Case Name: *London Borough of Hackney v Secretary of State for Housing Communities And Local Government & Ors* [2021] EWHC 720 (Admin) (25 March 2021)

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Commentary:
The Claimant (LB Hackney) challenged the decision of 26 May 2020 made by an Inspector, appointed by the First Defendant (the Secretary of State), in which the Inspector allowed an appeal by the Second and Third Defendants (the Developers) against an enforcement notice issued by the Claimant on 27 June 2018, and quashed the enforcement notice.

The Inspector's decision was quashed by the Court and will be reconsidered in relation to the relevant grounds of challenge by a different Inspector.

The enforcement notice related to the change of use of a building at an industrial estate in Hackney, London from Class B8 (storage or distribution centre) to Class C3 (flats) under the Town and Country Planning (Use Classes) Order 1987. The building was converted into 25 self-contained apartments, on the ground floor (10 units) and first floor (15 units) of the building, relying initially on prior approvals having been granted (and deemed to have been granted) under permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The Developers also added some unauthorised elements: an external staircase to the western elevation, a single storey extension to the western elevation, and the installation of new windows, doors and roof lights.

LB Hackney began an enforcement investigation and when the Developers applied to discharge conditions under the prior approvals, LB Hackney refused those. LB Hackney then brought in an Article 4 direction disapplying permitted development rights for the conversion from B8 to C3, so the Developers applied for retrospective planning permission for both the conversions to 15 units and to 10 units. LB Hackney refused to grant permission for both.

LB Hackney then issued an enforcement notice and stated that the change from warehouse to flats and the external alterations had been carried out without permission, that substandard accommodation had been created, and required the Developers to cease the use of the flats and return them to their original condition and use (as B8 storage).
As a result of an appeal against the enforcement notice, the Inspector quashed the notice. LB Hackney then filed a claim under both section 288 TCPA 1990 and an appeal under section 289 TCPA 1990 against the Inspector's decision.

LB Hackney's first ground of challenge was that the Inspector had erred in law in allowing the appeal on the previous ground (c) (ground (c) had been that there was no breach of planning control on the ground floor of the building). The Defendant / Respondents accepted that there were inconsistencies in the Inspector's reasoning and interpretation of caselaw on this point, so it will be remitted to another Inspector and re-determined.

The second ground of challenge was that the Inspector had erred in law in allowing the appeal on the previous ground (a) (ground (a) had been that planning permission was granted, on the application deemed to have been made under section 177(5) TCPA 1990, for the development already carried out on the first floor of the building).

Lang J held that the Inspector had not properly considered (under section 38(6) Planning and Compulsory Purchase Act 2004) whether the development accorded with the development plan as a whole. Additionally, the Inspector made two other significant errors in the decision, in relation to outlook in Policy DM2 and the space standards in the London Plan. Because those matters could affect the overall planning balance, Lang J allowed the application for statutory review under section 288 TCPA 1990 and quashed the Inspector's decision. She held that the appeal under ground (a) should be considered by a different Inspector, who would be able to approach it with a fresh mind

Case summary prepared by Lucy Morton