



Neutral Citation Number: [2022] EWHC 3298 (Admin)

Case No: CO/2343/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2022

Before:
Mr Timothy Corner, KC
Sitting as a Deputy High Court Judge

Between:

The King	<u>Claimant</u>
on the application of	
Mrs Christine Wells	
- and -	
Welwyn Hatfield Borough Council	<u>Defendant</u>
-and-	
Mr Les Tucker	<u>Interested Party</u>

The Claimant appeared in person
Joseph Thomas (instructed by Trowers & Hamlin) for the **Defendant**
The **Interested Party** was not represented at the hearing and took no part in the proceedings.

Hearing date: 8 December 2022

Approved Judgment

This judgment was handed down remotely at 10.30am on Tuesday 20 December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Timothy Corner, KC:

INTRODUCTION

1. The Claimant challenges the lawfulness of the Defendant's decision to grant planning permission to the Interested Party for retrospective planning permission for a pool enclosure. The Claimant invites the Court to quash the decision.
2. Permission to apply for judicial review was granted by Mr Justice Morris on 3 August 2022.

BACKGROUND

3. This case concerns the decision of the Defendant to grant retrospective planning permission to the Interested Party for retention of an existing pool enclosure at 10 Thrush Lane Cuffley Potters Bar EN6 4JU ("the application site"). The Claimant's property (32 Brookside Crescent) backs onto the garden of the Interested Party.
4. The Defendant has a statement of community involvement for planning permissions. This provides in part:

“5.1 For many people, the submission of a planning application, on a neighbouring or nearby site or premises, is the first, and possibly, the only time that they will become directly involved in the planning system. It is important that anyone who feels that they may be affected by a development proposal or has an opinion that they wish to be taken into account before a decision is made, is able to take part in and respond to consultation.

5.2 This section sets out the consultation requirements for applicants before a planning application is submitted, how the rest of the community will be informed about applications and how they can be involved in influencing decisions.

[...]

How can you be involved?

5.18 All planning applications and appeals are added to our online database. You can view and track planning applications as they progress. There are a number of ways you can comment on an application; comments can be made in writing, by email or submitted electronically using the on-line database. All comments received are a matter of public record and will be published on the council's website www.welhat.gov.uk/planning.”

5. The pool enclosure appears to have been constructed in 2021. The Claimant contacted the Defendant requesting that planning enforcement action should be taken against the pool enclosure, since it was not allowed under permitted development rights. Following a visit to the application site around 6 December 2021, the Defendant confirmed that the pool enclosure exceeded permitted development rights limits. The Interested Party

submitted a retrospective planning application for the pool enclosure. I gather from an email from Mr Neal of the Defendant to the Claimant’s husband of 31 January 2022 that the planning application was submitted on 28 January 2022.

6. There were two phases of correspondence that are particularly relevant to this claim. The first occurred around 7 December 2021 (before the planning application was submitted by the Interested Party) and the second occurred around 23 February 2022. I set out extracts below.

7 December 2021 email exchange

Time	Sender and Recipient	Relevant Text
14:11	From the Claimant to Mr Neal	<p>“This aircraft hanger is across our first floor bedroom windows – it reflects a ‘whiteness’ for some reason and you can only see the impact that it has by viewing our property.... It only [a]ffects us as the angle of their swimming pool goes right across the back of our property. Our neighbours are safe and not been [a]ffected.....</p> <p>You are welcomed to view the site from our bedroom windows-you cannot envisage the impact on the view from our bedroom windows-the impact hits you as you come up the stairs.....”</p>
14:44	From Mr Neal to the Claimant	<p>“...The fact that an application is being made in this case has the potential to ultimately work in your favour in terms of being able to demonstrate the impact on you, something that is often difficult to visualise in real life from paper plans.....</p> <p>“If your solicitor would like to contact me to discuss please do not hesitate to pass on my details. We will keep you informed in relation to any retrospective application and any steps beyond that in due course.”</p>

