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Case No: CO/4685/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

The Civil Justice Centre
Manchester

Date: 16th November 2021

Before :

HIS HONOUR JUDGE BIRD sitting as a Judge of this Court

- -

Between :

RIBBLE VALLEY BOROUGH COUNCIL — **Claimant**

- and -

(1) THE SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT — **First Defendant**

(2) OAKMERE HOMES (NW) LIMITED — **Second Defendant**

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Miss Reid (instructed by **Ribble Valley Borough Council**) for the **claimant**
Mr Goatley QC (instructed by Addleshaw Goddard LLP) for the **second defendant**

Hearing dates: 16th September 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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His Honour Judge Bird :

Introduction

1. This is an application made under section 288 of the Town and Country Planning Act 1990 to the High Court seeking an order quashing a decision of the Secretary of State's Inspector Graeme Robbie, made on 10 November 2020 ("the Decision"). Permission to proceed was granted by His Honour Judge Eyre QC (as he then was) on 21 January 2021.

2. The Inspector allowed a section 78 appeal against a failure on the part of Ribble Valley Borough Council ("RV") to give notice within the prescribed period of a decision on an application for planning permission. He granted planning permission for the erection of 39 dwellings with landscaping and associated works with access at the junction of Chatburn Road and Pimlico Link Road in Clitheroe.

The Relevant Policies

3. When deciding the appeal, it is common ground that the Inspector was obliged to consider The Ribble Valley Borough Council Core Strategy 2008-2028 ("CS"). The Development Strategy forms part of the CS. Key statement DS1 deals with the broad intended location of three types of future development: housing, development to promote employment opportunities and retail and leisure development. Key statement DMG2 sets out strategic considerations in respect of development management policy.

4. DS1 requires that the majority of new housing be concentrated within an identified strategic site located to the south of Clitheroe and the principal settlements of Clitheroe (the main administrative centre of the RV with a population of 14,765 – see para.2.6 of the local plan), Longridge (population 7,724 and the other main town in the RV) and Whalley (population 3,895). The extent of the Clitheroe settlement identified in policy DS1 is outlined on a plan exhibited at exhibit 11 to the witness statement of Nicola Hopkins.

5. DMG2 provides:

> *Development should be in accordance with the core strategy development strategy and should support the spatial vision.*
>
> *1. development proposals in the principal settlements of Clitheroe, Longridge and Whalley…. should consolidate, expand or round-off development so that it is closely related to the main built up areas, ensuring this is appropriate to the scale of, and in keeping with, the existing settlement*

6. Policy DMH3 deals with areas of open countryside or areas of outstanding natural beauty. There, residential development is to be limited to development essential for the purposes of agricultural or residential development which meets an identified local need.

7. The following definitions form part of the CS and are set out in the glossary:

    a. CONSOLIDATION – Refers to locating new developments so that it adjoins the main built up area of a settlement and where appropriate both the main urban area and an area of sporadic or isolated development.

    b. SETTLEMENT – see Defined Settlement

c. DEFINED SETTLEMENT – A defined settlement is one which contains at least 20 dwellings and a shop or public house or place of worship or school or village hall, i.e., they are of a size and form that justifies treatment as a settlement. Settlements smaller than this limit will not be given settlement boundaries as they are not considered to be large enough or to contain enough facilities to allow for growth beyond that delivering regeneration benefits or local needs housing.

d. EXPANSION – This is limited growth of a settlement generally it should be development which is in scale and keeping with the existing urban area.

e. ROUNDING OFF – Development which is essentially part of rather than an extension to the built up part of the settlement. It can be defined as the development of land within the settlement boundary (which is not covered by any protected designation) where at least two thirds of the perimeter is already built up with consolidated development.

The Decision

8. The Decision records that RV had resolved that if they had determined the planning application, they would have rejected it on the ground that the proposed development would not be in a suitable location.

9. The proposed development is outside the boundary of the settlement of Clitheroe and is in the open countryside so that development at the site would be contrary to policy DMH3. The Decision records the fact at paragraphs 8 and 9. The Inspector nonetheless concluded that the development would be in accordance with DMG2. The Secretary of State does not resist RV's application to quash the Inspector's decision. The application is pursued by the developer.

