INTRODUCTION

Jonathan Darby

Welcome to this week's edition of our Planning, Environment and Property newsletter. This week we have articles from Stephen Tromans QC (on waste planning in a commercial context), Richard Harwood QC (on the right to lobby councilors further to Holborn Studios 2), Celina Colquhoun (on the proposed extensions to planning permission), as well as Victoria Hutton (on bias and planning decisions further to the Westferry Printworks debacle). Victoria's article is the prequel to an article that we will feature next week on the issue of disclosure in judicial review and statutory reviews more generally.

We hope that you have a fantastic weekend.

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WASTE PLANNING IN A COMMERCIAL CONTEXT

Stephen Tromans QC

It is quite rare for a judge in the Technology and Construction Court to grapple with environmental and planning law, so the recent decision of Pepperall J in *Essex County Council v UBB Waste (Essex) Ltd (No. 2)* [2020] EWHC 1581 (TCC) is of interest. This was a contract dispute between Essex County Council and its contractor, UBB over a 25 year contract for the design, construction, financing, commissioning, operation and maintenance of a mechanical biological waste treatment ("MBT") plant in Basildon to process the county's household waste. After commissioning, the facility had failed to pass the readiness tests required by the contract. The council argued that UBB failed to design and construct the facility so that it was capable of passing the tests and that UBB's failure either to pass the tests or to attempt to do so was an event of contractor default and sought, among other relief, damages and a declaration that it was entitled to terminate the contract. UBB contended, inter alia, that the performance of the facility was critically dependent on the composition of the waste and would have passed the acceptance tests but for the council's failures: first, to provide waste with the assumed composition provided to UBB when bidding for the contract; secondly, to approve the use of modifications made to the plant referred to by the parties as the Quick SRF or ("QSRF") Line; and thirdly, to engage properly with UBB in the contractual options review process to deal with the waste composition issues by agreeing necessary modifications to the acceptance tests. The council won the case resoundingly and was awarded declaratory relief and damages of about £9,000,000 to the end of February 2019 and continuing losses thereafter at around £99,000 per month.

Most of the lengthy judgment relates to commercial and contractual issues, though there are passages of significant interest where the judge criticises UBB's expert witness on the basis of conflict of interest and lack of impartiality. His evidence was not excluded but was treated with great caution, and indeed the judge had serious concerns that he had "failed properly to distinguish between advocacy for a client and the rigour required when acting as an independent expert".

Waste hierarchy

The waste hierarchy under articles 1 and 4 of the Waste Directive 2008/98/EC came into play because of arguments by UBB that it was unlawful for the Council to require the facility to be tested in "Bio-Stabilisation Mode", which involved using bio-stabilisation treatment processes, producing a residue which was sent to landfill. UBB said this should not have been required, as it was lower down the hierarchy than UBB's favoured method of testing, "SRF mode" which resulted in a material ("SOM") sent for energy recovery. The hierarchy was implemented domestically by regulation 12 of The Waste (England & Wales) Regulations 2011. Reg. 12(1) incorporates the waste hierarchy into domestic law and requires that waste disposal authorities "must, on the transfer of waste, take all such measures available to it as are reasonable in the circumstances to apply the … waste hierarchy as a priority order…". However, this duty is subject to regulations 12(2) and (3), which provide that an establishment or undertaking may depart from the priority order so as to achieve the best overall environmental outcome where this is justified by life-cycle thinking on the overall impacts of the generation and management of the waste.

Pepperall J accepted that, since recovery of energy through incinerating SRF is higher up the waste hierarchy than disposal of SOM to landfill, that the Council was therefore required to prioritise such recovery over disposal. Accordingly, the Council should favour SRF Mode, which allows energy recovery, over Bio-Stabilisation Mode, which involves disposal to landfill. The obligation under reg. 12 was not, however, absolute: first, as reg. 12(1) makes plain, the obligation is only to take "all such measures available to it as are reasonable in the circumstances" and secondly, reg. 12(2) allows the for departure from the waste

hierarchy in order to achieve "the best overall environmental outcome where this is justified by life-cycle thinking on the overall impacts of the generation and management of waste." The judge considered and approved the discussion of the hierarchy by Sir Wyn Williams in *R (Protreat Ltd) v The Environment Agency* [2018] EWHC 1983 (Admin), [2018] P.T.S.R. 2090 where it was said that the terms of the Directive contained a clear recognition that a strict application of the hierarchy in all circumstances is not always justified. He also noted *Skrytek v Secretary of State for Communities and Local Government* [2013] EWCA Civ 231, [2014] Env. L.R. 15, where Beatson LJ observed, at [10], that: "The Directive [and] the 2011 Regulations … make it clear that the hierarchy does not have to be followed slavishly."

