July 2009

Review

Planning

Complaint upheld against Calderdale Council

The Local Government Ombudsman recently upheld a complaint of maladministration against Calderdale Council. The decision related to the grant of planning permission which the Council's Local Planning Authority (LPA) had given for an extension and alterations to a primary school which was situated next to a Grade II* listed 17th century hall. As well as acting as the LPA, the Council also submitted the planning application.

There are strict planning policy controls in place to protect listed buildings. Planning policy requires that any new buildings must be carefully designed to reflect the setting of the historical buildings which they are to stand alongside. The law further requires that English Heritage be consulted about planning applications which affect listed buildings.

The Ombudsman found the setting of the listed hall had not been considered when the extensions and alterations to the school were designed as the Council had given no instruction in this regard. The decision of the LPA was made by an inexperienced planning officer who failed to consult English Heritage and didn't know that she should have considered the impact of the development on the hall. English Heritage said that they would have opposed the application had they known about it, as the proposals adversely affected the open, green setting of the hall and made the school more prominent to the front and rear of it.

The Ombudsman found maladministration in the decision of the LPA to amend the terms of the planning permission (which they had no power to do) to allow cedar cladding on a prominent feature wall to be changed to a bright blue render. Another change to the initial permission allowed a new tarmac footpath along the boundary of the hall. These changes were neither publicised nor publicly discussed and there was a further failure to inform English Heritage. Local residents and English Heritage said they would have objected to these changes had they been notified of them.

The Ombudsman was satisfied that these decisions were evidence of maladministration by the Council and agreed with the complainants that they had suffered injustice as a result of them. The Council agreed to change the colour of the cladding, to discuss with English Heritage and local residents the best way to deal with the boundary footpath and to improve their internal controls and ensure staff in their planning department are properly trained, supported and supervised and are aware of the legal and policy requirements which are imposed on them during the planning process. In addition, the Council agreed to pay costs to English Heritage and to make payments to residents of the hall to reflect the time, trouble and stress in pursuing their complaints.

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Complaint upheld against Tynedale District Council

Having established in the Calderdale case above that a complaint to the Local Government Ombudsman against the decisions and acts of an LPA can be an effective remedy for those dissatisfied, this recent case provides a useful contrast to highlight the lack of remedial bite which the Ombudsman can suffer from.

The complaint concerned the way that Tynedale Council considered a planning application to change the use of an agricultural building to a home. The application included the erection of a 9 m high domestic wind turbine to avoid the need to mount 1.6 km of power lines on poles, which would reduce the amenity of the Area of Outstanding Natural Beauty in which the building was situated and present a danger to wildlife.

The Council had an established policy to ensure that overhead power lines were not installed across areas of outstanding natural beauty. It had therefore imposed conditions on other grants of planning permission requiring that power lines were placed underground. In approving the application in this case however, the council failed to impose such a condition. As a result the developer decided not to build a wind turbine and instead erected power lines on poles.

The Ombudsman found that the Council should have included a condition preventing the developer from following this course of action in the event that he chose not to erect a wind turbine. To remedy the injustice, the Ombudsman recommended that the Council should negotiate with the developer and the power supply company to remove the overhead power supply and install a wind turbine at the Council's expense. In the alternative, the Council should otherwise negotiate with both parties to ensure that the power supply is placed underground, again at the Council's expense. The Council declined to fulfil the remedy, so the Ombudsman issued a further report. The Council accepted the Ombudsman's findings, but again declined to fulfil the remedy.

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First eco-towns have been named

On Thursday 16 July the government named sites in the South and South West that will be transformed into eco-towns.

The chosen sites are Whitehill-Bordon, East Hampshire; China Clay Community, St Austell, Cornwall; North Bicester, Cherwell council and Rackheath, Greater Norwich.

The timetable has slipped. The first towns will be "under way" rather than built by 2016. The remainder will be "under way" before 2020.

Rural campaigners warned of local protests throughout the country because the zero-carbon developments could be a threat to the countryside, they believe.

Renewable Energy Directive

The latest piece of EU legislation designed to tackle climate change is the Renewable Energy Directive 2009. Under the Directive, Member States are required to adopt national targets for renewables that are consistent with reaching the EU Commission's target of 22% of electricity to be generated from renewables by 2010. The indicative target that the proposal sets for the UK is 10% of electricity by that date. It is expected that the UK will miss the 22% 2010 target by a considerable distance.

The Directive requires that the Government submit a National Action Plan to the Commission by the end of June 2010, detailing how it proposes to meet its obligations. The Directive includes measures to remove barriers to growth for renewables, including simplifying authorisation procedures for new projects.

It is anticipated that renewables will complement more established sources of energy, such as coal and nuclear power.

Hearings and Inquiries Rules 2009

New rules have been introduced in an attempt to speed up planning appeals as of 6 April.

