C1/2014/1144

Neutral Citation Number: [2015] EWCA Civ 195
IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
(HIS HONOUR JUDGE MACKIE QC
(sitting as a deputy judge of the High Court))

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday, 9 February 2015

B E F O R E:

LORD JUSTICE SULLIVAN

LORD JUSTICE BEAN

LADY JUSTICE KING DBE

- - - - - - -

JULIAN WOOD

Claimant/Appellant

-v-

THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

First Defendant

and

GRAVESHAM BOROUGH COUNCIL

Second Defendant/Respondent

(DAR Transcript of
Wordwave International Limited
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Official Shorthand Writers to the Court)

MR RICHARD TURNEY (instructed by Kingsley Smith Solicitors) appeared on behalf of the Appellant
MR JUAN LOPEZ (instructed by Sharpe Pritchard) appeared on behalf of the Respondent

(Second Defendant)

J U D G M E N T
(As Approved by the Court)

LORD JUSTICE SULLIVAN:

Introduction

1. This is an appeal against the order dated 21 February 2014 of HHJ Mackie QC, sitting as a deputy High Court judge, dismissing the appellant's application under section 288 of the Town and Country Planning Act 1990 ("the Act") to quash the decision dated 8 May 2013 of one of the first respondent's planning inspectors to dismiss the appellant's appeal under section 78 of the Act against the second respondent's decision to refuse to grant outline planning permission for the erection of a single dwelling on land adjoining the See-Ho Public House, Pear Tree Lane, Shorne, Gravesend.

2. The application under section 288 was made on two grounds which the judge summarised in paragraph 3 of his judgment ([2014] EWHC 683 (Admin)).

3. In his first ground of appeal the appellant contended that the inspector had failed properly to apply the policy in paragraph 89 of the National Planning Policy Framework ("NPPF") relating to "limited infilling in villages" in the green belt.

4. The appellant's second ground of appeal, which had been conceded by the first respondent, who played no part in the proceedings before the judge or in the appeal to this court, contended that the inspector had failed properly to consider the shortfall in housing land supply.

5. The judge dismissed the first ground of appeal (see paragraphs 66-68 of his judgment). In respect of the second ground of appeal, the judge concluded that the inspector had failed to give adequate reasons because he had failed to deal with the extent of the housing shortfall (see paragraphs 88-90), and granted the appellant a declaration that the inspector had erred in that particular respect.

6. However, the judge declined to squash the inspector's decision on this ground because he was satisfied that, whatever the extent of the shortfall, the inspector would have reached the same decision given the very strong policy objection to inappropriate development in the green belt (see paragraphs 91-94).

7. In this appeal the appellant challenges the judge's conclusion that the inspector correctly applied the policy guidance in respect of infilling in villages in paragraph 89 of the NPPF, and the judge's decision not to quash the inspector's decision on ground 2.

The NPPF

8. Paragraphs 79 to 92 of the NPPF deal with "Protecting green belt land". Inappropriate development in the green belt should not be approved except in "very special circumstances" which will not exist unless the potential harm to the green belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (see paragraphs 87 and 88).

9. Paragraph 89 is the key paragraph of the NPPF for the purposes of this appeal. So far as relevant, that paragraph provides that:

> "A local planning authority should regard the construction of new buildings as
>
> inappropriate in Green Belt. Exceptions to this are:
> • limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan ..."

10. Before the judge it was submitted on behalf of the second respondent that the words "under policies set out in the Local Plan" governed both limited affordable housing for local community needs and limited infilling in villages.

11. In his oral submissions before us Mr Lopez did not pursue that submission, which had been foreshadowed in his written skeleton argument on behalf of the second respondent. In my view, he was right not to do so. The position of the comma in the description of the exception is important. The words at the end of the exception are part of and govern the second limb of the exception -- limited affordable housing for local community needs. It is readily understandable why that should be so. It may not be possible to accommodate such housing within a village that is in the green belt, so any expansion of the village to accommodate such housing must be dealt with by policies in the Local Plan. The same considerations do not apply to limited infilling in villages.

12. Before this court it was common ground that whether or not a proposed development constituted limited infilling in a village for the purpose of paragraph 89 was a question of planning judgment for the inspector and the inspector's answer to that question would depend upon his assessment of the position on the ground. It was also common ground that while a village boundary as defined in a Local Plan would be a relevant consideration, it would not necessarily be determinative, particularly in circumstances where the boundary as defined did not accord with the inspector's assessment of the extent of the village on the ground. Against that agreed background, I turn to the inspector's decision.

