

Lanner Parish Council v The Cornwall Council [2013] EWHC 37 (Admin)

Case Summary

The Claim related to the Cornwall Council's decision to grant planning permission to Coastline Housing Limited for the development of 25 Affordable Homes on a Greenfield site adjoining the development boundary in Lanner.

The claim sought to quash the Council's decision on two grounds:-

1. That the Council misunderstood or misapplied policy H20 of the former Draft Kerrier District Local Plan 2004 (the Claimant contended that the policy set a limit of 'about 12' dwellings).
2. That the Council's planning committee was not presented with full, sufficient and correct data on the local need for rural affordable housing when it made the decision.

Policy H20 ('H20') was contained within the draft Kerrier Local Plan 2004. That Plan did not ever reach a Public Inquiry stage and so never became part of the development plan for Kerrier District Council or the Cornwall Council ('the Council'). Instead, H20 was a material consideration for the Council's Planning Committee.

The Council defended the claim.

Following a hearing in the High Court, HH Judge Anthony Thornton QC held that:-

- 1) The Committee was not misinformed about the meaning of policy H20 and was entitled to give the policy little weight and approve

the application on the grounds that it would assist in satisfying local need for affordable housing. Furthermore, it is clear that in addition to the Committee members being given advice along these lines, they were all experienced members in local planning issues who would have been advised about the current effect of policy H20 on previous occasions and who must have acquired a detailed knowledge of whether and in what circumstances they could decline to give effect to the policy and permit a development which exceeded the numbers provided for in policy H20.

- 2) It is necessary to keep in mind the role of the Committee and the limited basis on which a court can intervene to quash a decision which is challenged. In this case, the Committee had to decide whether or not the local need for affordable housing outweighed the general discouragement of developing a green field rural site. This required the Committee's members to consider the material that had been supplied and all relevant planning policies. The members were not involved in a fact-finding exercise but in a policy evaluation exercise. It followed that the weight that should be given to the matters that they considered and the decision itself involved matters of planning judgment. The court therefore could only intervene if the Committee made an error of law or failed to take into account material considerations. It could not, however, consider whether the decision itself was erroneous unless that decision was perverse. This is particularly so when the matters complained of involved the weighing up of policy issues.

- 3) In respect of Ground 2, the Learned Judge said:

"66. The Committee placed greater weight on the Homechoice Register details than on the other survey results and appeared to place little weight on the suggested shortcomings of that material. It is not for me to express any views as to whether the data

extracted from the Register presented an accurate measure of local affordable housing need, whether it could or should have been presented in a different way or whether it should have been preferred to and be afforded greater weight than the LPC and Coastline data. All these matters involved the exercise of planning judgment and the application of planning policy. It is, however, clear that it was not demonstrated that the Homechoice Register data should have been corrected in the ways suggested by LPC in argument or that the Coastline survey could or should have been dismissed as being a flawed assessment. Furthermore, the surveys were not statistically valid surveys of identifiable fact. At best, they provided an indication of local housing need to enable generalised conclusions to be drawn by the decision-makers as to whether or not to approve the application.”

Consequently, the claim was dismissed on both grounds and Lanner Parish Council ordered to pay the Council's costs of the proceedings.

A full copy of the Judgement can be found at:
<http://www.bailii.org/ew/cases/EWHC/Admin/2013/37.html>

The Parish Council requested permission to appeal which was refused by the Judge. It has now made an application for permission to appeal from the Court of Appeal. In the meantime, Coastline submitted a further application which has been approved by the Council.