

Case Name: *Sainsbury's Supermarkets Ltd v Secretary of State for Housing, Communities And Local Government and Anor* [2020] EWHC 270 (Admin) (13 February 2020)

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Commentary:

The High Court dismissed the claim by Sainsbury's to quash the decision of the Secretary of State on a recovered appeal to dismiss the Claimant's appeal for non-determination for its application for planning permission to demolish its Whitechapel store and re-develop the site against the Inspector's recommendation.

The application was for planning permission to replace the existing store with an "explore learning" facility, retail and office space, 471 residential units, car parking spaces with 40 disabled parking bays and associated highway works. The application was reported to the Council's Strategic Development Committee which resolved that the application would have been refused on grounds relating to affordable housing and viability, harm to the setting, unacceptable impact on daylight and sunlight to surrounding properties and the absence of a legal agreement.

The Claimant relied on two grounds of challenge. The first ground was that the Secretary of State should have provided Sainsbury's with an opportunity to offer an alternative location for the proposed affordable housing through a revised section 106 agreement and therefore the decision (as recommended by the Inspector) to dismiss the appeal had been irrational and/or unintelligible and/or insufficient reasons had been given. The second ground was that the Secretary of State had failed to have regard to relevant considerations in concluding that there were no material considerations which indicated that the proposal should be determined otherwise than in accordance with the development plan.

The Claimant submitted, in support of Ground 1, that all matters save for the location of the affordable housing, were resolved in the Claimant's favour, and therefore the decision was irrational. The Defendants did not agree with the Claimant's reading of the First Defendant's decision letter, and the dispute between the parties on this issue was at the heart of Ground 2.

The Court held that the Secretary of State took into account other matters which weighed against the grant of planning permission and that it was far from certain that addressing the distribution of affordable housing would have altered the planning balance in the Claimant's favour. Further, the Secretary of State was entitled to dismiss the appeal on the basis that the proposal was not in accordance with the development plan overall and that the material considerations did not indicate that the development plan should not be followed. There was no identifiable public law error in the First Defendant's decision-making, and therefore no grounds for a legal challenge

Case summary prepared by Lida Nguyen