Neutral Citation Number: [2025] EWHC 1968 (Admin)

Case No: AC-2025-LON-000362

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/08/2025

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court
Between :

QUARRY MEWS LIMITED	**Appellant**
- and -	
(1) SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT	**Respondents**
(2) OXFORD CITY COUNCIL	

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- -

Mr Michael Feeney (instructed by **Keystone Law**) for the **Appellant**
Mr Howard Leithead (instructed by **Government Legal Department**) for the **First Respondent**
The Second Respondent did not appear and was not represented.

Hearing dates: 24 July 2025
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Approved Judgment

This judgment was handed down remotely at 10.30am on 1 August 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE JARMAN KC

HHJ JARMAN KC:

Introduction

1. The Appellant appeals the decision of an inspector appointed by the First Respondent, the Secretary of State, with the permission of Richard Kimblin KC, sitting as a Deputy Judge of the High Court, on two grounds. The decision letter (DL) dated 6 January 2025 dismissed the Appellant's appeal under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (the notice) issued on 5 January 2022 by the Second Respondent as local planning authority (the authority). The breach of planning control alleged in the notice is the erection of 6 x 1 bedroom dwellings in a 3-storey terrace (the Mews Building), alterations to the existing access and formation of 9 car parking spaces on the land. The notice required the demolition of the Mews Building and associated car parking spaces and the removal of all resulting materials. The inspector extended the time for compliance, but otherwise upheld the notice.

2. Planning permission was granted by the authority for such development in 2006 on the site in question which falls within the Headington Quarry Conservation Area, Oxford. However, the authority took the view that the development when constructed did not comply with the permission. The justification stated in the notice for requiring demolition included the following:

> "(ii) The development, as built, has a significantly higher eaves height than as approved and a notably higher total height. This gives the development a bulkier appearance, with no degree of equality to buildings within the site or immediate area, sitting proud of the consistent roofline of the street, clashing with the grain of development of Quarry High Street and the streetscene. The position of the eaves line and depth of the tile hung roof element alongside the height and width of the bays again highlights the increased size and scale of the building from that approved. Due to the increased length, the building now has an awkward relationship to the front boundary wall and has the appearance of being built into the public highway, jarring with the established building lines of development on the street. The increased height and mass of the building does not preserve or enhance the character or appearance of the Headington Quarry conservation area but detracts from the character of the area and instead further attracts attention to the bulky, prominent form of the development. No design rationale has been provided as to why the development needed to be constructed as built, as opposed to the approved scheme under 06/00023/FUL, and as to why it needs to be retained in such a manner. Accordingly, the development as constructed conflicts with Policies DH1, DH2 and DH3 of the Oxford Local Plan 2036 ("the Local Plan").
>
> (iii) The footprint of the building is an additional 11.3m2 bigger than approved which has further reduced the small triangular green spaces provided at the northern and southern ends of the

> building, significantly reducing the overall shape and usability of the amenity space for the ground floor flats. Furthermore, the increased height of the building creates further overshadowing of these areas, reducing their usability for private outdoor dining and drying of clothes with reasonable circulation. There is no justification for the further reduction and as such this is in conflict with Policy H16 of the Local Plan.
>
> (iv) 18 conditions were imposed on planning permission reference number 06/00023/FUL. The conditions imposed were the only way to ensure an acceptable development in planning terms in line with the wording of Paragraph 55 of the National Planning Policy Framework 2021. The unauthorised development, would not be controlled by planning conditions and is unacceptable in planning terms."

3. The grounds are:

> i) The inspector erred in law in failing to comply with the Public Sector Equality Duty (PSED) imposed by section 149 of the Equality Act 2010 and in failing to have regard to the need to safeguard and promote the welfare of children.
>
> ii) The inspector erred in law in reducing the weight to the environmental benefit of not demolishing the appeal development on the basis that this argument could be repeated in other appeals.

The decision letter

4. The inspector dealt firstly with the appeal under ground (a) which is that planning permission ought to be granted for the matters stated in the notice. He set out the main issues at DL28 as follows:

> "(i) the effect of the appeal development on the character and appearance of the area, including the Headington Quarry Conservation Area; and
>
> (ii) if there is harm arising from the above effect of the appeal development, whether the harm is outweighed by public benefits to justify a grant of planning permission; and
>
> (iii) whether the appeal development provides adequate outdoor amenity space for occupants."

