



Public Session

Report Reference Number: P/17/2

Agenda Item No: 6

To: Planning Committee
Date: 7 February 2018
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Title: Reasons for planning decisions

Summary:

The report summarises a recent decision of the Supreme Court regarding the requirement to give reasons in planning matters. The decision will require changes to be made to the Code of Practice for the determination of Planning Matters. In the interim the report recommends that planning committee adopt a working protocol to ensure that decisions made are legally defensible.

Recommendations:

- i. To note the content of the report and agree the working protocol set out in paragraph 2.6 pending the update to the Code of Practice for Dealing with Planning Matters.**

Reasons for recommendation

To ensure that decisions made are legally defensible.

1. Introduction and background

- 1.1 Until 2003, there was no statutory duty on an LPA to give reasons for granting planning permission. There was then a change of thinking and between 2003 and 2013, summary reasons for the grant of planning permission had to be given. This duty was repealed by the Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013 (SI 2013/1238). The explanatory memorandum suggested that the duty had become "burdensome and unnecessary"
- 1.2 However, since 2014, there has been a duty on a local authority officer making any decision involving the "grant [of] a permission or licence" to

produce a written record of the decision "along with the reasons for the decision" and "details of alternative options, if any, considered or rejected" (*Openness of Local Government Bodies Regulations 2014 (SI 2014/2095) (OLGB Regulations 2014)*). This includes the grant of planning permission.

- 1.3 An LPA must give reasons for refusing planning permission or for imposing conditions (*Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595)*).

2 The Report

- 2.1 On 6 December 2017, the Supreme Court gave judgment in *Dover DC & China Gateway International Ltd v CPRE Kent* [2017] UKSC 79 concerning the duty on local authorities to give reasons for planning decisions. The decision affirmed a recent Court of Appeal ruling in *Oakley v South Cambridgeshire*. The Supreme Court upheld the principle that, although there is no general common law duty to give reasons for a decision to grant planning permission, fairness may in certain circumstances require reasons to be given, even where there is no statutory duty to provide them. The justifications underlying that principle include the fact that the giving of reasons is essential to enable the Court to review the legality of the decision (which, in the case of planning decisions, may be of legitimate interest to a wide range of parties, private and public) and because of the importance of ensuring that "justice should not only be done, but also be seen to be done".
- 2.2 While each case will turn on its facts, the common law will "typically" require reasons to be given, Lord Carnwath stated, "where, permission has been granted in the face of substantial public opposition and against the advice of officers, for projects which involve major departures from the development plan, or from other policies of recognised importance (such as the "specific policies" identified in the NPPF). Such decisions call for public explanation, not just because of their immediate impact; but also because they are likely to have lasting relevance for the application of policy in future cases." Lord Carnwath rejected the suggestion that there would be uncertainty as to when reasons would be required, stating that it "should not be difficult" for local planning authorities to identify cases where they are necessary.
- 2.3 The Court held that there was nothing unduly burdensome in requiring members of a planning committee to provide reasons for their decision so far as those reasons could not be gleaned from the documents available as part of the planning application given, in particular, that the Local Government Model Council Planning Code and Protocol (2013 update) requires planning committee members to "understand the planning reasons leading to [the decision in question]".
- 2.4 As to the standard of the reasons required, the Supreme Court rejected the distinction previously drawn in *R (Hawksworth Securities PLC) v Peterborough CC* [2016] EWHC 1870 (Admin) between the standard of reasons required of a planning inspector conducting an appeal and a local planning authority determining a planning application. In all cases, the

question for the court is whether, by reference to all of the information available, the reasons for the decision-maker's decision leave "genuine doubt ... as to what (it) has decided and why".

- 2.5** In the light of this clarification of the common law duty to give reasons Officers have considered the Code of Practice for the Determination of Planning matters which forms part of the constitution and consulted with the Chair of Planning Committee. It is considered that the Code will require updating, particularly at paragraph 10.5 which provides

'...where the Planning Committee is minded to approve or refuse a planning application contrary to the recommendations of the Lead Officer – Planning or the Development Plan, if agreement can be reached at the meeting rather than deferring the item, the planning reasons shall be fully minuted.'

This section was intended to avoid deferrals wherever possible in the light of the then recently introduced performance measures and the implications of being designated as underperforming. However the implementation of the Planning Service Review has significantly improved performance. The Head of Planning and the Planning Development Manager consider that the issue of legally defensible decisions should be the priority over the speed of decision.

- 2.6** It is recommended that Planning Committee adopt a working protocol in advance of the review of the Planning Code as follows:

Where a Councillor wishes to move a proposal contrary to the recommendation of the planning officer he/she should:

- Confirm whether they accept the officer's view on whether the application in question is or is not in conflict with the Development Plan, and if not, give reasons for that view.
- Identify any relevant policy reasons for their view
- Confirm whether they agree with the identification of material considerations set out in the report and if not
 - o Identify what additional material considerations exist and/or
 - o Identify where different weight has been given to that in the officer report
- All such proposals will then be deferred to the next committee cycle so that officers can assess the proposed reasons and advise the Committee on the adequacy of the proposed reasons (rather than delaying the meeting and seeking to draft and advise on these at the time)..
- When the matter returns to Committee, Members will need to consider the drafted reasons and officer advice before voting on whether to accept the drafted reasons or amend the drafted reasons. Members who were not present at the initial meeting will need to consider (on a case by case basis) whether they have sufficient information to form a properly informed view such that they take part in the vote.

3 Legal/Financial Controls and other Policy matters

Legal Issues

- 3.1 The issue of decisions contrary to the officer recommendations without adequate reasons leaves the Council vulnerable to legal challenge.

Financial Issues

- 3.2 None.

4. Conclusion

- 4.1 That a working protocol should be adopted to comply with the law in advance of a full review of the planning code.

5. Background Documents

Judgement in Dover District Council v CPRE Kent [2017] UKSC 79

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Appendices:

None.