

Case Name: *Formby Parish Council v Sefton Council* [2022] EWHC 73 (Admin) (17 January 2022)

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Commentary:

The High Court refused an application to challenge by judicial review Sefton Council's decision of 28 May 2021 to grant planning permission for the development of a property in Formby, Liverpool, currently a Costa Coffee at ground and first floor level with a second floor loft. The planning permission was for change use of the first floor involving the erection of extensions at the rear to form two self-contained flats involving alterations to the elevations. The effect was to allow the coffee shop to continue to operate on the ground floor, but to create two self-contained flats on the first and second floors.

The claimant was Formby Parish Council. Its claim was on the following main grounds: the property had existing planning permission for use as a shop; in determining the application, Sefton Council proceeded on the mistaken basis that the proposed development could have been carried out under permitted development rights, which would have permitted change of use but not operational development; this led Sefton Council to determine the application on the basis of an immaterial consideration, being that the proposed development as a fallback position did not need planning permission; this was an error of law.

The judge, His Honour Judge Stephen Davies (sitting as a Judge of the High Court), identified Sefton Council's Officer Report as the key document in the case – in particular where the Report stated that the proposed development could be carried out under permitted development rights. The claimant parish council argued that the planning officer had reported “under a profound mistake that what could be done under permitted development included the construction of substantial extensions as operational development, when any competent planning officer would have known that it did not”.

However, the judge accepted Sefton Council's submissions that the planning officer understood the difference between what was being applied for and what could be done under permitted development; the officer was comparing the end result under the scheme applied for with the end result under permitted development as a fallback; and the officer concluded that the scheme applied for was still preferable to the end result under permitted development. Accordingly, the judge dismissed the application, ruling “it seems to me that the simple statement that “the conversion could be carried out under permitted development” was sufficient on the facts of this particular case to show that the planning officer had addressed his mind and had reached the conclusion that the prospect of this happening as a fallback met the minimum standard of possibility so as to amount to a material consideration”.

Case summary prepared by George Morton Jack