A new age of reason?

Charles Forrest discusses recent cases concerning the duty of local planning authorities to give reasons for granting planning permission

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'My Lords, the so-called rules of natural justice are not engraved on tablets of stone.' So said Lord Bridge of Harwich in his well-known dictum in *Lloyd v McMahon* [1987] AC 625.

The flexibility of those rules has been in evidence this year as a number of cases in the senior courts have grappled with the duty of a local planning authority to give reasons for its grant of planning permission.

Previously things were more simple: pursuant to article 22(1) of the Town and Country Planning (General Development Procedure) Order 1995, an approval notice should 'include a summary of their reasons for the grant'. Since the repeal of article 22(1) in 2010, however, the rules on reasons have been anything but engravings on tablets of stone.

Having said that, some guidance can be found in *R (Oakley) v South Cambridgeshire DC* [2016] EWHC 570 and, no doubt, its upcoming appeal in January 2017.

In *Oakley*, contrary to the officer report recommendation and without giving reasons, the LPA granted planning permission for the construction of a 3,000-seat football ground for Cambridge City FC in the green belt. Ms Oakley unsuccessfully argued before Mr Justice Jay that the LPA was required to give reasons for a planning consent due to the complexity of the case and peculiarity of the planning committee departing from the recommendation to refuse contained in the officer report. Although he rejected those submissions and refused the application, Jay J did conceive that such factors could be material to a legal requirement to give reasons but on this occasion cautiously chose to keep 'the judicial powder dry'.

Therefore, although the circumstances when natural justice requires reasons in planning are fact sensitive and hard to define, factors that could give rise to the duty include:

- Whether the planning committee has failed to follow the recommendation of the officer's report;
- The complexity of the issues in the decision. It stands to reason that if a particularly complex decision is taken without giving reasons, the committee's reasoning would be difficult to follow and potentially 'peculiar';
- The strict or pressing nature of the policy framework (e.g. green belt protection); and
- The nature and extent of the objections to the proposed development.

Furthermore, although there was a statutory duty to give reasons in *R (CPRE Kent) v Dover DC* [2016] EWCA Civ 936 (under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011), the Court of Appeal in that case did provide some clues as to the potential standard of the duty more generally.

The planning permission in CPRE was for what Lord Justice Laws termed development of an 'unprecedented' scale in the Kent Downs area of outstanding natural beauty (521 residential units, a 90-apartment retirement village, and a hotel). The officers' report had recommended refusal of the scheme on the grounds of density, layout, and design. However, the officers, informed by professional advice arguing that a lower density scheme of 375 units would have a reduced effect on the AONB and remain viable, also suggested in the report that an amended proposal on those lines be submitted for consideration.

The planning committee approved the application with brief reasons given in the committee minutes. Laws and Simon LLJ, allowing the appeal, ruled that those reasons were legally inadequate, particularly in relation to the handling of the officers' assessment of the harm that they advised would be inflicted on the AONB by the proposed development.

In the process they stated that Mrs Justice Lang's recent judgment in *R (Hawksworth Securities PLC) v Peterborough CC* [2016] EWHC 1870 (Admin) – in which she ruled that the extent of the duty to give reasons was higher in inspectors' decisions on appeal compared with the administrative decisions of LPAs – needed to be 'treated with some care' in instances such as this where there was policy of a pressing nature such as that in relation to AONBs and the committee was rejecting the officers' recommendation in respect of such a pressing policy.

One can see, therefore, that where the duty to give reasons arises (for example, under a combination of the circumstances outlined above), the standard of the duty may well be closer to that of an inspector's decision letter than what is merely contained in the committee minutes. Possibly this could be a separate statement of reasons endorsed by the committee, but ultimately, as Lord Brown stated in *South Bucks DC v Porter (No 2)* [2004] UKHL 33, 'the degree of particularity required depend[s] entirely on the nature of the issues falling for decision'. **SJ**