Case Name: *Bhandal & Ors v Secretary of State for Housing, Communities & Local Government & Anor* [2020] EWHC 2724 (Admin) (15 October 2020)

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Commentary: This case considered the combined meaning of sections 177(1)(a) and 174(2)(a) Town and Country Planning Act 1990, and the extent to which the Secretary of State can grant permission for alternative developments to remedy matters stated in an enforcement notice. Pepperall J called for a pragmatic, broader interpretation, and affirmed that Inspectors have a duty to consider obvious alternative developments.

The defendant, Bromsgrove District Council, granted planning permission to demolish and replace the sunroom at the front of the claimants' restaurant. The roof of the subsequent development did not comply with the planning permission, and the claimants' application for planning permission for this replacement was refused. An enforcement notice requiring removal was then issued.

The claimants appealed against the enforcement notice, putting forward four alternative developments and arguing that one of these proposals ought to be granted planning permission instead (under section 174(2)(a)), and that the steps required in the notice exceed what is necessary to remedy the breach (under section 174(2)(f)). The Inspector rejected the appeal. He interpreted section 177(1)(a), which empowers the Secretary of State to grant planning permission in relation to "whole or part of the matters stated in the enforcement notice", as not extending to alternative developments that involve any new works. Consequently, he rejected Options B-C (the ones relevant to the decision), since they involved putting in place a replacement roof.

Pepperall J rejected the Inspector's narrow interpretation of section 177(1)(a), claiming this would result in allowing only alternative schemes involving partial demolition, and would add delay by requiring the planning authority to consider a freestanding retrospective application. He stated that it was "unnecessary for the court to adopt a strained interpretation of the power to grant planning permission" – if a proposed development can properly be regarded as "part" of the matters enforced, then the Secretary of State has power to grant permission. Applying Moore v Secretary of State for Communities and Local Government [2012] EWCA Civ 1202, he stated that Inspectors had a duty to consider an "obvious alternative which would overcome the planning difficulties at less cost and disruption". He added that, while claimants should actively put forward such alternatives, the Inspector's duty went beyond this, to consider other obvious alternatives. Pepperall J consequently held that the Inspector erred in his approach to section 177(1)(a), and remitted the matter for fresh consideration of options B and C under the first ground.

The case upholds more expansive interpretations of the Secretary of State's power to grant permission on alternative developments, in an effort to ensure enforcement procedure serves

as a tool to remedy breaches in a way that avoids unnecessary cost and disruption, rather than a punitive tool.

Case summary prepared by Jed Holloway