

Case Name: *Whiteside, R (On the Application Of) v London Borough of Croydon & Anor* [2023] EWHC 3289 (Admin) (22 December 2023)

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Commentary: This was an unsuccessful claim for judicial review by a local resident (“**the Claimant**”) against a decision of the London Borough of Croydon (“**the Defendant**”) to approve a discharge of condition application.

Planning permission was granted in February 2022 for the demolition of an existing dwelling and the construction of replacement residential units (“**the Permission**”). Condition 14 of the Permission provided that all residential units should comply with optional requirements for accessible and adaptable dwellings under the Building Regulations 2010 (“**the 2010 Regulations**”), with at least 10 per cent of the dwellings to comply with either of the “wheelchair adaptable” or “wheelchair accessible” optional requirements. The stated reason for this condition was to ensure the adequate provision of accessible and adaptable dwellings. Condition 18 of the Permission required details to be submitted and approved by the Defendant, prior to commencement, showing the finished land levels of the proposed dwellings and finished levels of the amenity spaces and roof. The stated reason for imposing the condition was concerned with protecting the residential and visual amenity of the surrounding buildings and area.

An application was made to discharge condition 18. The Claimant objected to this application by contending that step-free access would not be available for two of the residential units, meaning the operational requirements under the 2010 Regulations, sought by condition 14 of the Permission, could not be met. Notwithstanding these concerns, the Defendant approved the discharge of condition 18 (“**the Approval**”).

Grounds

The Claimant claimed that the Approval was unlawful on the single ground that it was irrational. In brief, the Claimant contended that, by discharging condition 18, the Defendant made compliance with condition 14 of the Permission impossible and so had not complied with its legal duties.

Judgment

Mr Timothy Corner KC, sitting as a Deputy High Court Judge, rejected the Defendant’s argument, relying on *Camden LBC v Secretary of State for the Environment*, that decision-makers, when deciding if a discharge application was satisfactory, were limited to examining the condition itself and the reasoning for imposing that condition. The Court distinguished *Camden* and held that if approval details pursuant to one condition would

prejudice compliance with another condition, the decision-maker must be entitled to have regard to this.

The Court then considered the approach taken by the Defendant, where officers considered they were unable to take account of the matters raised by the Claimant, and held that the Defendant had made an error of law; it was irrational to not at least consider whether to investigate these concerns. The Court declined to determine whether the Defendant had a positive duty to investigate or whether, as the Defendant had argued, matters under condition 14 could be left to a building inspector under the 2010 Regulations. It was sufficient for present purposes that the Defendant had not considered whether to deal with the issue or not.

Whilst the Claimant's irrationality ground was made out, ultimately, relief was refused by the Court pursuant to section 31(2A) of the Senior Courts Act 1981. The Court found that, had proper consideration been given to the Claimant's concerns, the Approval would still have been granted. The available evidence showed that, within the ambit of the Permission, there were no alternative set of levels which could have met the Claimant's concerns. On this basis, relief was refused, and the claim failed.

Commentary

This case provides useful commentary on the scope of what a local authority can consider for an application to discharge a condition, particularly where such approval could prejudice compliance with other conditions on the relevant planning permission. It also acts as a pertinent reminder of the numerous obstacles, including evidentiary hurdles, that need to be overcome in order for a claim for judicial review to be successful.

Case summary prepared by Jack Curnow