The first amendment relates to the Statement of Common Ground (SoCG). The 2009 Rules require that the SoCG be submitted 6 weeks after the start of the appeals process and not 4 weeks before the Inquiry as was previously the case. This will mean that parties will submit their SoCG at the same time as their statements of case. It is therefore more likely that the SoCG will inform the statements of case and vice versa. It is hoped that this cross-referencing will reduce the volume of evidence produced, and thereby the length of the inquiry, making the system more efficient and cost effective for all involved.

The second amendment removes the wholly underused 9-week comment stage for hearings and inquiries.

Cases

Prem (Rooster) Limited v SSCLG 2009

Adequacy of reasons

Prem applied to quash a decision of a Planning Inspector to dismiss two of its three appeals against a refusal by the LPA to grant planning permission for the redevelopment of a former employment site that accommodated a listed building, an old mill for business and residential buildings. It also applied for planning permission for the change of use and conversion of the mill, permission and listed building consent for the listed building and a number of other buildings to form residential units.

The LPA refused all three applications and the Planning Inspector allowed Prem's appeal against the refusal of listed building consent but dismissed its appeals against the refusal of planning permission.

The Inspector found that Prem's redevelopment proposals were contrary to policies contained in the LPA's local development plan. This plan contained policies that stated that before the use of employment sites could be abandoned, it had to be demonstrated that there was no prospect of continued use. The Inspector found that Prem had failed to demonstrate that a different mixed use for the site, that would have greater employment use, would not be possible. In addition, the Inspector found there to be no overwhelming need for residential housing in the area, which could have outweighed the objectives of the LPA's policies. The Inspector also found that the proposed siting of a particular building on the site would have a negative impact on the visual impact on an existing building on the site.

On appeal to the High Court, Prem submitted that the Inspector had failed to give proper, adequate and intelligible reasons for his decision. The Court dismissed this, finding that it could not be said that his decision was inconsistent or irrational. The Court held that the degree to which a Planning Inspector had to explain how he had reached a particular decision depended on the circumstances of each case. In this decision, the Inspector did not have to explicitly state the assumptions or elements he had used in calculating the need for housing in the LPA's area, figures about which had been in dispute between Prem and the LPA. The Inspector had only taken relevant considerations into account in reaching his decision and had considered the benefits which Prem's proposed development would bring to the area.

Paul McCleave v (1) SSCLG and (2) Canterbury City Council 2009

Conservation areas: conduct at inquiry; raising new issues at the High Court

McCleave applied to quash a decision of the Planning Inspector to dismiss his appeal against the refusal of planning permission by the LPA for the change of use of an existing building to a dwelling. The building which was within a conservation area, was incomplete and subject to an enforcement notice which was upheld on appeal. McCleave proposed to retain the building, complete its construction and use it as a dwelling.

The LPA maintained that, although part of the site had once had a residential use because it had previously sited a terrace of small cottages, those buildings had been demolished and the residential use had therefore ceased. McCleave submitted that the former presence of houses on the site and the existence of the remains of some of those houses, were enough to justify his proposed residential development of the land. The Inspector found that the residential use of the land had ceased and that McCleave's proposals would be harmful to the character and appearance of the countryside and would affect the area of high landscape value. He also found that, due to the building's poor design, it would fail to preserve the character and appearance of the conservation area. He concluded that the proposal was contrary to the local development plan.

On appeal to the High Court, McCleave contended that the conduct of the inquiry by the Inspector had been unacceptable, that the omission of pages from a decision letter concerning the planning permission had affected his decision and that he had erred in thinking that all of the appeal site was within a conservation area. The Court dismissed his appeal, finding that there was nothing unacceptable in the way in which the Inspector had conducted the inquiry. The Court further found that McCleave's contention that an area of the land in question had established residential use had no substance. The court ruled that McCleave could not raise new issues which had not been dealt with at the Inspector's inquiry because this would require the consideration of new evidence. The Court concluded that there was no error of law in relation to the issues raised. Accordingly, the Inspector had been entitled to conclude that McCleave's proposal would be harmful to the character and appearance of the countryside and would fail to preserve the character and appearance of the conservation area.

FURTHER INFORMATION

For more information relating to this article, please contact:

David Goodman
Partner and National Head of Planning and Consents Team
T: +44 (0)113 284 7039
E: david.goodman@hammonds.com

Richard Glover
Partner
T: +44 (0)113 284 7023
E: richard.glover@hammonds.com

Philip Maude
Director of Compulsory Purchase
T: +44 (0)113 284 7038
E: philip.maude@hammonds.com

Martin Walker
Senior Associate
T: +44 (0)121 200 3445
E: martin.walker@hammonds.com

Julia Dixon
Senior Associate
T: +44 (0)113 284 7305
E: julia.dixon@hammonds.com