Neutral Citation Number: [2026] EWHC 958 (Admin)

Case No: AC-2026-LON-000874/875

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**DIVISIONAL COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/04/2026

**Before** :

**LORD JUSTICE DINGEMANS, SENIOR PRESIDENT OF TRIBUNALS**
**THE HONOURABLE MRS JUSTICE LIEVEN**

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**Between :**

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| **The King (on the application of the ROYAL MINT COURT RESIDENTS' ASSOCIATION)** | **Claimant** |
| **- and –** | |
| **(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT** | **1st Defendant** |
| **(2) LONDON BOROUGH OF TOWER HAMLETS** | **2nd Defendant** |
| **(3) [~~CHINESE EMBASSY IN THE UK~~]** | |
| **(4) SECRETARY OF STATE FOR THE HOME DEPARTMENT** | **4th Defendant** |
| **(5) SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS** | **5th Defendant** |

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**Lord Banner KC and Matthew Henderson** (instructed by **Leigh Day**) for the **Claimant**
**Richard Moules KC** (instructed by **Government Legal Department**) for the **First Defendant**
**Katharine Elliot** (instructed by the Government Legal Department) for the **Fourth and Fifth Defendants**

Hearing dates: 20th April 2026

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**Approved Judgment**

This judgment was handed down remotely at 14:00 on Tuesday 28th April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE DINGEMANS, SENIOR PRESIDENT OF TRIBUNALS
THE HONOURABLE MRS JUSTICE LIEVEN

**Lord Justice Dingemans, Senior President of Tribunals and The Honourable Mrs Justice Lieven:**

Introduction

1. This is the judgment of the Court to which we have both contributed.

2. This is the hearing of an application of whether permission should be granted for one proposed ground (ground 4) for a statutory review. The statutory review is made pursuant to section 288 of the Town and Country Planning Act 1990 (TCPA 1990) and is of the decision of the Secretary of State for Housing. Communities and Local Government (the SSHCLG) to grant planning permission for a new embassy for the People's Republic of China (PRC) at Royal Mint Court London EC3N 4QN (the proposed embassy).

3. There are telecommunications cables associated with the Wapping Telephone Exchange in the vicinity of Seaman's Registry and Dexter House. The cables run close to or under the site of the proposed embassy. Ground 4 relates to proposed mitigation measures to be undertaken for national security reasons relating to the cables. The mitigation measures will be undertaken and paid for by the Secretary of State for the Home Department (SSHD).

4. Lieven J, at a hearing on 30 March 2026, ordered the grounds for statutory review, save for ground 4, to be determined at a rolled-up hearing of the application for permission and if permission were granted, the appeal, to be listed in July 2026. As ground 4 raised a discrete issue concerning mitigation measures relating to national security concerns, and the Claimant had issued a separate judicial review of the SSHD's decision relating to those mitigation measures, Lieven J ordered that the issue of permission for judicial review against the SSHD and permission for Ground 4 against the SSHCLG should be heard at a separate hearing.

5. The claim for judicial review of the decision of the SSHD was withdrawn by consent, so as a result this judgment is limited to dealing with the grant of permission for ground 4 of the statutory review. The parties also resolved a number of other procedural issues. It became common ground that the assertion of state immunity made by the PRC was well-founded, and the PRC has been removed from these proceedings.

6. The Claimants are a local residents' group and were represented by Lord Banner KC and Matthew Henderson; the SSHCLG by Richard Moules KC; and the Secretary of State for the Home Department (SSHD) by Katharine Elliot. In fact, because the claim for judicial review was withdrawn by consent, Ms Elliot played no active part in the hearing. We are grateful to counsel for their helpful written and oral submissions.

7. Lord Banner suggested that this court should adjourn ground 4 to the rolled up hearing in July, leaving the issue of permission to be determined in July. Mr Moules resisted that application, pointing out that the hearing had been arranged for the determination of the grant of permission, and submitting that the ground was unarguable.

