Case Name: *London Borough of Southwark v Secretary of State for Housing, Communities and Local Government and Blow Up Media [2025] EWHC 1556 (Admin)*

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Commentary: The London Borough of Southwark ("the Council") under section 288 of the Town and Country Planning Act successfully challenged the decision of the Secretary of State's Planning Inspector to grant express consent for the display of a temporary decorative printed shroud advertisement ("the Display") at Town Hall Chambers on Borough High Street, London. The Inspector granted consent for a five-year period. His decision as to the duration of the consent is the subject of the first ground of challenge, while the second ground of challenge contends that the Inspector failed to properly consider the impact of the Display on the Borough High Street Conservation Area and/or was irrational in determining the impact of the Display on the Conservation Area.

The judgment considered the Town and Country Planning (Control of Advertising) (England) Regulations 2007 and the appropriate approach to the imposition of time limit conditions other than the "default" five-year term. The judgment also sets out a helpful summary of relevant case law in assessing and weighing harm to heritage assets including conservation areas.

The Display was linked to proposed renovation works on the site: scaffolding was required to facilitate renovation work, including façade work, and the purpose of the Display was to shroud the scaffolding for the duration of the works. Permission for a smaller shroud advert was refused and was subject of an unsuccessful appeal decision dated 19 February 2021. The application for express consent for the Display was made on 19 January 2024 and identified the period for which consent was sought as running from 10 June 2024 until 10 December 2024 (i.e. for six months) and was located on the eastern elevation of the building in response to the previous Inspector's grounds of refusal. In his decision letter, the Inspector did not broach the subject of how long the Display would be on show, and instead granted the standard term of five years.

After setting out the relevant statutory provisions, policy framework and case law, Dan Kolinsky KC, sitting as a Deputy High Court Judge, proceeded to consider each of the grounds of challenge.

Submissions

Counsel for the Council submitted that, as the application was made for a temporary period of six months, it was incumbent on the Inspector to at least consider whether to grant consent for a period of six months rather than the standard five-year period. It was also submitted that the Inspector was in breach of his duty to give reasons for his decision, and Southwark suffered substantial prejudice from this breach because the temporary nature of the Display was central to its acceptability. Further, the Council

submitted that the heritage balance struck was flawed, as the Inspector found harm which he did not afford great weight to and instead improperly weighed against public benefits.

On behalf of the Secretary of State, it was submitted that advertising control has a limited focus, only being exercised on the grounds of public safety and in the interests of amenity. The duty to consider the period specified in the application applied only when an Inspector was deciding to apply a longer or shorter period than the five-year standard, which had not occurred in this case. The Secretary of State highlighted that the nature of the Display was linked to the presence of scaffolding, and that therefore the relevant legal question was whether it was a mandatory material consideration to address the six-month period. It would only be so if it was irrational not to consider it, which was not the case here. There was no breach of a duty to give reasons, as the Inspector was only required to deal with the principal controversial issues, and the heritage balance was appropriately struck.

Counsel for the Secretary of State also submitted that the Inspector's approach to heritage issues was sound. The Inspector did not find harm to heritage assets overall: he carried out an internal balancing exercise first, setting the harm caused against the benefits to the Conservation Area from the shroud over the scaffolding.

Ground 2: Heritage issues

The Judge began by noting that the description of the development for which consent was sought was a temporary scaffolding shroud with advertising inset. By definition, this could only be displayed if there was scaffolding in place.

The Judge was satisfied that, on a straightforward reading of the Inspector's decision, the heritage issues were dealt with in a logical and consistent way whereby the Inspector found no overall harm to the character and appearance of the conservation area from the proposal, and accordingly there was no heritage harm to which he had to apply considerable weight. The net balancing exercise undertaken by the Inspector was sound.

Ground 1

The Judge first noted that the Inspector did not refer to the fact that the application for consent was made on the basis that the Display would be in place for six months, and instead decided that the standard five-year condition should apply without explanation.

The Court held that it was plain that, by reference to para.2(1A) of schedule 4 of the Town and Country Planning (Control of Advertising) (England) Regulations 2007, that the

Inspector was directed to consider (among other things) the period specified in the application for consent. While it was expressed in permissive terms, the Inspector would necessarily have to consider the period applied for in considering whether to change the standard period. While it was not a mandatory material consideration explicitly imposed by statute, it could be implicit in the provision and/or was obviously necessary in the factual circumstances of the case.

Counsel for the Inspector argued that it was obvious why the Inspector applied the standard five-year condition, and that it flowed inextricably from the Inspector's conclusions that there was no harm to the Conservation Area. However, the Court held that this oversimplified the position. Just because the Inspector concluded that there was no adverse impact to the conservation area, it did not mean that amenity considerations were irrelevant. There was scope for debate as to whether a condition limiting the duration of the Display was necessary or otiose, and no indication that the Inspector thought about those issues.

In the Court's view, the duration of the consent was something which, in the circumstances of the case, needed to be addressed. The basis for rejecting the consensus required an explanation, and the Court was satisfied that duration was a mandatory material consideration. Therefore, there was an error of law in the Inspector not addressing the period of consent in departing from the common understanding of the parties to the appeal (that they were debating whether express consent should be granted for a six-month period). The Inspector's reasons were also inadequate.

Relief

The Court rejected the submission of the Secretary of State that, applying the *Simplex* test, the outcome would necessarily be the same if the errors had not occurred in the Inspector's reasoning. While the Court accepted that the Inspector might have reached the same conclusion, he would not necessarily have done so, and may well have reflected that it was better to clarify that the display should be of limited duration and imposed a time limited condition as requested.

As the Court had concluded that: (1) the absence of any reference to the six-month period specified in the application was an error of law; (2) The Inspector failed to address a mandatory material consideration (in this case) and (3) failed to give reasons for his decision which caused the Claimant substantial prejudice, it was appropriate to grant the Claimant the relief sought, namely the quashing of the Inspector's decision.

Case summary prepared by Gregor Donaldson