



Appeal Decision

Inquiry held on 10 March 2026 to 13 March 2026

Site visit made on 11 March 2026

by R Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23/06/2026

Appeal Ref: APP/L5240/Q/25/3370365

Queens Hotel, 122 Church Road, London, SE19 2UG

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a refusal to discharge a planning obligation.
 - The appeal is made by London Crystal Palace Ltd against the decision of the Council of the London Borough of Croydon.
 - The development to which the planning obligation relates is the demolition of existing buildings to the centre and rear of the site and existing extensions to the roof, and the construction of a new spine building including glazed link to part retained mews building, an extension from the southwestern facing elevation of the existing locally listed building, a single storey extension to the restaurant, five subterranean levels which provide parking, a swimming pool and servicing space, to create a total of 495 hotel rooms and 207 vehicle parking spaces, the re-cladding of the 1970's extension, provision of enhanced landscaping across the site including 5 coach parking spaces to the front, and the adaptation of existing entrance to the hotel.
 - The planning obligation, dated 28 March 2019, was made between the Council of the London Borough of Croydon Council and London Crystal Palace Ltd.
 - The application Ref 24/02960/PDO, dated 29 August 2024, was refused by notice dated 3 February 2025.
 - The application sought to have the planning obligation modified by removing clauses 6.10.1 and 6.10.2 from the agreement.
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Decision

1. The appeal is dismissed.

Procedural and Preliminary Matters

2. A Case Management Conference was held on 20 January 2026 where the administrative and procedural arrangements for the Inquiry were discussed and it was agreed how the evidence should be heard. The Inquiry was served by a series of Core Documents (CDs) and further Inquiry Documents (IDs) were submitted. The information was made publicly accessible during the Inquiry and opportunities for views to be shared and, where appropriate, for any interested persons to participate were given.
3. On the first day of the Inquiry a representative on behalf of the Fitzroy Wakefield Residents Association (the FWRA) made oral representations to the Inquiry and I requested those submissions to be confirmed in writing. However, the representative did not return to the Inquiry so was unable to answer any questions on additional matters raised in the submission¹. I have dealt with the representation on this basis.

¹ ID4.

4. Due to the nature of the appeal and following discussions at the Inquiry, neither party considered it was necessary for the determination of the issues in dispute that I enter the appeal site or the existing building. I therefore carried out an unaccompanied site visit from the public realm allowing for familiarisation with the appeal site and its surroundings, including visiting Westow Park.

Background and Main Issues

5. The hotel is currently being used as contingency accommodation for asylum seekers with the Council's records showing that the hotel was reported as being used as such as far back as 2014². The hotel is not currently available for public bookings, and the appellant's other hotels in the area are similarly unavailable.
6. As part of the proposal to redevelop the hotel to provide additional rooms, allowed on appeal on 1 May 2019, a s.106 legal agreement (the agreement) dated 28 March 2019 was made between the Council of the London Borough of Croydon Council (the Council) and London Crystal Palace Ltd.
7. The application subject of the appeal now before me sought to have clauses 6.10.1 and 6.10.2 removed from that agreement. The Council refused the application on the grounds that the obligations served a useful purpose in protecting tourism revenue and preventing strain on local primary healthcare services. At Statement of Case stage the Council further raised that the clauses in question serve a useful purpose by preventing long-term occupation that could resemble residential/institutional use and that the design for such occupation is unsuitable with some rooms under 10 and 15 square metres in floor area and with no windows and therefore served by artificial light only.
8. Despite some references in evidence that might have suggested otherwise, I do not regard the Council's case as being that a useful purpose is to displace or exclude asylum seekers³. The Council also no longer relies on any useful purpose related to impact on schools, accident and emergency services or what was termed as 'ease of enforcement'. I have no reasons to disagree and have not considered these matters any further.
9. Section 106A (1) states that a planning obligation may not be modified except by agreement between the appropriate authority and the person against whom the obligation is enforceable, or in accordance with s.106A and s.106B. Section 106A (6) sets out that the authority may determine:
 - (a) that the planning obligation shall continue to have effect without modification;
 - (b) if the obligation no longer serves a useful purpose, that it shall be discharged;
or
 - (c) if the obligation continues to serve a useful purpose but would serve that purpose equally well if it has effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

² CD 4.3, para 4.6.

³ Paras. 34 and 35 Council's closing submissions.

