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C1/2015/2532

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE HIGH COURT

QUEEN'S BENCH DIVISION

(MRS JUSTICE LANG)

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 7 July 2016

B E F O R E:

LORD JUSTICE LAWS

LORD JUSTICE TOMLINSON

LORD JUSTICE LEWISON

OLD HUNSTANTON PARISH COUNCIL

Respondents

v

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Appellant

(DAR Transcript of
WordWave International Limited
Trading as DTI
8th Floor, 165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Mr R Honey appeared on behalf of the **Appellant**

Mr L Wilcox and Ms H Sargent appeared on behalf of the **Respondents**

J U D G M E N T

(Approved)

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1. **LORD JUSTICE LAWS:** This is the Secretary of State's appeal with permission granted by myself on 26 November 2015 against the judgment of Lang J given in the Planning Court on 15 July 2015.
2. The judge upheld the claim brought pursuant to section 288 of the Town and Country Planning Act 1990 by the Old Hunstanton Parish Council (to which I will refer as the Claimant) for an order to quash the decision of 1 December 2014 by the Secretary of State's inspector to grant planning permission for an affordable housing development on land at Coach House, Cromer Road, Old Hunstanton.
3. On 18 May 2016 I also granted permission to the Second Respondents, Hastoe Housing Association Limited, who are the proposed developers of the site, to appeal on the same ground as the Secretary of State.
4. The central issue in the case concerns the proper interpretation of policies CS06 and CS09 of the Core Strategy of the Kings Lynn and West Norfolk Borough Council, the relevant Local Planning Authority which was the Third Defendant before Lang J. The Core Strategy was adopted in July 2011. These policies constitute the Local Planning Authority's "Rural Exception Site" policy. As the supporting text to policy CS06 states in the second sentence at paragraph 652:

"Rural exception sites can be used to enable the Council to deliver affordable housing in rural communities on sites not otherwise available for residential development."

5. Before setting out the judge's crisp summary of the outline facts, there are some brief points by way of background which I may take from the helpful skeleton argument prepared by Mr Honey on behalf of the Secretary of State:

"5. The borough of Kings Lynn and West Norfolk is a large vastly populated rural borough with a large number of isolated villages and hamlets. The coastal part of the borough has a significant population of retired people in second homes. The borough has a low proportion of affordable housing. Hunstanton is surrounded by a number of smaller rural villages which are served by the town.

6. Hunstanton and Old Hunstanton are adjacent to each other. The edges of the two settlements are only some 230 metres apart or less than one field length. The appeal site adjoins the edge of Old Hunstanton and is some 130 metres away from the edge of the built up area of Hunstanton. The boundary between the civil parishes of Hunstanton and Old Hunstanton runs along one side of the site. The site just falls within the Old Hunstanton parish. The local affordable housing proposed would be between the two settlements on the boundary of the two parishes."

6. The judge introduced the case thus:

"2. The Site is within the administrative boundary of the Claimant Parish Council. The Second Defendant is the proposed developer of the Site.

3. The Site is approximately 0.5 hectares of a green field site (an agricultural field) on the southern edge of Old Hunstanton. It is located on the eastern side of Cromer Road (A149). The proposed development is for 15 residential units of affordable housing. As it is outside the settlement boundary of Old Hunstanton, the issue is whether planning permission could be granted, applying a Rural Exception Site policy.

4. The Third Defendant, as local planning authority, refused permission for the development on 6 February 2014, on the grounds that it would result in a reduction in the separation between the settlements of Hunstanton and Old Hunstanton, thus causing unacceptable levels of harm to the character of Hunstanton and Old Hunstanton and to the character of the countryside. The harm would not be outweighed by the benefit of providing affordable housing.

5. In her Decision, dated 1 December 2014, the Inspector allowed the Second Defendant's appeal and granted planning permission. She concluded that the proposed development (combined with a planning obligation under section 106 TCPA 1990 to ensure that the dwellings remained affordable) would comply with Core Strategy Policies CS06, CS08 and CS12 and the National Planning Policy Framework ("NPPF"). In her view, the benefits of the scheme, in terms of delivering affordable housing, outweighed the limited harm to the character and appearance of the area, particularly with regard to the coastline and separation of settlements ([25])."

