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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT
Royal Courts of Justice
Strand
London WC2

Friday, 9th March 2007
B E F O R E:

HER HONOUR JUDGE HAMILTON QC

THE QUEEN ON THE APPLICATION OF LADY BERKELEY
(CLAIMANT)

-v-

(1) THE FIRST SECRETARY OF STATE
(2) ROYAL BOROUGH OF KENSINGTON AND CHELSEA
(3) LONDON BOROUGH OF HAMMERSMITH AND FULHAM
(4) CIRCADIAN LIMITED
(DEFENDANTS)

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MR R DRABBLE QC AND MR A GOODMAN (instructed by Richard Buxton) appeared on
behalf of the CLAIMANT

MR P BROWN (instructed by the Treasury Solicitor) appeared on behalf of the FIRST
DEFENDANT

MR K LINDBLOM QC AND MISS M COOK (instructed by Addleshaw Goddard) appeared
on behalf of the FOURTH DEFENDANT

The SECOND and THIRD DEFENDANTS did not attend and were not represented

J U D G M E N T
(As Approved by the Court)

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1. HER HONOUR JUDGE HAMILTON: This is a claim by Lady Berkeley under section 288 of the Town and Country Planning Act 1990 attacking the decision of the First Secretary of State given on 30th January 2006, granting two planning permissions to redevelop the derelict site of the former Lots Road power station in Chelsea.

2. The first Secretary of State overruled his Inspector who recommended refusal on the grounds that the height of the proposed towers, particularly one of 37 stories, was unduly tall and overbearing in views from the river and the Lots Road triangle. Such development the Inspector found to be in conflict with the London Plan policies 4C.20, 4B.8 and 4B.9. However, this case is not related to the issue of the height of the towers but criticises the manner in which the First Secretary of State interpreted the Blue Ribbon Network policies in the London Plan and how he related those policies to other relevant planning policies.

3. The site straddles the boundary of the second defendant authority, which is the Royal Borough of Kensington and Chelsea, and the third defendant authority, the London Borough of Hammersmith and Fulham Council. Those defendants have not appeared before me in this matter. Neither of the local authorities challenge the First Secretary of State's decision, despite the fact that it was the Royal Borough of Kensington and Chelsea's objection to the scheme on the grounds of the height of the proposals that caused the Inspector to recommend refusal but on which he was overridden by the First Secretary of State.

4. The Mayor of London supported the proposals, as did English Heritage and the CABE, who are the Commission for Architecture and the Built Environment.

5. The claimant's grounds of challenge relate to the Secretary of State's interpretation and, where he relies upon the findings of his Inspector, the Inspector's interpretation of planning policies and the way in which any alleged conflicts of policy are resolved.

6. This is a very large development proposal which has been under consideration since the 1980s and inevitably there were many policy considerations for the Secretary of State to deal with. The policies forming the basis of this claim are those contained in the London Plan of 2004, particularly those in the Blue Ribbon Network policies found at section 4C of that plan.

7. The first and second grounds of challenge relate to an alleged error of law in the way in which any conflict of policies was dealt with. It is claimed by the claimant that the Secretary of State failed to resolve a conflict between differing plans, as required by section 38(5) of the Planning and Compensation Act 2004. That section reads as follows:

"If to any extent a policy contained in a development plan for an area conflicts with another policy in a development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published as the case may be."

8. Before this regime was introduced in 2004, the correct approach to this question was characterised by Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1998] 1 WLR 1447 at page 1459 D to F, where it says:

"The decision-maker will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal, but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether, in light of the whole plan, the proposal does or does not accord with it."

That principle in regard to conflicting policies within the same plan remains good and is not affected by the provisions of section 38(5) of the 2004 Act.

9. The third ground of challenge, it is claimed that the Secretary of State misapplied and misconstrued the explanatory paragraphs in the London Plan and in particular failed to apply Policy 4C.1 of that plan.

10. The fourth ground was a failure by the Secretary of State to properly apply and understand Policy 4C.12 of the London Plan. In this particular policy consideration, the Secretary of State followed his Inspector's reasoning on this and agreed with the Inspector's findings. Thus we have to examine what the Inspector said about that particular policy.

11. The fifth ground of challenge was that the Secretary of State misunderstood or failed to adequately consider whether the development proposals were in accordance with Policy 4C.20 of the London Plan. On that particular policy the Secretary of State differed from the Inspector and thus it is the Secretary of State's reasoning on that policy that must be considered, since it was his decision letter that is being challenged.

