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

CO/ /2020

IN THE MATTER OF AN APPLICATION UNDER SECTION 288 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BETWEEN:

LONDON BOROUGH OF TOWER HAMLETS

Claimant

and

SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

Defendant

and

(1) WESTFERRY DEVELOPMENTS LTD
(2) GREATER LONDON AUTHORITY

Interested Parties

STATEMENT OF FACTS AND GROUNDS

References

- **B**/*tab* refers to the claim bundle.
- **IR**/*para.* refers to the report of the Secretary of State's inspector dated 20 November 2019.
- **DL**/*para.* refers to the decision of the Secretary of State dated 14 January 2020.

Introduction

1. In this application under section 288 of the Town and Country Planning Act 1990 (**"the TCPA 1990"**), the Claimant, the London Borough of Tower Hamlets (**"the Council"**), seeks leave to challenge the decision of the Secretary of State, on 14 January 2020 [B/2], to allow the First Interested Party's appeal under s. 78 of the TCPA 1990 seeking planning permission for a mixed-use scheme on the former Westferry Printworks Site, 235 Westferry Road, London (**"the Site"**). The Council is the local planning authority for the Borough in which the Site is located.

2. The Site is in the southern part of the Isle of Dogs, bounded on its southern side by a water body known as the Millwall Outer Dock. The area to the north of the Site is predominantly residential in character. Historically, the Site was used as a printworks where the Daily Telegraph and the Daily Express newspapers were printed.

3. The development consented by the Secretary of State is to take the form of four tall towers spaced along the north of the Millwall Outer Dock, a fifth tall tower in the north-east corner of the Site, and various mid-rise buildings, all laid out in an area of landscaped public realm. The scheme will provide some 1,524 residential units, alongside some commercial and community uses on the lower levels.

4. In 2015, the Mayor of London granted planning permission for a more modest, but still large, mixed-use scheme on the Site that included 722 residential units, having called in the planning application for his own determination. This earlier scheme comprised four smaller towers (and there was no additional fifth tower in the north-east corner). Works to implement this 2015 permission commenced in 2017 and are ongoing. It is common ground that the 2015 permission has been lawfully implemented.

5. The Council objected to the 2015 scheme that was called in by the Mayor, and also the subsequent, larger scheme that is the subject of the proceedings. The First Interested Party applied for planning permission for the larger scheme on 24 July 2018. The Council having not determined that application within the statutory

period, the First Interested Party appealed to the Secretary of State. On 10 April 2019, the Secretary of State recovered the appeal for his own determination rather than allowing it to be determined by one of his inspectors. An inspector held a public inquiry in relation to the appeal (7-22 August 2019; 9 September 2019) and prepared a report for the Secretary of State containing his advice [B/3]. The Council and the appellant (now the First Interested Party) appeared as main parties at the inquiry. The Second Interested Party, the Greater London Authority, appeared as a third party at the inquiry (in the jargon, a Rule 6[1] party) to present its own case objecting to the proposal.

6. In his detailed report dated 20 November 2019, the inspector recommended that planning permission be refused.

7. In his decision dated 14 January 2020 that is challenged in this claim, the Secretary of State disagreed with the inspector's recommendation and allowed the appeal.

8. This claim raises one issue: whether there is a real possibility that the Secretary of State failed to act independently and impartially when determining the appeal by being biased in favour of the appellant developer.

9. The Council does not raise this issue lightly. It does so in the light of concerning statements made by the Government Legal Department on behalf of the Secretary of State in pre-action correspondence, and the Secretary of State's refusal, in that correspondence, to disclose material requested by the Council relating to the Secretary of State's decision-making process, contrary to his duty of candour.

Background

The inspector's report

10. Given the nature of the single issue in this claim, it is unnecessary to give a detailed account of the parties' cases before the inspector, and the recommendations that he

[1] Rule 6(6), Town and Country Planning (Inquiries Procedure) (England) Rules 2000

made in his report. Suffice to note that the inspector came down strongly in favour of recommending that planning permission should be refused. Having dealt with introductory matters [IR/1-17], described the site and its surroundings [IR/18-25], identified relevant planning policy [IR/26-50] and summarized the parties' cases before him [IR/61-362], the inspector set out his conclusions [IR/404-614].

