

Case Name: *Guerry, R (on the application of) v & Ors* [2018] EWHC 2899 (Admin) (01 November 2018)

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Commentary: A challenge based on errors in the Officer's Report in relation to the daylight assessment to the grant of planning permission was upheld and the permission quashed.

The Officer's Report stated that the VSC (vertical sky component) and NSL (no skyline) tests would normally be considered sequentially. However, the BRE Guide provides that "both the total amount of daylight and its distribution within the building are important"

The Judge stated (para 41) "In my judgment the officer's report is flawed by misapplication of the BRE methodology. By virtue of the error Councillors were given scant information on NSL compliance (daylight distribution). Councillors would probably not have understood that failing to meet the guideline for the distribution of daylight within a building is a separate distinct reason why daylight might be adversely affected and the need to form a judgment on the implications of any non compliance with the Guide. I do not accept Mr Ormondroyd's submission that the NSL results were simply additional detail. The BRE Guide is clear that both the total amount of daylight and the distribution of light within a building are important."

The relevant details of the report were considered and the Judge concluded:

"52. In my judgment, in light of the evidence set out above, Councillors were significantly misled because:

- a) They were not told that a reduction in the distribution of daylight is a separate distinct reason why daylight in the Pennard Road properties may be adversely affected.
- b) They were not informed that the NSL results were indicating losses in daylight distribution in the Pennard Road properties, some of which appear significant, although much might depend on the use of the rooms in question.
- c) In contrast, where it existed, NSL compliance was drawn to their attention as a reason for them to take comfort in the overall reduction in amount of daylight at the relevant properties.
- d) Councillors were not therefore in a position to form a judgment on the impacts of daylight distribution at properties on Pennard Road or aware that they needed to do so."

It was held that the misleading nature of the Officer's Report in relation to impacts on daylight at the relevant properties was material and the decision to grant the permission was therefore unlawful. Relief was not refused under Section 31 of the Senior Courts Act because it did not appear to be highly likely that the outcome would not have been substantially different if Councillors had been made aware of a separate distinct reason why daylight at the Pennard Road properties might be adversely affected by the proposed development.

The Judge also held that although the BRE Guide was not expressly incorporated into the

relevant local plan policy, "if the Council chooses to apply the BRE guide it must do so properly".

Town Legal acted for the Interested Party

Case summary prepared by Susannah Herbert