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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
[2024] EWHC 648 (Admin)



No. AC-2023-LON-002427

Royal Courts of Justice

Thursday, 29 February 2024

Before:

MRS JUSTICE LANG DBE

B E T W E E N :

THE KING
ON THE APPLICATION OF
ARDLEIGH PARISH COUNCIL

Claimant

- and -

TENDRING DISTRICT COUNCIL
FLYING TRADE GROUP LIMITED

Defendant

Interested Party

MR S BELL (instructed via Direct Access) appeared on behalf of the Claimant.

MR J PARKER (instructed by Tendring District Council Legal Department) appeared on behalf of the Defendant.

The Interested Party did not appear and was not represented

J U D G M E N T

MRS JUSTICE LANG:

- 1 The claimant seeks permission to apply for judicial review of the decision of the defendant (“the Council”) dated 13 July 2023 to grant the interested party planning permission for a food and storage distribution facility, associated parking, logistics yard and offices, on land adjoining Ipswich Road and Wick Lane, Ardleigh, Essex.
- 2 The site, which includes some active agricultural land, is in a rural area and in a countryside setting. It is approximately 9 hectares in size. The development will include a large warehouse with a height of between 16-20 metres, a width of approximately 105 metres along the front, and an overall depth of up to 170 metres, set in an extensive area of hardstanding.

Ground 1

- 3 The claimant contends that the defendant failed to consider adequately or at all the impact of the development on the setting on the AONB and so failed to apply para.176 of the National Planning Policy Framework (2021) (“the Framework”). Given the cumulative conclusions reached in the Officer’s Report (“OR”) in respect of landscape harm, the claimant submits that it is clear that if the defendant had applied its mind to para.176 of the Framework it would have rejected the application, not to do so would be irrational.

- 4 Paragraph 176 of the Framework provides:

“Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues... The scale and extent of development within all these designated areas should be limited or development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.”

- 5 The PPG on Natural Environment provides at para.042:

“How should development within the setting of National Parks, Broads and Areas of Outstanding Natural Beauty be dealt with?”

Land within the setting of these areas often makes an important contribution to maintaining their natural beauty and where poorly located or designed development can do significant harm. This is especially the case where long views from or to the designated landscape are identified as important or where the landscape character of land within and adjoining the designated area is complementary. Development within the settings of these areas will therefore need sensitive handling that takes these potential impacts into account.”

- 6 In my view, it is clear that the protection in para.176 of the Framework is only afforded to the AONB itself and so development in the setting of the AONB must avoid or minimise adverse impacts on the AONB. Para.176 does not protect the landscape and scenic beauty of areas outside the AONB for its own sake. I consider that the claimant’s case lost sight of this distinction in its submissions.

- 7 The site is 1.2 kilometres from the nearest southern boundary of the Dedham Vale AONB and therefore contributes to the setting of the AONB. The Dedham Vale AONB Management Plan states at p.227:

“The nationally designated AONB and (inaudible) project area sit within a wider countryside setting that enhances the value of these landscapes. The experience of being in the AONB is enhanced by its setting and benefits for wildlife and access also accrued from the wider countryside setting.”

- 8 The Council’s Landscape Character Assessment (7A Bromley Heaths) at p.198 states, among other matters, that the strategy should be to conserve the distinct pattern of rural settlement and it advises that the northern plateau edges are particularly sensitive development that would be visible from and intrude on the setting of the AONB.

- 9 The OR considered the impact of the development on the AONB at para.6.86 to 6.87:

“6.86 Starting with the areas directly due north of the application site, the southernmost boundary of the Dedham Vale Area of Outstanding Natural Beauty (AONB) is located due north of the site, the very nearest southern boundary (of the AONB) located approximately 1.2km away from the site. Due to this designation the LPA sought the views of the Dedham Vale AONB Project Team – their detailed comments are outlined in section 4 of this report. The AONB Project Team is concerned that the proposal will indirectly impact the Dedham Vale AONB by increasing the amount of HGV traffic passing through the nationally designated landscape and local roads in the designated landscape. Highways and Traffic impacts, as well as the impact of the proposal on the local road network are covered in the Highway Safety/Parking section below. In addition, the A12 is already cutting through a small section of the nationally designated landscape further to the north and it is anticipated that the majority of HGV traffic (associated with the proposed development) will access the site and facility via the A12 using either junction 29 or the off-ramp to the north of the site coming off the A12 when travelling in a southbound direction. It is therefore considered that the additional HGV traffic associated with this development will not directly or indirectly impact the Dedham Vale AONB

6.87 In terms of other impacts of the proposal on the AONB, the topography between the application site and the AONB boundary is generally flat and there is substantial intervening vegetation and sporadic build form between the two areas, as well as existing and committed development along the A12 corridor to the north of the site. Due to these factors, it is considered that there will be no inter-visibility between the application site and the AONB. Subject to conditions to secure details such as a lighting strategy (to mitigate any impacts on the AONB) and facing materials, it is considered that the proposal will result in no conflict with PPL3 (f) (insofar as the impact on the AONB is concerned).”

