Neutral Citation Number: [2025] EWHC 347 (Admin)

Case No: AC-2025-BHM-000019

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

Birmingham Civil Justice Centre
Priory Courts, 33 Bull Street
Birmingham, B4 6DS

Date: 05/02/2025

Before:

THE HONOURABLE MR JUSTICE MOULD

- -

Between:

ATE FARMS LIMITED	**Appellant**
- and -	
(1) THE SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT **(2) SOUTH STAFFORDSHIRE DISTRICT COUNCIL**	**Respondents**

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- -

MR ANDREW THOMAS KC of Counsel appeared for the **Appellant**
MR RICCARDO CALZAVARA of Counsel appeared for the **First Respondent**
MR PIERS RILEY-SMITH of Counsel appeared for the **Second Respondent**

- -

JUDGMENT

Digital Transcription by Marten Walsh Cherer Ltd.,

2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR JUSTICE MOULD:

Introduction

1. The appellant, ATE Farms Limited, seeks permission to appeal under section 289 of the Town and Country Planning Act 1990 **["the TCPA"]** from the decision of the first respondent's appointed inspector on 17 January 2025, refusing the appellant's application for the postponement of a local inquiry listed to begin on 11 March 2025 into the appellant's appeal against an enforcement notice issued by the second respondent. By order made on 24 January 2025, I directed a rolled-up hearing of the question of permission to appeal and, if permission were granted, of the substantive appeal itself.

The enforcement notice

2. The enforcement notice was issued by the second respondent on 27 February 2024. It was served on the appellant as the freehold owner of the land to which the notice relates, land at Crooked House, Crooked House Lane, Dudley, DY3 4DA. The Crooked House used to operate as a public house well known for its tilted appearance both within and outside. The causes of the differential settlement resulting in that appearance and evident in the building are possibly various, including the underlying natural geology and the impact of historic mining activity. The pub closed in July 2023 apparently following a burglary which had caused considerable and costly damage. The appellant purchased the land on 21 July 2023.

3. On 5 August 2023 the building was seriously damaged by fire, the cause of which, and in particular whether it was caused deliberately by criminal action, are currently the subject of a police investigation. On 7 August 2023 the fire-damaged building was demolished by contractors acting on the instruction of the appellant. The appellant's case is that those demolition works were initially agreed to by the second respondent, but that they led to an urgent risk of collapse and justified the immediate demolition of the remaining structure. The enforcement notice issued by the second respondent alleges that without planning permission the Crooked House building, an unlisted building, was demolished and that act of unauthorised development constitutes a breach of planning control.

4. The demolition of a building is defined as within the scope of operational development, in particular building operations, in section 55 of the TCPA and accordingly requires planning permission by virtue of section 57 of that Act. Some categories of demolition are granted planning permission under permitted development rights, but that does not apply to buildings which are in use as a public house. It is to be noted that the statutory words used in section 55(1) of the TCPA are that operational development consists of the carrying out of (amongst other forms of operations) building operations. Demolition is a form of building operation, the carrying out of which is development which requires planning permission.

5. The enforcement notice requires the Crooked House to be rebuilt effectively so as to reinstate it in facsimile. The requirements as stated in the notice are extensive. It is unnecessary to read them out for today's purposes, but I quote as follows:

> "Rebuild the building located in the position outlined in blue on the plan attached to this notice so as to recreate it as similar as possible to the demolished building as it stood prior to the start of demolition on 5 August 2023, to include the original pub building and later additions to the rear extension and toilet block. For the avoidance of doubt, such restoration shall include, but not be limited to, steps 1 and 2 as set out below."

More detailed requirements are then set out on the following pages of the enforcement notice. It is to be noted that the demolition against which the enforcement notice was issued is said to have begun on 5 August 2023, that being, of course, the date on which much of the building was destroyed by fire. The enforcement notice required those steps to which I have referred and the other detailed requirements of the notice to be carried out within three years of the date on which the enforcement notice takes effect.

The enforcement appeal – procedural history

6. On 28 March 2024 the appellant lodged an appeal against the enforcement notice under section 174(2) of the TCPA. The appeal proceeds on grounds (a), (b), (c), (f) and (g) in that subsection. It is necessary briefly to outline the chronology in relation to the appeal proceedings since then.