Accordingly, in Pepperall J's judgment, reg. 12 did not require him to construe the contract such that it was not necessary for UBB to be able to pass the acceptance tests in Bio-Stabilisation Mode, and it is not unlawful for the Council to require UBB to test the facility in both modes. First, it was a central requirement of the contract that UBB would design, construct, commission and operate a facility capable of operating in both modes. Secondly the facility was not required merely to produce SRF for incineration but also to be capable of operating in Bio-Stabilisation Mode when required and, operating in such mode, to achieve exacting standards for mass recovery and BMW reduction. Thirdly, while energy recovery through the incineration of SRF was plainly to be prioritised over sending waste to landfill, over the 25-year life of this contract there might well be times when the outputs fail to meet the SRF specification and have to be disposed of to landfill; or where it was not possible to find a reprocessor able to take the waste as SRF. Equally, the regulatory and political climate might change over a quarter of a century. Further, it was not actually necessary to breach the waste hierarchy in order to test the facility in Bio-Stabilisation Mode. Since it was to be tested simultaneously in both modes and UBB was required to design, construct and operate the facility so as to demonstrate that it can produce SOM that also meets the SRF Specification, it would be open to the parties to run the acceptance tests without diverting any waste to landfill. Further, regardless of that conclusion, the waste hierarchy did not have to be followed so slavishly that the parties cannot even test whether this facility met the acceptance tests and the performances guarantees that lay at the heart of the contract. The parties would be entitled to depart from the priority order in the waste hierarchy by operating the facility in both the Bio-Stabilisation and SRF Modes for the duration of the acceptance tests. Such derogation would be justified pursuant to reg. 12(2), so as to achieve the best overall environmental outcome by testing whether the facility met the high environmental standards required by the acceptance tests and can therefore enter service; and by considering the overall impacts upon the management of waste in Essex over the 25-year cycle of this contract.

Planning

A large part of the County Council's case turned on it being a key feature of the original design that all waste, save the recyclates recovered within the pre-processing plant, was to be stabilised in the biohalls before being refined to extract aggregates and then disposed of as either SOM or SRF the outputs. However, after the facility had been constructed and was operational, it was found that UBB had made a serious error regarding assumed waste density, resulting in the biohalls being too small to deal with the Council's waste inputs: the biohalls had only about half the required capacity. To try and work around this fundamental problem, UBB instituted a system for "Quick SRF" (QSRF) whereby a significant part of the waste stream was diverted away from the biohalls, by simply being shredded and passed through an electromagnet to extract ferrous metals and then into 40-yard containers. It was not further processed in order to remove other recyclates or aggregates. Nor was any biodegradable waste in this stream stabilised through the bio-halls. QSRF was not, therefore, a stabilised output.

