Case Name: *Spitfire Bespoke Homes Ltd v Secretary of State for Housing Communities And Local Government* [2020] EWHC 958 (Admin) (22 April 2020)

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Commentary: The High Court has roundly dismissed a developer's statutory review claim under section 288 of the TCPA 1990 against a planning inspector (the Inspector)'s dismissal of its appeal against Warwick District Council (the LPA)'s refusal of planning permission for the demolition of a Victorian Villa (non-designated heritage asset) in the Royal Leamington Spa Conservation Area describing the developer's case as "fundamentally misconceived".

The legal challenge was brought on two grounds by the developer both of which were dismissed by the High Court.

Ground 1 was that the inspector had erred in his application of statutory duty in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (1990 Act) to "pay special attention to the desirability of preserving the character or appearance of the conservation area". Ground 2 was a procedural fairness ground that the Inspector had erred in not seeking further representations from the developer in relation to the Inspector's finding against the Claimant with respect to non-compliance with the Council's SPD on residential amenity (whether there was sufficient amenity space to serve residents of the block of flats).

As to Ground 1, the High Court concluded that neither the statutory regime nor existing case law required the decision maker to confine his appraisal to the impact of the removal of the building as a whole from the conservation area as was advocated by the developer, rather than the more nuanced appraisal by the Inspector who assessed the contribution made by the building's different elements to the character and appearance of the conservation area. Reading the Inspector's decision as whole, the High Court was satisfied that the Inspector had correctly applied his mind to the relevant factors in concluding, in his planning judgment, that the proposed demolition and replacement of the Victorian Villa would be harmful to the conservation area engaging the "strong statutory presumption" in section 72 1990 Act against grant.

As to Ground 2, the High Court was satisfied, on the evidence, that the developer was fully aware that the LPA was alleging that it had provided insufficient amenity space for four of the flats, and had an adequate opportunity to address that complaint in the context of the planning appeal and did so claiming that any lack of amenity space was "a matter of no importance" in the particular circumstances of the case. The High Court concluded that procedural fairness did not require the Inspector to go back to the developer and reject the submission that he should give no weight to the non-compliance with policy, nor was the Inspector required to give the developer a second opportunity to address the same ground of objection.

While necessarily fact specific, this case is important in reiterating that the assessment of the extent of harm to the conservation area applying the statutory regime in section 72 of the

1990 Act and the policy framework in the NPPF and relevant local plan policies is quintessentially a matter of planning judgment for the decision maker. It is also a useful application of the "fair crack of the whip" procedural fairness test in Hopkins Developments Ltd v Secretary of State for Communities and Local Government [2014] EWCA Civ 470 which requires, in summary, that a person (i) knows the case it has to meet and (ii) has a reasonable opportunity to adduce evidence and/or make submissions to meet it.

Case summary prepared by Paul Arnett