PTA Template 269J1 - OCT16 - Planning

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **C1/2017/3306**

South Oxfordshire District Council –v– **Secretary of State for Communities and Local Government**

ORDER made by the Rt. Hon. Lord Justice Hickinbottom

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, against the refusal of the High Court to grant permission to apply for a planning statutory review

Decision: Permission to appeal refused

Permission to appeal: ☐ **Granted** ☒ **Refused** ☐ **Adjourned**

OR

Permission to apply for a planning statutory review: ☐ **Granted**

Where permission to apply for a statutory review is granted, the application should be returned to the Administrative Court ☐

OR

There are special reasons (set out below) why the application should be retained in the Court of Appeal ☐

Reasons

The Applicant local planning authority ("the Council") seeks permission to appeal the Order of Holgate J dated 28 November 2017 refusing permission to proceed with a s288 application to quash the decision of an inspector appointed by the Secretary of State ("the Inspector") dated 2 August 2017 allowing an appeal by Claire Engbers against the refusal by the Council of her application for outline planning permission for a residential development of 95 dwellings (40% affordable) at a site near Shiplake, Oxfordshire. There are three grounds.

First, the Council contend that, at [11]-[14] of his judgment, Holgate J erred in concluding that it was unarguable that the Inspector had failed to give adequate reasons for applying the appropriate 20% buffer to the existing housing shortfall as well as the requirement going forward. There is no force in that contention. It is uncontroversial that the Inspector was entitled to apply the buffer to the existing shortfall and, in the absence of any evidence or case to the contrary, although there is of course no principle of law that like cases must always be treated alike, he was clearly entitled to rely on other appeal decisions which had consistently adopted that approach. As a result, the Inspector properly proceeded on the basis that a 3 year supply of housing had not been shown, so the Neighbourhood Plan was deemed out-of-date.

Second, the Council contend that Holgate J erred in concluding that the Inspector had not arguably erred in failing properly to address the conflict between the development proposal and the development plan spatial strategy, particularly in failing to consider whether the development would be in breach of NDP Policy H1 (an allocation policy). However, the Inspector referred to Policy H1 in para 11 of his decision letter; and, as the judge remarked (at [25] and [29]), this proposed development clearly did not accord with that policy, which formed part of the spatial strategy policies in the development plan consistent with policies at District Council level. The judge was clearly entitled to conclude that the Inspector had the policy well in mind and, although the Inspector could have spelled the point out more fully in the final part of his decision, he plainly took into account the fact that the proposal did not accord with the housing distribution policy, so the issue turned on the way in which he had struck the planning balance; and it was appropriate to give overriding weight to the chronic and dire shortage of housing land, the benefits of this proposal in helping address that shortage and the relative lack of harm in allowing the development (at [26]-[27]). Mr Flood had done no more than say that, in his view, conflict with the Neighbourhood Plan (even if out-of-date) carried very substantial negative weight; but the Inspector was not bound to accept that, and was clearly entitled to find that it was outweighed by the other factors to which he referred. I do not consider any of the other forensic points made on behalf of the Council have any greater force.

For those reasons, I do not consider either of those grounds to be arguable.

In the light of my conclusions as to those two grounds, it is unnecessary for me to consider the third ground, i.e. that Holgate J erred in concluding that, even if he had been wrong in relation to one or both other grounds, he would still have found that it was inevitable that the Inspector's decision would have been the same; but, given the dire shortage of housing land etc, I would have found it difficult to conclude that the judge was wrong in that respect.

Where permission has been granted and the matter will be retained in the Court of Appeal

(a) time estimate (excluding judgment)

(b) any expedition

HER MAJESTY'S COURT OF APPEAL E & W

Signed:

Date: 26 February 2018

By the Court

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Rule 52.15 provides that, in granting permission, the Court of Appeal may grant permission to appeal or permission to apply for judicial review. Where the Court grants permission to apply for judicial review, the Court may direct that the matter be retained by the Court of Appeal or returned to the Administrative Court.

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