



Neutral Citation Number: [2023] EWHC 678 (Admin)

Case No: CO/2572/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31st March 2023

Before :

Neil Cameron KC
sitting as a Deputy High Court Judge

Between :

THE KING
ON THE APPLICATION OF

KRYSTYNA KNIGHT

Claimant

- and -

LONDON BOROUGH OF HARROW

Defendant

-and-

MR AND MRS KANABAR

Interested
Parties

Kate Olley (instructed by **Kingsley Smith Solicitors LLP**) for the **Claimant**

Meyric Lewis (instructed by **HR Public Law**) for the **Defendant**

The Interested Parties did not appear and were not represented

Hearing date: 8th February 2023

JUDGMENT

The Deputy Judge (Neil Cameron KC):

Introduction

1. In this case Ms Krystyna Knight has applied for an order to quash the decision made by the London Borough of Harrow on 7th June 2022 to grant planning permission to develop land at 31, Blythwood Road, Pinner, Harrow HA5 3QD (“the Site”) by erecting a “Single storey side to rear extension; pitched roof over existing side extension; external alterations (Amended Description)”.
2. Permission to proceed with the application for judicial review was granted by Timothy Straker KC sitting as a Deputy High Court Judge at a hearing held on 20th October 2022.
3. At the hearing which took place on 8th February 2023 I gave directions allowing the parties to make further written submissions on the approach to be taken to the construction of the provisions of Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”).
4. Further written submissions were made on behalf of the Claimant. The Defendant replied to the Claimant’s submissions and the Claimant provided a response to the Defendant’s submissions.

The Background Facts

5. The Claimant lives at 33, Blythwood Road, Pinner, Harrow, HA5 3QD.
6. By an application made on 17th February 2022 the Interested Parties sought prior approval of details of an extension to their property at 31, Blythwood Road. The drawing submitted in support of that application (drawing EX-HWN-400 A) included the following annotation: “Proposed single storey side extension to extend 6m beyond original rear wall. To be no higher than 3m to the eaves, no higher that (sic) 4m to the highest point.”
7. In a letter dated 6th March 2022, the Claimant and her husband made representations on the application for prior approval. In that letter, Mr and Mrs Knight drew attention to particular provisions of the Harrow Residential Design Guide SPD.
8. By a decision notice dated 30th March 2022 the Defendant granted prior approval. The decision notice included the following:

“GRANT PRIOR APPROVAL

Ref: P/0541/22/PRIOR

Application Type: Notification of Intention Householder Extension

With reference to the application received on 17 February 2022 accompanied by Drawing(s)

Notification for Prior Approval for a Proposed Larger Home

Extension Application Form; EX-HWN-400

Single Storey Rear Extension: 6.00 metres deep, 4.00 metres maximum

height, 3.00 metres high to the eaves

31 Blythwood Road, Pinner, HA5 3QD”

(“The Prior Approval”)

9. On the 8th April 2022 the Interested Parties applied for planning permission to develop the Site by:

“Single storey side to part rear extension”

(“the Planning Application”)

10. On 9th May 2022 the solicitors instructed by the Claimant wrote to the Defendant stating (amongst other things):

“The application is wholly reliant upon the prior approval recently granted under reference P/0541/22. The (only) plan, a site location plan that accompanied that application is attached for easy reference, dated 17/02/22. It shows the original dwelling footprint, but in conflict with that, the legend (on the left side) asserts that the proposal would lay beyond original rear wall. As a question of fact, that proposal would not project beyond an original rear wall. The dwelling had been extended to the side as the planning history demonstrates, and it can also be seen on Google Earth that there was no structure to the side of what the applicant admits is the original house footprint (even in this application - see dwg '400') in 1999.

.....

The upshot of the above is that the council's decision to grant the prior approval was waste paper, and it is not possible to lawfully grant planning permission for this proposal which is combined with the prior approval scheme and is predicated upon it (and confirmed by the description).”

11. The Defendant’s planning officer prepared a report on the Planning Application (“the OR”). The purpose of the report was to inform the officer to whom the decision to determine the Planning Application had been delegated.