12. These last three grounds were given precedence in the oral submissions of Mr Drabble on behalf of the claimant. On the night before the hearing he provided a note dealing with the merits of the claimant's application, which explained that the thrust behind this challenge is to prevent other developers using the Secretary of State's decision in the Lots Road case as a basis for ignoring BRN policies, and because, says the claimant, what the Secretary of State has done is say that these BRN policies do not override earlier UDP policies, thereby emasculating the BRN Plan.

13. Mr Drabble's case is that this claimant has a particular interest in the BRN policies. Her case at the inquiry into the Lots Road development was that the scheme should provide more water-based activities in line with the 2004 London Plan policies in the BRN suite. No-one actually sought to put forward any viable proposals as to what form those waterside activities should take. Her case is that the developers should have been asked to go back and rethink the development in the light of the London Plan, particularly policies 4C.12 and 4C.20. The claimant's case is that if there is a need for waterside development, it must be given priority over all other development because that is the term in which these particular policies (and here that is 4C.12) is couched.

14. Whilst Mr Drabble emphasised the importance of his case generally to developments involving the waterside, he of course said that it is still the case of the claimant that they wish to see this particular permission quashed for the reasons that they object to the Lots Road scheme as well.

15. I will deal later with the issue of 4C.20 but I wish to note here that, as a matter of fact, the development did include uses in accordance with Policy 4C.20, as is clearly set out in the Mayor of London's submissions to the Inspector.

16. The Secretary of State and the fourth defendant, in answer to this claim, say that there is no conflict between the development and the London Plan policies. The only conflict the Inspector found was that of a matter of design but, as I have said, the Secretary of State overruled the Inspector on that particular ground. Equally, say the Secretary of State and the fourth defendant, there is no conflict between the UDP and London Plan policies to which the Secretary of State has given greater weight to any UDP policy over and above the BRN

policies in the London Plan. Accordingly, they say, there is no issue of conflict for section 38(5) of the Planning and Compensation Act 2004 to bite upon. Thus grounds 1 and 2 are not even arguable in this particular case.

17. The defendants say that the Secretary of State, whose decision is being challenged, has not misinterpreted or misconstrued any policies in the London Plan, nor has the Inspector, leaving aside his views on the height in policy 4C.20. There is no suggestion in this case by the claimants that the Secretary of State's conclusions, as they were based on policy, were perverse or irrational. The only issue for this court is whether there were errors of law demonstrated in the way in which the Secretary of State interpreted the BRN policies.

18. Mr Drabble submitted that the BRN policies are there to force the Secretary of State and planning authorities to consider the need for water-based development post-2004 when the London Plan came into force. The claimant's case is that the Secretary of State, and where relevant his Inspector, ignored the BRN policies of the London Plan and considered that they could not override UDP policies which had proposed throughout that there should be housing on this site.

19. I do not accept that the Secretary of State or his Inspector did any such thing. It is clear from reading the Inspector's report and the Secretary of State's decision that they considered and applied all relevant London Plan policies to this proposal, including those in the BRN section of the plan. It is a wholly untenable argument to say that the Secretary of State said that the UDP policies could not be overridden by the BRN policies. I will deal with this in detail later.

20. Grounds 3 to 5 of the challenge were dealt with first by Mr Drabble. Ground 3 relates to Policy 4.1 which refers to the strategic importance of the Blue Ribbon Network. The claimant submitted that the decision marginalised the BRN principles instead of giving them the priority they deserve.

21. Mr Brown for the Secretary of State referred to paragraphs 19.154 to 19.156 of the Inspector's decision. That section is headed "The relationship of the proposed development to the relevant policies and provisions of the London Plan, in particular those concerning development affecting the Thames". It is quite clear in that section that the Inspector considers every relevant policy, including national policy and London Plan policy, to the proposed development. He goes on in 19.156 to say:

"Subject to what I say below about the Blue Ribbon Network policies, there are no other policy provisions in the London Plan which I consider contravened by the proposals."

He then deals with his objections on the height and design problems and the Inspector, as we know from his report, found that objection a compelling one.

22. The Secretary of State in his decision letter starts to set out in bold type the relationship of the proposed development to the relevant policies and provisions of the London Plan, in particular those concerning development affecting the Thames. Thereafter, paragraphs 75 to 80 of his letter deal with those very points. In the last sentence of paragraph 78 of his letter he says:

"The Secretary of State agrees with the Mayor [at his submissions found in the Inspector's report at 7.54] that where aspects of the development plan do not accord with the London Plan, then the provisions of the London Plan should prevail."

