

Case Name: *Romeo Dance Academy Ltd, R (On the Application Of) v Milton Keynes Council* [2022] EWHC 475 (Admin) (04 March 2022)

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Commentary:

The High Court has rejected a JR alleging that Milton Keynes Council ('Council') failed to comply with its Scheme of Delegation ('SoD') when granting itself planning permission in October 2021 for the change of use of part of the Old Bus Station from a youth and community centre to a night shelter for the homeless.

The claimant operates a nearby dance studio business. 26 objections were received to the planning application. All but 1 of the objections expressed concerns relating to the alleged adverse impacts of the proposed night shelter on the dance studio business and its customers. The Council's decision to grant permission was taken under delegated powers.

The Claimant's JR alleged that the Council had failed to comply with its own SoD adopted in May 2019 on the basis: (a) that it had failed to turn its mind or have regard to para. 2 of the SoD (concerning specified circumstances in which delegated decisions were inappropriate) which was neither mentioned in the officer's report nor the planning permission; (b) alternatively, if the Council did have regard to para.2 of the SoD, then it had misinterpreted its ambit; and/or (c) if the Council did have regard to para.2 of the SoD then its decision that the proposal was not likely to be of a controversial nature was irrational and taken on the basis of irrelevant considerations being that the bulk of the objections to the scheme were from the Claimant's customers.

As to ground (a) above, the High Court concluded that the fact that the SoD was not mentioned in the officer's report nor the decision notice was not surprising when these document concern the planning merits and substance of the application and not with the Council's jurisdiction and procedure. In any event, the Council's witness statement exhibited a contemporaneous email evidencing that the Council had turned its mind to whether para.2 of the SoD applied such that the matter should be determined at planning committee rather than under delegated powers. As to ground (b) above, the High Court concluded that there was no reason to infer the Council had misunderstood its SoD and rejected the Claimant's overly forensic dissection of a contemporaneous email disclosed within which the Council officer had purportedly used the "in the public interest" threshold rather than key "controversial" threshold in para.2 of the SoD. As to issue (c) above, the High Court disagreed with the Claimant's argument that having regard to the source of the bulk of the objections being from the dance studio customers (which may have been sought or encouraged by the Claimant) was an irrelevant consideration. On the contrary, the High Court concluded that the identity nature and source of objections were key to what the Council had to consider under para.2 of the SoD , which was whether the application was likely to be controversial

bearing in mind the level of public interest such that it needed to be referred to committee.

Interestingly, the High Court also concluded that even if the Council had failed to comply with its SoD that they would have exercised the statutory discretion not to quash the decision under section 31(3C) and (3D) of the Senior Courts Act 1981 on the basis that they were satisfied that it would have been highly likely that a committee or panel would have granted permission for the proposal in any event.

Comment- Although ultimately unsuccessful this case is a useful application of the well-established principle that a local authority acts unlawfully if it fails to act in accordance with its adopted SoD (*R (Bridgerow Limited) v Cheshire West and Chester Borough Council*) [2014] EWHC 1187 (Admin).

Case summary prepared by Paul Arnett