



In the High Court of Justice
Queen's Bench Division
Planning Court

CO Ref:
CO/409/2021

In the matter of an application for Judicial Review

The Queen on the application of

MARGUERITE MORTON

Claimant

versus

CAMDEN LONDON BOROUGH COUNCIL

Defendant

and

MR AND MRS OSBORNE

Interested Parties

On the Claimant's and the Defendant's application for approval of a consent order dated 21 April 2021

Following consideration of the documents lodged by the Claimant and the consent order dated 21 April 2021 which is attached to this Order


ORDER by Timothy Mould QC (sitting as a Deputy High Court Judge)

1. Permission to apply for judicial review is granted.
2. Each of the Certificates of lawfulness of proposed use or development at 42 Well Walk London NW3 1BX issued by the Defendant on 30 December 2020 under application references 2020/5983/P and 2020/5984/P pursuant to section 192 of the Town and Country Planning Act 1990 is quashed.
3. The Defendant shall pay the Claimant's costs in the sum of £5000.

Reasons

I am satisfied that this claim for judicial review is arguable and should be succeed for the reasons stated in the Statement of Reasons appended to the consent order dated 21 April 2021 that is attached to this Order. The Certificate of Service dated 11 February 2021 satisfies me that the Claimant has effected good service of the claim form and associated documents on the Interested Parties. The Interested Parties have not filed an Acknowledgement of Service within the time allowed under CPR Part 54 (that is to say, by 2 March 2021) or at all. In the circumstances, I am content that it is appropriate to make this Order.

Signed

The date of service is  the date in the section below

For completion by the Planning Court

Sent to the claimant, defendant and any interested party / the claimants, defendants, and any interested party's solicitors on (date): TAYLOR WESSING LLP 28/04/2021



IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

BETWEEN:

MARGUERITE MORTON

Claimant

-and-

LONDON BOROUGH OF CAMDEN

Defendant

-and-

MR AND MRS OSBORNE

Interested Party

CONSENT ORDER

TAKE NOTICE that we the undersigned acting for the above mentioned parties HEREBY CONSENT to an Order in the following terms:

BY CONSENT

IT IS ORDERED:

1. Permission is granted in claim CO/409/2020. The Claim Reference Number (underlined in the preceding sentence and at the top of the page) has been inserted into this Consent Order in accordance with the Order of Mrs Justice Laing dated 25 March 2021, which confirmed the terms of this Consent Order to be acceptable, subject to these changes being made.
2. The Certificates of Lawfulness issued under section 192 of the Town and Country Planning Act 1990 by the Defendant on 30 December 2020 pursuant to application reference numbers 2020/5983/P and 2020/5984/P are quashed.
3. The Defendant shall pay the Claimant's costs in the sum of £5,000.

For and on behalf of the Claimant [REDACTED] of Taylor Wessing LLP (Solicitors for the Claimant)

Signed: [REDACTED]

Date: 21 APRIL 2021

For and on behalf of the Defendant

Signed: [REDACTED]

WILLIAM BARTLETT

Date: 21 APRIL 2021

For and on behalf of the Interested Party

Signed:

Date:

**Statement of Reasons
in Support of
Consent Order**

Background

1. On 4 May 2020 the Council granted a certificate in respect of proposed development pursuant to application reference 2020/1226/P (the "Original Certificate") pursuant to section 192 of the Town and Country Planning Act 1990 (the "1990 Act") at the Interested Party's property at 42 Well Walk, London NW3 1BX (the "Property"), on the basis that it considered the proposed development to be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "GPDO").
2. On 15 June 2020, the neighbour at 44 Well Walk, Marguerite Morton (the "Claimant"), brought judicial review proceedings (the "Original Claim") challenging the Council's grant of the Original Certificate.
3. At the same time, James Dodd and Jane Corbin, the neighbours at 40 Well Walk, which is a Grade II* listed building on the other side of the Property, also wrote to the Council through their agent Ian Trehearne, objecting to the issue of the Original Certificate because of the effects on the listed building and party wall, which had not been considered.
4. Due to problems with the processing of correspondence during the pandemic, the Council did not see the pre-action letter that had been sent on behalf of the Claimant until the Original Claim had already been drawn up and filed.
5. Nevertheless, as soon as it became aware of the Original Claim it accepted that an error had been made in granting the Original Certificate and that the Original Certificate should be quashed. Significant costs had already been run up in preparing the Original Claim by this stage and the Council accepted liability for these costs.
6. The Council informed the Interested Party that it accepted that the Original Certificate had been granted in error because the proposed development exceeded the limitations in the GPDO and that it had agreed that the Original Certificate should be quashed by consent.
7. The Interested Party was asked to sign the consent order but refused to do so. It gave no reasons for not doing so. An order confirming the quashing of the Original Certificate was eventually made by Lang J on 7 December 2020 (the

"Order"), with Lang J noting (in respect of the Interested Party's failure to respond) that:

"They have not filed an Acknowledgment of Service or taken any part in the proceedings. On 6 August 2020, Christine Hereward of Hereward Solicitors, who were not on the record, notified the Court that she had been consulted by the Interested Parties who were currently abroad and she asked for time to liaise with the parties and her clients before taking further steps. The Court afforded Ms Hereward and the Interested Parties a generous amount of time before sending chasing emails on 11 and 12 November 2020, seeking a reply by 26 November 2020. No response has been received. All reasonable steps have been taken..."

Pre-application advice

8. In July 2020, amended plans were drawn up by the Interested Party's agent, who showed them (informally) to the then case officer, John Sheehy, who advised, in an email dated 31 July 2020, as follows:

"

"The three metre issue is resolved in these drawings and you can, if you wish, provide further detailed drawings of the rooflight to show it does not project from the roof plane beyond the permitted amount.

The outstanding issue is therefore whether the extension would be considered to project beyond a side elevation with knock-on implications for the permitted width.

As discussed on the phone I would advise you to put forward justification for the proposal in terms of your interpretation of the GPDO and the technical guidance, appeal decisions and any examples of a similar extensions granted under PD rights in similar circumstances – preferably in Camden.

The officer for the case will look into this particular point very closely with legal so any evidence/ justification you can provide will greatly help your case."

9. This, essentially, related to grounds 2 and 3 of the Original Claim, which concerned limitations under the GPDO as to side elevations.
10. Ground 2 was that the proposed development did not accord with paragraph A.2(b) of Part 1 of Schedule 2 to the GPDO. The limitations to permitted development in paragraph A.2 apply where the land is article 2(3) land. As the property lies within a conservation area, it is on article 2(3) land. Paragraph A.2(b) states that development on such land is not permitted "if the enlarged

part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse".

11. Ground 3 was that paragraph A.1(j) provides that development is not permitted "if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse" and would "have a width greater than half of the original dwellinghouse". The extension proposed covered the full width of the dwellinghouse.
12. There is a canted bay at the rear of the Property, which forms part of the original dwellinghouse, and which, in the Council's view, as Local Planning Authority, incorporates side elevations.
13. This is why Mr Sheehy was clear that the Interested Party's agent would need to provide detailed justification/evidence as to why the canted bay should not be considered to include side elevations with any further application that was submitted.
14. Nothing further was heard from the Interested Party until, on 24 December, its agent submitted two applications for certificates of lawfulness in relation to proposed development at the Property (allocated references 2020/5983/P and 2020/5984/P (the "Applications")).