11. In summary, the inspector concluded that:

(1) The proposal would *"represent a marked step up in height, mass and scale at the southern end of the Millwall Inner Dock TBZ* [Tall Building Zone]*"*, *"fail to create a satisfactory transition in scale to the adjoining residential areas to the north of the site and to south of Millwall Outer Dock"*, and fail to relate well *"to the street scene of Westferry Road"* [IR/436]. This would be harmful to the character and appearance of the area, contrary to several policies in the London Plan (7.4, 7.6, 7.7), the Council's Core Strategy (SP12) and the Council's Management Development Document (**"MDD"**) (DM24, DM26) [IR/437].

(2) The proposal would *"fail to preserve the settings of the Old Royal Naval College and Tower Bridge"*, both Grade I-listed heritage assets, again contrary to several policies in the London Plan (7.8), the Council's Core Strategy (SP10) and the Council's MDD [IR/472]. The failure to preserve the setting of the Old Royal Naval College, an *"important component"* of the World Heritage Site known as 'Maritime Greenwich', would also conflict with London Plan Policy 7.10 and MDD Policy DM28 [IR/456, 472].

(3) The proposal would result in *"a significant adverse effect on sailing quality for novice and inexperienced sailors"* using the Millwall Outer Dock due to the impact of the tall buildings on wind conditions [IR/498], contrary to the London Plan (7.7(D), 7.27(A), 7.30(B)), the Council's Core Strategy (SP04) and the MDD (DM12). The inspector gave *"no weight"* to the measures proposed to mitigate that impact as they did not comply with the tests for such measures in regulation 122(2) of the Community Infrastructure Regulations 2010 [IR/498]. (Specifically, it had not been shown that the measures were directly related to the development or necessary to make the development acceptable in planning terms) [IR/496]. However, as the impact of the scheme on sailing quality would

not be *"materially different"* to that of the scheme consented in 2015, the inspector attached only *"limited weight"* to this factor [IR/501].

(4) By offering to provide only 21% of the housing proposed as affordable housing, against a policy target of 35% (minimum), the proposal would fail to provide *"the maximum reasonable amount of affordable housing"*, contrary to the London Plan (3.12) and the Core Strategy (SP02).

(5) By not providing a sufficient proportion of the housing as larger family units, the proposal would *"not provide the balance of market housing types"* sought by the MDD (DM3), nor would it *"maximise the provision of family homes"* as required, for the Site, by emerging Local Plan policy [IR/550].

(6) Whilst the public open space proposed within the scheme would comply with development plan policy [IR/562], its design quality and recreational value would be inferior to the public open space consented as part of the 2015 scheme [IR/563].

(7) Whereas the scheme would *"provide an uplift"* from 722 units (the 2015 scheme) to 1,524 units of residential accommodation, it was still a *"significant disadvantage"* that the proposal would not provide enough family homes [IR/582].

(8) Whereas the scheme would *"provide an uplift"* from 148 affordable homes (the 2015 scheme) to 282 affordable homes, the overall offer of 21% affordable housing was still *"well below the policy target of 35%"* [IR/583].

(9) Accordingly, the inspector was only prepared to give *"moderate weight"* to the delivery of housing, including affordable housing, in the planning balance [IR/585].

(10) The inspector also attached *"moderate weight"* to *"the social and economic benefits of additional employment during construction"* of this larger scheme, *"as compared with the consented scheme"* [IR/591].

12. Drawing these judgments together, the inspector concluded that the benefits of the proposal would not outweigh the harms that would be caused to the heritage assets identified [IR/597-598]. In light of the multiple breaches of the development plan that he had identified, the inspector concluded that the proposal conflicted with the

development plan as a whole [IR/604]. He did not consider that there were other material considerations that indicated that the appeal should be determined other than in accordance with the development plan [IR/614]. Accordingly, the inspector advised the Secretary of State to dismiss the appeal [IR/615].

The Secretary of State's decision

13. Having dealt with introductory matters [DL/1-8] and identified the relevant policies, both extant and emerging [DL/9-15], the Secretary of State dealt with the main issues in the appeal at DL/16-37. In summary:

(1) The Secretary of State agreed with the inspector that the consented 2015 scheme was *"a realistic fallback position"*, but unlike the inspector, considered that *"there are significant benefits that the proposed scheme would deliver in comparison with the consented scheme, as set out below"* [DL/16].

(2) The Secretary of State agreed with the inspector that the proposal would breach development plan policies relating to character and appearance given the scale, height and massing of the buildings proposed [DL/18-19]. However, he considered that *"the spacing between the proposed towers assists in reducing their harmful impact... if only in certain views... and not in other views"* and that the design *"includes attractive features"*, thereby reducing *"the degree of harm caused"* [DL/20]. *"In its context"*, therefore, *"and by comparison with the quantum of development already approved"*, *"the harm to the character and appearance of the area identified above carries moderate weight in the planning balance"* in the Secretary of State's judgment [DL/20].