23 February 2022 email exchange

Time	Sender and Recipient	Relevant Text
06:17	Mr Neal to the Claimant	<p>“As per my previous email they were advised to get a planning professional to submit a higher quality application for them. Resulting from this they have employed an agent who confirmed to us on Friday that he would be submitting the application for them. Once this is received the normal planning application procedures will be followed.....</p> <p>“You will be notified when the agent submits an application.”</p>
07:52	The Claimant to Mr Neal	<p>“..We have instructed a Planning Consultant whom [sic] has visited our property two weeks ago-he was concerned of the impact of the building from the rear bedroom windows. He notified us that no photo truly reveals the impact of the closeness of the ‘Pool Enclosure’....</p> <p>“If you were to see for yourself-the view especially from our bedroom windows has been blocked by the enclosure.”</p>

08:03	Mr Neal to the Claimant	"..You will be notified of the case officer once the application has been submitted and registered. After this a site visit will be undertaken by the case officer and your views considered. You may also be able to arrange for them to visit from your side to see the impact."
08:30	The Claimant to Mr Neal	"...The Tuckers have added this steel bar to the entrance of their 'Pool Enclosure' brightly lit up like 'Blackpool Pier'- they believe their Retrospective Application will be granted..."
10:04	Mr Neal to the Claimant	"A small update, the application has been received and validated and will shortly be allocated to an officer. Once it has been allocated you will be notified of the details and the case officer who will visit and make the assessment."

7. The Claimant instructed a planning consultant, Mr Sam Dicocco, to draft a letter of objection to the Interested Party's planning application and this was submitted on 21 March 2022. Mr Dicocco's letter raised several concerns regarding the impact of the existing pool enclosure on landscaping, living conditions and design. The letter contained photographs of the application site from the Claimant's property. At paragraph 2.2 Mr Dicocco said:

"Whilst the site can be seen from a public road, public footpath, bridleway or other public land, (Site Visit section of the application form) the development subject to this application cannot. As such a site visit is definitely necessary to consider the impact on neighbouring premises. If the case officer wishes, the occupiers of No.32 Brookside Crescent would welcome a site visit to consider the impact the outbuilding has had on their private outlook and living conditions."

8. The Defendant permitted the retrospective planning application under delegated authority on 26 April 2022. The decision was taken by Derek Lawrence, a planning officer employed by the Defendant, on the basis of a Delegated Report. The Delegated Report was drafted by another of the Defendant's planning officers, Ms Elizabeth Mugova, but Mr Lawrence as senior officer agreed and adopted it, and used it as the basis of his decision. The Delegated Report dealt with the Claimant's objection (the only letter of objection received).

9. With regard to the Claimant's objection the delegated report observed:

"No. 32 have raised an objection on the grounds that the pool enclosure would have an impact on the outlook enjoyed from their living/dining room at ground floor level, as well as, loss of privacy primarily from, the rear facing first floor bedrooms. Although the permanence of the trees cannot be guaranteed the outbuilding is currently largely screened from view of No. 32 by the existing trees; providing limited overlooking. Also, given the single storey nature of the outbuilding (approximately 3m in height) and the acceptable separation distance (approximately 25m) between the pool enclosure and the rear flank walls of No. 32, it is considered that the outbuilding would not impact on the

living conditions of this neighbouring property. Therefore, loss of outlook and privacy would not be reasonable grounds for refusal of this application.

The outbuilding is fully glazed and a concern has been raised regarding light spills when the pool is in use outside of daylight hours, harming the amenity of the occupiers of No.32 Brookside Crescent. As stated above, there is an acceptable separation distance between the pool enclosure and No. 32, it is considered that glare and light spills would be minimised to acceptable levels.”

