Case Name: Folkestone and Hythe District Council v Secretary of State for Housing, Communities and Local Government & Anor [2025] EWHC 1397 (Admin)

Full case: Folkestone and Hythe District Council v Secretary of State for Housing, Communities and Local Government & Anor [2025] EWHC 1397 (Admin) (06 June 2025)

Commentary

This was an unsuccessful statutory challenge by Folkestone and Hythe District Council ("the Council") against the decision of one of the Secretary of State's Planning Inspectors to allow an appeal against the refusal of planning permission for 3 one-bedroom flats.

Two of the unsuccessful grounds related to a claim the Inspector failed to impose certain conditions on the permission or provided inadequate reasons for the failure to do so.

The findings on the scope of the decision-maker in imposing conditions (paragraphs 63-96 of the judgment) are of some interest, particularly in the context of a planning appeal.

Although one of the conditions did not give an express time period for compliance, the development was to be "carried out in accordance with" the relevant document. The Court accepted that despite the absence of an express time limit the condition was enforceable because "*Whatever "carried out" means, a development that has been completed must have been "carried out" by that point in time. Should the development be completed without providing the agreed biodiversity enhancements, therefore, the developer could find itself liable to enforcement action.*"

It was also noted that "the ability for a decision-maker to impose conditions is relatively unconstrained by statute. The decision-maker may impose "such conditions as they think fit" (section 70(1)(a)) of the 1990 Act). Whilst case-law has placed some restrictions on the ability to impose conditions, it is plain that the ability is not confined to imposing conditions which deal only with the principal controversial issues in the case."

Facts

Planning permission was refused for 3 one-bedroom flats at the relevant Site. The planning application was accompanied by supporting documents, including a Preliminary Ecological Appraisal ("PEA") and application plans which relevantly set out proposed landscaping. The Council refused the application which was subsequently appealed by the applicant to the Planning Inspectorate.

The Council suggested to the Inspector a series of 14 conditions in the event the appeal was granted. Condition 8 related to biodiversity offsetting measures and condition 11 related to the provision of soft landscaping. The Inspector declined to impose either of these conditions, finding in the Decision Letter:

> *"The PEA, which is already captured by condition 2, contains various ecological recommendation [sic.] and enhancements. I do not therefore consider a separate condition is necessary to secure a net-gain for biodiversity. The landscaping proposals are clearly shown on the approved plan and there is no suggestion from the Council that these are unacceptable. I do not therefore consider the landscaping conditions to be necessary in this instance"*

Grounds & Judgment

Ground 1

Ground 1 related to a failure to determine one of the principal controversial issues, being the amenity for future occupiers i.e. the poor outlook from the windows of Flats 1 and 2.

Whilst the Inspector's reasons on amenity were brief, the Court found that the Inspector determined the outlook for future occupiers of Flats 1 and 2 would be acceptable and to divulge further reasoning would be straying into providing "reasons on reasons" which previous case law warns against.

Ground 2

Ground 2 was a claim that the Inspector had misunderstood local plan policy HB3.

The relevant limb of policy HB3 in dispute required balconies of a certain size to be provided by flats, unless it reduced the privacy of neighbouring dwellings. The Court found that the Inspector made an express finding that it was difficult to see how the flats could incorporate balconies that would not overlook neighbouring properties. From that part of the decision, the Court held it was entirely reasonable to infer from this the subsidiary finding that the overlooking would reduce the privacy enjoyed by those neighbouring properties.

Grounds 5 & 6

The other two grounds pursued at the hearing (Grounds 5 and 6) related to the Inspector unlawfully failing to impose a condition on the permission, or providing inadequate reasons for the failure to do so.

The Inspector's reasoning for not imposing the two conditions requested by the Council were that condition 2 included by the Inspector in their decision covered this. The Council argued there were important elements missing from condition 2 that the two conditions that were covered by the Council's suggested conditions. Namely the ability to enforce biodiversity and the landscaping measures. The Court found that condition 2 still gave the Council the ability to enforce, and just because a condition could have been improved upon by the inclusion of some additional words, it does not mean that the condition is unlawful without those additional words.

The Court commented that imposing a condition is not confined to the principal issues in the case as submissions had been made that the issues raised by the conditions challenged were not principal controversial issues in the planning appeal and this could absolve any mistake. The Court held that the ability for a decision maker to impose a condition is relatively unconstrained by statute save some restrictions through case law, with decision makers able to impose conditions “as they think fit” with reference to section 70(1)(a) of the Town and Country Planning Act 1990.

Conclusion

All four grounds of challenge were not made out, and the challenge was dismissed by the Court.