10. Part (c) is not applicable in this appeal as no modifications were specified in the application or have been otherwise requested by the appellant.
11. The Act⁴ does not provide a definition the term useful purpose. Case law has established that a useful purpose does not need to be a useful planning purpose or have to be related to the development with which the agreement was entered into. The useful purpose can be a different one from that which led to the agreement in the first place. Even where there has been a change in planning policy or circumstances such that the original obligation would no longer be sought in a new agreement, that does not mean there is no useful continuing purpose. What ultimately matters is whether the obligation continues to serve a useful purpose.
12. Accordingly, the main issues in this appeal are:
 - Whether the planning obligation continues to serve a useful purpose; and
 - Equality, Human Rights and Other Considerations.

Reasons

The agreement

13. The Council contend that the restrictions have applied to the existing hotel since 2022 when the appellant obtained a Certificate of Lawfulness confirming that planning permission LPA ref: 18/00831/FUL had been implemented through the demolition of part of an area referred to as Phase 1, where four hotel rooms were demolished.
14. On my reading, the restrictions only apply to the development the subject of the planning application under 18/00831/FUL as set out in Clause D1 and the meaning of '*Development*' in the agreement. The restriction only applies to the Development as defined which is '*the development which is subject of the planning application*'. Clause 2 of the obligation makes clear that the Legal Effect shall be conditional on the '*Commencement of Development*'. That is defined as the first carrying out of a '*material operation*', which, at part (h) excludes '*demolition*' for the purposes of the agreement.
15. Accordingly, and whilst not binding on the parties, the 90-day length of stay restriction does not appear to me to apply to the existing hotel rooms, as well as those granted in planning permission pursuant to LPA ref: 18/00831/FUL. Whatever the case may be the Council's case is that the obligations apply to both the existing and future operation so even if my interpretation was incorrect, the Council's useful purposes analysis is unaffected as confirmed in their closing submissions⁵.

Background and context

16. Clause 6.10.1 provides that the stay by any occupier in any part of the development shall not exceed 90 days in duration. Clause 6.10.2 provides that

⁴ Town and Country Planning Act 1990 (As amended).

⁵ Para. 13 of Council's Closing Submissions.

there shall be no resumption of occupation in the same part of the development or further occupation in another part of the development within the following four weeks of each occupier's stay in any of the phases. In short the purpose that the obligation would fulfil once/if in effect would be to prevent the use of any room for more than 90 days unless a period of 28 days lapses in between the resumption of the occupation in the hotel.

17. The evidence of the Council's planning witness to the previous appeal is of limited significance given the useful purposes now advanced by the Council but it was stated that the restrictions were required *'to ensure that the site remains a C1 hotel use and not another use falling outside C1, such as student housing'*.
18. Despite attempts to acquire the relevant CIL compliance statement, it was confirmed by both parties there was no available paper or electronic copy that the previous Inspector refers to as 'ID11'. No satisfactory answers were provided by either party as to why this had occurred, even more surprising given it is the same Local Planning Authority, appellant and agent(s) involved but I can only deal with the available evidence.
19. The evidence I do have is that the Inspector confirmed in the decision letter that *'I have taken note of the statements of compliance with the Community Infrastructure Levy Regulations 2010, as amended (CIL Regulations), which was submitted at the Inquiry. On the basis of the contents of the agreements and the compliance statements, I am content that all matters conform to the CIL Regulations and that the agreements can be taken into account in my determination of the appeals'*. Importantly, the Inspector concluded that the same obligations before me passed the necessary legal and policy tests and formed a reason for the grant of planning permission.
20. Before I turn to the purported useful purposes, taking enforcement or other action can be challenging, complex and resource intensive process but that decision is solely a matter for the Local Planning Authority to make, regardless of whether they have previously chosen not to do. A change of use is not currently alleged and so it is also not entirely fair to categorise a failure to undertake such action as the Council gaining nothing from the occupation restrictions and they are not therefore useful. The essential question is whether the obligation serves a useful purpose, if there is compliance.
21. The appellant also contends that the Council has been inconsistent by not including a length of stay obligation for LPA ref: 22/05363/FUL. However, that appears to have been the grant of planning permission for a minor development of 6 bedrooms where a s.106 agreement was not deemed necessary, unlike the permission in this appeal. It does not appear to me to be directly comparable.

Living conditions – suitability of rooms for occupation beyond 90 days

22. The Inspector's decision is set against a background of agreement between the same parties to the restrictions. The Inspector in granting planning permission determined that *'The increase in number and quality of hotel rooms is accepted by the Council and I confirm that I give significant weight to this'*.⁶ Accordingly, occupation in the proposed rooms for that secured period up to 90 days was the

⁶ First sentence of para. 96 of DL.

basis for that determination and the Inspector was not concerned with the effects from stays beyond that period.

