Case Name: *Park Lane Homes (South East) Ltd, R (On the Application Of) v Rother District Council* [2022] EWHC 485 (Admin) (09 March 2022)

Full case: Click Here

Commentary: This was a judgment dismissing a claim for judicial review in respect of the Council's ("Defendant") decision to accept the recommendations of an Examiner into a draft neighbourhood plan. The background is set out at length in the judgment of Lang J, but in summary the Claimant was a landowner who had obtained outline permission in 2018 for 30 dwellings on their site, it having been allocated in a Local Plan dating from 2006. Though the adoption of the subsequent policy documents had superseded that Plan, the allocation policy was saved and remains extant. Following the grant of outline permission, the Claimant had subsequently made an unsuccessful full application and a further unsuccessful reserved matters application. To its dismay, the Claimant's site was not allocated in the draft neighbourhood plan, which in fact made no allocations despite accepting a minimum housing delivery target of 52 homes. Having considered the implications of this in detail in his report, the Examiner concluded that the neighbourhood plan met the basic conditions and the Council accepted this, intending to proceed to a referendum. The challenge was brought on two grounds.

The first ground was that the Council should not have accepted the Examiner's findings, in which he had concluded that the neighbourhood plan would meet two of the basic conditions set out in paragraph 8(2) of Schedule 4B to the TCPA 1990. These conditions are that, having regard to national policy and guidance, it is appropriate to make the plan and that the plan is in general conformity with the strategic policies in the area's development plan. In relation to the appropriateness of making the plan, it was submitted that, in accepting the Examiner's report, the Council failed to have proper regard to relevant considerations. These included that, in the Claimant's submission, the neighbourhood plan did not comply with the NPPF or the PPG, that the site had been allocated and had an existing outline permission, that the settlement boundary had not been extended in order to facilitate delivery of the housing target and that the plan did not comply with the area's development plan. The Defendant, however, noted that there is no requirement in statute for a neighbourhood plan to make allocations, and that the neighbourhood plan would not undermine the strategic policies of the development plan (which include the need to deliver 52 homes within the neighbourhood area) because none of the neighbourhood plan's policies would directly prevent delivery. Lang J concluded that the Examiner had clearly had regard to the NPPF and he had found that the draft neighbourhood plan had regard to national policy and guidance, which given the facts, was a reasonable exercise of his planning judgment. She further noted that, the allocation policy remaining extant and outline permission already granted, the Claimant would not be disadvantaged by the fact that its site was not allocated in the draft neighbourhood plan.

In relation to the neighbourhood plan's general conformity with the area's strategic

policies, there was some disagreement as to whether the saved allocation policy was strategic. It was also argued that, even if the allocation policy was not strategic, it was integral to the understanding and application of a policy which was indisputably strategic in nature. Lang J rejected these submissions, finding that a neighbourhood plan may depart from non-strategic policies and that the policy in question was non-strategic (notwithstanding its link to a strategic policy). She concluded that the approach taken by the Examiner did not approach irrationality: in recommending modifications to the neighbourhood plan, he had sought to ensure that new applications for housing development within the neighbourhood area would not be treated any less favourably than under the current policy position. Ground 1 was dismissed.

The second ground revolved around procedural unfairness, with the Claimant arguing that they were not given an opportunity to make representations prior to the decision being made to accept the Examiner's report. Additionally, the examination of the neighbourhood plan had taken place entirely by written representations, but the Claimant was of the view that an oral hearing should have occurred. The Defendant pointed out that, in his report, the Examiner had already taken the Claimant's concerns into account and that the Claimant had not raised any new issues. The general rule that examinations of neighbourhood plans will be conducted via written representations is set out in statute and the Claimant had offered no compelling evidence that the Examiner's decision to proceed in this was unreasonable. Furthermore, the Examiner had in fact made factual amendments to his report at the Claimant's request, these concerning the site's planning history.

In her judgment, Lang J concluded that the Council had complied with the procedures for consultation and that there was no need for the Council to offer the Claimant any additional opportunities to make representations. It was clear from all of the evidence that the Claimant's submissions had been taken into account both by the Examiner and by the Council. She further found that the Examiner was entitled to conclude, as he did, that an oral hearing was not necessary, and that his reasons for doing so did not involve an error of law. Accordingly, ground 2 was dismissed.

The judgment will be particularly helpful for practitioners seeking to distinguish between strategic and non-strategic policies and the differences between examination of local plans and neighbourhood plans, which are subject to very different tests.

Case summary prepared by Aline Hyde