

Story: 'R (ex parte Bokrosova) v Lambeth 2015'

What happens when consultation becomes mixed up with other types of engagement – the perils of unaffordable expectations

'R (ex parte Bokrosova) v Lambeth 2015' was a classic case of judicial review resulting from the conflation of consultation and another form of engagement. The Consultation Institute calls it "an excellent illustration of some of the perils of enthusiastic co-production and the dangers of inadequate financial clarity."

The 1985 Housing Act, under Section 105, requires councils to make 'such arrangements as it considers appropriate' to involve tenants in significant changes to housing management, and in this case, this was held to amount to 'consultation'. The authority adopted a 'detailed and sophisticated' programme of consultation. This included significant elements of co-production, in an attempt to secure the agreement of tenants to major changes that would address serious deficiencies in the housing stock. This process culminated in the identification of five separate options. One was total refurbishment. Two were partial refurbishment, with some demolition. The other two were for more radical redevelopment.

During the course of the process, the council became concerned that the first three options could not be funded, but did not share the financial modelling with the consultative working group set up to look at funding aspects. When Lambeth eventually withdrew the unaffordable options whilst the consultation was still proceeding, tenants mounted a legal challenge claiming the decision was unlawful. The Consultation Institute points out that the case was 'a clear interpretation of the S.105 consultation requirement' and 'points towards the application of Gunning Principles.'

The legal view was that, "Section 105 does not refer to "consultation", but it is, in substance, an obligation to consult... The Section 105 arrangements in this case consisted of the detailed and sophisticated programme of consultation... The decision had two relevant effects. It was a decision to renege on those arrangements, and it meant that the council was unable, before making a decision on the regeneration of the estate, to consider the representations which would have been generated had the arrangements been followed."

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