

**Case Name:** *The Spitalfields Historic Building Trust, R (On the Application Of) v London Borough Of Tower Hamlets* [2023] EWCA Civ 917 (28 July 2023)

**Full case:** [Click Here](#)

### **Commentary:**

This was an unsuccessful appeal by The Spitalfields Historic Building Trust (“Spitalfields”) against the decision of Morris J in the High Court ([2022] EWHC 2262 (Admin)). The singular issue in this case was whether a rule, restricting the voting rights of councillors, adopted by the London Borough of Tower Hamlets (“the Local Authority”) in their constitution, was lawful. The rule in question restricted voting by members on deferred applications for planning permission, to those who had been present at the meeting(s) at which the application had previously been considered. In the High Court, Morris J held that such a rule was lawful, and the Court of Appeal agreed with the judgement of Morris J.

### **Factual Background**

The Local Authority’s Development Committee met remotely on 27 April 2021 (“the First Meeting”) to consider a planning application by Old Truman Brewery Ltd (“the Interested Party”). At the First Meeting, the Development Committee unanimously resolved to defer consideration of the proposal to allow for officers to explore further the Heads of Terms and s106 agreement. Negotiations on the s106 followed. In May 2021, following the Annual Council Meeting, the membership of the Development Committee changed. Following this, on 14 September 2021, the Development Committee met again to determine the Interested Party’s planning application (“the Second Meeting”). At the start of the Second Meeting, the Chair of the Development Committee stated that, only the councillors who were present at the First Meeting and were present that day (i.e. on the day of the Second Meeting) in the Council Chamber may vote on the item (i.e. the Interested Party’s planning application). It should be noted that all the councillors that attended the Second Meeting had indeed been present at the First Meeting. At the Second Meeting, the Development Committee resolved to grant planning permission by a majority of two to one.

The key paragraph of the Local Authority’s Constitution is paragraph 11.4 headed “DEFERRALS” under Part D – Strategic Development Committee/Development Committee – Development Procedure Rules (“the Deferrals Paragraph”), which states as follows:

*“Where an application is deferred and its consideration recommences at a subsequent meeting only Members who were present at the previous meeting will be able to vote. If this renders the Committee inquorate then the item will have to be considered afresh. This would include public speaking rights being triggered again.”*

## Grounds of appeal

The single ground put forward by Spitalfields was that the Deferrals Paragraph of the Local Authority's Constitution was unlawful as it lay outside the Local Authority's power under Paragraph 42 of Schedule 12 of the Local Government Act 1972 ("Paragraph 42 of the 1972 Act"). Paragraph 42 of the 1972 Act states as follows:

"Subject to the provisions of this Act, a local authority may make standing orders for the regulation of their proceedings and business and may vary or revoke any such orders."

The central argument put forward by counsel for Spitalfields was that the "right" of an elected councillor to vote on matters before a committee of which he is a member is "sacrosanct" and can only be overridden by clear statutory authority and, Spitalfields argued, that Paragraph 42 of the 1972 Act does not have this effect.

## Judgement

The Court of Appeal unanimously held that the Deferrals Paragraph of the Local Authority's Constitution fell within the proper scope of the statutory power afforded to local authorities by Paragraph 42 of the 1972 Act. This was because the phrase "*regulation of their proceedings and business*" was held to not relate merely to procedural matters but also to substantive matters – it is an expansive description of the decision-making and other functions of local authorities, which includes voting restrictions. Therefore, the Court held, that the Local Authority was acting within its powers when adopting a rule, via a standing order, which restricts voting rights of councillors in this instance.

Sir Keith Lindblom further noted that the mere existence of other statutory provisions which explicitly restricted voting rights of councillors, for example where a councillor was aware of a pecuniary interest in that matter, does not suggest that those are the only circumstances in which the removal or restriction of the entitlement to vote was appropriate. The Court held that it should not be inferred from such statutory provisions that this was what the legislature was seeking to do.

In addition to the above, Sir Keith Lindblom also considered whether the principle of achieving "political balance", as described under s.15(4) of the Local Government and Housing Act 1989, was offended by local constitutional rules such as that outlined in the Deferrals Paragraph of the Local Authority's Constitution. He concluded that this was not the case since it may not always be "reasonably practicable" to ensure that those who are present and entitled to vote on the second occasion reflect the political composition of the authority, or do so in the same proportions, as on the first occasion (see [57]).

As a result, the appeal was dismissed.

*Case summary prepared by Chatura Saravanan*