

Case Name: *Gurvits & Anor v Secretary of State for Levelling Up, Housing And Communities & Anor* [2023] EWHC 911 (Admin) (25 April 2023)

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Commentary: The Appellants sought permission under section 289(6) of the Town and Country Planning Act 1990 (“TCPA 1990”) to bring a challenge pursuant to the provisions of section 289(1) of the TCPA 1990 against the decision of the Inspector dated 30 January 2023 (the “Decision”).

Background

The Decision of the Inspector was to dismiss the Applicants’ appeals under section 176 of the TCPA 1990 against an enforcement notice issued on 4 October 2021 (the “Enforcement Notice”). The Decision upheld the Enforcement Notice and introduced amendments, including the words “Permanently remove the internal doors and seal up the existing openings which link the three component buildings.”

The Enforcement Notice alleged a breach of planning control by reason of “The making of a material change of use of the outbuilding to the rear to use as an office and associated storage.” The Enforcement Notice required 1) cease the use of the building as a commercial office and associated storage; 2) permanently remove all kitchen units, sinks, cooking facilities and worktops from the outbuilding; 3) permanently remove all toilets from the outbuilding.

The outbuilding is a low-lying structure to the rear of three properties, three individually constructed outbuildings were at some point connected with interlocking doors to create a single structure. All three of the properties were owned by the Appellants and occupied either by the Appellants or their children and their respective families.

Grounds

The Appellant sought permission on the following four grounds:

1. Ground 1:
 - a. The Inspector failed to have regard to a material consideration – namely the First Appellant’s unchallenged evidence as to the use of the land.
 - b. The finding that each part of the outbuilding was, prior to 2017, used in connection with one of the three dwellings was irrational as unsupportable on the Applicants’ unchallenged evidence and submissions.
 - c. The Inspector failed to give any reasons for not accepting the Appellants’ unchallenged evidence on this point.
2. Ground 2: the Inspector took into account an immaterial consideration by considering whether operational development fell within or without certain permitted development rights.
3. Ground 3:

- a. The Inspector's finding that there was harm to neighbouring amenity on grounds of "noise and disturbance" was irrational and unsupportable on the evidence and submissions.
 - b. In reaching that finding, the Inspector failed to take into account material considerations by not considering the evidence of local residents.
 - c. In reaching that finding, the Inspector failed to give any reasons for rejecting the evidence that no such noise and disturbance was caused by the Appellants' use of the land.
4. Ground 4: The amendment of the notice by the insertion of a new requirement without the removal of other requirements was unlawful, and/or irrational, and/or the Inspector failed to give adequate reasons for this action.
- Decision

The judge found that Ground 1 of the appeal is arguable, agreeing with the Appellants that the Inspector did not have regard to the unchallenged evidence as to the use of the land and failing to give reasons for the same.

Ground 2 was also found to be arguable. The judge noted that "whilst this is not the strongest of points, as the Inspector did identify a number of factors which he determined resulted in a definable change in the character of the use made of the land, it is a properly arguable matter."

Ground 3 did not succeed as "the Inspector was not obliged to set out in the Decision Letter a record of those neighbours who did not find any interference and those who did, and then explain the balancing exercise he undertook. This was ultimately a matter of planning judgment and he was entitled to come to the conclusions he did based upon what was before him."

Ground 4 was found to be successful as the result of adding a condition 4 and not removing conditions 2 and 3 of the Enforcement Notice would have prohibited, or potentially prohibited, the Appellants from using the separated outbuildings in way that they are entitled to without planning permission.

Permission to appeal was granted in respect of Grounds 1, 2 and 4.

Case summary prepared by Amy Penrose