

**Case Name:** *R (on the application of The Spitalfields Historic Building Trust) (Appellant) v London Borough of Tower Hamlets and another (Respondents) [2025] UKSC 11*

**Full case:** [Read here](#)

**Commentary:**

The Supreme Court has affirmed the judgments of both the High Court and the Court of Appeal in a case concerning procedural governance and democratic participation in planning decisions by local authorities. The central issue was whether a provision in the standing orders of Tower Hamlets Council (the “Council”), which restricted voting on a deferred planning application to those committee members present at the original meeting, was lawful under the Local Government Act 1972 (the “Act”).

The appellant, The Spitalfields Historic Building Trust, challenged the Council’s decision to grant planning permission for the redevelopment of the Old Truman Brewery site. The appellant argued that the voting restriction was unlawful and that the standing order contravened statutory requirements. The case raised critical questions regarding the voting rights of councillors, principles of democratic representation, and the permissible scope of local authority constitutions.

Factual Background

The dispute concerned a planning application for the redevelopment of a historic brewery site located on Brick Lane. At the initial hearing of the Council’s Development Committee in April 2021, five members were present, and the Committee unanimously resolved to defer the matter for further consideration. When the application was reconsidered in September 2021, the Committee’s composition had altered. The Council’s standing orders stipulated that only members present at the initial hearing were eligible to vote on deferred applications. Consequently, only three of the original five members participated in the decision-making process, resulting in a vote of two to one in favour of granting planning permission.

Decision of the High Court

The High Court dismissed the judicial review claim and upheld the validity of the Council’s standing orders. It concluded that the Council had adopted the voting restriction lawfully, pursuant to its powers under paragraph 42 of Schedule 12 to the Act. While acknowledging potential limitations on councillor participation, the High Court found that the restriction was a lawful exercise of the Council’s authority to regulate its internal proceedings. The High Court dismissed alternative arguments posited by the Council and the developer (the second respondent), suggesting the standing orders reconstituted the committee or amounted to a sub-decision, as unrealistic.

### Decision of the Court of Appeal

The Court of Appeal unanimously dismissed the appeal, holding that the Act conferred sufficiently broad powers to enable the Council to enact standing orders restricting voting to members present at all relevant meetings. It rejected assertions that voting rights were so fundamental as to preclude curtailment by procedural standing orders. The Court of Appeal emphasised that the restriction safeguarded consistency and continuity within the decision-making process. The alternative arguments concerning committee reconstitution or sub-delegation were deemed unnecessary to address in light of the Court of Appeal's primary conclusions.

### Decision of the Supreme Court

The Supreme Court (the "Court") dismissed the appeal, affirming the lawfulness of the Council's standing orders. Delivering the unanimous judgment, Lord Sales held that the Act confers authority upon local councils to regulate their internal procedures via standing orders, including provisions on voting eligibility. Such powers, however, remain subject to public law principles, including rationality and legitimate purpose. The Court highlighted that these procedural regulations are essential for maintaining the integrity and functionality of decision-making processes within local councils.

### **Entitlement vs. Right to Vote**

The Court relied on Sedley LJ's judgment in *R v Flintshire County Council, ex parte Armstrong-Braun (2001)*, which distinguished councillors' entitlements from broader democratic rights belonging to constituents. Lord Sales drew a clear distinction between the general statutory entitlement to vote under paragraph 39 of Schedule 12 and the authority to impose procedural regulations under paragraph 42 of Schedule 12 and section 106 of the Act. He further noted that the provisions in paragraph 42 of Schedule 12 and section 106 of the Act were to be read according to their natural and ordinary meaning. Paragraph 42 allowed local authorities to make standing orders regulating their "proceedings and business," with no further statutory provisions restricting this power. However, Lord Sales emphasised that this power was not entirely without limits. Local authorities must individually assess whether it is both appropriate and justifiable for their standing orders to impose similar restrictions.

### **Heightened-Scrutiny Rationality Review**

Lord Sales outlined that the heightened-scrutiny rationality review is applicable to discretionary powers impacting democratic principles, particularly councillors' entitlement to vote. While typically associated with fundamental rights, such scrutiny was deemed appropriate in this context given the importance of democratic representation. The Court determined the voting restriction satisfied this heightened standard, safeguarding the integrity of deliberative processes. As the standing orders aimed to ensure that only councillors attending all meetings discussing the application

could vote, this measure was considered rational and necessary to maintain the quality of decision-making and public confidence.

### **Principle of Legality**

The Court rejected the application of the principle of legality, which applies where there is an established or fundamental right recognised in law then Parliament, by its use of general language in the particular context, is taken to have legislated in a way which is not intended to abrogate that right. The Court concluded that councillors' entitlement to vote does not constitute a fundamental right independent of the statutory framework. It concluded that the Act adequately protects democratic principles without necessitating additional interpretive safeguards. Lord Sales clarified that the voting entitlement is corporate, rather than personal, and may be lawfully restricted under statutory or common law principles, such as those addressing bias.

Finally, the Court briefly dismissed cross-appeal arguments from the second respondent concerning the alleged reconstitution of the committee or the establishment of a sub-committee. It held that the standing orders did not alter the composition of the committee but simply regulated its voting procedures.

The appeal was, therefore, dismissed as the Council's standing orders were upheld as lawful due to their alignment with the statutory provisions of the Local Government Act 1972.

*Case summary prepared by Tanika Zeidler*