*293 Trusthouse Forte Hotels Ltd. v Secretary of State for the Environment and Another

Negative Judicial Consideration

Court
Queen's Bench Division

Judgment Date
13 June 1986

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(1987) 53 P. & C.R. 293

Queen's Bench Division

(Simon Brown J.):

June 13, 1986

Town and country planning—Application for planning permission for a Post House Hotel refused—Applicants contended that no other site suitable—Four alternative sites investigated and rejected—Inspector recommended that need for hotel accommodation could be met on other sites—Whether inspector entitled as a matter of law to reach that conclusion when no alternative site specified—Whether inspector could reasonably come to that conclusion on the evidence before him

The applicants, Trusthouse Forte Hotels Ltd., applied for planning permission to build a Post House Hotel at a site at Hambrook, five miles north east of Bristol city centre. The applicants had been searching for an appropriate site since 1972 and had investigated four alternative sites suggested by the planning authorities, Northavon District Council. The applicants contended that if the appeal site was not available no other site within the area would be suitable for successful development. The appeal site was in the green belt and included high grade agricultural land. The inspector, whose conclusions the Secretary of State for the Environment adopted on appeal against the refusal by the planning authorities of planning permission, identified the central issue as being whether the need for a hotel on this site outweighed the presumption against building in the green belt and the loss of high quality agricultural land. He concluded that if there were a severe shortage of hotel accommodation of this sort, the normal market forces of supply and demand would operate and that the need would be met at an alternative site. The applicants applied to the court under section 246 of the Town and Country Planning Act 1971 to have the decision of the Secretary of State set aside on the grounds that as a matter of law the inspector was not entitled to conclude that the need would be met at some unspecified alternative site and that alternatively there was no evidence on which the inspector could properly have come to that conclusion.

Held, dismissing the application,

(1) As a matter of law, it was open to the planning authority in the present case to conclude that an accepted need could be. met elsewhere than upon the application or appeal site without reference to any specific or alternative site. Where the planning objections were sought to be overcome by reference to need, the greater those objections, the more material would be the possibility of meeting that need elsewhere. While it was generally desirable that a planning authority should identify that possibility by reference to specifically identifiable alternative sites, it would not always be essential or appropriate to do so. Where the planning objections related essentially to the development of the application site itself rather than to some intrinsically offensive aspect of the development wherever it might be sited, or where the requirements to be satisfied in order to meet the accepted need were less specific and exacting, the more likely it was that a planning authority could reasonably conclude that the need could be met elsewhere without reference to some identifiable preferable alternative site.

(2) To the extent that the Secretary of State's conclusion, that were there to be a severe shortage of hotel accommodation, normal market forces would operate and the demand for accommodation would be met, was based on the existence of certain facts such as that there were other hoteliers interested in meeting the need and that the planning authority did desire to

encourage additional hotel facilities, there was evidence before him which supported that conclusion. To the extent that the conclusion expressed an opinion or judgment *294 on the likely future course of events, it was well within the scope of the Secretary of State's powers to form such a conclusion. In considering the Secretary of State's decision, it was important to bear in mind that he accepted that the applicants would not build a hotel if the appeal site were not available but considered that the need might be met by some development quite different in location and nature to that proposed by the applicants and that therefore the need could be met otherwise than by allowing the applicants to overcome the planning objections to this particular type of development on this particular site. Consequently, the application to have the decision of the Secretary of State upholding the refusal of planning permission set aside would be dismissed.

Cases cited:

(1) *Banks Horticultural Products v. Secretary of State for the Environment [1980] J.P.L. 33; (1979) 252 E.G. 811* .
(2) *Brown v. Secretary of State for the Environment (1978) 40 P. & C.R. 285* .
(3) *Greater London Council v. Secretary of State for the Environment (1986) 52 P. & C.R. 158, C.A.*
(4) *R. v. Carlisle City Council and the Secretary of State for the Environment, ex p. Cumbrian Co-operative Society Ltd. [1986] J.P.L. 206* .
(5) *Rhodes v. Minister of Housing and Local Government [1963] 1 W.L.R. 208; [1963] 1 All E.R. 300; 14 P. & C.R. 122* .
(6) *Vale of Glamorgan Borough Council v. Secretary of State for Wales (1986) 52 P. & C.R. 418* .
(7) *Westminster Renslade v. Secretary of State for the Environment (1984) 48 P. & C.R. 255* .
(8) *Wholesale Mail Order Supplies v. Secretary of State for the Environment [1976] J.P.L. 163; (1975) 237 E.G. 185, D.C.*
(9) *Williams (Sir Brandon Rhys) v. Secretary of State for Wales and the Welsh Water Authority and Taff Ely Borough Council [1985] J.P.L. 29, C.A.*
(10) *Ynystawe, Ynysforgan and Glais Gypsy Site Action Group v. Secretary of State for Wales and West Glamorgan County Council [1981] J.P.L. 874* .