It cannot be said more starkly than that by the Secretary of State that he is well aware that the London Plan prevails over the UDP plans for the London Boroughs involved.

23. In dealing with that part, the Secretary of State specifically mentions Policy 4C.20 and sets out in paragraph 79 of his letter that he agrees with the Mayor's submissions on that policy and, for reasons given by the Mayor, the Secretary of State agrees that the scheme conforms to the criteria in Policy 4C.20. Thus, it is clear from the Secretary of State's decision letter that he finds no conflict between the proposals and London Plan policies. Thus, it cannot possibly be said that the Secretary of State has marginalised or ignored London Plan policies, including the Blue Ribbon Network policies. There is no error of law on that basis and that ground is wholly misconceived. The Secretary of State specifically deals with the Blue Ribbon Network policies, as did the Inspector in his report, and he says at paragraph 83:

"The Secretary of State agrees with the Inspector for the reasons given in [the report] 19.162 to 19.164 that the appeal proposals do not offend against the BRN policies listed."

He of course dealt with 4C.20 back in paragraph 79, which is the one point he does disagree with the Inspector's conclusions upon.

24. To be fair to Mr Drabble, he referred to Policy 4C.1 and the Blue Ribbon Network principles more as an introduction to his arguments on 4C.12 and 4C.20, but because it was set out in the grounds as a separate ground I have dealt with it as such.

25. As a general introduction to grounds 4 and 5, Mr Drabble pointed out that the BRN policies in the London Plan are said to be fundamentally different from the policies in RPG3b9b in that in the BRN policies the water is not seen as merely a setting for the development, but rather that the London Plan promotes the use of the water related spaces. Paragraph 4.76 sets out the thinking leading up and explaining the thrust of the BRN policies. That paragraph, having explained the fundamental change that the BRN policies make, promoting the use of water related spaces, it sets out the types of use that it thinks are possible after saying that the types of sustainable use are many and varied, and then it concludes:

"Water transport, water recreation, waterside open space, natural habitats and flood storage or protection."

26. In dealing with his 4 and 5 in relation to policies 4C.12 and 4C.20, Mr Drabble submits the only sensible reading of these policies is that they seek active promotion of waterside uses. He says the consequences of these policies in the BRN are as follows. Firstly, the Lots Road site offered an opportunity for water-based uses which the approved scheme does not offer. Secondly, accordingly, the proper application of 4C.12 and 4C.20 required the drawing up of development proposals which had water-based uses, and the Secretary of State should have told the developers to go back and include more water-based uses. Thirdly, it was not an answer for the Inspector to say that no viable proposals had come forward. The Inspector's interpretation of 4C.12 was wrong and he had misdirected himself, and therefore the Secretary of State who had adopted the Inspector's views of this policy.

27. In dealing with those policies in his report, the Inspector first of all mentions the history of the proposal and he explains that the site is identified for development, both in the UDPs adopted in 2002 and 2003, but obviously having undergone a long preparation period before that. In both -- that is the UDPs of Kensington and Chelsea and Hammersmith -- a residential led scheme is anticipated. He says there is nothing in either UDP to suggest that either water-based uses should be preferred even for parts of the site.

28. He then deals with the London Plan and explains that if one starts from UDP proposals then the strategic policies in the London Plan that seem most applicable to this site and its anticipated development, they are 2A.1 (sustainability criteria), 4B.3 (maximising the potential of sites), 3A.5, 3C.1 and 3C.2, all to do with integrating transport and development. The proposal satisfies all of these. Then he deals with the London Plan and says:

"At the same time, the London Plan also introduces, in its own chapter, the concept of the BRN. I do not believe that the BRN policies, cross-cutting though they may be, can have the effect of negating proposals already adopted in UDPs for major development on a site on the bank of the Thames. It is not uncommon for development proposals to create tension between development plan policies, some of which will pull in one direction, others in another. Here, the tension created by a proposal for residential development would equally be created if the site were proposed for river-based uses -- in particular, its loss for substantial residential development would be contrary to the housing strategy of the Plan [and that is plainly the London Plan not a UDP which he has mentioned in one sentence in that whole paragraph]."

The Inspector goes on to deal with the fact that the Mayor has come out firmly in favour of providing high density housing on the site, pointing out that the successful implementation of the BRN principles "means balancing competing economic, social and environmental interests to contribute to achieving sustainable development".

