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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
PLANNING COURT  
[2021] EWHC 3531 (Admin)



No. CO/3240/2021

Royal Courts of Justice

Tuesday, 7 December 2021

Before:

MRS JUSTICE LANG

B E T W E E N :

LONDON BOROUGH OF BRENT

Appellant

- and -

(1) SECRETARY OF STATE FOR  
LEVELLING UP, HOUSING AND COMMUNITIES

(2)

YEHUDA ROTHCHILD

Respondents

MR E. ROBB (instructed by Prospect Law Ltd) appeared on behalf of the Appellant.

THE FIRST RESPONDENT was not present and was not represented.

MR G. MACKENZIE (instructed by Direct Access) appeared on behalf of the Second Respondent.

# JUDGMENT

MRS JUSTICE LANG:

1 The appellant seeks permission to appeal, pursuant to section 289 of the Town and Country Planning Act 1990 ("TCPA 1990"), against the decision of an Inspector appointed by the first respondent ("the Secretary of State"), made on 24 August 2021, to quash an enforcement notice served by the appellant in respect of property at 51 Nutfield Road, London NW2 7EA ("the Property").

2 The enforcement notice, which was issued on 11 December 2019, specified as the alleged breach of planning control:

"Without planning permission, a material change of use of the premises to a House in Multiple Occupation (HMO) and flats, and the erection of a single storey rear extension to the premises."

The notice required the second respondent, who is the Company Secretary of the company which owns the property, to convert it back into a single dwelling house.

3 The second respondent appealed, pursuant to the grounds set out in section 174(2)(a),(b),(c),(f) and (g) of the TCPA 1990.

4 The principal issue the Inspector considered on ground (b) was whether the matters alleged in the enforcement notice i.e. the change of use alleged, had occurred as a matter of fact.

5 The principal issue the Inspector considered on ground (c) was whether the erection of a single storey rear extension benefitted from the provisions of permitted development for the purposes of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO").

6 The Inspector allowed the second respondent's appeal on both grounds, and quashed the enforcement notice. On ground (c) the relevant paragraphs in the decision letter are at 20 and 21.

7 The appellant's ground of appeal in the challenge under section 289 TCPA 1990 is:

"Whether the Inspector misdirected himself in law, when assessing whether the single storey extension had been built in accordance with the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the "GPDO")."

8 In a letter dated 10 November 2021, the Secretary of State, made it clear that it agreed that the Inspector had erred in law and that it would not be defending the appeal. Its reasoning was set out as follows:

"There is 1 Ground of challenge: The Inspector misdirected himself in law, when assessing whether the single storey extension to the Property had been built in accordance with the requirements of the GPDO. After careful review and consideration, the Secretary of State accepts that the Inspector erred in failing to consider the use of the property at the time of the extension and whether the rear extension was that granted prior approval in 2015 and that the Decision was consequently unlawful."

- 9 Mr Mackenzie has said all that could be said on behalf of the second respondent in seeking to resist the grant of permission. However, in my judgment, it is arguable that the Inspector did err in the manner identified by the appellant and the first respondent, and therefore permission to appeal is granted.
- 10 PD 52(D) paragraph 26 permits the appellant to rely on further evidence with the leave of the court. I consider that the appellant ought to be permitted to rely on the witness statement of Mr Wickes as it relates to the conduct of the appeal by the Inspector in the light of the submissions made by the Council, and the evidence provided by the Council. It does not seek to rely on new material that was not before the Inspector.
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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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5 New Street Square, London, EC4A 3BF  
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CACD.ACO@opus2.digital*

This transcript has been approved by the Judge.