(3) The Secretary of State agreed with <u>all</u> the inspector's conclusions in relation to the harmful impact of the proposal on the settings of heritage assets [DL/21-28].

(4) The Secretary of State agreed, without qualification, with the inspector's assessment of the impact of the proposal on sailing quality in the Millwall Outer Dock [DL/29-30].

(5) The Secretary of State agreed that the proposal could probably provide more affordable housing such that an offer to provide only 21% of units as affordable did not represent the maximum reasonable amount required by policy [DL/32].

(6) However, *"while not in line with the policy requirements for affordable housing, an increase in affordable units from 140 to 282 (IR583) provided by the appeal scheme as against the consented scheme"* would be, in the Secretary of State's judgment, *"a benefit of the scheme"*. Contrary to the inspector's advice, therefore, the Secretary of State considered that *"the delivery of an additional 142 affordable homes attracts significant weight in the planning balance"* – indeed, *"substantial weight"* – despite the breaches of policies relating to affordable housing and housing mix [DL/34].

14. Drawing these matters together in the sub-section *'Planning balance and overall conclusion'*, the Secretary of State agreed with the inspector that the proposal would result in multiple breaches of the development plan, such that it would not accord with the development plan overall [DL/41]. However, the proposal *"would provide a significantly greater amount of market and affordable housing than the consented scheme"* to which the Secretary of State gave *"substantial weight"* as a material consideration in the planning balance [DL/43]. He also attached *"moderate weight"* to the *"additional employment benefits during construction by reference to the consented scheme"* [DL/43]. The Secretary of State considered that these *"housing and employment benefits"* did *"outweigh the harm"* identified to the settings of heritage assets [DL/45], and did warrant a conclusion other than in accordance with the development plan [DL/47]. Accordingly, the Secretary of State allowed the appeal [DL/48].

Events before and after publication of the Secretary of State's decision

15. The inspector formally closed the public inquiry relating to the appeal on 9 September 2019.

16. In a letter dated 20 November 2019, the Planning Inspectorate informed the Council that the inspector's report had been sent to the Secretary of State for his consideration [B/4]. The letter added that the Secretary of State's decision *"will be issued on or before 20 February 2020"*.

17. In the event, the Secretary of State's decision was published unexpectedly early on 14 January 2020[2]. This was, as the Secretary of State knew, only one day before the Council was due to adopt its new Local Plan 2031 on 15 January 2020. However, more relevant for present purposes, it was also only one day before the Council was due to approve a new 'Charging Schedule' for its Community Infrastructure Levy (**"CIL"**) to take effect only two days later, on 17 January 2020.

18. As the relevant page of the Council's website[3] explains [B/5]:

> ***"Community Infrastructure Levy (CIL)***
>
> *The Community Infrastructure Levy (CIL) is a charge on most types of new developments over a certain size. This can help to pay for local infrastructure projects that are needed to support new developments, such as schools, health services, leisure, open spaces and transport improvements.*
>
> What development is liable for CIL?
>
> *A development will be potentially liable for a CIL charge if:*
> - *it contains at least 100 square metres of new build (additional floor space)*
> - *creates one or more new dwellings (even if it is less than 100 square metres of floor space); or*
> - *the conversion of a building that is no longer in lawful use which results in new dwellings*

19. It is common ground that the proposal was, at all times, liable for CIL. However, under the Council's first CIL 'Charging Schedule', adopted in April 2015 and still in force when the Secretary of State made his decision in this case, the proposal was "zero-rated" (i.e. the CIL liability was zero pounds based on the application of the rules in that schedule to this particular development).

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[2] The relevant page of the gov.uk website states that the decision was "Published 15 January 2020", but this is not consistent with the date of the decision itself. The Council's recollection is that the decision was published on gov.uk on 14 January 2020, but nothing turns on whether it was 14 or 15 January for the purposes of this claim.

[3] https://www.towerhamlets.gov.uk/lgnl/planning_and_building_control/Infrastructure_planning/community_infrastructure_levy.aspx

20. The effect of different rules in the Council's updated CIL 'Charging Schedule', which was to take effect on 17 January 2020, would have been to increase the developer's CIL liability for this proposal very substantially from zero to a high, multi-million pound figure. All of this is common ground. (Given the timing of the Secretary of State's decision, the Council has never had cause to calculate the precise liability for this development under the new 'Charging Schedule', but it would very broadly estimate that the liability would be in the region of £40 million.)

