

Case Name: *Tower Hamlets v Secretary of State for Housing, Communities And Local Government & Anor* [2019] EWHC 2219 (Admin) (27 August 2019)

Full case: [Click Here](#)

Commentary: The court upheld a planning inspector's decision to allow appeals against enforcement notices that had required buildings unlawfully demolished in a conservation area to be rebuilt. The court held that the Inspector was entitled to consider the likelihood of future development even where no actual proposal existed when weighing the public benefits of a proposal against "less than substantial harm" under paragraph 196 of the NPPF.

In determining the appeal against the enforcement notices, the Inspector had to decide whether to grant planning permission for the demolition of the three buildings alone as that was the unlawful act so the public benefit under paragraph 196 of the NPPF had to come from the site being vacant. This meant that for the Inspector's decision to be lawful it had to be a defensible conclusion that the demolition, without replacement, and doing harm to the significance of the conservation area did more good than harm. The wording of the NPPF assumes a positive proposal to develop. The question was therefore whether likely future development could be taken into account. Following *Mansell v. Tonbridge and Malling BC* [2017] EWCA Civ 1314, a planning benefit does not need to be certain to be material and the objective likelihood of a benefit being enjoyed in future must be relevant to weight. The Inspector could have decided that the benefits were too remote but he did not.

The Judge was satisfied that the inspector did not err in law by misinterpreting the relevant provisions in section 16 of the NPPF, principally paragraph 196; nor did he reach a conclusion that was too speculative to be rational; nor did he explain his reasoning insufficiently. The Judge therefore dismissed the appeal.

However, he concluded "I do so without much enthusiasm, reminding myself that the enforcement system is remedial not punitive. I must put aside the affront to the rule of law and criminal activity seen in this case, as well as the loss of the three houses and their contribution to our historic environment, however limited some may consider it. My discomfort does not make the inspector's decision unlawful and I must and do uphold it."

For further discussion see *Simonicity*

Case summary prepared by Town Legal LLP