10. The Delegated Report also stated that the use of the pool would be unlikely to have an unacceptable impact on living conditions of neighbouring occupiers by reason of noise, that the pool enclosure was acceptable in terms of appearance and scale in relation to the surrounding area, and that landscaping considerations did not warrant refusal.
11. The Claimant complained about the decision to grant permission on 28 April 2022 and raised the absence of a site visit:

“You made the decision on ‘paper plans/photographs’ instead of visiting our premises within 6 months of first contacting you. You cannot visualise from paper the impact. COVID restrictions were lifted when Mr Chris Neal advised us that Lizzie Mugova is our new case officer and she will be attending our premises for assessment thereof. Lizzie Mugova never made an assessment visit to our premises at all. Lizzie Mugova informed me that she postponed the decision date from the 18 April until the 26 April as she was going on holiday. It so happened that Mr Chris Neal – who had been dealing with us – left his role the week before!!!....”

12. Mr Lawrence replied on behalf of the Defendant on 13 May 2022, did not uphold the complaint and commented that:

“Dealing with the first issue there was an inspection of the site undertaken by a planning enforcement officer on 2 December 2021 in response to your complaint about the erection of the structure. I have spoken to this officer, and it is clear that she made a thorough inspection of the structure and its’ [sic] impact on the immediately adjoining properties, which naturally included your own property. Given the nature of the inspection undertaken it was not deemed necessary to view the site from your property. Following this inspection, the officer made contact with the property owner to advise that planning permission was required and to submit a planning application. As you will be aware this was submitted and the case was allocated to a different officer. Whilst the case officer for the application was a different officer to the officer who carried out

the initial inspection the two officers liaised with each other such that an assessment and report on the application could be made. The conclusion was reached that, taking into account the particulars of the application such as the overall size of the garden area, together with the siting and details of the enclosure, there was no planning reason why permission could reasonably be withheld in this instance.

I would add that had the original officer been of the opinion that retention of the enclosure was unacceptable then the property owner would not have been advised to submit a planning application and enforcement action for removal of the structure would have been instigated. Only one objection, made on your behalf, was received on the application and it is important to note that there was no objection from No.11 Thrush Lane which I consider is the property which could be most affected by the pool enclosure as it is sited immediately adjacent to the common boundary between the two properties.”

13. The Claimant then elevated her complaint to stage 2 on 15 May and on 22 May wrote to the Defendant, saying:

“1 What reasons are you giving us for not attending our property to make a full assessment of the impact this Pool Enclosure has made to number 32 Brookside Crescent as stated in Mr Chris Neal’s email? The assessment to our property was requested as far back in October/November 2021 when Lois May Chapman became our ‘case officer’ – we keep emailing you all the information and you are just ignoring the legal pointers. WHO MADE THAT DECISION NOT TO ATTEND OUR PROPERTY ON TWO OCCASIONS?. WHO IS ACCOUNTABLE? [capital emphasis in the original]

14. Mr Dale, Assistant Director (Planning) replied on behalf of the Defendant on 27 May 2022:

“You have also set out three further concerns in your email dated 22 May which I shall address in turn. Firstly, it was not considered necessary in this particular case to visit your property in order make an assessment of your neighbour’s proposals. In relation to your reference to Mr. Neal I can advise you that he was not responsible for the determination of the application. His role was that of a planning enforcement officer responsible for investigation alleged breaches of planning permission rather than that of a development management officer responsible for assessing planning applications. On your second point there was a full assessment made of the impact of the pool enclosure as can be seen from the officer’s report on the application which can be viewed via the Council’s website at the following link.....”

THE LAW

Planning permission

15. Development requires planning permission under s.57 of the Town and Country Planning Act 1990 (the 1990 Act"). Section 70(2) of the 1990 Act provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act ("the 2004 Act") provides that:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Judicial review

16. The scope of judicial review in planning cases was summarised by Lang J in *R(Suliman) v Bournemouth, Christchurch and Poole Council* [2022] EWHC 1196 (Admin) at paragraph 32:

"In a claim for judicial review, the Claimant must establish a public law error on the part of the decision-maker. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. A legal challenge is not an opportunity for a review of the planning merits: *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC 74 (Admin)."

