

Case Name: *Whiteside, R (On the Application Of) v London Borough Of Croydon* [2023] EWHC 1806 (Admin) (17 July 2023)

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Commentary:

This was an unsuccessful application for judicial review of a Council's decision to grant advertisement consent for the display of illuminated advertising on a bus shelter close to the Claimant's home.

The judgment of the court sets out the background to the claim in some detail. The scheme arose from a programme of renewal of some 110 bus shelters throughout the borough as well as other advertising sites. Pre-application advice had been sought and officers had concluded that the replacement bus shelters were themselves permitted development, but that a site-specific assessment of the impact of illuminance levels associated with advertising would need to be conducted. This pre-application advice was reported to the Council's Planning Committee, apparently on a for-information basis. The Interested Party subsequently made the application which gave rise to these proceedings and advertisement consent was duly granted, under delegated powers.

The challenge was brought on three grounds. The first was that, in considering the application for advertisement consent, the Council had failed to assess the proposal with reference to the policies in the development plan. Regulation 3(1)(a) of The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 provides that local planning authorities' powers over advertisements may only be exercised in the interests of amenity and public safety, but that in considering these interests they are to have regard to the provisions of the development plan. The Council, so said the Claimant, had not done this – omitting to mention the critical local plan policy (DM12) in the report. The Claimant also argued that the Council had taken into account an immaterial consideration, as the report had included a paragraph on public benefits in which it was mentioned that the proposal would be free advertising for the Council and was an important revenue stream.

On the first ground, the judge found that the Council had in fact considered the relevant policy and this finding was based partly on the fact that the reasons for imposing conditions on the decision notice explicitly mentioned policy DM12, and also partly on the fact that policy DM12 was very similar to policy D8 of the London Plan which had been fully addressed in the report. On the immaterial consideration point, the judge concluded that this was "descriptive material and background information" and that it had not informed the officer's conclusions as to the acceptability of the proposal.

The second ground was summarised as a failure to properly assess the impact of the proposal on this particular site, but it was alternatively presented in legal terms as (i) ignoring an obviously material consideration; (ii) as breaching the Council's duty to

enquire; and (iii) as a failure to give adequate reasons. The judge dismissed this ground, finding that there had been a site-specific assessment which had used best practice to arrive at a planning judgment as to the level of illumination considered acceptable in this location.

The third and final ground alleged that the decision to grant advertisement consent was unlawful on the basis that the Claimant had not been consulted, in breach of his legitimate expectation that he would be consulted. The Claimant had apparently been invited to comment on a previous bus shelter which had occupied the site, some twenty-five years before. The judge had more interest in the Claimant's contention that the lack of consultation in this case was unfair in the context of the actions set out in the Council's adopted Statement of Community Involvement (SCI). The judge concluded, however, that the terms of the SCI gave the Council "considerable discretion" as to when it would notify neighbours and that it did not provide the clear, ambiguous and unqualified undertaking to consult on applications for advertisement consent which would have been necessary in order for the Claimant to succeed on this ground. Accordingly, the claim was dismissed.

The claim was unusually brought out of time, two months and ten days following the grant of consent (the time limit for filing an application being ordinarily six weeks). Though the judge decided to grant permission for the claim to be heard (notwithstanding its ultimate failure) he did not address whether he would have granted an extension of time for the late filing of the application.

Case summary prepared by Aline Hyde