

Case Name: *Ikram v Secretary of State for Housing, Communities And Local Government & Ors* [2021] EWCA Civ 2 (06 January 2021)

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Commentary:

The Court of Appeal upheld the High Court's decision to overturn a planning inspector's decision to 1) grant retrospective planning permission for a change of use from a builders' yard and residential to a place of worship and residential and 2) quash an enforcement notice relating to the change of use.

During the planning appeal, the inspector had considered the use of the site as a mosque for prayers twice per day with a maximum attendance of 30 people, but he did not impose any conditions to that effect when granting the permission.

After permission had been granted for the High Court challenge, the owners of the site completed a section 106 unilateral undertaking containing obligations not to allow more than 30

People to attend the mosque at any one time for the purposes of religious worship.

The main issues were whether the High Court had been wrong to find that the inspector had failed properly to restrict the use permitted to that which had been proposed and assessed during the planning appeal, and to find that the defect in the conditions had not been cured by the unilateral undertaking.

The Secretary of State and the beneficiaries of the permission argued that, in deeming the conditions and subsequent planning obligation to be inadequate, the High Court had strayed into the territory of planning judgement which was a matter for the inspector and not for the court.

Dismissing the appeal, the Court of Appeal held that the High Court was right to decide that the inspector had fallen into a fundamental error of approach by grant planning permission for something which was much broader than the change of use which had been proposed and assessed.

The appeal court considered that a s106 planning obligation in suitable terms could be capable of putting right a defect in the conditions originally imposed on a planning permission, but that there would have to be some very good reason for accepting the obligation rather than quashing the defective permission.

The Court of Appeal was satisfied that the High Court judge had legitimate and proper grounds for concluding that in this instance the s106 had not cured the defects in the permission, and it did not wish to rehear a case heard by an experienced Planning Court judge since she had not misdirected herself or reached an incorrect or unjust conclusion.

It added that since the unilateral undertaking was given after the planning appeal had concluded, the High Court judge had not intruded impermissibly into the sphere of planning merits because there had been no planning judgment formed by the inspector on the undertaking.

Case summary prepared by Safiyah Islam