Officer reports

17. S.40 of the Local Audit and Accountability Act 2014 allows the Secretary of State to make regulations (amongst other things) for requiring written records to be kept of decisions specified in regulations. Regulation 7(3)(b) of The Openness of Local Government Bodies Regulations 2014 requires decision makers to record the reasons for a decision for the grant of a permission.
18. Delegated reports must not be read in "an overly critical spirit". Lindblom LJ held in *R(Bates) v Maldon District Council and another* [2019] EWCA Civ 1272 at paragraph 43:

"As this court has said before, a planning officer's report must not be read in an overly critical spirit or with an unrealistic view of what needs to be set out in assessing the proposal on its merits (see, for example, my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314 at [41]-[42], and the judgment of the Chancellor of the High Court at [62]-[64]). I see no reason to apply a different approach to a report prepared by a planning officer where the decision is being taken

under delegated powers and there is a duty on the officer making the decision to give reasons for that decision, under regulation 7 of the Openness of Local Government Bodies Regulations 2014. The court will only intervene if there is some distinct and material defect in the report, such as a clear misunderstanding of relevant national or local policy”.

19. In *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314 Lindblom LJ set out observations regarding the approach to officer’s reports to planning committees (references omitted):

“The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge [...] Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave [...] The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way-so that, but for the flawed advice it was given, the committee's decision would or might have been different-that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

"(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact [...], or has plainly misdirected the members as to the meaning of a relevant policy [...]. There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example [...]). But unless there is some distinct and material defect in the officer's advice, the court will not interfere."

Procedural unfairness

20. The exact requirements of procedural fairness vary depending on the decision being taken and its statutory context. In relation to planning matters, the requirements of fairness have been held to be “acutely fact sensitive” (*Hopkins Developments Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 470).

21. Article 18(7) of the Town and Country Planning (Development Management) (England) Order 2010 provides that:

“The local planning authority shall, in determining the application, take into account any representations received from a consultee.”

22. With regards to “legitimate expectation” and site visits, the law has been summarised in *Suliman* from paragraph 81 onwards:

“81. The requirement to meet the legitimate expectations of the public flows from the general public law duty of fairness (*Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 149).

82. A legitimate expectation, whether procedural or substantive, may arise from an express promise or representation made by a public body. In order to found a claim of legitimate expectation, the promise or representation relied upon must be ‘clear, unambiguous and devoid of relevant qualification’: *R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, per Bingham LJ at 1569G.

83. Bingham LJ's classic test has been widely approved and applied. In *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2009] AC 453, Lord Hoffmann said, at [60]:

‘It is clear that in a case such as the present, a claim to a legitimate expectation can be based only upon a promise which is ‘clear, unambiguous and devoid of relevant qualification’: see Bingham LJ in *R v Inland Revenue Comrs Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, 1569. It is not essential that the applicant should have relied upon the promise to his detriment, although this is a relevant consideration in deciding whether the adoption of a policy in conflict with the promise would be an abuse of power and such a change of policy may be justified in the public interest, particularly in the area of what Laws LJ called ‘the macro-political field’: see *R v Secretary of State for Education and Employment, Ex p Begbie* [2000] 1 WLR 1115, 1131.’

84. The onus of establishing a clear, unambiguous and unqualified representation rests on the Claimant (*Re Finucane's Application for Judicial Review* [2019] UKSC 7, at [64]).

85. The Courts have given guidance on how Bingham LJ's test in *MFK* is to be applied. In *Paponette and Ors v Attorney General of Trinidad and Tobago* [2010] UKPC 32, Lord Dyson JSC, giving the judgment of the majority of the Board, said, at [30]:

‘As regards whether the representations were "clear, unambiguous and devoid of relevant qualification", the Board refers to what Dyson LJ said when giving the judgment of the Court of Appeal in *R (Association of British Civilian Internees: Far East Region) v Secretary of State for Defence* [2003] QB 1397, para 56: the question is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made.’”