5. The inspector at DL29-40 dealt with character and appearance, and concluded that the appeal development has a harmful effect on the character and appearance of the area, including the conservation area, to which harm he attached considerable importance and weight.

6. At DL41-46, public benefits were dealt with, including these paragraphs:

> "43. My attention has been drawn to the environmental benefit of not demolishing the appeal development, with disruption,

> pollution and a waste of resources and energy that demolition may entail. But this argument could be too easily repeated, to defeat the whole point of enforcement notices and encourage unauthorised development. So I give this argument limited weight in my decision.…
>
> 45. Overall, as a matter of my planning judgement, the public benefits do not outweigh the heritage harm identified to justify a grant of planning permission.
>
> 46. I conclude the appeal development, including the amended scheme, harms the character and appearance of the area, including the Headington Quarry 46. I conclude the appeal development, including the amended scheme, harms the character and appearance of the area, including the Headington Quarry Conservation Area and its significance. As such, in this regard, it does not comply with Policies DH1, DH2 or DH3 of the Local Plan or the historic environment policies of the Framework."

7. His concluding paragraph under this ground, headed "Planning Balance" reads:

> "59. I have considered the benefits of the appeal development, set out elsewhere in this decision so I shall not repeat them here. But as a matter of my planning judgement, the benefits do not outweigh the harm to justify a grant of planning permission. So I consider that there is conflict with the development plan overall and the conditions suggested would not be able to mitigate the harm."

8. It is not in dispute that in weighing up that balance the inspector did not have express regard to the PSED. The relevant protected characteristic is age. Nor did he have express regard to the best interests of the child being a primary consideration, pursuant to Article 3.1 of the United Nations Convention on the Rights of the Child (UNCRC). The inspector in his pre-inquiry note required answers to whether occupants of the appeal dwellings were served with a copy of the notice, and were notified of the appeal and the hearing. This brought forth letters from occupants one of which referred to the fact that they had a child since moving in. Given that the dwellings had only one bedroom, it is not surprising that there was no further evidence of children occupying them.

9. The inspector referred to children in dealing with the time for compliance with the notice, as follows:

> "69. The appellant seeks 18 months to comply with the notice to allow time for the tenants to find somewhere else to live and move out and to enable the owner to find funds to demolish the building.
>
> 70. But from the evidence before me, all of the tenants are on relatively short term contracts and they moved into their current

> accommodation in full knowledge of the enforcement notice. According to the appellant, upholding the notice would probably bankrupt them. But no financial information was presented to support this view.
>
> 71. However, I am sympathetic to the situation of occupants of the mews building, some of whom have children and/or have roles considered to be particularly important in the local community. Furthermore, the planning history clearly indicates that it is likely that an acceptable scheme for dwellings on the site of the mews building, could be developed, albeit at a reduced scale to that which has been built. With these points in mind, I shall exercise my discretion to allow more time for the notice to be complied with. This will allow the tenants more time to look for alternative accommodation and has the added benefit that it allows the appellant more time to progress an acceptable revised scheme."

10. Although the inspector there referred to children, it was not in dispute before me that the letters from the occupants referred to only one small child occupying one of the appeal dwellings, as indicated above. Further evidence from the Appellant stated that there was at least one child.

Legal principles

11. The legal principles regarding PSED were not in dispute before me and may be shortly summarised. It is accepted that the inspector was under such a duty so that in the course of his function, he must have regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; (b) advance equality of opportunity between persons who share a relevant protected characteristics 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.

12. The main principles were summarised in *R (Bridges) v Chief Constable of South Wales Police* [2020] 1 WLR 5037, in which reference was made to *R (Bracking) v Secretary of State for Work and Pensions* [2014] EqLR 60, [25] approved by the Supreme Court in *Hotak v Southwark London Borough Council* [2015] UKSC 30 at [73]) as follows:

> "(1) The PSED must be fulfilled before and at the time when a particular policy is being considered.
>
> (2) The duty must be exercised in substance, with rigour, and with an open mind. It is not a question of ticking boxes.
>
> (3) The duty is non-delegable.
>
> (4) The duty is a continuing one.

> (5) If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required.
>
> (6) Provided the court is satisfied that there has been a rigorous consideration of the duty, so that there is a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them, then it is for the decision-maker to decide how much weight should be given to the various factors informing the decision..."