Background

8. On 20 January 2026, the SSHCLG issued the decision letter (DL) granting permission for the Embassy at the Site. On the same day as the DL was issued by the SSHCLG, the Minister for Security (in the Home Office) told Parliament:

> *"This Government, and the last, have been aware of the potential for a new embassy at this site since the Chinese Government completed the purchase in 2018. The issues that continue to be raised in media reports are not new to the Government or the intelligence community, and an extensive range of measures have been developed to protect national security. We have acted*

*to increase the resilience of cables in the area through an extensive series of measures to protect sensitive data, and I can confirm that, contrary to reporting, the Government had seen the unredacted plans for the embassy and the Government have agreed with China that the publicly accessible forecourt on the embassy grounds will not have diplomatic immunity, managing the risk to the public."*

9. There was a statement made by the Intelligence and Security Committee of the House of Commons to the effect that they were satisfied by the mitigation measures. The Minister for Security told Parliament that the security risks arising from the proposed development *"are being appropriately managed"*. We refer to the cables in the area of the proposed embassy as "the cables", and whatever works or actions the SSHD is to undertake as "the mitigation measures".

10. The SSHCLG dealt with the cables within his discussion of the identified main issues in the DL. The cables are only addressed directly at DL paragraphs 61 and 62 (DL61 and 62), where the SSHCLG said:

*"[61] As set out at paragraph 10 above, the Secretary of State does not consider that general national security concerns arising from the identity of the applicant alone are a material planning consideration. However, in so far as the national security concerns arise out of, or relate to, the development proposed, he considers that such matters are capable of being material planning considerations. Several parties have raised concerns about the potential sensitivity and security risks to telecommunications cables associated with the Wapping Telephone Exchange, which is between the Seaman's Registry and Dexter House, but outside the red-line boundary of the site. The Secretary of State considers that given the concerns that sensitive cabling runs close to or under the site, this matter is a material planning consideration in this case.*

*[62] There is no suggestion that the operational development permitted by any grant of planning permission would interfere with the cables, nor that a lawful embassy use of the site would give rise to any such interference. He notes that no bodies with responsibility for national security, including HO and FCDO, have raised concerns or objected to the proposal on the basis of the proximity of the cables or other underground infrastructure. He considers that the lack of objection from these bodies on this issue carries significant weight. He further notes that this matter has not been raised by the owner and operator of the cables. In light of the above, he does not consider that the generalised concerns which have been raised about these cables are a reason to refuse planning permission, or that this matter weighs against the proposal. Furthermore, the Secretary of State notes that any concerns relating to unlawful or improper activity by a foreign state are capable of being addressed by the Foreign Secretary exercising his functions under the DCPA 1987 and the Vienna Conventions."*

11. Ground 4 in the Amended Statement of Facts and Grounds alleges that the SSHCLG erred in law by not taking into account the mitigation measures in the planning decision, as they were a mandatory material consideration. Lord Banner expanded upon this in oral argument, setting out Ground 4 which had not been reduced to writing in one place as:

"*Given the Home Secretary's decision that if planning permission is granted for the development the mitigation measures would need to be and would be undertaken, any or all of the following matters were so obviously material considerations that they needed to be taken into account: first whether to require the PRC to pay for the measures, whether through a s.106 agreement or otherwise; secondly, the cost to the public purse of the mitigation measures if the PRC did not pay for them; and thirdly, the potential land use consequences of the mitigation measures (such as roadworks), in particular those relating to the character of the use of the land, for example those proximate to the site. These fairly and reasonably related to the proposed development given that they are a direct response to a national security risk identified*

*by the Home Secretary as a result of the development, and are only being undertaken as a result of the planning permission."*

12. The Claimant, in the Amended Statement of Facts and Grounds at [88], argues that the SSHCLG was under a *Tameside* duty to investigate why the SSHD considered the mitigation measures were necessary. However, the SSHCLG has said that he was unaware of the SSHD's decision to undertake the mitigation measures, and remains unaware of their content. The parties have agreed that this issue of knowledge is not one for a permission hearing, and therefore the question of whether the SSHCLG should have undertaken further investigations is not raised at this stage.

