Neutral Citation Number: [2017] EWHC 3059 (Admin)

Case No: CO/2023/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 November 2017

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN **on the application of**	**Claimant**
SAVE BRITAIN'S HERITAGE	
- and -	
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**Defendant**
(1) WESTMINSTER CITY COUNCIL **(2) GREAT WESTERN DEVELOPMENTS LIMITED**	**Interested Parties**

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- -

Richard Harwood QC (instructed by **Harrison Grant**) for the **Claimant**
Nathalie Lieven QC and Mark Westmoreland Smith (instructed by the **Government Legal Department**) for the **Defendant**
Saira Kabir Sheikh QC and Alex Greaves (instructed by **Tri-Borough Shared Legal Services**) for the **First Interested Party**
Christopher Lockhart-Mummery QC and Robert Walton (instructed by **Dentons UKMEA LLP**) for the **Second Interested Party**

Hearing date: 1 November 2017

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Approved Judgment

Mrs Justice Lang :

1. The Claimant applied for judicial review of the decision of the Defendant, dated 15 March 2017, not to call in for his own determination under section 77 of the Town and Country Planning Act 1990 ("TCPA 1990") applications for planning permission and listed building consent for a major demolition and re-development project at 31 London Street, London W2, known as the Paddington Cube development ("the development").

2. The applications for planning permission and listed building consent were made by the Second Interested Party ("the developer") to the First Interested Party ("Westminster CC"), which was the local planning authority.

3. The development was controversial and widely opposed by a number of organisations and individuals, including the Claimant, a well-respected conservation group.

4. Permission to apply for judicial review was granted by Sir Ross Cranston, sitting as a High Court Judge, after refusal of permission by Mr Justice Dove on the papers.

Facts

5. On 6 December 2016, Westminster CC Planning Applications Committee resolved to grant conditional planning permission and listed building consent for the development. The Mayor of London decided not to take over the applications.

6. In a letter dated 13 December 2016, the Claimant asked the Defendant to call in the development for his own determination, following a public inquiry, on the ground that the applications met the criteria for a call-in. In a detailed letter, the Claimant referred to the harm to heritage assets and buildings of merit within a Conservation Area, contrary to national and local planning policies, and opposed by Historic England; the significant effects of the development beyond its immediate locality; significant architectural and urban design issues; the controversial nature of the development which had attracted widespread opposition; and concerns about the handling of the applications by Westminster CC.

7. The Victorian Society and the Imperial College Healthcare NHS Trust also requested the Defendant to call in the applications.

8. On 20 February 2017 the Defendant made a direction prohibiting Westminster CC from granting permission on the applications without specific authorisation from him, pursuant to Article 31 of the Town and Country Planning (Development Management Procedure)(England) Order 2015.

9. In a letter dated 15 March 2017, the Defendant notified Westminster CC that he would not be calling in the applications, and he lifted the direction prohibiting Westminster CC from granting permission on the applications, pursuant to Article 45 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The letter read as follows:

> "**Town and Country Planning Act 1990**

> **Redevelopment of Paddington Sorting and Delivery Office**
>
> **Application numbers – 16/09050/FUL & 16/08052/LBC**
>
> I refer to the above application which has been the subject of third party requests to call in for determination by the Secretary of State for Communities and Local Government.
>
> The Secretary of State has carefully considered this case against call-in policy, as set out in the Written Ministerial Statement by Nick Boles on 26 October 2012. The policy makes it clear that the power to call in a case will only be used very selectively.
>
> The Government is committed to give more power to councils and communities to make their own decisions on planning issues, and believes planning decisions should be made at the local level wherever possible.
>
> In deciding whether to call in this application, the Secretary of State has considered his policy on calling in planning applications. This policy gives examples of the types of issues which may lead him to conclude, in his opinion that the application should be called in. The Secretary of State has decided, having had regard to this policy, not to call in this application. He is content that it should be determined by the local planning authority.
>
> In considering whether to exercise the discretion to call in this application, the Secretary of State has not considered the matter of whether this application is EIA Development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.
>
> The local planning authority responsible for determining this application remains the relevant authority for considering whether these Regulations apply to this proposed development and, if so, for ensuring that the requirements of the Regulations are complied with.
>
> The Article 31 Direction issued pursuant to the Secretary of State's letter of 20 February 2017 is hereby withdrawn."

