

## **LOT'S ROAD POWER STATION.**

### **Extracts of Counsel's advice - Russell Harris QC, Landmark Chambers.**

**(The Council does not waive legal privilege in respect of the balance of the advice)**

#### **Introduction.**

1. On 30<sup>th</sup> January 2006, the First Secretary of State (hereafter Secretary of State) granted planning permission for significant development including two large residential towers at Lot's Road Power Station Chelsea Creek. The consent was granted following a long local public inquiry and was contrary to the recommendation of the duly appointed inspector who conducted the inquiry and listened to the evidence.
2. The inspector recommended that permission be refused on the basis that the taller of the two towers was too tall, overbearing and inappropriate to its context.
3. In brief, it is my opinion that the decision is not susceptible to successful challenge. I set out my reasoning below.

#### **The decision maker.**

4. By ss 78 and 79 of the Town and Country Planning Act, the Secretary of State has the jurisdiction to determine an appeal and/or a called in application himself as if he were the relevant planning authority.
5. Self evidently the Secretary of State cannot attend all planning inquiries over which he has jurisdiction. Parliament has therefore provided that it is

appropriate for local inquiries to be presided over by planning inspectors duly appointed who listen to and record the evidence on the Secretary of State's behalf. Such inspectors, who are often expert in the field of most relevance to the case also have the power to make recommendations to the Secretary of State as to the disposal of the application or appeal. Almost invariably, as a matter of practice, inspector's reports contain a recommendation as to whether the consent should be granted or not.

6. Ultimately, however the determination of the appeal or application remains a matter for the Secretary of State. There is neither a requirement nor any form of legitimate expectation that the Secretary of State will adopt the Inspector's recommendation.
7. The Secretary of State therefore commits no error in law in failing to follow an inspector's recommendation.

#### **Limited Grounds of Challenge.**

8. There is no right of appeal on the merits from the decision of the Secretary of State. The Secretary of State's judgment on the acceptability of development in the public interest is to this extent final.
9. The Court will only intervene in the decision to grant consent in very limited circumstances.
10. In short summary, a Court will only intervene to quash a planning permission issued by the Secretary of State if it can be shown:
  - a. that the decision is perverse to the extent that no reasonable decision-maker properly advised could rationally have reached that decision.

- b. that the decision maker failed to have regard to a material consideration or had regard to an immaterial consideration- for example if the decision maker failed properly to understand and to apply the relevant policy matrix.
- c. that there had been a material breach of the relevant regulations, which breach had resulted in significant prejudice to a relevant person.

**Application of grounds to this case.**

- 11. As to the principles set by s 288 and the caselaw, first, I am satisfied that no Court would find that the Secretary of State's decision was perverse. He disagreed with his inspector on the issues of size, dominance and context but these disagreements were all within the range of conclusions which were available to a reasonable decision-maker.
- 12. Second, I am content that the Secretary of State took into account all relevant material. In particular the Secretary of State appears to have understood the relevant policy matrix.
- 13. The only difference between the Secretary of State and the inspector was that when the subjective judgment as to the impact of the tallest tower was factored into the policy matrix, the inspector found as a matter of fact and judgement that the 4B policies were breached, the Secretary of State was able to find that the policies were complied with. The Secretary of State was then able to conclude consistent with the inspector's policy analysis that consent should be granted.
- 14. There is no error of law here.
- 15. In the present case, the Secretary of State has followed the structure and reasoning of the Inspector in the conclusions to the Report. He has identified

each and every determinative adverse judgment by the Inspector and has given a reason for coming to a conclusion which is different.

**Conclusion.**

16. It is always very disappointing when the recommendation of an inspector, favourable to a client is overturned by the Secretary of State.
17. The inspector in this case has listened to and weighed all of the evidence, has brought his own huge experience to the determination. His conclusion was clear and consistent with the main case advanced by Kensington and Chelsea.
18. I do not believe more could have been done on behalf of the views of elected members. Indeed in my opinion, the Inspector's report is in large part a vindication of the position of elected members and the case put on their behalf at the inquiry.
19. But, Parliament has given the Secretary of State the final say. The Courts will only intervene in particular circumstances. In my opinion there are no grounds of challenge in the present case.

**Russell Harris QC**  
**Landmark Chambers**  
**22<sup>nd</sup> February 2006**