

**Case Name:** *Choiceplace Properties Ltd v Secretary of State for Housing Communities And Local Government* [2021] EWHC 1070 (Admin) (27 April 2021)

**Full case:** [Click Here](#)

**Commentary:**

This was an unsuccessful challenge to a planning inspector's decision to reject an appeal relating to a building where an error in the drawings showed the building's height as lower than intended.

In July 2018, the claimant (Choiceplace Properties) submitted an application for permission for the demolition of 2 two-storey semi-detached houses and the erection of a 3-storey block to provide 6 self-contained flats. Barnet LBC granted planning permission subject to several planning conditions, including that the development should be carried out in accordance with the approved plans. The claimant commenced the development shortly after permission was granted. In December 2018, the claimant's architect advised the claimant that a street scene drawing submitted alongside the planning application was inaccurate as the drawing showed the ridge height of the new building to be lower than the neighbouring building when in fact the ridge on the new building would be higher than neighbouring dwellings.

Aware of the possible implications the inaccurate drawing had for the planning permission, the claimant applied for a certificate of lawful use or development under Section 192(1)(b) of the Town and Country Planning Act 1990 (TCPA 1990) on the basis that the planning permission was capable of being implemented, notwithstanding the inaccurate drawing. Barnet however refused to issue such a certificate on the basis that "any approval is made with regard to the context provided by the Applicant at the time the decision is made...if the context is in fact materially different to that provided, it may mean that a different decision might have been reached."

The claimant appealed Barnet's refusal to grant a certificate, a planning inspector rejected this appeal, the claimant then sought review of the inspector's decision under s.288 TCPA 1990 on the grounds that:

1. The inspector erred in law when he interpreted the planning permission as prescribing the relationship between the proposed development and its neighbouring buildings - the inaccurate drawing depicting the neighbouring dwellings was merely illustrative and not a matter over which there was any control as part of the process of granting planning permission.
2. The inspector erroneously confused his view of the merits of a potential judicial review of the planning permission with an examination of the legal effect of the permission as it stands.

In relation to Ground 1 Dove J held that the relationship between a proposed development and adjacent structures was not merely illustrative but rather “a matter to be accurately depicted on plans accompanying planning permission for good reason” and that drawings would be assumed to be accurate in absence of any specific note explaining otherwise. Dove J therefore held that there was no substance to this ground; the inspector had concluded that the development could not be implemented in accordance with the approved plans.

On Ground 2, Dove J held that he was “wholly unpersuaded” by the proposition that the inspector had confused the merits of judicial review and the legal effect of the planning permission. The inspector’s decision letter had made clear the question he was tasked with determining in order to resolve the appeal. There was therefore no substance to this ground.

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