7. The judge set out the material planning policies at length at paragraphs 17 to 34, including at paragraphs 33 to 34 provisions contained in the national policy document Planning Policy Statement 3 (PPS3) which, as I shall show, played an important part in her approach to the Core Strategy. It was in fact replaced by the National Planning Policy Framework (the NPPF) in 2012.

8. The glossary to the Core Strategy defines the Rural Exception Site policy thus:

"Rural Exceptions Policy/Site - a development or Development Plan document may allocate small sites within rural areas solely for affordable housing, which would not otherwise be released for general market housing."

9. Then policy CS06 itself has this:

"In the Rural Villages, Smaller Villages and Hamlets, more modest levels of development, as detailed in Policy CS09, will be permitted to meet local needs and maintain the vitality of these communities where this can

be achieved in a sustainable manner..."

10. Policy CS09 under the heading "Rural Villages" adds this:

"New housing allocations will be restricted solely to the provision of small scale infilling or affordable housing allocations or potential exceptions housing to meet the identified needs of the local community."

11. I should also refer to CS02, which the judge summarised in this way:

"18. CS02 on Settlement Hierarchy sets out a six tier hierarchy which ranks settlements according to their size, range of facilities and capacity for growth.

19. In summary, the tiers are:

I) Sub-regional centre: Kings Lynn

Ii) Main towns: Hunstanton, Downham Market

Iii) Settlements adjacent to Kings Lynn and the main towns: none relevant to this case.

Iv) Key Rural Service Centres: 20 are listed of which only Heacham is relevant to this case.

V) Rural villages: 32 are listed of which only Old Hunstanton is relevant.

Vi) Smaller villages and hamlets: 54 are listed of which only Ringstead and Holme next the Sea are relevant."

As I have shown, policy CS06 referred in terms to the rural villages, smaller villages and hamlets.

12. The supporting text to CS02 has this:

"Rural villages have a limited but locally important role meeting the needs of the immediate village. Sustaining the existing services is a key priority. These settlements may see some limited growth, which will help support surrounding rural areas (e.g. some small-scale infilling or affordable housing)."

13. In seeking planning permission the developers sought to satisfy the Core Strategy in considerable measure by reference to housing needs in the town of Hunstanton and the large village of Heacham. The inspector found in paragraph 24 that the proposed development complied with policy CS06 and other policies. Paragraph 24 of the decision letter reads as follows:

"Having considered all the points raised, I conclude benefits of the scheme in terms of delivering affordable housing outweigh any harm,

which in my view would be very limited, to the character and appearance of the area, particularly with regard to the coastline and separation of the settlements. The proposal would therefore comply with CS policy CS06, CS08 and CS12 and the Framework."

14. The inspector did not refer in terms to CS09. However, it may be noted that in paragraph 6 she noted that there has to be a need for affordable housing. She went on to ask whether there was a need for affordable housing "for local residents" (paragraph 7), to consider "the need for affordable housing in the area" (paragraph 9) and to conclude that there was "a need in the locality" (paragraph 11) and "a need for such housing in the local area" (paragraph 12).

15. It is to be noted that the Local Planning Authority took a like view upon this aspect. The officer's report said there was "a valid case for considering the current application as an exception site in line with the NPPF and CS06 and CS09." The minutes of the relevant meeting record that the planning control manager repeated his advice to the committee, concluding:

"Officers believe that the exception site was appropriate."

16. The LPA's decision notice, issued following the committee's decision, recorded that:

"The application proposes the development of housing in the countryside as an exception site for affordable housing to be provided in perpetuity to meet local needs."

17. The LPA has confirmed its position in a letter to the court, as the Secretary of State notes in Mr Honey's skeleton. So it was the inspector granted planning permission.

