Neutral Citation Number: [2022] EWHC 3079 (Admin)

Case No: CO/824/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 December 2022

Before:

Mr Timothy Corner, KC
Sitting as a Deputy High Court Judge

- -

Between:	
The King	**Claimant**
on the application of	
Andrew Plant	
- and -	
London Borough of Lambeth	**Defendant**
-and-	
Nieves Dotimas	**First Interested Party**
-and-	
HFL Build Limited	**Second Interested Party**

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Richard Harwood, KC (instructed by Harrison Grant Ring solicitors) for the **Claimant**
Matthew Reed, KC (instructed by Lambeth Legal Services) for the **Defendant**
Christopher Jacobs (instructed under the Direct Access Provisions) for the **First Interested Party**
The **Second Interested Party** was not represented at the hearing and took no part in the proceedings.

Hearing date: 24 November 2022

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Approved Judgment

This judgment was handed down remotely at 10.30 am on 2 December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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Timothy Corner, KC:

INTRODUCTION

1. The Claimant challenges the decision of the London Borough of Lambeth ('the Defendant') to grant planning permission for the redevelopment of part of the Cressingham Gardens Estate ('**the Estate**') at Trinity Rise/Ropers Walk ('**the Site**'), comprising the demolition of all existing buildings on the Site and the erection of a part 3- and part 4-storey building containing 20 residential units, together with the relocation of a bin store and cycle store and associated landscaping and infrastructure works.

2. Permission to apply for judicial review was granted by Mr Justice Eyre on one ground, the original ground (iii) relating to trees.

3. The Claimant contends that the decision was unlawful on the following ground:

   The Council misinterpreted the revised Lambeth Local Plan policy Q10. They concluded, incorrectly, that it allowed the removal of any tree for a development provided that its value was replaced, and failed to understand that the policy still prohibited the removal of trees of significant value (Q10(b),(c)).

THE PARTIES

4. The Claimant is an active and long-standing resident of the Estate (for 26 years). He is a supporter of Cressingham Gardens Community Limited, a non-profit company set up with objects including to promote the preservation and conservation of Cressingham Gardens and the surrounding environment-and which submitted objections to the planning application the subject of this challenge. He also addressed the Defendant's Planning Applications Committee ('**the Committee**') in objection to the proposed development. He is aggrieved by the decision, which affects him directly as a neighbouring resident, and indirectly insofar as it has implications for the future development of the remainder of the Estate.

5. He brought a successful earlier judicial review on this planning application and spoke at the November 2021 committee meeting.

6. The Defendant is involved in two capacities, as the local planning authority and as the developer. The developer, HFL Build Limited, who is wholly owned by the Defendant is the Second Interested Party. The First Interested Party, Mrs Nieves Dotimas is the owner occupier, as freeholder, of one of the existing maisonettes in the application site, 5 Ropers Walk. Mrs Dotimas submitted a witness statement which demonstrates fully how important to her are the trees proposed for removal.

BACKGROUND

Cressingham Gardens

7. The Cressingham Gardens estate was built in the 1970s by the Defendant and contains over 300 homes. It has been widely recognized as being of high quality and now having heritage interest. The design incorporated existing mature trees, four of which are to be cut down for the new scheme.

8. In 2016 the Defendant's Cabinet authorized the redevelopment of the entire Cressingham Gardens estate. No masterplan for the redevelopment has been brought forward, nor has an application been made over the whole estate. However, the Defendant has described the present application as an early phase.

The application

9. In July 2020 'Homes for Lambeth' submitted the present planning application for the Trinity Rise/Ropers Walk site. The site presently contains 12 homes (8 Council and 4 market) with 59 habitable rooms, which the application intends to replace with 20 homes (14 low cost rented and 6 intermediate (shared ownership)), comprising 70 habitable rooms.

10. The scheme will also involve the development of 100m2 of amenity land which is currently available to the entire estate.

11. The covering letter to the application said that 'the proposals represent an exciting opportunity to redevelop a currently vacant site'.

12. The application was reported to the Committee in February 2021 with a recommendation to approve.

13. The report's executive summary said on trees:

> "The proposal would result in the loss of four mature trees. The Council's tree officer has objected to the loss of three of these trees as they constitute trees of significant amenity value, contrary to Policy Q10 of the Lambeth Local Plan. The application has been advertised as a departure from this policy of the Local Plan, but officers are satisfied that there are material considerations that outweigh the departure from development plan policy."