13. The PSED requires a highly fact sensitive inquiry (*R (Hough) v SSHD* [2022] EWHC 1635 (Admin), [106]) and a rigorous consideration which requires the decision maker to have a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them (*R (Hurley & Moore) v SSBIS* [2012] EWHC 201 (Admin), [77]). Steyn J in *R* (*Devonhurst Investments Ltd) v Luton BC* [2023] EWHC 978 (Admin) held that the PSED implies a duty of reasonable enquiry with a view to understanding the potential impact of a proposed decision on people with the protected characteristics. She accepted at [55] that the nature of the function being exercised, and the context, may have an important impact on what is required to fulfil the duty of enquiry. How the duty is complied with is subject to challenge only on *Wednesbury* grounds.

14. In the context of planning decisions, Lindblom J, as he then was, in *R (Coleman) v London Borough of Barnet* [2012] EWHC 3725 (Admin) when holding that a local planning authority had due regard to the PSED which had been fully set out in the planning officers' report, said this:

> "66. As Dyson LJ said in [*R (Baker) v Secretary of State for Communities and Local G overnment* [2009] PTSR 809] (in paragraph 31), the duty is not a duty to achieve a result, but to have due regard to the need to achieve the statutory goals. This distinction, said Dyson LJ, is "vital". The failure of a decision-maker to make explicit reference to the relevant statutory provision...) would not determine whether the duty under the statute had been performed, for this "would be to sacrifice substance to form."

15. However, where it is found that a planning decision discloses that the PSED duty has not been complied with, the decision will be quashed (see, for example *Ladr Limited & Others v Secretary of State for Communities and Local Government & Anor* [2016] EWHC 950).

16. The principles applicable to challenges to the decisions of planning inspectors were also agreed. These were conveniently summarised by Lindblom J in *Bloor Homes East Midlands Ltd v* [2014] EWHC 754 (Admin) at [19]. Such decisions must be construed in a reasonably flexible way and need not rehearse every argument in every paragraph. The reasons need refer only to the main issues in the dispute, not every material consideration. The weight to be attached to such considerations and planning judgment are a matter for the inspector with which the court should only interfere on grounds of *Wednesbury* unreasonableness.

Ground 1

17. Mr Feeney for the Appellant accepts that the decision letter must be construed as a whole, and accepts that the inspector complied with the PSED when considering whether to extend time for compliance, but submits that it was a material consideration in the planning balance whether to grant planning permission and there is no indication that that material consideration was taken into account in that exercise.

18. In my judgment it is highly unlikely that the inspector had proper regard when deciding whether to extend time, but did not do so when deciding whether or not to grant planning permission. The context in which he was making both parts of the decision includes those matters set out in DL70 but also that the dwellings were all one-bedroom dwellings and not family dwellings. In my judgment, within that context there is sufficient indication that he had proper regard so as to comply with the PSED when considering the planning balance, when the DL is read fairly as a whole. Moreover, again within that context, by asking for details about occupants' awareness of the notice and the appeal, he made sufficient inquiry.

19. In my judgment, similar considerations apply to the best interest of the child being a (not the) primary consideration under Article 3.1 of UNCRC. Ground 1 fails.

Ground 2

20. Turning to ground 2, Mr Feeney submits that by referring in DL43 to the encouragement of unauthorized development, the inspector took into account an immaterial consideration. What may or may not happen elsewhere is not relevant to what should happen on the appeal site.

21. In my judgment, three important points emerge from that paragraph. The first is that the inspector accepted this as a benefit of not requiring demolition. Second, he attached weight to this in the planning balance, albeit a limited one. Third, the reference to unauthorised development went to the weight to be attached to this material consideration. Sensibly, this must be included in the benefits referred to in DL59, as he attached some weight to it. It is clear in that paragraph that he carried out the required balancing exercise and came to the conclusion that the benefits did not outweigh the identified harm. That was a conclusion to which he was entitled to come.

22. There was some discussion before me as to authorities on precedent, but in the end, as I understood it, the parties agreed that these were not relevant. In my judgment, when the DL is read fairly as a whole, the inspector's approach to the planning balance was a proper one. Ground 2 also fails.

Conclusion

23. Accordingly, the appeal is dismissed. I am grateful to counsel for their assistance. The parties should submit a draft order, agreed as far as possible, within 14 day of hand down of this judgment, together with written submissions on consequential matters which cannot be agreed. These will then be determined on the basis of those submissions.