Application by the plaintiffs, Trusthouse Forte Hotels Ltd., under section 246 of the Town and Country Planning Act 1971 to set aside the decision of the first respondent, the Secretary of State for the Environment upholding the decision of the second respondent, Northavon District Council, to refuse planning permission for the development of a hotel at a site at Hambrook five miles north-east of Bristol city centre. The decision was based on the fact that the accepted need for hotel accommodation would be met elsewhere. The applicants sought to have the decision set aside on two grounds (1) as a matter of law the Secretary of State could not base his decision on the availability of an alternative but unspecified site and (2) there was no evidence on which he could properly conclude that there was available an alternative site to the appeal site. The facts are set out in the judgment.

Representation

M. Horton for the applicants.
D. Holgate for the first respondent.

Simon Brown J.

By this application pursuant to section 246 of the Town and Country Planning Act 1971 the applicants seek to quash the decision of the Secretary of State dated October 23, 1984 whereby he dismissed their appeal from the Northavon District Council's refusal of planning permission for the erection of a hotel on green belt land at Hambrook, some five miles north-east of Bristol city centre. The *295 applicants seek to build what is known as a Post House hotel, a single storey construction of four star category, 90 per cent. of whose customers would be expected to arrive by car.

In arriving at his decision the Secretary of State contented himself with an unvarnished endorsement of his inspector's conclusions and recommendation and thus it has been convenient to treat the inspector's report as if it were itself the decision letter and he the deciding tribunal. I shall continue to treat the matter in this way for the purposes of this judgment.

The decision has been challenged on a number of different grounds which make it necessary to relate several of the inspector's findings of fact and conclusions. This is in any event a convenient way of setting the application in its factual context. Amongst the inspector's findings of fact were these:

> v. The Trust House Forte group is the largest hotel chain in the world enjoying an international reputation for good service …. vii. The hotel is expected to perform an active role in encouraging businessmen and tourists to the city. viii. The company consider that certain criteria are essential before a successful hotel can be established. These consist of:— the lower cost of land acquisition, the right location, suitable environment, good accessibility and adequate car parking. The most important requirement, in the appellants' view, is the correct location.
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> ix. The appellant company have been searching for a suitable site in the Bristol area since 1972. They had previously identified the appeal site as the prime location and a separate survey more recently has confirmed this opinion, x. The Trust House Forte chain are the only hotel group in the country at the moment with a large building programme. They are not prepared to build town centre hotels because of the high costs of land acquisition, the higher costs of building other than single-storey accommodation and the problems of providing adequate and satisfactory car-parking. They are satisfied that the appeal site is the prime location. The appeal site to them represents the only viable site for their Post House development. xi. The site is well located to take advantage of the excellent communications serving the Bristol area and a hotel on the north side of Bristol would be best placed to serve the existing industries and the proposed large scale developments on the north side of the city …. xv. The appellant company had extended their search for a suitable site in the Bristol area to a 15-mile radius from the city centre. They have investigated all the other sites suggested by the district council and the Bristol City Council but have rejected them as being unsuitable and not viable propositions. The company maintain that none are so conveniently located to attract trade from the M4 and none have easy access to and from the city centre along the M32.
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> xvii. In order to be viable the appellants maintain that they have to attract the tourist trade in addition to the businessman. Bristol is conveniently located in relation to many tourist attractions …. xxi. Motels have been accepted in the green belt in appeals where a need has been demonstrated …. xxvii. The appellants and the ***296** MAFF have carried out independent surveys and auger borings and have agreed that the land is of a high agricultural quality almost entirely Grade 1 and Grade 2 and predominantly Grade 1 …. xxxii. Policy C1 of the structure plan, following the advice in government circulars indicates that developments wherever possible, should not encroach upon land with the higher agricultural potential …. xxxiv. Specific provision has been made at the Aztec West development for a hotel site and also at Cribbs Causeway.