10. The Decision includes the following (with emphasis added by underlining):

    a. (Paragraph 11) Although located beyond Clitheroe's settlement boundary, the appeal site is well related to it in terms of built form, and its physical and visual relationships. The appeal site is therefore seen very much as a part of Clitheroe and the pattern of development along Chatburn Road. CS policy DMG2 seeks to support the CS's development strategy as set out in Key Statement DS1. To this end, it states that development proposals in principal settlements such as Clitheroe should consolidate, expand or round-off development so that it is closely related to the main built up areas, ensuring that it is appropriate to the scale of, and in keeping with, the existing settlement.

    b. (Paragraph 12) The site is clearly not within the defined settlement boundary for Clitheroe. However, having regard to the nature and context of the land immediately around it, particularly the adjacent and adjoining residential development and prevailing pattern of development and built form along Chatburn Road, it is not unreasonable to conclude that the proposed residential development of the appeal site would consolidate development in a manner closely related to the main built up area of Clitheroe.

    c. (Paragraph 13) The CS Glossary definition of consolidation refers to new developments adjoining the main built up area of a settlement. The proposal would do this. The Glossary does not distinguish between consolidation within or beyond a settlement, just that it adjoins the main built up area. The prevailing pattern of development along Chatburn Road is not one of isolated or sporadic development, even if the glossary definition also includes these, where appropriate, within the

definition of consolidation.

d. (Paragraph 14): the appeal site can be sufficiently seen as a consolidation in the terms set out in CS policy DMG2 and the CS Glossary, confers support from the first part of CS policy DMG2.

11. The single ground of challenge to the Decision is that the Inspector made an error of law when interpreting (and applying) DMG2.

The Arguments

12. Miss Reid of Counsel appeared for RV. She argued that the proper construction of the policy was clear. Policy DMG2 must be read in context. Key statement DS1 is an important part of that context. A key aim of the CS is to concentrate new development in certain identified areas. The CS does not prohibit new development outside those identified areas but imposes far more stringent requirements on such development (see DMH3). RV submits (and it is agreed) that the Inspector correctly identified the development site as falling outside an area identified in policy DS1. Having correctly identified the proposed site of the development the Inspector ought to have gone on to apply the correct policy (DMH3). Whilst it would be potentially open to the Inspector to depart from policy DMH3 if he was to follow that course, he would need in the first instance to accept that the policy would apply and then provide proper and cogent reasons for departing from it. In fact, the Inspector applied policy DMG2, the wrong policy.

13. Mr Goatley QC appeared for the developer. In summary, he submitted that the Inspector was entitled to reach the conclusion he did as a matter of planning judgment. The Inspector identified that policy DMH3 was relevant (see paragraphs 7 and 8 of the Decision) and went on to say (paragraph 15) that the policy would not justify the grant of planning permission. He submitted that whether a development site is "in" a principal settlement "is not simply a mechanistic exercise but is one which involves planning judgment". He derives support for that proposition from the terms defined in the glossary in particular reference to the definition of "rounding off" which he submits leaves open the possibility of rounding off taking place outside a settlement boundary and the definition of "consolidation" which does not refer to the settlement boundary. The question of consolidation was a matter of planning judgment.

The Law

14. There was no disagreement about the law. Mr Goatley QC helpfully summarised the position at paragraph 6 of his skeleton argument by reference to paragraph 19 of *Bloor Homes v SoSCLG* [2014] EWHC 754 (Admin) a decision of Lindblom J (as he then was), *Hopkins Homes v SoSCLG* [2017] 1 WLR 1865 and *Tesco Stores v Dundee* [2012] PTSR 983:

a. Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues.
b. The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a

review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State* [2001] EWHC Admin 74, at paragraph 6).

c. Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).

15. Mr Goatley QC cited the following paragraphs from *Hopkins* (in the Supreme Court) in full:

> *"25 It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light…. the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. With the support and guidance of the planning inspectorate, they have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local. As I observed in the Court of Appeal (Wychavon District Council v Secretary of State for Communities and Local Government [2009] PTSR 19, para 43) their position is in some ways analogous to that of expert tribunals, in respect of which the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence: see AH (Sudan) v Secretary of State for the Home Department (United Nations High Comr for Refugees intervening) [2008] AC 678, para 30, per Baroness Hale of Richmond.*
>
> *26 Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies, as in the Tesco case. In that exercise the specialist judges of the Planning Court have an important role. However, the judges are entitled to look to applicants, seeking to rely on matters of planning policy in applications to quash planning decisions (at local or appellate level), to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgment in the application of that policy; and not to elide the two."*

16. I would add to these authorities *Holborn Studios v Hackney LBC* [2020] EWHC 1509 (Admin). Dove J said at paragraph 43:

> *"Where a question of interpretation of planning policy does genuinely arise for the court, in approaching that question the court must bear in mind that the policy is not a statute or other formal legal instrument, but is intended to be a practical aid to decision-taking. These documents are statements of policy and their purpose and intended audience (being both professionals and the wider public) must be taken into account in assessing any question of interpretation which arises. The policy should be read and interpreted in a straightforward manner, taking into account the context in which it arises."*

17. As Mr Goatley QC submits the courts have repeatedly cautioned against over legalisation of the planning process.

The Dispute

18. The real area of dispute between the parties is whether the Inspector's conclusion that planning permission should be granted was based on the simple and legitimate exercise of a planning judgment arising out of a correctly interpreted policy (in which case, given the absence of an irrationality challenge, the Decision would stand and the challenge would fail) ("option 1") or on a planning judgment based on a misunderstanding of the relevant policy (in which case the claim would succeed) ("option 2").

