Neutral Citation Number: [2021] EWHC 2789 (Admin)

Case No: CO/1816/2021

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**
**PLANNING COURT**
**LEEDS DISTRICT REGISTRY**

Leeds Combined Court Centre
1 Oxford Row
Leeds
LS1 3BG

Date: 20/10/2021

**Before** :

**MR JUSTICE JULIAN KNOWLES**

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**Between :**

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| **THE QUEEN ON THE APPLICATION OF KARIN HARRISON** | **Claimant** |
| **- and -** | |
| **LONDON BOROUGH OF BARNET** | **Defendant** |
| **-and-** | |
| **RAJEEV MULCHANDANI<br>NIKKITA MULCHANDANI<br>JOHN MULCHANDANI** | **Interested Parties** |

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**The Claimant appeared in person**
**Richard Harwood QC** (instructed by **Council Solicitor**) for the **Defendant**
**The Interested Parties did not appear and were not represented**

Hearing dates: 7 October 2021

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# Approved Judgment

**Mr Justice Julian Knowles:**

## Introduction

1. This is a renewed application for permission to seek judicial review following refusal by the single judge. The Claimant challenges the grant of planning permission to the Interested Parties by Defendant (the Council) on 9 April 2021 through one of its Planning Committees. The permission relates to land at 39a/b Flower Lane, London NW4. I will refer to 39a/b as 'the plot'.

2. Permission was granted for the erection of two three storey buildings including a lower ground level to provide four self-contained semi-detached dwellings; provision of off-street parking spaces to the front of the dwellings; refuse and cycle stores; and associated landscaping. A number of conditions were attached. The plot is a vacant and cleared brown field site which formerly accommodated a pair of semi-detached bungalows which have been demolished.

3. Over recent years there have been a number of planning applications in relation to the plot. Most recently, in 2019 an application for the erection of dwellings was refused, and in 2020 a similar application for the erection of dwellings was withdrawn. A number of local residents as well as the Claimant and her husband objected to the latest application (and the earlier applications).

4. The plot is to the rear of 39 Flower Lane. It is accessed via a driveway of some length (the Claimant said 90m – 100m) from an entrance between 39 and 43 Flower Lane. The drive is about 3.5m wide. Travelling from the entrance, after running straight for a distance, the drive bends to the left and opens out into an area where the plot is situated.

5. Immediately adjacent to the plot, and accessed by the same driveway, is a garage, the freehold of which is held by Plantation Trading Limited. The Claimant was formerly a director of that company but is no longer. She holds a 20-year lease for the garage which commenced in 2013.

6. The application for planning permission was lodged on 28 May 2020. The Applicant in Section 2 of the planning application form is named as 'Turnit Capital'. This is not a legal entity, such as a company or a partnership. It appears to be a trading name or alias used by the Interested Parties. The form was completed by an agent, Drawing and Planning Limited, on behalf of the Interested Parties.

7. The Claimant and other neighbours objected in writing to the planning application. Some spoke at the Planning Committee meeting at which the permission was granted.

8. The planning officers' recommendation was to grant permission, subject to conditions, which the Planning Committee accepted.

9. The Claimant filed her application for permission to seek judicial review and Detailed Grounds of Challenge on 21 May 2021. These ran to two pages but raised a number of points. The Defendant filed Summary Grounds of Resistance. The Claimant filed a Reply. The single judge refused permission on 21 July 2021.

10. The Claimant then filed Revised Detailed Statement of Grounds. These run to 126 paragraphs over 19 pages. She applied under CPR Part 23 to substitute them for her original Grounds. The Defendant objected on the basis that the Revised Grounds expanded the grounds of challenge beyond those originally pleaded. The Claimant disputed this.

11. At the hearing I permitted the Claimant to address me on whichever of her expanded Grounds she chose, and so pragmatically I formally allow her application for substitution. The Claimant and Defendant both filed Skeleton Arguments for the oral hearing (the Claimant filed two Skeleton Arguments: her main Skeleton Argument runs to 30 pages). As well as the initial paper bundle of over 200 pages, the parties both filed additional electronic bundles containing many further pages.

## Grounds of challenge and decision

12. In her oral submissions the Claimant helpfully grouped her grounds of challenge under four headings, each with a number of sub-points. Having carefully considered each of her arguments (and also those set out in her Revised Detailed Statement of Grounds and Skeleton Arguments) I do not consider there is an any arguable ground of challenge to the Defendant's decision and I therefore refuse permission. That is for the following reasons, and also those set out in the detailed decision of the single judge, with which I agree.

13. The Claimant first submitted that the application for planning permission was defective for a number of reasons. She therefore said that the Defendant should not have considered but should have rejected it. She relied on s 65(5) of the Town and Country Planning Act 1990 (TCPA), which provides that a local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of s 65 have been satisfied.

