

# Government told to stick to promise on call-in reasons



**E**arlier this month, the Court of Appeal handed down judgment on the controversial application for the Paddington Cube, a 19-storey office tower next to the grade I listed station and within a conservation area. The ruling followed conservation group SAVE Britain's Heritage's request to former communities secretary Sajid Javid in 2016 to call in the application for his own determination under section 77 of the Town and Country Planning Act 1990.

SAVE challenged the secretary of state's subsequent refusal to do so on the grounds that he failed to give reasons for his decision. In the Court of Appeal,

Lord Justice Coulson rejected SAVE's claim that the secretary of state had a general or common law duty to give reasons. The court held that a decision under section 77 is simply a procedural step that is in no way determinative of the application itself. There is no requirement for reasons to be given in legislation or case law, it confirmed.

However, the court also noted that in December 2001, the government issued a green paper promising that reasons would be given for not calling in planning applications. These changes were also announced in both Houses of Parliament. This approach was

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restated in March 2010, confirming the 2001 policy.

The court concluded that, even though there had been a change of practice in 2014, the 2001 promise had never been explicitly withdrawn. It was critical of the manner in which the change of practice had come about, finding it apparent that no-one in the Department for Communities and Local Government recalled or "had in mind" the unequivocal promise made in 2001. "It is not possible to change a policy of which you are unaware," it remarked. It concluded that SAVE's legitimate expectation case had been made and granted a declaration that the secretary of state is required to give reasons for any section 77 decision.

While this outcome represents a firm rap on the knuckles for the government, it also gives it a clear route map to follow if it wants to lawfully effect a change to the requirement to give reasons. It must revoke its promise in clear terms and ensure it is published sufficiently widely. One must assume that this matter is being given serious consideration within the Ministry of Housing, Communities and Local Government.

**R (SAVE Britain's Heritage) v Secretary of State for Communities and Local Government**; Date: 4 October 2018; Ref: [2018] EWCA Civ 2137

**MEETA KAUR** is a partner at Town Legal LLP