18. The principal issue in the section 288 proceedings is whether the requirement of local housing needs stipulated in the Core Strategy should be read restrictively so that it could only be met in this case by reference to housing need arising in Old Hunstanton itself or in effect other nearby rural villages and hamlets or whether the requirement should be read more broadly so that although the location of a development justified by the policy has indeed to be rural, the "local need" which has to be shown need not be. Hence, need in Hunstanton town may qualify. The inspector proceeded on the latter basis. The judge held that the former was correct.

19. As I have indicated, the judge attached importance to the national policy guidance contained in the old PPS3. At paragraph 25 she cited paragraph 6.5.2 of the supporting text to policy CS06. I have already set out the second sentence. The first sentence reads as follows:

"In line with national planning guidance for housing (PPS3), the Council's approach to housing in rural areas will seek to sustain rural communities, identifying a need for both affordable and market housing."

20. At paragraph 32 the judge stated:

"It is apparent from paragraph 6.5.2 of Policy CS06 [with respect, she means the supporting text], and the wording of the Glossary definition, that the [Local Planning Authority] was intending to give effect to Planning Policy Statement 3 (PPS3)."

21. Then at paragraph 33 the judge cited paragraph 30 of PPS3 as follows:

"PPS3 provides:

"30. In providing for affordable housing in rural communities, where opportunities for delivering affordable housing tend to be more limited, the aim should be to deliver high quality housing that contributes to the creation and maintenance of sustainable rural communities in market towns and villages... Where viable and practical, Local Planning Authorities should consider allocating and releasing sites solely for affordable housing, including using a Rural Exception Site Policy. This enables small sites to be used, specifically for affordable housing in small rural communities that would not normally be used for housing because, for example, they are subject to policies of restraint. Rural exception sites should only be used for affordable housing in perpetuity. A Rural Exception Site policy should seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection, whilst also ensuring that rural areas continue to develop as sustainable, mixed, inclusive communities."."

22. Paragraph 30 of PPS3 has a footnote to the expression "small rural communities" which the judge also set out. It says:

"Small rural settlements have been designated for enfranchisement and right to acquire purposes (under Section 17 of the Housing Act 1996) by [then the document identifies two Statutory Instruments]."

It is a little unclear precisely why that was footnoted, as my Lord Lewison LJ pointed out in the course of argument.

23. The judge described her interpretation of the Core Strategy at paragraph 35 of the judgment and did so in five subparagraphs. Before setting them out, I should give some account of the considerations which informed her conclusions. At paragraph 34 she said this:

"The statutory provisions in the footnote to PPS3 set out the rural areas in Norfolk which are "designated rural areas" for the purposes of tenants' "right to buy". In a designated rural area, restrictions may be imposed on re-sales, to protect stocks of social housing. Only parishes with 3,000 or fewer inhabitants are eligible and the population density must be below a specified level. The designated parishes in West Norfolk include Old Hunstanton, Holme next the Sea and Ringstead but not Heacham or

Hunstanton (Schedule 1 to the Housing (Right to Acquire or Enfranchise) (Designated Rural Areas in the East Order 1997/623). Some of the Key Rural Service Centres listed in CS02 are designated rural areas, by virtue of their small size, but not Heacham, which has a population well in excess of 3,000."

24. Despite counsel's researches, we have not been informed what was the statutory source of this number of 3,000 there referred to by the judge, although as I will show the number appears also in the Local Planning Authority's Affordable Housing Policy.
25. Then after setting out her interpretation of the Core Strategy at paragraph 35 the judge gave details of what she described as "other material considerations". Among these was the Third Defendant council's Affordable Housing Policy (the AHP) which was adopted in April 2011 and as I understand it was developed alongside the Core Strategy. The judge set out or described substantial extracts from the AHP at paragraphs 38 to 40. I will cite only paragraphs 5.6, part of 7.3 and 7.1.1. The latter appears under the heading "Small Rural Settlements (3,000 and below) - Exception Site policy":

"5.6. The main route for delivery of affordable housing in rural areas is the 'exceptions policy' that allows for small scale development outside of a village's development boundary. Such schemes aim to meet the identified needs of households with a connection to the village. The aim is to meet rural need and help sustain communities by giving preference through the allocation of those homes to those with established local connections."

