

Within reason

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Recent case law and regulations confirm that local planning authorities must give reasons for either granting planning permission or refusing to grant it. **Anna Russell-Knee** explains what this means for those wanting to challenge a planning decision

It is trite law that local planning authorities (LPAs) must provide reasons for refusing to grant planning permission, whether the decision is taken by committee or by officers under powers delegated by committee. This requirement is included within the Town and Country Planning (Development Management Procedure) (England) Order 2015.

It has always been good practice, although not a statutory duty, for LPAs to also provide reasons for granting planning permission, particularly if the decision taken by a committee was contrary to the recommendations contained in the officer report to committee. However, recent case law and regulations now require LPAs to provide such reasons.

Committee decisions

Recent case law confirms that committees have a common law duty to provide reasons for granting permission contrary to officer recommendation, rather than it being merely good practice to do so.

Oakley v South Cambs DC [2017] EWCA Civ 71 concerned a planning committee that had granted planning permission contrary to the recommendation of its planning officers. The Court of Appeal overturned the claimant's initially

unsuccessful judicial review proceedings. The planning permission was quashed on the basis that adequate reasons for departing from the officer's recommendation were not provided by the committee. However, the court stopped short of concluding that there is a general common law duty to give reasons in every case, but only in certain cases (in *Oakley*, there were greenbelt concerns that needed to have been addressed). Lord Justice Elias said: '... the fact that the committee has departed from the officer's report may in some contexts be a relevant factor supporting the conclusion that a common law duty to give reasons should be imposed.'

In the recent case of *Dover DC v CPRE Kent* [2017] UKSC 79, the Supreme Court upheld the Court of Appeal's decision to quash the planning committee's decision to grant planning permission – on the basis that adequate reasons for granting permission were not given, particularly as the committee did not adopt the views of the planning officer that were outlined in the officer report.

The Supreme Court judges concluded as follows: 'At the very least there needed to be an explanation of how the members reconciled this assertion with the view of their officers. ... This is a case where the defect in reasons goes to the heart of the justification for the permission, and undermines its validity. The only appropriate remedy is to quash the permission.'

CPRE serves as a stark reminder to LPAs that reasons must be given for every planning decision that is taken where the recommendation of officers is not adopted.

One of the concerns in creating this common law duty was that it may 'place an undue burden on decision makers' (Mr Justice Sedley in *R v HEFC, ex p Institute of Dental Surgery* [1994] 1 All ER 651).

Following *Oakley* and *CPRE*, it would also be prudent for committees to give reasons for making a decision that is in line with officer recommendation(s). If the officer report clearly outlines the reasons for the recommendation to grant (or refuse) permission, it should suffice for a committee to conclude that it has adopted the reasons outlined in the officer report, rather than leaving it to inference and therefore open to a possible legal challenge based on the failure to give reasons.

Delegated decisions

LPAs have varying practices in respect of the types of planning and enforcement decisions that are delegated to officers.

As there is no need for officers to draft a full report to committee, in some instances the internal report or memo prepared by officers will not have adequately justified the decision taken by officers.

This had led to the introduction of the regulations explained below.

Openness of Local Government Bodies Regulations

These 2014 regulations relate only to decisions taken by officers under delegated powers, as opposed to decisions taken by a planning committee.

Since the regulations came into force, decisions of local authority officers taken in respect of granting planning permissions or licences, incurring expenditure, awarding contracts, or any decision affecting the rights of an individual, now invoke the statutory duty to give reasons (regulation 7).

Regulation 7 also provides that the written record must be produced 'as soon as reasonably practicable after the decision-making officer has made the decision and must contain the following information –

- a) the date the decision was taken;
- b) a record of the decision taken along with reasons for the decision;
- c) details of alternative options, if any, considered and rejected; and
- d) where the decision falls under paragraph 2(a), the names of any member of the relevant local government body who has declared a conflict of interest in relation to the decision.'

Regulation 8 stipulates that the written record must be made available for inspection by members of the public, and regulation 10 makes it a criminal offence to withhold that written record.

The judicial review case of *Shasha and others v Westminster City Council* [2016] EWHC 3283 (Admin) confirms the duty on officers to give reasons for their decisions, in light of the 2014 regulations. The key principles arising out of *Shasha* are as follows.

- Reasons should be provided as soon as reasonably practicable after the delegated decision has been taken.
- It can be assumed that the delegated officer accepted the reasons contained in the officer report (although it would, nonetheless, still be good practice to explicitly state the acceptance of the reasons contained in the report).
- The reasons can be brief, but they must be ‘intelligible and adequate’.

If the 2014 regulations are not followed and adequate reasons are not provided, a delegated decision could be at risk of judicial review, and be rendered unlawful. Local government officers are now strongly advised to keep a detailed written record of the considered justification for all decisions taken – to avoid any third-party legal challenge by way of judicial review.

Scrutinising planning decisions

Whether a planning decision, particularly one to grant permission, is made by committee, or by officers under delegated powers, those objecting are advised to scrutinise the stated justification for the making of such decisions. In the case of decisions taken by committee, objectors will wish to consider the officer report along with the approved committee minutes. In the case of a delegated decision, objectors will wish to obtain a copy of the internal report or memo.