13. It was not in dispute for the purposes of this hearing, that the nature of the mitigation measures were a matter of national security and the measures could not be disclosed in open proceedings. In that respect the SSHD's Summary Grounds of Defence for the withdrawn judicial review proceedings referred to the mitigation measures as follows at [9]:

*"…the SSHD had regard to wider national security concerns relating to the proposed new embassy, just as she would (and does) with any other diplomatic premises located within the UK. Having done so, the SSHD determined on 19 November 2025 to approve a range of measures to protect national security (i.e. the mitigation measures). The nature and scope of the mitigation measures, beyond confirming that those measures include actions to increase the resilience of cables in the area of the new embassy at RMC (a matter which was raised during the Inquiry into the application for the Planning Permission (see below), cannot be explained for reasons of national security."*

It was common ground that this Court did not need to know the nature of the mitigation measures in order to determine whether ground 4 was arguable. It was submitted on behalf of the SSHCLG and SSHD that there would need to be a closed hearing if permission to appeal on ground 4 were to be granted.

Relevant principles of law

14. In order to be granted permission to apply on ground 4, the Claimant needs to show that the ground provides an arguable basis for allowing the application.

15. On the hearing of the application, the Claimant accepts that it has to show that it was irrational to leave the mitigation measures out of account, *R (Friends of the Earth Ltd) v Secretary of State for Housing, Communities and Local Government* [2021] PTSR 190 (*Friends of the Earth*) at [116] – [120] per Lord Sales and Lord Hodge.

16. Mr Moules submits that rationality is to be judged in the particular circumstances of the decision in question. For example, in *DLA Delivery Ltd v Baroness Cumberlege of Newick* [2018] P.T.S.R. 2063, at [22] – [24], Lindblom LJ considered that the appropriate approach to determining whether a consideration was so obviously material was to ask *"whether the matter is one that no reasonable decision-maker would have failed to take into account in the circumstances"* (see also *Keep Chiswell Green v SSHCLG* [2026] J.P.L. 536, at [61], where Lewis LJ, with whom Elisabeth Laing and Andrews LJJ agreed, referred to Lindblom LJ's formulation of the relevant question with approval).

17. Lord Banner urged some caution on the court because he said that in most cases where the court has shown particular deference to the planning decision-maker the decision-maker has been making planning judgements on the basis of planning evidence, but here, the SSHCLG does not know what the mitigation measures involve and the court is therefore in as good a position as the SSHCLG to consider the relevant issues. He does however accept that the *Wednesbury* test applies. It is not necessary, for the purposes of deciding whether to grant permission to rely

on ground 4, to decide whether issues of deference are relevant because we have come to a clear conclusion which is not affected by any issues of deference to planning decision-makers.

Respective cases

18. Under Ground 4 Lord Banner on behalf of the Claimant submits that the potential impact of the proposed development on the cables, and therefore the mitigation measures, was a material consideration which the SSHCLG failed to take into account. This was unlawful because the mitigation measures were so obviously material as for it to be irrational to leave them out of account. Lord Banner identifies three material considerations: (i) that according to normal planning principles, the PRC should bear the costs of mitigating the impacts of the development; (ii) that if the PRC do not pay for them then there is a (probably significant) public cost; and (iii) the mitigation measures may have material impacts on the Claimant which have not been taken into account, such as through noise or other disturbance.

19. Lord Banner submits that the planning consequences of the mitigation measures are unknown but have the potential to be significant, and any works such as moving the location of the cables, may require planning permission. It was therefore important that the SSHCLG grapple with them at the stage of granting permission for the embassy. For the purposes of a permission hearing, it should be assumed that the mitigation measures will have planning impacts. Reference was made to Regulation 122 of the Community Infrastructure Levy Regulations (the CIL Regulations), which states that a planning obligation may only constitute a reason for granting permission for the development if the obligation is: *"(a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development."* This Regulation reflects the well-known tests for materiality in a planning decision.

