



**In the High Court of Justice
Queen's Bench Division
Planning Court**

CO Ref:

CO/5462/2016

In the matter of an application for Judicial Review

The Queen on the application of

LONDON BOROUGH OF SOUTHWARK

versus

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
and others

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgements of service filed by the Defendant Interested Parties

Order by the Honourable Mr Justice Dove

Permission is hereby refused.

Reasons:

In relation to the Grounds which are raised with respect to sunlight and daylight in the rooms and open spaces of the proposed scheme I am unable to accept that there was an error of law in the Inspector and Defendant's findings based on a misinterpretation or misapplication of the Claimants' policy on this issue. The Claimant's policy, having set out tests, suggests that evidence in accordance with the BRE Guidance may be required. In this case that evidence was required by the Claimant and was set out in their Committee Report of 23 April 2015 in relation to the planning application for the proposed development. At pages 829-830 and 833-834 of the bundle the Committee Report notes that compliance with the BRE Guidance is not achieved in relation to a specified number of rooms and open spaces within the development. The fact that the BRE Guidance states that it is to be interpreted flexibly and natural light is one factor in design is of no assistance to the Claimant: the Guidance then requires a planning and design judgment as to whether the failure to achieve the BRE requirements is acceptable. The Inspector exercised that judgment in paragraphs 368-370 of her report, noting the BRE Guidance should not be applied inflexibly. Bearing in mind that the Inspector clearly sourced her data from the Committee Report I am unwilling to accept that she was not aware of the point raised in relation to Extra Care units. That point does not affect the soundness of her overall conclusion as a matter of judgement in paragraph 370 of the Report. There is no substance in the complaint of procedural fairness: the Claimant's note of the proceedings shows that the Inspector raised the issue and gave the Claimant an opportunity to address her in relation to the issues. The comparison made by the Inspector in relation to the existing situation followed a site visit, and was again a matter for her judgment. She was not bound by the Council's conclusions in relation to the impact of this issue and indeed it was an important part of her task to evaluate the effects on environmental well-being of the Claimant's proposals.


The Claimant's arguments in relation to economic impacts are similarly unarguable. There is no doubt that the Defendant took account of the Claimant's change of policy: see paragraphs 7 and 8 of the decision letter. Paragraphs 371-373 have to be read as a whole along with paragraphs 399-402 of the Report. The question of the £16,000 threshold was very much a subsidiary issue in relation to the main point that the Inspector was raising namely the financial impact on leaseholders arising from the difference between the Claimant's valuation of their property and the cost of replacement property in the area which would either require them to use savings and to contemplate shared ownership or shared equity arrangements, or alternatively force them to leave the area with the consequent social dislocation. This was associated with concern about the intrusive nature of the financial assessment. The change in the Claimant's

policy over the £16,000 did not obviate the concerns expressed in these paragraphs; the change resolved a subsidiary but not determinative point about the parameters of the financial assessment. There was therefore no illegality in the Defendant expressing the conclusions he did in the decision letter which were adequately reasoned and not perverse. My conclusions on these arguments also dispose of the arguments raised in relation to social impacts, and also in respect of Convention Rights since they also depend upon the allegation, which is misconceived, that the Defendant failed to take account of the change in policy.

Turning to the Public Sector Equality Duty ("PSED") I am unimpressed with the contentions raised in relation the numbers of affected persons: if they were affected then it was for the Defendant to have due regard to those affects and they were not irrelevant to the discharge of the duty. The Claimant's contentions in relation to the sufficiency of information rest on a misreading of the Defendant's decision. The Defendant, having commented on the extent of available information, went on to base a conclusion as to likely effects on a reasonable assumption based on what was known about the demographic profile of the Estate. There was no need in the light of this approach to seek further information. The Defendant properly directed himself as to the requirements of s149 of the Equality Act 2010 in paragraph 23 of the decision. The reasons given in relation to this aspect of the decision were clear. For the reasons set out above I am unable to accept that the Defendant failed to have regard to the Claimants change in policy. The evidential basis for the allegation that the Defendant "failed to take into account that the shared ownership and shared equity options could be acquired from the compensation paid for the leasehold interests, without a mortgage" is unclear and unsubstantiated.

In respect of the Grounds which are related to reasonable steps to acquire by agreement the reasons which are given in paragraphs 395-402 of the Inspector's Report and which are adopted by the Defendant fully set out the basis for the Defendant's conclusion in this respect. The Inspector and the Defendant's approach took account of the need to approach the matter applying in this respect the old guidance: see paragraph 398 of the Report. In the light of this there is no substance in the suggestion that the Defendant applied the new guidance retrospectively. The reasons for the Defendant's conclusions in relation to this issue were clear. The Inspector and the Defendant were entitled, if not obliged, to take account of the reality of the situation in relation to the economic impact on leaseholders and there was no error of law in the Defendant's conclusions. The suggestion by the Claimant that the Defendant elided the question of the steps taken to acquire by agreement with the impacts of the scheme is also a point of no substance. The Defendant was entitled to form the conclusion that the evidence in respect of one of these issues was also of relevance in respect of the other. The question of whether the Defendant took account of the Claimant's change of policy had been considered and rejected as a criticism above. There is no basis upon which to conclude that the Defendant's conclusions were perverse. It is manifest from the inspector's Report that she took account of all relevant material in reaching her conclusions.

It follows that each of the Grounds of this application are not arguable and permission must be refused. The Claimant must pay the costs of the Acknowledgment of Service: the amount of those costs shall be determined by summary assessment once a Schedule of Costs has been received.

Signed 

8:xi:16

For completion by the Planning Court

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors:

Ref No.

19 DEC 2016

LEG/RP/PL/JR/424(SH)

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed FORM 86B within 7 days of the service of this order. A fee is payable on submission of Form 86B. **For details of the current fee see the Court website.** Failure to pay the fee or

lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website **Error! Hyperlink reference not valid.**