19. The exercise of planning judgment in option 1 would bring into play natural judicial reticence to interfere with the judgment of an "expert tribunal" (see para.25 of ***Hopkins***). Option 2 on the other hand is entirely (see Hopkins paragraph 26) "*appropriate for judicial analysis*".

20. The correct interpretation of a policy is not a matter of planning judgment it is a matter for the court.

Discussion

21. In interpreting the policy, I bear in mind the guidance set out in the authorities. Policies:

    a. should not be treated like a statute
    b. should not be treated like a contract (or any other formal legal instrument)
    c. are to be interpreted objectively, in accordance with the language used and in context
    d. are intended to be a "practical aid to decision-taking"
    e. are designed to be read by members of the public and by planning professionals.

22. In my view interpreting a policy in context requires the court to consider the aim of the policy. That in turn requires consideration of the aim of the core strategy and adopted plan. Key statement DS1 sets out the development strategy at which the local plan is aimed. The plan also refers to open countryside: "*The Council will also seek to ensure that the open countryside is protected from inappropriate development*." (Paragraph 5.3 under the heading: "strategic spatial policies"). Policy DMG2, policy DMH3 which includes the following note: "*The protection of the open countryside and designated landscape areas from sporadic or visually harmful development is seen as a high priority by the Council and is necessary to deliver both sustainable patterns of development and the overarching core strategy vision*".

23. The adopted plan and core strategy clearly set out to protect the open countryside from development (save from development which is justified by local need). RV sees this aim as a "high priority".

24. The language used in policy DMG2:

    a. Makes it plain that the development strategy (including DS1) and spatial strategy (including the protection of open countryside) are central. That underlines the context I have set out in the preceding paragraphs.
    b. Requires that development "in the principal settlements of Clitheroe, Longridge and Whalley" is "appropriate to the scale of, and in keeping with, the existing settlement". That aim is achieved by providing that such development "should consolidate, expand or round-off" development already in the settlement.

25. The language used in the policy, when given its normal everyday meaning in the context in which it is intended to be read, clearly means that any consideration of consolidation, expansion or rounding-off only arises in respect of proposed development which is "in the principal settlements". The word "in" in this context is a preposition. It describes the relation between the proposed development on the one hand and the settlement on the other. The

former must be "in" the latter. If the relationship described by the preposition is satisfied then questions of consolidation, expansion or rounding-off arise. If the relationship described by the preposition is not met such questions do not arise. To put it another way: the relation between the proposed development on the one hand and the settlement on the other (described by the preposition "in") is a condition precedent which must be satisfied before there can be any consideration of consolidation, expansion or rounding-off.

26. The word "in" has no special meaning, it means what it says, and anyone interested enough to look at the core strategy would readily understand it.

27. Based on the interpretation, I have set out, it is impermissible (wrong) to consider consolidation, expansion or rounding-off when determining if the condition precedent is met. Doing so robs the condition precedent of any meaning. Such an interpretation would call for a redrafting of the policy (moving the words which govern the preposition from the struck out words to the underlined words) so that it would read as follows: "development proposals ~~in the principal settlements of Clitheroe, Longridge and Whalley~~…. should consolidate, expand or round-off development <u>in the principal settlements of Clitheroe, Longridge and Whalley</u> so that it is closely related to the main built up areas, ensuring this is appropriate to the scale of, and in keeping with, the existing settlement". This re-writing changes the meaning of the policy so that the development to which the preposition relates is not the new development but the existing development. Such an interpretation would clash with policy DMH3. The interpretation I have put forward does not clash with policy DMH3. It is appropriate when considering context to favour an interpretation which is consistent with other aspects of the plan.

<u>Conclusion</u>

28. The Inspector's approach is to ignore the fact that CS policy DMG2 sets out how development within the relevant settlement should proceed. He takes support for that from the definition in the CS of "consolidation" which refers to locating new development so that it "adjoins the main built up area of a settlement". For the reasons I have set out that approach is in my judgment flawed.

29. The Decision did not involve planning judgment. The inspector's decision is firmly rooted in a misunderstanding of the policy and so must be quashed.

30. The fact that the Secretary of State has not resisted the application is not determinative but does clearly indicate that (by whatever route) the Secretary of State, who is responsible for "the support and guidance" provided by the Planning Inspectorate who "have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local" (see ***<u>Hopkins</u>***) has reached the same decision.

31. I am grateful to Leading Counsel and Counsel for their helpful and concise submissions on the point.