Bearing in mind those facts the inspector set out his conclusions which so far as relevant to this application were as follows:

> 99. … It seems to me that the main issue to be decided is whether or not the need for a hotel on this site is sufficient to outweigh the presumption against building in the green belt and the loss of high quality agricultural land. 100. Although the Bristol Hotels Association do not see any justification for a further hotel in the Bristol area, the overwhelming evidence points to such a need and the council themselves acknowledge the desirability of providing additional good class hotel accommodation. Certainly when the large scale developments planned in the north fringe take place I believe that there is likely to be a severe shortage of suitable accommodation and I note that at least two of the existing major hotels are planning to expand to meet this need. The proposed hotel would be admirably sited to serve the new development and at the same time would provide quick and easy access for visitors who wished to visit the city centre and be conveniently located for most travellers on the motorways approaching from the west, north and east. Apart from the highway aspect to which I have referred I consider that it is a splended location for a hotel. After years of research the appellants are convinced that it is the prime site in the Bristol area and I do not quarrel with that judgment. However, they have gone further in suggesting that it is the only site likely to be developed for a modern hotel in the Bristol area. I must accept that the Trust House Forte Group have made a commercial assessment and concluded that unless they are able to benefit from all the advantages offered by the appeal site they would not be prepared to build and Bristol would be deprived of a modern Post House development. In my opinion, having regard to the undoubtedly high standard of service associated with the group that would be most regrettable albeit there is the existing Post House development at Alveston.

suitable hotel site has extended to a radius of 15 miles around Bristol city centre, which was also included in their search and their arguments would suggest that if the appeal site was not available there was no other site within the area which could be successfully developed for a hotel. Whilst respecting the company's own decision on this point I believe that if there is such a shortage of 3/4 star hotel accommodation, which can only become more acute as the large scale developments progress, then the normal market forces of supply and demand will operate and the demand will be met—given that it is the wish of the responsible authorities to encourage additional and improved hotel facilities in the Bristol area.

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102. The appellants in setting out the criteria for the siting of a new hotel placed great stress on the choice of location particularly in relation to principal highway routes and the council accepted that for the Post House type of operation catering predominantly for the motorist good communications were necessary. I acknowledge that the position of the appeal site adjoining the M32 and close to the east/west M4 motorway would provide probably the best opportunity for bringing the hotel to the attention of a large number of motorists visiting the Bristol area. However, the continued success of the company's own Alveston Post House Hotel, some 11 miles from the Bristol centre and not on one of the principal traffic routes would seem to indicate that, whilst clearly desirable from a commercial point of view it is not essential that the hotel should be in the prime position adjoining the motorway. In reaching this conclusion I have had regard to the point made by the appellants that the Alveston hotel has had 20 years in which to build up goodwill but I believe that its success will be derived to a large extent from the excellent reputation enjoyed by the group generally and the fact that many visitors to the Bristol area are apparently prepared to accept the longer drive into the city centre.

103. I appreciate that the company have made a carefully considered commercial judgment in deciding that a Post House type of operation on any other site would not be viable and in reaching this decision they have naturally to take into account the costs involved including the lower costs of single-storey construction and of land purchase outside the central area which would enable a hotel on the appeal site to compete with the city centre hotels by charging a lower tariff. However, I have no doubt that there are many other concerns which would claim to offer a less expensive product to the public if they were allowed to build outside the built-up areas and whilst the commercial implications and economic viability of any proposal should not be ignored in the consideration of a planning application I do not believe that the question of costs can be an overriding factor in this instance and this is accepted by the appellants.

104. In these circumstances I can find no justification for setting aside what, in my opinion, are two of the most basic and stringent planning constraints against development—the green belt and the loss of high quality agricultural land … 105. The appellants further submitted that in any case the proposed development would not be detrimental to the green belt objectives but I consider that at this part the green belt performs a vital function in preventing any extension of the urban outskirts of Bristol, with the A4174 forming a firm and readily identifiable boundary. This is a very vulnerable part of the green belt and should the A4174 line be breached by the granting of consent in this case it would be difficult to resist other proposals in this locality. In my opinion too, any development on the appeal site would be an intrusive feature which would detract from the rural setting which helps to retain the separate identity of Hambrook Village.

