



JUDICIARY OF
ENGLAND AND WALES

8 April 2022

SUMMARY

NOTE: This summary is provided to help in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.bailii.org/>

The London Historic Parks and Gardens Trust v The Minister of State for Housing and Westminster City Council

[2022] EWHC 829 (Admin)

The Honourable Mrs Justice Thornton DBE

1. This is a claim for review, by the High Court, of the decision by the Minister of State for Housing to grant planning permission for the installation of the United Kingdom Holocaust Memorial and Learning Centre at Victoria Tower Gardens in Millbank, London.
2. All parties before the Court support the principle of a compelling memorial to the victims of the Holocaust and all those persecuted by the Nazis during those years when “*humanity was tipped into the abyss of evil and depravity*” (words taken from the Prime Minister’s Holocaust Commission Report ‘Britain’s Promise to Remember’). The Memorial is considered to be an essential part of “*Britain’s Promise to Remember*”
3. The issue dividing the parties is the proposed location of the Memorial in Victoria Tower Gardens, located on the north bank of the River Thames immediately south of and adjacent to the Palace of Westminster and Black Rod Garden. Victoria Tower Gardens has considerable cultural, historical and heritage significance.
4. The role of the Court in judicial review is concerned with resolving questions of law and ensuring that public bodies act within the limits of their legal powers. The merits of the Memorial’s proposed location in Victoria Tower Gardens are not a matter for the

Court. Its location there may raise matters of legitimate public debate, but they are not matters for the Court to determine.

5. Three of five grounds of challenge arise for consideration by the Court. They are:
 - 1) Did the Planning Inspector and Minister err in their assessment of harm to the historic environment of the Gardens; in particular the setting of the Buxton Memorial? (Ground 1)
 - 2) Does the London County Council (Improvements) Act 1900 impose a statutory prohibition on locating the Memorial in the Gardens? (Ground 3)
 - 3) Did the Planning Inspector and Minister err in their treatment of alternative sites for the Memorial? (Ground 4)
6. The claim succeeds on Ground 3 (London County Council (Improvements) Act 1900). It succeeds on Ground 4 (alternative sites), but only to the extent consequential on the outcome of Ground 3.
7. On its ordinary and natural meaning, Section 8(1) of the London County Council (Improvements) Act 1900 imposes an enduring obligation to retain Victoria Tower Gardens for use as a public garden. The repeal, in 1965, of the larger part of the 1900 Act, save for sections 7 - 9, confirms the enduring nature of the obligations imposed by section 8.
8. Section 8 of the 1900 Act is a material planning consideration, because of the potential impediment it presents to construction of the Memorial in Victoria Tower Gardens and the importance attached to the construction of the Memorial in the lifetime of Holocaust survivors. The Act was not raised at the planning inquiry by the main parties, but it was raised by a member of the public. The applicant for planning permission was on notice of the point in advance of the inquiry.
9. The Planning Inspector and Minister assessed alternative sites for the location of the Memorial without an appreciation of the potential impediment presented by the 1900 Act to locating the Memorial in Victoria Tower Gardens. In the circumstances, as a consequence, to this extent only, Ground 4 succeeds.
10. The appropriate remedy is to quash the decision, so as to enable further consideration of the implications of the 1900 Act. It is an Act of Parliament which specifically regulates Victoria Tower Gardens and specifies that the land must be retained for use as a public garden. The Inspector's assessment of the potential impact of the Memorial on the existing garden means it cannot be said that the existence of the 1900 Act will make no difference to the outcome of the decision. The Court was not addressed on the mechanics of whether or when the 1900 Act might be repealed. The issue raises factual

questions of some difficulty and detail which may require exploration of the relative speed of delivery of the Memorial at each of the sites under consideration for the location of the Memorial.

11. The claim fails on Ground 1 (heritage impacts). The Planning Inspector did not fall into error in his assessment of the harm to the heritage assets. He performed his own straightforward, careful estimation and characterisation of the harm to the Buxton Memorial and, as a consequence, to the Garden. His analysis is a sophisticated and, at times, poetic calibration of the harm. The Minister accepted the Inspector's analysis.