Then at 7.3:

"It is possible to develop housing in small rural settlements (with populations of 3,000 or under as designated in s.17 of the 1996 Housing Act and various statutory instruments) under a Rural Exceptions Site policy. Policy CS09 of the Core Strategy Document sets out the principle whereby affordable housing can be developed on land outside the development boundary which would not normally be used for housing...

Housing developed under these policies must meet local identified need with local people given preference for these homes... Future allocations... must be in accordance with the local connection criteria."

Lastly, 7.1.1:

"Under PPS3 there is a requirement that evidence of housing need be provided before planning permission can be granted for rural exception site development and that any proposed development will 'address the needs of the local community by accommodating households who are either current residents or have an existing family or employment

connection whilst also ensuring that rural communities continue to develop as sustainable, mixed and inclusive communities."

26. Now I will set out paragraph 35 of the judgment which, as I have said, takes the judge's interpretation of the Core Strategy:

"i) Its purpose is to provide affordable housing in small rural communities (CS Glossary definition; CS06; CS06 supporting text; CS09; PPS3). Although the CS Glossary definition is broad and refers to "rural areas" and PPS3 refers to affordable housing in "rural communities in market towns and villages", PPS3 also indicates that the Rural Exceptions Site policy is specifically for housing in "small rural communities", as defined. These are designated rural parishes with fewer than 3,000 inhabitants. Policies CS06 and CS09 only expressly provide for the Rural Exceptions Site policy to be applied in the categories of "rural villages" and "smaller village and hamlets". Whilst Policy CS02 and the settlement hierarchy is relevant to all development, including housing, it sets out general policy and does not itself make any reference to the locations in which the Rural Exceptions Sites policy may operate.

ii) Such housing development is intended "to meet local needs and to maintain the vitality of these communities" (CS06) and "to meet the identified needs of the local community" (CS09). When read together with the references I have listed at (i) above, I consider that the needs referred to here are primarily the needs of the small rural settlement in which the development site is based. In my view, this interpretation is consistent with both the wording and the objective of the Rural Exception Site policy, as set out in PPS3 and Policies CS06 and CS09. The policy is, exceptionally, relaxing planning constraints on development in rural areas so as to meet the needs of small rural communities, not to meet the housing needs of neighbouring towns and larger conurbations.

iii) The term "local" in the phrases "local needs" and "local community" is not defined. I consider that the natural meaning of the term, in this context, is not necessarily limited to the needs of the settlement in which the development is situated. It could also extend to the needs of other small rural settlements and communities nearby, if in the judgment of the decision-maker, they are "local".

iv) In furtherance of the policy objective of providing affordable housing in rural communities, development may be permitted at rural sites, including green field sites, which would not generally be approved for this purpose (CS Glossary definition; PPS3; CS06 supporting text).

v) This is an exception to the CS general strategy which is to protect the countryside and not to allow green field sites to be developed for housing (CS06)."

The judge does not in terms explain the connection between her conclusions and the AHP.

