

Case Name: *Jopling v Richmond-Upon-Thames London Borough Council & Anor* 2019 EWHC 190 (Admin) (08 February 2019)

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Commentary: Successful challenge by the Claimant of the decision by Richmond upon Thames London Borough Council to adopt its Local Plan, on the principal ground that a procedural requirement was not complied with, pursuant to s.113(3)(b) of the Planning and Compulsory Purchase Act 2004.

Neither the Council nor the Secretary of State defended the claim, just the Interested Party, Quantum Teddington LLP. Quantum owned the site which was the central issue in this case. The site, Udney Park Playing Fields ("UPPF") was designated as Local Green Space ("LGS") by the Council and this was incorporated into the Local Plan. During the examination of the Local Plan, the Inspector rejected the designation of the site as LGS and sought to include this in the Main Modifications ("MMs") to the Local Plan, which the Council would need to include in the Plan as adopted.

The Claimant argued that the MMs did not make it clear that they included the de-designation of UPPF as LGS. Therefore, the Claimant was not given the opportunity to make representations on the point and as such the Claimant was substantially prejudiced. Had the Claimant made the representations the outcome may have been different.

Quantum argued that the de-designation of the site could not have been included in the MMs as it was instead set out in the policies map (which is not a development plan document and therefore the Inspector cannot recommend amendments to it through the MMs). Therefore, there was no procedural error. In any event the MMs did make it clear that the de-designation was up for debate and therefore the Claimant could have made representations and was not substantially prejudiced.

It was held that the Inspector's MMs were intended to capture the de-designation of the site, any such de-designation would have been a departure from the published plan and was a MM in substance. However, the MMs were unclear. The Inspector should not contemplate recommending a MM to remedy unsound or legally non-compliant elements unless any party whose interests might be prejudiced has had a fair opportunity to comment on it. The consultation on the MMs was inadequate as it was not clear what was actually to be consulted on and the Claimant was not given a fair opportunity to make full representations. A further sustainability appraisal into the de-designation was also not made. It could not be proved that the outcome would have been the same had the Claimant had the opportunity to take part in the consultation. As such, the Claimant suffered sufficient substantial prejudice as a result of the procedural defects and the claim was successful.

Case summary prepared by Amy Bennett