

Case Name: *Smith v Secretary of State for Levelling Up, Housing and Communities & Anor* [2022] EWHC 3209 (Admin) (16 December 2022)

Full case: [Click Here](#)

Commentary: This case was a successful application for statutory review, in relation to the decision by the Secretary of State to refuse a planning appeal for the erection of an externally illuminated advertisement wrap in Shoreditch.

The legal issue considered was ‘whether the inspector unlawfully sub-delegated his functions to an inexperienced junior officer, whose recommendation and reasoning he adopted without alteration; and whether that was an unfair process’.

Whilst relevant legislation did not require a site visit to be carried out, the appeal acceptance letter from PINS stated that a site visit would be carried out by an Inspector or their representative. An Appeal Planning Officer (‘APO’) conducted the site visit on behalf of the Inspector. Following this site visit, the APO recommended the appeal be refused on the sole ground of visual amenity.

The Inspector ‘topped and tailed’ the APO’s decision without adding further reasoning before signing and issuing the decision in the inspector’s own name, appending the decision of the APO.

Whilst planning inspectors are not required by law to possess certain qualifications, they are in practice highly qualified professionals. The APO in this case had a university degree and had received some degree of training.

The court considered that the employment of APOs to assist with reporting, document handling and carrying out site visits as a representative of an inspector is a lawful practice. However, in this case, the inspector had unlawfully delegated powers to the APO, such delegation being procedurally unfair because the APO exercised a professional judgment that she was not professionally equipped to exercise.

Mr Justice Kerr considered that best practice is for an APO ‘to address the facts, avoiding planning judgments and avoiding discussion of the merits with the inspector; for the template to record the APO’s findings; and for the decision maker then to fill in the planning judgment parts addressing the merits’.

Case summary prepared by Matt Speed