7. There was a change in the inspector initially appointed to hear the appeal. The new inspector held a case management conference on 29 May 2024. After that meeting, he issued a note which included the following:

> "As to the court case –
>
> [I interpolate that is a reference to the then current police investigation into the causes of the fire] –
>
> no charging decision has been made, but they hope to know by September. The Council helpfully explained their view that the identity of the fire starter or even if it was deliberate or not was of little relevance to the enforcement appeal. Their view was that a fire took place followed by demolition of the remains. The issue is whether the fire can be considered to be part of the demolition, not who started it. Particularly as the appellants are not relying on permitted development rights for demolition in the first place.
>
> The appellants reserved their position on these matters.
>
> It is the Inspectorate's position that any further delay to the Inquiry would not be welcome. But if there was a request for a delay this would be considered on its merits."

That last observation was made in the light of the inspector on that day having identified a date in mid-March 2025 as having been agreed for the start of the then

postponed inquiry into the enforcement appeal. He indicated that two weeks should be reserved from around 10 March 2025 for the purposes of the appeal.

8. On 27 September 2024 the second respondent requested that the appeal inquiry be adjourned until after the police investigation into the fire had been concluded, because the cause of the fire and whether it had occurred through human agency could be a key issue for the inquiry to resolve. On 18 October 2024 the Crown Prosecution Service wrote to the inspector notifying him that their current expectation was that the criminal investigation and any decisions on prosecution would be completed by the end of 2024. That letter included the following:

> "As the Appeal touches upon an issue a criminal court may be asked to determine, we request that consideration be given to adjourning the appeal to allow time for the CPS to conclude its review. While we appreciate a decision not to charge a person with any criminal offence will not assist either party to the Appeal, a decision to prosecute may have a bearing on the Appeal and could also impact the criminal proceedings should the appeal be held in tandem."

9. On 15 November 2024 the appellant requested that the inspector postpone the start date for the inquiry on the grounds of fairness and prejudice to the criminal proceedings and pending completion of any criminal process. On 10 December 2024 the inspector issued a note, the contents of which are summarised in the first respondent's skeleton argument as follows:

> "On 10 December 2024 the Inspector indicated his reluctance to put the inquiry "into abeyance" and noted that "the sensible recourse would be for the Council to withdraw the notice, relying on the second bite procedure". He went on to express a view about the question whether the cause of the fire was material, and therefore whether he might "consider only grounds (a) and (f)" as not requiring "discussion of who was responsible for the fire"; he invited submissions on that point."

10. On 11 December 2024 the appellant responded in writing to that request. Their response included the following:

> "5. The Appellant's case is that the destruction of the buildings by fire does not constitute a breach of planning control. The Appellant was not responsible for the fire. It matters not whether the fire was wholly accidental (eg. an electrical fire) or partially accidental (eg. a fire started by a third party which got out of control). Either way, it does not constitute the *"carrying out"* of demolition.
>
> 6. Further and in any event, the Appellant's case is that if the building was deliberately destroyed by fire by a malicious third party, the appeal should be allowed on Ground (a). It would not be proportionate to require a wholly innocent victim of

> arson to incur the multi-million pound cost of restoring the Crooked House when it is uneconomic to do so."

And the following in conclusion:

> "21. The Appellant respectfully submits that the decisions in Save Britain's Heritage are wholly irrelevant to the Crooked House appeal. For the reasons set out, it is important in the present case to consider the cause of the fire which substantially destroyed the property. The issue of the post-fire works is largely academic, because the objective of the Enforcement Notice is to return the Crooked House to its pre-fire condition.
>
> 22. The Appellant therefore maintains its case that the cause of the fire is central to the appeal, and a postponement is necessary both to ensure fairness to the parties in the present appeal and to avoid a substantial risk of injustice to any defendant who may be the subject of a criminal prosecution."

11. On 9 January 2025 the inspector sent a further note to the parties. I should read a substantial part of that note into this judgment:

> "As I am sure you understand, the Inspectorate has a duty to determine appeals in a timely manner, in particular where there is considerable local interest, hence our reluctance to postpone the inquiry. Timescales for the outcome of investigations and any subsequent Court proceedings are uncertain. If there is a court case this could take several years before we even began to consider the planning merits of the demolition of the building. Such a delay also ignores the question, how relevant is the issue of responsibility to the determination of the various grounds of appeal? This is still a matter of dispute between the parties.
>
> In this regard, before I consider who was responsible for the fire, should that become necessary, there are a number of more fundamental questions to answer:
>
> 1. Can a fire be an act of demolition for the purposes of the 1990 Act?
>
> 2. If it can, does it matter who was responsible for the fire in so far as this may be relevant to the grounds of appeal?
>
> 3. Is there a difference between a genuine accident (an act of God) and a deliberate act - regardless of who carried out the deliberate act in so far as it relates to the considerations under appeal?
>
> The three questions above are essentially legal and interpretational issues (and I have already had your outline

