Claims No. CO/1361/2014

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN:

REDHILL AERODROME LIMITED

Claimant

-v-

(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2) TANDRIDGE DISTRICT COUNCIL
(3) REIGATE AND BANSTEAD BOROUGH COUNCIL

Defendants

APPLICATION FOR PERMISSION TO APPEAL MADE ON BEHALF OF THE SECRETARY OF STATE

COMPELLING REASONS TO GRANT PERMISSION TO APPEAL

1. The Government attaches great importance to Green Belts[1]. For six decades it has been and is a central and key policy of restraint and strict limitation on development in the designated Green Belts.

2. The interpretation of Green Belt policy in this judgment weakens an element of that policy, particularly as to how a decision maker should address 'any other harm' in a Green Belt proposal for inappropriate development. The position

[1] §79 of the Framework

articulated in the judgment is novel having regard to: (i) the previous state of the law on precisely the same words, and; (ii) the absence of any intention to change the policy.

3. In those circumstances, this is a plain case in which the Court should grant permission to appeal so that the Court of Appeal may give rapid and conclusive clarity on the issue. This judgment will have immediate and wide effects on day-to-day decisions. The great importance of Green Belt policy and the implications of the judgment for decisions on other Green Belt cases both by planning authorities and by the Secretary of State on appeal make this a case in which there are compelling reasons to grant permission to appeal. Such is consistent with the general thrust of the Planning Court's role in avoiding delay and uncertainty in the planning system.

4. In any event, there are real prospects that the appeal would succeed on the following grounds.

GROUND 1

The Court erred in that it did not give any or any sufficient effect to the plain meaning of the words of §§ 87 & 88 of the Framework.

5. The Claimant did not submit orally that there had been any material change to the wording of PPG2 so far as it was now expressed in §§87 & 88 of the Framework. Likewise, the Court did not identify any material change.

6. The plain meaning of the words 'and any other harm' clearly relates to harms in addition to definitional harm, openness etc and it is an overly sophisticated reading of a policy document to hold otherwise.

7. It is strongly arguable that words of Green Belt policy should be given their plain meaning and the Court of Appeal should be given the opportunity to say so.

GROUND 2

The Court erred in not following clear authority on the meaning of precisely the same words in PPG 2 (*River Club*).

8. The Inspector was obliged to give effect to the policy in § 88 of the Framework, including the words 'and any other harm'. She followed the clear, unequivocal and cogent reasons provided by the High Court in *River Club*. It is startling that the High Court should rule that those words now have a quite different meaning and that in faithfully following the law as articulated by the High Court the Inspector has now been found to have erred in law such that her decision should be quashed.

9. This is a case in which there is persuasive authority in support of the Secretary of State's position and hence there is at least a real prospect that the Court of Appeal would prefer the *River Club* approach.

GROUND 3

The Court allowed the tail to wag the dog - though context and reading the Framework as a whole are relevant to understanding the policy, they do not have the effect which the learned judge found.

10. At § 55 of the judgment the question asked was: '*Was it right then to take them into account either individually or as part of the cumulative Green Belt harm assessments?*'. The Court found that it was not correct to take those matters into account, contrary to the position in PPG2.

11. That outcome was in error because the idea of reading planning policies as a whole is not new. Rather, it is long established. As was submitted at the hearing, national planning policies on particular topics have never been kept in discrete silos, to be used in isolation. Resolving the tensions between policies

which pull in different directions and with differing forces has always been a feature of a decision maker's task in the planning sphere.

12. The conclusion at §56 of the judgment is wrong. The outcome from the judgment is that all manner of considerations are capable of contributing to very special circumstances but non-Green Belt harms which do not warrant refusal do not go into the balance. In this way the scales to assess very special circumstances are upset. So, the 'other considerations' to make very special circumstances are unlimited in scope, but the harm is limited to Green Belt harm.

13. Still further, the conclusion at §57 of the judgment leads to a situation in which harm and cumulative harm is not taken into account. In ruling out the possibility of cumulative harm under the Framework, the Court has in fact failed to interpret the Framework as a whole and significantly damages its role in protecting against a range of harms which arise and accumulate.

14. So far as context is relevant in interpretation of the policy, it is Green Belt policy, taken as a whole which is the immediate and determinative context. The interoperation in this judgment is out of context, and is inherently improbable.

15. This ground is both of wider importance as to the interpretation of the Framework and enjoys real prospects of success.

GROUND 4

The Court ought to have concluded that the decision would have been the same regardless of the approach to 'any other harm' to the Green Belt.

16. Paragraph 126 of the decision letter is a very clear statement of the Inspector's views of the merits of the appeal - the harm both significantly and demonstrably outweighed the benefits. It is quite clear that the proposal failed to persuade the Inspector by a considerable margin. It is wrong to suggest that this clear statement is affected by the Inspector's approach to Green Belt issues (paragraph 62 of the judgment).

17. It is plain that the Inspector found the proposal to fall well short of demonstrating very special circumstances.

CONCLUSION

18. The court is respectfully invited to grant permission to appeal on the grounds that this case, which the Court considered to be far from straightforward, raises issues which it is appropriate for the Court of Appeal to consider and is of wider importance than its own facts.

Richard Kimblin

24th July 2014

Claims No. CO/1361/2014

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN:

REDHILL AERODROME LIMITED

Claimant

-v-

(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2) TANDRIDGE DISTRICT COUNCIL
(3) REIGATE AND BANSTEAD BOROUGH COUNCIL

Defendants

APPLICATION FOR PTA MADE ON BEHALF OF THE SECRETARY OF STATE

The Treasury Solicitor
One Kemble Street
London
WC2B 4TS

Caseholder: Dan Drewett
Ref: Z1408593/DWD/B5

Richard Kimblin

No5 CHAMBERS

London • Birmingham • Bristol

Tel: 0845 210 5555

Ref: 618153