10. This letter was copied to the Claimant under cover of a letter dated 15 March 2017 which stated:

> "The Government remains committed to giving more power to councils and communities to make their own decisions on planning issues, and believe that planning decisions should be made at the local level wherever possible. The call-in policy

> makes it clear that the power to call in a case will only be used very selectively.
>
> The Secretary of State has deciding, having had regard to this policy, not to call in this application. He is satisfied that the application should be determined at a local level.
>
> I appreciate that this is not the preferred outcome for you and I understand that there will be great disappointment as a result. It is, however, now for the Council to determine this application and a copy of our letter to the Council is attached for your information."

11. On 20 April 2017, in response to an application under the Environmental Information Regulations 2004, the Defendant provided the Claimant with a redacted version of the briefing note which had been provided by civil servants to the Minister, Marcus Jones MP, to assist him in the decision-making process. The briefing note summarised the details of the site and the proposal and the main issues, including the concerns of the objectors. It stated that the local MP had not made representations. The redactions blanked out paragraphs 3, 25 and 28, which were those which contained the civil service advice and recommendation to the Minister. The reason given for not disclosing this advice was that "Ministers should be able to consider the advice from officials and discuss it frankly and with candour, without the inhibition that would be caused if disclosure was made at this time."

12. Following pre-action protocol correspondence, the Claimant's claim for judicial review was issued on 26 April 2017. The sole ground of challenge related to the failure to give reasons.

13. On 14 August 2017, Westminster CC granted the developer planning permission and listed building consent for the development. In correspondence with the Claimant's solicitors, Westminster CC expressed its view that the claim against the Defendant did not prevent it from proceeding to grant planning permission and listed building consent. The Claimant did not issue any proceedings against Westminster CC to challenge its decision, nor to seek an injunction preventing it from proceeding.

14. Imperial College Healthcare NHS Trust has filed a claim for judicial review against Westminster CC, challenging the grant of planning permission and listed building consents, on the ground that the development will increase journey time for ambulances travelling to St Mary's Hospital.

Statutory framework

15. By section 77(1) of the TCPA 1990 the Secretary of State is empowered to 'call in' for his own determination planning applications which are before local planning authorities:

> "The Secretary of State may give directions requiring applications for planning permission … to be referred to him instead of being dealt with by local planning authorities."

16. A similar power exists for listed building consent applications in section 12(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

17. Under article 31 of the Town and Country Planning (Development Management Procedure)(England) Order 2015, the Minister is able to suspend a local planning authority's power to determine a planning application, usually to enable a decision to be made. A similar power exists under sections 14 and 15 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

18. The policy criteria for calling in applications were set out in a ministerial statement to Parliament by Mr Richard Caborn MP, the then Planning Minister, on 16 June 1999. On 26 October 2012, the policy criteria were amended in a Written Ministerial Statement by Nick Boles MP which stated:

> "**Planning Applications**
>
> **The Parliamentary Under-Secretary of State for Communities and Local Government (Nick Boles)**: The Localism Act has put the power to plan back in the hands of communities, but with this power comes responsibility: a responsibility to meet their needs for development and growth, and to deal quickly and effectively with proposals that will deliver homes, jobs and facilities.
>
> The Secretary of State for Communities and Local Government has the power to "call in" planning applications for his own consideration. There will be occasions where he considers it necessary to call in a planning application for determination, rather than leave the determination to the local planning authority.
>
> The policy is to continue to be very selective about calling in planning applications. We consider it only right that as Parliament has entrusted local planning authorities with the responsibility for day-to-day planning control in their areas, they should, in general, be free to carry out their duties responsibly, with the minimum of interference.
>
> In the written ministerial statement of 6 September 2012, Official Report, column 29WS, Ministers noted that the recovery criteria already include large residential developments. To align this with the call-in process, we stated we would consider carefully the use of call-in for major new settlements with larger than local impact. Consequently, we have resolved to amend the existing call-in indicators (the "Caborn" principles, 16 June 1999, Official Report, column 138W).
>
> The Secretary of State will, in general, only consider the use of his call-in powers if planning issues of more than local

> importance are involved. Such cases may include, for example, those which in his opinion:
>
> may conflict with national policies on important matters;
>
> may have significant long-term impact on economic growth and meeting housing needs across a wider area than a single local authority;
>
> could have significant effects beyond their immediate locality;
>
> give rise to substantial cross-boundary or national controversy;
>
> raise significant architectural and urban design issues; or
>
> may involve the interests of national security or of foreign Governments.
>
> However, each case will continue to be considered on its individual merits."

