

2022/2019/P
Camden Highline

Further submission from Future Transport London, to OPPOSE this application

The Planning Authority must either claim 'deliverability' of this application is

- (a) an IRRELEVANT planning consideration (*good luck with that*), or
- (b) that there ARE valid deliverability considerations to be documented and considered by Officers.

In the latter case, deliverability must involve queries to, and responses from,

- (a) the Department for Transport
- (b) the Office of Road and Rail, and
- (c) Network Rail national Strategic Network Planning.

There are no documents which indicate the Planning Authority has done that as yet.

Network Rail says that

"All of our work to date points to further significant demand on Britain's rail network.

The industry developed the Long-Term Planning Process (LTPP) methodology to take into account the latest thinking on economic forecasting, modelling, and the benefits that the railway can bring, including consideration of the wider economic benefits of the rail network.

Changes to the capability of the rail network take time to implement, and the LTPP allows the industry to keep up with increasing demand."

Deliverability is a live subject in planning law.

For instance, in ***Satnam Millennium Limited v Secretary of State for Housing, Communities and Local Government [2019] EWHC 2631 (Admin)***, the Secretary of State dismissed an appeal because the proposal was not deliverable.

The court applied the principle established by the decision of the House of Lords in ***British Railways Board v Secretary of State for the Environment [1994] JPL 32***, that it is generally irrelevant to the determination of the planning merits of a proposal whether the owner of the whole or part of the site is willing to allow it to be developed.

There is no general rule that the existence of such difficulties, even if apparently insuperable, necessarily leads to a refusal of planning permission. A would-be developer is potentially entitled to a decision from the planning authority on the merits of their proposal, even if they hold no interest in any of the land, or any difficulties in relation to ownership or control of land or use for new purposes.

The position would be different if, for example, the merits of a proposal depend upon the development being desirable in the public interest or there being a need for the scheme.

In ***Satnam***, the legal challenge succeeded because there was no reasoning in the decision to say why non-deliverability of the proposed development could be considered to be an adverse factor or in some way harmful. But Sir Duncan Ouseley accepted, in line with the BRB decision, that permission may be refused where non-deliverability is relevant to the planning merits of the proposal, giving some examples.

There is now a new judgement, made a fortnight ago, ***Council of the City of Newcastle Upon Tyne v Secretary of State for Levelling Up, Housing and Communities [2022] EWHC 2752 (Admin) (01 November 2022)***.

In this case Holgate LJ found that the inspector in granting planning permission had taken into account a legally irrelevant consideration in assessing the level of harm caused to a neighbouring Grade I listed St Ann's Church. The inspector's decision had accounted for the fact that the level of harm to the Church could not be further minimised by a different design. The court held however that even if the level of harm was "minimised" by the current design, this said nothing about what that "minimised" level of harm amounts to - harm to a heritage asset might be "minimised" by the design proposed but nevertheless still be "substantial".

The Judge dismissed two further grounds of challenge, including a challenge that the inspector had wrongly considered the likely deliverability of the scheme.

Holgate LJ held that there was no reason why deliverability could not be a material consideration in the determination of a planning application/appeal if relevant to the merits of the proposal – in this case, the site was owned by Homes England, and this was relevant to the likelihood of delivery given its statutory function to promote regeneration.

As the National Planning Policy Framework makes clear,

“The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.”

The current common law principles of land development must surely carry over into those relating to the severance - ‘permanently’ in practice, a reasonable meaning of “20 to 30 years” - of a potentially significant additional railway corridor across north London.

The reopening of the corridor would be of proven and documented benefit to Network Rail, the London Mayor’s London Overground system, and the private-sector rail freight industry, east-coast-of-England container ports and Channel Tunnel rail freight traffic.

In the Camden Highline case, the site is owned by the state, and this is relevant to the acceptability of delivery, given statutory functions to reduce global heating and promote per-capita carbon-use reduction in transport, modal shift from road transport to rail, and cleaner air in London.