29. I consider that is the correct interpretation of that particular paragraph in the London Plan, namely that in order to balance competing economic, social and environmental interests, one has to look at the whole of the plan policies relating to housing, other forms of development, and one is not, in looking at paragraph 4.75, just relating those principles to BRN policies only but looks at it throughout the plan. It was suggested by Mr Drabble that the Mayor misunderstood his own plan in his own paragraph 4.75 and 4.76 I disagree with that conclusion. I think the sensible reading is that as set out by the Inspector in his 19.161.

30. What the Inspector then does in paragraph 19.162 is go through a whole raft of BRN policies and find that there is no conflict between the proposal and the policies he thereby identifies. Save, as we already know, his argument about Policy 4C.20 where the design in terms of height, he thought, was contrary to 4C.20.

31. He goes on to deal with 4C.12 in paragraph 19.163, if we look at the policy it is under the title "Sustainable growth priorities" and it says:

"The use of the Blue Ribbon Network and land alongside it should be prioritised in favour of those uses that specifically require a waterside location. These uses include water transport, leisure, recreation, walls and flood defences."

It goes on to say:

"For sites that are not suitable or not needed for these priority uses, developments should capitalise on the water as an asset and enhance the Blue Ribbon Network in order to improve the quality of life for Londoners as a whole as well as for the users of the development."

What the Inspector says about that is:

"In this context, Policy 4C.12 (sustainable growth priorities for the BRN) says that uses should be prioritised in favour of those specifically requiring a waterside location (including transport, leisure and recreation). But there is no water-based use which could reasonably be expected to occupy the site, or part of it, if this scheme did not go ahead -- and thus no use to which priority might reasonably be given in terms of Policy 4C.12."

He then deals with a matter that has not troubled the court, but he said:

" . . . it is difficult to see the objection [and this is effectively the objection of the claimant in this case at the inquiry] as more than a desire by the objectors that the land should be available for any such use, should a firm proposal emerge. (That said, I find the desire understandable, given the valid point that there are very few opportunities even to moor a boat along this stretch of the river)."

32. Mr Drabble says that he has misinterpreted 4C.12 by saying that because there were no firm proposals for priority developments on this site, he was entitled to ignore the thrust of the plan which says that if there is need, these priority uses take priority effectively over any other policies in the London Plan.

33. Before I deal with the defendant's case on that, I shall deal with this issue of need, because nowhere in the Secretary of State's decision letter does he suggest there is any need on the proposal site for water-based uses as set out in 4C.12, namely priority waterside uses. What the Inspector has said in his paragraph 19.163, I interpret, as submitted by Mr Lindblom, that all the Inspector was doing was giving a sympathetic note to the objectors. What he said was in brackets, nowhere has he said that there is a need, and thus that sentence at the end of 19.163 cannot, in my view, be said to be an argument that there is some need for priority uses. I have no doubt that if the Inspector or, more importantly, the Secretary of State found there to be a need for such priority uses, he would have said so clearly in his decision letter. Equally, I am sure the Mayor, whose plan it is, would have said if there was any such need that appeared in the years during the preparation and approval of the London Plan, and he would equally have put that to the Inspector. There was no such submission.

34. I get some support, in my view, for Mr Lindblom's submissions and my interpretation by looking at the last part of the paragraph 19.164. This is a paragraph where the Inspector is going on dealing with other policies which he finds are not in conflict with the proposal. He says in relation to that very point about moorings that he has mentioned in 19.163:

"There are no existing moorings within the site but the creek and basin are designated as a Site of Metropolitan Importance, something which would militate against any proposal for water-based development causing a loss of biodiversity or habitat value. On the other hand, there is no doubt in my mind that the proposed scheme would have a beneficial effect for nature conservation and cannot be criticised in relation to Policies 4C.19 and 4C.31."

Thus, by what he says at the end of that paragraph, it simply negates any suggestion that he thought there was some need for moorings, because he is saying quite clearly that moorings

might well be contrary to habitat and biodiversity policies within the same plan. Lack of viable proposals can properly be taken as lack of need for priority uses in 4C.12.

35. In the absence of need, there can be no question that 4C.12 is some overriding or super-policy, and there simply is no suggestion that there is need and that is essentially what the Inspector is saying in his 19.163, because he says that there is no water-based use which could reasonably be expected to occupy the site or part of it, thus no use to which priority might reasonably be given in terms of Policy 4C.12. That is a finding of fact the Inspector is quite entitled to make and, given that finding, his interpretation of the policy is not in any way an error of law and accordingly neither is the Secretary of State's adoption of the Inspector's proposals.