> views on them) which should, I would suggest, be dealt with by way of submissions. Consequently, in order to continue with the current, agreed, timetable, I suggest the following process is followed. Both parties provide submissions on the above questions which will cover grounds (b) and (c) at the same time as proofs are submitted. Proofs of evidence should then be limited to grounds (a) and (g) which will be the only matters examined at the inquiry.
>
> Without prejudice to my determination of the appeal, I consider, at this stage, that there are three likely outcomes of grounds (b) and (c). Firstly, that ground (b) succeeds so there has been no demolition in which case the notice will be quashed. Secondly that ground (b)/(c) succeeds to the extent that the allegation needs to be corrected so that demolition is restricted to the part of the building that remained after the fire; and, thirdly, the grounds fail and it is unnecessary to correct the notice. This last outcome is the main component of ground (a), should planning permission be granted for the demolition of the building?
>
> For the inquiry ground (a) should be considered on the basis of either the second or third outcomes. Should you consider any additional outcomes may arise from grounds (b) or (c), relevant to ground (a), these should also be addressed in your submissions and proofs of evidence. Having heard the evidence on grounds (a) and (g) and discussed conditions I will then discuss how best to proceed. At present I consider the best way forward would be to adjourn the inquiry to allow me to consider the written and oral evidence. If it turns out that further evidence is required concerning the identity of those responsible for the fire this can either be dealt with by way of further written representations or I can re-open the inquiry. It may be possible to reach a decision without further evidence in which case I could close the inquiry and issue the decision letter. I will ensure both main parties have an opportunity to address me on this before I adjourn the inquiry and before any final decision is issued."

He invited views on that proposal and how long would be needed for a truncated inquiry in March 2025, to be submitted to him by 17 January.

12. On 14 January 2025 the appellant made further submissions in writing seeking the postponement of the inquiry, on the basis that a proposal to determine grounds (a) and (g) alone at an inquiry beginning on 11 March 2025, leaving the remaining grounds to be determined at a future hearing, was not a viable or fair proposal. At [6] the appellant said this:

> "In ordinary circumstances, delay in the determination of the planning enforcement appeal would be contrary to the public interest. However, these are not ordinary circumstances.

> Concerns about potential adverse public reaction cannot be allowed to undermine the fair determination of the issues on the appeal. It is not appropriate to adopt a convoluted procedure to determine the appeal in order to make up for the fact that potentially decisive evidence is not currently available to the parties and therefore to the Inquiry."

And under the heading, "Resolution of the factual issue is necessary to determine grounds (a) and (g)" the appellant submitted the following:

> "13. The Appellant's case is that it is necessary to establish the cause of the fire in order to determine grounds (a) and (g).
>
> 14. The LPA's case is that the enforcement regime is engaged if Scenario (2) or (3) applies (i.e. if this was destruction by a third party) because the identity of the person who carries out the demolition is not relevant to the application of the statute. This is a contentious argument, at least in so far as Scenario (2) is concerned. However, it is the Appellant's case in any event that the identity of the person responsible for the fire would then become a relevant factor for the purposes of ground (a). If the Appellant is the innocent victim of a malicious arson attack, it would be a disproportionate interference with its economic rights to require it to spend millions of pounds rebuilding the Crooked House. The appeal should be allowed under ground (a) to avoid injustice of that result."

And at 16:

> "In any event, in the context of the present case it is simply irrational to determine ground (a) as a preliminary issue. The Appellant's case is that it is the innocent victim of either an accident or the actions of a third party. It is wholly irrational to determine the hypothetical question of whether it ought to be granted retrospective permission for the demolition of the Crooked House without first resolving the question of whether it in fact did so. Further, given the requirement for expert evidence to determine ground (a), the cost to the parties even of a "truncated" planning inquiry will significantly exceed £100,000. For example, the estimated costs of the groundwork investigations alone is in excess of £40,000. It would also involve a considerable public investment in hearing time for the inquiry."

