

Case Name: *Kulah v Secretary of State for Housing, Communities And Local Government & Anor* [2021] EWHC 3028 (Admin) (15 November 2021)

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Commentary: This was a dismissal by the High Court of an appeal against the Secretary of State's dismissal of an enforcement appeal relating to a bungalow in Chingford, London.

An enforcement notice had been issued by the London Borough of Waltham Forest relating to the erection of a single storey side extension without planning permission. The notice required the removal of part of the extension and had been upheld by the Planning Inspector at appeal.

The grounds of appeal pursued in the High Court were that the Inspector had erred in law by (1) failing to have regard to the existing property's differing eaves heights when establishing whether the extension was permitted development; and (2) not giving the permitted development fall-back position proper consideration.

The first ground was dismissed because, in finding that the eaves of the flat-roofed side extension were higher than the eaves of the existing house, the Inspector had correctly applied paragraph A.1(d) of Class A of Part 1 of Schedule 2 of the GPDO 2015, and the Government's Permitted Development Rights for Householders Technical Guidance (September 2019). The reference in the Technical Guidance to differing eaves heights was not relevant to this situation. Instead, following *Waltham Forest Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 2816 (Admin), the common and normal meaning of the term "eaves" should be used, and this approach was consistent with the Technical Guidance.

The second ground, also dismissed, considered the correct approach to the assessment of the fall-back position. The Inspector had correctly given the appellant's asserted fall-back position little weight because it would not be possible under permitted development rights. At the High Court, the appellant contended that the assessment should have considered the fall-back position that would have been possible under permitted development rights. The High Court found that the Inspector had in fact done this: although the Inspector's conclusions in this respect were "briefly stated, they were sufficient to meet the standard required".

Case summary prepared by Tom Brooks