

Case Name: *Vanbrugh Court Residents' Association v London Borough of Lambeth* [2022] EWHC 1207 (Admin) (20 May 2022)

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Commentary: The claim for judicial review was bought by the Claimant against the London Borough of Lambeth (“the Council”) in respect of the Council’s grant of planning permission for a roof level extension to a four-storey block of flats at Vanbrugh Court to provide an additional sixteen residential units and five external lifts. Kanin Corporation NV and Gregory O’Connor were interested parties. The Claimant is an association of leaseholders and tenants of Vanbrugh Court who objected to the extension, namely raising core concerns relating to the structural feasibility of the building to support the extension and questioning whether residents would need to vacate their flats during construction.

The Claimant’s application for judicial review cited the following grounds:

1. The Council failed to take into account a material consideration, namely the structural feasibility of the building. It was put that Councillors on the Planning Committee were incorrectly advised and therefore failed to require a full structural survey of the building to assess the impact on the residents during construction.
2. Planning Officers failed to make further enquiries as to whether residents would have to vacate during construction.
3. The decision to grant planning permission was Wednesbury unreasonable as it was based on the acceptance of the contention that there would be no need to relocate residents during construction, despite the lack of a structural survey and despite a report commissioned by the applicant acknowledging the risk of greater structural work being required.
4. The Council misinterpreted Policy Q8 of its Local Plan and the Members of the Planning Committee erroneously advised that Policy Q8 only related to questions of the “buildability” of the detailed design of the scheme and not the buildability of the scheme as a whole.
5. The Council failed to have regard to and/or misinterpreted paragraph 120(e) of the National Planning Policy Framework (“NPPF”) which refers to support for “upward extensions” where schemes are well-designed.
6. The implementation of the proposed upward extension carried an unacceptable risk to the existing properties in the building. The decision to grant permission therefore constituted a disproportionate interference with the rights of residents under Article 8 of the European Convention on Human Rights.

In dismissing the claim, the court held that Officers treated the question of whether residents might have to vacate their homes during construction as legally capable of being a material consideration, although the Officers were correct to attach no weight to the matter on the basis that a scenario requiring decanting was “highly unlikely.” It then

followed that in these circumstances, not requiring a structural survey was entirely reasonable. The court found that the building control regime was available to regulate structural issues and that the Officer made specific inquiries of the applicant and were entitled to rely on the responses received – which accorded with their professional experience. As such, grounds 1-3 and 6 failed.

The court was not persuaded that Officers misinterpreted Policy Q8 of the Lambeth Local Plan nor that the Council failed to have regard to paragraph 120(e) of the NPPF. The court held that if reference to design in paragraph 120(e) extended to structural integrity, then the effect would be to start to import the building control regime into the design polities. The court held that the general position is that structural issues are not normally within the scope of the planning application process. Accordingly, grounds 4-5 failed.

Case summary prepared by Amy Carter