23. In the associated officer report to committee, the issue of the rooms was acknowledged and confirmed a number of responses had raised objections '*to so many rooms with limited light/no light and reliance on light-wells*'. The report refers to this in the context of there being '*currently no policies that seek to protect amenity of occupiers in hotel accommodation*' and that '*the applicant has previously provided officers and Members of Planning Committee the opportunity to view windowless rooms of a similar size in the existing hotel. Officers found the accommodation acceptable in terms of overall design quality.*'
24. The report goes on to confirm that a number of the room sizes had changed which corroborates the commercial flexibility required by the appellant, for example in providing family rooms and smaller rooms for single occupancy and without any length of stay restrictions. That however was an officer recommendation for a planning application, I am dealing with a judgment regarding what could be a useful purpose where there is no specific development policy, standard or other guidance. As the professional opinion of an officer of the Council I acknowledge that view is of weight but the Council is also now taking a different one.
25. I do not have the benefit of the information as to which rooms were seen by those members and whether they are or would be comparable to those shown on the proposed plans that are now before me. Neither party considered it was necessary for an internal site visit of the building to view any existing rooms; not unexpected given the appellant's case rests on the proposed scheme. For this issue the parties therefore relied solely on the plans and evidence submitted to the Inquiry⁷. Whilst I do not therefore disregard the findings of those officers and members, having held a Public Inquiry I have also formed my own view on the evidence as put to me solely by the parties.
26. Neither the appellant nor Council adequately addressed what the physical, mental or overall well-being effects could be from occupation of the rooms in question beyond a period of 90 days, regardless of user or personal choice. I was initially referred by the Council to 78⁸ windowless rooms which then appeared to morph into significantly more but without substantive qualification.
27. Thirty nine of the existing rooms in the hotel currently have no window and therefore are only served by artificial light as confirmed by the table in the officer report for the original application at paragraph 9.46. That table also refers to 43 as 'existing retained' and 33 as 'new build' which would have no windows. The 'Total proposed' is 78 which does not quite add up. No existing rooms have lightwells but in the proposed scheme 33 new build are proposed. There would also be a total of 62 rooms with 'partial/obscure windows' and 355 rooms with 'full' windows.
28. The acceptability or otherwise of any effects from longer term occupation would be directly proportionate to how long an individual would occupy the room and their purpose for doing so. I note that this general approach was confirmed in two of the appeal decisions put before me⁹. A tourist visiting for a short holiday period would be much less adversely affected by any living conditions offered, than for example

⁷ ID5.

⁸ Paragraph 63 of Council's closing submissions.

⁹ PINS Refs: APP/E2734/W/23/3322021 and APP/F5540/W/21/3277355.

a business visitor who would typically stay for longer periods, albeit perhaps Monday to Friday and work typical hours during the day with some evening work often required. Tourists in choosing a busy urban location would also not be likely to spend extended periods of time in their accommodation during the day and evening although they would typically need respite after a day of leisure.

29. What is clear from the plans before me¹⁰ is that a significant enough number of rooms would be small, below approximately 10 and 15 square metres, with no windows and natural light. There would also appear to be little meaningful space for furniture or other amenities one could reasonably expect for a stay beyond 90 days such as a wardrobe for clothes storage, a desk and a chair.
30. A number of rooms would be served by lightwells which would be acceptable for shorter stays but limited natural light through a lightwell for longer term stays beyond 90 days may not provide acceptable conditions for such occupation as outlook is limited and would become overbearing. I agree with the Council that whilst family sized and therefore more accessible rooms are welcome they should not be without adequate light and some of those rooms would also appear to be served by artificial light only.
31. Turning to factors which the appellant contends mitigates any effects and accepting there are no policy or technical space standards before me, I agree in principle that external and public amenity space can assist in mitigating a shortfall in internal space and/or facilities for residents or occupiers. Mindful that planning permission has been granted for the proposal and these matters considered, this is also an important consideration for me in determining suitability for longer term occupation beyond 90 days.
32. Hotel and business travellers do not require much space with a communal sitting out or small garden area as a minimum where outdoor respite could be taken, if desired. The appeal site however would be dominated by hard elements such as buildings and hard surfaces, with little meaningful sitting out or external amenity space. That was clear from an examination the proposed landscape plan at the Inquiry and from my own observations at my site visit.
33. Westow Park lies an accessible and short walk from the appeal site. It is a large urban park and no doubt well used but whether occupiers who seek outdoor activity would use it would be down to personal choice, including personal safety. Whilst it does provide some off-site opportunities such occupiers are also not normal residential occupiers of an area and should not have to rely on local parks, even if they choose to do so on occasion.
34. The Council refer me in closing submissions to the plans for a ground floor dining room/bar and pool/gymnasium. It is indicated as being in the basement but appears of limited size and served by artificial light only. I have also not been provided with the details of what the gym would contain from the appellant so I am unable to make a conclusive qualitative judgment as to its likely effects. Such amenities can help mitigate a certain duration of occupation but in the longer term beyond 90 days they would fail to give a sufficient choice as to how occupants spend their social and leisure time. Even in combination with the park it does not suitably mitigate my findings in relation to the rooms I consider would be unsuitable for stays over 90 days.