27. The essence of the difference between the parties as to the interpretation of the Core Strategy concerns the meaning of "local needs" in CS06 and "needs of the local community" in CS09. As I have indicated, the Secretary of State and the developers say that while it is plain that the location of housing development within the Core Strategy has to be rural, the local need referred to need not be. Attention is drawn to aspects of the decision letter at paragraphs 6, 7, 9, 11 and 12 which I have already summarised.
28. The Claimants for their part assert that in context the essential meaning of "local needs" is need arising in the settlement where the exception site is to be located, though it is accepted that need arising in other small rural settlements in the locality may be taken into account.
29. I should say at once that in my judgment the issue is not, as Miss Sargent for the developers submitted this afternoon, one of the standard of review. It is upon this first issue in the case a question of the construction of the policy.
30. There is no dispute as to the applicable legal principles. (1) Decision letters are to be read straightforwardly in a common sense manner without excessive legalism and according to their natural meaning: see Tesco v Dundee [2012] PTSR 983. I would draw attention to paragraphs 18, 19, 21, 25 and 35. I may be forgiven for not setting them out. See also South Buckinghamshire District Council v Porter (No 2) [2004] 1 WLR 1953 at paragraph 36. There is much other learning to like effect. (2) Supporting text cannot be used to introduce policy not contained in the primary policy document, but it may be relevant to the interpretation of the policy there set out: see Cherkley Campaign [2014] EWCA Civ 567 at paragraph 16.
31. Bearing these principles in mind, I conclude as follows. (1) As a matter of language, the terms "local needs" and "needs of the local community" in context support the narrower approach of the Claimants at least as readily as the wider approach of the Secretary of State and the developers. The judge's conclusions involve no departure from the ordinary meaning of the relevant terms. The context of "local needs" in CS06 tends to support this conclusion. The sentence in which that expression appears begins with the phrase "in the rural villages, smaller villages and hamlets". Read as a whole then, the critical language both in CS06 and CS09 is consistent with the view arrived at by the judge.
32. (2) Given that "local needs" are not defined in the policies themselves and might be read more or less broadly, the judge was, in my view, entitled to look at the supporting text and the associated AHP policy for a steer as to the intention of the policy maker.
33. (3) As I have shown, the supporting text to CS06 refers in terms to PPS3. Both PPS3 and the AHP (paragraph 7.1.1) fill out the "needs of the local community" by reference to current residents, plainly residents of the community in question, or persons with a

family or employment connection, plainly a connection with the community in question.

34. (4) Likewise, PPS3 and the AHP both emphasise "small rural communities". These are apparently contemplated as being communities with 3,000 inhabitants or fewer. The 3,000 figure is taken up in the AHP at 7.3 and 7.1.1. Miss Sargent for the developers submitted that the reference in paragraph 6.5.2 of the supporting text to CS06 was not intended to encompass material such as that contained in PPS3 paragraph 30. I cannot see that that is so.
35. (5) These supporting materials point, I think, strongly to the narrower approach to "local needs". I consider, however, and this is of some importance, that the references to 3,000 inhabitants should be taken at most as a guide to the location of need where that arises and not a definition of the eligible communities. If the judge took the latter view as she appears to have done (see paragraph 39), she was, with respect, mistaken. To define communities eligible for housing under the Core Strategy as confined to 3,000 inhabitants would be to introduce a rigidity into the policy which is not to be found in CS06 or CS09.
36. (6) The reference in paragraph 6.5.2 of the supporting text to CS06 "the council's approach will seek to sustain local communities" and the reference in PPS3 paragraph 30 quoted in the AHP in paragraph 7.1.1 to "ensuring that rural communities continue to develop sustainable mixed and inclusive communities" in my judgment points strongly to the existence in the Core Strategy of a nexus, as the Claimants put it (paragraph 33 of counsel's skeleton), between the location of Rural Exception Site development and the location of the need for such development. Such a nexus reflects the overall policy rationale, which is the protection of the countryside.
37. To deploy the policy as a means in principle of alleviating the shortage of affordable housing in non-rural areas such as Hunstanton town is thus entirely at odds with what I see as the overall thrust of the Core Strategy. However, some flexibility is important here. There may be individual cases where persons living in a town have a specific connection with the rural location of the proposed development site. Lang J recognised as much at paragraph 54. In such a case, persons in those circumstances might, subject to the decision maker's judgment, be accommodated by means of the Core Strategy, but a general alleviation of housing need in a conurbation is not to be achieved under that strategy.
38. None of these observations, I think, are contradicted by points made by Mr Honey for the Secretary of State as to the demography of the need for housing in this particular case. Mr Honey also submitted this morning that if it were not Hunstanton town but a considerably larger conurbation though one just as near the development site whose housing shortage was to be alleviated, then the policy might not apply. But once that is accepted, it is surely accepted that the term testimony "local needs" has a greater nuance than mere proximity.
39. We were shown some observations about the policy made by officers of the LPA at a meeting of the planning committee on 3 February 2014 and also certain written

comments (tabs 21 and 22 of the bundle). I do not, with respect to Mr Honey, consider that these materials take the matter further.