36. Mr Brown for the Secretary of State pointed out that the claimant's case that somehow the BRN policies were super-policies which overrode other policies in the plan is completely misconceived, because when one looks at the scheme of the plan, the first parts, 1 to 3 of the plan, set out the main objectives. The first is to accommodate London's growth within its boundary, and it is part of the London Plan in section 3 that housing development should be maximised on development sites because, of course, of the constant housing shortage in London. I was referred to, and provided with, a separate part of those policies which are referred to in any event in the Inspector's recommendation and the Secretary of State's decision letter.

37. As Mr Brown points out, what it says about section 4 of the plan is that, and to quote the plan, "Chapter 4 -- 'Cross-cutting policies'". Now we can see exactly where the Inspector got his term "cross-cutting policy" that he refers to in paragraph 19.160. The London Plan says:

"'Cross-cutting policies' -- looks at the generic policies that pull the themes together, reflecting in particular the environmental theme of the Mayor's vision."

Thus, the policies in 4 have parts A, B and C -- A dealing with environmental policies; B, designs on London, addresses the quality of life, heritage and design. We can see, as Mr Brown submits, that the policies in 4 run across all the other development policies in the plan, namely in the initial parts of the plan, and therefore clearly they are not proposed to be any kind of super-policy, but they cut across, as the plan says, and have to be considered when one is dealing with specific development proposals. They is, as Mr Brown says, only one part of the London Plan and as the Secretary of State, having found that the proposal satisfied all relevant policies in the housing and transport section of the plan and was not in conflict with any of the Blue Ribbon policies, there can be no suggestion that somehow the Secretary of State has failed to take into account or given the correct interpretation of 4C.12.

38. What Mr Brown submits is that in 19.160, as I think I have already inferred, what the Inspector is saying is that he is dealing with tensions between policies in the London Plan itself, namely residential versus river-based, and accordingly that balance is a matter entirely for the decision maker, in this case the Secretary of State. Provided he has not misconstrued or misapplied his policies, it is a matter for him how he balances the policies. For reasons I have explained, he has not misapplied or misconstrued Policy 4C.12.

39. The suggestion of the claimant in this case that, in the absence of any existing need that anyone could identify, the Secretary of State should say, "Well, let us just sterilise a strip of this in case something happens in the future", is wholly untenable and would, of course, serve no purpose nor the purpose of the BRN part of the plan because, as we can see from 4C.12, it

also says that for sites that are not suitable or not needed for priority uses, development should capitalise on the water as an asset and enhance the Blue Ribbon Network in order to improve the quality of life for London as a whole, as well as those who use the development. There is no suggestion whatsoever that this proposal is in conflict with that second part of 4C.12.

40. I go on to deal with ground 5, and here, dealing with Policy 4C.20 of the London Plan, it is evident that the Secretary of State did not accept the Inspector's conclusions on 4C.20. What the Inspector said, for completeness, on 4C.20 in paragraph 19.162 was:

"I take Policy 4C.20 (design -- starting with from the water) to be, as its title and the title of the subsection suggest, purely a design policy -- not one which addresses the suitability in principle of a proposed use for a riverside site."

That, Mr Drabble said, was a wrong interpretation and I will deal with his argument on that when I deal with the rather more important aspect which is: what did the Secretary of State say about 4C.20? As I have read out earlier, what he said in his decision letter at paragraph 79 is that he agrees with the Mayor, for the reasons given by the Mayor, that the scheme conforms to the criteria in Policy 4C.20. So we have to go and see what the Mayor said about that policy. In 7.51 he said:

"London Plan Policy 4C.20 seeks high quality design for all waterside development. It expressly contemplates 'intensive or tall buildings' in such locations. Local character should be 'reflected', while meeting general principles of good design. This requirement must be intelligently applied in an area as diverse as that surrounding the site. The supporting text counsels against blandness."

41. If we go to Policy 4C.20 we will see that indeed, as the Inspector said, it is headed "Design" under a section marked "Design". In the first part of that policy:

"The Mayor will, and boroughs should, seek a high quality of design for all waterside development. All development, including intensive or tall buildings, should reflect local character, meet general principles of good urban design and improve the quality of the built environment. In addition, development should integrate successfully with the water space in terms of use, appearance and physical impact and should, in particular [and it refers to a number of bullet points] include a mix of uses appropriate to the water space, including public uses and open spaces, to ensure an inclusive, accessible and active waterside and ground level frontage."