¹⁰ ID5.

35. I acknowledge the appellant's view that visitors often choose accommodation based on their own preferences, including price, quality, location, and amenities. Further, that an occupant could leave on day 90 and be replaced with another and which would not be in breach of the agreement. The latter appears to me to be of little significance as I am concerned with the effects of longer term occupation beyond 90 days.
36. There is also a clear demand for contingency accommodation. I also accept this could result in some adverse impact for a hotel operator seeking commercial flexibility. I am also mindful the number of such visitors could be regarded as small, with less than 0.6% of overseas visitors staying over 90 days. Nonetheless, and even if some long term visitors were displaced outside the Borough to my mind it is not acceptable to seek such commercial flexibility but with a product that would be sub-standard for such use.
37. A restriction of 90 days was deemed appropriate and although different arguments are now advanced by both sides the restriction balances short, medium and longer term occupation. I do not find the period previously agreed to be arbitrary and a line must ultimately be drawn. I note the Inspector in the Harrogate appeal formed a similar conclusion albeit in a different appeal type and context¹¹.
38. Drawing everything together, even excluding those rooms with a lightwell a significant number of the rooms would be small with no natural light and unsuitable for the unrestricted occupation in length of stay sought by the appellant. In the context of considering what a useful purpose is I do not agree that in the face of such a poor standard of accommodation for such stays that it should be left solely to the market or individual choice.
39. The Council is right to be concerned about guests staying beyond 90 days in those rooms and it does not matter to my mind who occupies the rooms or for what purpose, because occupation beyond 90 days in those rooms would not be beneficial to overall health and well-being and would fail to result in a suitable standard and quality of accommodation for such occupation. The prevention of this is the prevailing consideration and in my judgement a real and substantial useful purpose.

Protection of tourism revenue

40. Having found a useful purpose above consideration of this dispute and my findings are not determinative given the statutory test set out above or binding. Nonetheless, issues were raised by the parties and an Inquiry held with evidence presented so I make the following points.
41. Occupation restrictions generally perform an important function in preventing the longer term occupation of a hotel, which may otherwise undermine the availability of rooms for leisure and business uses and which are supported by adopted planning and other strategies and objectives, typically in terms of retaining and growing visitor expenditure. Such restrictions are often agreed to also act as a safeguard to ensure that a hotel remains part of an areas shorter term accommodation offer, rather than becoming longer-stay and more residential/institutional style accommodation.

¹¹ Paras. 19-23 of DL PINS ref: APP/E2734/W/23/3322021.

42. The situation before me is that a large hotel with planning permission for redevelopment and refurbishment is currently unavailable for public bookings as it is being used for contingency accommodation. Only the courts could conclusively decide when the s.106 'bites' but on the evidence before me in this appeal I am of the opinion that the restriction relates to the proposed scheme and not existing.
43. Public policy that such hotels normally designed for leisure and business are to be used for asylum seeker accommodation could be a factor that indicates protecting tourism is no longer a useful purpose. However, I have no details of any of the decision making taken in the formulation of that that public policy including the evidence that might underpin such a finding.
44. I sought further clarification from the parties as to an overall figure of tourism revenue involved and whilst further evidence was produced by the Council I ultimately did not accept it to the Inquiry for procedural reasons. The Council also conceded that evidence was prepared on the basis of the occupation restrictions already being in force and that protecting revenue must be based upon expenditure within the Borough.
45. In *Great Yarmouth BC v Al-Abdin* [2022] EWHC 3476 it was determined that asylum seekers occupying a hotel receive only a small amount of financial assistance and so would not make any significant contribution to the economy. Further that hotels being used in this way are commonly closed to public bookings, as is the case with this hotel and others owned and operated by the appellant. Any contribution from its current occupiers to the wider economy is therefore likely to be limited, particularly when compared with the typical economic value generated by short and medium stay leisure and business visitors.
46. In this case the appellant secured the appeal permission to capture the demand at the time but confirmed in evidence that the restriction targets a small share of demand and therefore cannot protect tourism revenue. However, the appellant also argues that the restriction causes commercial harm by preventing it from hosting longer-stay guests and providing a cushion during the lower demand seasons.
47. In principle tourism revenue could be affected not from a small number of ultra-long stay leisure visitors being turned away, but from the hotel being entirely removed from the visitor market. That said, the Council's witness¹² also confirmed the entire hotel can lawfully be occupied for up to 90 days by any occupant. Whatever conclusions may or may not be drawn from the various data, lack of or otherwise the current use appears to be preventing shorter term stays because occupiers can stay up to 90 days. Therefore, the hotel would not appear to be able to operate as a short stay tourist hotel anyway.
48. For the proposed 90-day restriction to serve a meaningful purpose in protecting tourism revenue, the Council would also need to demonstrate that unmet demand exists. No substantive evidence was submitted that suggests the market in Croydon or the three mile radius the Council used is constrained. Ninety plus day visitors would not appear to displace other tourists who might be more valuable and no substantive evidence that the operation of the hotel is displacing tourists who would otherwise stay elsewhere in the Borough.

