

(1) Brian Connolly (2) Alison Connolly (Respondents / Claimants) (3) Havering London Borough Council (Third Respondent / Defendant) v Secretary of State for Communities & Local Government (Appellant / Defendant) (2009)

CASE HISTORY:

Court of Appeal (Civil Division) decision

Queen's Bench Division (Administrative Court) decision

[2009] EWCA Civ 1059

CA (Civ Div) (Laws LJ, Rix LJ, Mann J) 15/10/2009

PLANNING - ADMINISTRATIVE LAW - LOCAL GOVERNMENT

BUILDING EXTENSIONS : ERROR OF FACT : FAIRNESS : FRESH EVIDENCE : PLANNING PERMISSION : FAIRNESS OF DECISION OF PLANNING INSPECTOR : FAILURE TO PROVIDE FULL PLANNING HISTORY

It was appropriate to quash a decision of a planning inspector who had decided to grant planning permission whilst under the false impression that she possessed the full and material planning history of the site.

The appellant secretary of state appealed against a decision ((2008) EWHC 2873 (Admin)) in favour of the respondents (C) that a decision of a planning inspector should be quashed. C's neighbour (X) had applied for planning permission to carry out alterations to the north and south sides of his home. C were not notified of the application and so did not object to it. Nevertheless, whilst the local authority was not opposed to the proposal concerning the north side of the property, it refused the application because it considered that the proposed change to the south would have a detrimental impact. X applied again for planning permission but only for alterations to the north of his property. C objected to the proposal and the local authority also refused that application. X appealed to a planning inspector and the local authority provided the inspector with information only about its decision on the first application. The inspector distinguished between the north and south sides of property and granted planning permission only in respect of the north side proposal. C appealed and the judge allowed the appeal on the basis that the inspector should have been informed of the second planning permission application and that if that information had been provided, the inspector's decision might have been different. The secretary of state submitted that (1) there was concern that the judge's approach had trespassed dangerously on the principle that planning merits were solely for an inspector and not a court to consider and if the decision stood, inspectors would be forced to undertake an investigatory role; (2) the local authority had chosen not to inform the inspector of the second application because, contrary to what had been common ground before the judge, the proposals about the north side in the two applications were not materially identical.

HELD: (1) There was unfairness arising from the local authority's failure to provide to the inspector the full and material planning history of the site. The inspector had made her decision under the false impression that she was possessed of that history when she had not been, *R v Criminal Injuries Compensation Board Ex p A* (1999) 2 AC 330 HL, *E v Secretary of State for the Home Department* (2004) EWCA Civ 49, (2004) QB 1044 and *Patel v Secretary of State for Transport, Local Government and the Regions* (2002) EWHC 1963 (Admin), (2003) 2 P & CR 17 applied. There had been a mistake as to the previous planning history of the site by the omission of reference to the local authority's negative views about what was accepted before the judge as a materially identical proposal in relation to the north side. That evidence relating to the planning history of the site was established in an uncontentious and objectively verifiable form as it was documented in the local authority's decision on the second application and it was accepted before the judge that that application, so far as it concerned the north side proposal, was materially identical to the first proposal. Further, C were not responsible for the mistake and the mistake played a material part in the inspector's reasoning. (2) In respect of the point about the difference between the applications, the local authority, through the secretary of state, was asking the court to trespass onto the planning merits of the appeal. It was doing so on the basis of a last minute attempt to introduce new evidence, and assertions of fact for which there was no evidence, in support of an unpleaded ground of appeal which flew in the face of a finding of the judge below representing the common understanding of the parties before him. For the third respondent: No appearance or representation

Appeal dismissed

Counsel:

For the appellant: Paul Brown QC, Stephen Whale

For the first and second respondents: Clive Wolman

Solicitors:

For the appellant: Treasury Solicitor

For the first and second respondents: Connollys

LTL 15/10/2009 : (2009) NPC 114

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