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The Court of Appeal makes a landmark decision with ramifications for 'called in' schemes

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A recent Court of Appeal judgment regarding the Secretary of State's ("SoS") decision not to 'call-in' the 'Paddington Cube' application considers whether the SoS is under a duty to provide reasons for his decisions. The judgment will have major ramifications for future decision making by the SoS.

The application concerned the controversial 14-storey 'floating' glass office complex, designed by Renzo Piano, next to Paddington Station, London. Whilst this project was undoubtedly seen by developers as a compromise on the 72-storey 'Paddington Pole' that was rejected in 2016, the new scheme would include the demolition of the Edwardian former Royal Mail sorting office. Understandably this drew opposition from heritage groups, including the appellant, SAVE Britain's Heritage ("SAVE").

It is not uncommon for certain high profile planning decisions to be 'called in' by the SoS under powers granted by Section 77 of the Town and Country Planning Act 1990. The SoS's policy says that he may call in planning applications where the application is above particular size criteria and is either Green Belt development, development outside town centres, World Heritage Site development, playing field development or flood risk area development. Despite SAVE's request, the 'Paddington Cube' application was not called in by the SoS, and no reason was given for this decision. Accordingly, the application was granted consent by the local authority in December 2016. SAVE therefore challenged the decision not to call in the application.

Firstly, SAVE argued that the SoS, as respondent, had a common law duty to provide reasons. Secondly SAVE argued that they had a legitimate expectation to be given reasons for a decision, based on government policy published in 2001 that expressly said that reasons would be given. The SoS argued that whilst it had been the practice for many years to give reasons for not calling in a decision, that this practice ended in 2004 and SAVE ought to have known this.

The Court of Appeal stated that there was no common law duty for the SoS to give reasons for his decisions, as the decision is not directly determinative of the planning application itself, and is instead a procedural means of deciding who should deal with the decision. However, with regard to the second limb of the challenge, the President of the Family Division, Sir Andrew McFarlane, and Lord Justice Singh and Lord Justice Coulsen agreed that:

"An unequivocal promise was made (in 2001), and that unequivocal promise should have been publicly withdrawn when (or if) a conscious decision was taken no longer to give reasons for not calling in applications... For these reasons, I consider that Save's legitimate expectation case has been made out."

Whilst there was little doubt that the development would still go ahead (as SAVE had been precluded from actually challenging the grant of permission, SAVE heralded the decision as one that "will resonate through the planning system". It will certainly enforce the need for greater openness and transparency in decision making. It was also somewhat embarrassing for the Government, who had essentially failed to follow their own rules.

Access the judgment here.

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