

Case Name: *Save Britain's Heritage, R (on the application of) v Secretary of State for Communities and Local Government & Ors* [2018] EWCA Civ 2137 (04 October 2018)

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Commentary: This appeal considered a challenge brought by Save Britain's Heritage ("SAVE") against the Secretary of State's decision of 15 March 2017 not to call in a planning application dealing with the proposed development of a building known as the Paddington Cube, without giving reasons for his decision.

It is worth noting that on 14 August 2017 Westminster County Council granted planning permission and listed building consent for the Paddington Cube. Accordingly, permission to appeal was granted on a limited basis and in the public interest.

Overtuning a previous decision of Lang, J. the Court of Appeal held that:

- a) There is no requirement arising under common law for the Secretary of State to give reasons for a decision taken under S.77 of the Town and Country Planning Act 1990 not to call-in a planning application.
- b) SAVE's claim that there was a legitimate expectation that the Secretary of State would give reasons for his decision not to call a planning application must succeed.

The Court's decision was predicated on the existence of a 2001 Green Paper in which the then Secretary of State for Transport, Local Government and the Regions promised that reasons would be given for not calling in individual cases. This position was confirmed in a March 2010 review and again in a 2012 written ministerial statement. The Secretary of State's case was that on some unknown date in early 2014 a decision was taken internally to not give reasons for a decision refusing to call in an application and since then such decision letters have been issued without giving reasons. Such change in policy, the Secretary of State claimed, was apparent from the decision letters that were being sent out to individual local planning authorities responding to their requests for call in.

Mr Justice Coulson, giving the leading judgment, held that he could not accept that a policy that has been promised can then be withdrawn simply by the change in a template letter sent to individual local planning authorities and objectors, particularly where such a change of policy isn't clearly apparent on the face of such letters. As such, the Court held that the Secretary of State had made an unequivocal promise that reasons would be given for not calling in an application under s.77 and such a promise should have been publicly withdrawn when (or if) a conscious decision was taken to no longer give reasons. As such SAVE's legitimate expectation ground must succeed.