- i) The planning officer identified relevant planning policies.
- ii) The report contained a number of statements with boxes provided under the headings ‘yes’ or ‘no’.

- iii) The planning officer ticked 'yes' against the statement "Prior Approval/Certificate "fall back position" P/0541/22/PRIOR"
- iv) Under the heading 'Character and Appearance' the planning officer stated:

"Although the proposed single storey rear extension would extend 5.9m beyond the rear building line of the host dwelling, it would not project beyond the rear elevation of the approved Prior Approval extension under P/0541/22/PRIOR. Therefore, the proposed extension has the fall back position on the flank facing No. 33 Blythwood Road. The additional depth of 1.9m, beyond the 4m deemed acceptable under Paragraph 6.59 of the SPD, is deemed acceptable in this case. The proposed single storey rear extension is sufficiently set in from the side boundary of No. 29 Blythwood Road, approximately 4.5m, therefore in accordance with the two for one rule under Paragraph 6.61 of the SPD."

- v) Under the heading 'Residential Amenity' the planning officer stated:

"The proposed single storey side to rear extension is set away from the side boundary as shared with No. 29 Blythwood Road by approximately 4.5m. The proposed sliding doors on the flank elevation facing No. 29 Blythwood Road are therefore sufficiently set away and with the standard boundary treatment in situ, the proposed sliding doors would not impact the residential amenities of No. 29 Blythwood Road. A condition has been added to ensure that these sliding doors would not impact the residential amenities of No. 29 Blythwood Road.

It is noted that No. 33 have raised an objection to the proposed development. The proposed development has a fall-back position of P/0541/22/PRIOR, in which the Local Planning Authority also confirmed that the proposed works to the side could be done under Permitted Development under Class A of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Therefore, there would not be an impact the residential amenities of No. 33 Blythwood Road.

Notwithstanding, the principle of side extension is acceptable and could be carried out under permitted development rights, a certificate of lawfulness is not obligatory. The Local Planning Authority considers that as the principle of a side extension is acceptable under permitted development rights a fall-back position is established. Furthermore, the scheme is assessed, as a whole, on its planning merits to be acceptable in terms of visual and neighbouring amenity and is in accordance with relevant planning guidance."

- vi) The planning officer came to the following conclusion:

"The development would provide an improvement in quality of accommodation for the occupiers of the property, whilst ensuring extensions would be sympathetic to the existing property and would not unduly impinge on neighbouring amenities. Accordingly, the development would accord with development plan policies and is recommended for grant."

12. By a decision notice dated 7th June 2022 the Defendant granted planning permission for the following development:

Single storey side to rear extension; pitched roof over existing side extension; external alterations (Amended Description)

(“The Planning Permission”)

The Grounds of Claim

13. The Claimant relies upon the following two grounds of claim:
- i) The OR contains a factual error when the officer stated that proposed extension has a fall back on the flank facing 33, Blythwood Road. In determining the planning application on the basis of that advice contained in the planning officer’s report, the Defendant made a material mistake of fact and/or took into account an immaterial consideration.
 - ii) The OR gave no adequate reasons for asserting that the proposed development was acceptable in terms of neighbouring amenity.

The Legal Framework

Officer Reports

14. The principles to be applied when a challenge is based on criticism of an officer’s report to a planning committee were set out by Lindblom LJ at paragraph 42 in *Mansell v. Tonbridge and Malling BC* [2017] EWCA Civ 1314. This case is not concerned with a report prepared for consideration by a planning committee. The OR in this case was prepared to inform a decision which was taken by a planning officer to whom the powers to determine the planning application were delegated. In my judgment the broad principles which apply to reports prepared to inform planning committees also apply to reports prepared to inform decisions taken by officers. Indeed, reports prepared to inform decisions taken by officers are often shorter than those prepared for committee, and it is reasonable to assume that there is little need for the attention of a senior planning officer to be drawn to each and every policy that may be applicable, or to the general policy background.

Fall Back

15. The ability of a landowner to carry out development without the need to obtain a further express planning permission is a well-established type or category of material considerations to which a decision maker may have regard. The circumstances in which a landowner can carry out development without the need to obtain express planning

permission includes cases where the development falls into a class described as permitted development in Schedule 2 of the GPDO.

