

Case Name: *Pyrosome Ltd v Secretary of State for Levelling Up Housing and Communities & Anor* [2023] EWHC 563 (Admin) (14 March 2023)

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Commentary: This case concerns a renewed application by the Claimant to bring a statutory review claim against a planning inspector's decision to dismiss an appeal against the London Borough of Richmond Upon Thames's decision to refuse planning permission.

The permission in question was for the "construction of a two storey, two bedroom, 3 bed space attached dwelling house with associated provision of refuse/parking/cycle storage, and amenity space; host dwelling roof conversion from hip to gable, incorporating proposed rear dormer and 1st floor rear fenestration changes" (the "Proposed Development") at 9 Cheyne Avenue, Twickenham (the "Property").

Ms Justice Lang refused permission to bring the challenge at the papers stage and refused an extension of time for the statutory review claim form which was filed and issued with a fee 12 days after the deadline of 4 November 2022. Ms Justice Lang also found the challenge impermissible as no error of law had been found in the Inspector's decision.

With regard to the delay in filing of the claim form, the issue was that the claim was originally filed in time and with the correct fee, but on the wrong form. The Secretary of State recognised the Court's discretion to permit correction of the filing of the claim on the wrong claim form (*Croke v Secretary of State for Communities and Local Government* [2019] EWCA Civ 54) but maintained that the issue in the current circumstances was also the payment of the incorrect fee. Mr Justice Fordham stated that "once it is recognised that the Court can properly allow the 'correction' of someone using the 'wrong claim form' it must logically follow that it is likely that the 'wrong fee' will have been paid".

There were four grounds of challenge, three of which related to the main issues identified by the Inspector in respect of which an adverse conclusion was arrived at. These were "character and appearance of those property and surrounding area", car parking and affordable housing. The fourth ground of challenge related to the 'dormer' loft conversion.

In respect of character and appearance, the Claimant suggested that the Inspector was wrong to describe properties in the residential area as being "within generous sized plots" and "set back from the highway". The Claimant provided examples of local properties which did not fit these descriptions. Mr Justice Fordham considered these general descriptions to be "classic illustrations of an evaluative judgment" and a consideration of the objections to the Proposed Development in respect of the general

surrounding area. He also agreed with the Inspector's description of the area as being "characterised by 'semi-detached houses and bungalows'" whilst also recognising that his role was not to decide what evaluative description is appropriate. Mr Justice Fordham also considered that the Claimant's points regarding the "established 'building line' in Sheringham Avenue" and the Inspector's use of the term "cul-de-sac" would not "undermine the point the Inspector makes" and were insufficient to show that "evaluative judgment was flawed in public law terms".

The second ground related to car parking. The Claimant argued that the Inspector was wrong to conclude that the Proposed Development would lead to an increase in on-street parking due to the absence of dedicated off-street parking for the Proposed Development, as the current owner of the Property does not use the existing space for parking and it could therefore be 'transferred' to the Proposed Development without affecting current levels of on-street parking. However, Mr Justice Fordham agreed with the Inspector's conclusion on the issue, as a future change of habits and practices needed to be considered.

The third ground related to affordable housing. Mr Justice Fordham found that the Inspector had correctly recorded that the appellant had indicated that it was willing to make a reasonable contribution to off-site affordable housing but that no figure had been agreed on and no legal agreement had been presented. He also considered that this point alone would not be sufficient for him to allow permission even if there were a viable ground, due to the other adverse conclusions arrived at by the Inspector.

The final ground of challenge related to the 'dormer' loft conversion. The Inspector had concluded in his report that the Proposed Development would be "detrimental to the character and appearance of [the Property] and the area" as "the extensions" would not be "severable" and would be "viewed as part of the larger scheme". The Claimant argued that the Inspector was wrong to consider the dormer in the context of the scheme as a whole, as once a dwelling is on a site, the dormer alterations would fall within general permitted development rights. Mr Justice Fordham rejected this ground, finding that the Inspector was entitled to consider the Proposed Development as a whole, and that in any case the argument based on general permitted development rights had not been advanced before the Inspector and therefore could not point to an error of law in the Inspector's decision.

Mr Justice Fordham found that the claim had no realistic prospect of success and refused permission for statutory review.