

Case Name: *Samuel Smith Old Brewery (Tadcaster), R (On the Application Of) v Redcar and Cleveland Borough Council* [2023] EWHC 878 (Admin) (20 April 2023)

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Commentary: This was an application for judicial review following the Defendant Council's decision to proceed with demolition of buildings that it considered (having taken expert advice) to be unsafe. In deciding to do so it relied on section 78 of the Building Act 1984, which provides that a local authority may take such steps as may be necessary to remove an immediate danger arising from a dangerous building or structure. The core issue was whether the reliance on section 78 meant that planning permission was not required. Section 57 of the Town and Country Planning Act 1990 sets out the need for planning permission for development, and section 55 of the same Act includes demolition within the definition of development.

The Claimant had previously made an unsuccessful application for an injunction to stop the Defendant demolishing the buildings, which were located within a conservation area. The application for judicial review was brought on two grounds. The first was that the Defendant's decision to proceed with demolition exceeded its powers, since it was contrary to section 57 and section 196D (Offence of failing to obtain planning permission for demolition of unlisted etc buildings in conservation areas in England) of the 1990 Act. On behalf of the Defendant, it was argued that requiring a separate grant of planning permission would cancel out the purpose of section 78 of the 1984 Act and that the result would be absurd, effectively requiring the Council to leave in situ a known danger whilst planning permission is sought, potentially rendering it liable for injury or damage caused in the meantime.

Notwithstanding, the judge concluded that section 78 is not a "carve-out" from the general requirement that planning permission is required for development. Lane J observed that where a local authority relies on section 78 of the 1984 Act and the urgency is such that there is not enough time for planning permission to be obtained, the defence provided in section 196D of the Town and Country Planning Act 1990 (which section renders demolition of an unlisted building in a conservation area without permission a criminal offence), that:

- a) that demolition was urgently necessary in the interests of safety or health;
- b) that it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter;
- c) that demolition was the minimum measure necessary; and
- d) that notice in writing was given to the local planning authority as soon as reasonably practicable

would remain available and would influence any decision to bring a prosecution. The local authority might also grant retrospective planning permission for the demolition, or

decide that enforcement action is not expedient.

The second ground was argued alternatively to ground one, on the basis that if section 78 of the 1984 Act could be relied on, the Defendant had applied it unlawfully in any event. It was argued on behalf of the Claimant that the Defendant had not taken reasonable steps to acquaint itself with relevant information to allow it to consider whether demolition was actually necessary and had insufficient evidence to demonstrate that total demolition was needed in order to overcome any danger posed by the buildings in question. It was further argued that the Defendant had not considered an obviously material alternative option of leaving part of the fabric of the buildings in place and that it was irrational for the Council not to properly investigate lesser works, given that section 78 applies only where works are “necessary”.

On this ground Lane J concluded that the Defendant was entitled to conclude, as it did, that demolition was necessary to remove the dangers posed by the buildings. Accordingly, ground 2 failed.

Comment: Aside from the helpful clarification as to the exercise of power under section 78, the judgment is an interesting example of the relevance of extrinsic material to statutory construction, being informed by an extract from Hansard and a number of observations from a textbook on listed buildings.

Case summary prepared by Aline Hyde