

# Jot down a list of reasons for permission

**Planning permission** The Court of Appeal has provided welcome advice on a problematic legislative change. By Martin Edwards and John Martin

The legislative change to the duty to provide reasons for granting planning permission has proved particularly troublesome for planning authorities. The position has not been helped by an inconsistent judicial approach. However, the Court of Appeal in *R (on the application of Telford Trustee No 1 Ltd) v Telford and Wrekin Council* [2011] EWCA Civ 896; [2011] PLSCS 200, has provided welcome guidance.

The claimants owned land in Telford town centre that was partly occupied by an Asda store under a lease expiring in 2014. In August 2009, the council agreed to sell its edge of centre civic offices to Asda, conditional on granting it planning permission for a new store. In October 2009, Asda submitted its planning application and the claimants lodged their objections. The application was considered by the planning committee in December 2009 but was adjourned until January 2010. In the interim, PPS 6 was replaced by PPS 4. Consequently, the officers prepared an addendum to the previous committee report covering, in part, PPS 4. The committee resolved to grant planning permission. The claimants challenged the grant, which failed at first instance. They appealed.

## Grounds of appeal

Three grounds of appeal were rejected by the court. Two concerned the committee's treatment of PPS 4 in the reasons given for granting planning permission. It was argued that: (i) the summary reasons failed to explain not only that the proposal was in accordance with the policies in PPS 4 but also why it was; and (ii) this failure amounted to a legal error that justified quashing the permission.

Richards LJ rejected these arguments and reviewed the authorities that have arisen since the duty was introduced. The amended article 22(1)(b)(i) of the Town and Country Planning (General Development Procedure) Order 1995 requires planning authorities, when granting planning permission, to "include a summary of their reasons for the grant together with a summary of the policies and proposals in the development plan which are relevant to the decision".

## Key points

- A change to the duty to provide reasons for granting planning permission has been causing problems
- An inconsistent judicial approach has not helped the troublesome legislative change
- The Court of Appeal has provided a welcome clarification on the change

Richards LJ took as his starting point *R (on the application of Siraj) v Kirklees Metropolitan Council* [2010] EWCA Civ 1286; [2011] JPL 571. Attention was drawn to the contrast in article 22(1) between the requirement to give summary reasons for a grant and the requirement to give full reasons for a refusal.

He commented on the contrast between Collins J's approach in *R (on the application of Midcounties Co-operative Ltd) v Forest of Dean District Council* [2007] EWHC 1714 (Admin); [2007] 2 P&CR 30 (see *EG* 27 October 2007, p198) and Sir Michael Harrison in *R (on the application of Ling (Bridlington) Ltd) v East Riding of Yorkshire Council* [2006] EWHC 1604 (Admin); [2007] JPL 396. Sullivan LJ endorsed Sir Michael's approach as set out in [47] to [50] in *Ling*. Richards LJ did likewise and stated: "Sullivan LJ's judgment in *Siraj* makes clear, however, that regard is to be had to the factors set

out by Sir Michael rather than to the conflicting views expressed by Collins J."

When considering the adequacy of the reasons, four factors to consider are:

- the difference in the language of the statutory requirements relating to giving reasons for the grant compared to that for the refusal of planning permission;
- the statutory language requires a summary of the reasons for the grant, not a summary of the reasons for rejecting objections to the grant;
- a summary of reasons does not require a summary of reasons for reasons – it can be shortly stated where appropriate; and
- the adequacy of reasons for granting permission will depend on each case. The officer's report to committee will be a relevant consideration. If it recommends refusal and members decide to grant permission, a fuller summary of the reasons would be appropriate. If members follow the officer's recommendation, then a short summary may suffice.

## Legal challenge

The Court of Appeal has clearly rejected Collins J's approach in favour of Sir Michael's. This clarification is welcome. It may reduce the scope for legal challenge solely on the adequacy of the reason for granting permission. However, planning authorities will still have to exercise care in determining applications. As this decision makes clear, the officer's report to committee will have to be drafted with considerable care so as to fully inform, and not mislead, the committee. When members go against an officer's recommendation to refuse permission, the committee will have to provide cogent reasons for granting it that reflect the matters debated at the meeting.

*Martin Edwards is a specialist planning barrister at 39 Essex Street Chambers and John Martin is a freelance writer*

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