14. The development plan was identified as the Lambeth Local Plan 2015 and the London Plan 2016. The draft Publication London Plan 'PLP' was to be given significant weight. Limited weight would be afforded to the draft Lambeth Local Plan.

15. Paragraphs 15.1, 15.6 and 15.7 of the February 2021 report said the application was a departure from then policy Q10. The February report also recognized that 'It should be noted that Policy Q10 of the LLP does not provide for compensatory payment for loss of trees as a policy compliant measure'. The trees included two A2 category trees, defined as 'Trees of high quality with an estimated remaining life expectancy of at least 40 years' with 'mainly landscape qualities – trees, groups or woodlands of particular visual importance as aboricultural and/or landscape features.' The other significant tree was an English Oak.

16. The report set out material considerations which were said to outweigh the harm. Paragraph 15.9 began:

> "Emerging London Plan and Local Plan policies including Policy G7 of the PLP allows for the removal of trees where

> necessary provided that there is adequate replacement based on the existing value of the benefits of the tree removed, determined by CAVAT."

17. A CAVAT valuation for the tree was given as £182,564 and subject to that contribution and replacement planting on site 'the proposal is considered to meet the requirements of Policy G7 of the LLP'.

18. The conclusion of the February report on trees was (at paragraph 21.6):

> "The proposal would result in the loss of 4 mature trees. Three of these trees are considered to be trees of significant amenity value and the proposal is therefore a departure from Policy Q10 of the LLP. Officers are satisfied that the material considerations outlined in para 15.9 of this report are of sufficient weight to dictate that planning permission should be granted. Officers have used the CAVAT system to calculate the value of the trees to be lost and to secure a financial obligation of £182,564 to be spent on planting trees in the vicinity of the site, this include [sic] street trees along Trinity Rise and Brockwell Park Gardens as well as within the nearby Brockwell Park. This will deliver the planting of approximately 200 trees. Subject to conditions securing a scheme of onsite tree planting and the financial contribution towards tree replacement the proposal is considered to meet the requirements of Policy G7 of the PLP."

19. The overall conclusion was (paragraph 21.10):

> "Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The public benefits discussed in para 15.9 are material planning considerations in favour of the application and officers consider that the test under Section 38(6) is met."

20. Planning permission was originally granted on 19 March 2021.

21. Judicial review proceedings were brought by the Claimant on grounds that the Defendant wrongly considered itself to be precluded from deciding that the Cressingham Gardens Estate, including the application site, was a non-designated heritage asset and that the Defendant had failed to take account of the precedent effect of the application on the future of the rest of the estate.

22. Permission to apply for judicial review was granted on both grounds. The Defendant then submitted to judgment on the non-designated heritage asset ground.

23. The application was reported back to the Committee on 23rd November 2021. On this occasion the unchanged application was said not to be contrary to trees policies but to cause harm to Cressingham Gardens as a non-designated heritage asset. Officers recommended the approval of the application and members accepted the recommendation.

24. The November 2021 summary said on trees:

> "xii The proposal would result in the loss of 4 mature trees. Three of these trees are considered to be trees of significant amenity value. Officers have used the CAVAT system to calculate the value of the trees to be lost and to secure a financial obligation of £182,564 to be spent on planting trees in the vicinity of the site, this includes street trees along Trinity Rise and Brockwell Park Gardens as well as within the nearby Brockwell Park. This could fund the planting of an estimated 200 trees in the wider area. Subject to conditions securing a scheme of onsite tree planting and the financial contribution towards tree replacement the proposal is considered to meet the requirements of LP Policy G7 and LLP Policy Q10."

25. 402 objections were submitted to the application when it was first published (with 2 letters in support) and 126 objections were raised (and 1 support) when re-consultation took place following the quashing. Objections were raised to the loss of the trees amongst other matters.

26. The 2021 versions of the London Plan and the Lambeth Local Plan were identified as part of the development plan.

27. On trees, the November report began:

> "17.1 National policy acknowledges the important contribution that trees to the quality and character of urban environments and states that existing trees are retained wherever possible and that the long term maintenance of newly planted trees is secured (NPPF para. 131). This is continued in local policy under LLP Policy Q10 which states that proposals for new developments will be required to take particular account of existing trees on site and adjoining land. Development will not be permitted that would result in the loss of trees of significant amenity, historic or ecological/habitat conservation value, or give rise to a threat, immediate or long term to the continued wellbeing of such trees. Where appropriate the planting of additional trees should be included in new developments. Where it is imperative to remove trees, adequate replacement planting will be secured. The amount and nature of the replacement planting will be based on the existing value of the benefits of the trees removed, calculated using cost/benefit tools such as i-tree or CAVAT as set out in London Plan policy G7 C.
>
> 17.2 Policy G7 of the LP states if planning permission is granted that necessitates the removal of trees, there should be adequate replacement based on the existing value of the benefits of the trees removed, determined by, for example, i-tree or CAVAT or another appropriate valuation system."

