

Right to lobby councillors upheld by Justice Dove 11th June 2020

Do you have a right to lobby councillors sitting on a planning committee? It happens all the time, but is it a legal right and something which the Councils cannot stop? The answer from 11th June 2020 is yes.

That question has not previously come up as a legal issue, but it did so in mid June 2020 in a Planning Court judgment over Holborn Studios in Hackney. The council has twice granted permission for residential redevelopment only to have the High Court quash it over procedural problems.

One of three grounds challenged was an element of Hackney's Planning Code of Practice which said councillors who get sent lobbying material "should forward it to the Committee Clerks unread". If a Hackney councillor didn't observe the dictates of the code, they would be held to have breached the Member's Code of Conduct and could be publicly sanctioned. Hackney also publicly tells the public not to contact planning committee members.

When the Holborn Studios leaseholder emailed committee councillors criticising the officer report, the chair and one other member told them in reply that their email had not been read but passed on to the officers. In challenging the permission, the leaseholders argued this was unlawful under Article 10 of the European Convention on Human Rights which safeguards the right of free expression without interference by a public authority.

Mr Justice Dove came to a judicious conclusion about this argument. While not upholding it, because everything in the email was conveyed in a speech at the committee meeting, and because there was no actual ability to prevent councillors from reading anything sent to them, he had some clear words about the right to lobby councillors:

"Receiving communications from objectors to an application for planning permission is an important feature of freedom of expression in connection with democratic decision-taking ... the preclusion or prevention of members reading such material could not be justified as proportionate"

The Judge went on to say that preventing objectors lobbying would be unfair as it would leave members relying on information from the applicant as reported by officers in the committee report. The planning permission was overturned because the report wrongly did not include the viability report as a background paper.

It seems that as a judgement at first instance, the Holborn Studios does not set a formal precedent, but planning law is a specialist field and Mr Justice Dove is one of the most senior specialists operating in it. It would be a brave council who tried to shield its members from lobbying, after this judgement. And planning councillors should brace themselves for objectors citing the Holborn Studios case as substantiating their right to dispute unwelcome officer reports.

[Link to PDF of judgement](#)