- 10 In my view, these paragraphs accurately reflected the consultation response from the AONB Unit which provided as follows:

**“Suffolk Coast and Heaths Area of Outstanding Natural Beauty
07.02.2022**

**Proposal - Full planning for food storage and distribution facility
and associated parking, logistics yard and offices.**

Thank you for consulting the AONB team on the above planning application.

The site lies 1.2km north of the boundary with the Dedham Vale Area of Outstanding Natural Beauty (AONB). In our response to the previous application, (20/00594/FUL), the AONB team raised concerns about the potential impacts of a similar type but larger development at this location on the setting to the Dedham Vale AONB. These concerns were driven mainly by the scale of the proposed development and the materials, namely the reflective metallic finish proposed to construct the warehouse in the scheme. The need for a Landscape and Visual Impact Assessment was also highlighted.

The AONB team welcomes that an LVIA has been completed to support the revised proposal. The AONB team broadly concurs with the conclusion in the LVIA regards potential impacts on the Dedham Vale AONB. I visited the site and AONB on 28 January 2022. The topography between the application site and the AONB boundary is flat but there is substantial intervening vegetation between the two areas as well as some development to the north of the site. Due to these factors, the AONB team concur that there is likely to be no inter-visibility between the application site and the AONB.

The walls of the warehouse will have a metallic finish comprising 'horizontal bands of colour in an ombre'. Given the scale of the warehouse, the colour selected will need careful consideration. While the site lies outside the AONB, (the boundary is 1.2km to the north) to assist the colour selection process the AONB team suggest reference is made to The Selection and Use of Colour in Development Guide for the Dedham Vale AONB. If an ombre design is not supported, the use of colour guide may be helpful for identifying an alternative block colour suitable for the warehouse at this location to help integrate it into the landscape.

It is not clear if the proposal will indirectly impact the Dedham Vale AONB by increasing the amount of HGV traffic passing through the nationally designated landscape. The minor road network leading to and across the AONB is not appropriate in terms of scale to accommodate any significant increase in HGV traffic. Any such increase could adversely impact on tranquillity, one of the defining qualities of the AONB. The Local Planning Authority should satisfy itself that the scheme will not result in an increase in HGV traffic in the AONB, with a resultant erosion of tranquillity.

Lighting will be needed at this site and without careful consideration this could add to the growing sky glow from north Colchester, which is already visible from parts of the Dedham Vale AONB. The EIA Scoping Opinion (application ref 21/02042/EIASCOR) highlighted the need for wildlife sensitive lighting. The Revised Design and Access Statement

prepared to support application 20/00594/FUL recommends the need for 'a Lighting Strategy to reduce the potential impacts on foraging and commuting bats and to maintain dark corridors.'

The AONB team fully supports the need for a Lighting strategy given the proximity to the AONB. The Design and Access Statement (DAS) makes no specific reference about the need to manage light pollution/spill within the setting to the AONB to help conserve Dark Skies. The DAS recommends installing a wildlife friendly lighting scheme at this site. While this would go some way towards managing light spill levels, any lighting scheme at this location should also be designed to avoid excessive upwards light spill and excessive sky glow to minimise light pollution. This approach will ensure compliance with emerging Local Plan policy PPL3 (The Rural Landscape). If the Local Planning Authority is minded to approve this proposal the need for a lighting strategy should be secured by condition.

The AONB team also recommends that the landscape mitigation measures referenced in section 6 of the LVIA are worked up into a detailed landscaping scheme and secured via condition if the scheme is approved.”

- 11 The only concerns raised by the AONB Unit in terms of impact on the AONB relate to HGV traffic and lighting. They conclude that there is unlikely to be any intervisibility between the application site and AONB, which is a very significant finding.
- 12 The OR considered the issue of HGV traffic as raised by the AONB, but concluded that it would not impact the AONB. The lighting strategy discussed by the AONB Unit was adopted as a precautionary approach to mitigate any potential impact on the AONB.
- 13 The OR considered in detail the harmful impact of this major development and considered the impact on long distance views at para.6.88 to 6.93. He found harmful impacts which conflict with Local Plan policies but he also concluded that:

“Insofar as long-distance views and impact on the AONB is concerned, the proposal will result in no conflict with PPL3(F).”
- 14 The OR did not refer to the passage from the AONB Management Plan that I have quoted. He did refer to the landscape character assessment, including “some highly sensitive plateau edges with potential for very high visual impact and light pollution”, but he did not refer to the AONB in terms.
- 15 The OR did refer to Policy PPL3 on the rural landscape, which is at p.271, but not to the paragraph which states that development proposals affecting protective landscapes must pay particular regard to the conservation and enhancement of the special character and appearance of AONBs and their settings. The OR did not refer members to para.176 of the Framework or the PPG extract I have quoted. I have no doubt that he was well aware of these provisions and I consider that he did not find that they were engaged in this application.
- 16 I have had regard to the legal principles which apply to a challenge to an OR, which have been helpfully summarised by Mr Parker in his written documents. I do not consider that these omissions that I have referred to in the OR were even arguably seriously misleading in

a material way because adverse impacts on the AONB have not been identified, save for the potential of impacts from lighting, which could be mitigated.

