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Insights

CALL-IN – AN OWN GOAL OR THE RIGHT RESULT?

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SUMMARY

The news this week that Madison Square Garden Entertainment (**MSG**) has pulled its proposals for a spherical entertainment venue with external, wrap-around LED-illuminated advertisements in Stratford, is a reminder of the role of call-in within the planning system. This Insight takes a look at that role within the context of a couple of recent high profile examples.

THE "POLITICAL FOOTBALL" THAT IS THE LONDON SPHERE

MSG had promoted applications for planning permission and advertisement consent in relation to a spherical entertainment venue in Stratford, East London. The blueprint for this proposal was a scheme that MSG has successfully delivered in Las Vegas. Together with issuing a hard-hitting press release, MSG has now withdrawn its planning application citing several million pounds of expenditure across a five-year planning process only to find it had become, as MSG perceived, "*a political football between rival parties*".

First, some background:

The London Legacy Development Corporation (**LLDC**) registered the applications in March 2019 and took the applications to a series of three committees between March 2022 and April 2023. Together, these committee decisions comprised LLDC's resolutions to grant planning permission and advertisement consent.

So far, so good, even though four years had passed (not including the pre-application process).

As those of us familiar with planning in London will know, the Mayor of London (**MoL**) has a consultative role at various stages in the planning process for certain planning applications. Further, in relation to that qualifying development, the MoL may direct that the local planning authority (**LPA**) must refuse planning permission and may even direct that the MoL is to become the LPA for that application (although, in this case, as LLDC is the LPA the latter directing power of "call-in" is

not available). The MoL duly directed LLDC to refuse planning permission on 20 November 2023 alleging an unacceptable impact on the amenity of neighbouring residential communities.

It is sometimes overlooked that the MoL's powers are subject to the Secretary of State's (**SoS**) general powers of call-in. In this case, Lee Rowley (on behalf of Michael Gove) issued his decision to call-in the application at the beginning of December 2023 (as revised and updated in January 2024).

THE RULES OF THE GAME

The SoS has a statutory call-in power under section 77 of the Town and Country Planning Act 1990. It is a political intervention intended as a counter-balance and safeguard to errant local decision-taking – VAR for the planning system.

This power might typically be exercised in the following circumstances:

1. an application is referred to the SoS by the LPA because it falls within a category of development specified for referral in the statutory Consultation Direction (the current direction in force is from 2021) and the LPA is minded to grant planning permission for it. This includes e.g. proposals to build on a flood risk area or land at high-risk of flooding or inappropriate development in the Green Belt;

2. an applicant lobbies the SoS to call-in an application that has become locked-up in a process with an unsupportive LPA i.e. a bet on the SoS support to grant planning permission; or

3. an objector lobbies the SoS to call-in an application where the objector fears that the LPA might be supportive i.e. a bet on the SoS support to refuse planning permission.

One may speculate in the London Sphere case that the SoS was minded to consider benevolently the planning application otherwise there would be no reason to intervene. One might similarly speculate that the SoS was minded to refuse the application and in doing so take the public plaudits (there was significant local objection) away from the MoL (MSG's "political football" point). Whichever is true, the possibility of a further 6-9 month delay together with a public inquiry and associated costs and an uncertain outcome proved too much for MSG to bear.

A MATCH FROM AN EARLIER ROUND

The "M&S decision" in relation to the development of the Marks and Spencer flagship store at 456-472 Oxford Street last July is another example of a high-profile use of call-in powers. In this case, the LPA (Westminster City Council) and the MoL/Greater London Authority were supportive of the proposed mixed-use redevelopment. The SoS called-in the application in the context of significant objector lobbying and the planning application was ultimately refused principally on the grounds of

heritage impacts (while also praying in aid of whole life carbon reasoning). This decision is currently the subject of legal challenge.

In this case, it is notable that the developer had been through a process and succeeded in convincing the LPA and the strategic planning body to support the proposal only for the SoS to then intervene to call-in the application following, one may suppose, lobbying by objectors (one could relate this to pressure from the home crowd but the metaphor is sufficiently tenuous).

SO WHAT HIGHLIGHTS CAN WE TAKE FROM ALL THIS?

Planning continues to be an intensely political process and there should be no surprise in that and there are often winners and losers. The public engagement integral to planning makes local (and sometimes national) political involvement inevitable. The real criticism by MSG appears to be that the politics of (in this case) a Conservative SoS versus a Labour MoL became the primary focus.

The call-in process has long been seen as a potential tactical option to take jurisdiction from a LPA that is either not supportive or is incapable of supporting an application or to prevent a supportive LPA from granting planning permission. There is no guarantee that the SoS will intervene (the power is exercised relatively infrequently – perhaps between one and two dozen times in any year) and if they will what the outcome will be.

The assumption that is often made is that the decision by the SoS to intervene is an indicator of their likely decision, implying a degree of pre-determination. This appears to conflict with the fact that the SoS will, in most cases, take a decision that follows the recommendation of the independent planning inspector. One must also remember the underlying principle that the SoS must act, and be seen to act, fairly and even-handedly and any legal error in decision making can be judicially reviewed.

In the current political environment, where seemingly any and all economic, demographic, productivity, environmental (both historic and natural) troubles in the UK will have someone laying the blame at the door of the planning system, the call-in system can be seen as yet another element layering yet more cost and delay. Whether one subscribes to that view, there can be no doubt that the call-in process, when properly used, provides a necessary safeguard to errant decision-taking. But for scheme promoters caught up in this process, the frustration is understandable.

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