



**In the High Court of Justice
Queen's Bench Division
Planning Court**

CO/2673/2021

In the matter of an application for Planning Statutory Review

U AND I (8AE) LIMITED

Claimant

-and-

**(1) SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL
GOVERNMENT**

(2) LONDON BOROUGH OF LAMBETH COUNCIL

**(3) LAMBETH VILLAGE GARDEN MUSEUM AND BEACONSFIELD
GALLERY**

(4) WESTMINSTER CITY COUNCIL

(5) THE LONDON FIRE COMMISSIONER

Defendants

**Notification of the Judge's decision on the application for permission to
apply for Planning Statutory Review (CPR PD 8C)**

Following consideration of the documents lodged by the Claimant and the
Acknowledgement of Service filed by the Defendant

ORDER by the Honourable Mrs Justice Lieven

1. The application for permission to apply for Planning Statutory Review is refused.
2. The Claimant should pay the SoS's Mount Cook costs, summarily assessed in the sum of £8945.

Reasons

Ground One

1. The argument is that the SoS and Inspector failed to make adequate judgements or give adequate reasons in respect of the extent of heritage harm, and thus failed to comply with para 018 PPG.
2. In my view this ground is unarguable. As the SoS in the SGD states there is no requirement in law for a spectrum or scaling of harm in the NPPF or the statute. The PPG goes to the quality of the reasoning of the decision maker and does not, and cannot, impose a legal obligation as to the precise format of reasoning. The caselaw does not support any such legal requirement in the reasoning, and to the degree that the Claimant places reliance on [89] of **Kinsey**, it is apparent from the face of that paragraph that the passage is obiter.
3. Further and importantly, the IR sets out the Inspector's analysis and conclusions on heritage impacts with great clarity and detail. It is entirely apparent to any informed reader why the Inspector has reached his conclusions on heritage impacts. As has often been said,

planning decisions are not supposed to be examination papers. This ground of challenge exemplifies the worst of turning a planning decision into a legal obstacle course.

Ground Two

4. The Claimant's reliance on the development being the Optimum Viable Use (OVU) seems to have been, at best, somewhat equivocal, see the reference to Dr Miele's evidence in para 15(a) of the SGD. But in any event, the Claimant did not produce detailed viability evidence with any analysis of an alternative scheme or schemes, which would be necessary to determine that the proposal was the OVU. On the facts of the case as presented to the Inspector, he approached OVU in a lawful manner. He carefully considered the public benefits of the scheme. He considered at IR825-6 the Claimant's position as set out and then he referred to the undoubted fact that there was no alternative scheme to test OVU against. In my view, IR828 is an entirely appropriate conclusion on the evidence before him, and there is no arguable error of law.

Ground Three

5. It is alleged that the SoS failed to have regard to the Mayor's SPG on daylight impacts or failed to give intelligible reasons.
6. The Inspector expressly referenced the SPG at IR750. The question of what weight to give to the level of impact on daylight and the relevance of local circumstances was pre-eminently a question of planning judgement for the Inspector. The Inspector gave clear reasons for distinguishing Eustace House. There is no arguable error of law.

Signed Mrs Justice Lieven

Dated 26 October 2021

The date of service of this order is calculated from the date in the section below

For completion by the Administrative Court Office

Sent / Handed to

either the Claimant, and the Defendant [and the Interested Party]
or the Claimant's, and the Defendant's [and the Interested Party's] solicitors

Date: 27/10/2021

Solicitors:

Ref No.

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR PD 8C 7.4, you must complete and serve the enclosed Form 86B within 7 days of the service of this order.

A fee is payable on submission of Form 86B. ***For details of the current fee please refer to the Administrative Court fees table at <https://www.gov.uk/court-fees-what-they-are>.***

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from the gov.uk website at <https://www.gov.uk/get-help-with-court-fees>