13. On 16 January 2025 the local planning authority, the second respondent, wrote in support of the inspector's proposed approach on the basis that it was a pragmatic arrangement which avoided the need for a postponement.

The decision under appeal

14. On 17 January 2025 the inspector issued his final ruling on the question in the following terms:

> "Following my note "Response to Request for Postponement of Inquiry", I have carefully considered the replies from both parties. This note is to confirm the Inquiry will go ahead as scheduled on 11 March 2025 for 4-6 sitting days, 11-14 and 18-19 March if necessary.
>
> Although the appellant was not in favour of my suggested approach the Council welcomed it as "pragmatic" which is its intention. The primary purpose of the Inquiry will be to hear evidence on ground (a) and ground (g). The evidence for grounds (b), (c) and (f) will be taken as written submissions. Once all the oral evidence has been heard the Inquiry will be adjourned. The parties will be given the opportunity to make submissions on the available options of how I might proceed and when in respect of the legal grounds of appeal.
>
> It is my intention that neither party will be prejudiced by the process and certainly there will be no prejudging of any legal issues surrounding the fire. The objective is to enable the appeal process to proceed without unnecessary delay.
>
> The remaining timetable is therefore, 11 February for submission of proofs to the Inquiry and written submissions on grounds (b), (c) and (f). Proofs should cover grounds (a) and (g) on the basis outlined in my previous note dated 9 January and written submissions should, in particular, cover the three points from that note."

It is that decision, informed as it is by the previous note of 9 January 2025, that is the subject of the appeal before me today.

Legal framework

15. I turn briefly to the statutory framework and the legal principles which govern my decision. The procedure at enforcement appeal inquiries is governed by the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) Rules 2002. Rule 9(1) provides:

> *"9(1) The date fixed by the Secretary of State for the holding of an inquiry shall be—*
>
> *(a) not later than 20 weeks after the starting date unless he considers such a date impracticable; or*
>
> *(b) the earliest date after that period which he considers to be practicable."*

Rule 9(3) states:

> *"The Secretary of State may vary the date fixed for the holding of an inquiry, whether or not the date as varied is within the period of 20 weeks mentioned in paragraph (1); and paragraph (2) shall apply to a variation of a date as it applied to the date originally fixed."*

16. Rule 17 provides for the inspector's management of the inquiry itself:

> *"17(1) Except as otherwise provided in these Rules, the inspector shall determine the procedure at an inquiry.*
>
> *(2) At the start of the inquiry the inspector shall identify what are, in his opinion, the main issues to be considered at the inquiry and any matters on which he requires further explanation from the persons entitled or permitted to appear.*
>
> *(3) Nothing in paragraph (2) shall preclude any person entitled or permitted to appear from referring to issues which they consider relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph…*
>
> *(6) The inspector may refuse to permit the—*
>
> *(a) giving or production of evidence;*
>
> *(b) cross-examination of persons giving evidence; or*
>
> *(c) presentation of any matter,*
>
> *which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the inquiry."*

As can be seen, the procedural rules place emphasis on the timely progression of enforcement appeals. The role of managing a procedure before and during such an inquiry rests primarily with the inspector in whom the decision is vested.

17. As to the powers of the court on an appeal, section 289(1) of the TCPA provides as follows:

> *"(1) Where the Secretary of State gives a decision in proceedings on an appeal under…Part VII against an enforcement notice the appellant or the local planning authority or any other person having an interest in the land to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court."*

The definition of *"decision"* in section 289(7) of the TCPA is as follows:

> *"In this section 'decision' includes a direction or order, and references to the giving of a decision shall be construed accordingly."*

By virtue of section 289(6) of the TCPA, the leave of the court is required to bring an appeal under section 289(1) to this court.

18. Where, as in the present case, an appeal is brought in relation to a procedural decision made by an inspector in the course of an enforcement notice appeal, the approach to review in this court is that stated by Keene J (as he then was) in *Croydon London Borough Council v Secretary of State for the Environment, Transport and the Regions* [2000] PLCR 171 at 176C:

> *"…the test is one of fairness, but the court should only intervene where it is satisfied that the decision was wrong in principle or demonstrably and clearly unfair."*

Ground 1

The appellant's case

19. The appellant seeks to challenge the inspector's decision on 17 January 2025 on five grounds as set out in the grounds of appeal and as ventilated in the appellant's skeleton argument.

