Case Name: *Manchester City Council v Secretary of State for Levelling Up, Housing and Communities & Anor* [2022] EWHC 1062 (Admin) (10 May 2022)

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Commentary:
This appeal was brought by Manchester City Council ("the Council") under section 289 of the Town and County Planning Act 1990 ("TCPA 1990") in respect of the Planning Inspectorate's validation of an enforcement appeal. PINS had accepted that the enforcement notice appeal should proceed on ground (a) of section 174(2) of the TCPA 1990. The Council argued that a ground (a) appeal was precluded by virtue of section 174(2A) and (2B). The Council's appeal was allowed.

The issue before the court was the interpretation of Section 174(2A) and (2B) of TCPA 1990, namely the meaning of "related application". Section 174(2A) provides that an appeal may not be brought on ground (a) (i.e. that planning permission ought to be granted) in circumstances where an enforcement notice was issued after the making of a related application for planning permission. Section 174(2B) defines an application as being "related to an enforcement notice" if granting permission for the development "would involve granting planning permission in respect of the matters specified in the enforcement notice as constituting a breach of planning control".

The application for planning permission was for the change of use of the ground floor to a shop, alterations to the front and the erection of a first floor rear extension and installation of a rear roof dormer to create a 3-bed duplex flat. The enforcement notice, by contrast, related only to the first-floor rear extension and rear roof dormer. As the substance of the development being considered under the planning application was "significantly different" to that which would be considered under the ground (a) appeal, the Planning Inspectorate had maintained that section 174(2A) did not preclude a ground (a) appeal.

Mr Justice Lane held that the planning application clearly encompassed the building operation of the first-floor extension and rear dormer specified in the enforcement notice. His reasoning was that if the Council had granted permission for the totality of the development applied for, it would have granted permission inter alia for these operations, and thus "for the matters specified in the enforcement notice as constituting a breach of planning control". It followed that a plain and ordinary reading of statute led to the conclusion that there was no need for the matters specified in the enforcement notice and those applied for as part of the planning application to be coincident. By including the relevant operations, the planning application (and any appeal against refusal) did cover the very matters specified in the enforcement notice.

The appeal was therefore allowed.

Commentary: It is worth noting that the Levelling Up and Regeneration Bill, published the day after this judgement (summarised here), seeks to amend sections 174 (2A) and (2B) in order to further tighten the scope for appeals against enforcement notices. However, the amendments, if adopted, would not appear to change the outcome or relevance of this decision.

Case summary prepared by Stephanie Bruce-Smith