16. In *Mansell*, at paragraph 27, Lindblom LJ stated:

27. The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three things can be said about it:

(1) Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker.

(2) The relevant law as to a “real prospect” of a fallback development being implemented was applied by this court in *Samuel Smith Old Brewery* (see, in particular, paragraphs 17 to 30 of Sullivan L.J.’s judgment, with which the Master of the Rolls and Toulson L.J. agreed; and the judgment of Supperstone J. in *R. (on the application of Kverndal) v London Borough of Hounslow Council* [2015] EWHC 3084 (Admin), at paragraphs 17 and 42 to 53). As Sullivan L.J. said in his judgment in *Samuel Smith Old Brewery*, in this context a “real” prospect is the antithesis of one that is “merely theoretical” (paragraph 20). The basic principle is that “... for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice” (paragraph 21). Previous decisions at first instance, including *Ahern* and *Brentwood Borough Council v Secretary of State for the Environment* [1996] 72 P. & C.R. 61 must be read with care in the light of that statement of the law, and bearing in mind, as Sullivan L.J. emphasized, “... “fall back” cases tend to be very fact-specific” (ibid.). The role of planning judgment is vital. And “[it] is important ... not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal decisions within judicial formulations that are not enactments of general application but are themselves simply the judge’s response to the facts of the case before the court” (paragraph 22).

(3) Therefore, when the court is considering whether a decision-maker has properly identified a “real prospect” of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker’s planning judgment in the particular circumstances of the case in hand.

17. As with any ‘other material consideration’ the weight to be given to a fall back is a matter of planning judgment for the decision maker, subject to not lapsing into *Wednesbury* irrationality. (*Tesco Stores Ltd. v. Secretary of State for the Environment* [1995] 1 WLR 759 at page 780 F-G)

Prior Approval and Permitted Development

18. Article 3(1) of the GPDO grants planning permission for the classes of development described as permitted development in Schedule 2 of the GPDO.
19. Article 3(2) of the GPDO provides:

“(2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2.”
20. Class A of Part 1 of Schedule 2 of the GPDO describes the following as permitted development:

“The enlargement, improvement or other alteration of a dwellinghouse.”
21. The breadth of the development described in Class A is reduced by the provisions of paragraphs A.1 and A.2, which set out the circumstances in which development is not permitted by Class A.
22. Paragraphs A.3. and A.4. impose conditions on the development permitted by Class A.
23. Paragraph A.4 provides (so far as relevant):

“(1) The following conditions apply to development permitted by Class A which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g).

(2) Before beginning the development the developer must provide the following information to the local planning authority—

(a) a written description of the proposed development including—

 - (i) how far the enlarged part of the dwellinghouse extends beyond the rear wall of the original dwellinghouse;
 - (ii) the maximum height of the enlarged part of the dwellinghouse; [...]₁
 - (iii) the height of the eaves of the enlarged part of the dwellinghouse ; and

[(iv) where the enlarged part will be joined to an existing enlargement of the dwellinghouse, the information in sub-paragraphs (i) to (iii) must be provided in respect of the total enlargement (being the enlarged part together with the existing enlargement to which it will be joined);]

(b) a plan indicating the site and showing the proposed development [and any existing enlargement of the original dwellinghouse to which the enlarged part will be joined] ;

(c) the addresses of any adjoining premises;

(d) the developer's contact address; and

(e) the developer's email address if the developer is content to receive communications electronically [,]

[together with any fee required to be paid.]

(3) The local planning authority may refuse an application where, in the opinion of the authority—

- (a) the proposed development does not comply with, or
- (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with,

the conditions, limitations or restrictions applicable to development permitted by Class A which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g).

....

(5) The local planning authority must notify each adjoining owner or occupier about the proposed development by serving on them a notice which—

- [(a) describes the development by setting out the information provided to the authority by the developer under paragraph A.4(2)(a);]
- (b) provides the address of the proposed development;
- (c) specifies the date when the information referred to in sub-paragraph (2) was received by the local planning authority and the date when the period referred to in sub-paragraph (10)(c) would expire; and
- (d) specifies the date (being not less than 21 days from the date of the notice) by which representations are to be received by the local planning authority.