19. There is no statutory duty to give reasons for not calling in an application. However, the Town and Country Planning (Development Management Procedure)(England) Order 2015 envisages that reasons may be given when the minister decides to call in an application. By article 17, if an application is called in, the local planning authority is required to serve on the applicant a notice "setting out the terms of the direction and any reasons given by the Secretary of State for issuing it".

Grounds for judicial review

20. **Ground 1.** The Claimant submitted that the Defendant's decision was unlawful because he failed to give reasons for not calling in the applications, in breach of the Claimant's legitimate expectation that reasons would be given. The legitimate expectation arose from a change in practice, announced in a Green Paper and in Parliament in December 2001. Thereafter, ministers began to give reasons for not calling in planning applications, when previously they had not done so.

21. The change was announced in the Green Paper '*Planning: delivering a fundamental change*', issued by the then Secretary of State for Communities and Local Government in December 2001. Paragraph 6.18 stated:

> "At the moment, we state the reasons for calling in a planning application for the Secretary of State's decision and place on the DTLR planning web site both copies of letters calling in applications and notifying applicants of Ministers' final decision. We have not given reasons for not calling in a planning application. In the interests of greater transparency, we will now, as from today, give reasons for not calling in individual cases and to put copies of these letters on the Department's web site."

22. Parliamentary answers announcing the publication of the Green Paper on 12 December 2001 referred to the proposed change[1]. Lord Falconer, Planning Minister, said in the House of Lords:

> "We also propose to speed up the handling of planning applications that have been called in and appeals that have been recovered for my determination. My right honourable friend the Secretary of State gives reasons where applications are called in but, up to now, they have not been given when he has decided not to call in an application. In the interests of greater openness he shall, from today, give reasons in both circumstances."

23. The change was also announced to Parliament on 12 December 2001 by the Secretary of State in the House of Commons[2] and by Lord Falconer in the House of Lords[3]:

> "**Lord Williams of Elvel** asked Her Majesty's Government:
>
> Whether they will give reasons for not calling in planning applications.
>
> **Lord Falconer of Thoroton:** As part of our fundamental review of the planning system, we have decided that as from today we will give reasons for our decision not to call in planning applications. This decision, which forms part of the raft of measures in our planning Green Paper published today, is in the interests of transparency, good administration and best practice. The courts have established that there is no legal obligation to provide reasons for not calling in an application…"

24. In March 2010, the departmental '*Review of the call-in process*' stated that decision letters would set out "reasons for either call-in or non-intervention" (paragraph 24).

25. In response, the Defendant submitted that he was not under a duty to give reasons for his decision, and had not intended to do so in this case. The Defendant adduced in evidence a witness statement from Mr Raymond Colbourne, Team Leader in the Planning Casework Unit, which explained that the practice of giving reasons for not calling in applications ceased in 2014. Since then, ministers had issued decision letters without giving reasons. The Defendant submitted that the earlier statements and practice relied upon by the Claimant had been superseded by 2017 and could no longer be relied upon.

26. **Ground 2**. Alternatively, the Claimant submitted that the court should find that there was a general common law duty to give reasons under section 77(1) TCPA 1990, having regard to the following factors:

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[1] HL Deb 12 December 2001 col. 218-220WA; HC Deb 12 December 2001 vol. 376 col. 881-2W

[2] C Deb 12 December 2001 vol. 376 cc878W

[3] HL Deb 12 December 2001 col. 220WA

i) the ability of the Secretary of State to call in a planning application was an important safeguard within the planning process;

ii) it was an unusually private part of the process: decisions were taken by ministers in private with the benefit of an unpublished briefing;

iii) applications could involve public controversy and potential breaches of planning policy. It was particularly important to understand why these were not taken up by the Minister;

iv) further parties were often involved in the debate on the application, often seeking a call-in;

v) fairness to those seeking a call-in necessitated an explanation as to why the application had not been called in, just as fairness to the applicant for planning permission required reasons to be given where an application was called in;

vi) a duty to give reasons would improve the understanding of public decision-making in this area;

vii) it was quite straightforward for the Minister to set out his reasons, as he had the benefit of a written briefing, with which he could either agree or disagree.