20. Lord Banner submits that the materiality of the impact on the cables to the planning decision is conceded in the last sentence of DL61. The importance of national security was identified as being one of the SSHCLG's main issues, in DL61 and 62. The mitigation measures are necessarily of equal importance, because they are the steps that are required to mitigate the national security concerns raised. The SSHCLG had relied on the absence of objection from the bodies with responsibility for national security, and Lord Banner submits, it follows that the mitigation measures were an essential part of making the proposal acceptable. The impact of the Embassy on national security had been raised by a number of the parties at the inquiry. The mitigation measures are to be paid for out of the public purse and therefore they would normally be a cost that a developer would be expected to bear, see the NPPF at [59].

21. Lord Banner submits that all of the CIL Regulation 122 tests are met and for these reasons the mitigation measures were plainly a material consideration.

22. Further, Lord Banner argues that there is a link between this ground 4 issue and ground 1 (that the conditions on the planning permission were unenforceable because of the status of the Embassy), and therefore the issue should go to the rolled-up hearing.

23. The SSHCLG resists permission on two separate bases. First, that the mitigation measures were not a mandatory material consideration; and secondly that, even if they were, the decision would inevitably have been the same, on the principle in *Simplex GE v SSE* [2017] PTSR 1041 (*Simplex*).

24. As to the first basis, Mr Moules submits that it is not arguable that the mitigation measures were a mandatory material consideration. First, the national security issues were considered insofar as they arose from the proposed development, and that is what is referred to in DL61. No works to the cables were proposed as part of the application and there was no suggestion that the operational development applied for would interfere with the cables, or that a lawful use of the

Embassy would interfere with the cables. Therefore, the need for the mitigation measures could only be a response to unlawful acts, which is a clear indicator that they were not clearly and obviously a mandatory consideration. Secondly, Mr Moules relies on the fact that no concerns were raised by the owners or operators of the cables.

25. Thirdly, the bodies with responsibility for national security, including the Home Office and the Foreign, Commonwealth and Development Office, had not raised concerns or objected on the basis of the proximity of the cables. They had raised concerns about other security issues, but not about the cables. The SSHD confirmed in her letter of 10 April 2026 that her decision to authorise the mitigation measures in November 2025 was not communicated to the SSHCLG (the SSHD also setting out in that letter that she was under no legal or other duty to communicate her decision to the SSHCLG). The SSHCLG took into account the lack of objections from the bodies responsible when concluding that the concerns raised by some third parties about the cables did not weigh against the proposal, see DL62.

26. Fourthly, the SSHCLG argues that the Claimant is wrong to assume that the mitigation measures must have been necessary to make the proposed development acceptable in planning terms. The SSHD's decision to approve the mitigation measures was made for reasons of national security, and pursuant to her national security powers. It does not follow that they were "necessary" in planning terms, as the issues are plainly different. The SSHD had raised two specific security concerns through the planning process, which were fully addressed. The mitigation measures were a separate concern, wholly related to national security, and not related to the planning process. The SSHD determined to put in place precautionary and preventative measures in the event of unlawful use of the premises, in order to protect national security.

27. If the mitigation measures have planning consequences they will be dealt with in the normal way and local residents will have the normal planning and environmental protections. Lord Banner's suggestion that a *Grampian* condition is sought (a condition requiring the works to be done before the planning permission is commenced) is unworkable. It would involve disclosing the nature of the works that have to be carried out, in circumstances where such information is necessarily secret.

28. Fifthly, in respect of the costs of the mitigation measures, the SSHD did not request a contribution towards the cost of the mitigation measures through the planning process. There is now no challenge to the SSHD's decision to approve the mitigation measures. The SSHD plainly considered that, as a matter of national security, it was both appropriate for those measures to be undertaken, and for the Government to pay for them. That was a matter for the SSHD.