Among a series of issues on this point was whether this amounted to a breach of planning permission which would in turn be a breach of contract. It was a matter of agreement that the introduction of the QSRF line was not operational development and Pepperall J accepted UBB's case that it was not a material change of use either. The facility remained a facility for the mechanical and biological Treatment of residual municipal solid waste and commercial and industrial waste, as permitted. The Council's principal argument was that the installation of the QSRF Line was a breach of condition 2 of the planning permission, which provided that the development should be carried out in accordance with the details of the application and, among other documents, the Planning Statement and the Environmental Statement. Pepperall J reviewed the authorities on construction of planning permission, including *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74, [2016] 1 W.L.R. 85 and *Lambeth London Borough Council v Secretary of State for Housing, Communities & Local Government* [2019] UKSC 33; [2019] 1 W.L.R. 4317. Condition 2 of the planning permission has already been the subject of judicial review proceedings heard by Lieven J in July 2019: *UBB Waste (Essex) Ltd v Essex County Council* [2019] EWHC 1924 (Admin).[1] Lieven J held that in construing condition 2, the terms of the Planning and Environmental Statements, among other documents, fell to be considered. This was in Pepperall J's view plainly right since these statements were expressly incorporated by reference. The judge agreed with Lieven J's observation that in cases where substantial documents are incorporated, it is necessary to take an overview of the documents. It was plain from these statements in the judge's view that the waste would be processed and, after the extraction of recyclates, composted in the bio-stabilisation halls before passing through the refining unit. Therefore, the judge held that operating the facility such that a very substantial quantity of waste is diverted away from the biohalls altogether was not in accordance with condition 2. Further, the mass diversion of waste was plainly not *de minimis*. Therefore Pepperall J held that the introduction of the QSRF Line was in breach of planning condition. Under the contract the planning risk was plainly allocated to UBB. Accordingly UBB was not entitled to divert waste away from the biohalls without first obtaining revised planning permission for the facility. Further, UBB cannot avoid this conclusion by resorting to implied terms of good faith, since the contract expressly places the planning risk upon the contractor.

Stephen Tromans QC advised Essex County Council on environmental and planning matters, instructed by Slaughter and May. Celina Colquhoun acted for UBB on this case and in ***UBB Waste (Essex) Ltd v Essex County Council*** *[2019] EWHC 1924 (Admin) led by James Strachan QC.*

THE RIGHT TO LOBBY COUNCILLORS: HOLBORN STUDIOS 2

Richard Harwood OBE QC

The High Court has ruled, for the first time, whether members of the public can write to councillors, and whether councillors can read those letters in advance of taking decisions. The case concerned the practice of the London Borough of Hackney of prohibiting planning committee members from reading correspondence sent to them about forthcoming applications.

Holborn Studios run the largest photographic studio in Europe. Redevelopment is proposed by their landlords, with a scheme which will not accommodate them. In 2017 planning permission was quashed because an unfair failure to reconsult on amendments and a failure to disclose application documents in breach of a legitimate

1 The case before Lieven J had involved UBB's challenge to the grant of a certificate of lawfulness pursuant to s.192 of the 1990 Act by which Essex, as the Waste Planning Authority, on an application by the Waste Disposal Authority certified that the introduction to the facility of 30,000 tonnes per annum of source-segregated green garden waste was lawful. Construing the Planning and Environmental Statements among other documents incorporated into the permission, the judge concluded that the permission was for the processing of residual waste and that accordingly the permission did not allow the introduction of source-segregated waste.

expectation: ***R (Holborn Studios) v London Borough of Hackney.*** **A new application was considered by Hackney's Planning Sub-Committee in January 2019. Shortly before the meeting Holborn Studio's managing director wrote to the committee members about the officers' report and received this reply from the chair:**

> "Planning members are advised to resist being lobbied by either applicant or objectors."

Holborn Studio's solicitors, Harrison Grant, then wrote to the planning officers, copying in the committee members, explaining why the officer recommendation to refuse the application should be rejected. They also said that Hackney's approach of not allowing committee members to read representations sent to them was unlawful. A councillor replied that he had been given legal advice that he 'should forward any lobbying letters to Governance Services and refrain from reading them'. Consequently, he said, 'I have not read your email'. In an addendum report the officers responded to the solicitors' letter:

> "Members are warned about viewing lobbying material as this can be considered to be prejudicial to their consideration of the application."

This reflected the Council's leaflet 'How to have your say at the Planning Sub-Committee', sent to the public in advance of the meeting 'it is advised that you don't contact any of the councillors before a meeting'.

The particular issue was whether the public could write to councillors about decisions they will be making and whether those councillors could consider those representations. The point was remarkably free of any judicial authority, apart from a passing comment by Dove J in *R(Legard) v Royal Borough of Kensington and Chelsea*[2] that 'As democratically elected representatives they are expected to receive and consider representations and lobbying from those interested in the issues they are determining.'

