

Case Name: *Sage v Secretary of State for Housing, Local Government and Communities*
[2021] EWHC 2885 (Admin) (28 October 2021)

Full case: [Click Here](#)

Commentary:

This was an application under s.288 of the Town and Country Planning Act 1990 for review of an Inspector's decision to refuse an appeal against the refusal by Bromley LBC of an application for a Certificate of Lawful Use ("CLU"). The application for a CLU concerned Mr Sage's use of an out-building as a gym for his business as a personal trainer.

Mr Sage claimed that the Inspector's decision (i) took an immaterial consideration into account in her decision, namely "visual disturbance" caused by the use, and that the decision was (ii) irrational and (iii) vitiated by legally inadequate reasoning. All three grounds were rejected by the Court and the application dismissed.

Immaterial Consideration

The Inspector had not found any noticeable increase in noise or disturbance to neighbours as a result of the use as a gym. She then found that noise was "not the only factor to consider" and considered "visual disturbance", given that the garden was small and visible from rear windows and gardens of neighbouring dwellings. The claimant argued this type of disturbance was immaterial as it did not feature in the non-exhaustive list in the Planning Practice Guidance of issues the decision-maker "may wish to consider" in determining whether there had been a material change of use. The judge rejected this argument, holding visual disturbance was a relevant aspect of environmental impact, and emphasised that the list of mandatory considerations in the PPG did not rule out possible further considerations.

Adequacy of reasons

The Claimant argued that the Inspector had not explained why there was visual disturbance from the four or five daily visitors. The Court again rejected this submission. It was held that in setting out the passage which was said to be inadequately reasoned in context, there was no deficiency in reasoning and that it was a "perfectly straightforward expression of the planning judgment on the issues the Inspector was seeking to resolve".

Irrationality

The Claimant alleged that it was irrational to reach the conclusion the Inspector did on disturbance, visual or otherwise, in view of the evidence. Neighbours had said they were not disturbed by the use of the property, the acoustic consultant's (undisputed) report showed that there was no noise disturbance from the comings and goings and the Inspector had said nothing to suggest that the report had not been accepted. The visual effect could only be seen from the upper windows of the neighbours and seeing other people walk through the garden for the short time it took could not rationally be

regarded as a disturbance. On this ground the Court found that the matter was one of planning judgment and that what the Inspector considered neighbours, objectively, would be aware of and disturbed by was for her and that there were obvious enough sources for it and in the circumstances of a small property in a tight-knit residential area, the judgment she reached could not be described as irrational. Accordingly, the application was dismissed.

Comment: The most interesting feature of this judgment is not its outcome, but rather the comments made by Sir Duncan Ouseley on the Planning Practice Guidance. He noted that the guidance suffers from two main problems. The first is that it is capable of leading to the concept of a material change of use or a purpose incidental to the use of a dwelling house, being misunderstood: a business use in a dwelling house may be secondary to the primary residential use of the dwelling house but may nevertheless create a material change of use (i) where that use is not merely ancillary to the residential use such that there is just one use or (ii) where the use is not reasonably incidental to the enjoyment of the dwelling house as such. The second is that the guidance is apt to mislead as to the limited relevance of environmental impact: a material change of use can be made without any adverse environmental impact at all – the crucial test being whether there has been a change in the character of the use.

Case summary prepared by Stephanie Bruce-Smith