

Case Name: *Patel v Secretary of State for Housing, Communities And Local Government & Ors* [2021] EWHC 2115 (Admin) (28 July 2021)

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Commentary:

This was an application by the Claimant for a statutory review pursuant to s.288 of the Town and Country Planning Act 1990 of the decision made by an Inspector to dismiss the Claimant's appeal against the refusal by the London Borough of Lewisham to issue a certificate of lawfulness of existing use or development (CLEUD) in respect of the development at 122 New Cross Road, London. The Claimant's application succeeded.

Whether the development was lawful depended on a single issue – namely, whether the information that had been submitted by the Claimant was sufficient to discharge Additional Condition 1 ('AC1') on the permission, which provided:

"Full written details, including relevant drawings and specifications of:

- (a) The proposed construction of the ceilings and walls separating the ground floor use hereby permitted and the upper floors and the external walls; and
- (b) The proposed works of soundproofing against airborne and impact sound

shall be submitted to and approved in writing by the local planning authority prior to any works starting on site [...]"

The Inspector had supported the Council's contention that AC1 had required the development to be soundproofed against transmission of noise from the commercial units to neighbouring land/premises and from that land/premises to the residential units. A music studio operating next door (the Third Defendants) had supported the Council's position at appeal.

The Claimant's sole ground of challenge was that the Inspector had erred in finding that part (b) of AC1 required the submission of details of soundproofing works in relation to anything other than the elements of the building specified in (a) (i.e. the ceiling and walls separating the ground and upper floors and the external walls). The Council's position, supported by the Third Defendant (a neighbouring music studio), was that the Inspector's interpretation was correct.

Lang J held that the Inspector's interpretation of AC1 was clearly incorrect.

First, it was contrary to the ordinary and natural meaning of the words. She considered that through the eyes of the reasonable reader, the natural and ordinary meaning of AC1 is that parts (a) and (b) were complementary in that (a) requires full written details of the proposed construction of the ceiling and walls and that (b) requires full details of the soundproofing to be installed within those walls and ceilings.

Second, at the date when the Council granted permission and imposed conditions, the natural and ordinary meaning of “proposed works” in AC1 was the soundproofing works between the commercial and residential units as proposed at the date of planning permission – and not to works yet to be submitted, as the Inspector’s conclusion implied. Lang J found that this interpretation was further supported by reading AC1 in the context of the permission as a whole, including standard Condition 2, which required that the development be carried out in accordance with the application plans, drawings and documents approved and as detailed in the relevant schedule. The schedule had included the DAS and Sustainability Report, neither of which made reference to any soundproofing or noise concerns, other than the need for sound insulation between the dwellings and commercial units (i.e. the need for soundproofing against internal noise).

Third, Lang J agreed with the Claimant’s submission that there was nothing in the reasons for AC1 to suggest that its purpose is to protect future occupants of the residential dwellings from sources of noise external to the development. The reasons for AC1 and Additional Conditions 16 and 17 were identical, indicating, in the Claimant’s submission, that each of the conditions was provided for the same purpose. As Conditions 16 and 17 were clearly intended to prevent unacceptable impacts arising from within the development (and, in particular, from the commercial ground floor uses), it followed that the purpose of AC1 was likewise that of protection from noise generated within the development.

Lang J also rejected the Inspector’s finding that the reference to Policy ENV.PRO 11 (which seeks to prevent development that would lead to unacceptable levels of noise) in the reasons for AC1 supported the expectation of and need for a scheme of noise attenuating measures to safeguard the residential units from external sources of noise. She noted that the Policy provides that the Council may require the developers to prepare a detailed noise impact survey – and it was a significant point in support of the Claimant’s interpretation that no such noise survey in respect of external noise from the neighbouring music studio was ever required by the Council in its determination of the planning application, nor was the Claimant required to submit one under AC1.

Finally, Lang J criticised Inspector’s conclusion that although AC1 did not specifically state that protection is required from noise external to the site, “the absence of such specific references would not necessarily rule out the need to address external noise protection in the details of soundproofing”. The difficulty with this conclusion was that it failed to address the fact that conditions must be sufficiently precise. Lang J held that since AC1 is a pre-commencement condition and a condition-precent, it is imperative that the Claimant knows what noise attenuation measures he has to address prior to making an application to discharge the condition.

Accordingly, the Claimant’s application succeeded and the decision of the Inspector was quashed and remitted to the SSHCLG.

Case summary prepared by Stephanie Bruce-Smith