Case Name: *Knight, R (On the Application Of) v London Borough of Harrow* [2023] EWHC 678 (Admin) (31 March 2023)

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Commentary:
This case concerned a judicial review challenge to the decision by the London Borough of Harrow (the Defendant) to grant planning permission for a single storey residential extension.

Prior to making the planning application, Mr and Mrs Kanabar (appearing as Interested Parties) sought prior approval for an extension under Class A of the General Permitted Development Order. The drawing submitted with the application stated that the extension was "6m beyond the original rear wall", but in fact the drawings depicted an extension from a pre-existing side extension. Regardless, the Defendant approved the extension.

Mr and Mrs Kanabar then applied for planning permission for an extension, which the Defendant granted. The Claimant challenged the decision on two grounds:

1. The officer's report contained a factual error by stating that the proposed extension has a "fall back" position (i.e. the ability of the landowner to carry out development without the need for further express planning permission) based on the prior approval. Accordingly, the decision (being based on the advice of the report) involved a material mistake of fact and/or took into account an immaterial consideration.
2. The officer's report gave no adequate reasons for asserting the development was acceptable in terms of neighbouring amenity.

Neil Cameron KC, sitting as Deputy High Court Judge, first noted that a fall back position was a well-established type of material consideration to which a decision maker may have regard. He then cited Lindblom LJ's analysis of the status of fall back positions in the Mansell case:

- the Court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker;
- in determining if there is a "real prospect" of a fall back development being implemented, the prospect need not be probable or likely – a possibility will suffice (applying the Samuel Smith Old Brewery case);
- an assessment of a "real prospect" of a fallback development being carried out will depend on the particular circumstances of a case, and will be a matter for the decision-maker's planning judgment (subject to Wednesbury irrationality).

Ground 1
Claimant's counsel submitted that the prior approval application was null and void because it of the discrepancy between regarding whether the extension was from the original rear wall or side extension. This meant the prior approval did not constitute a fall back position. Defendant's counsel submitted that the prior approval did not play a material part in the decision-making process as the officer's decision was based upon the overall planning merits. Further, the Defendant did not make a material mistake of fact or take into account an immaterial consideration, as the plan was referred to on the face of the grant of prior approval, and as the prior approval was not challenged under JR, it stands.

Neil Cameron KC agreed with the Defendant's counsel that the reference to the previous prior approval did not play a material part in the decision-making process, as the decision was based on an assessment of the scheme as a whole on its merits. He affirmed that a fall back is capable of being a material consideration, with the weight to be attributed to it being a matter for the decision maker (subject to Wednesbury irrationality). A fall back can take the form of a statement by a developer or landowner that they intend to make use of PD rights. The fact that information has been submitted and prior approval obtained can be relevant when determining whether a 'fall back' development exists, and when determining the weight to be given to such a fall back. Obtaining of approval likely to be material. Notice giving prior approval was a material factor to be taken into account, so the Defendant did not err in having regard to it.

Ground 2
Claimant's counsel submitted that no adequate reasons were given for the officer's conclusion that the planning application scheme was acceptable in terms of neighbour amenity. Defendant's counsel submitted that this issue was properly dealt with, and that it was sufficient that the officer filled out a pro forma document based on the relevant local SPD criteria.

Neil Cameron KC cited the summary in South Buckinghamshire DC v Porter on the approach to be taken when considering a 'reasons' challenge: the reasons must be intelligible and adequate, and enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues". He then assessed the approach taken by the officer and reasons given. Given the report was only to inform a decision by a planning officer (rather than a planning committee), and a proforma section of the report had been completed, he held no further elaboration was required.

The claim failed on both grounds.

Case summary prepared by Jed Holloway