

**Case Name:** *Future High Street Living (Staines) Ltd v Spelthorne Borough Council* [2023] EWHC 688 (Admin) (28 March 2023)

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

**Commentary:**

This was a successful application for judicial review of the Council's decision to extend a conservation area to include a building which formerly accommodated a branch of Debenhams ("the Building"). The Claimant is the owner of the Building and submitted an application for planning permission to demolish the Building and replace it with build-to-rent and commercial development. The Claimant had separately sought confirmation that prior approval was not required for the Building's demolition, but the Council opined that prior approval was required and around a week later, it locally-listed the Building.

The planning application was then refused in June 2022, one reason being the harm arising from the proposed development to the significance of heritage assets (both designated and non-designated). Later that month, the Council decided to extend the conservation area. A few days later, prior approval for demolition of the Building was refused. The Claimant indicated its intention to appeal against the refusal of the planning application in July. The Council subsequently reviewed its decision to extend the conservation area in August 2022 ("the Review Decision"), partly because it realised that it had accidentally not taken into account the Claimant's representations in which it objected to the extension of the conservation area. The Review Decision found that no change should be made to the Council's initial decision. The application for judicial review was brought on four grounds, of which three succeeded.

The first ground was that the Council had acted illegally in deciding to extend the conservation area. The Claimant contended that the Council's real motive in doing so was to prevent the demolition of the Building and this was an improper purpose for the exercise of its powers to designate conservation areas. This ground was unsuccessful, Lane J observing that the desire to protect a particular building as a motivator for designating a conservation area was not itself problematic. Had the desire to protect the Building been the only driving factor this would have rendered the decision unlawful but the judge found that there was insufficient evidence that this was the case.

The judge took grounds 2 and 4 together and both succeeded. The second ground was that the Council had not taken into account the Claimant's representations. The Council argued that it took them into account in the report which informed the Review Decision and that in any event, it was highly likely that the initial decision would not have been any different if the representations had been taken into account then. The judge found that the officer's report informing the Review Decision was flawed in that it did not consider the conservation boundary afresh: it instead started with the initial decision and considered whether the Claimant's representations were persuasive enough to

warrant a change to that decision. The fourth ground attacked the Council's review of its decision to extend the conservation area. This was on the basis that the Review Decision simply affirmed the original unlawful decision, and that the officer who conducted the review did not have the authority to do so. The judge declined to consider the aspect of the challenge which related to delegation of power, in particularly whether delegation of a power to a particular officer includes a different officer of greater seniority to the first. Lane J referred to this as a "potentially interesting question" but found it unnecessary to address it on this occasion.

Ground 3 related to an allegation that the officer's reports produced in relation to the extension of the conservation area were seriously misleading. The reports omitted to mention that Historic England had declined to list the Building, and that two separate reviews of the Council's local list in 2004 and 2016 had also concluded that the Building should not be locally-listed. Lane J found that the officer's reports made much of the architectural quality of the Building and that councillors were not presented with a fair and balanced analysis of the same, which should have included reference to Historic England's consideration and the previous reviews of the local list. Those factors would not have been determinative of whether the Building should be included within the conservation area, but the judge found that they were obviously material to the decision.

One useful note within the judgment is the clarity that the Council was able to reconsider its earlier decision to extend the conservation area. This is to be contrasted with a Council's decision on a planning application which, once made, cannot be revisited (though care must be taken to distinguish between a resolution and a decision).

For further discussion see [Simoncity](#).

*Case summary prepared by Aline Hyde*