

Right to light wins again in West London

November 2018

Chelsea Football Club's attempts to extend their stadium have so far been scuppered due to rights of light issues. Another case in West London has underlined the importance of rights to light and planning applications. This time the lesson was to ensure that light reports are applied and reported on fairly.

On 1 November 2018 a Judicial review was heard regarding a decision by the London Borough of Hammersmith & Fulham Council's ("the Council") to grant planning permission for a hotel on Shepherd's Bush Green. As part of the application, the Council had considered a report undertaken by the developer assessing the impact on daylight, sunlight and overshadowing to neighbouring properties. The report concluded that the impacts followed the Building Research Establishment's ("BRE") guidelines and should therefore be considered acceptable in planning terms.

The Claimant objected to the design, and commissioned her own report which found that the adverse impact on 11 out of 36 properties assessed would transgress the BRE guidelines.

Justice Justine Thornton QC concluded that councillors were materially misled by the original report. Councillors were not informed of light losses, whereas in contrast, any instances of compliance with the BRE light guidelines were drawn to the councillors' attention, and presented as a reason for them to take comfort in the overall reduction in the amount of daylight at the affected properties. The decision to grant planning permission was therefore quashed.

The case highlights the importance of ensuring that expert's reports that are produced to support a planning application are prepared and written in an objective fashion. Where a report is obviously misleading the Court is entitled to infer that the authority have either failed to take account of a material consideration or have taken into account immaterial ones.

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