

Case Name: *Plant, R (On the Application Of) v London Borough of Lambeth* [2022] EWHC 3079 (Admin) (02 December 2022)

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Commentary: This was a claim for judicial review of the decision of the London Borough of Lambeth (the 'Defendant') to grant planning permission for the redevelopment of the Cressingham Garden Estate. The Claimant (an active and long standing resident of the Estate) contended that the decision was unlawful as the Council had misinterpreted the revised Lambeth Local Plan policy Q10.

The relevant Lambeth Local Plan policy Q10 stated:

"A. Proposals for new development will be required to take particular account of existing trees on the site and on adjoining land.
B. Development will not be permitted that would result in the loss of trees of significant amenity, historic or ecological/habitat conservation value (including veteran trees), or give rise to a threat, immediate or long term, to the continued wellbeing of such trees.
C. Where trees are located within a development site, the proposal will be supported only where it has been demonstrated that:
i) trees of significant amenity, historic or ecological/habitat conservation value have been retained as part of the site layout ...
G. Where it is imperative to remove trees, adequate replacement planting will be secured. The amount and nature of the replacement planting will be based on the existing value of the benefits of the trees removed, calculated using cost/benefit tools such as i-tree or CAVAT as set out in London Plan policy G7 C."

The Claimant's case was that the Defendant concluded incorrectly that policy Q10 allowed the removal of any tree for a development provided that its value was replaced, and failed to understand that the policy still prohibited the removal of trees of significant value (Q10 (B) and (C)). The Claimant argued that 'imperative' meant simply that it is necessary to remove a tree in order for a proposed scheme of development to proceed – this was therefore a question of fact. In deciding whether it was 'imperative' to remove a tree, the Defendant was not to balance the importance of the scheme against the value of the tree.

In dismissing the claim, Corner J noted that the Claimant's arguments were "unrealistic" and would mean that the planning authority could not strike a balance between the importance of the scheme and the value of the tree proposed for removal in deciding whether removal is 'imperative' under (G). The court held that there was no justification in policy Q10 for an approach whereby the only relevant consideration for deciding whether removal is 'imperative' was whether the tree was 'in the way', in the sense of occupying the physical space required for the scheme to be built. In deciding whether removal is 'imperative' the decision-maker was entitled to take account of wider

considerations, including balancing the value of the tree against the importance of the scheme. The use of the word 'imperative' in the policy reinforced the view that wider considerations could indeed be relevant - the greater the value of the tree the higher will be the hurdle would be for deciding that its removal was 'imperative'.

The Court did not accept that the Defendant failed to consider (B) and (C). The officer's report directly acknowledged these limbs and the value of the trees was considered in detail. The justification for removal of the trees was then dealt with by considering, in substance, the terms of (G) – the report culminated in the conclusion that subject to the financial contributions and suitable replacement tree planting on the Site, the proposal was considered to meet the requirements of London Plan policy G7 and Local Plan policy Q10. That was a conclusion which the Defendant was entitled to reach.

Accordingly, the claim was dismissed.

Case summary prepared by Emma McDonald