

Case Name: *Hall, R (On the Application Of) v Royal Borough Of Greenwich* [2023] EWHC 1588 (Admin) (27 June 2023)

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Commentary: This was an unsuccessful application for permission to judicially review a decision of The Royal Borough of Greenwich (“the Council”) to grant planning permission for the demolition of an existing dwelling at 113 Mycenae Road and the provision of three four-bedroom dwellings on the site.

The planning permission was granted in October 2022 and was subject to conditions including:

- condition 3, which required the development to be implemented in accordance with an arboricultural method statement, to which the planning committee added a requirement for implementation in accordance with a detailed tree survey (“DTS”) for “Tree T6”; and
- condition 6, which required implementation in accordance with a future basement impact assessment (“BIA”), which the planning committee stipulated should include a geological survey and consideration of local sinkholes

Permission for judicial review was refused on the papers in April 2023. At this renewal hearing the claimant advanced two grounds of challenge.

The first ground was that the planning committee could not reasonably conclude that the impact on trees and neighbouring amenity were acceptable as it had identified that the DTS and the enhanced BIA would be required, but it did not know at the time of its decision what the outcome of those studies would be; therefore it did not have a legally sufficient evidential basis.

The second ground was that the committee had disregarded relevant considerations – whether the scheme was deliverable depended on issues pertinent to the DTS and BIA, which weren’t available at the time of the decision and so had been disregarded.

In reaching his decision, the judge examined the substance and purpose of each of the relevant conditions.

The purpose of the DTS in condition 3 was to safeguard Tree T6 during building operations, responding to planning policy that required trees of value to be retained “wherever possible”. It achieved this by requiring development in accordance with a survey that would identify whether all the roots of Tree T6 could be retained, and if not, which roots could be removed.

The purpose of condition 6 was to prevent nuisance, protect environmental health and local amenity and ensure protection for adjacent trees. It achieved this by requiring

methodologies to ensure structural stability, that had to be endorsed by an engineer and approved by the Council.

Bearing the substance and purpose of the conditions in mind, there was no arguable case in the grounds of challenge - there was no lack of evidence informing the committee's decision, and that the committee did not disregard any material consideration in coming to its decision. Rather the committee was entitled to come to the decision that the development was acceptable in planning terms subject to the strengthened conditions.

Permission for the review was therefore refused.

The judge also dismissed the claimant's challenge to the setting of a cap on her cost exposure at £25,000. He found that the judge who set the costs had appropriately considered the claimant's means, which is a specifically relevant consideration for the purposes of the cost-setting rule.

Case summary prepared by Dougal Ainsley