News

Planning

Heathrow Third Runway given the 'Amber Light'

Since the launch of the Government's consultation "Adding capacity at Heathrow Airport" in November 2007, controversy has been rife. Widespread concerns over both environmental and social impacts of the proposal have dominated headlines but the Government and BAA argue that a new runway is necessary for the survival of the airport which operates at close to maximum capacity.

In response to the Government's Amber Light to the third runway protesters have become more ingenious in their plans to thwart BAA. Comedian Alistair McGowan, actress Emma Thompson, Tory environmental advisor Zac Goldsmith and Greenpeace jointly purchased a plot of land earmarked for the third runway and are encouraging others to do likewise. Although the Government can use its powers of compulsory purchase, the existence of hostile landowners will delay progress and increase costs.

The third runway will require Planning Permission and could be handled by the new Infrastructure Planning Commission (IPC). The Government stressed that its backing for the third runway comes with a clutch of conditions including: limits on the initial use to 125,000 flights a year. Any capacity increases will require the approval of the '2020 Climate Change Committee', and even then only if strict air quality and noise conditions are met. The decision has been met with vocal criticism from environmentalists. The IPC may disregard any representations thought vexatious or frivolous thus potentially severely limiting the weight of objections made from those not within proximity of the airport.

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High Court rejects challenge to Eco-Towns Initiative

The campaign group BARD ("Better Accessible Responsible Development") has lost its case against the Government 's consultation on eco-towns. BARD relied on six grounds of challenge but focused on two main areas, whether the consultation process was legally adequate, and the absence of a strategic environmental assessment (SEA) at the consultation stage. Lord Justice Walker, who stressed that the project was "at a relatively early stage" and that there would be future opportunities for consultation, rejected the challenge on all grounds.

Housing and planning Minister Margaret Beckett welcomed the decision. The decision leaves clear the opportunity for a decision on the final eco-town location shortlist in the coming months.

Nationally Significant Infrastructure Projects under the Planning Act 2008

Since receiving Royal Assent in November 2008, timetables to implement the changes under the new Planning Act have been gradually introduced. In an attempt to improve UK infrastructure and provide transparency, a new regime is being created.

The Act introduced a single consent regime for major infrastructure projects, replacing cumbersome pre-existing regimes. A new system to approve Nationally Significant Infrastructure Projects ("NSIPs") will see the establishment of an independent Infrastructure Planning Commission ("IPC"). The IPC will consider and grant a Development Consent Order ("DCO") that will authorise the development of a NSIP.

The IPC will consist of a Chairman, two vice-Chairmen and a panel of Commissioners. The Commissioners will be experts within related fields. The IPC will play a crucial role in the new

system by providing advice for an applicant of a DCO and deciding whether the application should be dealt with by a single commissioner or by way of panel.

Part 2 of the Act also introduces a new concept – National Policy Statements ("NPS"). An NPS is a statement by the Secretary of State setting out Government Policy in relation to one or more specific descriptions of development in the fields of energy, transport, water and waste. The NPS must be on the basis of a public consultation, with regard to responses to such consultation and hold prime the concept of sustainable development. Undoubtedly, the decision of a NPS may be contested. A challenge to a NPS must be brought within six weeks, and in accordance with judicial review procedure, to allow for unmeritorious claims to be filtered out by way of a preliminary permission stage.

The Tories have stated that should they win the next general Election they will scrap the IPC.

Law Reports

AMBER VALLEY BC V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

The local Authority made an application to quash the decision of the planning inspector to grant planning permission. The respondent homeowners had planning permission to convert a barn on their land into ancillary residential accommodation for a dependant relative. The planning permission authorised a change of use and "alteration or extension to existing buildings".

Building works began, yet after initial dismantlement, the Authority decided that the conversion was effectively demolishing and rebuilding the barn, and went beyond what was permitted. The Authority served both an Enforcement Notice and a Stop Notice. The landowners, effectively left with a ruin, appealed against the Enforcement Notice. The Appeal was allowed by the Inspector stating that the completed building would not provide any additional effects on the character of the area than the original approved scheme for the barn.

The Authority challenged the inspector's decision, arguing that the correct starting point was the original barn and not the original planning permission. The challenge was, however, unsuccessful. The Inspector had not adopted the wrong starting point, by reference to the site history. The application was made for the development carried out, namely the part demolition of the building and accordingly the planning permission was a material consideration. Arguments to quash on the basis of demolition being outside the remit of the permission were rejected as the permission had authorised some element of demolition and rebuilding.

MCCARTHY & OTHERS V BASILDON DISTRICT COUNCIL (EQUALITY AND HUMAN RIGHTS COMMISSION) INTERVENING

The Claimants represented 40 families of travellers and gypsies in unauthorised occupation of green belt land within the defendant local planning Authority. The Authority had refused planning permission and served enforcement notices .

The Secretary of State undertook the relevant inquiries regarding the housing and medical needs of the families and upheld the notices. The Authority later entered the land under Section 178 of the TCPA to remove the caravans. The Claimants sought judicial review of the decision to use Section 178 and the Equality and Human Rights Commission were given permission to intervene in the decision, because of the obligation to have due regard to race equality under the Race Relations Act. The Judge concluded that the decision of the Authority to invoke Section 178 could not stand, the Authority appealed.

The Appeal was allowed. Lord Justice Pill concluded that although Section 178 required a consideration of the case of each claimant, the decision was not unlawful. He held that at the

time the decision to use Section 178, the manner for eviction of each claimant had not been set out. The Authority had considered the needs of each family, and a balancing exercise with regard to appropriate factors was carried out. The fact that the resident land was situated within an area of green belt would be a factor of substantial weight in reaching the decision regarding race equality. The Authority took into account the evidence considered by the Secretary of State in the appeals. Accordingly, the judge was in error to hold that the needs of individual families had not been considered.

The Claimants had defied the law by remaining on site after refusal of planning permission. The Secretary of State had supported the decision to refuse. Thus, the disregard of the enforcement action could legitimately give rise to action under Section 178 . The decision to take action under Section 178 had been lawfully taken.

R (ON THE APPLICATION OF ETHERTON) V HASTINGS BOROUGH COUNCIL

The Defendant local planning Authority had approved construction of flats and bungalows in the grounds of a hotel situated in a conservation area. The Claimant objected to the plans on grounds of character of area, over-development and highway safety. The Authority's highway officer's report to the planning committee was in favour of the development, despite the difficulties with parking at the site at evenings and weekends.

In this case, there were deviations from the Authority's Planning Protocol including: only three of ten members of the committee attended the site and a site attendance note was not completed. At the decision stage, four of the members withdrew from the decision on the grounds of insufficient knowledge. Of the remainder, only two had attended the site, yet the others claimed sufficient knowledge. The Claimant contended that as a result of procedural irregularities, the decision to grant permission should be quashed.

It was held that although the protocol was not fully adhered to, it could not be said that failures to follow the guidance were significant enough to prejudice the Claimant, nor that the planning committee was not properly constituted. There was no evidence to suggest that a different decision would have been reached had all members attended the site. Further, given the site visit was undertaken on a weekday, the reasons for visit must have been ancillary to the highways issues of parking on an evening and weekend. Accordingly failure to record an attendance note would not have been prejudicial to the Claimant. Finally, it was noted that the fact that some members had withdrawn, implied that the remaining members had sufficient knowledge of the site, as they would too have withdrawn if they had insufficient knowledge.

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