Holborn Studios relied on Article 10 of the European Convention on Human Rights and the common law. Article 10 provides 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information … subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society'. In *R(Lord Carlisle of Berriew v Secretary of State for the Home Department*[3] Parliamentarians asked for the exclusion of a dissident Iranian politician from the United Kingdom to be lifted to enable her to address meetings in Parliament on issues associated with Iran. Lord Neuberger said at paragraph 91, discussing meetings with MPs and Peers:

> "These are hugely important rights. Freedom of speech, and particularly political speech, is the foundation of any democracy. Without it, how can the electorate know whom to elect and how can the parliamentarians know how to make up their minds on the difficult issues they have to confront? How can they decide whether or not to support the Government in the actions it wishes to take?"

Baroness Hale emphasised that whilst the politician could still speak to UK Parliamentarians by video or audio link, or they could see her in Paris, the preventing a meeting at Westminster was still an interference with the Parliamentarians' Article 10 rights.[4]

Holborn Studios also relied on the common law as being in step with Article 10 citing Lord Steyn in *R v Secretary of State for the Home Department ex p Simms:*[5]

> "The starting point is the right of freedom of expression. In a democracy it is the primary right: without it an effective rule of law is not

2 [2018] EWHC 32 (Admin) at para 143.
3 [2014] UKSC 60, [2015] AC 95.
4 Lord Carlisle at para 94.
5 [2000] 2 AC 115 at 125.

> possible. … In *Attorney-General v Guardian Newspapers Ltd. (No. 2)* [1990] 1 A.C. 109, 283-284, Lord Goff of Chieveley expressed the opinion that in the field of freedom of speech there was in principle no difference between English law on the subject and article 10 of the Convention. …
>
> Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Holmes J. (echoing John Stuart Mill), "the best test of truth is the power of the thought to get itself accepted in the competition of the market:" *Abrams v United States* (1919) 250 U.S. 616, 630, *per* Holmes J. (dissenting). Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country …"

Dove J referred to the Local Government Association's publication "Probity in Planning" which says 'Lobbying is a normal part of the planning process'. It was 'indisputably correct' that 'that issues in relation to freedom of expression and the application of Article 10 of the ECHR were engaged in the communication between members of a local authority, and in particular members of a planning committee, and members of the public who they represent and on whose behalf they were making decisions in the public interest' (para 78). He held (para 78):

> "Similarly, bearing in mind the importance of the decisions which the members of the planning committee are making, and the fact that they are acting in the context of a democratically representative role, the need for the communication of views and opinions between councillors and the public whom they represent must be afforded significant weight. In my view, it would be extremely difficult to justify as proportionate the discouragement, prohibition or prevention of communication between public and the councillors representing them which was otherwise in accordance with the law. Here it was no part of the defendant's case to suggest that the communication which the claimant made in their correspondence in respect of the committee report was anything other than lawful."

Mr Justice Dove concluded (para 79):

> "Receiving communications from objectors to an application for planning permission is an important feature of freedom of expression in connection with democratic decision-taking and in undertaking this aspect of local authority business. Whilst it may make perfect sense after the communication has been read for the member to pass it on to officers (so that for instance its existence can be logged in the file relating to the application, and any issues which need to be addressed in advice to members can be taken up in a committee report), the preclusion or prevention of members reading such material could not be justified as proportionate since it would serve no proper purpose in the decision-taking process. Any concern that members might receive misleading or illegitimate material will be resolved by the passing of that correspondence to officers, so that any such problem of that kind would be rectified. In my view there is an additional issue of fairness which arises if members of the planning committee are prevented from reading lobbying material from objectors and required to pass that information unread to their officers. The position that would leave members in would

1 https://www.nationalgrideso.com/

2 https://ember-climate.org/project/the-burning-question/. See The Times June 15 2020, *"Dirty Secret of Subsidised Wood-Fired Power Stations."*

be that they would be reliant only on material from the applicant placed on the public record as part of the application or the information and opinions summarised and edited in the committee report. It is an important feature of the opportunity of an objector to a planning application to be able to present that objection and the points which they wish to make in the manner which they believe will make them most cogent and persuasive. Of course, it is a matter for the individual councillor in the discharge of his responsibilities to choose what evidence and opinion it is that he or she wishes to study in discharging the responsibility of determining a planning application, but the issue in the present case is having the access to all the material bearing upon the application in order to make that choice. If the choice is curtailed by an instruction not to read any lobbying material from members of the public that has a significant impact on the ability of a member of the public to make a case in relation to a proposed development making the points that they wish to make in the way in which they would wish to make them.