¹² BD XX.

49. Restriction might encourage the hotel to revert to its original intended purpose as short-term accommodation but the Council also accepted that the hotel is unlikely to be operational until 2029 at the earliest and that, therefore, the future use cannot be predicted with any certainty. There is also nothing that would prevent current occupiers being moved out and then back after the relevant period so the hotel could continue to be unavailable.
50. Whether the appellant decides to give up an unconstrained use against what was termed a constrained one is simply not something I can be conclusive on. What can be said is that the appellant is likely to have a commercial incentive to continue the current use but the likelihood of the permission being built out at all and then once built, being used as a traditional business/leisure hotel is a function of how lucrative those contracts are, contracts which are not available to me in this appeal. Ultimately, the hotel is not currently available but that is due to other circumstances and the restriction does not appear to incentivise short-term tourism use as visitors could still stay for up to 90 days.
51. On both sides the complexities and subtleties of counter arguments and points made were not entirely substantiated by evidence or made clear with some inherent contradictions and assumptions on both sides. Much of the evidence is also subject to significant uncertainties with limited evidence available to the Inquiry.
52. Having found a useful purpose, in drawing any findings together as best I can on this issue the Council's identified useful purpose is to discourage the use of hotel accommodation for operations that do not support the visitor and tourism economy. Concern about the availability of genuine serviced visitor accommodation for leisure and business visitors in Croydon is one thing, but the appellant has raised genuine and legitimate concerns with the Council's case and the robustness and lack of evidence presented. Overall, I agree that the Council's case has not been borne out sufficiently for me to conclude with any certainty on this appeal, that the protection of tourism revenue should be regarded as a real and substantial useful purpose of the restrictions before me.

Primary healthcare services

53. A number of reports to the Council's Cabinet and Scrutiny and Overview committee have documented perceived pressure on the National Health Service. The reports identified that no healthcare was or has been commissioned for hotel sites by the Government and that health colleagues have found it '*challenging to keep pace with demand*' with outbreaks of infections reported.
54. On the one hand the Council argue the appellant has ignored the actual demographic profile of the people occupying the hotel but could not provide me with any information of individual healthcare requirements. Balanced against that, and where I also have no substantive answers from the Council, even in acknowledging it is a challenging situation, no enforcement action, not even a Planning Contravention Notice to establish baseline information, or any formal enquiries to the nature of the occupants have been made. If they have been they are not before me in this appeal. Similarly, the appellant was unable to provide any assistance on likely health care needs of current or future occupiers, despite operating the hotel.

55. There are asylum seekers who may reasonably require General Practitioner (GP) services and the hotel has been used for such accommodation for a significant number of years. A Council reporting on concerns is clearly one thing but it is ultimately down to the Council, and in the public interest, as to what action, if any they take regarding the well documented concerns they have made public and over a number of years. The Council do not allege in this appeal that there is a change of use from hotel to asylum seeker accommodation and I consider the restriction should relate to the proposed scheme and not existing.
56. Even if GP utilisation is primarily driven by clinical need and demographics as perhaps to length of stay, it would be required on an irregular basis and subject to length of stay. Depending on severity of illness, which would then possibly require emergency assistance most visitors in such a situation would probably see their own GP on return home. Any proportion of such travellers using primary healthcare services would therefore be very limited.
57. This appears to be a case of concern regarding pressure from current occupiers and their particular circumstances rather than from typical leisure and business visitors. The pressure on national and local services from current occupiers is a matter for the Council and other Government Offices and on the evidence before me, use, by any occupier beyond 90 days is unlikely to result in such pressure on primary healthcare services that in the context of this appeal, should be regarded as a useful purpose of the obligation.

