validity.

Case summary prepared by Safiyah Islam