Case Name: *Frack Free Balcombe Residents' Association v Secretary of State for Housing, Communities and Local Government & Ors [2025] EWCA Civ 495 (16 April 2025)*

Full case: Read here

Commentary: The appellant, Frack Free Balcombe Residents' Association, unsuccessfully appealed the order of Lieven J dated 14 November 2023, dismissing their claim for planning statutory review under section 288 of the Town and Country Planning Act 1990 ("the TCPA 1990"), of a decision made by an inspector appointed by the first respondent, the Secretary of State for Housing, Communities and Local Government. The inspector allowed an appeal by the second respondent, Angus Energy Weald Basin No.3 Ltd., against the refusal of planning permission by the third respondent, West Sussex County Council, for development at the Lower Stumble Exploration Site near the village of Balcombe.

The facts

The proposal was described in the decision notice as "exploration and appraisal comprising the removal of drilling fluids and subsequent engineering works with an extended well test for hydrocarbons along with site security fencing and site restoration." On 2 March 2021, the county council's Planning Committee resolved that planning permission be refused, against the recommendation of their planning officers, on the basis that the proposal would be "major development in the High Weald Area of Outstanding Natural Beauty" for which there were "no exceptional circumstances" and which was "not in the public interest." The Planning Committee also stated that there were "alternative sources of hydrocarbon supply, both indigenous and imported, to meet the national need" and that there was "scope for meeting the need in some other way, outside of the nationally designated landscapes" and that the development "would therefore be contrary to Policies M7a and M13 of the [West Sussex Joint Minerals Local Plan (2018)] and paragraphs 170 and 172 of the National Planning Policy Framework [NPPF] (2019)."

Angus Energy appealed against that decision to the Secretary of State under section 78 of the 1990 Act in September 2021. The inspector's decision letter was dated 13 February 2023. Frack Free Balcombe's challenge to his decision came before Lieven J at a hearing in July 2024, which she rejected on all six grounds.

The grounds of appeal

The four grounds of appeal were as follows:

1. Whether the inspector erred in taking into account the benefits, but not the harm, of a future development of "commercial production" of hydrocarbons;

2. Whether the inspector misdirected himself by applying Policy M7a of the joint minerals local plan, rather than Policy M7b;
3. Whether the inspector erred in failing to consider alternative sites and proposals outside the AONB; and
4. Whether the inspector failed to consider the likely effects of the development on the Ardingly Reservoir.

Ground 1

Counsel for the appellant submitted that Lieven J had misunderstood the inspector's decision letter and as a result wrongly concluded that he did not take into account the benefits of the future commercial production of hydrocarbons and therefore did not need to take the harm into account.

The court rejected this submission and confirmed the reasoning of Lieven J. There was never any doubt about the nature and extent of the development proposed. The application and supporting material, the officer's report to committee the decision notice refusing permission and the inspector's decision letter made it clear that the development was solely for hydrocarbon "exploration and appraisal" and not commercial production. The difference between "exploration and appraisal" and "production" as separate operations in hydrocarbon development is also recognised in national planning policy generally and in the development plan policies which were before the Court in this case. The inspector did not make the error of taking into account the possible benefits of some future scheme for the commercial production of hydrocarbons but instead recognised the importance of energy security and the economic advantages of maintaining sufficient domestic oil and gas reserves, and hence the advantage inherent in the proposed scheme of hydrocarbon exploration and appraisal. He understood the distinction between the benefits and harm attributable to the present proposal for exploration and appraisal and those of a subsequent development of commercial production.

Ground 2

Counsel for the appellant submitted that both the inspector and Lieven J in the decision on appeal misunderstood Policy M7a of the joint minerals local plan: the inspector did not explain how he concluded that it was Policy M7a, not Policy M7b, that was relevant, and why he thought this question only turned on the content of the proposal for exploration, without taking into account the future production phase.

The Court rejected this. As counsel for the first and second respondent submitted, Policy M7a explicitly applies to hydrocarbon development not involving hydraulic fracturing, while M7b does. The proposed development did not involve hydraulic fracturing, and no

application had been made for such development. The proposal was assessed according to the relevant policy, Policy M7a. This was understood by the inspector, who even imposed a specific condition on the permission to preclude hydraulic fracturing on the site. The Court also rejected the submission of counsel for the appellant that Policy M7b applied at the time, because whatever the present intentions of the second respondent, the possibility remained that hydraulic fracturing would occur in the production phase. As the Inspector's decision letter noted, however, and in accordance with planning principle and common sense, any future proposal for commercial production, whether or not it involved hydraulic fracturing, would be dealt with if and when the time came, applying whichever policy of the joint minerals local plan was then relevant.

Ground 3

Counsel for the appellant submitted that the Inspector misinterpreted the "exceptional circumstances" test for "major development" in the AONB, set out in Policy M13 of the joint minerals local plan and paragraph 177 of the NPPF and ought to have considered "alternatives" outside the AONB. He wrongly failed to base his assessment on "the need for the mineral," concentrating solely, and wrongly, on the Lower Stumble hydrocarbon resource itself.

The Court was not persuaded by this line of argument. The Inspector's conclusion that the test was met, as a matter of planning judgment, was lawful, as was his handling of the question of "alternatives" to hydrocarbon exploration. The test in both policies was not prescriptive and is not expressed in a series of tests that the applicant for planning permission must satisfy. Instead, both policies refer to matters that the decision-maker should take into account in an assessment directed at the overarching question: whether approval is justified by "exceptional circumstances" and "the public interest." These matters admit different conclusions on different facts, and were described by the Court as "classic questions of planning judgment."

Ground 4

Counsel for the appellant submitted that the inspector failed to consider, as he should have done, the possibility that water pollution caused by the development would affect Ardingly Reservoir. This was presented in different ways: that the possible effects of the development on the reservoir were an obligatory material consideration; that his reasons were inadequate; and an argument that he made an error of fact.

The Court rejected all of the above. The Court held that the inspector concluded, by a lawful exercise of planning judgment, that the development did not pose any unacceptable risk of water pollution. This was, the Court held, a "classic matter of fact

and judgment for a planning decision-maker." The Inspector's assessment did not rest on any factual error or other unlawfulness. Mitigation measures had been proposed, there was a regulatory regime in place, and the Environment Agency had not objected to the proposed development. The effectiveness of the proposed measures was accepted by the county council's officers and by the county council itself. As Lieven J held, the risk of run-off and contamination was so small as not to be a material matter which the inspector needed to give further reasons or consideration. But even if it had been, the Court found that there was nothing to indicate that the inspector failed to give the issue due regard.

Conclusion

All four grounds were dismissed, and with it the appeal overall.

Case summary prepared by Gregor Donaldson