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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
[2023] EWHC 3371 (Admin)



No. AC-2023-LON-001369

Royal Courts of Justice

Tuesday, 19 December 2023

Before:

MRS JUSTICE LANG DBE

B E T W E E N :

SEEDLINGS PROPERTY LIMITED

Claimant

- and -

(1) SECRETARY OF STATE
FOR LEVELLING UP, HOUSING AND COMMUNITIES
(2) PETERBOROUGH CITY COUNCIL

Defendants

MR J HUNTER (instructed by Wright Hassall LLP) appeared on behalf of the Claimant.

MISS S HALL (instructed by the Government Legal Department) appeared on behalf of the First Defendant.

The Second Defendant did not appear and was not represented.

J U D G M E N T

MRS JUSTICE LANG:

1 This is the claimant's renewed application for permission to apply for statutory review, under s.288 of the Town and Country Planning Act 1990 ("TCPA 1990"), of the decision of an inspector dated 24 March 2023, to dismiss the claimant's appeal against the non-determination of an application for outline planning permission for the construction of up to 14 prestige self-build dwellings and associated infrastructure, on land to the east of Old Pump House, Old Leicester Road, Wansford, Peterborough, Cambridgeshire.

2 Permission was refused by HHJ Worster on the papers on 27 June 2023. The claimant's application to file a reply was not before him. I grant the claimant permission to rely on its reply.

3 There were originally four grounds of claim. The claimant no longer pursues Ground 1. Therefore, the renewed application for leave relates solely to Grounds 2, 3 and 4.

Ground 2

4 Under the first limb of Ground 2 the claimant submits that the inspector misstated the total balance test in para.11(d) of the Framework. Paragraph 11 of the Framework provides (so far as is relevant):

"Plans and decisions should apply a presumption in favour of sustainable development...

For decision-taking this means:

(c) approving development proposals that accord with an up-to-date development plan without delay or

(d) when there are no relevant development plan policies or the policies which are most important for determining the application are out of date, granting permission unless:

(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

5 At DL/58, under the heading "Planning Balance", the inspector set out the test as follows: "Crucially, the severe harm to the character and appearance of the area which would arise as a consequence of deviating from the adopted spatial strategy is not significantly and demonstrably outweighed by the identified benefits. Consequently, para.11(d) of the Framework does not weigh in favour of this particular appeal proposal."

6 The first defendant acknowledges the misstatement of the test, as he must, but he submits that the inspector was not required to set out the precise terms of the policy and that the inspector did, in fact, apply the tilted balance.

7 In my view, there is an error on the face of the decision which is more than a slip or a drafting error. As the claimant submits, the inspector's formulation inverted the test in

favour of refusal instead of in favour of approval. The claimant is entitled to have permission on this point. Whether or not the inspector did, in fact, apply the tilted balance correctly and whether or not the simplex principle is engaged are matters to be determined at the substantive hearing.

- 8 Under the second limb of Ground 2 the claimant submits that the inspector erred in failing to determine whether the policies that were most important for determining the application were out of date for the purposes of applying para.11(d). I am just persuaded that this point is arguable, but I am far from convinced it will succeed in the light of DL/57. Therefore, I grant permission on Ground 2.

Ground 3

- 9 Under Ground 3 the claimant submits that the inspector erred in rejecting the claimant's submission that 480 units at Site Number 166 (also known as the Hamptons), which were the subject of reserved matters approvals, should be removed from the supply as undeliverable, applying *Hillside Parks Limited v Snowdonia National Park Authority* [2022] UKSC 30. This number of units made a significant difference to the housing plan supply.
- 10 The inspector accepted the Council's reasons for treating these units as deliverable at DL/48, where she stated:

“The Council firmly assert that despite the appellant's challenges to its lawfulness, Site Number 166 has the benefit of planning permission and subsequent to that decision the period for legal challenge was elapsed. During the hearing sessions the Council stated that it did not intend to take any action which would erase this site from their supply. It falls beyond the scope of this appeal for me to determine whether or not any enforcement proceedings are warranted. For the purposes of this appeal, there is no firm basis for me to conclude that Site Number 166, which forms part of the wider, longstanding strategic plan allocation currently under construction would not continue to deliver homes as and when the Council predicts. This finding increases the appellant's deliverable supply figures by 480 units.”

- 11 The first defendant submits that the claimant's reasoning is incorrect because the 1993 permission, as crystallised by recent matters approvals, was extant and was capable of being implemented unless or until quashed by a court or revoked by the Council, neither of which was likely to occur. The first defendant also distinguishes the judgment in *Hillside Parks*, relied on by the claimant. Finally, the inspector did proceed to apply the tilted balance and the 480 units in dispute would not have affected the overall outcome.
- 12 I accept the first defendant's submissions on Ground 3 and I do not consider that the inspector's approach discloses any arguable error of law. Therefore, permission on Ground 3 is refused.

Ground 4

- 13 On Ground 4, the claimant submits that the inspector made inconsistent attributions as to weight in DL/31 and DL/56 in respect of the same matters, which was arguably irrational or inadequate, or at least inadequately reasoned. At DL/31 the inspector stated:

“The unilateral undertaking provides an appropriate mechanism to restrict the development of the appeal site to this particular housing

product and attracts significant weight in favour of the appeal proposal.”

At DL/56 the inspector stated:

“However, even if I were to accept the appellant’s stance on the approach housing over supply, at worst case housing land supply position amounts to a limited shortfall in the five-year housing land supply. Whilst significant the contribution that the appeal proposal would make to that limited shortfall carries moderate weight in favour of the appeal proposal. I have also found that the appeal proposal will make a contribution to local housing needs for both prestigious and self-build housing products, which has associated social and economic benefits for the area. However, given the uncertainty of the level of these particular housing needs and the fact that the Local Plan makes provision for them, in any event, whilst significant, these benefits each weigh moderately in favour of the appeal proposal. I have also identified that the appeal proposal will provide limited economic benefits, which attracts significant weight, and a range of other benefits, each of which attract moderate weight.”

- 14 The first defendant contends that these two paragraphs in the decision address different matters and so are not inconsistent. His Honour Judge Worster also took that view. I agree with him. DL/31 addressed the discrete issue of the mechanism, whereas DL/56 addressed the overall planning balance. I also consider that the attribution of weight was an exercising of planning judgment with which the court will be very reluctant to interfere at a substantive hearing. Therefore, I refuse permission on Ground 4.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.