It goes on to deal with integration into the public realm, especially in relation to walking and cycling routes and borough open space strategies. It then deals with the provision of public art and other matters that are not relevant.

42. That is what the policy says. What the Mayor had said to the inquiry was, in 7.52:

"Assessed against the 4C.20 criteria, the scheme conforms. The mix of uses is appropriate and includes public open space next to river and creek. The development proposes major benefits in terms of integration of the surrounding areas with those features and enables the strategic Thames Path to be extended for pedestrians and cyclists. Its car-free layout will assist in this. Interaction with the public realm and human scale elements are achieved

through the ground floor uses proposed in the power station and towers and through layout and detailing, together with the treatment of the creek and its adjoining park."

Then he deals with purely design matters about the towers of the development. As an add on he says that he "strongly supports the towers as exemplars of his policies for tall buildings, contemporary exciting design and a compact city".

43. That is the assessment of the policy with which the Secretary of State agrees. Clearly, the Mayor sees 4C.20 (and that is accepted by the Secretary of State) essentially as a design policy into which, as a matter of design, a mix of uses appropriate to the water space can be provided, including public uses and open spaces and access to the river, all of which this proposal is going to provide. So perhaps not surprisingly the Secretary of State considers that that policy is met, and I cannot see any misinterpretation in the way in which the Secretary of State has construed that policy.

44. What perhaps it is instructive to note in the case for the Mayor of London, is where he deals in paragraphs 7.11 and 7.12 with the Blue Ribbon Network. The Mayor says that:

"As Mr Makower accepted on behalf of the West London River Group [who I believe originally were named as the challengers in this case but were then substituted by Lady Berkeley] the principles are not absolutes, the plan itself recognising that 'successful implementation means balancing competing economic, social and environmental interests to contribute to achieving sustainable development'. This is the proper approach to construction and application of these policies, rather than the suggestion by Lady Berkeley that Policy 4C.20 'Design -- starting from the water' requires a fundamental reappraisal of proposed land uses for the site. Her argument misreads 4C.20, which is concerned with design rather than land use, and ignores the other fundamental London Plan policies referred to above"

Then he refers to designations of the UDPs and national policy.

"The implications of Lady Berkeley's case on land use are clear from her explanation that buffers would be required to enable house boats to be moored in the creek without generating complaints from land-based residences. When pressed to say how many dwellings would have to be removed, she indicated problems with much of the proposed development and said that the scheme 'would have to be rethought'. Such a result would be completely at odds with both the housing policies referred to above and the London Plan's approach to density.

(7.12) In fact, as Mr Makower agreed, the proposals achieve many of the objectives of Chapter 4C [that is the Blue Ribbon Network policies]. Opening up the site for the first time in at least a century, enabling public access to the river and an extension of the Thames Path, together with the development of housing near the creek and the river, and particularly affordable housing, all give effect to policies for greater access, equality of opportunity and promotion of health benefits in relation to BRN."

Then it goes on to deal with increasing potential patronage for and physical access to the riverboat service according to Policy 4C.13, retention of recreation opportunities in the creek, together with creation of the Creekside Park on its bank which is in pursuance of BRN Principle 4 and attendant policies:

"Mr Wilson explained that nature conservation was specifically included in the BRN Chapter as an appropriate use at the request of the EiP Panel and pointed out that the use of part of the

site for flood relief is also an appropriate BRN use. Thus, the proposed land uses pay due regard to the BRN policies. There is no evidence to suggest that Lady Berkeley's suggested alternative uses of boating and education centre with maritime support services, or indeed any similar proposals for such development, would be viable."

45. That, in my view, also supports the Inspector's conclusions on 4C.12. There were no viable proposals that had come forward for any priority uses. As I said, that is a finding of fact which is clearly in his province. I should just like to emphasise and point out that it is clear from the report that this proposal includes an appropriate mix of uses mentioned in 4C.20, namely public open space next to the river and the creek, major benefits of integration of the surrounding areas of these features, and extension of the strategic Thames Path for pedestrians and cyclists. If one looks at 4C.20, those uses proposed are exactly those described which are incorporated as a matter of design features into the site.

46. In finding that this proposal accords with 4C.20, it cannot possibly be said that the Secretary of State has misinterpreted, misunderstood or misapplied that policy. Thus, ground 5 therefore must fail.

