Case Name: *Binning Property Corporation Ltd v Secretary of State for Housing, Communities and Local Government & Anor* [2019] EWCA Civ 250 (28 February 2019)

Full case: Click Here

Commentary: The Council had issued two enforcement notices in respect of land owned by the Claimant. One of those enforcement notices was upheld on appeal to the Secretary of State and the Claimant applied under section 289 of the Town and Country Planning Act 1990 for leave to appeal to the High Court against the decision to uphold the enforcement notice. The High Court refused leave to appeal and the Claimant appealed that decision to the Court of Appeal.

It is well-established (following Wendy Fair Markets Ltd. (Strandmill Ltd.) v Secretary of State for the Environment [1996] J.P.L. 649, Prashar v Secretary of State for the Environment, Transport and the Regions [2001] EWCA Civ 1231 and Walsall Metropolitan Borough Council v Secretary of State for Communities and Local Government [2013] EWCA Civ 370) that the Court of Appeal has no jurisdiction to hear an appeal against a refusal of an application for leave to appeal under section 289(6). The Claimant argued that significant changes to the regime for challenging planning decisions in the courts had been made since the previous case law. In particular, there had been changes to the Aarhus cost capping regime and a permission stage had been added to proceedings challenging certain planning decisions under section 288 of the 1990 Act.

In line with previous jurisprudence, the Court of Appeal rejected these arguments. Section 54(4) of the Access to Justice Act 1999 states that no appeal may be made against a decision of a court to give or refuse permission unless there are other rules of court providing for such a right. Changes to the Civil Procedure Rules (rule 52.10) have established such a right for section 288 challenges, but no such right has been established for section 289 challenges.

Case summary prepared by Ricardo Gama