106. With regard to the loss of the high quality agricultural land … the Government's policy of safeguarding the long-term potential *298 of high quality agricultural land has remained unchanged. To overcome this the appellants have relied on their submissions regarding the need for a hotel in the Bristol area but I can find no special circumstances in this case to justify permission being granted.

The inspector then recommended that the appeal be dismissed, a recommendation which, as I have already related, the Secretary of State accepted.

The applicants do not criticise the inspector's identification of the crucial issue arising on the appeal as set out in paragraph 99; indeed they commend it. But they complain that he never properly resolved it. More particularly they contend that he was not entitled to reach the conclusion set out in paragraph 101 to the general effect that in so far as there is and will arise any acute demand for additional first class hotel accommodation in the Bristol area, then it will be met by the normal market forces of supply and demand. This complaint really lies at the heart of the applicant's challenge before this court. I propose first to deal with it in all its various forms and then to turn very much more briefly to consider the other residual and largely subsidiary grounds of challenge raised upon this application.

The central complaint is advanced in a variety of different ways. First it is contended that there was no evidence to support the inspector's conclusion that the normal forces of supply and demand would operate to meet on another site the demand for additional hotel facilities. Next it is said that proper account was not taken of a number of matters which had been canvassed strongly by the applicants upon the appeal; this ground of challenge is in large part complementary to the first ground in that it seeks to stress all the evidence before the inspector that went the other way and to assert that had he taken it properly into account he could not have arrived at the conclusion impugned. Thirdly it is said that in considering the main issue which he had identified the inspector failed to ask himself the right question, namely:

> Whether, on the assumption that the appeal site was the only suitable site likely to be developed in the foreseeable future for development of the kind proposed, … the planning objections to built development on the site were so great as to warrant keeping it undeveloped despite the need for the development.

Finally, Mr. Horton submits on behalf of the applicants that the inspector misconstrued and misapplied green belt and agricultural land policies in regard to hotel development, criticism which upon analysis also depends for its validity upon the proposition that there was no basis for the inspector to conclude that the need could be met elsewhere, a conclusion implicitly underlying the further conclusions set out in paragraphs 104 and 106 to which I have referred.

What all these differently formulated grounds really amount to is in my judgment a *cri de coeur* to the general effect that the inspector was not entitled to conclude that the accepted need for further hotel accommodation could be met elsewhere than upon the appeal site but rather was bound to determine the appeal upon the assumption that it would be met only if the applicants' appeal were to be allowed. Mr. Horton accepts that the inspector could have said: ***299**

> I recognise that the need may well not be met if this appeal is dismissed, but I nevertheless recommend its dismissal because the planning objections are such as to outweigh the need.

But, as Mr. Horton rightly points out, this was not the basis of decision. Rather it was that the need would be met elsewhere.

The applicants advance two wholly distinct arguments as to why the inspector was not entitled to arrive at this crucial conclusion. First they say that as a matter of law the inspector was debarred from deciding that the accepted need could be satisfied on some unspecified alternative site. Secondly, even if that first contention be wrong, they contend that there was no evidence in the instant case upon which the inspector could properly have arrived at this conclusion.

So far as the first of those contentions goes, Mr. Horton submits that once the inspector rejected the four specific sites canvassed by the district council as ones upon which the accepted need could be met he was bound to ignore the possibility of the need being met elsewhere. Instead, says Mr. Horton, he was bound to assume that there was no alternative site upon which it could be met.

There has been a growing body of case law upon the question when it is necessary or at least permissible to have regard to the possibility of meeting a recognised need elsewhere than upon the appeal site. The line of authority begins with *Rhodes v. Minister of Housing and Local Government and Another* and ends with a spate of cases reported in *Journal of Planning and Environment Law* in 1986. These authorities in my judgment establish the following principles:

