

**Case Name:** *LW Zenith Ltd, R. (On the Application Of) v Secretary of State for Levelling Up, Housing And Communities* [2022] EWHC 3317 (Admin) (21 December 2022)

**Full case:** [Click Here](#)

**Commentary:**

This was a successful challenge to a decision of an inspector, appointed by the Secretary of State, dismissing an appeal under section 78 of the Town and Country Planning Act 1990 against the authority's refusal to grant approval under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "GPDO").

Class O permits a change of use from Class B1a office to residential use – subject to certain requirements. The claimant wanted to use those rights to change the use of a three storey office building into 34 residential flats. The authority refused approval on the basis that the permitted development right had been removed by an Article 4 Direction. The inspector decided that the permitted development right had not been removed, although the appeal was still dismissed.

The habitable rooms of the flats were required to have adequate natural light – a requirement not met by 11 of the 34 residential flats. Planning permission was however granted in 2019 for operational works which would have facilitated the necessary light. The inspector found that the imposition of a condition to require completion of the 2019 permission was not a proper use of a condition, and that even if it were possible to word a condition to require this development before any permitted change of use occurred, that would necessitate work beyond the scope and complexity level of the prior approval process. Supplementary comments and replies between the inspector and the authority on this issue were not shared with the claimant.

The claimant challenged the inspector's decision on three grounds. Grounds 1 and 2 were that the inspector misinterpreted the GPDO, Planning Policy Guidance and the National Planning Policy Framework and / or that they had regard to irrelevant considerations and failed to have regard to relevant considerations. Ground 3 was that the inspector acted unfairly by failing to disclose to the claimant the authority's supplementary comments or by failing to notify the claimant that they intended to determine the appeal on another basis.

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*Case summary prepared by Amy Penrose*