

Designing for Equality and Best interests of the Child



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This talk

- Two topics: designing for equality
- Best interests of the child

Designing for equality: a difficult challenge?



Designing for equality

- “*Consideration of diversity should be at the heart of planning activities*”- [2005 Office of the Deputy Prime Minister guide](#) (a bit old now- but still relevant!)
- Planning is about people, and people are a diverse bunch
- This talk will consider how we design our plans and how we design our projects with equality in mind- bearing in mind the risk of legal challenge if we don’t do a good job on this
- ***Also well worth a read:*** [London Mayor’s SPG on Equality and Diversity](#)
- ***See also*** [this helpful short guide from the TCPA on Equality Impact Assessments](#)

Designing for equality: the plan-making stage

- Age of consultees- almost always older.
How do you engage with young people?
- Traveller sites- planning should allow for different lifestyles
- Provision of parks and community benefits- where will these be situated, and where are they needed?

In the 1930s-1950s, New York City's chief planning officer made sure local parks and swimming pools were mostly built in white-majority districts- there were hardly any in black-majority districts. Blatant racism...



Designing for equality: the plan-making stage

- **Consider-** have you assessed your plan for equality issues (EqIA)?
 - Have you identified what those issues are?
 - Do you have policies in place to address them?

Designing for equality: the project stage

- **Escape routes** in e.g. the event of a flood or fire: will wheelchair users be able to escape?
- Width of roads/ paths- and steps
- Will your proposals remove an **important benefit** for protected groups? E.g. demolition/change of use of an important building used by older people: how will you make up the loss for that protected group?
- Large developments: consider **offering** a significant benefit to protected groups such as a community hub, school or museum. Will engage PSED in your favour

Designing for equality: the project stage

- Toilet provision:
 - **Gender- neutral?** Though see recent government opposition to this vs London Mayor support
 - **Ratio of male-female toilets?** Equal number $=/=$ equal experience
 - **Baby change facilities**

Designing for equality: the project stage

- Toilet provision:
 - **Changing places toilets:**
 - Very important for users with profound and multiple learning disabilities, as well as people with other physical disabilities such as spinal injuries, muscular dystrophy and multiple sclerosis
 - These toilets provide the right equipment including a height adjustable adult-sized changing table



Designing for equality: the project stage

- Toilet provision:
 - **Changing Places toilets** are now mandatory in England for many buildings— Approved Document M of the Building Regs (2021 change):
 - Assembly, recreation and entertainment buildings with a capacity for 350 or more people. Or a collection of smaller buildings associated with a site used for assembly, recreation or entertainment such as zoos, theme parks and venues for sport and exhibitions with a capacity of 2000 people or more;
 - Shopping centres/malls or retail parks with a gross floor area of 30,000 m² or more;
 - Retail premises with a gross floor area of 2500m² or more;
 - Sport and leisure buildings with a gross floor area over 5000m²;
 - Hospitals and primary care centres; f. Crematoria and cemetery buildings

Designing for equality: the project stage

- Toilet provision:

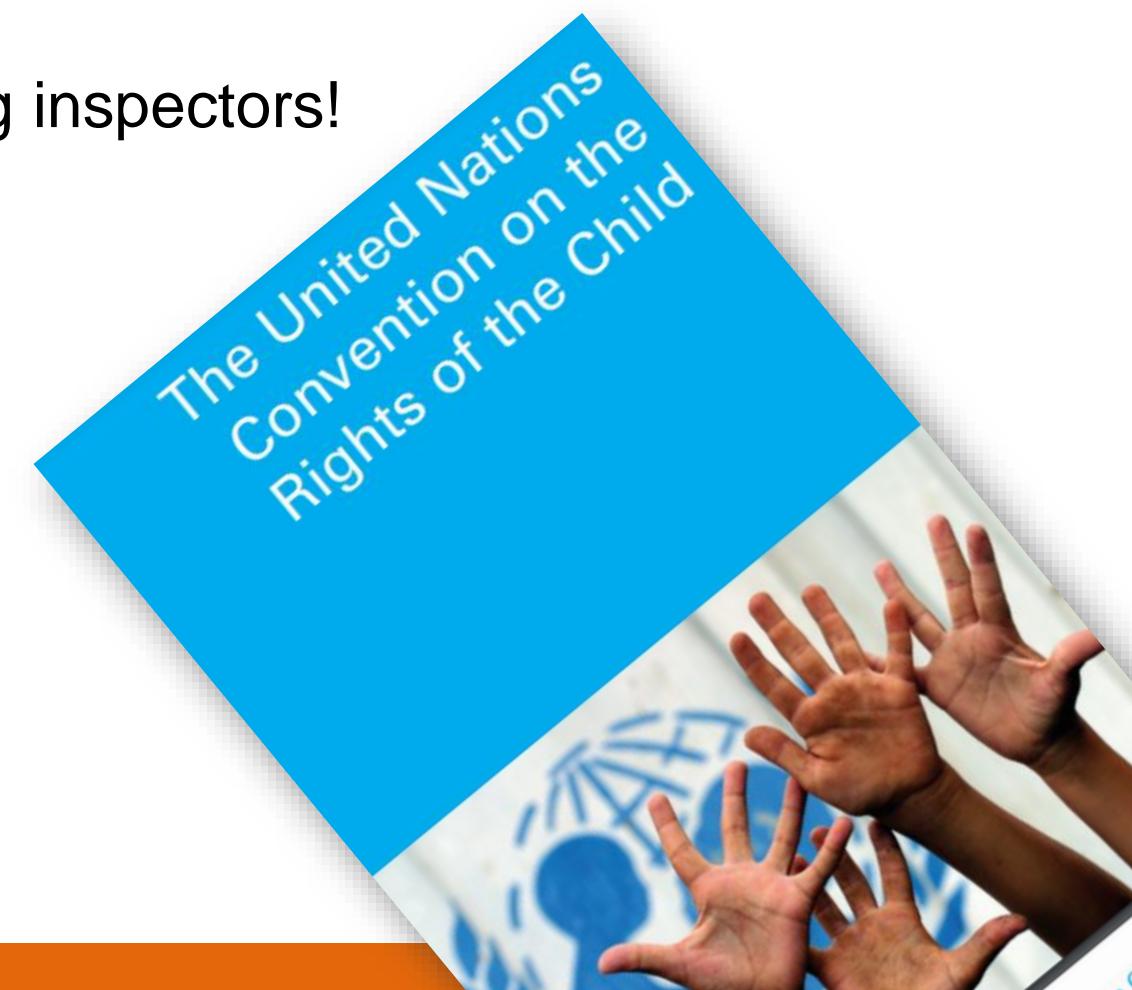
If you think carefully about loos, you can't lose...

Best interests of the child



Best interests of the child

- Decision makers have a legal duty to have regard to the best interests of children
- This includes local authorities and planning inspectors!



Best interests of the child

- Key case: **ZH (Tanzania) v SSHD** [2011] UKSC 4
- Not a planning case- but:
- Applied in **Stevens v SSCLG** [2013] EWHC 792 (Admin), Hickinbottom J:
 - a planning case (about travellers)
 - The judge set out at [69] a number of helpful guidelines relating to how the rights of children should be considered in the planning process.
 - These were later endorsed by the Court of Appeal in **Collins v SSCLG** [2013] EWCA Civ 1193.

Best interests of the child: *Stevens* principles

1. Article 3 of the UN Convention on the Rights of the Child “requires a child's best interests to be a primary consideration.”
2. This requires the decision-maker, first, to **identify what the child's best interests are.**
3. In the planning context, a child's rights “*are likely to be consistent with those of his parent or other carer who is involved in the planning decision-making process*” and “*the decision-maker can assume that that carer will properly represent the child's best interests, and can properly represent and evidence the potential adverse impact of any decision upon that child's best interests.*”

Best interests of the child: *Stevens* principles

4. Once identified, “*although a primary consideration, the best interests of the child are not determinative of the planning issue.*”
5. However, “*no other consideration must be regarded as more important or given greater weight than the best interests of any child, merely by virtue of its inherent nature apart from the context of the individual case.*”
6. Further, “*the best interests of any child must be kept at the forefront of the decision-maker's mind as he examines all material considerations and performs the exercise of planning judgment on the basis of them; and, when considering any decision he might make... he needs to assess whether the adverse impact of such a decision on the interests of a child is proportionate.*”

Best interests of the child: *Stevens* principles

- While Hickinbottom J limited his analysis in *Stevens* to cases where it was alleged that a planning decision would interfere with a child's **Article 8** rights, it was accepted on behalf of the Secretary of State in the later Court of Appeal case *Collins* that:

"in light of the reasoning in ZH in particular (at [21]), there is a broad consensus in support of the idea that in all decisions concerning children, their best interests must be of primary importance, and that planning decisions by him ought to have regard to that principle" (emphasis added)

- So: principle applies in any planning decision involving children

Conclusion

- Equality law can seem like a different world- but it *does* apply to planning!
- If you understand equality impacts at an early stage, and seek to overcome any issues *early on*, your local plan or planning permission will have a much better chance of surviving a High Court challenge
- Conversely, if you are opposing development, always check that the LA/developer/Inspector has properly considered the equality issues/ best interests of children
- Seek legal advice if in any doubt!

Ideally from Landmark's crack team of equality/planning law specialists...

Thank you for listening

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