LEGAL CASEBOOK

The latest court cases summarised

COURT CASES

HOUSING CONVERSION

Council loses bid to block isolated barn conversion

An inspector correctly applied national policy in determining a prior approval application to convert a barn in Hertfordshire to a home, the High Court has ruled.

The owner had applied for prior approval under part 3, schedule 2 of the General Permitted Development Order 2015. Under paragraph Q2(1)(e), the council assessed whether the barn's location or siting made the conversion "impractical or undesirable". It refused the proposal on the grounds that it would create an isolated dwelling, contrary to paragraph 55 of the National Planning Policy Framework (NPPF).

On appeal, the inspector found that the barn was relatively close to an established residential cluster. In any case, she saw no requirement to test the sustainability of the location when applying part Q, and granted prior approval. In court, the council contended that the inspector had erred in failing to take into account paragraph 55.

The secretary of state responded that class Q's purpose was to promote provision of new homes and interpretation of the term "undesirable" had to be undertaken with this in mind. Under the relevant policy guidance, he argued, the barn's position in a location where planning permission would not normally be granted for a new dwelling was not in itself sufficient reason for refusing prior approval.

Mr Justice Dove found that class Q was clearly intended to promote residential uses in locations that would not ordinarily be contemplated by the undiluted application of, for instance, locational policies in the NPPF. In his view, to apply NPPF policies on accessibility to the prior approval process with the same rigour as would be applied to a planning application for residential use could frustrate class Q's purpose of increasing housing supply through conversion of agricultural buildings.

Case: East Hertfordshire District Council v Secretary of State for Communities and Local Government; **Date:** 9 March 2017; **Ref:** [2017] EWHC 465 (Admin)

MINERALS DEVELOPMENT

Reasons behind fracking approval found faultless

The reasoning behind an inspector's decision to allow shale gas exploration in Lancashire was unimpeachable, the High Court has ruled.

The county council refused permission on the basis that the proposal would have an unacceptable impact on landscape and visual amenity. At appeal (DCS Number 200-005-629), the inspector accepted that the landscape had some value but decided that any adverse impacts would be reversible and short-term.

A local action group argued that the inspector had applied an inconsistent approach in assessing the effect on a "valued landscape", contrary to paragraph 109 of the National Planning Policy Framework. Mr Justice Dove ruled that a core strategy policy did not mean that development should automatically be refused. In his view, the strategy allowed for development where harm could be reduced to acceptable levels and this had been the approach followed by the inspector. He held that the inspector had been entitled to conclude that the scheme would not conflict with the long-term aim of conserving the natural environment.

Case: Preston New Road Action Group v Secretary of State for Communities and Local Government; **Date:** 12 April 2017; **Ref:** [2017] EWHC 808 (Admin)

LEGAL VIEWPOINT: CLARE PARRY

Still scope for challenges to costs protection rules

The government has long struggled to find an efficient and effective way of meeting the requirements of the Aarhus Convention that environmental challenges should not be prohibitively expensive. At the end of February, new provisions governing the circumstances in which applicants can obtain costs protection in "Aarhus" cases were brought into effect via the Civil Procedure (Amendment) Rules 2017.

In 2013, the government provided for fixed costs in High Court judicial review claims brought under the convention. There was an automatic cap of £5,000 for individuals and £10,000 for organisations, with a reciprocal cap of £35,000 applied to the costs applicants could claim. The rules enabled applicants to obtain costs protection automatically provided their case fell within the definition of an Aarhus Convention claim, a concept the courts gave a broad interpretation in *Secretary of State for Communities and Local Government v Venn* [2014].

"Statutory challenges to inspectors' decisions can now fall within costs protection"

These rules faced criticism. Extending automatic costs protection to those who could afford to bring challenges led many to argue that they went further than necessary to implement the convention and led to an increase in judicial review claims. Conversely, because they did not apply to statutory challenges to inspectors' decisions under sections 288 and 289 of the Town and Country Planning Act 1990, others argued that they did not go far enough.

The new rules seek to address both issues. Firstly, they require applicants to provide financial information upon issue of the claim if they wish to obtain costs protection. In light of that financial information and a range of other factors, the court can vary the costs protection from the figures given above or remove it altogether. This is a sensible change that removes the prospect of well-heeled companies claiming costs protection to challenge hard-pressed public bodies. However, it carries risks for the government. In removing the predictability of costs protection, would-be applicants can no longer be sure of their potential liability before bringing proceedings. This may lead to challenges to the rules.

Secondly, statutory challenges to inspectors' decisions can now fall within costs protection, but only if the challenge falls within article 9(1) or (2) of the convention. This covers environmental information challenges and challenges to development requiring environmental impact assessment or otherwise likely to cause "significant effects". This is a narrower scope of challenge than that for which costs protection is obtainable in judicial review, which again could lead to challenges to the rules.

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