...

(7) Where any owner or occupier of any adjoining premises objects to the proposed development, the prior approval of the local planning authority is required as to the impact of the proposed development on the amenity of any adjoining premises.

.....

(9) The local planning authority must, when considering the impact referred to in sub-paragraph

- (7)—
- (a) take into account any representations made as a result of the notice given under sub-paragraph (5); and
- (b) consider the amenity of all adjoining premises, not just adjoining premises which are the subject of representations.

(10) The development must not begin before the occurrence of one of the following—

- (a) the receipt by the developer from the local planning authority of a written notice that their prior approval is not required;
- (b) the receipt by the developer from the local planning authority of a written notice giving their prior approval; or
- (c) the expiry of 42 days following the date on which the information referred to in sub-paragraph (2) was received by the local planning authority without the local planning authority notifying the developer as to whether prior approval is given or refused.”

24. The effect of a written notice giving prior approval is to satisfy the condition imposed by paragraph A.4(10).
25. The relationship between conditions imposed on classes of development described as permitted development and the class of permitted development was explained by Lindblom LJ at paragraphs 32 to 35 in *Keenan v. Woking BC* [2017] EWCA Civ 438:

“32 The true analysis, in my view, is this. Under the GPDO 1995, and now under the Town and Country Planning (General Permitted Development) (England) Order 2015, various kinds of development have been authorised as “permitted development”. Some, though not all, of the classes of development described as “permitted development” in Schedule 2 to the GPDO 1995 were subject to particular conditions, specified class by class. This was expressly contemplated in article 3(2). So too was the provision, again class by class, of any relevant exceptions and limitations. We are concerned in this case with two classes of “permitted development”, Class A of Part 6, and Class A of Part 7, and in particular with development consisting of “the formation . . . of a private way”, neither of which was unconditional. Both were subject to relevant conditions.
33. Crucially, the grant of planning permission itself came about not through the procedure to be followed under article 3(2) and the specific provisions for “conditions” in either class, but through the operation of article 3(1) and the provisions for “permitted development” in that class. To be “permitted development” in the first place, the development in question had to come fully within the relevant description of the “permitted development” provided for within each class. If it did not, the provisions for “conditions” applicable specifically and only to “permitted development” as thus defined could not relate to it. The operation of the provisions for “conditions” did not, and could not, apply to other forms of development outside that particular class of “permitted development”. Nor did they, or could they, have the effect of enlarging that class. The conditions applied only to development belonging to the class, and not, in any circumstances, to development of whatever kind outside it.
34. If taken out of its proper context, the provision in paragraph A.2(1) in Class A of Part 6 mirrored in paragraph A.2(1) in Class A of Part 7 stating that “[development] is permitted by Class A subject to the following conditions” might be construed, wrongly, as embodying a grant of permission under Class A. But when read in its context, it clearly does not do that. Its meaning, and relevant effect here, is simply that development which is permitted development under Class A, and within the scope of paragraph A.2(2), is subject to the specified conditions.
35. It follows that for the provisions relating to conditions in paragraph A.2(2)(i) in Class A of Part 6, or those in paragraph A.2(1)(a) to (f) in Class A of Part 7, to come into play, the development proposed had to fall squarely within the description of “permitted development”, in the relevant class.”
26. The conditions set out in paragraphs A.3 and A.4 apply only to development which falls within the description of permitted development in Class A.
27. The relationship between the grant of planning permission by the GPDO and the grant of prior approval was explained by Sir Keith Lindblom at paragraph 23 in *CAB*

Housing v. Secretary of State for Levelling up Housing and Communities [2023]
EWCA Civ 194:

23. As Holgate J. explained (in paragraph 31 of his judgment), the grant of the “permitted development” right under Class AA of Part 1 is brought about by the operation of article 3(1) and the relevant provisions of Class AA itself (see the leading judgment in *Keenan v Woking Borough Council* [2018] PTSR 697, at paragraphs 33 to 42, and the leading judgment in *R. (on the application of Rights: Community: Action) v Secretary of State for Housing and Local Government* [2021] EWCA Civ 1954, at paragraphs 25 to 27). The planning permission only accrues – or crystallises – upon the grant of prior approval (see *Rights: Community: Action*, at paragraph 28). The grant of permission by the GPDO together with the grant of prior approval comprise the development consent. The process for prior approval is embedded in that consent. It forms an inextricable part of the permitted development right. Until prior approval is granted for the proposal, the developer’s ability to implement the planning permission remains latent (see *Rights: Community: Action*, paragraphs 64 and 68).

