IN THE MATTER OF
A POTENTIAL CLAIM FOR JUDICIAL REVIEW

BETWEEN

NO IKEA GREENWICH and OTHERS
Potential Claimants

and

(1) GREENWICH COUNCIL
(2) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
Potential Defendants

and

IKEA PROPERTIES INVESTMENTS LIMITED AND LXB RP (NO 20) LIMITED
Potential Interested Party

ADVICE

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1. My advice is sought in connection with a potential claim for judicial review by "No IKEA Greenwich" ("No IKEA") and others to be made with respect to a (future: see below) decision by Greenwich Council ("the Council") to grant outline planning permission for the redevelopment of a site at 55 and 57 Bugsby's Way, Greenwich SE10. The development is described in the Officers' Report as one involving the provision of "one non-food retail unit (Class A1) of up to 33, 000 square metres gross floor area, service yard and associated infrastructure" ("the new IKEA store"). The potential Interested Party ("IKEA") is the applicant for planning permission.

2. For present purposes, the advice sought is limited to the question of whether, as No IKEA (and, I am told, others, including some members of the Council) have been led to believe, outline permission has in fact been granted for the new IKEA store as at today's date.

3. The short answer to the above question is that outline planning permission has not, as yet, been granted for the new IKEA store. The situation, correctly understood, is as follows.

4. Planning applications such as the present one are determined pursuant to the provisions of the Town and Country Planning Act 1990 ("the 1990 Act"). Section 57(1) of the 1990 Act provides, so far as is relevant, that planning permission is required for the carrying out of any development of land. Section 70(1) provides (again, so far as is relevant) that where an application is made to a local planning authority ("LPA") for planning permission, they may grant planning permission, either unconditionally or subject to such conditions as they see fit; or they may refuse planning permission.

5. LPAs also have the power, under the 1990 Act, to grant either "full" or "outline" planning permission. "Full" planning permission is one whereby permission is granted in its entirety, so that (subject to the need to comply with any conditions), the development in question may be proceeded with without more ado. "Outline" planning permission is defined in section 92(1) of the 1990 Act to mean "planning permission granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority or the Secretary of State of matters not particularised in the application ('reserved matters')". The effect of a grant of outline permission is to approve the principle of the relevant development, with matters of detail to be approved at a later stage. IKEA have applied for a grant of outline permission in the present case.

6. The 1990 Act itself does not expressly specify what action by the LPA constitutes the grant of planning permission. For a number of years there was uncertainty as to whether the planning permission was granted by way of a resolution on the part of the LPA to the effect that planning permission should be granted; or by the notification of the decision to grant planning permission to the applicant. It is now clear and well-established, however, that it is the latter which constitutes the grant of planning permission: see R v West Oxfordshire DC, ex parte Pearce (CH) Homes [1986] JPL 523.

7. In the present case, I understand that the Council determined that outline planning permission should be granted in March 2014, subject to referral to the Mayor of London, the satisfactory completion of a section 106 agreement; and

the conditions set out in section 3 of the Officers' Report. However, no decision notice with respect to that decision has as yet been issued. Consequently, contrary to whatever those instructing me may have been told by the Council, planning permission for that development has not been granted. It is therefore still open to the Council to take a different decision with respect to the application ie to refuse it, or alternatively to delay in issuing a decision notice, whether for a certain period of time or indefinitely.

8. Once a decision notice has been issued, any person seeking to challenge the grant of planning permission by way of a claim for judicial review must do so within six weeks "after the grounds to make the claim first arose", ie in effect from the date of the decision notice. It should be noted, however, in this connection, that it is open to claimants to challenge certain steps taken with respect to the relevant planning application prior to the date on which planning permission was granted: in this instance, notably, the decisions on the part of the LPA and the Secretary of State that the development comprised by the new IKEA store was not EIA development.

9. The six week timeframe is plainly a very short one. It is a cause of concern to me that the Council may have put off granting planning permission until the present time, in a deliberate attempt to scupper, or at any rate discourage, a claim from being made, given that we are fast approaching the holiday period. This is all the more so in circumstances where, as I have been indicated above, according to my instructions, members of the public (and indeed, it would seem, members of the Council) have to date been labouring under the misapprehension that planning permission for the new IKEA store has already been granted. In my view, No IKEA would be well advised to urge the Council to delay in issuing a decision notice with respect thereto, in order that it may reconsider the application in light of the concerns expressed regarding it by that organisation (and others), on the correct basis that the development presently lacks planning permission.

10. In the meantime, and in any event, I should be happy to advise on the merits of a judicial review claim in a separate advice.

LISA BUSCH

LANDMARK CHAMBERS

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28th November 2014