<u>The inspector's decision</u>

13. Having referred to paragraphs 79 to 92 of the NPPF, the inspector said in paragraphs 7 and 8:

> "7. The appeal site is located on the south side of Pear Tree Lane and comprises a plot of open land adjacent to the car park of a public house. It is surrounded on all sides by housing, and is bounded by conifer hedges and timber fencing. To the west and south is a continuously built-up

area, while to the east it adjoins a line of detached properties extending out into the countryside. On the opposite side of the road is a row of similar bungalows (Ridgeway Bungalows) on deep plots behind which are open fields.

8. I have not been advised of the location of the village envelope or the Green Belt boundary, but the Council states that the site lies outside the village boundary and within the countryside and the Metropolitan Green Belt. Ridgeway Bungalows continue the built-up area further to the east on the north side of Pear Tree Lane."

14. In paragraph 9 the inspector referred to an earlier appeal for a development of two houses on the appeal site which had been dismissed in 1991. He continued in paragraphs 10 and 11:

"10. The 1991 appeal indicates that the built-up area boundary ran along the east side of Rose Cottage with the public house and other properties to the east of Bowesden Lane being in the countryside. However, at that time the Council was reviewing the Local Plan and proposed to include within the village envelope the public house, its car park and Ridgeway Bungalows. While the last named are now within the village envelope I have not been advised whether the public house and its car park are now within or without.

11. Whichever is the case the site appears to lie on or very close to the boundary between the village and the Green Belt."

15. The inspector dealt with the appeal under the written representations procedure. That explains why the information before him appears to have been less than complete.

16. We have been shown a copy of the application plan which was before the inspector. The appeal site is immediately to the east of the public house and its car park. If the public house and car park had been included in the village envelope under the review, then the western boundary of the appeal site would have been on the village boundary, as defined in the Local Plan. If on the other hand the public house and its car park had not been included in the village envelope when the Local Plan was reviewed, then the appeal site would still have been very close to the boundary between the village and the green belt as defined in the Local Plan. It would have been separated from the defined boundary by the public house and its car park.

17. I return to the inspector's decision. The inspector concluded in paragraphs 13 and 14 as follows:

"13. Since the 1991 appeal some developments have taken place in the area. Most notable at the time of my visit was work being undertaken on Shornebury, a detached house adjoining the site to the east. Third party evidence indicates that this is in fact two large extensions one on each side of the house. The resulting building is massive and highly prominent in the street scene. It extends the built environment out of the village into the Green Belt. Contrary to the appearance of the area in

1991, the built-up area now appears to start some distance to the east of the appeal site.

14. Paragraph 89 of the NPPF regards the construction of new buildings in the Green Belt as inappropriate, but indicates a number of exceptions. Among these is limited infilling in villages. Although the appeal site has the appearance of being an infill location in view of the existing development all around, it does not lie in a village, but outside the boundary. I therefore consider that the proposed development would be inappropriate and thus by definition harmful to the Green Belt."

18. Under the heading "Effect on village envelope and countryside" the inspector said in paragraphs 17 and 18:

"17. The proposed development would infill an open space on or close to the village envelope. However, the continuing development along Pear Tree Lane gives the appearance of the built-up area extending further to the east. There is already a difference between the defined village boundary and that which appears on the ground to be the logical end of the built-up area.

18. I do not consider that the proposed development would distort further the definition between village envelope and surrounding countryside."

The parties' submissions

19. Mr Turney submitted, on behalf of the appellant, that on a fair reading of the passages in the inspector's decision to which I have just referred the inspector had misdirected himself because he had wrongly treated the boundary of the village as defined in the Local Plan as being determinative of the issue whether the proposed development was in the village. If the appeal site was in the village, there was no suggestion that the proposal for one dwelling was not limited infilling (between the public house to the west and Shornebury to the east).

20. He pointed to paragraph 8 of the decision, in which the inspector referred to the village envelope and the green belt boundary. Although the inspector had said that he had not been advised of their location, he noted the second respondent's statement that the appeal site was outside the village boundary and within the countryside and the green belt. This, submitted Mr Turney, suggested that the inspector was considering a boundary that was defined on a development plan, rather than the boundary on the ground.

21. Mr Turney submitted that this conclusion was reinforced by the discussion in paragraph 10 of the inspector's decision of the review of the village envelope, which was clearly the village envelope as defined in the Local Plan. This was the boundary to which the inspector was referring in paragraph 11 of the decision. Whether the appeal site was on or close to that defined boundary depended on whether the defined boundary had been revised to include the public house and its car park to the west of the site.