The Applications

15. The Applications were allocated to a new case officer who was not aware of any of the history relating to the Original Certificate and the Original Claim.
16. The Interested Party did not make any reference to the Original Certificate or to the Original Claim in the Applications.
17. In addition, both Applications incorrectly stated that no assistance or prior advice been sought from the Council in relation to the application, even though assistance and prior advice had in fact been sought, as described in paragraph 8.
18. Nor did the Interested Party provide the justification and evidence that John Sheehy had explicitly requested, as to why the canted bay should not be considered to include 'side elevations' and why the Council's interpretation of the GPDO was wrong. There was no reference to the canted bay at all.
19. It was unfortunate that a note had not been placed on the planning register (or on any other planning files) to the effect that the decision to grant the Original Certificate was subject to a challenge by way of judicial review, so that the new case officer could have been made aware of the issues that had been identified.

The Council has therefore undertaken to place a note on the planning register to make it clear that the decisions to grant the Certificates are under challenge and that the Council has accepted that the Certificates were granted in error and that they should be quashed and the Applications re-determined. This note has yet to be drafted.

20. The Applications were received on Christmas Eve and were dealt with between Christmas and New Year, at a time when there are few people at work. The applications were noted by the Claimant and by Mr Trehearne on 30 December when they received the Council's formal notification. The Council's notifications website records that the applications were registered on 29 December 2020 and granted the next day on 30 December 2020.
21. The planning register gave the case officer no cause for concern, rather it would have encouraged him to take the action he did, which was to grant the Applications, by decision letters dated 30 December 2020 (the "Decisions").
22. As Bethany Cullen, the Council's Head of Development Control explained in her email to the Claimant (and others) dated 5 January 2021:

"The previous LDC 2020/1226/P was still showing on the system as approved and there was nothing on the planning record to alert the officer to the fact that the decision had been challenged. It is therefore in that context understandable why the new officer wrote it up for approval and why it was signed off by a senior planning officer. The GPDO point at debate has gone both ways at appeal and the officers would have taken their cues from the previous decision, as far as they were aware maintaining a consistent line."
23. It is the Decisions issued on 30 December 2020 that are the subject of this challenge and which the Council accepts were taken in error and must be quashed.
24. On 31st December 2020 the Claimant telephoned the planning officer and referred him to William Bartlett, the planning solicitor, and Mr Trehearne emailed Bethany Cullen to alert her to the error, (copying in the Claimant).
25. Bethany Cullen emailed back immediately (again copying in the Claimant) accepting that the Certificates should not have been granted, reiterating the Council's view that the proposed changes are not permitted development, and confirming that the Decisions had been taken in error – as well as apologising for the mistake and promising to put it right.
26. When it transpired that it was too late to simply reverse the Decisions on the system (by agreement between all parties), the Council considered whether it might be possible to revoke the Decisions pursuant to section 193 of the 1990 Act.

27. The Council concluded that, despite elements of the Applications being misleading, those elements were not significant enough to enable it to revoke the Decisions. Therefore, the Council accepted that the proper course of action was for the Decisions to be quashed by consent.
28. Bethany Cullen emailed Mr Trehearne and the Claimant on 5 January 2021 proposing this way forward. This email was, in effect, the Council's pre-action response to Mr Trehearne's email of 30 December.
29. This Statement was then prepared, before any claim had been made, to make the Council's position clear and to avoid any unnecessary costs being incurred.
30. It was ultimately agreed that the Claimant would bring the claim. The Claimant and the Council agree that the objectives of the Pre-action Protocol have been satisfied through correspondence between the Council, the Claimant and Mr Trehearne.
31. The Council has sent the Interested Party's agent a copy of this Statement of Reasons and the draft Consent Order. The Council has asked that the Interested Party sign the Consent Order or alternatively to explain why it will not agree to do so. At the time of submission, the Council has not received a response from the Interested Party. If this position changes after Service, the Council will submit an updated Consent Order to this effect.
32. The Council has agreed to pay the Claimant's reasonable costs up to a cap of £5,000.
33. The Claimant and the Council respectfully request that the Court now quash the Certificates and make the final order on the terms set out in the agreed Consent Order.