Ground 2

- 17 On Ground 2 the claimant submits that the defendant failed to pay adequate, or any, regard to policies SPL1 and SPL2 when determining the application, resulting in the grant of permission for a development that fails to bear any relation to the pattern and scale of growth in the location.
- 18 Policy SPL1, titled “Managing Growth”, sets out the settlement hierarchy. Ardleigh is classified as a smaller rural settlement.
- 19 Policy SPL2, titled “Settlement Development Boundaries”, provides that within settlement boundaries there will be a presumption in favour of new development in accordance with policy. In contrast, it states:
- “Outside of settlement development boundaries the Council will consider any planning application in relation to the pattern and scales of growth promoted through the settlement hierarchy in Policy SPL1 and any other relevant policies in this plan.”
- 20 The claimant contends that the defendant failed to consider or apply SPL2 and therefore had no regard to the conflict with SPL1 and 2, which arises from the size and scale of the development at this rural location. The brief references made in the OR and the supplementary report failed to address the suggestion that a development of this nature outside the smaller rural settlement, Ardleigh, was inappropriate and should be directed to or near a higher tier settlement. The claimant concludes that, through the failure to have regard to an engage with Policies SPL1 and SPL2, permission has been granted for a development without having regard to the pattern and scale of growth appropriate for its location outside of the boundary of a smaller rural settlement.
- 21 I refer to the claimant’s detailed objections to the proposal, summarised in the OR at para.5.1 to 5.12. They included a quote from the consultation response from Colchester BC:
- “As Colchester BC has pointed out, a relocation to a suitable and sustainable site could retain or increase all positive impact of the development, while substantially reducing the negative impacts.”
- 22 In my view, Policies SPL1 and SPL2 were considered in the OR and the supplementary OR. The supplementary OR expressly responded to the representations made by the claimant and said:
- “Policy SPL1 (Managing Growth) sets out the settlement hierarchy in the District of Tendring and this hierarchy prioritises locations with access to the strategic road network, public transport and which have the potential to offer the widest range of services. The supporting text to the Policy provides clarity on the four different settlement hierarchy classifications... and what it means. The settlement of Ardleigh is a smaller rural settlement, clearly at the bottom of the settlement hierarchy. The committee report repeatedly refers to the “semi-rural nature” of the site and the “rural nature” of the surrounding area. The committee report, when read as a whole, also makes it very clear that the site is in

the countryside and the village of Ardleigh... is some 2.5 kilometres further to the east. Policy SPL1 does not preclude development outside of settlement development boundaries.

The relevant part of Policy SPL2 states “Outside of settlement development boundaries the Council will consider any planning application in relation to the pattern and scales of growth promoted through the settlement hierarchy in Policy SPL1 and any other relevant policies in this plan (emphasis added).”

The committee report engages extensively with the “principle of development” consideration in para.6.23 to para.6.27 of the report and the remaining 31 pages engage extensively with all the other key and most important material planning considerations, as well as all the other relevant policies in the local plan. The report then reaches a balanced conclusion and it will be up to the ultimate decision-maker (the Planning Committee) to now consider the committee report to both the schemes and reach a decision. The LPA therefore strongly disagree that the report “fails to acknowledge and properly assess the form and extent of the locational policy conflict. It is fully and acknowledged and assessed and so cannot be considered as absence. It is appreciated that other opinions will apply the weighing of the considerations differently and that is a matter of judgment.””

- 23 I emphasise the relevance of para.6.25 to 6.2 of the main OR which deal with Policy PP7 and employment-related development, both in and outside allocated areas.
- 24 In my view, there is little more that the officers could say about Policies SPL1 and SPL2. The problem lies with the content of the local policies and the Framework, which do not impose the strict constraints on development outside the settlement boundary that the claimant would like to see for this rural area. Regrettably, a sequential assessment of allocated sites in the District of Tendring did not identify any suitable alternative sites. So, ultimately, it was a matter for the Council to assess and decide whether or not to grant planning permission in the exercise of its planning judgment.

Conclusion

- 25 I find that Grounds 1 and 2 are not arguable and do not have a realistic prospect of success for the reasons that I have given. Therefore, permission must be refused.

L A T E R

- 26 In my judgment, the claimant should pay the defendant’s costs of preparation of the acknowledgement of service, including pre-action correspondence, and the cost of amending the claim in response to the claimant’s amendment. The general rule is that a defendant or interested party who attends an oral permission hearing will not receive its costs if he successfully resists permission, save in certain exceptional cases. I do not consider this case falls within any of those exceptions and there is no particular reason here why the claimant should pay for the defendant’s attendance.
- 27 The claimant was originally unrepresented and the decision to refer the application for an oral hearing was made in part because an oral hearing is often needed with a litigant in person. The claimant here was not an individual, it is a parish council, but it had no legal

representative. In the event, following an indication that I gave in my order that the claimant would benefit from being legally represented, they were legally represented.

- 28 That said, the defendant was not required to attend this hearing, local authorities often do not, and simply reply on their written submissions and summary grounds of defence, which the court can take account of. Whilst it was very nice to see Mr Parker and his team, I do not think that the claimant should have to pay for their presence.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.