Case Name: *Hough, R (On the Application Of) v Secretary of State for the Home Department* [2022] EWHC 1635 (Admin) (24 June 2022)

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Commentary: The Claimant brought an application for judicial review of the Secretary of State's decision to make a Special Development Order ("SDO") to grant planning permission for the use of Napier Barracks for asylum accommodation for 5 years from 21 September 2021. The Barracks had been used by the Home Office as accommodation to house asylum seekers since September 2020, benefitting from permitted development rights under the Town and Country Planning Act (General Permitted Development) (England) Order 2015 until September 2021. The Claimant was a local resident who runs a drop-in centre at the Barracks.

The Claimant brought 3 grounds of challenge. Ground 1 concerned three alleged breaches of the EIA Regulations. Ground 2 alleged that the SDO was unlawful because it offended against the principle in Pilkington v Secretary of State for the Environment [1973] 1 WLR 1527. Ground 3 alleged that the SDO was ultra vires for:

(i) Unlawfully avoiding the requirements of para Q(1)(b) of the GPDO;
(ii) A breach of procedural requirements (a) to consult and (b) to undertake inquiries pursuant to the duty in Secretary of State for Education v Tameside MBC [1977] 1 AC 1014; and
(iii) A failure to comply with the Public Sector Equality Duty ("PSED") in s.149 of the Equality Act 2010.

The Claimant's challenge succeeded only in relation to Ground 3(iii), that there was failure on the part of the Secretary of State to comply with the PSED under the Equality Act 2010.

In relation to Ground 3(iii), the Claimant argued that by being placed together in a large and plainly segregated accommodation, the asylum seekers were marked out as a group which created obvious and significant equalities implications. The Equalities Impact Assessment ("EqIA") that had been carried out only dealt with the use of the site up to September 2021, rather than five years as permitted under the SDO, and did not have any meaningful regard to the impact of the decision on community relations in the area.

In response, the Defendant argued that regard was had to the PSED, as the Minister had sight of numerous decision-making documents which referred to the PSED. The Defendant also referred to meeting minutes expressly stating that the Minister "considered the PSED and Human Rights implications of the SDO, particularly in terms of the asylum seekers housed there and on the impact on local residents".

Although Lieven J accepted that there was no need for an EqIA document, she nevertheless found that there had been a failure to have proper regard to the PSED, emphasising that compliance with the s.149 duty involves a "highly fact sensitive inquiry, both into the nature of the decision and the form of the consideration of equality issues". She found that there was a very significant difference between a development proposed to continue for two months and one for five years, especially where the issue is developing community relations. Although the Minister knew the use would continue for five years, he did not have information about how that would impact on community relations over that period and what other steps could or should be taken.

As for the court's discretion to refuse relief under s31(2A) of the Senior Courts Act 1981, Lieven J found even if the substantive decision was the same, there was a real possibility that further mitigation measures might be put in place if a proper investigation had been undertaken. Accordingly, Lieven J did not consider it was appropriate to exercise this discretion.

Case summary prepared by Stephanie Bruce-Smith