28. The report maintained the Defendant's previous view that three trees were of significant amenity value and the trees would be lost if the proposed quantum of development was to be secured.

29. The November 2021 report departed from the earlier advice at para 17.6:

> "LP Policy G7 and LLP Policy Q10 allows for the removal of trees where necessary provided that there is adequate replacement based on the existing value of the benefits of the trees removed, determined by a CAVAT based calculation. Mitigation in this form was not provided for in Policy Q10 under the superseded Local Plan (2015) and the application was previously advertised a departure for this reason. As Q10 under the current Local Plan (2021) does allow for such mitigation, the proposal complies with current development plan policy and is no longer considered to be a departure for this reason from the development plan."

30. The section on trees concluded (paragraph 17.8):

> "Subject to the financial contributions and suitable replacement tree planting on the site the proposal is considered to meet the requirements of LP Policy G7 and LLP Policy Q10."

31. The conclusion to the report said (paragraph 25.12):

> "The proposal would result in the loss of 4 mature trees. Three of these trees are considered to be trees of significant amenity value. Officers have used the CAVAT system to calculate the value of the trees to be lost and to secure a financial obligation of £182,564 to be spent on planting trees in the vicinity of the site, this include [sic] street trees along Trinity Rise and Brockwell Park Gardens as well as within the nearby Brockwell Park. This could fund the planting of estimated 200 trees in the wider area. Subject to conditions securing a scheme of onsite tree planting and the financial contribution towards tree replacement the proposal is considered to meet the requirements of LP Policy G7 and LLP Policy Q10."

32. There was a low degree of harm to the significance of the Cressingham Gardens Estate as a non-designated heritage asset, conflicting with Lambeth Local Plan policy Q23, although considerable importance and weight should be attached to that. However, it was considered that there was no departure from the development plan as a whole.

33. Introducing the item at the Committee meeting, the planning officer said:

> "It should be noted that when the application was first assessed it was considered to be a departure from our Local Plan policy on trees as the provision of a financial contribution was not provided for in the previous policy but our current policy on trees

> now allows for financial contributions, so it is no longer a departure in this respect"

34. At the meeting Mr Plant spoke in objection, referring to 'removal of 3 mature trees over 80 years old' and other matters.

35. Planning permission was issued on 25 January 2022. A Judicial Review Pre-action Protocol letter was sent on behalf of Mr Plant on 17th February 2022 and the Defendant replied substantively on 3rd March 2022.

THE LAW

36. In determining a planning application, the Defendant was required to have regard to 'the provisions of the development plan, so far as material to the application' and 'any other material considerations' (Town and Country Planning Act 1990, s 70(2)).

37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

38. It is clear from Tesco Stores Ltd v Dundee [2012] PTSR 983 (see [18]) that policy statements such as those in Local Plans should be interpreted objectively in accordance with the language used, read as always in their proper context. This question of interpretation is one for the court to determine.

39. The proper approach to officer reports to committees was set out in Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

> "42. The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarize the law as it stands:
>
> (1) The essential principles are as stated by the Court of Appeal in R. v Selby District Council, ex parte Oxton Farms [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in R. (on the application of Siraj) v Kirklees Metropolitan Borough Council [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in R. (on the application of Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin), at paragraph 15).

(2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in R. (on the application of Morge) v Hampshire County Council [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in R. v Mendip District Council, ex parte Fabre (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in Palmer v Herefordshire Council [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example R. (on the application of Loader) v Rother District Council [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, Watermead Parish Council v Aylesbury Vale District Council [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for

> example, R. (on the application of Williams) v Powys County Council [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere."

