

The Law – Avoiding Costs and Courts

Neighbourhood Planning and Heritage

8 February 2018

Karen Mutton

Principal Associate



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Topics

- Basic Principles
- Addressing Heritage Issues
- Neighbourhood Planning

Basic Principles

- Planning as a fully codified system
- Supremacy of the Development Plan (including Neighbourhood Plan)
- Material Considerations
- Due Process
- Officer's Report
- Scope to revisit
- The Decision

Basic Principles

The Outcome of the Richborough Case [2017] UKSC 37

- scope for presumption in favour of sustainable development
- the importance of restrictive policies in a 5 or 3 year supply scenario
- emphasis on exercise of planning judgement in attributing weight
- limited role for the courts

Basic Principles

Barwood Strategic Land II LLP v East Staffordshire Borough Council

“...Excessive legalism has no place in the planning system, or in proceedings before the Planning

Planning decision-making is far from being mechanical.. It is essentially a flexible process... It involves, largely, an exercise of planning judgment, in which the decision-maker must understand relevant national and local policy correctly and apply it lawfully to the particular facts and circumstances of the case in hand, in accordance with the statutory scheme....”

Basic Principles

Officer's Report

- required to have regard to all material considerations
- weight to be given to any particular material consideration is a question of planning judgement and a matter for the decision making body
- report must be sufficiently clear and full to enable decision maker to understand the issues and material considerations, yet also be concise and focussed
- must not seriously mislead the decision maker
- not to be analysed as a statute; needs a fair reading of the document as a whole
- accept that they are addressed to a knowledgeable readership

Application to Heritage Assets

- Section 12 NPPF
- Statutory Duty in the Planning (Listed Buildings and Conservation Areas) Act 1990
- *“Generally a decision-maker who works through those paragraphs [of the NPPF] in accordance with their terms will have complied with the s66 duty...”*
- Distinction between
 - assessment of listed buildings and conservation areas
 - designated and non-designated heritage assets

Application to Heritage Assets

Assessment of the loss of a heritage asset

— R (on the application of Hayes) v York CC

- interpretation of paragraph 141 of NPPF
- materiality of ability to record the asset

Application to Heritage Assets

What is the setting of a heritage asset

- R (on the application of Williams) v Powys CC
 - requirement for a visual relationship between development and heritage asset
- Steer v Secretary of State for Communities and Local Government
 - other historical, social or economic connection could be sufficient to bring development within the setting of a heritage asset
- Appeals outstanding
- Historic England Good Practice Advice Note 3 (December 2017)

Neighbourhood Planning

Current status

- Written Ministerial Statement
- Judicial Review Unsuccessful
- Recovery of Appeals?

Neighbourhood Planning

Recent Cases

- R (on the application of DLA Delivery Ltd) v Lewes DC
- R (on the application of Kebbell Developments Ltd) v Leeds CC
- R (on the application of RTL Built Environment Ltd) v Cornwall Council
- R (on the application of Stonegate Homes) v Horsham DC
- R (on the application of Legard) v RB Kensington and Chelsea

Questions?



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Karen Mutton

Principal Associate
Planning and Infrastructure
Consenting

Eversheds Sutherland
(International) LLP
Water Court
116-118 Canal Street
Nottingham
NG1 7HF

[eversheds-sutherland.com](https://www.eversheds-sutherland.com)

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