Irrationality

23. The law on irrationality/*Wednesbury* unreasonableness was set out by Leggatt LJ and Carr J in *R (Law Society) v Lord Chancellor* [2018] EWHC 2094:

"The second ground on which the Lord Chancellor's Decision is challenged encompasses a number of arguments falling under the general head of "irrationality" or, as it is more accurately described, unreasonableness. This legal basis for judicial review has two aspects. The first is concerned with whether the decision under review is capable of being justified or whether in the classic *Wednesbury* formulation it is "so unreasonable that no reasonable authority could ever have come to it": see *Associated Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223, 233-4. Another, simpler formulation of the test which avoids tautology is whether the decision is outside the range of reasonable decisions open to the decision-maker: see e.g. *Boddington v British Transport Police* [1998] UKHL 13; [1999] 2 AC 143, 175 (Lord Steyn). The second aspect of irrationality/unreasonableness is concerned with the process by which the decision was reached. A decision may be challenged on the basis that there is a demonstrable flaw in the reasoning which led to it - for example, that significant reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the reasoning involved a serious logical or methodological error. Factual error, although it has been recognised as a separate principle, can also be regarded as an example of flawed reasoning - the test being whether a mistake as to a fact which was uncontroversial and objectively verifiable played a material part in the decision-maker's reasoning: see *E v Secretary of State for the Home Department* [2004] EWCA Civ 49; [2004] QB 1044."

24. In *R (Newsmith Stanless Ltd) v Secretary of State for environment, Transport & The Regions* [2001] EWHC Admin 74, Sullivan J emphasised the difficulty in challenging planning decisions on the basis of irrationality:

“In any case, where an expert tribunal is the fact-finding body the threshold of *Wednesbury* unreasonableness is a difficult obstacle for an applicant to surmount. That difficulty is greatly

increased in most planning cases because the Inspector is not simply deciding questions of fact, he or she is reaching a series of planning judgments.”

Duty to undertake sufficient inquiry

25. With regards to the *Tameside* duty to carry out sufficient inquiry, the law was set out in *R (on the Application of Plantagenet Alliance) v Secretary of State for Justice and others* [2014] EWHC 1662, where Hallett LJ, Ouseley J and Haddon-Cave J observed:

“100. The following principles can be gleaned from the authorities:

(1) The obligation upon the decision-maker is only to take such steps to inform himself as are reasonable.

(2) Subject to a *Wednesbury* challenge, it is for the public body, and not the court to decide upon the manner and intensity of inquiry to be undertaken (*R(Khatun) v Newham LBC* [2005] QB 37 at paragraph [35], per Laws LJ).

(3) The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision (per Neill LJ in *R (Bayani) v. Kensington and Chelsea Royal LBC* (1990) 22 HLR 406).

(4) The court should establish what material was before the authority and should only strike down a decision by the authority not to make further inquiries if no reasonable council possessed of that material could suppose that the inquiries they had made were sufficient (per Schiemann J in *R (Costello) v Nottingham City Council* (1989) 21 HLR 301; cited with approval by Laws LJ in *R(Khatun) v Newham LBC* (*supra*) at paragraph [35]).

(5) The principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant, but from the Secretary of State’s duty so to inform himself as to arrive at a rational conclusion (per Laws LJ in *R (London Borough of Southwark) v Secretary of State for Education* (*supra*) at page 323D).

(6) The wider the discretion conferred on the Secretary of State, the more important it must be that he has all relevant material to enable him properly to exercise it (*R (Venables) v Secretary of State for the Home Department* [1998] AC 407 at 466G).”

