

Case Name: *Juden v London Borough of Tower Hamlets* [2021] EWHC 1368 (Admin) (21 May 2021)

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Commentary:

The High Court has quashed a planning permission and listed building consent for residential development of the Grade 2 listed former London Chest Hospital at Bonner Road, concluding that the London Borough of Tower Hamlets ('Council') had misinterpreted paragraph 175(c) of the NPPF relating to the loss of or deterioration of veteran trees.

The proposed development had sought to relocate a veteran mulberry tree within the grounds of the site to another location within the site to enable the development to be carried out. The Council had concluded, in granting the necessary consents for the proposal, that the veteran tree was more likely than not to survive the relocation, but that there was a risk that it may not.

In challenging the grant of planning permission and listed building consent for the proposed development, the Claimant, Mr Juden (a local resident opposed to the development which was controversial locally), claimed with respect to the veteran tree ground of challenge that

- (a) in considering whether the risk of loss was acceptable, the Council's Planning Committee was advised by officers to take into account the fact that, even if the veteran tree were lost, the development would still comply with paragraph 175(c) of the NPPF;
- (b) on the correct interpretation of paragraph 175(c) of the NPPF, that the existence of "wholly exceptional circumstances" and the existence of a "suitable compensation strategy" were separate and cumulative requirements of the NPPF policy test; and
- (c) that the Council had erred in taking into account the suitability of the compensation strategy in considering whether wholly exceptional circumstances would exist in the event that the veteran tree was lost.

These arguments were accepted by the High Court who concluded that Council members had misinterpreted the paragraph 175(c) NPPF policy test. The planning permission and listed building permission were duly quashed by the High Court rejecting the argument that it was highly likely that the outcome would have been the same if the error had not been made.

This judgment provides helpful clarification for decision makers of the correct interpretation of the policy test in paragraph 175 (c) of the NPPF relating to proposed development resulting in the loss or deterioration of irreplaceable habitats. In addition, while the other grounds of challenge relating to the Council's consideration of the heritage impacts of the development were dismissed, in rejecting these grounds of challenge, the High Court helpfully considered the effect of the recent key Court of Appeal judgment of Bramshill at paragraphs 59 to 87 of the judgment in relation to heritage matters.

Case summary prepared by Paul Arnett