

Case Name: *T & P Real Estate Ltd v London Borough of Sutton* [2020] EWHC 879 (Ch) (21 April 2020)

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Commentary: The High Court has struck out the claim by T & P Real Estate Limited (the Claimant) in the Business and Property Court, who sought a declaration to confirm (a) the proper interpretation of the Article 4 Direction made by the Defendant Council and (b) that the Claimant's proposed development, a change of use from office to residential at Sutton Park House, fell within an exception to an Article 4 Direction made by the Defendant, London Borough of Sutton.

The Town and Country Planning (General Permitted Development) Order 1995 had the effect of granting planning permission for classes of development identified in the relevant Order without specific application. Change of use from office (B1) to residential use (C3) was one of the classes of development permitted.

In December 2014, prior approval was granted to a company (the previous owner) for the change of use from office to residential use. However, that scheme was never implemented and planning permission pursuant to that prior approval lapsed in December 2017.

The Defendant Council had taken steps in November 2013 to issue an Article 4 Direction to remove the permitted development rights unless the development had completed by 29 January 2015 (when the Article 4 Direction would come into effect). However, by December 2014, the Secretary of State had modified the Article 4 Direction with an exception for any building or land which had the benefit of a prior approval granted before 29 January 2015. Therefore the Claimant argued that the change of use which had prior approval before that date was excluded from the Article 4 Direction.

In March 2019, the new owner, Lawlor (Holdings) Limited, a company related to the Claimant, made an application for prior approval in respect of a new development scheme, as with the old scheme, for a change of use from office to residential use. The Defendant Council refused the application on the ground that the prior approval had lapsed. The refusal has been appealed by way of section 78 (Town and Country Planning Act 1990) to the Planning Inspectorate and a decision is awaited. Whilst this decision is in the process of being determined, the Claimant issued a claim in the Business and Property Court by way of Part 8 CPR proceedings seeking a declaration of the proper interpretation of the Article 4 Direction made by the Defendant and to confirm that its proposed development constitutes permitted development pursuant to Class O of the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2015.

The Court struck out the claim on grounds that the Claimant had brought a claim under Part 8 CPR Proceedings alongside Lawlor's section 78 appeal, in parallel proceedings, without conforming to the usual procedures for challenging a public law decision. The Court held that it was an abuse of process to bring the proceedings when the same point is already in the process of being determined. Further, this was exclusively a public law issue and it was a misuse of the Part 8 procedure as there was insufficient private law interest to justify its use.

Case summary prepared by Lida Nguyen