22. Mr Turney submitted that in paragraph 13, by contrast, the inspector was there considering the position on the ground and had concluded that the built environment had extended into the green belt, so that the built-up area appeared to start some distance to the east of the site. Although the inspector recognised in paragraph 14 that this meant that the appeal site had the appearance of being an infill site because of the existing development all around it, the inspector's reason for concluding that it did not lie "in a village" was because it lay outside "the boundary", that is to say the boundary as defined in the Local Plan which the inspector had been discussing in the earlier paragraphs of his decision.

23. Mr Turney submitted at this conclusion was confirmed by paragraph 17 of the decision in which the inspector had returned to the concept of the village envelope (to which he had referred in paragraphs 8 and 10) and had noted the difference between the "defined village boundary" and the appearance of the village on the ground.

24. On behalf of the second respondent, Mr Lopez accepted that the inspector would have misdirected himself in paragraph 14 of the decision if he had treated the boundary of the village as defined in the local plan as determinative. However, he submitted that the inspector had not misdirected himself in that way. The inspector had recognised (see paragraph 13 of the decision) that the built-up area of the village had expanded since 1991, and had therefore gone on in paragraph 14 to form his own view of what was the boundary of the village in 2013 and had concluded, as a matter of planning judgment, that the appeal site did not fall within the village, notwithstanding the fact that there were, as Mr Lopez put it, "other pockets" of built-up development to the east of the appeal site.

25. I have to say that looking at the application plan and at the inspector's description of the position on the ground, Mr Lopez's description of the development to the east of the appeal site as "other pockets" of development does not seem to me to do full justice to the extent of the development to the east of the site.

26. Be that as it may, Mr Lopez submitted that the conclusion that the inspector in paragraph 14 had formed his own planning judgment as to where the boundary of the village lay and had not treated the boundary as defined in the Local Plan as being determinative was the only logical conclusion that could be drawn because the inspector had made it clear earlier in the decision (see paragraph 8) that he had not been advised of the village envelope boundary as defined in the Local Plan. Mr Lopez submitted that since the inspector did not know the position of the village boundary as defined in the Local Plan, he could not have relied upon it, much less could he have treated it as being determinative of the question whether the appeal site was in the village for the purpose of paragraph 89 of the NPPF.

Discussion

27. The submission that the inspector could not have treated the village boundary as defined in the Local Plan as determinative and had, of necessity, to form his own view as to what was the boundary of the village because he had not been told what was the position of the defined boundary has an obvious attraction, but it overlooks the fact that

the inspector was not left in complete ignorance as to the precise position of the defined boundary in the Local Plan.

28. The 1991 appeal decision, which the inspector referred to in paragraph 10 of the decision letter, had told the inspector what the defined boundary was in 1991. It told him that at that time it excluded the public house and its car park to the west of the appeal site. It also told the inspector that at that time the defined boundary was under review. The inspector knew that as a result of that review the Ridgeway Bungalows, which were on the north side of Pear Tree Lane opposite the appeal site, had been included in the defined village envelope. He did not know whether or not the public house and its car park had also been included, but whether they had been included or not under the review, that still left the appeal site either on or very close to the boundary between the village and the green belt as defined in the Local Plan (see paragraph 10 of the decision).

29. Once this is appreciated, it is clear that for all of the reasons advanced by Mr Turney in his submissions (see above) "the boundary" to which the inspector was referring in paragraph 14 was not his own assessment of the boundary of the village on the ground, but was the defined village boundary in the Local Plan, to which the inspector had been referring in paragraphs 10 and 11. Whether or not the public house and its car park were within the defined boundary as revised, the appeal site was outside that boundary. That is the sole reason why the inspector concluded in paragraph 14 that the appeal site did "not lie in a village, but outside the boundary", notwithstanding his earlier assessment in paragraph 13 of the extent of the built-up area on the ground. The contrast between the "village envelope" within the "defined village boundary" and the extent of the built-up area of the village on the ground is repeated in paragraph 17 of the decision.

Conclusions

30. For these reasons, I am satisfied that on a fair reading of this decision the inspector did misdirect himself in the manner alleged in ground 1 of this appeal. It follows that the inspector's decision must be quashed and in these circumstances it is unnecessary, in my view, to consider ground 2 of the appeal.

31. LORD JUSTICE BEAN: I agree.

32. LADY JUSTICE KING: I also agree.

ORDER: Appeal allowed; paragraph 4 of Judge Mackie's order set aside and an order is substituted that the second respondent shall pay the appellant's costs from 30 January 2014, to be the subject of a detailed assessment if not otherwise agreed; the second respondent to pay the appellant's costs of the appeal, to be the subject of a detailed assessment if not otherwise agreed; order for an interim payment on account of costs in the sum of £25,000.

(Order not part of approved judgment)