20 December 2013

SUMMARY OF JUDGMENT OF THE ADMINISTRATIVE COURT

LONDON BOROUGH OF ISLINGTON AND OTHERS

v

THE MAYOR OF LONDON AND OTHERS

Case No: CO/14653/2013

This summary summarises the judgment handed down in this case. It forms no part of the judgment which should be read in full for a complete understanding of the reasons for the decision. It is available on www.judiciary.gov.uk

References below in square brackets are to paragraph numbers in the judgment

1. The application by 7 London boroughs and Mrs Ingrid Richardson ('the Claimants') for permission to apply for judicial review of the decision made by The London Fire and Emergency Planning Authority ('LFEPA') on 12 September 2013 to adopt LSP5 ('London Safety Plan 5') was heard by Mr Justice Foskett on 26-29 November.

2. The decision under challenge was made following a direction from the Mayor of London ('the Mayor') in August 2013 that LEFPA was obliged in law to follow. The Mayor's direction was based on the recommendation to adopt the plan by the London Fire Commissioner ('the Commissioner'). The Claimants sought an order quashing the decision.

3. Given the urgency, all parties asked the judge to give judgment before Christmas if possible.

4. The judgment handed down today explains why the judge decided not to make an order quashing the decision.

5. The Claimants have indicated that they do not intend to appeal.

6. LSP5 was developed because of the need to make substantial cuts in expenditure for the fire services in London from the financial year 2012/13 into 2013/14. Similar cuts have had to be made by other fire services throughout the country because of reduced support from central government. This was the first occasion when cuts to front-line services in London had to be considered and the principal effects of LSP5 are to reduce the number of fire stations in London from 112 to 102, the number of fire appliances from 169 to 155 and the number of fire-fighters by 552.

7. The judge emphasised that the role of the court was not to decide whether the decision to which the three parties named in paragraph 1 above contributed was right or wrong or whether the court agreed with it or not, but to decide whether the process by which it was reached was lawful or unlawful. At [7] he said this:

> "It is important that anyone interested in this case and its outcome should understand the extremely narrow basis upon which the court is being asked to interfere with the decision made. The hearing does not constitute a public inquiry into the fire safety proposals for London and it has not involved an evaluation of competing evidence about the proposals. The case is also not about whether the court agrees or disagrees with the proposals. What is the subject of legal challenge in these proceedings is primarily the process by which that decision was reached. Whatever conclusion may be reached by the court in relation to this challenge, it is important to understand that the court's focus is primarily upon the process leading to the making of the decision, not upon the merits of the decision itself or any individual aspect of it, or indeed upon how relevant factors were weighed in reaching the decision: those have always been matters of judgment for the elected decision-makers with the help of advice from those with expertise in the field. The court is not the place where any such decision is made and, of course, any political issues that may arise are not matters for the court either. The issue for the court in this case is primarily whether the process by which the decision was made has led to an unlawful decision, as is contended by the Claimants (and supported by the Fire Brigades Union - 'the FBU'), or to a lawful decision, as is contended by the decision-makers."

8. The judge clarified who the "decision-makers" were in this context at [8]:

> "The principal decision-makers for this purpose were the Mayor … and … LFEPA. The substantive reality is that it was the Mayor who made the decision based upon advice from and the recommendations of the … Commissioner …."
>
> As indicated above, the Mayor directed LFEPA to adopt the plan.

9. For the Claimants to succeed in the case it was necessary for them to demonstrate that in the process that led to the decision the Commissioner's advice and recommendation (i) failed to take into account material considerations, (ii) took into account immaterial considerations or (iii) recommended a decision that no reasonable decision-maker could reach [72]. The test for (iii) is whether the decision is "so outrageous in its defiance of logic or of accepted moral standards that no

sensible person who had applied his mind to the question to be decided could have arrived at it." [218] The other ways in which the Claimants sought to attack the decision was to suggest that LSP5 breached the National Framework on fire services, breached the public sector equality duty under the Equality Act 2010 and that the consultation process undertaken by the Commissioner was flawed.

