

LEGAL BRIEFING NOTE



STANSTED AIRPORT PLANNING APPLICATION UTT/18/0460/FUL

1) KING'S CROSS RAILWAY LANDS GROUP v CAMDEN LBC [2007] EWHC 1515

This was a judicial review case in the High Court held before Mr Justice Sullivan. The Claimant, Kings Cross Railway Lands Group (a conservation group) sought to quash a decision by the Defendant, Camden Borough Council, reached in March 2006 to grant outline planning permission for the redevelopment of the railway land at King's Cross and the grant of eight related listed building consents and conservation area consents.

It was not until November 2016 that the negotiations on the S.106 agreement were concluded and the matter was brought back to the Development Control Committee ('DCC'). In the meantime there had been local elections in May 2006 and the membership of the new DCC was different to that of the DCC who had granted the approval in March 2006.

The new DCC was asked to change its mind but refused to do so and was challenged on the basis that it thought it could not lawfully do so. The Claimants lost on the wider facts of the case but the ruling confirmed that the DCC could quite lawfully reach a different decision to its predecessor provided it had good planning reasons for doing so.

Mr Justice Sullivan's judgment stated as follows (at para 18):

"Mr Hobson [the QC representing the Claimants] submits, correctly, that while a material change of circumstances since an earlier decision is capable of being a good reason for a change of mind, it is not the only ground on which a local planning authority may change its mind. A change of mind may be justified even though there has been no change of circumstances whatsoever if the subsequent decision taker considers that a different weight should be given to one or more of the relevant factors, thus causing the balance to be struck against rather than in favour of granting planning permission."

2) R (on the application of Kides) v South Cambridgeshire District Council [2002] EWCA 1370

This was a case in the Court of Appeal before Lord Justice Aldous, Lord Justice Laws and Lord Justice Jonathan Parker. The Appellant, Mrs Erine Kides sought a judicial review of a planning permission by South Cambridgeshire District Council ('SCDC') in October 2000 for the comprehensive development of some 30 hectares of land at Longstanton, Cambridgeshire.

It was argued that there had been a considerable time gap between the decision in principle and the decision notice, during which time several elements had changed requiring the

decision to be reconsidered. However, the JR was refused because it was ruled that SCDC had taken all the materials into consideration. Lord Justice Parker defined what considerations were material in this context:

'In my judgment a consideration is 'material', in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision maker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision making process, although plainly it may not be determinative. The test must, of course, be an objective one in the sense that the choice of material considerations must be a rational one, and the considerations chosen must be rationally related to land use issues.'

It follows from this that the materiality of any new consideration will depend to some extent on the decisiveness of the earlier determination. In other words, it would take a great deal more to pass the test of materiality in the case of an earlier unanimous decision than in the case of a finely balanced decision, as in the case of the conditional approval granted on 14 November 2018 to Stansted Airport Planning Application UTT/18/0460/FUL.

CLOSING COMMENT

The fact that Stephen Hockman QC and Christiaan Zwart made no reference to either of the above cases reinforces the need for advice from an independent QC, as required by your requisition to the Council on 25 April 2019.

"To instruct the Chief Executive and fellow officers not to issue the Planning Decision Notice for planning application UTT/18/0460/FUL until members have had an opportunity to review and obtain independent legal corroboration... etc" [my emphasis]

It is clear that there has, as yet, been no "independent legal corroboration", the author of the first legal advice to UDC being the co-author of the subsequent advice, and with both barristers having been selected and briefed (in confidence) by officers.

*Stop Stansted Expansion
June 2019*