

Case Name: *Wells, R (On the Application Of) v Welwyn Hatfield Borough Council* [2022] EWHC 3298 (Admin) (20 December 2022)

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Commentary:

Welwyn Hatfield Borough Council ("the Council") granted retrospective planning permission for retention of an existing pool enclosure at a residential property in Potters Bar. The Claimant (whose property backs onto the garden of the property with the pool enclosure) applied for judicial review of the Council's decision. The grounds of challenge were as follows:

1. It was procedurally unfair for the Council not to have viewed the impact of the development from the Claimant's property;
2. It was irrational to grant planning permission without having viewed the impact of the development from the Claimant's property; and
3. There was a material error of fact/an immaterial consideration was taken into account in a letter from the Council.

The court rejected ground 1 on the basis that the Council clearly consulted the Claimant, the Claimant had the opportunity to make representations and the Claimant's representations were fully considered (in line with the Council's Statement of Community Involvement). There was no obligation on the Council to visit the Claimant's property before deciding the planning application. The Claimant did not demonstrate (as it would be required to do following the decision *R (oao Plantaganet Alliance) v Secretary of State for Justice and Others* [2014] EWHC 1662) that no reasonable decision-maker in the Council's position could have been satisfied that it possessed the information necessary for its decision without visiting the Claimant's property.

The court also rejected ground 2, concluding that the decision to grant permission was not unreasonable and the investigation undertaken by the Council was not unreasonable. The Delegated Report dealt with the Claimant's objection in relation to lack of engagement and landscaping and found that they do not comprise a reason why planning permission should be refused. The Delegated Report then concluded that the relevant policies would be complied with. These were matters of planning judgement in relation to which it is particularly difficult to find irrationality (see *R (Newsmith Stainless Ltd) v Secretary of State* [2001] EWHC Admin 74).

Ground 3 stems from a letter from a planning officer of the Council where he said that only one objection (from the Claimant) had been received on the application and that it was important to note that there was no objection from the Claimant's neighbouring property "which I consider is the property which could be most affected by the pool enclosure as it is sited immediately adjacent to the common boundary between the two properties". However, the court did not consider it clear that this was a mistake of fact

and found that there was nothing in the Delegated Report that suggests the officer's assessment was carried out on the basis that the neighbouring property was the property most affected, or based on any comparative analysis of which property would be the most affected.

As such, ground 3 was also rejected and the Claimant's application for judicial review was dismissed.

Case summary prepared by Nikita Sellers