Case Name: *Broad, R (On the Application Of) v Sanctuary Group* [2019] EWHC 628 (Admin) (21 March 2019)

Full case: Click Here

Commentary: The High Court has upheld a decision by Rochford District Council ('Council') to grant planning permission for an affordable residential scheme in Essex which was amended by the developer without further public consultation.

The developer (provider of social housing) applied for planning permission for 2 blocks of affordable residential accommodation in Canewdon, Essex. The Claimant (owner of an adjacent site) objected to the scheme on a number of grounds including loss of light, overshadowing, loss of privacy, poor outlook, overdevelopment, and noise and disturbance. Following receipt of the Claimant's objection and other consultee responses, the developer amended the scheme and submitted revised plans to the Council. The amended plans were seemingly not uploaded to the Council's website until planning permission was granted in March 2018 and the Claimant was not consulted regarding the scheme amendments. The Claimant legally challenged the Council's decision on 2 grounds, both of which were unsuccessful. Ground 1 was that the Council had acted irrationally and/or in breach of natural justice in approving amended plans without further public consultation.

Ground 2 was that the Council had materially erred in fact and/or had failed to take into account a relevant material consideration in failing to understand and assess the impacts of the amended scheme. As to the irrationality limb of Ground 1, the High Court held that while the revised plans created a change in the layout of the scheme, introduced a new feature, and were not placed on the website, the Council's decision that the changes were not fundamental so as to trigger the duty to reconsult was not irrational. As to the natural justice limb of Ground 1, the High Court considered that the Claimant had not suffered material prejudice in being unable to make further representations on the amended scheme on the basis that (i) the Claimant's original objections were also applicable to the amended scheme; (ii) the scheme changes were such that the Council could properly consider these; and (iii) the Council would have reached the same conclusion even had the Claimant had an opportunity to make further representations. As to Ground 2, the High Court was satisfied, on considering the Officer's Report (OR) and related evidence, that the Council was properly aware of the scheme revisions and reached its decision in light of the relevant circumstances including the objections relating to overlooking and lack of privacy and accordingly had not erred in fact and/or failed to take into account a relevant material consideration.

Comment: This case is a useful application of recent Court of Appeal authorities explaining how ORs should be interpreted. Courts should not adopt an overly legalistic or unduly forensic approach to considering ORs. ORs ought not to be read with undue rigour, but with reasonable benevolence, bearing in mind that they are written for councillors with local knowledge (Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314). This case is also a useful illustration of the relevant principles governing scheme amendments which were recently summarised by the High Court in Barlow (on behalf of Harthill Against Fracking) v.

Secretary of State [2019] EWHC 146 (QB). While a decision maker is entitled to grant planning permission which is different to that sought provided it does not result in a development which is substantially or significantly different from that which has been applied for, procedural fairness may still require, on the individual facts of a case, that interested persons be reconsulted and given a reasonable opportunity to make further representations.

Case summary prepared by Paul Arnett