**Case Name:** *CAB Housing Ltd v Secretary of State for Levelling Up, Housing and Communities & Anor* [2023] EWCA Civ 194 (23 February 2023)

**Full case:** Click Here

**Commentary:** This was an appeal to the Court of an Appeal of applications under s.288 of TCPA 1990. The appeal considered how a local planning authority should approach an application for prior approval under Class AA of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "GPDO") which provides for permitted development rights to enlarge dwellings by the construction of additional storeys.

The Claimant had sought to make use of Class AA rights in order to build the additional single storey to a dwelling. Class AA.2 of Part 1 of Schedule 2 to the GDPO sets out the conditions subject to which permitted development in Class AA is granted and it was the interpretation of these conditions that formed the basis of the challenge.

Paragraph AA.2(3)(a) states as follows:

(a) Before beginning the development, the developer must apply to the local planning authority for prior approval as to i. Impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light;

ii. The external appearance of the dwelling house, including the design and architectural features of (aa) the principal elevation of the dwelling house; and (bb) any side elevation of the dwelling house that fronts the highway.

The Claimant challenged the inspector's interpretation of Class AA on three main grounds:

1. The decision-maker was not permitted under Class AA to consider the scale of the proposal at the prior approval stage, the principle of development (including its scale) is established by the grant of planning permission under paragraph AA.2.(3)(a)

2. The decision-maker was incorrect to decide that the phrase "adjoining premises" in paragraph AA.2(3)(a)(i) should be given a broad meaning so as to mean "neighbouring", and that the phrase should be restricted to its natural and ordinary meaning so as to mean only those properties which abut, or are contiguous with, the subject property rather than a broader approach meaning "adjacent" or "neighbouring"; and

3. Paragraph AA.2(3)(a)(i) limits the consideration of "amenity" impacts to overlooking, privacy or loss of light and the decision-maker was wrong to consider design or architectural features at the prior approval stage.

The Court of Appeal dismissed the appeal on all three grounds.

In relation to limb 1 above, Sir Keith Lindblom (with who Andrews LJ and Whipple LJ agreed) found that the scale of the proposed development was a matter of potential relevance to a number of considerations within paragraph AA.2(3)(a)(i) - including, for example, "the impact on the amenity of any adjoining premises" and the "external appearance of the dwellinghouse". "Scale" was therefore subject to the LPA's control under the provisions for prior approval in paragraphs AA.2 and AA.3.

In relation to limb 2, the court held that an approach to "adjoining premises" which focused unduly on the linguistic origins of the word "adjoining" would be inappropriate. In the context, an assessment of the likely effects of Class AA development on "amenity … including overlooking, privacy and the loss of light", will frequently, if not in every case, require consideration of the effects on the "amenity" not merely of contiguous or abutting buildings, but also of other premises lying close to the site of the proposed development, whose amenity may be equally or more significantly affected by it. There was therefore good reason for understanding the word "adjoining" in this provision as having its wider meaning.

In relation to limb 3, the issue was divided into two parts. Firstly, the meaning and scope of the word "amenity" and secondly, the meaning and scope of the concept of "external appearance" in paragraph AA.2(3)(a)(ii). In relation to amenity, the Claimant submitted that the range of the local planning authority's assessment was limited to "overlooking, privacy and loss of light". As for "external appearance", the Claimant submitted that paragraph AA.2(3)(a)(ii) confined the decision-maker's assessment of the impact of the proposed development on the design and architectural features of the dwelling house to its effects on the principal elevation of the building and any side elevation fronting the highway. The court was not persuaded by this reasoning - Sir Keith Lindblom found that the use of the word "including" in sub-paragraph (3)(a)(i) and in sub-paragraph (3)(a)(ii), made clear that relevant considerations were not confined to the matters actually mentioned in these two sub-paragraphs. Had the intention been to impose such a restriction, it would have been straightforward to do so without using the word "including" to refer to specific considerations and instead using some other formulation, stipulating expressly and exhaustively the only matters which the local planning authority could lawfully take into account.

The Court of Appeal therefore held that the inspector's decision was not flawed by the errors of law alleged and that the High Court judge was right to reject the challenge to dismiss it. The appeal was therefore dismissed.

The decision confirms the wide discretion awarded to local planning authorities when considering prior approval applications.

*Case summary prepared by Emma McDonald*