(1) Land (irrespective of whether it is owned by the applicant for planning permission) may be developed in any way which is acceptable for planning purposes. The fact that other land exists (whether or not in the applicant's ownership)

upon which the development would be yet more acceptable for planning purposes would not justify the refusal of planning permission upon the application site.
(2) Where, however, there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it.
(3) Instances of this type of case are developments, whether of national or regional importance, such as airports (see the *Rhodes* case), coalmining, petro-chemical plants, nuclear power stations and gypsy encampments (see *Ynstawe, Ynysforgan and Glais Gypsy Site Action Group v. Secretary of State for Wales and West Glamorgan County Council* .) Oliver L.J.'s judgment in *Greater London Council v. Secretary of State for the Environment and London Docklands Development Corporation and Cablecross Projects Ltd.* suggests a helpful although expressly ***300*** not exhaustive approach to the problem of determining whether consideration of the alternative sites is material [1] :

> … comparability is appropriate generally to cases having the following characteristics: First of all, the presence of a clear public convenience, or advantage, in the proposal under consideration; secondly, the existence of inevitable adverse effects or disadvantages to the public or to some section of the public in the proposal; thirdly, the existence of an alternative site for the same project which would not have those effects, or would not have them to the same extent; and fourthly, a situation in which there can only be one permission granted for such development, or at least only a very limited number of permissions.

(4) In contrast to the situations envisaged above are cases where development permission is being sought for dwelling houses, offices (see the *Glc* case itself) and superstores (at least in the circumstances of *R. v. Carlisle City Council and the Secretary of State for the Environment, ex parte Cumbrian Co-operative Society Ltd.)* .
(5) There may be cases where, even although they contain the characteristics referred to above, nevertheless it could properly be regarded as unnecessary to go into questions of comparability. This would be so particularly if the environmental impact was relatively slight and the planning objections were not especially strong: See *Sir Brandon Meredith Rhys Williams v. Secretary of State for Wales and others* and *Vale of Glamorgan Borough Council v. Secretary of State for Wales and Sir Brandon Rhys-Williams* , both of which concerned the siting of the same sewage treatment works.
(6) Compulsory purchase cases are *a fortiori* to planning cases: in considering whether to make or confirm a C.P.O. it is plainly material to consider the availability of other sites upon which the need could be satisfied, particularly where an available alternative site is owned by the acquiring authority itself—see *Brown and another v. Secretary of State for the Environment and Another* .

The applicants accept that the question whether or not specific alternative sites need to be identified before any question of meeting the perceived need elsewhere can arise has not yet expressly fallen for decision. They contend, however, that it is implicit in the authorities that where it was held to be right to consider alternative sites these were specific alternatives. Mr. Horton suggests that it is necessary to operate on a site specific basis since (a) the rationale of the comparability exercise is to consider whether the alternative has fewer disadvantages than the appeal site and this cannot satisfactorily be achieved unless the comparison is between specific sites and (b) it is unfair to place upon the developer the burden of establishing not merely that certain specified alternative sites cannot meet the need but also that no other sites elsewhere can. The decided cases clearly establish that a planning authority is not obliged to "rout round" to see if there may not be an ***301*** alternative site (*Rhodes'* case); Mr. Horton, however, goes further and says that a planning authority is not even entitled to take that course.

Mr. Holgate for the Secretary of State likewise accepts that the earlier cases do not decide the point now at issue. He contends, however, that there can be no objection in principle to a planning authority concluding in certain cases at least that a particular need can be satisfied elsewhere than upon the appeal site even though no other specific sites are identified and established as preferable alternatives. I prefer Mr. Holgate's contention. In my judgment the better view is as follows:

(1) In a case where planning objections are sought to be overcome by reference to need, the greater those objections, the more material will be the possibility of meeting that need elsewhere.
(2) Although generally speaking it is desirable and preferable that a planning authority (including, of course, the Secretary of State on appeal) should identify and consider that possibility by reference to specifically identifiable alternative sites, it will not always be essential or indeed necessarily appropriate to do so.

