Case Name: *Wavendon Properties Ltdv Secretary of State of Housing Communities And Local Government & Anor* [2019] EWHC 1524 (Admin) (14 June 2019)

Full case: Click Here

Commentary: This case involved an outline planning application to Milton Keynes Council for development of up to 203 homes and ancillary infrastructure, made on 20 July 2016 by Wavendon Properties Limited. The application was refused, against officer recommendation, on 5 December 2016. Wavendon appealed and a public inquiry was held in July 2017, after which the Secretary of State was asked to recover the appeal for his own determination. He declined at first, until the local MP later made the same request and then the Secretary of State did call in the application. The Inspector's report was written in February 2018 and recommended granting planning permission, but this was kept confidential until the Secretary of State's decision was published on 5 December 2018. The Secretary of State disagreed with the Inspector's recommendation and dismissed the appeal.

Wavendon challenged the decision under s.288 of the Town and Country Planning Act 1990. Mr Justice Dove held that Wavendon's challenge succeeded under grounds 2 and 3 of their claim, in particular in relation to the inadequacy of the Secretary of State's reasons for arriving at a figure for an "estimated deliverable supply" of housing. The Secretary of State had asserted that the five year housing supply requirement was met (meaning that the NPPF titled balance was not engaged), with no proper explanation behind the figures. Mr Justice Dove quashed the Secretary of State's decision.

Wavendon's first ground of appeal was not successful. Wavendon had claimed that the Secretary of State failed to recognise that the presumption in favour of sustainable development applied because when two of the relevant policies were found to be out of date, the Secretary of State should have then applied the titled balance (under para 11 (d) (ii) of the NPPF), alternatively there was a failure to provide any reasons in relation to why para 11 (d) (ii) did not apply if two of the policies were out of date. The judge agreed with the Secretary of State that the tilted balance did not apply only because one or two of the relevant policies were out of date. Rather, having identified the most important policies for determining the application, they should be examined individually and then considered in the round to decide whether the policies all together should be considered out of date. The fact that the Secretary of State did not apply the tilted balance to the decision in this case implies that his evaluation of all of the policies that were most important for the application, when examined individually and in the round, led to the conclusion they were not to be considered out of date.

In relation to the fourth ground, Wavendon did not succeed. This was the claim that the Secretary of State had not properly interpreted the relevant policy which required not just a numerical threshold approach to density but also the requirement for density to be "well related to the character and appearance of the area", and had not given reasons for departing from the Inspector's approach, nor given reasons for the assertation that the policy was inconsistent with the 2012 NPPF but consistent with the 2018 NPPF. The judge held that

the Secretary of State's decision on that point was lawful and that he had taken into account the character and appearance of the area, and that it was a matter for the Secretary of State's planning judgment as to whether the policy was consistent with the 2018 NPPF.

In relation to the fifth ground, Wavendon claimed that the Secretary of State differed from the Inspector in relation to three matters of fact which would have allowed Wavendon to make further representations pursuant to reg 17(5) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. The judge held that the matters of fact were in fact matters of opinion and did not engage reg 17 of the Rules, so this ground was not successful.

The judge held that permission must be refused for Wavendon's sixth ground. This ground was the challenge to the Secretary of State's conclusion that the section 106 obligation to use reasonable endeavours to complete the development within five years was not addressing planning harm and was not necessary to make the development acceptable in planning terms - the judge was not satisfied that this was properly arguable.

Substantive relief was declined in respect of grounds 1, 4 and 5.

For further discussion see Simonicity.

Case summary prepared by Lucy Morton