Case Name: *Manchester City Council v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 1920 (16 December 2021)

Full case: Click Here

Commentary:
The case involved a planning inspectors decision to refuse to impose conditions on the grant of planning permission on the ground they were unnecessary. The Court of Appeal upheld the ruling by Knowles J in the High Court that the planning inspector made an error of law in coming to this conclusion, and such a condition was necessary.

On 23 October 2019, Manchester City Council served an enforcement notice in relation to 3 Grandale Road, alleging a breach of planning control for a material change of use from C3 dwellinghouse to four commercial units with various uses. The recipients appealed to the Secretary of State under section 174 of the TCPA 1990, under ground (a): planning permission ought to be granted for the change of use. Under section 177(5), such an appeal is deemed as an application for planning permission for the alleged breach, which the Secretary of State may grant under section 177(6). The Council opposed the appeal, contending that planning permission ought not to be granted and, failing that, conditions should be imposed to limit use of the four units to the their specific current uses.

The inspector decided to grant planning permission for "material change of use of a dwellinghouse (Class C3) to form four commercial units operating as a travel agent (Class A1), 2 x couriers' offices (Class B1) and therapy/medical treatment room (Class D1)". The found the Council's proposed conditions to be unnecessary.

The Secretary of State sought to uphold the inspector's decision. They contended that the planning permission conceived of the four commercial units as a single planning unit, with sui generis mixed use across the whole property. Lewison LJ disagreed, and agreed with the Council's view that the planning permission appeared to grant planning permission for the commercial units as four distinct planning units. He noted that the inspectors decision letter did not identify the extent of the planning unit(s), and made no mention of mixed use. It did, however, describe the breach as a change of use from a dwelling house "to form 4 commercial units". The reference to the specific use class of each unit, as well as the specific type of use within that class, also pointed to four distinct planning units (if the units were to be taken as a whole sui generis use, there would be no need to specify use classes).

The consequence of this finding was that, under the planning permission (as granted) each unit would be deemed to fall within the stated class (rather than sui generis), allowing it to benefit from changes of use within the use class pursuant to section 55(2)(f). The inspector had therefore made an error of law in their decision, as the condition preventing such change of use was not unnecessary.

Case summary prepared by Jed Holloway