14. Article 7(1)(a) and (b) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) (the DMPO), made under (inter alia) s 65, provides that a planning application must: (a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect); (b) include the particulars specified or referred to on the form.

15. The Claimant said the application form was defective in a number of ways. In her Skeleton Argument she said the address of the plot in Section 1 of the form (headed 'Site Address') had been wrongly given as 39 Flower Lane rather than '39a/b'. She wisely abandoned this point orally. The address was specified correctly elsewhere on the form, in the officers' report, in the decision, and no-one was in any doubt about the address of the plot (which had been the subject of a number of planning applications in previous years as I have said).

16. Next, she said that the applicants' names had not been given on the form, and criticised the use of the trading name 'Turnit Capital'. Mr Harwood said there was nothing wrong or unusual in the use of a trading name, which was common. He said often planning applications were made by agents on behalf of undisclosed principals and there was no

legal requirement to name the actual ultimate developer I agree. Section 2 of the form plainly contemplates that the application can be made by and in the name of the agent without the principal being named. Planning permission runs with the land, not the applicant, and so unless a personal permission is being sought (which it was not in this case) it is not necessary to name the ultimate developer. It is open to a party to obtain planning permission for land and for it then to sell the land with the planning permission to someone else.

17. Next, she said the form was wrong in Section 8 ('Pedestrian and Vehicle Access, Roads and Rights of Way') because 'No' had been checked in response to the question, 'Do the proposals require any diversions/extinguishments and/or creation of rights of way ?', when there is a restrictive covenant over the driveway which would be affected by the development and in particular the proposed parking spaces, and she also has an easement over it. Mr Harwood said that Section 8 is concerned with public rights of way and not private rights of way. He said that the purpose of the Council seeking this information is because its duty to publicise a planning application is wider where public rights of way may potentially be affected (see Article 15(2)(c), (3) and (7) of the DMPO, which refers specifically to public rights of way). I agree with Mr Harwood's submission. The previous question in Section 8 specifically refers to 'new *public* rights of way'.

18. The Claimant also complained that Section 25 of the form ('Ownership Certificates and Agricultural Land Declaration') had been wrongly completed because certificates had not been served. She was not able to point to any evidence that this was so. She said the wrong address had been given for Plantation Trading Limited. However, everyone was aware of the application and her husband who is a director of that company addressed the Planning Committee. Further, under the statutory provisions only the owner (meaning a person with a freehold or leasehold interest in the land to which application relates, ie 39a/b, in other words, the Interested Parties), needed to be served. The Claimant adduced no evidence that those who needed to be notified, were not notified.

19. The Claimant's Detailed Grounds and Skeleton Argument makes other criticisms of the form but it is not necessary to say more than that they are not arguable either.

20. If I am wrong about these points then in my judgment the application for permission is defeated in any event by s 31(3C) and (3D) of the Senior Courts Act 1981 because it seems to me that if the Council had rejected the application form it simply would have been corrected and resubmitted and planning application granted in due course in exactly the same terms. For the reasons set out the following paragraph neither the restrictive covenant nor the easement provide a reason for permission to be refused.

21. The Claimant's next complaint is that the proposed development would infringe the restrictive covenant and also her easement over the driveway in various ways. These were set out in a letter of objection dated 30 March 2021 from her husband on her behalf and on behalf of Plantation Trading Limited and relate in part to the proposed bin storage arrangement, parking and landscaping.

22. It is trite law that private rights such as restrictive covenants and easements are not relevant to, and no bar to, an application for planning permission. Given the plot's

planning history, and the Claimant and her husband's objections, the developers know that the development will have to not infringe any private rights attaching to the plot and/or apply to the Upper Tribunal (Lands Chamber) for the discharge of the restrictive covenant under s 84 of the Law of Property Act 1925 (for an example, see *In the Matter of an Application under s 84 of the Law of Property Act 1925* [2018] UKUT 21 (LC)).

23. Further and in any event, the arrangements for (*inter alia*) bins and recycling, parking and landscaping are, by conditions 6, 7 and 11 in the permission, still to be submitted to and approved by the Council. This must be done before the development starts. The Claimant made the point about why the Council granted permission for something which cannot be completed and said (Detailed Grounds, [25]) that there is not the room. The short answer is that the developers will have to devise a suitable solution.

