Neutral Citation Number: [2024] EWHC 2378 (Admin)

Case No: AC-2024-LON-001696

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
SITTING IN LONDON

Thursday, 19th September 2024

Before:
FORDHAM J

- -

Between:

LONDON BOROUGH OF HARINGEY	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES	
(2) UNITED PROPERTIES LONDON LIMITED	**Defendants**

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Isabella Buono (instructed by Haringey LBC) for the **Claimant**
Sasha Blackmore (instructed by GLD) for the **First Defendant**
The **Second Defendant** did not appear and was not represented

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Hearing date: 17.9.24
Draft judgment: 18.9.24

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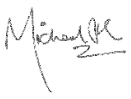
Approved Judgment



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FORDHAM J

This judgment was handed down remotely at 10am on 19.9.24 by circulation to the parties or their representatives by email and by release to the National Archives.

FORDHAM J:

1. This was an application by the local planning authority (LPA), the London Borough of Haringey, for permission for statutory review pursuant to s.288(4B) of the Town and Country Planning Act 1990. I have put my ruling into this brief written judgment because the oral arguments were completed at the end of the Court day.

2. The case concerns permission in principle (PiP), which is governed by ss.58A, 59A and 70(2) of the 1990 Act, the Town and Country Planning (Permission in Principle) Order 2017 (SI 2017 No. 402) and March 2019 Planning Practice Guidance (PPG). In a case where PiP is granted, a second-stage application for technical details consent has to be made which falls within "the terms" of the PiP (s.70(2ZZB)). The PPG (§12) says that "the scope" of PiP is "limited to location, land use and amount of development" and (§20) that it is "not possible for conditions to be attached" to a grant of PiP, whose "terms may only include the site location, the type of development and amount of development". The formal reference for these PPG paragraphs (§§12 and 20) is "012 Reference ID: 58-012-20180615" and "020 Reference ID: 58-020-20180615".

3. In December 2022, the developer (United Properties) made an application for PiP, giving this as the "description of the proposed development including any non-residential development":

> ***Residential development up to 9 dwellings with associated open space & landscaping.***

   The site was described as 0.3 hectares of inaccessible scrubland at the rear of numbers 7 and 8 Bruce Grove, London N17 6RA.

4. The LPA did not deal with the PiP application in time and the developer appealed to the Secretary of State (s.78 of the 1990 Act). The LPA's case on that appeal was that PiP should be refused by the inspector and the appeal dismissed, because:

> ***(1) The site at the rear of 7-8 Bruce Grove is designated open space. The proposal to redevelop the existing designated open space to deliver 9 new houses, with a quantum of replacement open space that is significantly less than is currently on the site would result in a net loss of designated open in an area identified as being deficient in open space contrary to Haringey Local Plan policies SP13 and DM20 which seek to protect and enhance designated open spaces, and only support development where it is either ancillary to the open space use, or does not result in a net loss through reconfigurations. (2) The proposal fails to protect and enhance the nature conservation value of the SINC, without sufficient mitigation measures herefore in principle, a proposal that would result in the significant loss of a SINC site contrary to Policy DM19. (3) Whilst the site lies within a highly accessible location where housing can be acceptable, the Council's growth strategy identifies sufficient sites and areas that are not designated open space or affected by other restrictive designations to accommodate levels of growth anticipated over the plan period. Therefore, regardless of the sites location it is not appropriate for housing.***

5. The planning inspector did not agree. By an Appeal Decision reference APP/Y5420/W/23/3321012, she allowed the developer's appeal and granted PiP "for residential development comprising a minimum of 5 and a maximum of 9 dwellings at land to the rear of 7-8 Bruce Grove, London N17 6RA in accordance with the terms of application HGY/2022/4536 dated 22 December 2022".

6. In her reasoned decision the inspector accepted that the development of the site would result in the loss of an area of designated Open Space and therefore would be contrary to SP13 of the Local Plan Strategic Policies as well as DM20 and Policy G4 of the London

Plan which do not support development which would result in the net loss or loss of protected open space respectively. She accepted that the development of part of the local SINC for housing would diminish the nature conservation value of the site, particularly in areas directly affected by development and that, as such, the proposal was contrary to Policy DM19 which required that development on SINCs should protect and enhance the nature conservation value of the site. But she referred to the developer's stated position that it "would" include areas of improved open space for public and recreational use within the future layout of the development, thereby improving the public benefit of what is currently a retained area of land. She concluded that, given the significant proposed improvements to landscaping and public access, the proposed provision "would" be at least equivalent to the existing position and "would" off-set the loss of designated open space, which is not publicly accessible. She said the proposed development would result in the provision of up to nine dwellings in an area, where there is an identified need, and "would" include publicly accessible open space; and that the public benefits of the proposal were a clear and convincing justification for the harm to the setting of the listed buildings. She recorded, by reference to §11(d) of the National Planning Policy Framework, that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. She said that, as well as making a notable contribution towards housing in the area, the proposal "would" result in the gain of publicly accessible open space as well as a net gain in terms of biodiversity.