40. In R (Davison) v Elmbridge Borough Council [2019] EWHC 1409 (Admin), [2020] 1 P. & C.R. 1 Thornton J held at para 56:

> "iii) [a] previously quashed decision is capable in law of being a material consideration. Whether, and to what extent, the decision maker is required to take the previously quashed decision into account is a matter for the judgment of the decision maker reviewable on public law grounds. A failure to take into account a previously quashed decision will be unlawful if no reasonable authority could have failed to take it into account (*DLA Delivery Ltd v Baroness Cumberledge of Newark*)
>
> iv) The decision maker may need to analyse the basis on which the previous decision was quashed and take into account the parts of the decision unaffected by the quashing (*Fox and Vallis*). Difficulties with identifying what has been quashed and what has been left could be a reason not to take the previous decision into account (as with the cases of *Arun* and *West Lancashire*).
>
> v) The greater the apparent inconsistency between the decisions the more the need for an explanation of the position (*JJ Gallagher*)."

DEVELOPMENT PLAN POLICY ON TREES

41. The Lambeth Local Plan policy Q10 was originally adopted in 2015. In January 2020 it was published in a draft revised form which was subsequently adopted in September 2021. Relevant changes between the 2015 and 2020/2021 versions are underlined:[1]

> "A. Proposals for new development will be required to take particular account of existing trees on the site and on adjoining land.
>
> B. Development will not be permitted that would result in the loss of trees of significant amenity, historic or ecological/habitat conservation value (including veteran trees), or give rise to a threat, immediate or long term, to the continued wellbeing of such trees.

[1] No one has suggested that these trees are veteran trees.

> C. Where trees are located within a development site, the proposal will be supported only where it has been demonstrated that:
>
> i) trees of significant amenity, historic or ecological/habitat conservation value have been retained as part of the site layout …
>
> G. Where it is imperative to remove trees, adequate replacement planting will be secured. The amount and nature of the replacement planting will be based on the existing value of the benefits of the trees removed, calculated using cost/benefit tools such as i-tree or CAVAT as set out in London Plan policy G7 C."

42. The London Plan March 2016 addressed trees in policy 7.21. For planning decisions this read:

> "Planning decisions
>
> B Existing trees of value should be retained and any loss as the result of development should be replaced following the principle of 'right place, right tree'. Wherever appropriate, the planting of additional trees should be included in new developments, particularly large-canopied species."

43. The London Plan 2021 policy G7 C says, as relevant:

> **"**Development proposals should ensure that, wherever possible, existing trees of value are retained.[140] If planning permission is granted that necessitates the removal of trees there should be adequate replacement based on the existing value of the benefits of the trees removed, determined by, for example, i-tree or CAVAT or another appropriate valuation system."

44. Footnote 140 is 'Category A, B and lesser category trees where these are considered by the local planning authority to be of importance to amenity and biodiversity, as defined by BS 5837:2012'.

CLAIMANT'S SUBMISSIONS

45. The Claimant's case, which was adopted by the First Interested Party, is that the Defendant misinterpreted the revised Lambeth Local Plan, policy Q10. It concluded incorrectly that the policy allowed the removal of any tree for a development provided that its value was replaced, and failed to understand that the policy still prohibited the removal of trees of significant value (Q10 (B) and (C)).

46. The Claimant contends that Q10(B) and (C) (i) prohibit development which would result in the loss of trees of significant value. Q10(G) requires adequate replacement planting to be secured for the removal of *any tree*. Q10(G) does not displace the prohibitions in (B) and (C). If it did, then those paragraphs would be otiose as any tree

could be removed by a development provided it was replaced, even if it was a significant tree.

47. The Claimant addresses the meaning of the first clause of Q10, 'Where it is imperative to remove trees.' According to the Claimant, 'imperative' here means simply that it is necessary to remove a tree in order for a proposed scheme of development to proceed. In deciding whether it is 'imperative' to remove a tree, the planning authority is not to balance the importance of the scheme against the value of the tree. The value of the tree is dealt with in (B) and (C).

48. The Defendant failed to consider (B) and (C) and it considered, incorrectly, that Q10 allowed the removal and replacement of any tree if it was considered 'necessary' to do so. There was no lawful basis for changing the conclusion on trees which the Defendant reached in the February 2021 report.

49. Had the Defendant acknowledged the prohibition in Q10(B) and (C), then it would have had to acknowledge a breach of the new Q10 as well and put that harm into the judgment whether the scheme complied with the development plan and the planning balance. Given its previous conclusion, it should have found that the proposal was contrary to the development plan.

DEFENDANT'S SUBMISSIONS

50. The Defendant argues that Q10 contains a cascading series of requirements and exceptions. Paragraph (A) applies to all trees, requiring them to be positively considered, protecting them as appropriate. Paragraphs (B) and (C) address significant trees particularly, requiring them to be retained and protected. Paragraph (G) then deals with cases where the aims of Paragraphs (B) and (C) cannot be achieved. Paragraph (G) is a narrow exception, allowing removal (where justified) against the high test of 'imperative', whose normal meaning is 'of vital importance', 'crucial', or 'essential.'