24. The Claimant's next point is that the Committee was misled by the Council's planning officers in various ways in their report and orally at the meeting, and referred (Skeleton Argument, [29]) on Judge LJ's (as he then was) judgment in *Oxton Farms and another v Selby District Council* [1997] EWCA Civ 4004. The full passage is as follows:

> "The report by a planning officer to his committee is not and is not intended to provide a learned disquisition of relevant legal principles or to repeat each and every detail of the relevant facts to members of the committee who are responsible for the decision and who are entitled to use their local knowledge to reach it. The report is therefore not susceptible to textual analysis appropriate to the construction of a statute or the directions provided by a judge when summing a case up to the jury.
>
> From time to time there will no doubt be cases when judicial review is granted on the basis of what is or is not contained in the planning officer's report. This reflects no more than the court's conclusion in the particular circumstances of the case before it. In my judgment an application for judicial review based on criticisms on the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken."

25. The Claimant criticised the officers' approach to overdevelopment in their report and said that, in reality, the proposal was not different to the application in 2019 which was refused on the grounds *inter alia* of overdevelopment.

26. Whether or not the current application represented overdevelopment or not was a matter of planning judgment for the officers and the Council. It was clearly identified as a ground of objection and as one of the main things which needed to be considered. It was fully addressed in [5.3] of the report. The development's potential impact on the locality was addressed. There had been alterations to the plans from the previous application. I agree with the single judge's observations in [3(f) and (g)] of his decision, which I adopt without repeating.

27. The Claimant also criticised the selective citation by the officers of previous planning applications. There is nothing in this point. Applications in relation to the plot going back to 2012 were summarised in the report in Section 2. The objections to the current application were properly and adequately summarised by the officers in their report.

28. She also said the officers had not referred to the restrictive covenant. As I have explained, this was not a relevant matter for the Planning Committee and in any event, as the Claimant told me, it was raised at the meeting. It had also been referred to in earlier objections relating to the plot.

29. Next, she said that the officers failed to take into account the long and narrow driveway and made points about cars not being able to pass, and said there was no room for a fire engine to turn. She said that a report in rebuttal written by transport consultants on behalf of the applicants in 2020 in response to officers' comments had depicted a type of fire engine which was no longer used by the London Fire Brigade. These were all matters of planning judgement. Further, that the driveway can only accommodate one car at a time *was* referred to by the officers in their report. Transport matters were fully considered by reference to the relevant policies.

30. Next, the Claimant said the permission conflicted with the Council's Public Sector Equality Duty or was not taken properly into account (Skeleton Argument, [49], [68]-[73]). She referred to a Council run autism centre that is adjacent to the plot, and said many who use the centre gather at the entrance to the access driveway. She also said that any infirm or disabled residents in the new proposed houses would be at risk on the driveway because of its narrow width and lack of room for passing cars.

31. Section 149 of the Equality Act 2010 provides:

> "(1) A public authority must, in the exercise of its functions, have due regard to the need to –
>
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
>
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
>
> (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

32. There is no merit to this submission. Equality and diversity were covered in section 6 of the officers' report. The driveway and entrance is long and established and there is, and was no evidence, about any impact on users of the centre It did not object to the development and I accept Mr Harwood's submission that it could have done, notwithstanding it is a Council-run facility.

33. The Claimant also alleged that the planning officers were biased in favour of the applicants. She referred to the fact that in 2013 the Council entered into a public-private partnership with Capita plc called 'Re' (Regional Enterprise Ltd) to deal with planning matters and showed me a brochure. According to that document, Re offers a number of

services including planning and development management, part of which includes giving advice to developers.

34. The Clamant made a number of criticisms of the Council and one of its officers, including that he had a conflict of interest and that overall the decision was infected by apparent bias. She accused the officers of disregarding key facts; making misleading statements; belatedly disclosing documents; having a readiness to disregard statutory provisions. She accused the Council (Skeleton Argument, [131]-[132]), of 'acting in bad faith or with an improper purpose', and to it having engaged in misconduct, and she asked the Court to impose sanctions on the Council.

35. The test is the well-known test in *Porter v. Magill* [2002] 2 AC 257, summarised by Lord Hope in the following sentence (p494, [103]):

> "The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

36. In *R (Cummins) v. London Borough of Camden* [2001] EWHC Admin 1116 Ouseley J said:

> "256. I accept Sedley J's analysis [in *R v. Secretary of State for the Environment, ex parte Kirkstall Valley Campaign Ltd* [1996] 3 All ER 304] of the two distinct principles. The first question is whether there was a real danger that a Councillor's decision would be influenced by a personal interest, or putting it in what may be a slightly different formulation of the test for bias, following *In re Medicaments and Related Classes of Goods (No2)* [2001] 1 WLR 727 CA: would the fair-minded observer, knowing the background, consider that there was a real danger of bias from, in this context, a personal interest held by a councillor? There is an important distinction between bias from a personal interest and a predisposition, short of predetermination, arising say from prior consideration of the issues or some aspect of a proposal. The decision-making structure, the nature of the functions and the democratic political accountability of Councillors permit, indeed must recognise, the legitimate potential for predisposition towards a particular decision. The source of the potential bias has to be a personal interest for it to be potentially objectionable in law."