81. … The standard correspondence clearly advised against members of the public writing directly to members of the committee; there was no warrant for that advice or discouragement and it impeded the freedom of expression of a member of the public who was entitled to write to a member of the planning committee setting out in his or her own terms the points they wish to be considered in respect of an application and expect that the member would have the opportunity to read it."

The permission was not quashed on this ground since whilst committee members had thought they were obliged to disregard a letter from Holborn Studios' solicitors, their points were made by their QC at the committee meeting.

The judgment establishes, surprisingly for the first time, the right of local councillors to receive correspondence from the public and to consider it when making decisions. Part of that is the right of the public to write. There is also a recognition that members can and will be lobbied, whether in writing, in meetings, at social events or chatting in the street. Provided that is done openly, in particular that correspondence is copied to officers whether by the writer or the recipient, that is not simply legitimate, but an important part of the democratic process.

The planning permission was though quashed because the Council failed to make affordable housing viability assessments available to Holborn Studios and the public. These were background papers and given government policy and guidance on transparency, the public interest did not allow these to be exempt information. Dove J found that the viability material which was published to justify a reduced affordable housing contribution was 'opaque and incoherent'. This aspect of the case is considered in detail by Richard Harwood QC here.

Richard Harwood QC appeared for Holborn Studios in both cases, instructed by Susan Ring of Harrison Grant.

C-19 – PROPOSED EXTENSIONS TO PLANNING PERMISSION

Celina Colquhoun

In the midst of the current storms buffeting the Secretary of State for Housing Community and Local Government he has tempted our attentions away from his decision making towards some potential Government relief measures for developers with planning permissions which are due to expire soon and where implementation has been interrupted by lockdown.

On 22 June in a press release *"New plans to get Britain building in coronavirus recovery"* https://www.gov.uk/government/news/new-plans-to-get-britain-building-in-coronavirus-recovery we were told that Robert Jenrick MP had announced new measures to extend planning permission deadlines; speed up planning appeals and allow builders more flexible working hours

following agreement with their local council.

Those of us who remember the previous provisions to extend permissions will recall that these were brought in following the financial crash(es) of 2008 and the 'credit crunch' that followed (a phrase to conjure with). They were prospective having been passed and adopted in 2009 in respect of planning permissions granted "on or before 1 October 2009." The legal measures were set out/ contained in the **Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009** (SI 2009 No. 2261) and the **Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2009** (SI 2009 No. 2262) amending the **Town and Country Planning (General Development Procedure) Order 1995.**

What these provisions in effect did was temporarily amend s73 of the 1990 Act so that a class of permissions ie only those granted on or before a certain date first 1 October 2009 and then secondly, when it was extended in 2012, those granted on or before 1 October 2010.

The key was that this extension which was by means of an application under s73 and could only apply to a permission as yet unimplemented but also not yet expired at the time of the application to replace the existing permission. This was intended to be a temporary measure to specifically address the economic downturn, allowing applications to be more efficiently renewed and implemented shortly after when economic conditions improved. In November 2013, when the 2010 provisions came to an end the Government announced that they would not be renewed again.

With regard to the extension to planning permissions now proposed, very little detail is provided in the announcement but it is fair to say that this is a move which was to be reasonably expected and which makes sense. It is also a measure that the developer and construction industry had called for.

What we are told is that the measures will apply consents **due to expire** *"between the start of lockdown"* (ie 23 March 2020) and *"the end of this year"* and that the consequence will be that these permissions are *"extended to 1 April 2021."*

This implies two things (1) that the measures may well have some retrospective effect applying to permissions which have **already** expired and (2) that this may well be a provision that applies automatically.

This is of course very different to the 2009/2010 extension which went a lot wider.

We will have to see what comes forward and it seems soon enough (ie later this week).

It is perhaps worth remembering in this context a point that was made at the time by practitioners at the time of the 2009/10 extensions which is that once upon a time s.73 of the 1990 Act as originally drafted enabled the time limit conditions imposed under s91 and 92 of the 1990 Act to be revisited. This option was removed by s51 of the 2004 Act which introduced s.73(5).