51. The exception under (G) can only be established if it is imperative to remove the tree, and if there is adequate replacement planting, which is determined by reference to the value of the tree in question through the operation of cost/benefit calculation tools.

52. The Defendant says that its interpretation is consistent with corresponding London Plan policy G7 and that Q10 was drafted to be consistent with that policy. The Defendant says that its interpretation is also consistent with the National Planning Policy Framework ('**NPPF**'), which requires in paragraph 131 that existing trees should be retained wherever possible and in paragraph 180 (c) states that the loss of veteran trees requires wholly exceptional reasons.

53. The Defendant also disputes the Claimant's assertion that the Defendant failed to apply paragraphs (B) and (C) of policy Q10, saying that the specific words of (B) and (C) were set out in the November report when introducing the issue of trees, and citing the references in the report (paragraphs 17-17.5) to the value of the trees in that context.

ASSESSMENT

54. I start by setting out my approach. I have examined policy Q10 by looking at the ordinary meaning of its words. I gather from Ms Carpenter's witness statement that the

amendments to Q10 were drafted to bring the Defendant's policy into line with London Plan policy G7, which plainly does allow for removal of trees where necessary. However, I agree with the Claimant that the intention behind the drafting of the policy is irrelevant. This background is not available to the public and I have to examine Q10 and decide (as per Tesco Stores Ltd v Dundee City Council) what its words mean, interpreted objectively in accordance with the language used.

55. Adopting that approach, I think the Defendant's interpretation of Q10 is essentially correct. As the Defendant submitted, Q10 includes a cascading series of requirements and exceptions. Paragraph (A) requires particular account to be taken of existing trees. Paragraphs (B) and (C) (i) apply to significant trees, including veteran trees (I agree with the Claimant that (C) (ii) and (iii) can apply to all trees, whether significant or not). Together, (B) and (C) require that significant trees are retained and protected.

56. Paragraph (G) applies to all trees. With regard to significant trees, it allows for the exceptional case where it is 'imperative' for trees to be removed, despite the policy of retention in (B) and (C). Where removal is indeed imperative, adequate replacement planting is to be secured.

57. The Claimant's case is that if significant trees are removed (so that the requirements of Q10 (B) and/or (C) are not met), there is a breach of Q10 irrespective of Q10 (G), so that in the instant case the proposal was contrary to the development plan. In effect the Claimant is arguing for a meaning of Q10 that always requires retention of significant trees, whatever justification there might be for their removal or whatever benefits removal may bring.

58. The Claimant says that if a significant tree is removed, then planning permission can still be granted, with the planning authority striking the balance between the importance of the scheme and the value of the tree, but that this balancing exercise happens outside Q10. The Claimant says that Q10 places an absolute prohibition on removal of significant trees (because such removal contravenes (B) and (C)) and the importance of the scheme is a material consideration outside the development plan which may indicate a decision 'otherwise' than in accordance with the development plan, in the words of section 38 (6) of the Planning and Compulsory Purchase Act 2004.

59. On the Claimant's case the planning authority cannot strike a balance between the importance of the scheme and the value of the tree proposed for removal in deciding whether removal is 'imperative' under (G).

60. I think this is an unrealistic approach. It depends on an artificial constraint on the considerations which the planning authority can take into account in deciding whether removal of a tree is 'imperative.' As the Defendant submitted, there is simply no justification in the policy for an approach whereby the only relevant consideration for deciding whether removal is 'imperative' is whether the tree is 'in the way', in the sense of occupying the physical space required for the scheme to be built. I cannot see why in deciding whether removal is 'imperative' the decision-maker (local planning authority or Secretary of State) is unable to take account of wider considerations, including balancing the value of the tree against the importance of the scheme.

61. Had the first clause of (G) simply meant 'If a tree is to be removed to make way for a new development' I would have expected it to say just that, rather than use the emphatic

word 'imperative'. The use of that word reinforces my view that wider considerations can indeed be relevant.

62. No doubt, the greater the value of the tree the higher will be the hurdle for deciding that its removal is 'imperative'. If the tree has a particularly high significance, it might be, for example, that the decision-maker would decide that because of its value its removal is not 'imperative' even if the scheme could not physically be built without its removal. That would mean either that the scheme as proposed could not proceed, or that it would require amendment. Alternatively, it might be decided that despite the significance of the tree the importance of the scheme going ahead in its proposed form is so great that removal of the tree is indeed 'imperative.'