37. In *Georgiou v London Borough of Enfield* [2004] EWHC 779 (Admin), Richards J said at [31]:

> "31. I therefore take the view that in considering the question of apparent bias in accordance with the test in *Porter v. Magill*, it is necessary to look beyond pecuniary or personal interests and to consider in addition whether, from the point of view of the fair-minded and informed observer, there was a real possibility that the planning committee or some of its members were biased in the sense of approaching the decision with a closed mind and without

> impartial consideration of all relevant planning issues. That is a question to be approached with appropriate caution, since it is important not to apply the test in a way that will render local authority decision-making impossible or unduly difficult. I do not consider, however, that the circumstances of local authority decision-making are such as to exclude the broader application of the test altogether."

38. There is nothing in any of the points made by the Claimant, and no basis for her accusations of bad faith or bias. No-one, either officer or councillor, had any personal interest in this planning application. Nor is there any evidence the matter was approached with closed minds and without impartial consideration being given to it. It is part of a planning officer's job to give advice in relation to planning applications and what may or may not be permitted by way of development. Officers advise and councillors decide. That has always been the case, and there is nothing improper in officers giving advice. The fact that Barnet has entered into a partnership with a private company is neither here nor there. The decision in question was taken by a Planning Committee of councillors in accordance with national and local policies, all of which are published, and not the officers. The refusal of permission in 2019 shows that the Council was quite capable of turning down the applicants' application. As the single judge noted (and I agree) much of the Claimant's argument under this head depend on complaints about the decision-making process which lack merit (para 3(q)).

39. For all of these reasons, and those given by the single judge, none of the Claimant's submissions raise an arguable ground of challenge and I therefore refuse permission.

## Costs

40. Mr Harwood applied for the Council's costs of attending the oral hearing. He accepted that the starting point is that a defendant who attends an oral renewal permission hearing is not usually entitled to their costs of doing so, absent exceptional circumstances: *Mount Cook Land Ltd v Westminster City Council* [2004] 2 Costs LR 211, [76]. At [76(4)] of that decision Auld LJ referred to the court considering costs at the permission stage being allowed a broad discretion as to whether, on the facts of the case, there are exceptional circumstances justifying the award of costs against an unsuccessful claimant, and at [76(5)] gave a non-exhaustive list of what could constitute exceptional features.

41. The points prayed in aid by Mr Harwood were: what he said was the hopelessness of the claim; the fact that the Claimant substantially re-wrote and (he said) expanded her grounds of challenge; and because the Claimant had attacked the conduct and integrity of the Council as a whole and also specific officers, without foundation, and the Council had to attend in order to respond to those attacks.

42. For her part, the Claimant said that I should not award costs and pointed to the fact that (as Mr Harwood accepted) the Council did not respond to her letter before action, and also wrote to her in terms she regarded as intimidating.

43. In my judgment there are exceptional reasons justifying the award to the Council of its costs of attending the hearing (as well as preparing the Acknowledgement of Service

and Summary Grounds). These are as follows. It was wrong for the Council not to have replied to the Claimant's letter before action, but in the event the litigation would still have taken the same course. The factors which have led me to award the Council its costs are essentially those identified by Mr Harwood. Most if not all of the Claimant's arguments were not just devoid of merit, but can properly be labelled hopeless. They had been rejected in round terms by the single judge and some of them dismissed as 'bare, unparticularised allegations', an assessment I agree with. For example, in 2020 the Council informed the Claimant and her husband that the existence of the restrictive covenant was not relevant to an application for planning permission. Yet the Claimant maintained her reliance on the restrictive covenant without any supporting authority or anything substantial in the way of principled argument. If she thought the Council had written to her inappropriately, there were other remedies open to her besides judicial review. Whether or not her broad heads of argument remained the same, as the Claimant said, or whether they contained new grounds, the Claimant filed substantial submissions in greatly expanded pleadings following the refusal of permission, to which the Council needed to respond. Perhaps most importantly, she also maintained her serious accusations of misconduct, bias and bad faith against the Council and its officers, and sought sanctions, despite the single judge's clear statement that her allegation that the officers had been 'determined to promote the developer's profit' was 'without foundation' and the basis of her argument had no merit. I summarily assess the Council's costs of the hearing at £9831.30. The Claimant must also pay the Council's costs of preparing the Acknowledgement of Service, permission having been refused on the papers, summarily assessed at £7138.60 (this decision was reserved to the renewal hearing by the judge who refused permission.). Both Costs Schedules have been served on the Claimant.

44. The Council should draw up a draft order within seven days to which the Claimant must respond within seven days. I will then approve the order as appropriate.