20. Ground 1 contends that the inspector has misdirected himself as to the relevance of the cause of the fire to the determination of the ground (a) appeal. The appeal on ground (a) is said to depend upon the inspector being satisfied that the building was demolished; that is to say, that its destruction, wholly or in part, resulted from an act of operational development in the form of demolition by some person or persons. That particular issue in the present case relates to the damage caused to the building by the fire on 5 August 2023, the second respondent having indicated that the enforcement notice is intended to embrace the destruction caused by the fire on that day within the scope of the unauthorised development alleged as the breach of planning control.

21. The appellant says that understood in that way, the allegation in the enforcement notice necessarily begs the factual question "By whom?". The appellant relies upon the fact that the enforcement notice requires reinstatement of the building at what, on any view, is very considerable expense. The appellant's own estimate, which is not necessarily accepted by the second respondent, is that the cost of the reinstatement works required under the enforcement notice is of the order of £3 million. The appellant's case to the inquiry will be that it and its agents are entirely innocent of any involvement in causing the fire which occurred on 5 August 2023, if indeed that fire was caused by any human agency rather than being accidental in its cause.

22. It is, Mr Thomas KC for the appellant submitted, central to the appeal on ground (a) that planning permission should be granted for the demolition of the building on a

retrospective basis, because it would be wholly disproportionate to require the appellant as the innocent landowner to meet the £3 million cost of reinstatement. That consideration, it will be submitted to the inspector, is highly material and of great weight in the determination of the ground (a) appeal.

23. In paragraph 23 of his skeleton argument, Mr Thomas says this:

> "The appeal on Ground (a) arises if (but only if) the building was deliberately destroyed by fire by some person. The LPA is right that the strict language of the TCPA does not draw any distinction as to the identity of the 'developer', but it is an outrageous suggestion that the Claimant should have to meet the vast cost of recreating The Crooked House for the benefit of the public if it is the innocent victim of a malicious arson attack."

24. Thus the determination of the ground (a) appeal is said to be inescapably dependent on: firstly, a finding of fact based on evidence as to whether the appellant and/or its agents were responsible for the fire; and secondly, an evaluation of the proportionality of insisting on reinstatement of the building at very substantial cost, in the event that the finding on that first matter is in the appellant's favour. Mr Thomas KC points out that the local planning authority does not argue that these matters are immaterial considerations in the determination of the ground (a) appeal; but rather will wish to advance a case that it remains proportionate to require the appellant to reinstate the building, whether or not they were responsible for the fire which caused the damage overnight on 5 August 2023.

The respondents' case

25. In response to the appellant's submissions, the first and second respondent resist the appeal on ground 1 on the basis that the appellant's complaint is premature and misunderstands the inspector's proposed procedure. As it was put by Mr Calzavara in paragraph 23 of his skeleton argument and as developed in oral submissions before me:

> "The inspector has <u>not</u> decided that the cause of the fire is irrelevant to the ground (a) appeal. He has not determined the point at all. He has, as above, explicitly identified three questions that it is necessary to consider in order to determine it <u>in the future</u>. He has at this stage merely indicated that the appeal <u>may</u> be capable of determination without considering the cause. The manner in which that might be so is identified [by reference to the three questions that the inspector posed in his note of 9 January 2025]. There is no conceivable misdirection. This ground is premature."

26. For the second respondent, Mr Riley-Smith made written and oral submissions to similar effect. He submitted that the hybrid procedure, as he put it, which the inspector has proposed to follow leaves the appellant's position in the enforcement appeal preserved. In the event that the inspector finds it to be necessary to determine the cause of the fire in order to reach a decision on the enforcement appeal, the

inspector's arrangements will enable that matter to be the subject of further submissions and evidence, if necessary, before he reaches his final conclusion. However, it was submitted, the inspector was entitled to and correct to contemplate that it may not be necessary for him to consider and to make a decision as to the cause of the fire in order to determine the enforcement appeal whether on ground (a) or, indeed, overall. It was argued that the pragmatic approach followed by the inspector avoids prejudice to the parties but also enables the appeal proceedings to get underway, thereby drawing the correct balance between fairness and the public interest in avoiding unnecessary delay to these already prolonged enforcement appeal proceedings.