Ground 1

28. Ms Olley, for the Claimant, submits that the statement in the OR (under the heading Character and Appearance) “Therefore, the proposed extension has the fall back position on the flank facing No. 33 Blythwood Road.” constituted a material mistake of fact. In support of that main submission she submits:
- i) What was approved in the Prior Approval application was a 6m extension which was asserted to lie beyond an original rear wall, whereas the extension shown on the submitted plan for the Prior Approval was for an extension from a side extension, not from an original rear wall.
 - ii) The decision notice for the Prior Approval was, as a result, so much ‘waste paper’ and does not serve as a fall back.
 - iii) A prior approval is not a planning permission, nor does it have the same effect as a lawful development certificate, and should not be taken as being a ‘fall back’.
 - iv) There was no possibility that permitted development rights could be relied upon as a fall back development.
29. Mr Lewis submits:
- i) The reference to the prior approval did not play a material part in the decision making process as the officer’s decision was based upon the overall planning merits. In making that submission Mr Lewis places particular reliance on the following words in the OR which appear under the heading ‘Residential Amenity’:

“Furthermore, the scheme is assessed, as a whole, on its planning merits to be acceptable in terms of visual and neighbouring amenity and is in accordance with relevant planning guidance.”

- ii) The Defendant did not make a material mistake of fact, and did not take into account an immaterial consideration:
 - a) The plan (EX-HWN-400 A) which shows the proposed extension was referred to on the face of the grant of prior approval.
 - b) The prior approval decision was not challenged by making an application for judicial review, and as such, it stands.
 - c) The officer found the prior approval scheme acceptable on its merits. The same officer dealt with the Prior Approval and the Planning Application.
 - d) The ability to rely on permitted development rights is capable of amounting to a fall back.
 - e) The prior approval granted fell within ambit of Class A in Part 1 of Schedule 2 to the GPDO as “the enlarged part of the dwellinghouse” would “have a single storey and (i) [not] extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse... (ii) [nor] exceed 4 metres in height” and would therefore not fall within the exclusion set out in paragraph A.1(g). In addition, insofar as the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse it would not “(i) exceed 4 metres in height, (ii) have more than a single storey, or (iii) have a width greater than half the width of the original dwellinghouse”, and therefore would not fall within the exclusion set out at paragraph A.1(j).
 - f) The officer was correct to say in the OR “The proposed development has a fall-back position of P/0541/22/PRIOR, in which the Local Planning Authority also confirmed that the proposed works to the side could be done under Permitted Development under Class A of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015.”

Discussion

- 30. The first issue to consider is whether reference to the prior approval played a material part in the decision making process.
- 31. I accept Mr Lewis’ submission that the reference to the previous prior approval did not play a material part in the decision making process, as the decision was based upon an assessment of the scheme as a whole on its merits. By stating that the scheme, assessed

as whole, was “... on its planning merits to be acceptable in terms of visual and neighbouring amenity ...” the officer made plain that the acceptability of the scheme was assessed on its own merits, and that the conclusion reached was not dependent upon the fact that prior approval had been granted. As a result Ground 1 fails as the decision was not dependent upon the alleged mistake.

