

Case Name: *London Historic Parks And Gardens Trust v Minister of State for Housing & Anor* [2022] EWHC 829 (Admin) (08 April 2022)

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Commentary:

This was a statutory challenge in respect of the decision of the Minister of State for Housing to grant planning permission for the installation of the United Kingdom Holocaust Memorial and Learning Centre at Victoria Tower Gardens in Millbank, London. The challenge succeeded on two grounds related to the London County Council (Improvements) Act 1900. The decision to grant the planning permission was therefore quashed. The challenge did not succeed on the ground concerning the assessment of harm to the historic environment of the Gardens.

The London County Council (Improvements) Act 1990 was an act which included the power for the London County Council to make an extension of the Thames Embankment and a new street and improvements at Westminster. The key provision of this Act was section 8(1) which the Judge held to impose an enduring obligation to lay out and retain the new garden land for use as a public garden and integral part of the existing Victoria Tower Gardens. She held that it is not an obligation which was spent once the Gardens had been laid out so that the land could be turned over to some other use or be developed or built upon at some point after it had been laid out whenever it suited those subject to the obligation.

Although in general the decision to grant planning permission is without prejudice to any further consents which may be required for implementation of the planning permission, in this case timing of deliverability of the proposal was a material consideration which was given considerable weight by the Inspector because of the importance attached to the construction of the Memorial in the lifetime of Holocaust survivors. Section 8 of the London County Council (Improvements) Act 1900 was therefore a material planning consideration because of the potential impediment it presents to construction of the Memorial in Victoria Tower Gardens and this material consideration was not considered at the inquiry. Therefore, the challenge succeeded on this ground.

The challenge also succeeded on the ground of the consideration of alternatives and whether there was a more appropriate alternative site elsewhere because the Inspector had not taken into account the material consideration of section 8 and its implications for deliverability when considering the alternatives. However, this ground only succeeded in relation to this point. The Judge did not agree that the Inspector had erred in the approach taken to considering alternatives and had not placed a burden of proof on objectors to demonstrate the existence of a feasible alternative scheme that could be provided with less harm than at Victoria Tower Gardens.

The ground in respect of the assessment of harm to the historic environment did not succeed. The Judge held that the Inspector's formulation of the test for substantial harm as "the serious degree of harm to the asset's significance" was unimpeachable. The Judge also commented on the judgment in the case of *Bedford Borough Council v Secretary of State* [2013] EWHC 2847 (Admin) and stated that read as a whole and in context, that judgment does not import a test of "draining away" to the test of substantial harm and that it is not appropriate to treat comments made by a Judge assessing the reasoning of an individual decision maker, when applying the test of 'substantial harm' to the circumstances before him/her, as creating a gloss or additional meaning to the test.

The judgment also dealt with issues of using pre-legislative material to aid interpretation and with raising points in a challenge that had not been raised at the Inquiry.

In terms of the remedy, the summary of the judgment released by the Court explained that "The appropriate remedy is to quash the decision, so as to enable further consideration of the implications of the 1900 Act. It is an Act of Parliament which specifically regulates Victoria Tower Gardens and specifies that the land must be retained for use as a public garden. The Inspector's assessment of the potential impact of the Memorial on the existing garden means it cannot be said that the existence of the 1900 Act will make no difference to the outcome of the decision. The Court was not addressed on the mechanics of whether or when the 1900 Act might be repealed. The issue raises factual questions of some difficulty and detail which may require exploration of the relative speed of delivery of the Memorial at each of the sites under consideration for the location of the Memorial."

For further discussion see [Simoncity Holocaust Memorial Permission Quashed – SIMONICITY](#)

Case summary prepared by Susannah Herbert