Discussion

27. In the light of these contentions, I turn to my own understanding of the inspector's approach.

28. In my view, the inspector's hybrid approach, as Mr Riley-Smith puts it, is founded upon the real possibility that he will not need to hear evidence about, and to make a finding as to, the cause of the fire on 5 August 2023 in order to make his decision on the ground (a) appeal. In my judgment, however, on the face of the cases that the parties wish to advance at the appeal inquiry in relation to ground (a), no such possibility exists.

29. Firstly, it is the appellant's case that the question whether they were responsible for the fire which occurred on 5 August 2023 is central not only to the determination of the enforcement appeal generally, but in particular to the evaluation of, and the determination of, the issue raised under ground (a). Whether the fire was accidental or was caused by human agency, their case is that they are innocent of its occurrence. They therefore, understandably, contend that it would be grossly disproportionate to their rights protected under Article 1 of the First Protocol of the European Convention of Human Rights to require them to reinstate the building at very considerable cost, in the event that the answer to that first question was in their favour. The appellant says that would be a powerful material consideration in support of the grant of planning permission retrospectively for the demolition of the building.

30. It is not for me to offer any view as to the weight, or strength, or weakness of those submissions. However, it seems to me that in the light of that being the case that the appellant seeks to advance under ground (a) to the inspector, it is fanciful to suggest that there is any possibility that he will not need to grapple with the factual questions as to whether the fire was caused by human agency; and if so, whether the person who caused the fire was the appellant or somebody acting on the appellant's direction. In particular, the inspector will need to determine the following questions: firstly, what evidence should be admitted and the evaluation of such evidence as to the cause of the fire; secondly, to make findings of fact on those matters; and, thirdly, on the basis of those findings to determine the balance of planning advantage and disadvantage in relation to the ground (a) appeal.

31. It is to be noted that the local planning authority's position on the facts is at the very least reserved. Firstly, as I understand it, their contention is that the building was demolished within the meaning of section 55 of the TCPA. Secondly, they do not admit that the cause of its demolition was accidental, nor do they admit that the

appellants are free from involvement or responsibility for the demolition of the building by fire. Thirdly, nor does the local planning authority accept that even if the appellant is innocent of those actions, that it will be disproportionate for them to bear the costs of reinstatement.

32. It follows that whether the appellants caused the fire is, at the very least, highly arguably a material consideration to the determination of the ground (a) appeal. There is simply no realistic possibility that consideration of the ground (a) appeal at the forthcoming inquiry, let alone its determination, will be able to proceed without the inspector grappling with those questions of fact and causation. In my view, the inspector clearly misdirected himself in proceeding on the basis that he may be able to determine the enforcement appeal on ground (a) or at all, independently of inquiring into and finding facts as to the cause of the fire, on a true understanding of the evidence.

33. The second respondent accepts that for the inspector to proceed to hear evidence and make findings on those matters would at this stage risk causing prejudice to the appellant. Mr Riley-Smith fairly drew my attention to paragraphs 22 and 23 of his skeleton argument where he said:

> "It is right that initially the Council did support the Claimant's application for a postponement (as noted through the SFG). The reasoning for this was, while it formed no part of the Council's case, it was recognised that the circumstances of the fire did form part of the Claimant's case. While we fundamentally disagree with the Claimant's arguments, the Council has always recognised the Claimant's right to run them.
>
> Furthermore, the Council accepted (and continues to accept) that if the Public Inquiry were to have to hear evidence to determine the exact circumstances of the fire, then this would be prejudicial to the Claimant at this current time."

34. The inspector himself saw the relevance of prejudice. He has proceeded on the basis that he can hear the ground (a) appeal and may, at least as a real possibility, be able to make findings in relation to the ground (a) appeal without such prejudice arising. For the reasons that I have given, I think that that judgment was insupportable.

35. I have considerable sympathy for the inspector in his desire to avoid unnecessary delay and postponement of the inquiry. Not only does that objective flow from the Procedure Rules, as I have indicated, but it was in any event an entirely reasonable and understandable objective for him to pursue. The question though is whether he has misdirected himself in seeking to achieve that.

36. It seems to me, for the reasons that I have given, that the approach that he has followed cannot, in truth, avoid delay in relation to the determination of the ground (a) appeal. In order to determine the ground (a) appeal, it is inevitable that the inspector will have to hear evidence and make findings of fact on the cause of the fire: in particular, as to whether the appellant was responsible for it. He must do so in order to establish the true factual matrix against which to determine whether

retrospective planning permission is merited in vindication of the appellant's Article 1 Protocol 1 rights. On a true analysis of the position, there is no proper basis upon which the inspector can avoid hearing such evidence in the context of the ground (a) appeal.