It is often said that the reason for this is to avoid the practice of landbanking by allowing developers to keep permissions alive and not implement them until a more (economically) suitable time. However it does seem equally arguable that that sort of practice could be avoided by requiring applicants to justify an extension and indeed an LPA might have the power only to extend for a shorter period than requested ie 1 year as opposed to 3.

It will be interesting to see how the new extension measures pan out and whether such a facility is itself extended as in 2010 or perhaps along with Mr Cummings' apparent root and branch revision of the whole planning system more flexibility on time limits will be thought about.

BIAS AND PLANNING DECISIONS

Victoria Hutton

Anyone who has picked up a newspaper or read the same online over the past couple of weeks will be aware of the furore which has surrounded the decision of the Secretary of State for Housing, Communities and Local Government (Robert Jenrick) to consent to judgment in a challenge to the planning permission he granted at the Westferry Printworks site in Tower Hamlets for over 1500 homes, shops, offices, restaurants and pubs.

At the time of writing there is no indication that the issue is going away anytime soon. The factual matrix behind the decision appears to develop daily and some MPs are reportedly seeking a vote in Parliament to force the disclosure of certain documents. It is not the intention of this article to comment upon those issues. Rather, the article seeks to set out the factual background to the claim and consent order and briefly considers why it is that this claim has captured so much attention.

The facts, as alleged in the statement of facts and grounds ('SFG'), were these: the Application was recovered on 10 April 2019 and an inquiry was held in September 2019. The Secretary of State's inspector recommended refusal. The Secretary of State disagreed with his inspector and allowed the appeal on 14 January 2020. The next day, Tower Hamlets Council ('the Council') adopted its new local plan which included a new CIL Charging Schedule which was to take effect from 17 January 2020. The SFG alleges that the timing of the decision meant that the developer (Richard Desmond) avoided a CIL liability of c.£40 million.

The Council sought to challenge the grant of permission and sent a pre-action letter which raised the issue of apparent bias and sought disclosure of relevant documents concerning the appeal. The response on behalf of the Secretary of State did not give disclosure but stated sought to explain the decision as follows:

> *'1. The Secretary of State decided to grant planning permission in or around late December 2019;*
>
> *2. The Secretary of State was advised by his civil servants prior to that decision that, to avoid delay, a decision should be issued before the Council adopted its new Local Plan and CIL charging schedule;*
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> *3. The Secretary of State decided at the same time in late December 2019 that he wanted the decision issued as soon as possible in the New Year;*
>
> *4. The basis for the advice that a decision should be issued before the Council adopted the new Local Plan and CIL charging schedule was to avoid the delay which would arise from having to refer back to the parties and seek representations on the impact on the appeal of the adoption of the new Local Plan and CIL charging schedule. There were also concerns that delay could impact on the viability of the proposed development.'*

The Council then issued proceedings under s288 of the Town and Country Planning Act 1990. The challenge was brought on a single ground: apparent bias. It alleged that the pre-action response from the Secretary of State indicated that the decision was timed to avoid the CIL liability. The grounds pressed for relevant material, including advice from officials, to be disclosed.

The test for apparent bias is an objective one, it comes from the House of Lords' judgment in *Porter v McGill* [2002] AC 357, it is:

> *'… whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased…'*

Further, the courts have made clear that it will consider all relevant facts. It is not limited to facts available at the time of the decision (*Flaherty v National Greyhound Racing Club* [2005] EWCA Civ 117).

Also of relevance is the duty of candour. This is the principle that public authorities must be candid when it comes to judicial review. In other words, the litigation must be 'conducted with all the cards face upwards on the table' (*R v Lancashire County Council, ex p Huddleston* [1986] 2 All ER 941.