Mistakes of fact

26. Although mistakes of fact may be dealt with under unreasonableness (*R (Law Society)* (referred to above), the Court of Appeal held in *E v Secretary of State for the Home Department* [2004] EWCA Civ 49 that it can also give rise to a separate ground of review, based on the principle of fairness. Carnwath LJ (as he was then) held:

“63.. In our view, the CICB case points the way to a separate ground of review, based on the principle of fairness. It is true that Lord Slynn distinguished between “ignorance of fact” and “unfairness” as grounds of review. However, we doubt if there is a real distinction. The decision turned, not on issues of fault or lack of fault on either side; it was sufficient that “objectively” there was unfairness. On analysis, the “unfairness” arose from the combination of five factors:

- i) An erroneous impression created by a mistake as to, or ignorance of, a relevant fact (the availability of reliable evidence to support her case);
- ii) The fact was “established”, in the sense that, if attention had been drawn to the point, the correct position could have been shown by objective and uncontentious evidence;
- iii) The claimant could not fairly be held responsible for the error;
- iv) Although there was no duty on the Board itself, or the police, to do the claimant's work of proving her case, all the participants had a shared interest in co-operating to achieve the correct result;
- v) The mistaken impression played a material part in the reasoning.”

GROUNDS

27. The grounds of challenge can be summarised as follows:
- i) It was procedurally unfair for the Defendant not to have viewed the impact of the development from the Claimant's property.
 - ii) It was irrational to grant planning permission without having viewed the impact of the development from the Claimant's property.
 - iii) There was a material error of fact/an immaterial consideration was taken into account arising from Mr Lawrence's statement in his letter of 13 May 2022 that No.11 Thrush Lane was the property most likely to be affected.¹

¹ The permission judge (Morris J.) refers to an email dated 30 May 2022 where this issue was raised. This is presumed to be a typographical error since an email dated 26 May 2022 included in the Claimant bundle raises this point.

GROUND 1 PROCEDURAL UNFAIRNESS

28. The Claimant contends that the decision to grant planning permission was vitiated by procedural unfairness. In granting permission to apply for judicial review, Mr Justice Morris said that it was arguable that the grant of permission was procedurally unfair:

“..on the basis that, in the light of the contents of the Claimant’s detailed letter of objection and in the light of the statements made by the Claimant in emails from Mr Neal of the Defendant, the Defendant’s failure to visit the Claimant’s property, and in particular failure to view the impact of the development from the Claimant’s house (and not simply the garden) was procedurally unfair, alternatively rendered the grant of planning permission irrational.”

29. I am unable to agree that the decision to grant planning permission was procedurally unfair.
30. The Claimant’s complaint about procedural unfairness is essentially based on the fact that the Defendant’s officers did not visit the Claimant’s property before taking the decision to grant planning permission.

Consultation

31. The Defendant clearly consulted the Claimant, she had the opportunity to make representations, and her representations were fully considered. This is in line with the Defendant’s Statement of Community Involvement, which states that objectors will be able to respond to applications and that their representations will be considered.
32. The Claimant, who was clearly very concerned about this application, took the opportunity to make representations and employed a planning specialist who submitted detailed evidence to the Defendant.
33. The Delegated Report takes full account of the Claimant’s concerns. Indeed, much of the Report is taken up with dealing with those concerns in detail. Unfortunately (from the Claimant’s point of view) the Defendant’s planning officer did not agree with the Claimant, but that does not mean that there was procedural unfairness.

Was the Defendant obliged to visit the Claimant’s property?

34. There was no obligation on the Defendant to visit the Claimant’s property before deciding the planning application. It is established in *R (on the Application of Plantagenet Alliance) v Secretary of State for Justice and Others* [2014] EWHC 1662 that the obligation on a decision-maker is only to take such steps to inform himself as are reasonable and that the Court should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision.
35. In my judgement the Claimant does not come close to demonstrating that in the present case no reasonable decision-maker in the Defendant’s position could have granted planning permission without visiting her property.
36. The Defendant had evidence from its site visit to the application site, and, no doubt, knowledge of the area generally. The site visit was carried out by Ms Chapman, an

Enforcement Officer with the Defendant, but Mr Lawrence's letter of 13 May 2022 said that Ms Chapman discussed the case with the case officer, Ms Mugova.