37. The inspector's note indicates that if he is required, as I say he must, to determine the question of causation and the appellant's responsibility for the fire, if any, then real prejudice may arise to the appellant and, indeed, to the second defendant if he does so whilst the criminal proceedings remain in contemplation. As I have indicated, in their letter to him the Crown Prosecution Service invited him to postpone making any such findings; a position that they have reiterated, as I understand it, in recent email correspondence. Those matters show that it is, in fact, indisputably necessary to delay the proceedings on the ground (a) appeal in order to fulfil the objective of avoiding prejudice to the parties.

Conclusions

38. For those reasons, I shall grant leave on ground 1 and allow the appeal on that ground, remitting the matter to the inspector for redetermination as to whether to begin the inquiry on 11 March 2025 and, if so, on what basis. It is, of course, and I emphasise this, a matter for the inspector to decide in the light of my decision how he should now proceed. As I have indicated, the procedure before and at the inquiry is vouchsafed to him under the Inquiry Procedure Rules. It is not for me to direct him or mandate as to how he should proceed in the application of those Rules.

39. I merely make the modest suggestion that he may wish to consider, in the light of any representations from the parties following my decision, whether he is in a position at least to hear legal submissions in relation to the questions of law and interpretation which he identified in his note of 9 January 2025. He may also have other matters of that kind which he thinks may usefully be debated both in writing and orally at an inquiry which opens in mid-March. Whether that is a profitable way to proceed is of course for him assisted, as I am sure he will be, by submissions from the parties to the appeal.

40. It may also be that he will wish to consider the position with regard to the ongoing criminal investigation in the light of the recent comments by the Crown Prosecution Service, and in the light of how those matters have progressed by 11 March 2025. I am sure the parties will seek to assist him as best they can in relation to that matter should he wish to revisit it.

Other grounds

41. I have thus far confined my analysis and reasoning to ground 1 of the appeal. There are other grounds which I can deal with quite shortly.

42. Ground 2 contends that the inspector failed to consider or to apply rule 17(3) of the Inquiry Procedure Rules in making his decision to proceed with the inquiry. It seems to me that this contention adds nothing of substance to the arguments raised on ground 1. Ground 1 raised the logically prior question as to whether the inspector had misdirected himself in the ruling that he gave on 17 January 2025. For the reasons I have given, I have concluded that he did. In reconsidering the matter, I have no doubt

that he will guide himself by reference to the powers available to him under rule 17 of the Inquiry Procedure Rules and any other relevant case management provisions which are available to him.

43. Ground 3 seeks to contend that to proceed in the way that the inspector proposes, in the absence of decisions having been made and evidence being available from the criminal proceedings, risks depriving the appellant of a fair hearing. Again, it seems to me that that adds nothing of substance to ground 1 on the basis on which I have found that ground is made out.

44. Ground 4 asserts that the hearing of the planning inquiry before the criminal investigation is resolved risks prejudice to any criminal proceedings. As I have indicated, the matter is now at large in relation to how the inspector should proceed, if at all, in March. The impact of decisions that he may make, in the light of my ruling, on the criminal proceedings and the degree to which the parties may be prejudiced by the sequence in which the enforcement appeal and any criminal proceedings may be heard is a matter that he can revisit, in so far as he considers it to be appropriate to do so and in the light of any submissions that the parties may make on that matter.

45. As I understand it, ground 5 is essentially another way of advancing the argument that the inspector misdirected himself, on the basis of there being a false logic in the inspector's approach. As I have indicated, I consider that there is force in that argument. For the reasons I have given, the inspector proceeded on the false premise that there was some realistic possibility that he may be able to hear evidence and proceed to determination of the ground (a) appeal, without needing to grapple with the causes of the fire on 5 August 2023 and whether the appellant or its agents were responsible, wholly or in part, for that fire. For the reasons that I have given, on the cases advanced by the parties in the enforcement appeal, that possibility simply does not exist.

Disposal

46. I shall grant permission for the appeal to proceed. I shall do so on all grounds, but I find it necessary to determine the appeal only on the basis of ground 1. The remaining grounds of appeal do not add substantially to the issues raised under ground 1, on the basis of which I have found that the appeal should succeed. For those reasons, the appeal is allowed.

2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP
Telephone No: 020 7067 2900 DX: 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com