32. As submissions have been made on the effect of the prior approval, I have gone on to consider them, although it is not necessary to do so in order to dispose of Ground 1.
33. A ‘fall back’ is capable of being a material consideration when determining a planning application. As with any material consideration, the weight to be attributed to it is a matter for the decision maker, so long as s/he does not lapse into *Wednesbury* irrationality.
34. As referred to at paragraph 27 in *Mansell* a fall back development can take the form of a statement by a developer or landowner that she or he intends to make use of permitted development rights available to her or to him.
35. As made plain in *Keenan* the planning permission granted by the GPDO arises as a result of the operation of Article 3(1).
36. The fact that information has been submitted and prior approval obtained pursuant to a condition set out in Schedule 2 to the GPDO, can be relevant when determining whether a ‘fall back’ development exists, and when determining the weight to be given to such a fall back. In particular, the obtaining of such approval is likely to be material when considering how a developer may intend to make use of permitted development rights available to him or her under the GPDO.
37. In this case the Prior Approval was granted pursuant to the condition set out at paragraph A.4 of Class A of Part 1 of Schedule 2 to the GPDO.
38. The decision to grant prior approval was not challenged, and is to be treated as valid unless and until quashed by a court.
39. I accept the submission made by Mr Lewis that the enlarged part of the dwellinghouse shown on the drawing referred to in the prior approval notice (drawing EX-HWN-400) did not fall within the ambit of the exception set out in paragraph A.1(g)(i). The exception in paragraph A.1(g)(i) is that the enlarged part of the dwelling house would have a single storey and:

“(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or ...”
40. The enlarged part of the dwellinghouse as shown in drawing EX-HWN-400 does not come within the exception described in paragraph A.1(g)(i) as it does not extend beyond that rear wall by more than 8 metres. The fact that enlarged part extends from a side extension to the original dwellinghouse does not bring it within the exception.
41. As the development shown on drawing EX-HWN-400 exceeded the limits in paragraph A.1(f) but was allowed by paragraph A.1(g), the condition at paragraph A.4 applied.

42. The notice giving the Prior Approval was a material factor to be taken into account when determining whether there was a fall back development and in deciding the weight to be given to such a fall back. The Defendant did not err in having regard to the notice giving prior approval. There was no material mistake.
43. For those reasons Ground 1 is not made out.

Ground 2

44. Ms Olley submits that no adequate reasons were given for the officer's conclusion that the Planning Application scheme was acceptable in terms of neighbour amenity and that such reasons as were given were 'infected' by the material mistake of fact which formed the basis for Ground 1. She submits:
- i) The officer did not visit No.33 Blythwood Road, and so could not form a judgement on whether or not the impact was acceptable.
 - ii) The Planning Application proposal did not accord with the Harrow Residential Design Guide SPD, in particular the guidance at paragraphs 6.59 to 6.61, and the officer did not explain why the additional depth of 1.9m (being 1.9m in excess of the 4m referred to at paragraph 6.59 of the Residential Design Guide SPD) was deemed to be acceptable.
45. Mr Lewis submits
- i) The principal controversial issue was impact on residential amenity and the officer addressed that issue.
 - ii) In the OR, the officer works through the criteria in the Residential Design Guide SPD when he filled out the boxes which require the answers 'yes' or 'no'.
 - iii) The officer visited No.31 Blythwood Road, at least twice. Those visits were sufficient for him to form a view on whether the occupiers of No.33 would suffer an unacceptable impact on amenity.

Discussion

46. The approach to be taken when considering a reasons challenge is well established. In *South Buckinghamshire DC v. Porter* [2004] UKHL 33 at paragraph 36, Lord Brown summarised the law:

"36.. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main

issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

47. The planning officer considered the issue of residential amenity in his report. The officer filled out the proforma boxes found under the heading ‘Character and Appearance of the Area/Residential Amenity’.

48. In addition the officer included a section headed ‘Residential Amenity’ in his report. Following consideration of the ‘fall back’ development based on permitted development rights, the officer stated:

“Furthermore, the scheme is assessed, as a whole, on its planning merits to be acceptable in terms of visual and neighbouring amenity and is in accordance with relevant planning guidance”

49. The degree of particularity of reasoning required, and the degree of investigation required, is dependent on the nature of the issues falling for decision. The officer identified impact on residential amenity as a principal issue. The officer considered impact on the two adjoining properties. It was for the officer to decide, in the exercise of his judgement, whether it was necessary to visit the adjoining properties. The decision to assess the impact by visiting the application site, and not to visit the adjoining property, was for the officer to make in the exercise of his judgement. The decision to assess impact on the basis of a visit or visits to the application site fell within the scope of the discretion vested in the officer, and reveals no error of law.

