Case Name: *Bedford Park Developments v Secretary of State for Levelling Up, Housing and Communities & Anor* [2024] EWHC 2337 (Admin)

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Commentary: This claim for statutory review under section 288 of the Town and Country Planning Act 1990 of a Planning Inspector's decision to dismiss the Claimant's planning appeal concerning a residential development near Lewes was dismissed on all four grounds. In her judgement, Deputy High Court Judge Karen Ridge found that grounds alleging procedural unfairness, inconsistency of decision making, irrationality and a lack of reasoning were unfounded.

Background

The Claimant had sought planning permission (with all matters reserved) from Lewes District Council for up to 68 residential units on a site south of Lewes Road and Laughton Road, in Ringmer. The site is located 0.5 kilometres outside the South Downs National Park boundary. The relevant officer's report recommended that the application be referred to the Secretary of State for call in or, if not called in, that the application be approved subject to conditions. Despite this recommendation, the application was refused by the Council's planning committee with a single reason for refusal; namely that the development would cause unacceptable landscape and visual harm.

The Claimant appealed ("*the Appeal*"), with the appeal hearing taking place on 22 November 2022; the day after an appeal decision letter was issued in relation to a neighbouring scheme ("*the Croudace Decision*"). The Croudace Decision permitted the development of up to 100 residential dwellings, with the Inspector in that case deciding that the adverse effect upon the landscape, character and appearance of the area was outweighed by the benefits of the scheme.

All parties in the Appeal agreed that the Croudace Decision was a material consideration. However, the Inspector dismissed the Appeal.

Grounds and Judgement

The Claimant pursued its claim for statutory review on four grounds.

Ground 1: The Inspector's decision was procedurally unfair because it departed from the agreed position in the Statement of Common Ground and the Council's stated position at the hearing, without the Claimant being afforded the opportunity to address the case it had to meet.

The SoCG recorded as an area of disagreement the weight to be afforded to various polices, and the nature and extent of any harm arising from the proposals in both landscape and visual impact, and heritage matters. The application had been accompanied by a Landscape and Visual Impact Assessment, a Landscape Statement and by a Heritage Statement which was later supplemented by a further statement. These were all in evidence before the Inspector.

In court, the Claimant alleged that it was not on notice that the Inspector was interested in heritage matters, as heritage had been listed as 'another issue' in the Inspector's hearing agenda rather than a 'main issue'. The Inspector then elevated heritage to a 'main issue' in the Decision Letter.

The judge found, however, that the issue of what evidence to submit is a matter for each individual appellant, and the parties' positions as recorded in the SoCG were the very matters which the Inspector considered. The hearing agenda, which included heritage, provided a framework for the discussions and it is clear that the Claimant was given the opportunity to put forward whatever evidence it felt necessary, respond to the points raised on the various issues, to have the last word on each topic, and to seek to introduce additional evidence had it wanted to do so. The Inspector had included heritage in the agenda, and heritage matters had been fully ventilated in the hearing. As such, the elevation of heritage to a 'main issue' in the decision letter was of no great importance.

The judgment concludes that Ground 1 must fail, as there had been no procedural unfairness and the Inspector had not departed from the SoCG. In any event, the judgement notes that the Claimant had produced detailed evidence on landscape and heritage matters with the benefit of a professional team and legal representation. It was therefore not clear as to how the Claimant had been prejudiced by any perceived unfairness.

Ground 2: There had been inconsistency in decision making because the Inspector had departed from the Croudace Decision without explanation.

It was agreed that the Croudace Decision was a material consideration in the Appeal, with many similarities between that site and the Appeal site. There were also key differences, however, with sites which were close to each other but not identical, and the Croudace proposals providing half of their site for community facilities. Importantly, the Inspector concluded that, as the Croudace Decision had already been made, she was required to determine the Appeal with regards to the cumulative effects of the two developments; something which the Croudace Decision had not been required to do. The Inspector in the Appeal found that the cumulative impacts of both developments would be detrimental to the character and appearance of the area because, when taken together, they would result in the loss of a gap between two rural settlements.

The judgement concludes that there is no requirement for like cases to be decided alike. The Croudace Decision had formed a material consideration, and the issue of the impact on character and appearance requires an evaluative assessment and the exercise of the Inspector's planning judgement. In this case cogent reasons were provided as to why the Inspector came to a different view to the Croudace Decision, and Ground 2 failed.

Ground 3: The Inspector's decision was irrational or perverse by departing from the agreed weighting of the issues in the Statement of Common Ground.

The Claimant stated that agreement had been reached with the Council that a community woodland area would be provided to secure more mitigation for the proposals. A signed S.106 agreement containing the relevant obligations was before the Inspector at the Appeal, and the SoCG recorded that the Council would provide confirmation that each of the planning obligations sought would satisfy the relevant legal tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. The Inspector, however, concluded that delivery of this woodland parcel was clearly separate from the Appeal site and would not be directly related to the development, thereby failing to satisfy Regulation 122(2). As such, only very limited weight could be afforded to these obligations in the planning balance. The judgement found the Inspector's conclusions to be properly reasoned and rational, meaning Ground 3 failed.

Ground 4: The Inspector failed to give intelligible and adequate reasons for her decision in relation to Grounds 1 to 3, and the tilted balance.

The judgement found the Inspector's reasoning in relation to the presumption in favour of sustainable development in paragraph 11(d) of the National Planning Policy Framework to be expressed precisely and correctly. Ground 4 also failed.

As such, the claim was dismissed.

Case summary prepared by Matthew Cockerill