However, the statutory challenge did not run its course. Rather, the Secretary of State decided to consent to judgment. On 20 May 2020, Mr Justice Holgate approved a consent order between the Secretary of State, the Council, Westferry Developments and the Mayor of London. The schedule of reasons states:

> *'5. In its claim the Claimant contends that the decision was tainted by apparent bias in the circumstances of the case. The First Defendant has carefully considered the Claimant's claim. He accepts that the timing of the DL, on the eve of the approval of the Claimant's new CIL Charging Schedule, thereby avoiding a substantial financial liability which would otherwise fall on the Second Defendant, would lead the fair minded and informed observer to conclude that there was a real possibility that the First Defendant was biased in favour of the Second Defendant.*
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> *6. Accordingly, the First Defendant accepts that the DL was unlawful by reason of apparent bias and should be quashed. The First Defendant also accepts that the application should be redetermined by a different Minister, as the Claimant seeks.'*

Thus the Court case was disposed of and the Court no longer has jurisdiction over it. However, that is clearly not the end of the story. Those of us practicing in planning (or any area of public law) will know that unlawful decisions by Government are not rare. Judicial reviews and statutory challenges succeed day in day out on a variety of grounds. But, it's obvious why this is different and why the case has captured the headlines. Here the (now admitted) unlawfulness is not merely a drafting error or a failure to take account of a material consideration but an admission that the decision making process appeared biased. Such an admission is necessary a cause of concern for many particularly where the full factual background remains unclear. This will be one to watch as it plays out in Parliament and the court of public opinion.

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Richard specialises in planning, environment, public and art law, appearing in numerous leading cases including SAVE Britain's Heritage, Thames Tideway Tunnel, Chiswick Curve, *Dill v SoS* and Holborn Studios. Recent cases include housing, retail, minerals, environmental permitting, nuisance, development consent orders, and development plans. He is a case editor of the Journal of Planning and Environment Law and the author of Planning Permission, Planning Enforcement (3rd Edition pending) and Historic Environment Law and co-author of Planning Policy. He is also a member of the Bar Library, Belfast. To view full CV click here.

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Stephen is recognised as a leading practitioner in environmental, energy and planning law. His clients include major utilities and industrial companies in the UK and elsewhere, banks, insurers, Government departments and agencies, local authorities, NGOs and individuals. He has been involved in some of the leading cases in matters such as environmental impact assessment, habitats, nuisance, and waste, in key projects such as proposals for new nuclear powerstations, and in high-profile incidents such as the Buncefield explosion and the Trafigura case. To view full CV click here.

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Celina regularly acts for and advises local authority and private sector clients in all aspects of planning and environmental law. She also regularly appears in the High Court and Court of Appeal in respect of statutory challenges and judicial review. She undertakes both prosecution and defence work in respect of planning and environmental enforcement in Magistrates' and Crown courts. She specialises in all aspects of compulsory purchase and compensation, acting for and advising acquiring authorities seeking to promote such Order or objectors and affected landowners. Her career had a significant grounding in national infrastructure planning and highways projects and she has continued that specialism throughout. *"She has a track record of infrastructure matters"* Legal 500 2019-20. To view full CV click here.

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Victoria has extensive experience in planning, environmental and property law. She has consistently been rated as one of the top planning juniors under 35 by Planning Magazine. Victoria acts in a wide range of planning and environmental law matters for developers, local authorities and other interested parties. She is also a qualified mediator and is able to mediate between parties on any planning/environmental dispute. Her work in 2016/17 includes: representing a major housing developer in objecting to the Silvertown Tunnel DCO (junior to James Strachan QC), representing Natural Resources Wales at a 20 week inquiry into the diversion of the M4 (with Richard Wald), acting for the Secretary of State for Communities and Local Government in a number of statutory challenges and representing a developer in relation to multiple retail schemes across the country including those at appeal. Victoria was appointed to the Attorney General's C Panel of Counsel in 2016. To view full CV click here.

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Jon is ranked by Chambers & Partners as a leading junior for planning law and is listed as one of the top planning juniors in the Planning Magazine's annual survey. Frequently instructed as both sole and junior counsel, Jon advises developers, consultants, local authorities, objectors, third party interest groups and private clients on all aspects of the planning process, including planning enforcement (both inquiries and criminal proceedings), planning appeals (inquiries, hearings and written representations), development plan examinations, injunctions, and criminal prosecutions under the Environmental Protection Act 1990. Jon is currently instructed by the Department for Transport as part of the legal team advising on a wide variety of aspects of the HS2 project and has previously undertaken secondments to local authorities, where he advised on a range of planning and environmental matters including highways, compulsory purchase and rights of way. Jon also provides advice and representation in nuisance claims (public and private), boundary disputes and Land Registration Tribunal matters. To view full CV click here.

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