

Case Name: *Tottenham Hotspur Ltd, R (On the Application Of) v London Borough of Haringey* [2023] EWHC 2569 (Admin) (18 October 2023)

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Commentary:

This case involved a claim by Tottenham Hotspur Limited (“the Claimant”) against the decision of the London Borough of Haringey (“the Council”) to grant planning permission for the redevelopment of land west of High Road, Tottenham by Lendlease (High Road West) Limited (“the Developer”).

Facts

The Officer’s Report to members recommended approval of the major redevelopment scheme, which included, amongst other things, 2,929 homes, public realm improvements and commercial/community infrastructure. The proposal included six tall buildings, three of which already had planning permission (known as the Goods Yard and the Depot – permissions which had been granted to the Claimant). The application included these three buildings pursuant to the extant permissions.

Grounds

Ground 1: The Claimant argued that the Council failed to lawfully assess the totality of the heritage impacts of the development.

Ground 2: This was divided into two sub-grounds both relating to implications of access and crowd control at the Tottenham Hotspur Stadium, the Claimant argued:

(i) that the Council unlawfully relied upon a section 106 Agreement and planning conditions to determine that crowd control matters for the stadium would be addressed; and

(ii) the Council failed to lawfully apply the Agent of Change Principle.

Judgment

Ground 1: Heritage impacts

The Claimant submitted that the Council had failed to properly assess the heritage impacts of the extant permissions. It was argued that the Officer’s Report had simply followed the advice of the Council’s heritage consultant in error as the Goods Yard and Depot sites were not addressed as part of the heritage impact of the overall development (being the six tall buildings).

Saini J found that the Officer’s Report began by drawing on the Environmental Statement (“ES”) prepared by the Developer, which made clear the assessment was on maximum parameters (being all six buildings). The Officer undertook an asset-by-asset assessment, drawing on and evaluating the ES as well as expressing his own assessment of the impact, which in most cases agreed with the Council’s heritage consultant.

Relief would have been refused under Section 31(2A) of the Senior Courts Act 1981 if the court accepted Ground 1 as the various planning assessments (including the two extant permissions) showed a clear public benefit, meaning the outcome would've been the same even absent the error.

Given the above, ground 1 was dismissed.

Ground 2

Sub-ground (i): Access and crowd control in relation to Tottenham Hotspur Stadium (Stadium)

The Claimant argued that members were misled as the section 106 Agreement ("Agreement") and planning conditions failed to secure access and crowd control arrangements as proposed in the Officer's Report.

The Agreement provided that the Developer was to use all reasonable endeavours to enter into a licence agreement with the Claimant. This would allow the Claimant access to the Developer's land during and post-construction to allow crowd management control for those seeking to go to the Stadium. In addition, Condition 64 was a detailed pre-commencement crowd control condition. This required the submission of crowd flow management plans to the Council for approval prior to the commencement of the relevant phases of the development for the reason of ensuring the interim and detailed crowd flow scenarios were workable.

Saini J found that the combined effect of the Agreement and Condition 64 was that it ensured safeguards would exist which will enable arrangements for crowd safety to be in place (and be capable of being implemented) at each stage of the construction. It followed that if satisfactory arrangements had not been secured under the Agreement in relation to access, the Council would be entitled to refuse to grant approval under the Condition on the grounds that the arrangements are not workable.

In conclusion Saini J found that this ground amounted to a hypercritical approach (as discussed in Mansell) and the Council acted lawfully in putting in place mechanisms which encouraged cooperation in relation to access and crowd control.

Sub-ground (ii): Agent of Change

The Claimant's argument under this sub-ground was that the Council at no point carried out an assessment of any impacts of new crowd flow arrangements and therefore did not assess the unreasonable impacts on the existing Stadium that could arise under the Agent of Change principle at Paragraph 187 of the National Planning Policy Framework. In its argument the Claimant said that unreasonable restrictions on their Stadium operation was not just a question of queuing area (which was addressed in the Officer's Report). It was argued that restrictions could also be caused by the cost of employing

extra staff, additional signage/barriers and the ability for the Claimant to control its environment to allow ingress and egress from the stadium.

Saini J found that the Council was lawfully satisfied that the planning permission created a framework where access to the stadium would be satisfactorily achieved without unreasonable impact on the Claimant, and in finding this, the combination of the Agreement and various conditions would safeguard the interests of the Claimant to make the application compatible with the Agent of Change Principle.

Given the above, Ground 2 was dismissed, and the claim was dismissed in its entirety.

Comment

This decision provides a useful reminder of 1) the need to assess (especially if extant permissions are relevant) heritage impacts in their totality and 2) the importance of providing a strong framework to exercise relevant planning controls within the planning permission (in this case through a detailed condition and Section 106 Agreement) where any major facility is involved, which should consider the Agent of Change principle.

Case summary prepared by Jack Curnow