21. As the Secretary of State's decision was published much earlier than the deadline of 20 February 2020 previously identified in the Planning Inspectorate's letter to the Council (over 5 weeks earlier), the Council was keen to understand whether anything had led the Secretary of State to expedite the decision.

22. Accordingly, on 4 February 2020, the Council's Head of Commercial and Contracts, Ms Rachel McKoy, wrote a letter to the relevant 'Decision Officer' at the Secretary of State's Planning Casework Unit headlined *'Pre-action request for compliance with duty of candour'*. [B/6]. In the letter, Ms McKoy stated that the Council was contemplating a High Court challenge to the Secretary of State's decision under s. 288 of the Town and Country Planning Act 1990 (section 6). She explained why as follows:

> *"[...] The Council is concerned that the decision and its timing, only one day before the adoption of the Council's new Local Plan and three days before the Council's CIL Charging Schedule took effect, might have been influenced by irrelevant factors such as to give rise to a real perception of bias in favour of the appellant in the decision-making process.*
>
> *To enable the Council to consider this issue properly ahead of a potential High Court challenge, the Council requires disclosure of the following from the Secretary of State pursuant to his duty of candour in statutory review proceedings:*
>
> *A copy of all correspondence (including emails), memoranda, file notes, text messaging or other records of communication, submissions and/or advice that includes any reference to, or is otherwise relevant to, the decision of the Secretary of State to allow appeal APP/E5900/W/19/3225474 relating to the*

land at the former Westferry Printworks site, 235 Westferry Road, London, E14 3QS (including, to be clear, any reference to the Secretary of State's decision-making process, the timing of the Secretary of State's decision, or the related Inspector's report), sent, received, prepared or recorded by:

(i) any employee or representative of the Planning Casework Unit and/or, beyond that, the Ministry of Housing, Communities and Local Government; and/or

(ii) the Secretary of State for Housing, Communities and Local Government and/or any of his team or representatives;

(iii) any other Minister of the Ministry of Housing, Communities and Local Government and/or any of their team(s) or representatives."

23. Ms McKoy then stressed that the Secretary of State's duty of candour extended to the pre-action stage. She asked for a reply within 7 days (by 11 February 2020) in view of the strict 6-week timeframe for issuing a claim under s. 288 of the TCPA 1990. To facilitate a swift response, Ms McKoy sent a copy of the same letter to the Government Legal Department (**"the GLD"**).

24. On 11 February 2020, Mr Kevin Brooks of the GLD responded to Ms McKoy's pre-action letter, stating that it was unreasonable to expect a substantive response to such a broad request for disclosure within 7 days [B/7]. Nevertheless, Mr Brooks acknowledged that Ms McKoy's letter *"merits careful consideration"* and that he 'anticipated' being able to provide a substantive response by 5pm on 18 February 2020 (i.e. within a further 7 days).

25. On 18 February 2020, at 16:44h, Mr Brooks emailed Ms McKoy to request a further extension of 1 day to allow the Secretary of State's department to *"finalise its response... as it wishes to discuss the response with legal advisors"*.

26. On 19 February 2020, at 16:21h, Mr Brooks sent Ms McKoy, by email attachment, his response to her pre-action letter 15 days earlier [B/8]. Instead of providing the disclosure requested in accordance with the Secretary of State's duty of candour (or stating that more time was required to comply with this duty), Mr Brooks conveyed the following on behalf of his client:

(1) The Secretary of State considered that the Council's concern about his decision-making process was not *"substantiated"* and that he would resist any *"appeal"* [sic] brought by the Council alleging apparent bias.

(2) The Secretary of State accepted that he had a duty of candour at the pre-action stage, but he was not willing to make any of the disclosure requested as this was not necessary *"to enable the Council to understand the reasons for his decision"*.

(3) He regarded the Council's request for disclosure as a mere *"fishing expedition"*.

