

**Case Name:** *Strongroom Ltd, R (On the Application Of) v London Borough of Hackney* [2024] EWHC 1221 (Admin) (22 May 2024)

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

### **Commentary:**

This case was a successful challenge by Strongroom Limited (the “Claimant”) to the decision of the London Borough of Hackney (the “Council”) to grant “Prior Approval for Change of use from commercial, business and service use (Class E) to 6 Residential dwellings” at 117-121 Curtain Road, Hackney (the “Site”) to The Belvedere Realty Investments Limited (the “Interested Party”) (the “Prior Approval”).

### **Facts**

The Claimant owns and operates recording studios and a bar and kitchen which are situated directly opposite the Site. Noise emitted from its premises was likely to be the subject of complaints from future residential occupiers of the Site. The Claimant considered that the agent of change principle should apply to rebut any such complaints and the Interested Party should be required to manage and mitigate the impact of the Site’s change to residential use.

An application for prior approval was originally made by the Interested Party on 5 August 2022 (the “First Application”) however it was refused by the Council on 29 September 2022. A second application for prior approval was made by the Interested Party on 14 November 2022 (the “Second Application”) and the Prior Approval was granted by the Council on 9 January 2023.

### **Grounds of challenge**

The Claimant challenged the Council’s decision to grant the Prior Approval on the Second Application, without notifying and consulting the Claimant as it had done on the First Application, on the following grounds:

1. Breach of legitimate expectation of proper notification and consultation;
2. Irrational exercise of discretion;
3. Mistake of fact; and
4. Failure to have regard to a material consideration.

Permission to apply for judicial review was granted to the Claimant on the papers by Mrs Justice Lang DBE and after permission was granted, the Council, in its detailed grounds of resistance, conceded that the failure to consult the Claimant was unlawful, on Ground 2 only, because there was no rational reason for it to consult the Claimant on the First Application but not on the Second Application.

The Claimant decided not to pursue the remaining grounds at the hearing and focussed on the remaining issue in dispute, the grant of relief.

### **The Applications**

When consulted, the Claimant objected to the First Application on the basis that the proposals did not sufficiently address and mitigate existing noise levels in the area, in part from its own premises, and therefore put its premises at risk and threatened its business.

The First Application was refused by the Council, however not on the basis of the Claimant's objection. The First Application was refused because of

1. the failure to demonstrate that the dwellings would comply with the nationally described space standard;
2. the failure to provide sufficient cycle storage;
3. the failure to provide adequate natural light to all habitable rooms; and
4. the failure to preserve the character of the South Shoreditch Conservation Area by changing the use of part of the ground floor from commercial floorspace to ancillary residential floorspace.

The Second Application dealt with the reasons for refusal by reducing the number of flats from eight to six, ensuring all habitable rooms had natural light and increasing the number of cycle spaces provided. The Council consulted on the Second Application by posting a site notice and sending a letter, however the letter was only sent to 84 recipients, compared to the 113 recipients of the consultation letter for the First Application. The Council accepted that the consultation letter for the Second Application was not sent to the Claimant. The Council considered that the amendments to the proposals sufficiently dealt with the previous reasons for refusal and granted the Prior Approval.

### **Submissions**

The submissions made by the parties in the hearing were largely in respect of the provision set out in section 31(2A) of the Senior Courts Act 1981, that the High Court “(a) must refuse to grant relief on an application for judicial review, and (b) may not make an award under subsection (4) on such an application, if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred”.

The Claimant submitted that the Council had failed to discharge the burden of proof upon it to establish the elements of s31(2A), as it had not provided any supporting evidence. The Claimant further submitted that the Council incorrectly proceeded on the basis that there were no objections to the Second Application, despite knowing that the consultation letter had been sent to less recipients and that the Claimant had recently objected to the First Application. The Claimant submitted that it would have made a similar objection to the Second Application, had it been consulted.

The Council submitted that its differing approach to consultation on the two applications was a result of the officer hand drawing a smaller polygon around the Site

which was still larger than the minimum statutory requirements, however it did accept that there was no rational reason for doing so. The Council further submitted that the Claimant would suffer no prejudice if the Prior Approval was maintained as it was highly likely that the Prior Approval would have been granted in exactly the same terms even if the Claimant had objected, as the Claimant's reasons for objection were not the reasons for refusing the First Application. The Council submitted that the Interested Party would suffer significant prejudice if the Prior Approval were quashed as the Council had since issued an Article 4 Direction preventing the use of permitted development rights to convert offices to residential use and the Interested Party would therefore need to make an application for planning permission to pursue the proposed development.

The Interested Party adopted the Council's submissions, including that an application for planning permission was made by the Interested Party in December 2023 and the Prior Approval represented the lawful fallback position.

### **Conclusion**

Mrs Justice Lang found that the Council's concession on Ground 2 was correct, as the reduction in consultees on the Second Application was significant and had no rational basis. The list of consultees on the Second Application excluded the sole objector to the First Application and the consultation procedure was "seriously flawed". Condition 4 to the Prior Approval which required soundproofing did not address the Claimant's concerns as it dealt only with noise from activities within the Site.

The Judge considered that there was, at the very least, a dispute between experts as to the sufficiency of the noise impact assessment, and that if these issues had been raised with the Council through consultation, it is possible that the outcome would have been different and the test under s31(2A) was not met.

For these reasons, the challenge was successful and the Prior Approval was quashed.

*Case summary prepared by Sophie Bell*