10. This summary cannot deal with all the arguments and points raised, but the main submissions on behalf of the Claimants were -

(i) that the way in which the LSP5 was formulated failed properly to take account of "local risk" and that it failed to have sufficient regard to those areas in the Claimant boroughs where there was a substantial number of vulnerable groups (e.g. the elderly or disabled) and where there was a high proportion of high-rise buildings;

(ii) that the application of "the principle of equal entitlement" (i.e. that Londoners should have equal entitlement to the fastest possible attendance times of fire engines, irrespective of whether they live in an area in which there is a higher likelihood or a lower likelihood of a fire occurring in the first place) in developing LSP5 meant that a “one size fits all” approach was adopted that did not take account of local risk factors.

11. As to (i), the Commissioner's case was that the sophisticated modelling process (undertaken by a well-established company that advises many fire authorities throughout the country) that led to the formulation of LSP5 did take into account all relevant local risk throughout the whole of London because "fed into" the modelling process at the outset was the 5-year record (April 2007 to March 2012) of all genuine, non-false alarm, serious dwelling fires. In his witness statement the Commissioner explained as follows:

> "The model considers the location of all serious incidents across London for the last five years. Given that serious incidents includes any incident to which two or more fire appliances have attended that is not a false alarm, the model will take account of any fires that have taken place in high-rise buildings, high profile buildings and heritage buildings across London over the last five years. Given the strong correlation between the locations of these incidents year on year, the modelling process optimises the location of resources in order to best respond to these serious incidents, including, for example, high-rise buildings, heritage buildings, or high profile buildings."

He went on to say this:

> "The Claimants appear to be advocating an approach which looks at the theoretical likelihood of a fire occurring at a particular type of premises, for example high-rise buildings or high profile buildings. However, the approach adopted by the [London Fire Brigade] is to look at actual evidence as to the likely locations of serious incidents based on historical data and to plan by reference to this."

12. The judge was satisfied -

(a) that although the phraseology of the documents made available to the public during the consultation process may have been hard to follow in this respect, the documents did confirm what the Commissioner said and that the modelling process was as he had described. This meant that a large quantity of highly relevant information about the likely location of serious fires throughout the whole of London was fed into the modelling process from the outset. [194-196]

(b) that whilst (as the Commissioner himself recognised) there were other ways in which "local risk" could have been identified, this was a perfectly rational way of ensuring that when LSP5 was formulated the likely areas where serious fires were likely to occur were factored into the process accurately and thoroughly.

13. As to (ii), the Commissioner's case was that the "the principle of equal entitlement" was not a parameter fed into the modelling process and that, accordingly, it had no direct impact on the formulation of LSP5. The model was asked to produce a plan that minimised the aggregate (i.e. the total) of 1st and 2nd appliance response times to serious accidents across the whole of London which is what it did. The principle of equal entitlement was then used as a means to assess the impact of the proposed plan, but did not affect the actual response times generated by the recommendations of the model.

14. The Commissioner's witness statement said this on this issue:

> "It is important that I emphasise that compliance with the attendance standards at a London level was not an objective or criteria input into the [model]. As I have explained above, the optimisation process [of the model] sought to minimise first and second appliance attendance times to all serious incidents across London, irrespective of the attendance standards. Although 6 and 8 minute attendance standards were used as a reference point to judge the effect of making particular changes in the simulation stage of the model ..., London-wide attendance standards did not directly influence the optimisation process which sought to allocate resources in a way which reduced attendance times across London to the maximum possible extent, whether this be to 4 minutes, 5 minutes, or 6 minutes. In short, the optimisation process would produce the same suggested outcomes at this stage irrespective of the attendance standards. To this extent, the Claimants' suggestion that the first and second attendance standards formed the basis of the decision as to where to make the cuts betrays a fundamental lack of understanding of the modelling process, which was set out in Draft LSP5 and the supporting documents ...." (Emphasis added.)