63. If the tree is not a significant one within the meaning of (B) and (C), then the hurdle for deciding that removal is 'imperative' will be lower. In such a case it might be enough that the tree is 'in the way' for the decision-maker to find that removal is 'imperative'. That still gives meaning to the opening words of (G) in the case of a tree that is not significant, and it is a meaning which fits in with how the Claimant interprets those words.

64. There is no inconsistency between my interpretation of (G) and guidance in the NPPF. Paragraph 180 (d) provides that development resulting in the loss of ancient woodland or ancient or veteran trees should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. In deciding whether removal is 'imperative' under policy Q10 (G), the decision-maker could be expected take account of this guidance. Veteran trees were clearly taken into account in the formulation of the new Q10, as an addition expressly referring to them was made by an amendment to the previous version of paragraph (B).

65. If the hurdles of removal being imperative and replacement planting being adequate are crossed, (G) is satisfied. That means, in my judgement, that there is no breach of the policy Q10.

66. I do not think that my reading of Q10 fails to give (B) and (C) a role. Those paragraphs clearly seek retention and protection of significant trees such as those in issue in the present case. However, (G) provides for the exceptional case where it is 'imperative' that they should be removed.

67. For completeness I would add that for Q10 to be out of step with London Plan policy G7 and national policy in the NPPF would not be enough of itself to show that the Defendant's, rather than the Claimant's, interpretation is correct. As was submitted for the Claimant, there is no statutory requirement that every policy of the Local Plan should be consistent with every policy of the London Plan or of the NPPF. Indeed, the Defendant has in the past had policies that are out of step with policy in the emerging London Plan; the previous version of Q10 did not accord with policy G7 in the emerging London Plan. The question is whether on the objective interpretation of the new wording, there is an inconsistency between the new Q10 and G7 as adopted.

68. However, I think it does provide some (though not conclusive) assistance to the Defendant's case that London Plan policy G7 is referred to in the text of the new Q10 (G). I appreciate that the reference is to the cost benefit tools for deciding the amount and nature of replacement planting, but the reference to G7 shows that the drafter of

Q10 was aware of G7. Although Local Plan policies can diverge from London Plan and national policy, one would normally expect policy Q10 in a new Local Plan for Lambeth to be consistent with policy G7 of the recently adopted London Plan; after all, the two policies deal with the same subject matter. If it had been intended that the new Q10 should be inconsistent with G7, I would expect some indication of that intention within the policy or supporting text, and there is none.

69. I emphasise that I have reached my conclusion in favour of the Defendant's interpretation of Q10 independently of the reference to G7 in the body of the policy. That reference merely provides some additional support to my view as to the meaning of Q10.

70. In relation to the Claimant's further submissions, I do not accept that the Defendant failed to consider (B) and (C). In my view the November report considered policy Q10 entirely correctly. The report must be read as a whole, as is clear from Mansell v Tonbridge and Malling Council. The words used in (B), which for the purposes of the present case cover also the requirements of (C), were set out verbatim in paragraph 17.1 of the November report, as were the words of (G). The value of the trees was considered in detail-see paragraphs 17.3, 17.4 and 17.5 of the report. The justification for removal of the trees was then dealt with in paragraph 17.5 onwards, by considering, in substance, the terms of (G). Paragraph 17.8 culminated in the conclusion that subject to the financial contributions and suitable replacement tree planting on the Site, the proposal was considered to meet the requirements of London Plan policy G7 and Local Plan policy Q10. That was a conclusion which the Defendant was entitled to reach.

71. I add that it was agreed that R (Davidson) v Elmbridge Borough Council does not assist the Claimant's case. That case emphasises the need for consistency in decision-making and it was held that a previously quashed decision was capable of being a material consideration, in that it could be necessary for the decision-maker to address the reasoning of the previous decision insofar as it was unaffected by the quashing. However, in the present case, that was done. At paragraph 17.6 of the November report reference was made to the differences between the previous version of Q10 and the present one, and it was stated that (in contrast to the previous, quashed decision) there was therefore no need for the proposal to be considered a departure from the development plan. This point was repeated by the planning officer in the verbal presentation to the Committee, as set out at paragraph 33 of this Judgement. Also, it follows from what I have said earlier that I agree; the policy has changed, so that what was previously a departure from the Local Plan is no longer so.

CONCLUSION

72. For the reasons set out above, this claim must be dismissed.