(3) The clearer it is that the planning objections relate essentially to the development of the application site itself rather than to some intrinsically offensive aspect of the proposed development wherever it might be sited, the less likely it is to be essential to identify specific alternative sites.
(4) Equally, the less specific and exacting are the requirements to be satisfied in order to meet the accepted need, the more likely is it that a planning authority could reasonably conclude that such need can be met elsewhere without reference to some identifiable preferable alternative site.
(5) Clearly, it is more difficult to make a sensible comparison in the absence of an identified alternative site and it is likely that a planning authority would be more hesitant in concluding that an accepted need could be met elsewhere if no specific alternative sites have been identified, *a fortiori* if they have been carefully searched for, identified and rejected.
(6) The extent to which it will be for the developer to establish the need for his proposed development on the application or appeal site rather than for an objector to establish that such need can and should be met elsewhere will vary. However, in cases such as this, when the green belt planning policy expressly provides that "the need for a motel on the site proposed, not merely in the area generally, has to be established in each case" [2] the burden lies squarely upon the developer. Thus in this type of case it will be the more likely that the planning authority could reasonably conclude that the need can be met elsewhere without reference to some identified more appropriate alternative site.
(7) As a matter of law it is accordingly open to a planning authority to conclude on the facts that an accepted need can and should be met elsewhere than upon the application or appeal site without reference to any specific alternative site or sites.

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I turn to the applicants' alternative contention that there was no evidence here upon which the inspector could found a factual conclusion that the accepted need would be met elsewhere. What Mr. Horton says is that in paragraph 101 the inspector was either adumbrating what he conceived to be an economic truth (or imperative or axiom of natural law: all these terms were at various times used in argument) but which in fact was manifest nonsense, or alternatively was expressing a belief which not merely had no factual support but indeed flew in the face of all the evidence put before him. He cites the case of *Banks Horticultural Products Ltd. v. Secretary of State for the Environment* which he contends provides a close analogy with the present case. The planning issues there, he suggests, had been whether there existed other reasonable sources of supply of peat; the issue here was whether a site for hotel development to meet the demand would be produced by the market forces of supply and demand.

Mr. Holgate for the Secretary of State submitted that when a conclusion is founded to a substantial degree upon questions of judgment and opinion it is more difficult to challenge it upon the ground that there is no evidence to support it than where, as in *Banks Horticultural* , the conclusion is as to an existing state of affairs. He nevertheless accepts that in principle it is as a matter of law amenable to such challenge. But he cites *Wholesale Mail Order Supplies Ltd. v. Secretary of State for the Environment and Another* and *Westminster Renslade Limited v. Secretary of State for the Environment and the London Borough of Hounslow* as indicating the considerable extent to which an inspector properly can and indeed must exercise his own planning judgment even in the absence of personal expertise in pertinent fields.

I have concluded that the decision is not to be faulted on the basis Mr. Horton propounds. As it seems to me paragraph 101 is a perfectly proper expression of view. To the extent that it predicates the existence of certain facts; such as that there are hoteliers other than these applicants who would have an interest in meeting the need and that the responsible planning authority do indeed desire to encourage the construction of additional hotel facilities; there was evidence before him to such effect; in so far as it expresses an opinion or judgment on the likely future course of events, it was well within the proper scope of the inspector's powers to form such a conclusion. Mr. Horton contended that the need could only be met if in future there occurred a remarkable coincidence of factors which had not thus far coincided despite the existence of a present need and a desire on all sides to meet it. These factors were, he said, the need itself, an available site, the satisfaction of the four criteria contained in finding of fact xiii, a willingness on the part of the planning authorities to grant planning permission, and a hotelier with funds to undertake the development. So be it (subject to a qualification as to the four criteria to which I shall come shortly). It is ultimately a matter of judgment as to whether such a situation would indeed arise.

It is I think helpful to the determination of this legal challenge to set out my understanding of the inspector's decision overall. It is to this essential effect: ***303**

(1) He accepts that there is a clear need for additional good class hotel accommodation in the Bristol area.
(2) He accepts that the appeal site is the prime site for such development.
(3) He accepts that these applicants will not build a hotel in the Bristol area otherwise than upon the appeal site.
(4) He does not, however, accept that no other hotelier will build; rather he believes that sooner or later (and, inferentially, the more acute the need the sooner) in one way or another the need will be met.
(5) He recognises that the need may be met by some development quite different in location and nature to that proposed by the applicants, whether upon a site already contemplated for hotel development or not.
(6) In the result he concludes that the present need is capable of being met otherwise and elsewhere than by the proposed development upon the appeal site and is not to be regarded as so acute as to overcome the strong planning objections constituted by the appeal site being in the green belt and of high agricultural quality.

