

Case Name: *Plant, R (On the Application Of) v London Borough Of Lambeth* [2023] EWCA Civ 809 (11 July 2023)

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Commentary: This was an unsuccessful appeal against a High Court ruling to uphold a decision of the London Borough of Lambeth (“the Council”) to grant planning permission for the redevelopment of part of the Cressingham Gardens Estate.

The development required the felling of four mature trees, three of which were of significant value. The appellant’s case was that the Council had erred by misinterpreting its local plan policy on trees.

The policy in question had three paragraphs at issue in the case:

- Paragraph (B) prohibited development that would result in the loss of trees of significant value;
- Paragraph (C) required the retention within a development site of trees of significant value in order for development to be supported; and
- Paragraph (G) provided that where it is imperative to remove trees, adequate replacement planting would be secured.

The Council’s officer had reported to the planning committee that although paragraphs (B) and (C) required trees of significant value to be retained, paragraph (G) operated to enable their removal if doing so was “imperative”. It was imperative in this case, despite the value of the trees, as the significant benefits of the scheme could not otherwise be delivered. Replacement planting would be secured by condition, meeting the demands of paragraph (G), and so the proposal was compliant with policy.

The appellant’s case at first instance was that paragraphs (B) and (C) were absolute requirements, and therefore the development was contrary to the policy, despite the presence of paragraph (G), which could not function as a proviso to the other paragraphs. “Imperative” in paragraph (G) simply meant if it was necessary to deliver the scheme and triggered the requirement to provide replacement planting. The Council wasn’t at liberty to consider scheme benefits and tree value in determining whether the “imperative” test was met; in any event, removal of trees of significant value would still be in breach of policy due to the absolute nature of paragraphs (B) and (C). Therefore the Council should not have taken its decision on the understanding that the proposal was policy compliant; rather it should have acknowledged the breach of policy and factored it in to a consideration of whether the scheme benefits justified departure from the development plan.

The judge rejected the appellant’s argument, finding it unrealistic and an artificial constraint on what the planning authority can take into account when deciding whether

removal of a tree is imperative. The Council had not failed to consider paragraphs (B) and (C) and had interpreted its policy correctly.

In the Court of Appeal, the appellant submitted that the approach of the judge at first instance effectively set aside the clear prohibition on felling trees of significant value and generally enabled tree felling by substituting a vague test of whether removal was “imperative”, which in the appellant’s view simply meant that development could not proceed without felling.

The Council submitted that the word “imperative” implied that something was of overriding importance, and to reach such a conclusion required an evaluative judgment based on all relevant considerations.

Stuart-Smith LJ, giving the leading judgment in the Court of Appeal, noted that the policy was not clear and simple expedients could have been used to remove ambiguity and ensure the policy was understood as either the appellant or the Council submitted, had that been the intention.

Faced as he was with unclear drafting, he applied the principle in *Tesco Stores Limited v Dundee City Council* – that local plan policies should be interpreted objectively in accordance with the language used.

On the meaning of the word “imperative”, he agreed with the Council that it implied a conclusion reached as the result of an evaluative process taking all relevant planning considerations into account, and the value of the trees and the benefits of the scheme were among the variables that could be considered in deciding whether removal of the trees was imperative.

Overall, he found that the Council’s interpretation of the policy did less violence to the wording and provided a more natural interpretation than the appellant’s. The more natural interpretation was to read the whole policy, including paragraph (G), as defining the circumstances in which any trees, including significant trees, could be removed (rather than treating paragraph (G) as a being concerned with what should happen in the event of a breach of paragraph (B) or (C)).

Sir Keith Lindblom, Senior President of Tribunals, and Moylan LJ agreed. The appeal was dismissed accordingly.