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Neutral Citation Number: [2019] EWHC 2046 (Admin)

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

CO/4789/2018

Royal Courts of Justice

Tuesday, 26 February 2019

Before:

MR JUSTICE HOLGATE

B E T W E E N :

THE QUEEN
ON THE APPLICATION OF
WILLIAM TERRY — Applicant

- and -

TONBRIDGE & MALLING BOROUGH COUNCIL — Respondent

THE APPLICANT appeared in Person with the assistance of McKenzie Friend Dr Wickham.

MR H. WALLER (instructed by Tonbridge & Malling Borough Council) appeared on behalf of the Respondent.

J U D G M E N T

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MR JUSTICE HOLGATE:

1 The claimant, Mr William John Terry, seeks permission to challenge the decision of the defendant, Tonbridge and Malling Borough Council on 19 October 2018 to grant planning permission to the interested party in respect of land at Beechin Wood Farm for the conversion of an existing water tower to residential use and the demolition of existing commercial buildings to be replaced by four new detached residential dwellings and a detached garage. Mr Terry renews his application for permission, which has been refused by Mr John Howell QC, sitting as a Deputy High Court Judge.

2 I am very grateful to Mr Terry for the courteous and clear way in which he has explained his claim, his grounds of challenge, both in writing and orally, assisted also by his planning consultant, Dr Wickham.

3 The original claim form raised two grounds of challenge, the second of which relies upon s.38(6) of the Planning and Compulsory Purchase Act 2004, requiring planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this context, reliance is placed up Policy CP14 of the defendant's Core Strategy, which provides that development in the countryside is to be limited to certain categories of development. It is what Dr Wickham correctly described as a "countryside protection policy".

4 The complaint is that the officer who took the delegated decision here to grant planning permission did not explicitly assess the merits of the scheme against Policy CP14. I do not consider this ground to be arguable, briefly, because it is plain from the officer's report that

she had well in mind the fact that this was a location outside the settlement boundary. That was mentioned explicitly, I think, in two places.

5 A policy of this nature is trite. It is the sort of policy which, as the Supreme Court in *Hopkins* pointed out, decision makers, particularly professional decision makers such as a planning officer, can be expected to have well in mind, and it should not be inferred by the court that they have failed to take into account such a policy simply because it is not explicitly mentioned.

6 This was a proposal for replacement development which was, in large measure, referable to the existing built footprint. There are, obviously, differences as regards building height, in some respects, but it was not a greenfield scheme. The greater part of the officer's report concentrates on the application of greenbelt policy, which is a much stricter policy than a policy such as CP14, and explained why, in the view of the officer, there would not be harm to the purposes of the greenbelt. So, with all due respect, no arguable material legal error can be identified under the second ground of challenge.

7 The first ground of challenge focuses upon para.5.11 of the officer's report, explaining the basis upon which she took the decision. I do understand why Mr Terry thought it appropriate to pursue this first ground, taking the matter at face value. In para.5.11 the officer said:-

> "Equally, the absence of any direct relationship between the proposed dwellings and any neighbouring dwellings will ensure residential amenity is protected. A residential dwelling lies to the east. However, the east elevation of Plot 2 (the nearest plot to the neighbouring dwelling) comprises a single first floor window to serve a bathroom.

> This is to be obscure glazed and will ensure no loss of privacy to the adjacent dwelling. This can be ensured by planning condition."

8 It is pointed out by Mr Terry that it is factually inaccurate to describe Plot 2 as being "the nearest plot to the neighbouring dwelling" and it is suggested that this was an error because the developer's plan showed the cottage, which is a dwelling with an independent residential use, as a neighbouring garage rather than as a habitable unit. This error was, in fact, corrected by the objection letter which was sent by Mr Terry's planning consultant, Dr Wickham, before the application was determined.

9 It is said on behalf of the council that this error is non-material because this part of the paragraph is simply justified or explained the reason why a planning condition was to be imposed on a single first floor window proposed in the east elevation of Plot 2 which will provide light to a bathroom. The condition requires glazing to be obscure so as to ensure no loss of privacy to the adjacent dwelling. It is not happily drafted, it must be said. But the court's function is to see whether there is an arguable error of law.

10 It is necessary to look at the rest of para.5.11. The first sentence refers to the absence of any direct relationship between the proposed dwellings and "any neighbouring dwellings". So far as the court is aware, there are two neighbouring dwellings, one of which is the cottage. Although my attention has not been drawn to any others, I can see from the plan that Greenacres is located to the south of Plot 1.

11 This first sentence is the subject of a witness statement from the planning officer concerned which explains how she came to make her assessment. She, in fact, did a site visit before the objection letter was sent and she explains that when she went on site she observed the first floor window within the southern elevation of the cottage, which I understand serves

the sitting room of the cottage on that level, and it is the only window serving that room, and it was her judgment that this window would not give rise to any potential overlooking because the plan at Exhibit 6 reveals that there would be no window within the northern elevation of the dwelling proposed for Plot 2 having a direct relationship with the window of the cottage. Having reviewed the drawings with the parties, I can see how she arrived at that judgment.

12 In any event, that is quintessentially a matter of planning judgment for the officer and not something which can be impugned in this court unless it can be said to be irrational. But as Sullivan J (as he then was) pointed out in *R (on the application Newsmith Stainless Steel Ltd.) v Secretary of State for Environment, Transport & the Regions*, the hurdle for establishing irrationality on an issue of this kind is notoriously high. Now that the drawings have been helpfully explained to the court, I cannot see any arguable basis upon which the officer's assessment could be questioned as a matter of law. The High Court is not a forum in which planning merits can be revisited. The officer went on to assess impact from other windows.

13 I also bear in mind the way in which the overlooking point was deployed in the objection letter. It was taken as far as it could be by Dr Wickham and one can see why the planning officer came to her view. So, at first sight, there seems to be very close physical proximity between one part of Plot 2 and the cottage, but with the aid of the officer's report and her witness statement one can understand why she has come to the planning judgment that she has. It is not a matter with which this court could possibly interfere.

14 Finally, Mr Terry, when he renewed the application, sought to introduce further grounds of challenge. Not content with that, when he helpfully produced his skeleton argument for today's hearing he introduced yet more grounds of challenge, briefly put. I have looked

through these and I have seen the responses to them prepared at short notice and helpfully by Mr Waller on behalf of the local authority. These grounds could not be pursued without the court's leave. An application has not been made. But no explanation has been given to justify reliance upon these grounds of challenge at this late stage. If any application had been made, I would not be prepared, on this basis, to grant it. In any event, having looked at the matters, for the most part they do appear to be an attempt to challenge matters of planning judgment which, as I have said already, are matters for the local planning authority and not this court. So, I have not been able to detect within those additional matters what could be described as an arguable error of law.

15 So, for all those reasons I will refuse the renewed application for permission.

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CERTIFICATE

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