The appeal permission and condition 30

58. The appellant contends that the use of the development is '*already amply protected by the terms of the permission and condition 30*' and that there are various tools of enforcement available to the Council that are '*more than sufficient*' concluding that the Council gains nothing from the restrictions, that is that they are not useful.
59. The appeal scheme described the development as a hotel. The reasoning for condition 30 of the appeal permission simply refers to a '*restriction on use*' with the condition stating, '*Notwithstanding the contents of the Town and Country (General Permitted Development) Order 2015 the application premises shall be used for Hotel purposes only and for no other purpose within Class C1 of the Schedule to the Town and Country Planning (Use Classes) Order, 1987 as amended.*'
60. In my opinion, the appellant can only be correct however if the useful purpose relied on pertained to preventing a change of use, it does not and the Council do not allege one has taken place. If the Council had considered a change of use had occurred it is open to them to take any appropriate enforcement action they decide as the Local Planning Authority. The relevant clauses before me provide the ability to control the maximum length of stay of occupants at the hotel regardless of whether there has been a material change of use; this is a different benefit to condition 30.
61. My attention has also been drawn to two appeal decisions¹³ where Inspectors found that conditions limiting occupation duration failed the necessity test in the Planning Practice Guidance. Whilst material considerations and some general similarities can be drawn, those decisions concerned planning conditions, not

¹³ PINS refs: APP/F5540/W/21/3277355 and APP/B3030/W/19/3239439.

s.106 obligations and requirement to determine whether there was a useful purpose. The threshold for necessity in planning conditions and the tests are different, as confirmed by the appellant.¹⁴

62. Further, in the Hounslow Road appeal, details of room facilities were before the Inspector (para. 9) with a 'small' proportion having no windows. That hotel also appears to have had a greater array of other facilities (para. 10) and an external garden. In the Newark appeal the proposal was for holiday accommodation in an area where it would normally have been permitted and as confirmed in that decision, Inspectors have taken different approaches depending on the specific circumstances of the cases presented and ultimately no two cases are directly comparable. They do not therefore alter my views.

Equality and Human Rights and other considerations

63. In light of the statutory test, the Council contend that fact that asylum seekers must be accommodated in accordance with the UK's national and international obligations is not a relevant consideration. The appellant contends that the Council had no regard to the Secretary of State's duties to accommodate asylum-seekers or regard to the duties on the Home Office and the effect of making the occupants destitute. Detailed and novel legal submissions have been made on this issue.
64. In *Epping Forest DC v Somani Hotels Ltd & Secretary of State for the Home Department & Anor* [2026] EWCA Civ 264, the need to provide accommodation for persons present in this country, whether as asylum seekers or otherwise, was found to be plainly capable of being a relevant planning consideration. That case however was not related to the type of appeal that is now before me.
65. While the Equality Act applies to everyone in the UK, immigration status is not itself a protected characteristic. That a public authority has not specifically mentioned the duty is also not determinative of whether the duty has been performed. However, there is no evidence before me to suggest that the Council considered the Public Sector Equality Duty (the PSED) when determining the application.
66. A public authority is required to comply with the PSED in the exercise of its functions. In compliance with s.149 of the Equality Act 2010, in reaching my decision I have had due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The duty does not compel a particular outcome and due regard is the regard which is appropriate in consideration of the circumstances of the particular case. The PSED incorporates a duty of inquiry for the decision-maker to equip themselves with adequate information to make a rational decision. The duty derives by necessary implication from the statutory duty to have due regard.
67. Much is made of this in closing submissions but I note the appellant did not seek judicial review of the Council's decision on the s.106A application due to their failure to comply with the PSED perhaps because they had a right of appeal. Termed as an impediment by the appellant to my determination of the appeal, it is asserted that a useful purpose cannot be founded on an unlawful or improper

¹⁴ Para. 33 appellant's closing submissions.

exercise of a statutory discretion. Further, that as a matter of public policy something cannot be useful if it disregards or breaches other duties. In turn the appellant contends that as the decision maker here I cannot lawfully find these purposes to be useful purposes.

