Case Name: *London Borough of Lambeth v Secretary of State for Levelling Up, Housing And Communities* [2024] EWHC 1391 (Admin) (10 June 2024)

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Commentary:
This was an unsuccessful claim under s288 of the Town and Country Planning Act 1990 by the London Borough of Lambeth ("the Claimant") to an Inspector's decision to grant a lawful development certificate ("LDC") and planning permission for the amalgamation of two flats into a single flat.

Background
In May 2022, the Claimant refused two separate applications made by the applicant for planning permission and a LDC for the amalgamation of a seventh storey flat the applicant had lived in for several years with the recently purchased flat next door. On appeal, the Inspector granted both applications, finding there was no material change of use and the loss of one unit was not a planning consequence of significance. The Claimant appealed to the High Court on six grounds.

Grounds & Judgment
Ground 1
The Claimant argued that since the Inspector granted a LDC and found that the works did not amount to development for which planning permission was required, the grant of planning permission was irrational and an error of law.

The Court found the Inspector was entitled to proceed to determine the application for planning permission despite the fact it had become academic after the LDC had been granted. This was because two separate applications were submitted to the Claimant (on a "without prejudice" basis), who then made two sperate decisions. In addition, two appeal notices were lodged by the applicant to the Inspector.

For these reasons Ground 1 was dismissed.

Grounds 2 & 3
The Claimant's key grounds of challenge were that the Inspector was wrong in not finding that Lambeth Local Plan Policy H3 positively safeguarded against the loss of existing housing stock and restricted amalgamations.

The Court disagreed and confirmed that on a proper reading of the policy, C3 housing was to be safeguarded in accordance with the London Plan. London Plan Policy H8 states that the loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace. The Claimant argued that H8 restricted amalgamations given there would be a loss of density (i.e. a loss in the number of units from two to one meant a loss of density). The Court found

that Policy H8 did not provide any definition or guidance on what is meant by density, and on that basis, it was a matter for planning judgement of the decision-maker. The Inspector found that despite a loss of a unit, there was no loss of density given there was no reduction in the amount of overall floorspace and number of habitable rooms as result of the amalgamation.

Mrs Justice Lang commented that it was difficult to see how wider measures of density, for example the number of units, habitable rooms etc. per hectare (found elsewhere in the London Plan) could be applied to a small-scale proposal such as this one. In finding the London Plan policy did not prohibit amalgamations, the Court also referred to Policy H1 and H2 where the supporting text envisages amalgamations in the context of monitoring supply.

For these reasons grounds 2 & 3 were dismissed.

Ground 4 & 5

The Claimant's argument that their development plan should be treated as determinative for the purposes of whether there had been a material change of use under section 55 of the Town and Country Planning Act 1990 was also rejected by the Court. The Court followed the established case law (particularly the principles set out by Mr Justice Holgate in R (Royal Borough of Kensington and Chelsea) v SSCLG) confirming that section 55 does not treat the development plan as determinative, and even if a development plan addresses the loss of an existing use, wider considerations may still be relevant in determining a material change of use. The Court found the Inspector's approach to finding there had not been a material change of use was correct. While the loss of a unit would have a planning consequence, the planning consequence of the change was not a significant one in the context of housing delivery evidence available for the Borough.

For these reasons grounds 4 & 5 were dismissed.

Ground 6

The Claimant also argued that the Inspector failed to consider three other appeal decisions (which had accepted its interpretation of the Policies H3 and H8). The Court did not depart from the general rule that an Inspector is not obliged to consider previous appeal decisions if they are not drawn to their attention. The Court's view was that the Claimant could have, and should have, brought these decisions to the attention of the Inspector even after final submissions were due. The Court found that whilst late documents are normally not accepted, PINS Guidance provides that a relevant appeal decision should be brought to an Inspector's attention as soon as possible, even if it is late.

For these reasons ground 6 was dismissed.

Key Takeaways

The decision provides useful commentary from the Court on the London Plan policy on amalgamations, material change of use principles, and procedure for late submissions in a planning appeal. The decision confirms that if a London Borough wishes to prevent or restrict amalgamations of smaller units, it should do so expressly within its development plan, as the London Plan does not prohibit amalgamations.

Case summary prepared by Jack Curnow