

Case Name: *Spitalfields Historic Building Trust, R (On the Application Of) v London Borough of Tower Hamlets* [2022] EWHC 2262 (Admin) (31 August 2022)

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Commentary: This High Court case concerned a judicial review challenge made by Spitalfields Historic Building Trust (the “Claimant”), relating to the decision by the London Borough of Tower Hamlets (the “Council”) to grant planning permission for the redevelopment of the Old Truman Brewery site on Brick Lane. The judge rejected each ground, holding that an authority was authorised under the Local Government Act 1972 to limit committee members’ voting rights, and that the LBTH constitution and rules on committee procedure had been adequately followed.

The application was first considered at a meeting of the Development Committee in April, with the officer’s report recommending approval. At this meeting, the decision was unanimously deferred by members to the committee meeting in September. The Council’s Constitution stipulated that in such circumstances no further public speaking would be allowed, (although further written representations would). Those who previously made representations were notified of the deferral, but the covering email failed to mention the prohibition of public speaking. Under the Council’s Planning Code of Conduct, only those members who attended the original April committee meeting could take part and vote; in the end this was only 3 members, who voted in favour of the application 2:1.

The judge considered each of the three grounds raised in turn, as follows:

Ground 1: the exclusion of Committee members from voting was unlawful.

The judge agreed with the Claimant that there is an inferred prima facie right of each member to vote on applications before the committee. Any restriction on such right to vote requires statutory authority. They went on to find that there was such authority under paragraph 42 of Schedule 12 of the Local Government Act 1972, which allows a local authority to make standing orders for the “regulation of their proceedings and business”. They interpreted the scope of this wording broadly, to include the exclusion of voting rights. Notably, they distinguished this from Northern Irish legislation allowing only regulation of “procedure”, which was held to have a narrower scope in the Hartlands case. Accordingly, the LBTH rules were lawful.

Ground 2: the prohibition on public speaking was unlawful.

The judge, applying Adlard, found that there was no absolute requirement to afford members of the public the right to make oral reps. They also found the procedure was fair and lawful and accorded with the LBTH Development Committee Procedure Rules, which they read as giving the Council discretion in this instance. It was not an

unreasonable exercise of discretion to refuse public speaking, especially given the public had already had a right to give oral representations, and a further chance to give written representations.

Ground 3: there was a failure to have regard to the relevant policies in the draft Spitalfields Neighbourhood Plan

The judge acknowledged that the Council recognised the plan (having been subject to examination and recommendation for referendum) as a material consideration with significant weight. Citing the *Lensbury* and *West Oxfordshire* cases, they stated that officers are not required to address each and every policy relevant to an application. The relevant policy in question required them to have regard to the impact of the Truman's brewery chimney, which had already been done in considerations of other local and national policy.

Case summary prepared by Jed Holloway