27. In these circumstances, the Secretary of State considered that he would comply with the duty of candour by offering this *"explanation"*, in Mr Brooks' letter, of his decision-making process *(emphasis added)*:

> *"1. The Secretary of State decided to grant planning permission in or around late December 2019;*
>
> *2. The Secretary of State was advised by his civil servants prior to that decision that, to avoid delay, a decision should be issued before the Council adopted its new Local Plan and CIL charging schedule.*
>
> *3. The Secretary of State decided at the same time in late December 2019 that he wanted the decision issued as soon as possible in the New Year;*
>
> *4. The basis for the advice that a decision should be issued before the Council adopted the new Local Plan and CIL charging schedule was to avoid the delay which would arise from having to refer back to the parties and seek representations on the impact on the appeal of the adoption of the new Local Plan and CIL charging schedule. There were also concerns that delay could impact on the viability of the proposed development."*

28. In light of this letter – in particular, the words underlined above and the refusal to provide any of the disclosure requested – the Council decided that it had no option but to issue these proceedings to require the Secretary of State to comply with his

duty of candour and enable his decision-making process in this case to be properly reviewed. The Council considers that the words underlined above give a clear indication that the Secretary of State failed to act lawfully in the determination of the appeal.

The law

Apparent bias

29. Justice must be seen to be done. The test for apparent bias was established by the House of Lords in ***Porter v McGill*** [2002] 2 AC 357. The court will ask itself:

> *"... whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased..."*

30. The relevant observer is *"a reasonable member of the public neither unduly complacent or naïve nor unduly cynical or suspicious, and adopting a balanced approach...."*: ***R. v Gough*** [1993] AC 646.

31. The decision as to whether there was a *"real possibility"* of bias must be made on the basis of <u>all</u> the relevant facts and circumstances in the particular case. As Scott Baker LJ said in ***Flaherty v National Greyhound Racing Club*** [2005] EWCA Civ 1117 at [27] *(<u>emphasis added</u>)*:

> *"The test for apparent bias involves a two stage process. <u>First the court must ascertain all the circumstances which have a bearing on the suggestion that the tribunal is biased</u>. Secondly it must ask itself whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased... an allegation of apparent bias must be decided on the facts and circumstances of the individual case... <u>the relevant circumstances are those apparent to the court upon investigation; they are not restricted to the circumstances available to the hypothetical observer at the original hearing</u>."*

Duty of candour

32. Judicial review involves *"a relationship between the courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration"*: per Sir John Donaldson MR, ***R v Lancashire County Council, ex p Huddleston*** [1986] 2 All ER 941 at 945c. Judicial review is *"to be conducted with all the cards face upwards on the table"*: 945g.

33. When this court previously had to consider an allegation of apparent bias on the part of the Secretary of State when determining a recovered appeal under s. 78 of the TCPA 1990, the Secretary of State initially resisted disclosure of officials' briefing notes to ministers relating to the appeal on the ground that they were *"not normally considered relevant to s. 288 challenges"*: ***Ball v Secretary of State for Communities and Local Government*** [2012] EWHC 3590 (Admin) at [66] (included at B/9). The Secretary of State opted instead to provide a witness statement from an official within his department, referring to meetings between the relevant minister and his advisers, and to disclose some documents with redactions.

34. The claimant applied for an order requiring fuller disclosure. Leggatt J ordered the Secretary of State to disclose any documents relating to such meetings and to review the redactions in the documents already provided: [69]. Pursuant to the order, the Secretary of State provided unredacted versions of the documents already disclosed and a 'disclosure statement' stating that no notes of meetings with the minister existed.

35. In his judgment on the claim under s. 288, Stuart-Smith J held that the Secretary of State was wrong not to have disclosed the advice to ministers, without redactions, earlier in the proceedings given that apparent bias was *"[o]ne of the issues in the proceedings"* [71], specifically a concern that the Secretary of State was still

influencing appeal decisions that he had been required to delegate to a junior minister due to a conflict of interest. The judge continued:

> *"71. [...] Documents showing the development of the decision making process, including the advice given by advisers to the minister, could be relevant to that issue by showing, for example, that the advisers had been incorrectly influenced by the view of Mr Pickles* [the Secretary of State], *or that the minister had followed advice from advisers that could be seen to be unimpeachable, or that the minister had departed from the advice he had received in a way which called from an explanation to dispel any suggestion of bias. [...]"*

Ground of challenge

36. The Council seeks leave to proceed with a single ground.

Ground 1: Apparent bias in favour of the appellant

37. The Council is troubled by the admission in the Secretary of State's pre-action response that the decision to grant planning permission in this case was expedited due to *"concerns"* by ministers and/or their advisers that to *"delay"* the decision until after the Council's updated CIL 'Charging Schedule' took effect *"could impact on the viability of the proposed development"*. In other words, ministers and/or their advisers were keen to ensure that the developer would avoid liability for a charge that the Council is entitled by law to impose on new development to *"help to pay for local infrastructure projects"* (the Council's website). As stated above, the Council very broadly estimates that the charge in this case would have been in the region of £40 million had planning permission been granted after the updated CIL 'Charging Schedule' took effect on 17 January 2020, as opposed to a charge of zero if planning permission had been granted before then.

