

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Claim No CO/725/2020

and CO/710/2020
DH

BETWEEN:

TOWER HAMLETS LONDON BOROUGH COUNCIL

Claimant

-and-

SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT

First Defendant

-and-

WESTFERRY DEVELOPMENTS LIMITED

Second Defendant

-and-

MAYOR OF LONDON /
GREATER LONDON AUTHORITY

Third Defendant



~~Draft~~ CONSENT ORDER

DH

UPON READING the claim form and statement of facts and grounds of the Claimant challenging, under s288 of the Town and Country Planning Act 1990, the grant of planning permission by the First Defendant in appeal reference APP/E5900/W/19/3225474 relating to land at the former Westferry Printworks Site, 235 Westferry Road, London, E14 3QS by way of a decision letter dated 14 January 2020 ("the Decision Letter")

AND UPON the parties having agreed to the terms herein for the reasons set out in the attached Schedule

BY CONSENT

IT IS ORDERED that:


- (1) permission is granted for the Claimant's claim to proceed;
- (2) the Claimant's claim succeeds and the Decision Letter is quashed;
- (3) the First Defendant shall pay the Claimant's costs of the claim, to be subject to detailed assessment if not agreed;

(4) the Third Defendant's claim in action CO/710/2020 is therefore academic and permission to bring that claim is refused;

(5) the First Defendant shall pay the Third Defendant's costs in action CO/710/2020, to be subject to detailed assessment if not agreed.

Dated:


We the parties consent to an Order in the above terms:


ON BEHALF OF ASHRAF MUSSAIB
CORPORATE DIRECTOR, GOVERNMENT
MONITORING OFFICE

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Solicitors for the Claimant


Matthew Hunt (for the Treasury Solicitor)

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Solicitors for the Second Defendant
FOR AND ON BEHALF OF
WESTFERRY DEVELOPMENTS
LIMITED


AARON RICHARDSON

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Solicitors for the Third Defendant

FOR AND ON BEHALF OF
THE MAYOR OF LONDON /
GREATER LONDON AUTHORITY

*Order approved as amended on page 1
David Helyar 20/5/20.*

SCHEDULE

1. These proceedings concern a challenge made by the Claimant under s288 of the Town and Country Planning Act 1990 to the grant by the First Defendant of planning permission in appeal reference APP/B5900/W/19/3225474 by way of a decision letter dated 14 January 2020 ("the DL") relating to land at the former Westferry Printworks Site, 235 Westferry Road, London, E14 3QS.
2. The development proposed was described as a comprehensive mixed-use redevelopment comprising 1,524 residential units (Class C3), shops, offices, flexible workspaces, financial and professional services, restaurants and cafes, drinking establishments (Classes B1/A1/A2/A3/A4), community uses (Class D1), car and cycle basement parking, associated landscaping, new public realm and all other necessary enabling works in accordance with application reference PA/18/01877/A1 ("the Development").
3. In a report dated 20 November 2019, Inspector David Prentis BA BPI MRTPI had recommended that the appeal be dismissed and planning permission refused. In a letter dated 20 November 2019, the Planning Inspectorate informed the Claimant that a decision would be issued on or before 20 February 2020. The DL was issued on 14 January 2020. This was one day before the Claimant was due to (and in the event did) adopt its new Local Plan and approve a new Community Infrastructure Levy (CIL) Charging Schedule, which would have taken (and in the event did take) effect two days later on 17 January 2020. Under the Charging Schedule in effect at the time of the DL, the Development was zero-rated for CIL. Under the new Charging Schedule, the Development would have been liable for CIL, which would have been significant on a development of this scale.
4. In pre-action correspondence, pursuant to the duty of candour, the First Defendant explained that the DL was issued on 14 January 2020 so that it would be issued before the Claimant adopted its new Local Plan and CIL Charging Schedule.
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.
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.
7. In light of this, the Third Defendant's claim in action CO/710/2020 is rendered academic and so without prejudice to the Third Defendant's position that the First Defendant erred in the ways alleged in the Third Defendant's claim, it is accepted that permission to bring the claim should be refused, so those proceedings are brought to an

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end. The First Defendant accepts that it should pay the Third Defendant's costs in those proceedings in the circumstances.

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