50. At paragraph 1 of the OR, the officer identified the Residential Design Guide Supplementary Planning Document (“the SPD”) as a main consideration.

51. Paragraphs 6.58 to 6.63 in the SPD give guidance in relation to rear extensions. Paragraph 6.59 of the SPD states:

“6.59 Where all other relevant permitted development criteria are met, single storey rear extensions to a depth (taken from the rear wall of the original house) of 4 metres on a detached house and 3 metres on a semi-detached or terraced house may not need planning permission(n). Where planning permission is required, the acceptable depth of extensions will be determined by the need for consistency with permitted development and:

- site considerations

- the scale of the development
- impact on the amenity of neighbouring residents, and
- the established character of the area and the pattern of development”

52. Paragraph 6.61 of the SPD refers to the “two for one rule”.
53. The OR contained a series of questions to which the officer gave a ‘yes’ or ‘no’ answer. Those questions were based, in part, on the guidance given in the SPD. The questions include those relating to depth of the extension and the ‘two for one rule’. In addition there is a question relating to prior approval and therefore to permitted development rights.
54. Insofar as the proforma questions were based upon the guidance given the SPD, the effect of working through the proforma boxes was to address material matters identified in the Residential Design Guide Supplementary Planning Document (“SPD”).
55. In addition, under the heading ‘Character and Appearance’ the officer stated:
“Although the proposed single storey rear extension would extend 5.9m beyond the rear building line of the host dwelling, it would not project beyond the rear elevation of the approved Prior Approval extension under P/0541/22/PRIOR. Therefore, the proposed extension has the fall back position on the flank facing No. 33 Blythwood Road. The additional depth of 1.9m, beyond the 4m deemed acceptable under Paragraph 6.59 of the SPD, is deemed acceptable in this case. The proposed single storey rear extension is sufficiently set in from the side boundary of No. 29 Blythwood Road, approximately 4.5m, therefore in accordance with the two for one rule under Paragraph 6.61 of the SPD.”
56. There is no indication that the officer misunderstood or misapplied the guidance in that SPD. Further, the officer expressly recognised that the depth of the extension (at 5.9m) exceeded the 4m figure referred to at paragraph 6.59 of the SPD, and came to the view that the depth was acceptable.
57. The officer took account of the ‘fall back’ when considering the relationship between the proposed development and No.33 Blythwood Road, and applied the ‘two for one rule’ when considering the relationship with 29, Blythwood Road.
58. Given the fact that this was a delegated decision, and the purpose of the report was to inform a decision by a local authority planning officer, and that the proforma section of the report had been completed, in my judgment no further elaboration was required beyond that given under the headings “Character and Appearance” and “Residential Amenity” in the OR. The Claimant has not established that she has been substantially prejudiced by a failure to give an adequately reasoned decision.
59. To the extent that this ground of claim is based upon the contention that the officer’s decision was ‘infected’ by a material mistake of fact, that contention is not made out for the reasons given when considering Ground 1. When considering both character and appearance, and residential amenity, the officer referred to the fact that prior

approval had been granted, and therefore the applicant had the benefit of a ‘fall back’ position. For the reasons given above, when considering Ground 1, the notice giving the Prior Approval was a material factor to be taken into account when determining whether there was a fall back development and in deciding the weight to be given to such a fall back. The Defendant did not err in having regard to the notice giving prior approval. There was no material mistake, and no defect in the reasoning arose as a result of referring to the Prior Approval and to a fall back.

60. For those reasons, Ground 2 is not made out.

Discretion

61. Mr Lewis seeks to rely on the provisions of section 31(2A) of the Senior Courts Act 1981 which provides that the High Court must refuse to grant relief on an application for judicial review if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.
62. As no ground of claim has been made out, the question of relief does not arise.
63. If I had found that the Claimant had succeeded under either Ground 1 or Ground 2, I would have found that it was highly likely that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred, as the officer formed the view that the scheme, assessed as a whole, on its planning merits, was acceptable in terms of visual and neighbourhood amenity.

Conclusion

64. For the reasons I have given the claim fails.
65. The parties should seek to agree a draft order. If consequential matters cannot be agreed, any further determination will be on the basis of written submissions.