38. The process followed by the Secretary of State in determining this appeal should not have been influenced by a desire to assist the developer to avoid a financial liability.

Equally, the process should not have been influenced by a desire to ensure that the Council was *not* able to collect a charge from this development to contribute towards the costs of local infrastructure. Such desires were completely incompatible with the quasi-judicial function of the Secretary of State when determining an appeal in which the developer was the appellant and the Council was the respondent.

39. The Secretary of State's pre-action response refers to "advice" that he received from officials in relation to the imminent publication of the Council's updated CIL 'Charging Schedule'. There must be a document containing this advice and also a record of the Secretary of State's response to that advice. Indeed, the Council understands that it is standard practice (as was the case in ***Ball***) for officials to brief ministers in writing on the recommendation of an inspector in a recovered appeal and to give their own advice on whether the recommendation should be followed.

40. It is plain, therefore, that there is material that should be disclosed, in accordance with the Secretary of State's duty of candour, so that the court can *"ascertain all the circumstances which have a bearing on the suggestion that the tribunal* [here, the Secretary of State] *is biased"*: ***Flaherty*** at [27].

41. If the material sought to be disclosed would not make the reasonable observer think that there was a real possibility of bias in this case, why did the Secretary of State refuse to disclose it at the pre-action stage? The defensive approach taken in the pre-action response can only lead the Council to infer, in the absence of any disclosure, that the material requested is problematic for the Secretary of State in some way.

42. The Council's request for this disclosure is not a *"fishing expedition"*; it is a legitimate attempt to require the Secretary of State to be transparent about the decision-making process in this case in the public interest, as his duty of candour requires of him.

43. For these reasons, the Council submits that its single ground of challenge alleging apparent bias is arguable, particularly in light of the admissions in the Secretary of State's response, such that it should be granted leave to proceed with its claim now.

44. Alternatively, the court may prefer to adjourn its consideration of whether to grant leave until the Secretary of State has complied with an order for specific disclosure (see below) and the Council has been given some time after that (the Council would suggest 21 days) to consider the material disclosed. The Council would not object to this course.

Application for specific disclosure

45. For the reasons given above, and in the expectation that the Secretary of State will continue to refuse to comply with his duty of candour when he serves his acknowledgment of service in this case, the Claimant seeks an order from this court for specific disclosure of the following (which is the same disclosure that the Council sought in its pre-action letter):

> *A copy of all correspondence (including emails), memoranda, file notes, text messaging or other records of communication, submissions and/or advice that includes any reference to, or is otherwise relevant to, the decision of the Secretary of State to allow appeal APP/E5900/W/19/3225474 relating to the land at the former Westferry Printworks site, 235 Westferry Road, London, E14 3QS (including, to be clear, any reference to the Secretary of State's decision-making process, the timing of the Secretary of State's decision, or the related Inspector's report), sent, received, prepared or recorded by:*
>
> *(i) any employee or representative of the Planning Casework Unit and/or, beyond that, the Ministry of Housing, Communities and Local Government; and/or*
>
> *(ii) the Secretary of State for Housing, Communities and Local Government and/or any of his team or representatives;*
>
> *(iii) any other Minister of the Ministry of Housing, Communities and Local Government and/or any of their team(s) or representatives."*

46. As the Council has already made this request for disclosure in its pre-action letter dated 4 February 2020, it submits that it would be sufficient to give the Secretary of State 14 days from the date of the court's order to provide this disclosure.

Conclusion

47. For these reasons, the Council invites the court:

(1) to grant its application for specific disclosure;

(2) to grant leave to proceed with its claim for statutory review (or to adjourn its consideration of whether to grant leave until at least 21 days after the period given to the Secretary of State to comply with its order for specific disclosure);

(3) to allow the claim after a substantive hearing;

(4) to quash the Secretary of State's decision and remit the appeal to be redetermined by a different Minister;

(5) to order the Secretary of State to pay the Council's costs.

SASHA WHITE Q.C. & GWION LEWIS

Landmark Chambers

London

21 February 2020