47. In deference to Mr Drabble's argument on 4C.20, which was directed almost entirely to the Inspector's report, I also disagree with his submission that the Inspector misunderstood the policy. Policy 4C.20 is the first policy under bold type headed "Design". The first paragraph of that policy deals with design aspects. It then goes on to suggest how the design and waterside development should integrate with the water space in terms of use, appearance and physical impact. It is not a use based policy. It is clearly a design based policy which enables the design to suggest that the design should incorporate the benefit of these mixed uses. Thus, where the Inspector says quite simply in 19.162, "I take Policy 4C.20 (design -- starting from the water) to be, as its title and the title of the subsection suggests, purely a design policy -- not one which addresses the suitability in principle of a proposed use for a riverside site", he is quite correct. It is not suggesting the principle of a proposed use for a riverside site.

48. Mr Brown for the Secretary of State drew my attention to all those policies in 4C which relate specifically to uses, and they are set out before the design criteria, because we can see that the issue of use is included in some of those policies. So I accept the Inspector's view as he sets out in that one sentence. He is not at all, in my view, wrong in saying that that policy does not address the suitability in principle of a proposed river use. It clearly, in my view, deals with how, as a matter of design, mixed uses suitable to a waterside development may be achieved. It is irrelevant, really, whether there was an error of law by the Inspector there but I say there was not. The important point is that the Secretary of State himself did not adopt that particular conclusion on 4C.20, as we know, and specifically adopted the Mayor's suggestion.

49. In the Secretary of State's decision letter there is perhaps a slight confusion in that, having said in paragraph 79 of his decision letter that the scheme conforms to the criteria in Policy 4C.20, he then goes on in dealing with the Blue Ribbon Network policies, he deals with the paragraph which says that he agrees with the Inspector's reasoning in 19.162, and 19.164. That, of course, includes the sentence about 4C.20. I do not think there is any particular difficulty there. It might have confused Mr Drabble and the claimant, but in my view it is quite clear that the Secretary of State is saying no conflict with 4C.20 and the interpretation that he has put on it, according to the Mayor's, submissions is, in my view, correct.

50. In the event, I have found that grounds 3, 4 and 5 of this claim are not sustainable and there are no errors of law, but they are policy based decisions which fall well within the interpretation of the policies and well within the Secretary of State's duty to balance the policies. The claimant might not like the way in which the Secretary of State has interpreted the policies or balanced one part of the London Plan against the other. But such an argument is insufficient to challenge this decision. This court can only interfere if it is an error of law, or (which is not suggested here) some procedural irregularity which has caused prejudice to a party.

51. Save on the question of height of the proposals, none of the planning authorities saw any conflict between this proposal and the BRN policies. The Mayor of London might be presumed to know what his policies are, and he supported this proposal and found it to be in accord with many BRN policies and in conflict with none. We can see that from paragraph 19.156 of the Inspector's report and paragraph 83 of the Secretary of State's decision letter.

52. In my view, Mr Drabble's argument under grounds 1 and 2 about policy plans which are in conflict must fail because the decision letter of the Secretary of State does not say that the BRN policies can be ignored in favour of the UDP policies. There is no suggestion in the decision letter that UDP policies have been allowed to override BRN policies. Thus, section 38(5) of the Planning and Compensation Act 2004 simply does not arise because there is no finding of a conflict between UDP and London Plan policies. It is quite clear that the Secretary of State has accepted that the London Plan policies override the other UDP policies.

53. Mr Drabble, as I mentioned earlier, in his argument raised one sentence out of 19.160 in the Inspector's report saying where the Inspector says:

"I do not believe that the BRN policies, cross-cutting though they may be, can have the effect of negating proposals already adopted in UDPs for major development on a site on the bank of the Thames."

This was agreed by the Secretary of State in his paragraph 82. The Secretary of State also agrees with the Inspector that the BRN policies do not negate the proposals in the already adopted UDPs for residential led development. As a matter of fact, it must be right that the BRN policies do not negate policies in other plans. That is all the Inspector and the Secretary of State had to say.

54. They then go on clearly to look at all the London Plan policies and test this proposal against the London Plan policies. Nowhere at all, if one reads the Inspector's recommendation and the Secretary of State's letter properly and as complete documents, is there any conclusion that UDP policies have been allowed to override the London Plan policies. The finding which is clear to all is that this proposal complies with the London Plan policies, including BRN policies.

