

Devon Boundary Case

STATEMENT BY FRANCIS BENNION

“A pointless and money-wasting appeal”

1. The Appeal Court decision in the Devon boundary case was given on 25 March. On its website the East Devon District Council (EDDC) claimed victory, but this was incorrect. The EDDC said “the Appeal Court supported most of its grounds for appeal”. In fact the Appeal Court supported only ground 2 of EDDC's 12 grounds of appeal, and even that was unnecessary. This was a pointless and money-wasting appeal by EDDC.
2. In their judgment (paragraph 112) the Appeal Court said that the EDDC
“. . . have succeeded in establishing in these proceedings (a) that the Boundary Committee promoted their original draft proposals for . . . Devon upon the mistaken legal basis that it was only open to them to consult upon and recommend a single proposal; and (b) that their consultation in the Autumn of 2008 on affordability was not then adequate because it did not give those consulted adequate time to consider and make representations about duly formulated financial materials.”
3. Point (a) had been established in the court below, so the appeal was not necessary in relation to it. Point (b), as stated above, formed ground 2 of the EDDC grounds. The Appeal Court either rejected or failed to mention the other 11 grounds.
4. In the court below Mr Justice Cranston had indicated how the Boundary Committee should proceed following the hearing before him. The Boundary Committee duly complied, and the results were published by it in March 2009 before the promulgation of the Appeal Court judgment (see *Further draft proposals for unitary local government in Devon*). This amounts to a further consultation, and takes care of ground 2 of the EDDC grounds.
5. The Appeal Court complained that the proceedings brought by the EDDC were premature. They said:-
“Thus the court is in the unsatisfactory position of being expected to consider in short order challenges to the Boundary Committee's historic process which was incomplete when it was challenged and which has now moved on, so that some parts of the challenge are academic only. It was for this reason that, during the hearing, the court indicated a strong disinclination from deciding anything other than points of law which remained relevant, and from spending time and money on points which had become academic simply to bolster arguments which the parties might have about costs. We were not inclined to act as a consultative clinic to assist the parties' future conduct of these incomplete matters.” (paragraph 34)
6. In the same paragraph the Appeal Court further expressed its displeasure:-
“. . . the main purpose of judicial review proceedings is for the court to review decisions by public authorities which have been made, rather than to guide decision makers along a path towards decisions which have yet to be made and where the process towards those decisions is incomplete. One very

obvious reason for this is that, until a decision is made, the court cannot be sure what the decision will be, nor by what process it will be arrived at.”

7. As I have indicated in previous statements on the matter, there was no need for this appeal by the EDDC and no benefit to council tax payers has resulted from it. The EDDC are required to pay two-thirds of their taxed costs of the legal proceedings before Mr Justice Cranston and the Appeal Court plus the full amount of staff and other incidental costs.
8. It does not seem fair for the Appeal Court to have ordered the Boundary Committee to pay one-third of the EDDC’s appeal costs in view of the fact that the EDDC achieved nothing by their appeal. This order carries the untrue implication that the Boundary Committee “lost” the appeal, which is unfortunate.

Note for Editors

Francis Bennion is a Budleigh Salterton resident. He is a barrister, a former Parliamentary Counsel, and a retired Oxford Law Don. He is the author of a law book cited in the legal proceedings.

For full CV see <http://www.francisbennion.com/pages/70/aboutfb.htm>.

Email fbennion@aol.com

For previous statements by Francis Bennion on this issue see

<http://www.francisbennion.com/2009/003.htm>

<http://www.francisbennion.com/2009/005.htm>

Francis Bennion

31 March 2009