The qualification to be made to Mr. Horton's point that all four of his client's criteria will need to be satisfied is this. Those criteria are only essential to a hotel of the Post House type. That is not in fact the only type of development which could satisfy the identified need. Quite apart from that, moreover, it must be recognised that there is in any event some measure of elasticity within each of the criteria. Certainly they were not accepted by the inspector as absolute. Indeed, the inspector's reference to the success of the applicants' own Alveston Post House hotel plainly indicates his refusal to accept that the criteria were sacrosanct even in regard to that type of development. Mr. Holgate pointed to several passages in the main body of the inspector's report which contained at least some partial recognition even by the applicants that other forms of hotel development might occur to satisfy the need. I instance just two: Paragraph 17 records the applicants' contention that other hotels “probably would not be suitable to meet the identified needs” (the recognition of a contrary possibility is implicit); paragraph 18 identifies two other known hotel developments in the offing.

In my judgment it is important to bear in mind that the identified and accepted need is of a wholly unspecific character. It is of good hotel accommodation in the Bristol area generally. True, it would seem likely to arise most acutely in north Bristol, but it could clearly be satisfied within a very substantial general area. Equally important, there are no planning objections to a hotel development as such, rather, as I have related, the planning authorities would clearly encourage such development if on the right site. All the planning objections here relate rather to the application site itself. Thus this seems to me to be just such a case as could properly attract the refusal of planning permission on the footing that the need can and should be met elsewhere than upon the appeal site, albeit no other specific more appropriate alternative is at present identified.

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I turn to deal very much more shortly with the applicants' other grounds of challenge. In my judgment none are made out. In considering them it must be recognised that this was a long and careful decision letter. It is not to be construed like a statute or a contract nor to be too readily criticised for venial imperfections. Approached on this basis I am at the end of the day wholly unpersuaded by the reasons challenge which was advanced with regard to certain identified findings of fact and more generally in respect of the inspector's conclusions upon the central matters to which I have already fully referred. In regard to the specific findings of fact complained of, Mr. Horton contends that the inspector did not make sufficiently plain whether he was accepting, or was merely recording, certain aspects of the applicants' case. Although at first blush there seemed to me some substance in this criticism, I have finally reached the conclusion that almost invariably it is plain which of these two things the inspector was doing and, even when rarely it is not, it really does not greatly matter. For instance, finding of fact xvii appears to me to be saying that the inspector accepts that the applicants would need to attract the tourist trade in order that their proposed type of development would be viable. However, in rejecting their case that the need should be satisfied in this way the inspector seems to me to have considered that it might well be necessary for another type of development to attract the tourist trade in order to be viable. It is not I think necessary to deal individually with all the other passages complained of by Mr. Horton.

A separate ground of complaint related to paragraph 103. It was said that the inspector here failed to distinguish between

> the effect of an out-of-town site on product cost on the one hand and on the provision of the product itself upon the other hand.

I am bound to say I did at one stage regard that paragraph as troublingly enigmatic but I have finally reached the view that really the inspector was saying here no more than that the question of costs, even if they determined the viability of the applicant's own proposal, could not override other planning objections. His comment that that was accepted by the appellants was a reference back to paragraph 31 of the report.

In so far as Mr. Horton additionally complained that the inspector had failed to take proper account of the importance to the economy of the area of providing additional hotel accommodation and had failed to compare that economic need with the competing need to safeguard good agricultural land and had failed also to recognise the availability of a great deal of good agricultural land compared to the few available suitable hotel development sites, I need say no more than that there is in my judgment nothing in the inspector's report to indicate that he omitted to take account of these considerations. Rather, the very fact that he recorded the arguments so very fully and accurately (and it is noteworthy that there is no complaint about the first 22 pages of his report in which he sets out the evidence and the respective cases) indicates that he had all these considerations well in mind. It was certainly not incumbent upon him to deal specifically with all the points in his final conclusions.

I am conscious myself of having neglected to deal with quite all of Mr. Horton's many arguments, but I have endeavoured to deal with all the ***305** main points as I have understood them and certainly with those grounds which in my view would, if made good, have required the quashing of the Secretary of State's decision. For the reasons I have given, however, these grounds do not succeed and the application therefore must be dismissed.

Representation

Solicitors— Paisner & Co. ; the Treasury Solicitor , London.

Application dismissed. ***306**

Footnotes

1 *(1986) 52 P. & C.R. 158* at p.172.

2 Paragraph 16 of Development Control Policy Note 12.