37. Furthermore, the fact that such detailed representations were submitted from the Claimant's planning consultant, including photographs of the application development from the Claimant's property, reduced the importance of a visit by the Defendant to the Claimant's property. Mr Dicocco's report gives a helpful and clear factual description of the impact of the development from the Claimant's property. Although the Claimant appeared to suggest that Mr Dicocco had stated that it was necessary to visit the Claimant's property to appreciate the impact on that property, no such statement appears in his report. He says that a "site visit is necessary" but I think that refers to a visit to the application site and not the Claimant's property, as he goes on to say:

"If the case officer wishes, the occupiers of no 32 Brookside Crescent would welcome a visit to consider the impact the outbuilding has had on their private outlook and living conditions."

Did the Claimant have a legitimate expectation that the Defendant would visit her property?

38. The Claimant has not established a legitimate expectation that the Defendant would visit her property before granting planning permission. It was stated by Bingham LJ in *R v Inland Revenue Commissioners Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, 1569, that in order to ground a claim based on legitimate expectation, there must be a promise which is "clear, unambiguous and devoid of relevant qualification." There was no such promise in the present case.
39. In the email exchanges on 7 December 2021 there is no assurance that there will be a visit to the Claimant's property. In the exchanges on 23 February 2021, Mr Neal stated at 8.03am that there would be a "site visit" but in relation to the Claimant's property said that "you may also be able to arrange for them to visit from your side to see the impact." This statement distinguishes a "site visit"-ie a visit to the application site-from a visit to the Claimant's property, and in relation to the latter says only that a visit *may* be possible.
40. At 10.04 am on 23 February Mr Neal said that:
- "..the application has been received and validated and will shortly be allocated to an officer. Once it has been allocated you will be notified of the details and the case officer who will visit and make the assessment...."
41. The Claimant suggested that the reference in this last email to the "case officer who will visit" was a promise that the case officer would visit the Claimant's property. I do not think it was. I think the reference to a "visit" has to be read in the context of the 8.03 am email, which distinguished between a "site visit" and a visit to the Claimant's own property. I think the reference to "will visit" in the later email was intended to refer to visiting the application site. At the very least, the email of 10.04 am was not a "clear and unambiguous statement" that an officer of the Defendant would visit the Claimant's property.

42. There was thus no clear and unambiguous statement that there would be a visit to the Claimant's property. This case has some similarity to *R (Suliman) v Bournemouth, Christchurch and Poole Council* [2022] EWHC 1196 (Admin) (see [102]), where the following statement was held to be insufficient to give rise to a legitimate expectation that the Claimant's property would occur:

“In regard to the request for a Site Visit, I can confirm that this is agreed to be appropriate and the Chairman and relevant officers are in agreement with this. The precise details will be confirmed in due course.”

43. Lang J held (see [108]-[111]) that this email could reasonably be understood as an agreement *in principle* to a “site visit” with the details to be confirmed at a later date, but she did not accept that the statement gave the Claimant a legitimate expectation that there would be a visit to the Claimant's property as well as or instead of the application site.

Involvement of several officers of the Defendant and their alleged lack of qualifications

44. The Claimant's criticised the number of officers of the Defendant who dealt with this matter and their lack of qualifications.
45. However, the fact that several officers were involved in the case does not make the decision to grant planning permission procedurally unfair. Also, there is no requirement in law that officers charged by a local planning authority to determine planning applications must have particular qualifications. In any event, I was told (and have no reason to doubt) that Ms Elizabeth Mugova, the planning officer who drafted the Delegated Report, is a Member of the Royal Town Planning Institute (“MRTPI”), and that Mr Lawrence, the more senior planning officer who signed off the Delegated Report and took the decision to grant planning permission, is also MRTPI. Although I understand that Ms Lois May Chapman (the Enforcement Officer who carried out the site visit at the application site) does not have planning qualifications, it is apparent from Mr Lawrence's letter of 13 May 2022 that Ms Chapman and Ms Mugova discussed the case. Ms Mugova was a planning officer for the Defendant and did have planning qualifications.
46. Accordingly, the way in which the Defendant considered the application and the Claimant's representations gave rise to no procedural unfairness. I must reject ground 1.

