Case Name: *Blacker, R (On the Application Of) v Chelmsford City Council* [2021] EWHC 3285 (Admin) (06 December 2021)

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Commentary: This was a claim by way of judicial review of a refusal of outline planning permission by Chelmsford City Council ("the Council"). The Council first considered the planning application for 55 new dwellings at a Committee meeting in November 2020. At that meeting, the majority of Committee members were in favour of the application, despite the Planning Officer's report which recommended refusal. The decision was therefore deferred to a subsequent meeting to enable officers to report on conditions to be attached to any grant of permission. However, at that second meeting in January 2021, the Committee resolved to refuse permission.

The Claimant, a local resident, challenged this refusal on four grounds:

1. The Planning Committee's decision making failed to follow the Council's constitution;
2. In resolving to refuse permission at the second meeting, the Council failed to engage with the principle of consistency or grasp the 'intellectual nettle' of its earlier approval in principle;
3. The Committee failed to follow a fair procedure; and
4. The Committee's mind was closed to the business properly before it.

The Claimant failed on all four grounds and the claim was dismissed.

At the first meeting, members discussed whether material considerations could justify a departure from the Local Plan, doubted the effectiveness of enforcement action to deal with various issues at the site and expressed views that the proposed development would not be as detrimental to the appearance of the countryside as the current use and that it would be beneficial in terms of both economic benefits and biodiversity. The outcome of the meeting was a resolution:

"that the Committee, being minded to approve application 19/02123/OUT in respect of the site [...] defer it to enable officers to report to a future meeting on conditions that could be attached to any grant of planning permission for the development".

At the second meeting, the minutes recorded that additional information had been provided including comments from a local resident and business owner and that some members who had previously been in favour of the development were now against, for various reasons. These included the precedent that would be set by going against the Local Plan and that the development would encroach on green field land. On being put to a vote, the application was refused for the reasons set out in the original planning officer's report of 3 November 2021.

On Ground 1, the Claimant submitted that, according to the Council's Constitution, in the event that a Council is minded to make a decision contrary to officer recommendation, the only matters deferred are the conditions and reasons for approval since the 'in-principle' decision was already made with the Council. Mrs Justice Thornton rejected this argument on the basis that the ordinary and natural meaning of the relevant paragraphs of the Constitution indicate that the entire decision is deferred.

Ground 2 concerned the principle of consistency in decision-making. For this ground, the Claimant relied on the proposition that where a previous decision has been subject to proper consultation and detailed consideration, and where the principle of consistency is engaged (i) the previous decision is a material consideration and (ii) the decision maker should consider (carefully) the weight to be given to the previous decision. In other words, the decision maker, must grasp and address with reasons "the intellectual nettle of the disagreement" between the two decisions, as per St Albans City & District Council v Secretary of State [2015] EWHC 655 (Admin). Mrs Justice Thornton held that the principle of consistency was not engaged by the facts of the present case, distinguishing it from the case of St Albans City and the other cases relied on by the Claimant. She held that the decision of the Committee to defer further substantive consideration of the application meant that the decision making was "inchoate" – that the first decision amounted to "no more than a procedural decision to defer further consideration, albeit based on a preliminary view in favour of the application". As there was no sufficiently concluded view to engage the principle of consistency, "there was no 'intellectual nettle' to the first decision which needed to be grasped" and thus the second ground also failed.

Grounds 3 and 4 were dealt with briefly. On ground 3, Mrs Justice Thornton held that both the Claimant and the Interested Party were given a fair opportunity to put their case. On Ground 4, she rejected the Claimant's submission that multiple factors amounted collectively to a demonstration that the Committee's minds were closed to the issue before them, namely that of conditions and the section 106 agreement. Rather, she found that if anything, the very fact that the members changed their minds at the second committee might be said to be evidence of open, rather than closed minds.

Accordingly, the claim was dismissed.

Commentary: The frequent references to nettle-grasping aside, the finding on Ground 2 is of interest. Whilst it is clear that the Committee's decision at the first meeting did not constitute a formal decision on the application, it would appear that a 'decision' had been made by the Committee in the ordinary sense of the term. The Committee's decision at the first meeting to defer occurred only because the Committee were

"minded to approve" the application contrary to the officer's report and yet this was not considered a sufficiently concluded decision to engage this public law principle.

Case summary prepared by Stephanie Bruce-Smith