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Case Summary posted by the Task Force on Access to Justice

United Kingdom: *Dover District Council (Appellant) v Campaign to Protect Rural England, Kent (Respondent): CPRE (Respondent) v China Gateway International Ltd (Appellant) & China Gateway International (CGI) Ltd (Interested Party)*

1. <i>Key issue</i>	The Supreme Court explained the extent of the duty on local planning authorities to give reasons for their decisions to grant planning permission, including where applications involve Environmental Impact Assessments
2. <i>Country/Region</i>	UK
3. <i>Court/body</i>	Supreme Court
4. <i>Date of judgment /decision</i>	2017-12-06
5. <i>Internal reference</i>	[2017] UKSC 79
6. <i>Articles of the Aarhus Convention</i>	Article 6, para. 9, and article 9, para. 4
7. <i>Key words</i>	Duty to give reasons, adequacy of reasons, remedies

8. *Case summary*

Dover District Council appealed to the UK Supreme Court against a decision to quash its grant of planning permission on the grounds that the reasons it had given were insufficient.

The proposed development was "EIA development" for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, extending to over 500 dwellings. The Planning Committee of the Local Planning Authority (LPA) rejected the planning officers' recommendation to reduce the number of dwellings and granted permission for the proposal. The LPA conceded that its reasons for granting permission had not complied with the 2011 Regulations, but argued that the breach could have been remedied by a declaration.

Duty to give reasons

Prior to this case, LPAs were only required to give reasons in planning decisions in the following circumstances:

- (1) **Refusals** – Town and Country Planning (Development Management Procedure) (England) Order 2015, art 35(1)(b);
- (2) **EIA cases** – Town and Country Planning (Environmental Impact Assessment) Regulations 2017, reg 30(1)(d)(ii)
- (3) **Delegated officer decisions** – Openness of Local Government Bodies Regulations 2014, reg 7 (see *R. (Shasha) v Westminster City Council* [2017] P.T.S.R. 306)

Public authorities are under no general common law duty to give reasons, but fairness could in some circumstances require it (see *R. v Secretary of State for the Home Department Ex p. Doody* [1994] 1 A.C. 531 and *Oakley v South Cambridgeshire District Council* [2017] EWCA Civ 71).

As a result of *Dover v CPRE*, there is now a further category of case that requires reasons (see *Dover* at 59):

“cases where, as in Oakley and the present case, permission has been granted in the face of substantial public opposition and against the advice of officers, for projects which involve major departures from the development plan, or from other policies of recognised importance (such as the “specific policies” identified in the NPPF [at fn9])”

This includes grants of planning permission which are:

- (1) Against substantial public opposition “and”
- (2) Against officer’s advice
- (3) Major departure(s) from the development plan “or”
- (4) Departure(s) from other policies of recognised importance (such as the National Planning Policy Framework, NPPF).

Standard of reasons

The Supreme Court confirmed that the duty to provide adequate and cogent reasons in planning decisions by LPAs is the same as that expected of the Secretary of State or Planning Inspectors when determining planning appeals (see *South Buckinghamshire DC v Porter* (No.2) [2004] UKHL 33). Where there is a legal requirement to give reasons, an adequate explanation is needed. Where the LPA followed the recommendations in the officers’ report, no reasons further than those in the report might be needed. Even if it was not accepted, it might normally be enough for the committee’s statement of reasons to be limited to the points of difference. The essence of the duty was the same: whether the information provided left room for doubt about what had been decided and why (see *Clarke Homes Ltd v Secretary of State for the Environment* [2017] P.T.S.R. 1081 applied (paras 37-42)).

Remedies

Where there is a material defect of reasoning, the appropriate remedy is to quash the permission (see *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 W.L.R. 153).

9. <i>Link to judgement/decision</i>	The Supreme Court judgment can be found here http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/UNITE_D_KINGDOM/Dover/uksc-2016-0188-judgment.pdf
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