

Case Name: *Stratton, R (On the Application Of) v The London Borough Of Enfield* [2022]
EWHC 404 (Admin) (25 February 2022)

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Commentary:

This case concerned a challenge by a neighbour (the “Claimant”) to the grant of planning permission for a residential extension by the London Borough of Enfield (the “Defendant”). The Defendant accepted that the planning permission had been granted unlawfully, as the relevant planning officer had relied on the mistaken understanding that the Claimant’s property had a bricks and mortar extension at its rear. The matter before the Court was whether substantive relief should be withheld pursuant to Section 31(2A) of the Senior Courts Act 1981.

Section 31(2A) of Senior Courts Act 1981 provides that “the High Court must refuse to grant relief on an application for judicial review (...) if it appears to the Court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred”.

The Defendant argued that the planning permission the subject of the proceedings would still have been granted even if the error identified by the Claimant had not been made. In particular the Defendant sought to rely on the fact that the officer, when making the relevant decision, would have considered the fall-back argument that if permission were refused a similar extension could have been constructed under permitted development rights. The judge held that it is not enough to acknowledge that the existence of a fall-back argument represents a material consideration, one must also consider the weight which should be accorded to it. That consideration inescapably requires the exercise of planning judgment into which the Court cannot be drawn.

Mr Justice Smith considered the wide-ranging case law regarding the application of Section 31(2A) and declined to refuse relief under this provision. However, in light of the factual situation, and in particular the grant by the Defendant of a subsequent planning permission for an extension similar in size and scale to that permitted by the planning permission the subject of these proceedings, the Judge exercised his general discretion not to quash the permission as it was fair to conclude that the claim is now academic by reason of the grant of the subsequent permission.

Case summary prepared by Juliet Munn