27. Alternatively, the Claimant submitted that the common law duty to give reasons arose in the particular circumstances of this case, having regard to the following features of the proposed development:

i) it was of more than local importance;

ii) it conflicted with the statutory duty to preserve or enhance the conservation area and the setting of listed buildings;

iii) it conflicted with national policy on the historic environment because of acknowledged harm;

iv) it had significant effects beyond its immediate locality;

v) it gave rise to substantial cross-boundary and national controversy;

vi) there were significant architectural and urban design issues raised by this huge and novel structure and the destruction and harm to designated heritage assets which was proposed;

vii) call-in was requested not only by leading heritage bodies but, for different reasons, by a hospital trust;

viii) the call-in decision was taken personally by a Minister. The departmental 'Review of the call-in process' in March 2010 indicated that applications for call-in were only referred to a minister if call-in was recommended or if various criteria were met e.g. novel/contentious issue of more than local importance; an MP or MEP requested call-in (which was not the case here); playing field or flooding cases with statutory objection; or in the discretion of

the National Planning Casework Unit (for example, because of a strong objection by a statutory consultee or new planning policy).

28. In response, the Defendant relied on the case law which established that there was no duty to give reasons for a decision not to call in an application under section 77 TCPA 1990. The circumstances of this case did not justify a departure from this well-established general principle.

Conclusions

Ground 1

29. I am grateful to Mr Raymond Colbourne for investigating the history in respect of the giving of reasons for not calling-in decisions since 2001. He explains that, after the announcements in December 2001, limited reasons were given for decisions not to call in applications. The practice of giving reasons was confirmed in the 2010 departmental *'Review of the call-in process*'. The templates used for non-intervention letters were revised from time to time, altering the way in which reasons were given.

30. However, in February 2014, in the course of preparation for the High Court case of *Westminster City Council v Secretary of State for Communities and Local Government* [2014] EWHC 708 (Admin), a departmental decision was made to cease the practice of giving reasons. The template was revised so as to remove the paragraph giving specific reasons for refusing the request to call in, whilst retaining the general reference to consideration of the case against call-in policy. Mr Colbourne has exhibited examples of letters sent before and after the change. Since February 2014, the department has issued non-intervention letters without specific reasons, similar to the decision letter in this case, in some 1,600 planning applications. Prior to this case, no one has argued that there was an entitlement to reasons, based on the announcements in 2001 or subsequent practice.

31. It was common ground before me that a procedural legitimate expectation may arise from a clear and unequivocal representation and/or from an established practice, which an individual or class of persons is entitled to rely upon, even where there is no statutory right to the benefit claimed: see *R (Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363, per Laws LJ at [47] – [57]; and in the planning context *R (Majed) v London Borough of Camden* [2009] EWCA Civ 1029, per Sullivan LJ at [14].

32. In this case, in 2001, a new practice of giving reasons for non-intervention was introduced by the then minister, and it was clearly and unequivocally announced in the Green Paper, and in Parliament. In my view, this could well have given rise to a legitimate expectation that reasons would be given for non-intervention, if it had remained in operation. A failure to give reasons in accordance with the established practice could have been a potential breach of the legitimate expectation, and thus unlawful unless justified.

33. However, by the date of the Claimant's application to the Defendant in December 2016 and the Defendant's decision in March 2017, there was no longer an established practice that reasons would be given for a decision not to call in an application. On

the contrary, the established practice was that reasons would not be given. I consider that the earlier statements and practice relied upon by the Claimant had been superseded by 2016/2017 and so could no longer found an expectation that reasons would be given. If any such expectation was held, it had ceased to be a legitimate one, because of the change in practice.

