

Case Name: *Standard Life Assurance Ltd v Secretary of State for Levelling-Up, Housing And Communities & Ors* [2022] EWHC 2632 (Admin) (19 October 2022)

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Commentary: In this decision the Court dismissed a legal challenge against the decision of the Secretary of State (the decision letter in question by Planning Inspector Nick Fagan) to grant planning permission for 104 flats and student accommodation at Newbridge Road, Bath. The application had already been subject to extensive scrutiny at public inquiry which had a significant bearing on the Court's conclusions.

The Claimant in this matter was the owner of the Maltings Industrial Estate sited immediately adjacent to the planning application site, the proposed development seeking access arrangements through the industrial estate as part of its proposals.

The grounds of challenge advanced by the Claimant were as follows –

1. The Inspector's decision was irrational. The Claimant submitted that the Inspector found that it would be necessary to put in place some changes to infrastructure and access controls over the industrial estate for the proposed development to be acceptable in planning terms, but that the inspector then failed to required such measures to be secured, or to explain why he was content to grant planning permission in their absence;

2. The Inspector: (i) misread the deed of grant concerning the existing right of way so as to discount potential planning harm that would arise from the proposed development; and (ii) unlawfully relied on that private law instrument as a reason to discount or neutralise the planning harm the Claimant had raised;

3A. The Inspector relied on a planning condition restriction the industrial operations at the industrial estate, but failed to take into account, or grapple with, evidence that the units had been in sui generis use for the requisite 10 year period of time without enforcement action being taken, such that the condition restricting the operations was no longer enforceable; and alternatively the Claimant alleged that the Inspector's reasons were inadequate bearing in mind the discussions about the evidence that took place at the inquiry; and

3B. The Inspector had erred in dealing with the 'agent of change' principle expressed in paragraph 182 of the NPPF and the relevant allocation policy in the development plan relating to the site, bearing in mind the inspectors conclusions elsewhere in his decision.

In a comprehensive judgment by James Strachan KC (JSKC) sitting a Deputy Judge it was concluded –

- in relation to grounds 1, 2 and 3B, that these had been predicated upon a misreading of the Inspector's decision –

o on ground 1 the Inspector was simply identifying that additional access controls/measures “may well be needed” however this did not extend to the Claimant's assertion that this equated to such controls/measures being necessary for the development to be acceptable in planning terms;

o on ground 2 the Inspector had only been making observations of factors that he took into account and that the Claimant's conclusions in respect of access and construction traffic activity was irreconcilable with the Inspectors conclusions when read as a whole;

o on ground 3B JSKC agreed with the Defendant's submissions that the Inspector did not treat the allocation policy as meaning that there could be non 'agent of change' issue, but rather treated it as a material consideration which was not dispositive to the matter.

- In relation to grounds 3A, JSKC dismissed this ground on the basis that it concerned matters that had not been properly pursued at the planning inquiry. The validity of the relevant condition had not been properly articulated by the Claimant at the inquiry in a way which made it an issue of importance for resolution by the Inspector in a way which required reasoning in the decision letter.

In his concluding remarks JSKC states that “...Standing back and reading the DL [decision letter] as a whole, I consider that the Inspector dealt properly and fairly with all of the Claimant's main objections to the proposed development. The reality of the situation is that he did not agree with the Claimant's points of objection and considered that the concerns were not a proper basis for refusing planning permission...”.

Case summary prepared by Chris Todman