68. Firstly, the Council's compliance with the PSED or otherwise when determining the application does not limit or curtail my authority to determine the appeal. Section 106B grants the same powers as a local authority determining the application and, in effect, I am making the decision on appeal as if the application were made in the first instance. Whatever might have ultimately been decided by a court if the appellant had judicially reviewed the Council's decision on the s.106A application, the duty now falls on me.
69. Secondly, a useful purpose is for me to determine in consideration of the facts of the case and evidence presented. The purpose of an appeal is to determine the merits of the case on first principles and not to review the lawfulness or otherwise of the Council's decision.
70. The failure of this appeal and enforcement of the obligation could affect the living arrangements of the current occupants in either having to be moved out after 90 days and then moved back after a further 28 days, or dispersal elsewhere. As such this would engage Article 8 of the European Convention on Human Rights, set out in UK law within Schedule 1 of the Human Rights Act 1998 which is the right for respect for private and family life. This is a "qualified" right, which means that determining whether it may be infringed involves balancing the fundamental rights of individuals against the legitimate interests of others, and the wider public interest. I return to this below.
71. Returning to the PSED, having due regard means properly considering the aims identified, and how they relate to the function being exercised. The level of due regard considered sufficient in any particular context depends on the facts. A proportionate approach should be taken to the resources spent on duty compliance, depending on the circumstances of the case and the seriousness of the potential equality impacts on those with protected characteristics. The discretion as to what information should be obtained is not at large; it is conditioned by the nature of the s.149, its statutory objective, any relevant code of practice as well as the facts of the case.
72. The Council should have been aware there was a risk that the equal opportunities of persons with protected characteristics could be adversely impacted as they have been aware of the hotel's occupancy since 2014. Neither Planning witness, whilst generally aware of the duty, could address the matter or its significance for the appeal in any detail, leaving clarification for legal submissions. However, and even in accepting it is not their role, the appellant could not provide any data or evidence on levels of occupation or the circumstances of current occupants despite being the current hotel operator.
73. I was mindful of the Planning Practice Guidance in considering how and whether to gather more information, that it is not sufficient to say, 'we do not have the evidence', but that indiscriminate and resource-intensive approaches to collecting diversity data, especially if the data is unlikely to help in any analysis should be avoided. Despite my own questions and although I considered adjourning the Inquiry, no quantitative or qualitative data relating to individuals appeared to exist,

let alone information that could be obtained and made available to the Inquiry within any reasonable timescale, if at all.

74. Even though I have very limited evidence it is reasonable for me to conclude that in a large and fully occupied hotel being used for contingency accommodation for asylum seekers that there are a significant number of individuals, and there are likely to be current occupiers that have protected characteristics of disability, gender reassignment, race and Religion and belief, pregnancy and maternity, sex and sexual orientation. The Council accepted that current occupants are likely to have protected characteristics and removal of the obligation could have the potential to impact on those with protected characteristics but went no further than that.
75. In the Equality Act 2010, race is defined including colour, nationality, and ethnic or national origins. Asylum seekers are people who have fled their home country and it seems to me that this inevitably lends itself to include persons who share a protected characteristic, not as asylum seekers but because they are likely to include persons from certain racial groups who are more likely to be negatively affected by this decision than persons who are not.
76. Focussing on the real-world effects, including on persons with protected characteristics is key to substantive compliance with the PSED. The consequence of dismissing the appeal might be that a current occupant is rendered homeless at some point and enforcement of the obligation would inevitably therefore have an impact.
77. However the length of time the hotel has been occupied as contingency accommodation is significant, no action has been taken by the Council over a number of years and no indication has been given they would do so. Parliament has ultimately allocated the function of determining whether a breach of planning control has taken place to a Local Planning Authority, for example when deciding to issue an enforcement notice. Public interest considerations and adverse impacts would need to be taken into account by the Council when deciding whether to enforce the obligation and any decision to enforce by the Council can be challenged by Judicial Review. In considering a Judicial Review challenge the Court would be able to weigh public interest arguments in the balance (and any Human Rights and adverse equality impacts) when determining whether to quash any decision to enforce.
78. Further, there is no change of use from a hotel alleged by the Local Planning Authority, I am of the view that the obligations relate to a scheme that has not been built yet and the useful purpose relates to prevention of longer term occupation beyond 90 days in unacceptable rooms, regardless of user. I have some doubts therefore that the dismissal of the appeal would have any immediate practical effects; it would simply leave the restrictions in place, and any subsequent steps, including any reasonable compliance/dispersal period and human rights and equality considerations, would be a matter solely for the Local Planning Authority.
79. Whilst I am not aware of any particular or specific process that would be followed were the obligation to be enforced and any action was successful; support is available for asylum seekers who would otherwise be destitute under the powers

set out in sections 95 or 98 of the Immigration and Asylum Act 1999. Existence of these powers should therefore serve to mitigate any impacts.

