

Case Name: *Gluck v Secretary of State for Housing, Communities And Local Government & Anor* [2020] EWCA Civ 1756 (21 December 2020)

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Commentary:

The Court of Appeal dismissed the challenge of the appellant, Mr Gluck, against the High Court's decision to uphold an inspector's decision that the 56-day period for a decision regarding prior approval had been extended.

In March 2018, the appellant applied to the Council for prior approval for a change of use from offices to residential under Class O of part 3, schedule 2 to the GDPO. The applications related to two sites in Crawley and the appellant wished to convert them into 75 apartments. The appellant argued that the Council had failed to notify him of their decision within the 56-day period required by the GDPO and therefore prior approval was deemed to be granted. Despite the deadline having passed, the Council had issued decision notices refusing the appellant's applications on grounds of unacceptable noise levels. The appellant appealed to the Secretary of State, but the appeals were dismissed on the basis that the occupiers of the apartments would be exposed to the occurrence of noise at any time, which would significantly affect their quality of life.

In respect of the timing of the Council's decision, there had been an email from the appellant's agent stating Mr Gluck's willingness to extend the 56-day period. The Secretary of State agreed with the Council's argument that in accordance with Article 7(c) of the GDPO, this was sufficient written notice that a longer determination period had been agreed and that the Council's decision had been made before that period expired.

The appellant challenged the Secretary of State's decision pursuant to section 288 of the Town and Country Planning Act 1990, but the claims were dismissed by the judge, so the appellant appealed against the decision.

The Court of Appeal dismissed the appeal on grounds that there had been a time extension. However, the judges were in disagreement in respect of Article 7(c) and whether it meant that a longer period must have been agreed by the applicant and the authority (i.e. both of them) in writing. One was of the view that "an agreement emanating from one party will not satisfy article 7(c) of the GDPO" whilst the others said that the agreement only needed to be in writing and the fact that there was an agreement to extend the deadline makes it "unnecessary for us to decide the one point of law on which differing views have been expressed... whether it is necessary for written evidence of an oral agreement".

Case summary prepared by Lida Nguyen