15. The judge again [204] said that the language of the supporting documents presented during the consultation presented "challenges", but they did confirm what the Commissioner said. It followed, therefore, that the principle of equal entitlement did not influence directly the plan produced by the model. The judge concluded on the evidence that "the modelling process was not, as the Claimants suggest, configured to produce results that had to be consistent with" the 6- and 8-minute attendance target times for the 1st and 2nd appliances.

16. The judge accepted [206] that "the principle of equal entitlement has undoubtedly had some influence on deciding whether the Plan was an acceptable way of achieving the necessary budgetary savings" and observed that "this has never been denied by the Commissioner." The judge addressed the question of whether it was irrational to permit the principle to have any influence on the acceptability of the plan – in other words, could it be said that "no reasonable organiser of London's fire services could reasonably have applied the principle in any part of the process of formulating or approving the Plan"? [225]

17. The judge prefaced his consideration of this issue by the following observations [215-216]:

> "… It would be that it is possible to conceive of almost any number of permutations of individual and collective circumstances throughout Greater London that could promote a discussion, possibly a lively one, about what is a "fair" or "the safest overall" arrangement for the emergency fire services. There will be "hard questions" to address from almost any angle. At the end of the day, someone or some body has to make a judgment about how best to allocate limited resources. Similar considerations will arise in any other fire service authority area in the country, whether in rural or urban communities. Judgments have to be made. It is unlikely that everyone will agree with the judgments made.
>
> This, of course, leads to the issue of where the court can step in and demand reconsideration of a judgment made. As I emphasised at the outset … and as I shall repeat before I conclude … the court does not replace such a judgment with its own appraisal of such an issue: it can only direct a reconsideration of such a judgment if it can be shown that the process leading to it was unlawful and/or irrational.

18. His conclusion was expressed in these terms [226]:

> " … there would appear to be at least two approaches to the influence of attendance times on evaluating the Plan: the utilitarian approach advocated by the Claimants and the egalitarian approach adopted in the past by the LFEPA (and supported in principle by the FBU) and felt by the Commissioner still to have a role to play in the present situation. He recognises the legitimacy of the former as one approach, but believes the latter to be more appropriate. The Claimants contend that the former is the only approach in the present context. It is at this point that I cannot agree. I would agree that, if its adoption had the effect of causing all local risk factors to be ignored or so devalued in the process as to have no meaningful impact, there would certainly be grounds for concern that the National Framework had not been properly reflected in the process and indeed that a rational approach was not being followed. However, for the reasons I have given (see paragraphs 194-196 …), I have not been persuaded that that is indeed the effect of its adoption. As I have previously indicated (see paragraphs 204-205), the actual

> influence of the principle on the Plan is less potent than the Claimants contend. Whether the Commissioner's approach to its influence at the stage in the process at which it was considered is right or wrong is not for me; but I cannot see how its influence can fairly be described as irrational."

19. Some of the other specific issues raised were dealt with in the following paragraphs of the judgment:

(i) 3rd appliance arrival times: [148-150], [259-264] and [313-319];

(ii) ward level impacts: [151-153], [182-184], [190], [195], [273], [297-316] and [367-368];

(iii) 28 "protected" fire stations: [155-159] and [265-268];

(iv) temporary fire station closures in Southwark: [160-161] and [269-272];

(v) drive time/response time: [140-146], [248-258]

(vi) the consultation process generally: [313-319]

(vii) the "misdirection" by the Mayor: [66], [379-389]

20. The judge referred to the well-established proposition that the "court has never engaged in determining how a finite pot is to be distributed between competing demands" [see 398-401].

21. Attention is drawn to the judge's 'Final overview' at [395-401] and his concluding paragraph:

> "I appreciate that the outcome will come as a disappointment to a number of people who had hoped to see the proposed changes to the provision of fire services in their area set aside. However, I hope that I have explained in reasonably accessible, albeit lengthy, terms why I have not felt able to take the course that they would have wished me to take."