80. Dismissal of the appeal could result in further expenditure of public resource if occupants ended up having to be housed elsewhere, even on a temporary basis. However, I have no details of the resource and expense involved if this were to happen. The Government has also made a commitment to reducing the number of hotels used for such purposes although again, no substantive evidence or plan is before me in this appeal.
81. The typical length of stay for asylum seekers in contingency accommodation in evidence before me is 223.75 days¹⁵. This significantly exceeds 90 days and were the appeal allowed this would result in individuals accommodated in rooms beyond 90 days without adequate natural light or space, rooms which I consider would be unacceptable for such occupation and by any user. Even if occupiers had to be moved elsewhere and then returned after the relevant period such a break would also offer some temporary respite.
82. There is no duty to give particular weight to the needs of persons with protected characteristics, no duty to achieve the outcome which advantages them most or disadvantages them the least. In such cases an Inspector is not obliged by s.149 to find some countervailing public benefit to set against the greater disadvantage¹⁶. On the evidence available to me, I have sought to understand the potential impacts on persons who share a protected characteristic, of a decision to dismiss the appeal. Throughout I have had due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
83. I have however concluded that that the existing obligation in clause 6.10.1 and 6.10.2 of the agreement pursuant to APP/L5420/W/18/3213506 should continue to have effect without modification in accordance with s.106A(6)(a) because the obligations serve a useful purpose.
84. The wording of the legislation has to be considered on its face and the legislation is clear; the test is whether the obligation no longer serves a useful purpose. If it serves a useful purpose, there appears to me to be no scope in the legislative test to take into account any adverse effects or adverse impact on the public interest that might outweigh the useful purpose, on an application under s.106A. This is unless it somehow serves to undermine or revoke the usefulness of the obligation, which does not appear to be the case here.
85. I have had due regard to the equality aims as required by the PSED, but the harms outweigh benefits in terms of eliminating discrimination against persons with the protected characteristics identified above, advancing equality of opportunity for those persons and fostering good relations between them and others.
86. Although dismissing the appeal would be unlikely to result in the removal of a permanent home for occupiers, it could interfere with the occupiers' rights to a private and family life and home, under Article 8 as set out under the Human Rights Act 1998. Those are qualified rights, and interference with them in this

¹⁵ Independent Chief Inspector of Borders and Immigration.

¹⁶ *Patel v SSCLG & Others* [2016] EWHC 3354 (Admin).

instance would accord with the law and be in pursuance of a well-established and legitimate aim and the wider public interest in the effective operation of the planning system.

87. I conclude it is proportionate and necessary to dismiss the appeal.

Other Matters

88. The representation from the FWRA raised no concerns about the current use and that the restriction would cause unnecessary disruption to the occupants if they had to move and be returned back to the hotel given the restriction. Whilst matters were raised which the appellant consider supports their case, the representation included new submissions and it was not possible for either me or the appellant to question the representative. In such circumstances I afford the written representation limited weight, and it does not alter my views in relation to the main issues in this appeal.

Conclusion

89. For the reasons set out above and having had regard to all other matters raised I conclude that the appeal should be dismissed.

R Aston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Saira Kabir Sheikh, of King's Counsel	instructed by Mr Charlie Austin, Town Legal
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She called

Ellie Evans BA (Hons)	Volterra Partners LLP
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Simon Fowler BSc (Hons) MRTPI	Iceni Projects Limited
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Also present for the appellant:

Charlie Austin	Town Legal
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Archie Hunter	Town Legal
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Professional qualifications not recorded.

FOR THE LOCAL PLANNING AUTHORITY:

Josh Semikula, of Counsel	instructed by London Borough of Croydon
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He called

Bláthnaid Duffy BSc (Hons) MURP MRTPI	Lambert Smith Hampton
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George Clarke BSc (Hons) MSc	London Borough of Croydon
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Also present for the Council:

Georgina Betts MRTPI	Deputy Team Leader - London Borough of Croydon
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Interested persons

Andrew Hayes on behalf of Fitzroy Wakefield Residents Association

DOCUMENTS SUBMITTED TO THE INQUIRY

Document Number	Document name	Submitted by
Document 1	Appellant's list of appearances	appellant
Document 2	Council's opening statement	Council
Document 3	Appellant's opening statement	appellant
Document 4	Statement of behalf of Fitzroy Wakefield Residents Association	Mr A Hayes
Document 5	Site Location Plan and Existing and Proposed drawings	appellant
Document 6	Council's closing submissions	Council
Document 7	Appellant's closing submissions	appellant
Document 8	<i>R (Bracking) v Secretary of State for work and Pensions [2013] EWCA Civ 1345</i>	appellant
Document 9	<i>Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government and Alan Beesley [2011]</i>	appellant