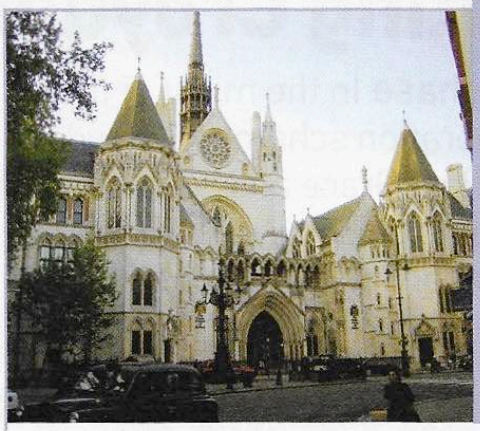

REX SHUTTERSTOCK

QUICKER TO BRING BUT HARDER TO WIN?

The Planning Court has made planning permission challenges far more efficient, but Martin Edwards observes that Court of Appeal judges are increasingly unwilling to quash permissions or appeal decisions

February was a busy month for the courts but before looking at some of the cases it is worth highlighting the undoubted success of the Planning Court (and related procedural changes) in significantly reducing the time it takes to determine them.

An initial review of the first months of the new specialist court (27 June 2015, p110) concluded that it had been an encouraging start, with an impressive reduction in time taken to decide cases. That early assessment has now been confirmed in the Lord Chief Justice's Report 2015, which notes that, at the end of October 2015, the time from lodging to substantive hearing had reduced from 46.9 weeks to 27.3 weeks and that the number of "live" cases was down from 314 at the end of 2013 to 222 at the end of October 2015. By any account this is impressive.

Reluctance to quash?

As to the month's cases, one discernible trend emerged: a growing reluctance by the courts to quash planning permissions or appeal decisions, even when there has been an acknowledged legal error. In one solar farm case where a quashing order had been made by the Planning Court, the Court of Appeal has allowed the local planning authority and developer's appeals: *R (on the application of Gerber)* v *Wiltshire Council* [2016] EWCA Civ 84; [2016] PLSCS 59 (see "Making hay while the sun shines", 15 August 2015, p48).

The appellants wisely did not challenge Dove J's first instance decision on three of the substantive grounds, focusing on two aspects of Dove J's judgment – his decisions to extend time under CPR Part 54.5 so that the claim could be brought a year after the planning permission had been granted and to exercise his discretion under section 31(6) of the Senior Courts Act 1981 to quash the permission. The Court of Appeal held that the judge erred in extending time, especially as the claimant had no proper grounds for delaying proceedings and no reasonable explanation for the delay in bringing the claim.

While it was therefore not necessary to consider the second decision, the Court of Appeal indicated that it would have set aside the judge's exercise of discretion and determined that issue afresh.

Incorrect advice made no difference

Earlier in the month the Court of Appeal dismissed the appeal in *R (on the application of Smech Properties Ltd)* v *Runnymede Borough Council* [2016] EWCA Civ 42; [2016] PLSCS 36. Sales LJ noted that Patterson J at first instance had rejected two of three grounds of challenge.

However, she had found that the council had been given, and followed, incorrect advice in the officer's report regarding the impact of a mixed-use development on a former Defence Evaluation and Research Agency site in the metropolitan green belt.

Nevertheless, on the basis of the principle in *Simplex G E (Holdings) Ltd and another* v *Secretary of State for the Environment and another* [1988] 3 PLR 25, she assessed that, had the correct advice been given, the council would inevitably still have decided to grant planning permission for the development, so she dismissed the claim to quash the permission.

The Court of Appeal upheld her decision. It held that it was abundantly clear that the judge had very well in mind the stringent test in paragraph 87 of the National Planning Policy Framework that there needed to be "very special circumstances" to justify permission for development in the green belt and that she had been entitled to make the assessment that the council would have made the same decision had it been properly advised.

The power of precedent

In a different context, the Court of Appeal also allowed an appeal by the secretary of state against a first instance decision to quash a planning inspector's decision letter in relation to a mobile home on green belt land despite there being serious errors in the inspector's decision to grant planning permission.

In *South Gloucestershire Council* v *Secretary of State for Communities and Local Government and another* [2016] EWCA Civ 74; [2016] PLSCS 40, Lindblom LJ acknowledged that the judge at first instance described the errors of law in the inspector's handling of the housing land supply issue as "serious" and commented that he could see why he did so because the errors went to an important theme of national planning policy in England, namely the requirement for a local planning authority to be able to show, at all times, a five-year supply of housing land. This error was clearly a powerful factor in the judge's exercise of his discretion.

However, the judge had also concluded that if the inspector's decision was allowed to stand it could be relied upon "as a precedent in order to cast doubt in substance on the efficacy of its Core Strategy, in particular Policy CS15 in the coming years".

Lindblom LJ held that the "precedent" factor should not have been a consideration in the exercise of the judge's discretion in this case and that justified the Court of Appeal setting his decision aside. Rather than remitting the case to the judge, it exercised its own discretion to uphold the inspector's decision to grant planning permission in what it considered to be an "exceptional case".

Some might not agree that the facts of the case were "exceptional" but these three cases demonstrate that the Court of Appeal, in one month, twice overturned first instance decisions to quash and upheld a first instance decision not to quash. It will be fascinating to see if this trend develops in the coming months.

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