55. I have already explained how in paragraph 19.160 of the Inspector's recommendations he goes on, not dealing with conflict between UDPs and the London Plan but with conflicts between policies in the plan itself. I say conflict, he describes it properly as "tension" between policies, some which pull one way, some which pull another. A simple example is any policy that you should provide moorings will provide a tension between an area where there are nature conservation interests. The last thing you want are moorings for boats to sit there either setting out effluent or putting anti-fouling in the water. It is quite clear there will

be tensions and that is what the Inspector is dealing with; tensions within one plan, the London Plan. Thus, as I have found, there is no conflict either within the London Plan policies themselves, and certainly none suggested between the London Plan and other policies which should give those other policies an overriding effect. Mr Drabble's grounds 1 and 2 fall and there is simply no issue to be determined under the Planning and Compensation Act 2004.

56. It is trite law that in reading decision letters the letter must be read as a whole and, as I have said, when you read the Inspector's report and the Secretary of State's decision letter as a whole it is quite clear that they are not describing tensions between UDP policies and London Plan policies but purely within London Plan policies themselves.

57. I should simply mention briefly the legal authorities that were referred to, and a number of authorities were cited in the course of the parties' submissions. In particular, Mr Drabble referred to *Cranage Parish Council and Others v First Secretary of State for Scotland and Others* [2004] EWHC 2949. Mr Drabble relied upon the principles set out at paragraph 50 of that decision, by which a planning policy should be interpreted where the meaning was capable of a number of interpretations. He also referred to part of paragraph 24 of that decision which describes situations where a court can intervene and question the validity of the Secretary of State's decision. I accept, of course, the principles set out in that case but in this case they really are not needed to be applied because I find there is no difficulty whatsoever with the way in which the Secretary of State has interpreted his policies, there is no error of law in the way he has done it, and similarly, I do not need to question the validity of his decision because, again, there is no error of law in the decision letter that he has given.

58. Further reference was made by Mr Drabble to *Patter and Harris v Secretary of State for Environment, Transport and the Regions* [2000] 79 P&CR 214. Again, this was another decision on the interpretation of planning policies which I find has no relevance to my consideration in this case.

59. Any misinterpretation or misapplication of policies in this case has been by the claimant. I reject her claim that either the Secretary of State, or indeed his Inspector, misinterpreted or misapplied any BRN policies relating to this proposal. There is no basis for the claimant's argument that this decision gives developers carte blanche to ignore BRN policies and emasculate them. It is quite clear to me that the Secretary of State had well in mind that it was the London Plan policies, including the BRN policies, against which this proposal had to be considered. He did so consider them and he found them to accord with the BRN policies amongst other London Plan policies.

60. Therefore, this application to quash the Secretary of State's decision of 31st January 2006 is dismissed.

61. MR BROWN: My Lady, I am very grateful. In the circumstances I would ask for two things in the formal order. The first is, as your Ladyship has just indicated, that the application be dismissed. The second, I ask for an order that the claimant pay the first defendant's costs of these proceedings. In circumstances where this was originally listed for two days there has been no schedule of costs exchanged, and indeed I do not have one at the moment so I am not in a position to ask for summary assessment. I am going to ask that the costs be assessed if not agreed. I suspect they will be agreed in due course.

62. HER HONOUR JUDGE HAMILTON: Very well.

63. MR DRABBLE: My Lady, I cannot resist the order for costs. My instructing solicitor suggests that the order should be that the claimant pays the defendant the costs of these proceedings other than those separately ordered in relation to the issues before Underhill J.

64. HER HONOUR JUDGE HAMILTON: Yes, because those were dealt with.

65. MR BROWN: We have no objection to that.

66. HER HONOUR JUDGE HAMILTON: If you can read it out to me, Mr Drabble, I can write it in my notebook.

67. MR DRABBLE: Claimant pays to the defendant the cost of these proceedings (other than as separately ordered in relation to the issues before Underhill J on 22nd September 2006).

68. HER HONOUR JUDGE HAMILTON: I think I should say such costs to be subject to detailed assessment unless agreed.

69. MR DRABBLE: Yes. My Lady, we do apply for permission to appeal. I simply say that there is an underlying point of some importance about the approach to need in the context of Policy 4C.12.

70. HER HONOUR JUDGE HAMILTON: I am sorry, there is no basis for that allegation. If you wish to appeal you will have to go to the Court of Appeal and seek their leave.

71. Thank you all very much. Very ably argued as everyone would expect.