SEPTEMBER 24, 2013 BY DAVID HART QC

Judge quashes "exclusive" golf course decision- and why we need judicial review

(http://adam1cor.files.wordpress.com/2013/09/22-ep-cherkley-court-2-w1200.jpg)Cherkley Campaign Ltd, (R o.t.a) v. Longshot Cherkley Court Ltd, Haddon-Cave J, 22 August 2013 read judgment (http://www.bailii.org/ew/cases/EWHC/Admin/2013/2582.html)

This is a successful judicial review of the grant of planning permission to a proposed new golf club in leafy Surrey – where one central issue was whether, in planning policy terms, there was a "need" for the club. The local planning officers had advised the council against the proposal, but the members voted in favour of it (just), hence this challenge. It succeeded on grounds including perversity, which is pretty rare, especially in the planning context, but, when one looks at the judgment, you can readily see why the judge concluded as he did.

The judgment contains some pungently expressed reminders that the planning system is not just about facilitating "business" but requires a proper assessment of the public interest. And dressing up the provision of very very expensive golf to a few very very rich people as "need" does not wash.

The Cherkley Estate consists of Cherkley Court (former home of Lord Beaverbrook), and Garden House, together with substantial outbuildings and cottages, which are set in parkland, woodland and farmland – some 375 acres in all. In landscape terms, they are about as protected as you can get, as the judge observed. The whole estate is within the Surrey Hills Area of Great Landscape Value, some within the Surrey Hills Area of Outstanding Natural Beauty. It is adjacent to the Box Hill Estate, a National Trust property, and the Mole Gap to Reigate Escarpment, a Special Area of Conservation. It includes a large field of uncultivated chalk grassland known as the '40-Acre Field', which is a UK Priority Biodiversity Action Plan Habitat and has the designation criteria of a Site of Nature Conservation Importance. 40-Acre Field (on which it is proposed to put 5 golf holes – so it won't be uncultivated grassland any more) abuts an adjacent EU classified Special Area of Conservation and Site of Special Scientific Interest. The whole estate is within the Metropolitan Green Belt.

The planning officers recommended refusal on 3 grounds:

(1) The proposed golf course in this highly exposed and sensitive landscape would be *"seriously detrimental"* to the visual amenities of the locality, and would fail *"to respect or enhance"* the landscape character of the area

(2) *"no justification"* had been provided as to *"why the proposed golf course needs to be located in protected landscape"*.

(3) Third, the proposal involved new buildings in the Green Belt, including a partly underground indoor swimming pool, an underground spa and a partly underground maintenance facility. There were

no *"very special circumstances"* advanced which clearly outweighed the harm.

Unperturbed by these cogent reasons, the members of the Council approved the scheme – 9 votes to 8, and then 10 to 9 in a re-vote. The hapless planning officers then had to draft reasons for the grant – as the judge observed

> **a not-altogether easy drafting exercise for them since it ran counter to their own recommendations and views.**

One of those reasons asserted (as it had to) that there was a "need" for this golf course.

The judge (Haddon-Cave J, fresh from the Richard III skeleton case – **see my post here) (http://ukhumanrightsblog.com/2013/08/22/they-paved-plantagenet-n-put-up-a-parking-lot/)** was not impressed by this supposed reason:

> **The developers argued that proof of private *"demand"* for exclusive golf facilities equated to *"need"*. This proposition is fallacious. The golden thread of public interest is woven through the lexicon of planning law, including into the word *"need"*. Pure private *"demand"* is antithetical to public *"need"*, particularly very exclusive private demand. Once this is understood, the case answers itself. The more exclusive the development, the less public need is demonstrated. It is a zero sum game.**

Or:

> ***Need"* does not simply mean *"demand"* or *"desire"* by private interests. Nor is mere proof of *"viability"* of such demand enough. The fact that Longshot could sell membership debentures to 400 millionaires in UK and abroad who might want to play golf at their own exclusive, 'world class', luxury golf club in Surrey does not equate to a *"need"* for such facilities in its proper public interest sense.**

His consideration of what "need" means started with its Old English origin, and diverted via the nursery:

> **The word "need" in Old English was 'nēd' or 'nēod' (noun) or 'nēodiun' (verb) and is of Germanic origin.**

and

> **Children sometimes use the word "need" infelicitously and say 'I need...' when they really mean 'I want...'. .**

Just so. Rich people, and developers who make money out of them, may want posher courses with less people on them, but that, by any stretch of the imagination, is not a need – unless one has a particularly unbridled view of the virtues of the capitalist endeavour.

And Surrey does not need another golf course. It has 141 already, which, as the judge tersely observed, is by any standards more than enough. The requirement to show "need" for further golf facilities to be built in protected landscape

> **could not be side-stepped by resort to an argument that this golf course was going to be *über*-exclusive. It was still a golf course.**

Hence, the Council had misinterpreted the meaning of "need" in planning policies applicable to the proposal. In any event, as the judge decided, the decision was perverse – it simply *"does not add up."*

The judge quashed the decision on these grounds, as well as on the basis that the Council misapplied

applicable landscape policies and failed to pay more than lip-service to Green Belt policies.

The developers wish to appeal – unsurprisingly given the asking price when they bought the estate – £20m. They profess being "appalled" at the decision, and their solicitors say that they "feel entirely let down by the judicial system": see a local press report. (http://www.yourlocalguardian.co.uk /news/local/epsomnews /10630429.UPDATE__Developers_to_appeal_after_high_court_blocks_hotel_and_golf_course_plan/)

Comment

This case is a perfect example of why we need a robust system of judicial review. One does not know from the judgment why this Council failed to follow the recommendations of its professional planning officers, but I speculate that some sort of local politics played its part. But our planning system (and our administrative system generally) can only sensibly work if councils properly apply policies, and if councils know that, if they do not properly do so, their reasons will be examined exquisitely in open court, set aside if bogus and illogical, and that the Council knows that it will bear the costs of the whole exercise.

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One thought on "Judge quashes "exclusive" golf course decision- and why we need judicial review"

Theo Hopkins | September 24, 2013 at 6:30 pm

And how can this be "exclusive" if 399 other millionairs are on the same golf course?