34. In the light of Mr Colbourne's evidence, supported by examples of letters sent by the department, I cannot accept Mr Harwood QC's submission that the practice of giving reasons remains in force because it has not been formally and publicly revoked by a ministerial statement or published policy document. It is a fundamental principle of public law that public bodies cannot lawfully fetter the future exercise of their discretion under statutory powers, by adopting policies which cannot be changed. As Sedley LJ said in *R (Bhatt Murphy) v Independent Assessor* [2008] EWCA Civ 755, in the context of legitimate expectation, "there is no equivalent expectation that policy itself, and with it any substantive benefits it confers, will not change" (at [68]). It follows that the Defendant at all times had power to change the practice of giving reasons which was adopted in 2001 (subject, of course, to any individual claim of legitimate expectation during any transition period). Even though it may have been good practice to announce the change publicly, there was no legal requirement to do so. Nor was there a legal requirement to issue a statement to indicate that the Green Paper and/or the earlier ministerial statements would no longer be followed.

35. Mr Harwood QC's complaint that the decision appears to have been made by civil servants, not the minister, cannot succeed in the light of the *Carltona* principle. As Lord Griffiths said in *R v Secretary of State for the Home Department ex p Oladehinde* [1991] 1 AC 254, at 300A-B:

> "It is obvious that the Secretary of State cannot personally take every decision …. The decision must be taken by a person of suitable seniority in the Home Office for whom the Home Secretary takes responsibility. This devolution of responsibility was recognised as a practical necessity in the administration of government by the Court of Appeal in *Carltona Ltd v. Works Commissioners* [1943] 2 All ER 560 and has come to be known as the *Carltona* principle."

Even if the Defendant was not directly involved in the decision, the change in practice was lawfully made on his behalf by civil servants to whom he had devolved responsibility.

36. Although the change was not formally announced, I accept the Defendant's submission that, because of the Claimant's active role in planning matters, it should have been aware of the change in the content of the standard non-intervention letters from other cases, and the lack of any case-specific reasons. The Claimant should also have been aware of the stance adopted by the Secretary of State in the well-publicised *Westminster* case. In *Westminster*, the Secretary of State expressly stated that his decision letter was not intended to provide the reasons for his decision, and this was accepted by Collins J. when he said, at [36], "[t]he letter cannot be regarded as one which was intended to give reasons. The defendant was relying on his right not to give reasons and the letter must be read accordingly". There was no suggestion by the Secretary of State in the *Westminster* case that the practice of giving reasons,

announced in the Green Paper and in Parliament in 2001, was still operative. Certainly it was not relied upon by Westminster CC. The question whether or not the Secretary of State ought, in the course of the *Westminster* case, to have referred to the past practice, as announced in the Green Paper and Parliament, has no bearing on what this Claimant could legitimately expect by way of reasons some three years later.

37. Mr Harwood QC also relied upon the House of Commons Library Briefing Papers entitled "Calling-in planning applications" published in 2016 and 2017 (I do not know whether there were earlier editions). The Briefing Papers referred to the policy change announced in Parliament in 2001, to the effect that reasons would be given for a refusal to call in an application.

38. The Briefing Papers included the following disclaimer:

> "Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes….
>
> Disclaimer
>
> This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice…."

39. In my view, the Briefing Papers were out-of-date as they relied upon the Parliamentary statements in 2001 which announced a practice of giving reasons which had ceased in 2014. It is important to note the Briefing Papers were neither authored nor issued by the Department for Communities and Local Government. I find the evidence of Mr Colbourne more reliable than these Briefing Papers.

40. On 14 December 2016, a civil servant in the Department for Communities and Local Government sent an email to Westminster CC which included some pro forma information, including a link to the 2016 Briefing Paper, which he described as "useful parliamentary guidance on the call in process". The author did not alert Westminster CC to the out-of-date briefing on the giving of reasons. I consider that this was an error on his part; this was not intended to be an endorsement by the Department of the statement that there was a practice of giving reasons for non-intervention. No such email was sent to the Claimant, and the email of 14 December 2016 was only sent to the Claimant after the decision, as part of a disclosure procedure. Therefore no misleading representation was made to the Claimant at the relevant time, and the Claimant did not place reliance upon it.

Ground 2

41. Mr Lockhart-Mummery QC, on behalf of the developer, submitted that the Defendant's decision letter did include reasons for the decision not to call in the

application, and those reasons were both adequate and intelligible. He referred to a similar decision letter in the case of *R (Shirley) v Secretary of State for Communities and Local Government* [2017] EWHC 2306 (Admin) which Ouseley J held, at permission stage, gave adequate reasons. I have had the advantage of considering the matter at a substantive hearing, at which the Defendant categorically stated that he had no intention of giving reasons in this case. On examining the letter, it can readily be seen that it lacks the specificity of the Defendant's earlier reasons letters. Therefore I accept that the Defendant did not give reasons for his decision in this case, relying upon his right not to do so.

