

PRESS RELEASE - JUDICIAL REVIEW OF RADSTOCK DECISION NOT TO TAKE PLACE

Earlier on this year I was granted full Legal Aid for all stages of progress towards and through a Judicial Review. However, the dates at which each phase of Legal Aid were to start depended on the success of the preceding stage. Following further work towards a Judicial Review it became apparent that, due to the 'emotional' way that judges view cases such as this one, the chances of being granted leave for Judicial Review had dropped to 50% at most. This meant that Legal Aid would no longer fund the progression of the case and I was forced to withdraw without submitting papers to the court. This does not imply that the decision taken by B&NES (that the regeneration benefits outweighed the harm to nature conservation) was lawful, only that it cannot be brought to court.

The case presented to the Legal Aid board was essentially an unfairness case based upon the late release of the Regeneration Case document, involving the lack of the opportunity for the public to comment, and the influence the document and any comments on it could have had on the committee. A wrong planning decision cannot be challenged, except by the developers, but an unlawful decision can. Unfortunately, judges do not like to intervene on planning decisions; they do not like to intervene when there is controversy; and they do not like to intervene when it is one matter versus another (eg wildlife versus economic claims) - this case had all three characteristics. Because judges do not like to intervene, they will jump on anything that can justify non-intervention and the bar is set very high when it comes to convincing a judge to allow a review of the decision. Arguments called 'subtle arguments' in legal circles do not convince a judge. He/she is looking for one big new fact that would have made a fundamental difference. Spin and misleading information is not considered, only new facts.

There were new facts put forward in the new documents that could have been challenged or commented on, there was plenty of spin and there was misleading information. There was a change of emphasis from the application's original aim. The development was now flagged up as meeting the Regeneration Objectives of the original SRB bid in 1996! I think that the change of purpose was contrived in the knowledge that the B&NES ecologist and the Consultant ecologist brought in by B&NES recommended refusal and because the Case Officer viewed NRR/Bellway's claims of adequate mitigation as unsound. Whereas previously, the application was for a sustainable development that also delivered an opportunity for regeneration and included compliance with local and national policies on nature conservation and biodiversity, now it was solely a regeneration initiative with an ecological price (the original application claimed to be in line with PPS9 and local plan policies, which require full mitigation and compensation, but the development would plainly contravene both national and local policies on wildlife and biodiversity).

The original SRB objectives did not include protection of the special natural and cultural heritage flagged up in the NRR/Bellway application and were, therefore, closer to what they had actually produced.

The Section 106 agreement revealed that the 'local' construction jobs and training could be taken up by people from as far as 40 miles away and that management of the off-site compensation sites would be given over to Sustrans, who were already obliged to manage the route to Frome under the conditions of the application to put in their cycle path and already manage the route to Shoscombe!

The Delegated report acknowledged that the proposed development would not comply with B&NES planning policies on sites of nature conservation value, European protected species, priority B&NES species, and landscape features and habitats. Unfortunately, because Local Authorities do not have to ensure that developments would be able to comply with the licencing criteria that allow licences to harm protected species, it was not possible to pursue this issue through the courts.

As the EU is investigating the British Government's failure to uphold the Habitats Directive, which Britain is signed up to, it may be possible to pursue this issue through the European courts or processes. My solicitor is looking into this.

Comment:

The system is stacked in favour of developers and against the public and natural justice. I am disappointed not to have succeeded in bringing forward a challenge to this unpopular decision and would like to thank all those who have supported me. It will be interesting to see whether, given the current climate, Bellway can actually develop the site. If they do, it will be the thin edge of the development wedge and will cause the loss of a unique site rich in natural and industrial heritage that could have been a jewel in its crown - NRR plans more development on the back of this, and plans are no doubt already afoot for massive expansion of this unique historic town at high environmental cost.

Notes to the Editor:

Background

Following the decision by the planning committee on 19th March 2007 to permit the development of Radstock Railway Land subject to a Section 106 agreement, I repeatedly asked B&NES, through my solicitor, to take the decision back to committee on the grounds that a new document, the Regeneration Case, containing new material had gone to the committee at the last minute without the chance for the public to comment, that there were changes to the UK Priority species and habitats lists affecting species and habitats on the site, and because the final bat report had not been released. I drew up a critique of the Regeneration Case to show that it was not a sustainable development that would regenerate Radstock, as they claimed in the application documents. I drew up a further document to show that there had been changes to what NRR and Bellway were saying in the new document compared with their application documents. Despite several letters from my solicitor, B&NES refused to budge, and finally issued a decision notice on 31st March 2008 giving permission to NRR and Bellway Homes for development of Radstock Railway Land in principle and in accordance with the Design Code and the Ecological Mitigation, Compensation and Management Plan. I was convinced that the Regeneration Case document, with its spin and new information, was designed to influence councillors, so my solicitor and one of the best barristers available, David Wolfe of Matrix Chambers, set about building a case. Our case was essentially an unfairness case based upon the late release of the Regeneration Case document.

The Regeneration Case document contained a number of changes including:

- the new claim that the scheme was to deliver the original SRB objectives from 1996, in contrast to the application documents' claims of a sustainable development that would also regenerate the town
- other new information, such as costings, ecological information, and information about NRR and the history of the 'journey' to this point;
- exaggerated need for accommodating housing in Radstock;
- implication that the Radstock Community had given a mandate to NRR by claiming that it was at the Community Planning Weekend that the people had mooted a 'Development Trust', which led to NRR - there is nothing about this in the report of the weekend at all;
- the claim that the buildings would meet EcoHomes BREEAM standards of 'very good', when the retail units only rated a 'pass';
- implication that the Planning Inspector had ruled out a railway, when the opposite was the truth, the Inspector having said that the retention of a sustainable transport corridor did not rule it out;
- the claim that Radstock town centre was weak in retail and economic terms and

'underperforms' against competing settlements, whilst strangely also saying that the town was not in competition;
certain new 'key economic indicators' that were not flagged up as economic indicators in the application documents, and some of which were unreliable as indicators;
the claim that Norton Radstock figures for out-commuting were for Radstock, when Radstock's figures were actually higher;
the claim that ecological measures were sustainability features when the effect fell well short of the effect claimed in their own Sustainability Statement
information about the viability of past schemes that was in conflict with information given with the previous application documents and put over a strong message that this was the only viable scheme that could regenerate Radstock;
the claim that their ambition was consistent with previous regeneration initiatives, when previous initiatives had greater community benefits designed in, including benefits for the 'youth' in the area, and the John Thompson Plan actually included a railway and a mixed use community resource building integrated with the station building.

Please note that if any current organisation, or individual other than me, has tried or tries to claim credit for either instigating, organising or undertaking this legal challenge, it is simply an attempt to do just that - claim credit. I would like to make it plain that the solicitor, Charlie Hopkins of Earthrights Solicitors, was originally secured by myself and another member of the Community Coalition who has since moved out of the area, as we were concerned that an unlawful permission had been granted. After that I was on my own, so to speak, with regard to the challenge. Latterly John Dunkley, also of Earthrights Solicitors was working with me on the case.

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END 30th June 2008.