40. Accordingly, in my judgment and for all these reasons, the appeal fails so far as it relates to the interpretation of the Core Strategy.

41. There are two other issues. Reasons: the judge held (paragraph 59) that:

"by failing to address expressly the Claimant's submissions on the proper interpretation and application of the policy, [the inspector] did not give adequate reasons for her decision."

The judge cited South Buckinghamshire (No 2) [2004] 1 WLR 1953 per Lord Brown at paragraph 36.

42. If my Lords agree with my conclusions as to the first and principal issue, the reasons challenge, as it seems to me, falls away. I will deal with it very briefly.

43. The judge said at paragraph 61:

"More generally, it seems to me that an Inspector ought to give reasons for his or her conclusions on any fundamental question raised about the proper interpretation of a development plan policy, as this is central to his or her statutory duty, under section 38(6) PCPA [Planning and Compulsory Purchase Act] 2004, to determine an application for planning permission in accordance with the development plan, unless material considerations indicate otherwise."

44. In this case the LPA and the developers were at one as to the interpretation of the policy. As Lord Brown said:

"The reasons need refer only to the main issues in the dispute, not to every material consideration."

45. But that aside, it is surely clear that the inspector took the view that the Core Strategy allowed for a rural exception on facts such as those in the present case. There can have been no doubt of his acceptance that the requirements of the policy were met. I have already cited paragraph 24 of the decision letter.

46. In all these circumstances, were it necessary to decide the issue, I would not consider that there was any want of legally adequate reasoning.

47. Lastly, there is a point about evidence. The question here is whether the judge was wrong to hold at paragraph 54 of the judgment that certain evidence of need relied on by the developers amounted to no more than expressions of interest. She should have held, it is said, that there was in any event clear evidence of need so that even if the inspector had adopted the narrow approach to the policy, the proposed development would still have fallen within it.

48. The Secretary of State and the developers say there was firm evidence of need described in the officer's report to which we were taken by Mr Honey this afternoon. The judge said this at paragraph 55:

"It was submitted that this [that is to say the material in the officer's report] was sufficient to establish local need. I agree with Counsel for the Claimant that this evidence, as presented, does not demonstrate housing need; these are merely expressions of interest, which on closer investigation may, or may not, amount to "need", and which may, or may not, qualify as "local". The evidence is very general in nature, and the forms and letters relied upon are not in evidence. Importantly, the Inspector made no mention of this evidence in her Appeal Decision, and I cannot be satisfied that she relied upon it in reaching her decision. Also, set against the Second Defendant's evidence, was the evidence from objectors arguing that there was little identifiable local need, and the fact that only 6 dwellings had been allocated to Old Hunstanton in the emerging Site Allocations development plan document and yet 15 dwellings were now proposed. I do not consider that this court is able to make primary findings on housing need in this case, based on incomplete evidence, to compensate for shortcomings in an Inspector's decision. Nor can I accept the First Defendant's submission that even if the Inspector had correctly interpreted and applied the policies, it would have made no difference to the outcome. The evidence of local housing need is simply too uncertain."

49. I will not cite the officer's report. It is said that it referred to 18 people having a connection with Old Hunstanton who were "in housing need". However, the primary material was not, as the judge said, in evidence. The context in which it disclosed or may have disclosed need had not been tested by the inspector.
50. The judge's reservations at paragraph 55 overall seem to me to be justified. The core point here, I think, is that the Appellants in truth are seeking to construct a planning case on the merits which was not put to and certainly not decided by the inspector. In those circumstances, in my judgment, it is not shown that the judge's approach to this aspect falls to be overturned.
51. For all these reasons, for my part I would dismiss the appeal.
52. **LORD JUSTICE TOMLINSON:** I agree.
53. **LORD JUSTICE LEWISON:** I also agree.