42. The starting point is that there is no statutory duty to give reasons for refusing to call in an application and "this court should be wary of stepping in to impose a general duty where Parliament has chosen not to do so" (per Sales LJ in *R (Oakley) v South Cambridgeshire District Council* [2017] EWCA Civ 71, at [76]).

43. The weight of legal authority is decisively against implying such a duty, as part of the common law requirement of fairness.

44. In *Asda Stores Limited v Secretary of State for Scotland* [1997] SLT 1286 (Outer House) Lord Nimmo-Smith stated there was no duty to give reasons for any call-in decision (at 1298C). On appeal, in *Asda Stores Limited v Secretary of State for Scotland* [1998] PLCR 233 (Inner House), it was accepted by the parties that there was no duty to give reasons for not calling in a planning application (per Lord Weir at 255).

45. In *R v Secretary of State for the Environment ex p Carter Commercial Developments* [1999] PLCR 125, Robin Purchas QC said, at 127C:

> "There was no obligation to give reasons for a decision not to call in an application."

46. In *R v Secretary of State for the Environment ex p. Newcroft* [1983] JPL 386, Forbes J. said that there was no duty on the Secretary of State to give reasons for a decision not to call in an application.

47. In *R (Persimmon Homes Ltd) v Secretary of State for Communities and Local Government* [2007] EWHC 1985 (Admin), [2008] J.P.L. 323 the Minister's decision not to call in a mixed use development was challenged. The Minister had given a reasoned decision. Sullivan J. said, at [40] – [41], that the Secretary of State was not required to give reasons but all parties accepted that any reasons which were given could be examined to see if they disclosed any error of law.

48. In *Westminster City Council v Secretary of State for Communities and Local Government* [2014] EWHC 708 (Admin) Collins J. said, at [14], "it is common ground that the discretion conferred by s.77 of the 1990 Act is very wide and there is no duty to give reasons for any decision". See also at paragraph 36 of my judgment above.

49. In *R (Shirley) v Secretary of State for Communities and Local Government* [2017] EWHC 2306 (Admin), at [19]. Dove J. helpfully summarised the law in relation to call in powers as follows:

"It is, in effect, common ground between the parties that the discretion of the Defendant under section 77 is a very broad discretion and pre-eminently a matter of planning judgment for the Defendant (see paragraph 49 of the judgment of Sullivan J in R (on the application of Persimmon Homes Ltd) v Secretary of State for Communities and Local Government and Others [2008] JPL 323). In Saunders v Secretary of State for Communities and Local Government [2011] EWHC 3756 Edwards-Stuart J accepted counsel's formulation of the relevant legal principles which he set out at paragraph 48 of his judgment in the following terms:

> "48. Turning to the substance of the application, Mr Strachan reminded me that a decision under section 77 was a decision that concerned process and not substance. He submitted that the courts had identified on a number of occasions that the statutory power is expressed in wide discretionary terms, that there is no duty to give reasons for a decision not to call in an application under section 77 and that a challenge to the Defendant's exercise of discretion on rationality grounds would be very difficult indeed. He submitted that the authorities on this could be summarised in following way: (a) the Secretary of State's decision on whether or not to call in applications can only be challenged if it is "wildly perverse." See R v Secretary of State for Environment ex parte Newprop [1983] JPL 386, per Forbes J at 387; (b) there is no obligation to give reasons for a decision not a call in an application. Where reasons are given they can be examined to see whether they disclose any error of law; see R (Carter Commercial Developments Limited) v Secretary of State for Environment, Transport and Regions [1998] EWHC (Admin) 798, Robin Purchas QC sitting as a Deputy High Court judge at paragraphs 5 and 46; (c) the decision under section 77 is not a decision to grant permission, but it is the exercise of a procedural discretion which deals with the responsibility for the determination of the application. The discretion is unfettered when exercised lawfully, see Carter Commercial, above, at paragraph 23; (d) a call in decision letter is one addressed to a local planning authority and its sole purpose is to tell the planning authority whether the Secretary of State has decided, exceptionally, to determine the application himself. Unlike an Inspector's or Secretary of State's decision letter after an inquiry, it is not a reasoned decision letter

