Case Name: *Monkhill Ltd v Secretary of State for Housing, Communities and Local Government & Anor (Rev 1)* [2021] EWCA Civ 74 (28 January 2021)

Full case: Click Here

Commentary:
This Court of Appeal case confirmed that the "great weight" to be given to conserving areas of natural beauty ("AONBs") under paragraph 172 of the NPPF could be considered a "clear reason for refusing" planning permission under paragraph 11(d)(i) of the NPPF. The judgment also affirmed the pragmatic approach required with interpretation of planning policy.

The appellant developer's permission, for 29 dwellings on a site across an AONB and area of great landscape value, was refused by Waverley Borough Council. This decision was upheld by the planning inspector (the "Inspector") and the appellant's application was dismissed in the High Court. The "great weight" afforded to conservation and enhancement of landscapes and scenic beauty under paragraph 172 of the NPPF, and the "highest status of protection" afforded to AONBs, were deemed to provide a clear reason for refusal – therefore, paragraph 11(d)(i) was engaged, disapplying the titled balance.

Charles Banner QC argued for the developer that the Inspector misunderstood paragraph 172. He asserted that a policy giving weight to a consideration is not in itself a clear reason for refusal – it only changes the balances involved in the decision-making process. He further argued that the application of a policy will only be capable of providing a clear reason for refusal if it provides that permission should (or should normally) be refused unless certain requirements or criteria are met, or provides for its own self-contained balancing exercise.

Rejecting this argument, Lindblom LJ stated that this did not reflect an accurate understanding of how these policies are intended to operate: interpretation of national planning policy must "discern the true, practical meaning of a policy issued by the Government". He distinguished this from interpretation of legislation and contractual clauses, which requires a greater degree of "linguistic rigour". He interpreted the word "provides" in paragraph 11(d)(i) to include situations where "the application of the policy in question yields a clear reason for refusal – in the decision-maker's view, as a matter of planning judgment". While paragraph 172 "is not actually expressed in terms of an expectation that the decision will be in favour of the protection of the "landscape and scenic beauty" of an AONB… that, in effect, is the real sense of it".

Lindblom LJ added that this did not mean that no development will be permitted in an AONB: "if the effects on the AONB would be slight [or] if the effects of the development would be greater, but its benefits substantial… the expectation might… be overcome".

For commentary on this case, in the context of a wider discussion about the tilted balance, please see Simon Ricketts' recent blog post: https://simonicity.com/2021/02/06/tilt/

Case summary prepared by Jed Holloway