

The case of (1) Technoprint PLC and (2) Mark Snee v Leeds City Council – 15th February 2010.

Introduction:

The case concerns the decision of a local authority planning officer to grant planning permission for the demolition of a workshop in Morley and erection of 12 flats on the site.

Justice Wyn Williams in considering whether the planning permission should be quashed was required to examine the grounds of the claimant in turn, having already ruled in 2009 that the defendant's (Leeds City Council) delegated decision scheme was valid. Such schemes allow authorities to delegate their planning decision making powers to principle planning officers.

Background:

Claimants grounds of challenge – applicable to planning:

One - The decision to grant planning to the Interested Party was reached in a manner that was procedurally unfair.

Three & four – It was not open to the planning officer to determine the application, since exceptions within the delegation scheme applied to this application.

Justice William's finding:

Ground One.

He found no grounds for procedural unfairness mainly because the Defendant did not at any time make any direct or clear request for the application to be determined by a panel as opposed to an officer. Therefore the Council had not failed to consider any request.

Grounds 3 & 4:

After careful consideration of case law, Justice Williams decided to assess the rationality of the planning officer's decision looking in particular at the reasoning and rationale used in his decision to determine the application.

He found that planning permission had been granted by one officer on the basis of a detailed report prepared by another officer that failed to address the question of whether the application should be determined by a panel. Because of this and other factors he was satisfied that it was unreasonable or irrational for the planning permission to have been granted.

Contaminated Land:

Relevance:

During consideration of claimant Grounds 3 & 4 above, Justice Williams noted that the planning officer report contained an analysis of identified main issues with an assessment of each. One of these main issues was contaminated land.

The Justice found that in considering contaminated land, the officer who had granted permission (subject to CL conditions) had not considered a memo sent to him by a technical officer that recommended Phase 1 & 2 report submission prior to approval. This recommendation was made on the basis of the site's proposed sensitive end use (residential).

The planning officer also admitted in an email, that whilst writing up the application for approval, that he had thought 'there were no objections' and asked the technical officer whether he might condition the application. The technical officer advised yes (presumably on the basis that this would be the planner's prerogative) but said again that she would prefer site investigation up front.

Justice Williams took into account that contaminated land had been previously identified as a main issue and decided, that "it was unreasonable for planning permission to be granted when so many issues relating to potential contaminated land were unresolved."

In his summary, he stated that **"a reasonable local planning authority might have demanded much more information from the Interested Party before deciding to grant permission, rather than grant permission subject to conditions when the extent of any potential problem was unknown."**

Implications:

1. CLO's may need to consider Phase 1 & 2 requirement for sites with a proposed sensitive end use.
2. CLO's can reasonably recommend that Phase 1 and 2 reports are submitted prior to grant of planning permission for residential developments, particularly where contaminated land has been, or is likely to be identified by as a main issue.
3. Planning officers can reasonably demand Phase 1 & 2 information up front when contaminated land is identified as a main issue and the proposed end use of a site is residential.

Full judgement is available at:

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/581.html>