Case Name: *Greenwood v Secretary of State for Housing, Communities and Local Government & Ors* [2021] EWHC 2975 (Admin) (08 November 2021)

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Commentary: This was a dismissed statutory challenge to a successful appeal relating to a refused planning application for the refurbishment of an existing stable and store (the "Outbuilding") at White Horse Farm, Wokingham (the "Site") by a nearby resident.

On 21 June 2017, Wokingham Borough Council (the "Council") granted permission for the conversion of the Outbuilding to a dwelling at the Site into an additional single-storey building for residential use (the "2017 Permission"). On 12 August 2018, the Council granted an alternative permission for the erection of a detached two-storey dwelling in place of the existing dwelling at the Site (the "2018 Permission") subject to a condition that no development would take place until the Outbuilding had been demolished ("Condition 6") on the basis that the Outbuilding was in poor condition and not suitable for conversion. The purpose of Condition 6 was to prevent the implementation of both schemes.

The Outbuilding was not in fact demolished before construction of the new dwelling began in April 2019 and occupied by the end of the year, and an application was submitted on 23 October 2019 for permission to retain and develop the Outbuilding (the "Application"). The claimant (supported by other residents in the White Horse Lane Action Group) objected to the Application on the grounds that the massing and scale of the Outbuilding at the front of the Site was inappropriate and impacted upon neighbours. The Outbuilding is 4.8m high as it had been designed to allow for a horse rear. However, a typical garage is considerably lower in height (the owners of a nearby property said their garage was 3.5m high and provided ample space for large cars).

Officers observed that the Application should have been submitted as a variation of the 2018 Permission so as to amend Condition 6, but the application did not turn on this point. The officer's report recommended refusal of the Application and enforcement action against the breach of planning control. It reiterated the advice set out in the report for the 2018 Permission which recognised the benefits of the removal of the Outbuilding. It concluded that the retention of the Outbuilding for an ancillary residential purpose would essentially be a residential extension and an inappropriate increase in built form in an inappropriate location. As such, the principal of the development was deemed to be a departure from local policy as it would cause cumulative harm to the character of the area. The Council refused the Application on 3 January 2020 on the basis that the excessive height of the retained Outbuilding would be out of place in the character and landscape setting of the Site and would lead to a loss of outlook, loss of light and increased sense of enclosure and building dominance for the occupants of the neighbouring property.

Following the refusal of the Application, the Council issued a "breach letter" on 18 February 2020, but all enforcement action was held in abeyance pending an appeal against the refusal of the Application. The inspector allowed the appeal. On the issue of character and appearance, the inspector was satisfied that the appeal proposal would retain the existing Outbuilding and propose no increase to either the height nor footprint of the existing Outbuilding, that the new replacement roof would be finished in tiles matching the existing residential dwelling on the Site, and that the proposal would introduce new timber cladding on the exterior walls which would be stained black to match the neighbouring property. The inspector did not agree with the Council's concerns that the proposal in its prominent location was harmful to the streetscape nor that it created an inconsistent building line. He found that there was no consistent building line and the variety provided a more informal streetscape which complemented the rural character of the area. Further, he considered that the proposed changes were relatively minor, and the refurbished Outbuilding would retain the same footprint and height as the existing Outbuilding. The inspector also concluded that the proposal would not be overbearing for the occupiers of the neighbouring property because of the distance between the properties and the high boundary fence which meant there would be limited visibility.

The Claimant's first ground of challenge was that the inspector should have considered all the impacts of the proposed development (including the breach of planning control) and assessed those impacts against the baseline or benchmark of the 2018 Permission (including demolition of the Outbuilding pursuant to Condition 6). The Secretary of State's response was that the question for the inspector was whether the development was acceptable in planning terms, having regard to the development plan and any material considerations. Within that framework, the approach he took was a matter for him to decide. The Secretary of State submitted that it would have been odd for the inspector to put the existence of the Outbuilding out of his mind, as he had the advantage of seeing its impact on the character of the area and the neighbours.

The court agreed that the Application in effect sought to vary a condition precedent to the 2018 Permission which had been implemented, so the decision-maker was required to consider the impacts of the proposed variation (including the breach of Condition 6) and assess them against the impacts of the existing 2018 Permission (which required the demolition of the Outbuilding). However, the court was satisfied that the Council did carry out this exercise when it decided to refuse the Application and the inspector also carried out this exercise on appeal, thought it led him to the opposite conclusion. In addition to this, the inspector considered the impacts of the proposed alterations to the Outbuilding in comparison with the existing Outbuilding which was also within the scope of the appeal.

The claimant's second ground was that the principle established in the case of Whitley and Sons v Secretary of State for Wales and Clwyd CC (1992) 64 P & CR 296, namely that

works which contravene conditions precedent cannot be taken as lawfully commencing development, applied in this case and so since the Outbuilding had not been demolished prior to the commencement of development pursuant to Condition 6, the construction of the new dwelling house was unlawful. The court and the Council agreed with this conclusion, but the court also agreed with the Secretary of State and the Council that it would be inappropriate to grant a declaration that the dwelling was unlawful and susceptible to enforcement, as that was a matter for the Council to determine and the court was only concerned with the lawfulness of the appeal decision.

Case summary prepared by Safiyah Islam