

Case Name: *Save Our Southbank v Secretary of State for Housing, Communities and Local Government & Ors* [2024] EWHC 3326 (Admin)

Full case: [Read here](#)

Commentary: This section 288 claim concerned the validity of the decision in February 2024 of the Secretary of State for Housing, Communities and Local Government (‘the First Defendant’) to grant planning permission for the redevelopment of the London Television Centre, the former headquarters of ITV, after calling in the application for his own determination.

The claim was brought by Save our Southbank (‘the Claimant’), an unincorporated group of local stakeholders whose stated objective is that they wish to see appropriate development of the site. The Claimant contends that the First Defendant’s decision was unlawful on four grounds:

1. The First Defendant failed to provide any or adequate reasons as to whether the scheme would preserve the heritage significance of St. Paul’s Cathedral, Waterloo Bridge and five conservation areas;
2. The First Defendant misinterpreted relevant development plan policy and so failed to understand that there was a policy requirement to deliver housing as a component of redevelopment of the site;
3. The First Defendant failed to understand that the policies of the London Plan 2021 (‘the London Plan’) required consideration of the prospects of retaining the existing buildings on the site, to deliver housing as part of the Circular Economy;
4. The First Defendant failed properly to apply Policy Q26 of the Lambeth Local Plan 2020-2035 (‘the Local Plan’) which states the policy requirements for assessment of planning applications proposing the development of tall buildings.

After setting out the relevant legislation and case law on how the Secretary of State is required to have regard to development plan policies determine planning applications, Mould J proceeded to deal with each of the grounds of challenge.

Ground 1

Counsel for the Claimant submitted that, in order to fulfil his duties under section 66(1) and section 72(1) of the Listed Buildings Act 1990 (‘the LBA 1990’), the First Defendant was required to state his own findings in respect of the scheme’s impact on each of the listed buildings and conservation areas which had been identified by the Planning Inspector as potentially affected by the scheme.

The judge rejected this ground of challenge, as the claimant did not establish that the First Defendant’s stated reasons were legally inadequate. Read in the context of the letter as a whole, the reasons given adequately explained the First Defendant’s

acceptance of and agreement with the inspector's conclusions in her report that the scheme would not result in harm to the significance of St Paul's Cathedral, Waterloo Bridge, or to the Old Barge House Alley, Whitefriars, Waterloo, Temple or Strand Conservation Areas. The Judge did not find, contrary to the Claimant's submissions, any inconsistency in the First Defendant's reasoning or conclusions on harm to heritage assets, in accordance with both national planning policy and his duties under section 66(1) and 72(1) of the LBA 1990. The absence of an explicit statement of his agreement with the Inspector's conclusions that the scheme would not cause harm to the other heritage assets did not raise any real doubt as to the fact that he did accept and agree with those conclusions and the obvious and natural inference was that he did indeed accept them. This ground of challenge failed.

Ground 2

Counsel for the Claimant submitted that, on a proper interpretation of the relevant policies of the London Plan and the Local Plan, a planning application for development of the site required delivery of an element of housing. Housing was not included within the mix of uses proposed in the scheme. The Secretary of State found the scheme to be in compliance overall with those plans and policies, and did not add to or otherwise comment on the Inspector's conclusions in her report.

Mould J did not accept that "on a proper interpretation of policies H1(B), H1(F) and D3(A) of the London Plan, read in combination with policy H1 and site allocation 9 of the Local Plan, there was a policy requirement that development of the site must include delivery of housing". Policies requiring housing to be included in the mix of activities needed to be understood in the wider context of all relevant policies, including those pertaining to London's 'Central Activity Zone' ('CAZ') where the site was located, which is subject to clear policy priorities for the development and use of land, in particular London Plan policy SD5.

Mould J concluded that the Inspector's approach of giving greater weight to the policy priorities for the CAZ were reasonable in the exercise of her planning judgment and the Inspector is not to be taken to have misunderstood the policy priorities for optimising housing delivery nor optimising capacity of the site. She also did not fail to give a proper contextual interpretation to the "preferred use" stated in the site allocation policy. Therefore, the presumption that she correctly understood the applicable development plan policy framework is shown to be justified. The Secretary of State did not therefore fall into legal error in founding his decision on the inspector's conclusions this ground of challenge failed.

Ground 3

The Claimant's third ground of challenge submitted that the Secretary of State misunderstood policies in the London Plan (SI7 and D3) and the Mayor's London Plan Guidance on Circular Economy Statements ('the Guidance') by failing to recognise that these policies required him to consider whether the existing building on the site could be retained to deliver residential uses as part of the Circular Economy. Specifically, proper consideration could and should have been given to the opportunity to retain and convert an existing tower on the site, Kent House, for residential use.

Counsel for the claimant acknowledged that this ground of challenge depended upon it being established that housing delivery was a requirement of development plan policy for schemes such as this. Ground 3 was contingent upon Ground 2.

In light of Mould J's conclusions on Ground 2, Ground 3 also fell away. For the sake of completeness, the Judge found no fault with the Inspector's reasoning and conclusions on the issue of compliance with the circular economy policies in the London Plan as explained in the associated Guidance on the premise that the mix of uses was in accordance with the development plan as a whole.

However, Mould J noted that if he had accepted that there was a policy requirement for housing, in this alternative scenario, he would have accepted the argument that proper consideration must also be given to the case for retention and re-use of Kent House as part of such a development.

Ground 4

The Claimant submitted that the Secretary of State's conclusion that the Northern part of the site was an appropriate place for a tall building was irrational, inadequately explained, or made without proper regard to his own findings regarding conflict with relevant Local Plan policies (i.e. Policy Q26).

Mould J did not find that the Secretary of State's conclusion was shown to be irrational or internally inconsistent. The Secretary of State's conclusions were adequately explained, and he did not lose sight of his finding that there would be some conflict with Local Plan policy. Instead, he drew the overall planning balance on the basis that the scheme gave rise to some conflict with that policy.

The Secretary of State found that although the location of the north building was appropriate for tall building development, the north building resulted in some conflict with Local Plan policy on tall buildings by virtue of its design, visual impact and wider townscape effects. Mould J held that there was no inconsistency in these findings, when they are properly understood as a response to the various considerations raised by the relevant policy from the Local Plan. How those considerations were best addressed was

a matter for the First Defendant. He chose to address them in the same order as the inspector in her report. That was a reasonable approach for him to take. As a consequence, this ground of challenge failed.

Conclusion

Mould J was not persuaded that any of the grounds of challenge were made out, and so the claim was dismissed.

Case summary prepared by Gregor Donaldson