29. In respect of the "no difference" argument following the principle in *Simplex*, Mr Moules submits that it is unrealistic to imagine that the SSHCLG would have disagreed with the SSHD on the decision as to whether the PRC should pay for any works. It is also wholly unworkable. For a lawful CIL or s.106 contribution to be sought, it would be necessary to give the PRC a cost for the mitigation measures and at least some outline of the works. This plainly cannot be done for national security reasons.

<u>Disposal of this application to rely on ground 4</u>

30. We agree that we should determine ground 4 at this stage, and not refer it to a rolled up hearing. This is because we have reached a clear view about whether ground 4 is arguable (it is not) and because this hearing was arranged to determine the issue of arguability of ground 4. Further, there is not sufficient overlap with ground 1 to defer making a decision on ground 4. This is because ground 1 related to issues of the enforcement of planning conditions, given that the PRC has state immunity and embassies are inviolable, whereas ground 4 related to what were alleged to be mandatory considerations for the SSHCLG.

31. We are satisfied that ground 4 is not an arguable ground for the statutory review. The applicable law was common ground between the parties, and at this stage, the claimant must show that, although it is for the SSHCLG in the first instance to decide what are material considerations, it is arguable that the SSHCLG irrationally failed to take account of other material considerations, being: (1) whether the PRC should pay for the mitigation measures; (2) the costs of the mitigation measures to the public purse, if not paid for by the PRC; and (3) the potential land use consequences of the mitigation measures, such as roadworks arising from any need to relocate cables.

32. It was common ground that the lawful use of the embassy did not involve any interference with the cables, but it was also common ground that planning decisions can take into account potentially unlawful activity. However, any potential unlawful activity and any mitigation measures for that activity, raised issues of national security. The SSHCLG accepted in DL61 that the fact that the cables ran close to or under the proposed embassy was a material consideration, and that national security concerns were capable of being material planning considerations. However, as the SSHCLG says, neither the SSHD nor the cable operators raised any objection to the proposed development on the basis of impact on the cables. The decision as to whether national security considerations required the SSHD to carry out work to the cables was a matter for the SSHD, under her national security powers, and not for the SSHCLG. The SSHD was content that mitigation measures could be put in place.

33. Further as to the suggested material considerations (1) and (2) and whether the costs of mitigation measures should be paid by the PRC or borne by the public purse, these were matters for the SSHD to consider. It was not irrational for the SSHCLG to pay no heed to those costs, when the SSHD had not asked for them to be recovered. As was discussed in submissions, identifying what the costs were, might be capable of identifying the type of mitigation measures which were being employed, which the SSHD has asserted is a matter of national security.

34. As to the suggested material consideration (3) and potential land use consequences of the mitigation measures, which might impact on residents, these would be subject to standard regulatory requirements for any physical works. There was nothing arguably unreasonable in leaving them to be dealt with, if (for example) any roadworks were necessary, through the normal regulatory requirements for any physical works.

35. We also agree that even if the SSHCLG had had to take account of the considerations identified by the Claimant, it is inevitable that the decision to grant planning permission would have been the same, and on the same terms. This is a separate reason for refusing permission to rely on ground 4. We make this finding because it is fanciful to suggest that the SSHCLG would have disagreed with the SSHD's decision that the State should pay for the mitigation measures. In any event it is inconceivable that the SSHCLG would require the PRC to pay for measures to mitigate the effect of unlawful actions, which could neither be specified nor costed to the PRC without disclosing, or risking disclosing, what they were. For this reason, the works (if any works are required) could not be subject to a s.106 or CIL payment, or a *Grampian* condition. Further it is inevitable that the SSHCLG would have to leave any land use consequences (if any) arising from mitigation measures to any applicable regulatory regimes.

36. For all these reasons, and notwithstanding the skill with which the points were pursued, we do not grant leave to appeal on ground 4.