7. In other words, yes there was to be smaller open space, but it would be better open space, with significant areas of improved open space for public and recreational use which were (unlike the present space) publicly accessible; and, yes, there was an impact on a SINC but again it would be better, with a net gain in terms of biodiversity. All of which could, and would, be secured at the second-stage if the development were going ahead. And so, on this clear and express basis, there was planning suitability for PiP.

8. Ms Buono says the inspector's decision is arguably contrary to law. Her first point is that the phrase "with associated open space & landscaping" within the description of the proposed development, and so the terms of the application, put the application beyond the statutory powers of any grant of PiP. That was not a point taken in the LPA's statement of case on the appeal.

9. I do not think it is a viable point. PiP can be granted for "residential development of land" (2017 Order Article 5A(2)). That means development "the main purpose of which is housing development" (Article 2), which in turn means development "for the provision of dwellings" (Article 2). Here, the development had "the main purpose" of housing development. It was "for the provision" of dwellings. This was, moreover, "housing-led development" (s.58A of the 1990 Act). Open space and landscaping were being identified, as being integral to the proposal. But that did not stop this being "residential development of land". Nor were open space and landscaping "non-housing development", triggering a duty to specify what was being permitted (2017 Order Article 5A(3)(b)). Open space and landscaping, as is common ground, were not "development" at all. They were, however, integral to what made the location, land use and amount of development suitable.

10. Ms Buono next says the inspector unlawfully took into account matters which could only be secured at the "technical details consent" second-stage (1990 Act s.70(2ZZB)). Her argument is that it is not lawful to grant PiP, relying for planning suitability on second-

stage matters. The two stages are distinct. Conditions can only be imposed at the second-stage. The focus on "location, land use and amount of development" means there must be straightforward planning suitability, without relying on protections or benefits secured only at the second-stage. Suitability for PiP cannot be "provided that" – and still less "because of" – matters which belong to the second-stage. Further, says Ms Buono, the inspector's reasons needed to and failed to explain the basis on which the proposal "would" have the various benefits for public-access space and increased-biodiversity identified by the inspector; and these were really potential benefits which were not reasonably capable of outweighing the concrete harms. It follows, says Ms Buono, that the inspector's decision is unlawful, unreasonable and/or legally inadequately reasoned.

11. I have not been persuaded that any of these further points give rise to a viable claim with a realistic prospect of success. There is, in my judgment, no arguable inadequacy of reasons or unreasonableness. I do not accept that the inspector was arguably legally obliged to consider planning suitability as to location, land use and amount of development in isolation from any and all aspects which would come to be secured at the second-stage. There is a statutory duty to have regard to the provisions of the development plan in dealing with an application for PiP, so far as material to the application (s.70(2)(a)). The LPA's own position on the appeal illustrates its own thinking – at this PiP stage – about the "quantum of replacement open space" and whether the proposal "fails to protect and enhance the nature conservation value of the SINC" and did so "without sufficient mitigation measures herefore in principle", involving "significant loss of a SINC site". The inspector was addressing, and following through on, the issues which had been raised. Reasons have to address the principal controversial issues. The PPG says (§12) that "issues relevant to these 'in principle' matters" – ie. location, land use and amount of development – "should be considered at the permission in principle stage". That leaves a question of evaluative judgment for the decision-maker, as to what is "relevant" and how. I have been able to see no hard-edged legal delineation. It is, in my judgment, difficult to identify a sustainable legal line which would prohibit matters, needing to be secured at the second-stage, from informing the planning suitability question at the PiP stage. The point was fully tested during the oral argument by taking examples of aspects which could be relevant to suitability, albeit that they would only be secured at the second-stage, and whether a PiP decision could be informed by considering those matters. Whether by zooming in, or by standing back, I have been able to see no viable legal reason why suitability for PiP can never be articulated as being "provided that" – or "because of" – matters which can be identified as important, albeit that they would come to be and need to be secured at the second-stage. That is what the inspector did in this case.

12. Where does that leave this development? The appeal has been allowed by the inspector because the inspector disagreed with the LPA as to suitability on the planning merits, for the reasons emphasised by the inspector. But Ms Buono and Ms Blackmore agree that – although not part of the "terms of the permission in principle" (s.70(2ZZB)(b)) – the inspector's clear reasons as to public-access open spaces and biodiversity-enhancement, constituting an improvement on the current inaccessible scrubland, would properly inform the LPA's decision-making at the second-stage and so would justify a refusal of second-stage permission, if the developer does not follow through on these aspects satisfactorily. After all, these open space and biodiversity enhancements – when compared to the status quo – are the express and articulated basis on which the inspector, acting lawfully, has determined planning suitability at the PiP stage. All of which links

to the virtue of the description of the "development" having included express reference to the "associated open space and landscaping" which are integral to what is proposed and whose necessary nature became central to the inspector's positive reasoned decision on planning suitability in granting PiP.

13. For these reasons, and in agreement with Sir Duncan Ouseley who refused permission on the papers, I dismiss the renewed application for permission for statutory review.

19.9.24