> which must deal adequately with the principal issues in dispute between the parties at an inquiry, see R (Persimmon Homes) v Secretary of State for Communities and Local Government [2007] EWHC 1985 (Admin) per Sullivan J at paragraphs 41 to 49; finally, (e) the discretion conferred by section 77 is very broad indeed. Within that very broad discretion, it is pre-eminently a matter of planning judgement for the Secretary of State to determine which, among what may well be a mass of relevant considerations, are the main matters relevant to his consideration, see Persimmon Homes at paragraph 49. As Mr Straker pointed out, the section identifies no criteria or requirements that the Secretary of State is to apply when exercising his judgment.""

50. The Claimant submitted that the law on the giving of reasons had moved on since these cases, and relied upon the recent decision of the Court of Appeal in *R (Oakley) v South Cambridgeshire District Council* [2017] EWCA Civ 71 in which it was held that a planning committee's decision to grant planning permission for a major scheme comprising inappropriate development in the Green Belt, contrary to their officers' recommendation, had to be explained by reasons.

51. However, in *Oakley* the Court of Appeal declined to limit the proposition set out by the Court of Appeal in *R v Aylesbury Vale DC ex p Chaplin* (1998) 76 P&CR 207 that there is no general duty to provide reasons in relation to substantive decisions in planning cases. Elias LJ (with whom Patten LJ agreed) stated that he was "strongly attracted" to the submission that reasons should always be given unless the reasoning is intelligible without them ([42] – [55] and [68]) but decided against determining the appeal on this broad principle, holding, at [55]:

> "The Courts decide the common law on a case by case basis, and I do not discount the possibility that there may be particular circumstances, other than where the reasoning is transparent in any event, where there is a justification for not imposing a common law duty."

52. Sales LJ identified a number of factors that weighed against the general proposition contended for before concluding, at [76]:

> "These sorts of factors are difficult for a court to assess and I think this court should be wary of stepping in to impose a general duty where Parliament has chosen not to do so. In my view, the common law should only identify a duty to give reasons where there is a sufficient accumulation of reasons of particular force and weight in relation to the particular circumstances of an individual case."

53. I accept the submissions of the Defendant and the Second Interested Party that *Oakley* is distinguishable since a call-in decision is a very different type of decision to a

decision by a local planning authority to grant planning permission. A call-in decision is in essence a procedural decision by the Secretary of State on whether to intervene in the planning process; it does not result in the grant of any substantive rights. As Sullivan J. said in *Persimmon* at [41]:

> "A call-in decision letter is addressed to the Local Planning Authority and its sole purpose is to tell the Local Planning Authority whether the Secretary of State has decided, exceptionally, to determine the application himself. Unlike an inspector's or Secretary of State's decision letter after an inquiry, it is not a reasoned decision letter which must deal adequately with the principal issues in dispute between the parties at an inquiry."

54. I have given careful consideration to the factors relied upon by the Claimant, which I have set out above at paragraphs 26 and 27. As to the general duty, I am most reluctant to depart from so many previous judgments of the court holding that no general duty exists. I am not persuaded that there is any basis on which to do so. Nor do I consider that the common law duty of fairness requires the imposition of a duty to give reasons for the decision in this case. The factors relied upon by the Claimant are neither exceptional nor unusual among call-in applications, which frequently raise controversial planning issues in major projects. The Defendant has a broad discretion under section 77, and has adopted a policy which also confers a wide discretion and is "very selective about calling in planning applications". A "reasons" letter of the type sent between 2002 and 2014 would merely confirm the Defendant's application of his policy to this case. This was not a case in which the Claimant needed to see the reasons to decide whether to challenge the decision since there was no right of appeal and the Claimant did not challenge the lawfulness of the Defendant's decision by way of judicial review on any other ground other than the lack of reasons, and it would be hopelessly out-of-time to do so now. The truth of the matter was that the Claimant hoped to use a successful reasons challenge as an indirect means of invalidating the Defendant's withdrawal of the article 31 direction and the subsequent grant of planning permission and listed building consents by Westminster CC. This was the relief claimed in the claim form. However, this could not be a legitimate reason for implying a common law duty to give reasons in this case.

Conclusion

55. The Claimant's claim for judicial review is dismissed on all grounds.