GROUND 2; IRRATIONALITY

47. In my judgement the decision to grant permission was not unreasonable and the investigation undertaken by the Defendant was not unreasonable.
48. In the Delegated Report the relevant issues were considered. It was concluded (taking full account of the Claimant's objection) that the proposed development was acceptable in terms of its appearance and scale, and that it would maintain the character of the “host dwelling” and the surrounding area.
49. It was also considered that the proposal would adequately respect and relate to the surrounding area and would not harm neighbouring occupiers' amenities. In reaching

that conclusion the reporting Officer took particular account of the objections from the Claimant and considered the possible impact of the proposal on the Claimant's property arising from outlook, privacy, glare, light spills and noise.

50. The Delegated Report goes on to deal with the Claimant's objection in relation to lack of engagement and landscaping and finds that they do not comprise a reason why planning permission should be refused.
51. The conclusion reached in the Delegated Report is that the relevant policies would be complied with.
52. I can find nothing legally irrational-"*Wednesbury* unreasonable"- in any of these conclusions. They were all matters of planning judgement, in relation to which, as Sullivan J said in *R (Newsmith Stainless Ltd) v Secretary of State* [2001] EHC Admin 74, it is particularly difficult to find irrationality, precisely because the decision whether planning permission should be granted is a matter of judgement which may itself involve judgements on various issues.
53. Furthermore, as I have already said in relation to ground 1, I cannot find any breach of the duty to make sufficient inquiry. It was for the Defendant as decision-maker to decide on the extent of inquiry that it needed to make in order to reach the judgements it reached. I cannot conclude that no reasonable local planning authority in the position of the Defendant could have been satisfied on the basis of the information the Defendant had.

GROUND 3; MISTAKE OF FACT

54. This ground stems from Mr Lawrence's letter dated 13 May 2022, where he said that only one objection (from the Claimant) had been received on the application and that it was important to note that there was no objection from 11 Thrush Lane "which I consider is the property which could be most affected by the pool enclosure as it is sited immediately adjacent to the common boundary between the two properties."
55. This statement cannot form the basis of a judicial review challenge. To begin with, it is not clear to me that Mr Lawrence's statement quoted in the previous paragraph was a mistake of fact. The only fact he purports to state is that no objection was received from 11 Thrush Lane. As I understand it, this is correct. What he said beyond that was simply a matter of his own judgement. The Claimant clearly disagrees with Mr Lawrence's judgement that 11 Thrush Lane could be said to be the most affected property, but that is a matter of judgement, not a mistake of fact.
56. I note that Mr Justice Morris said in his observations at para 3 that

"if and insofar as the decision was based on the fact that No 11 Thrush Lane was the property most affected...it is arguable that it was based on a material mistake of fact and/or irrelevant consideration..."
57. However, there is nothing in the Delegated Report that suggests the assessment in the Delegated Report was carried out on the basis that 11 Thrush Lane was the property most affected, or on the basis of any comparative analysis of which property would be the most affected. As I have already said, much, if not most, of the Delegated Report

is devoted to analysing the concerns raised by the Claimant, which were clearly taken seriously and dealt with in detail. There is no suggestion in the Delegated Report that the Claimant's concerns are to be set aside or their importance reduced, because others have not objected.

CONCLUSION

58. Having regard to my conclusions on the Claimant's grounds of challenge, this application must be dismissed.