

Blitz – ACCC Hendon Residents v London Borough of Barnet

Summary of Selected UK Domestic Law, Regulations and Decisions

We note the relevance of UK domestic law, regulations and decisions by UK courts.

Local Government Act 1972 - Schedule 12A sets out the conditions under which information may be exempt. See attached description of exempt information.

Planning and Compulsory Purchase Act 2004 both amended and repealed significant parts of the existing planning and compulsory purchase legislation in force at the time, including the Town and Country Planning Act 1990, and introduced reforms such as the abolition of Local Plans and Structure Plans, and their replacement with Local Development Frameworks.

Environmental Information Regulations 2004 (EIR) are similar to the Freedom of Information Act but are limited specifically to information regarding the environment. The EIR grant a right for any person to request access to environmental information held by public authorities and for public authorities to take steps to proactively make environmental information available to the public.

The EIR interpret ‘environmental information’ widely

Local Government Guidelines

In addition to the Local Government Act, local authorities are bound by regulations that set out processes to be followed. The LGA document, *LGA Conversations – New Guide to Engagement*, states that top-down models make residents feel that decision-making happens far removed from them or their community, and that it might be perceived as a tick box activity unlikely to result in solutions influenced by their contribution. It warns that top-down decision-making can lead to alienation and disillusionment. The LGA document also sets out models for ‘good engagement’, in particular, to foster partnership, and allow residents to be informed contributors to the decision-making process.

The HM Code of Practice on Consultation recommends that consultations should be conducted over a 12-week period under normal circumstances and advises of exceptions:

‘if a consultation exercise is to take place over a period when consultees are less able to respond e.g. over the summer or Christmas break, or if the policy under consideration is particularly complex, consideration should be given to the feasibility of allowing a longer period for the consultation.’

UK Courts have also interpreted the right to public participation in decision making in the following cases.

In the case of **R v Brent London Borough Council, ex p Gunning, (1985) 84 LGR 168** the court ruled,

“First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third,... that adequate time must be given for consideration and response and, finally, fourth, that the product of

consultation must be conscientiously taken into account in finalising any statutory proposals’.

In ***R v North and East Devon Health Authority ex parte Coughlan [2001] QB 213 at [108]***, the Court found that an applicant had been the beneficiary of a specific promise, and the defendant had not advanced an overriding public interest to break such a promise. The Court clarified when a public authority's promise or practice has induced a legitimate expectation of a procedural nature, which includes an expectation to be consulted before an authority reaches a conclusion, arising from a representation made by the authority.

In ***R (oao) Moseley v Haringey LBC [2014] UKSC 56***, The Supreme Court ruled that public authorities need to provide consultees with sufficient and accurate information including information about rejected alternatives. The Supreme Court formally endorsed the ‘Sedley criteria’ for a fair consultation, namely:

- Consultation must be at a time when proposals are still at a formative stage
- The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response
- Adequate time must be given for consideration and response

- The product of consultation must be conscientiously taken into account [para 25].

(2) The degree and specificity of information which must be provided to consultees will depend on the context, including:

- (i) the identity of the persons being consulted [para 26];
- (ii) whether the proposal would deprive consultees of an existing benefit [para 26];
- (iii) the purpose of the consultation, such as whether it is to ensure procedural fairness for individuals or to permit public participation in a democratic process [para 38]; and
- (iv) whether consultees can be expected to be familiar with the decision-making process and reasons [para 39].

In ***Flaxby Park Ltd v Harrogate Borough Council [2020] EWHC 3204 (Admin) (25 November 2020)***, the High Court ruled that

‘where a process of consultation is in fact embarked upon, it must be carried out properly, that is, in accordance with established legal principles (R v North and East Devon Health Authority ex parte Coughlan [2001] QB 213 at [108]). This means inter alia that "the product of consultation must be conscientiously taken into account when the ultimate decision is taken" (ibid approved by the Supreme Court in R (Moseley) v London Borough of Haringey [2014] 1 WLR 3947). This principle aligns with the requirement in Regulation 8(3) of the 2004 Regulations that opinions expressed in response to the environmental report must be taken into account before the adoption of the plan.