

Case Name: *R (on the application of Georgina Wallis) v North Northamptonshire Council* [2024] EWHC 3076 (Admin)

Full case: [Read here](#)

Commentary: This application for judicial review concerned two grants of planning consent by North Northampton Council ('the Council') for development at the former Weetabix Factory in Corby. The first grant was made in September 2021 for a change of use for the existing building on the site. The second was made in September 2022, and concerned the construction of a new, larger warehouse on the site of the old one.

The challenge was brought out of time by a local resident, Georgina Wallis, who also applied for an extension of time because, she contended, various administrative errors were made when dealing with the application and the Council did not properly consult with the wider community or give proper notice of the applications. Her claim was filed on 11 April 2024, more than two-and-a-half years after the 2021 permission and a year-and-a-half after the 2022 permission.

The grounds of challenge

The first grant of planning permission that the claimant wanted judicially review was made in 2021 for a change of use of the existing building on the site from use class B2 to use class B8. This challenge was dealt with swiftly. Mrs Justice Lang accepted the submissions made by the Council and the site owner ('the first Interested Party') that the demolition of the building that was the subject of the application, the grant of the 2022 permission, and the expiration of the first permission in September 2024 rendered the application academic [104].

The second application concerned the September 2022 application for a new, larger warehouse on the site of the old one. By the time the claim was brought, the site had been substantially built out. The Claimant's grounds of challenge, which overlapped with the grounds of the challenge to the 2021 permission, were as follows:

1. The Council failed to carry out the neighbour consultation which they had decided to do, as they sent the consultation letters to the wrong streets, and so the grant of planning permission was unlawful because:
 - a. There was an unappreciated failure to comply with the Council's statutory policy that it would consult neighbours where it considered it appropriate to do so.
 - b. A legitimate expectation arose that where the Council had decided to consult neighbours on a planning application that it would do so, under its statement of community involvement, the fact of the decision to consult, and its practice of consulting neighbours.

- c. The Council made an error of fact in believing that it had consulted neighbours when it had not done so.
 - d. It was irrational to determine the planning application when the consultation exercise which the Council had decided to carry out had been executed in such an erroneous fashion.
2. The Council failed to display a site notice 'on or near the land' in breach of the Town and Country Planning (Development Management Procedure) (England) Order 2015 ('the DMPO'), article 15(4), instead posting it 483 metres from the Site, at the eastern end of Earlstrees Road, outside a different Weetabix factory.
3. The Council failed to take into account an obviously material consideration, namely the effect of a building which was much taller, wider and for many houses, closer, than the previous building, on the living conditions of local residents, or provide any reasoning on it.
4. The Council's noise conditions were unlawfully lax, insofar as they:
 - a. Failed to take into account or control the total noise generated from the site; and
 - b. Imposed a limit which was higher than their own Environmental Health Officer's advice, based on an erroneous reliance on the 2021 change of use planning permission which was unlawfully granted.

Before considering the grounds of challenge, Lang J set out the relevant case law governing applications made out of time [46-50], and emphasised that:

1. Where such applications are made, the claimant must act 'with the greatest possible celerity' because a landowner is entitled to rely on a planning permission granted by a local authority exercising its statutory functions. Prompt legal action will be required unless very special reasons are shown;
2. The Court will seek to strike a fair balance between the interests of the developer and the public interest; and
3. The factors to be considered when determining an application to extend time "include many considerations beyond those relevant to an objectively good reason for the delay, including the importance of the issues, the prospect of success, the presence or absence of prejudice or detriment to good administration, and the public interest."

On Grounds 1 and 2, while the Council did comply with their statutory obligations under article 15(4) of the DMPO, they were in breach of their own policy and practice of consulting neighbours on major applications. They also made a material factual error in granting permission in the belief that a consultation had taken place when it had not.

The other grounds of challenge were not made out. Under Ground 3, Lang J was satisfied from the evidence before her that the Council was made well aware of the

height, size and location of the proposed building and its likely impact on neighbouring residents. The Council reviewed the proposals and suggested amendments to its dimensions, which were made.

Under Ground 4, Lang J accepted the Council's submission that the fact that a 5dB+ above background noise limit was imposed over the 3dB+ limit suggested by the Environmental Health Officer did not mean that the Council failed to take the EHO's advice into account or that it reached an irrational decision or that it had no evidence for its decision. The Council decided to impose Conditions 5 and 8, in the exercise of its planning judgment, and the Claimant's complaint is essentially a merits challenge. Furthermore, the Council was entitled to take into account the conditions attached to the 2021 Permission, and it would have been wrong for the Council to treat it as unlawful as it had not been revoked or quashed.

The application for an extension of time

Lang J concluded that the first interested party would be substantially prejudiced by an extension of time [125]. In comparison, if the application for an extension of time were to be refused, the claimant would have an alternative remedy through the Local Government and Social Care Ombudsman [127]. The Judge also found that there was a public interest in realising the public benefits to the local economy that the development would provide [130].

Crucially, Lang J also determined that while the Claimant has a good reason for the initial delay in commencing proceedings because of the Council's failure to send neighbour consultation letters to her, she has not demonstrated a good reason for her subsequent delay after the ground works commenced in September 2023 and the construction Project Manager began to write to residents. A reasonable landowner would have checked the Council website for details of the proposed development, or asked the Project Manager for more information, by October 2023 at the latest. In this case, the Claimant failed to act with 'the greatest possible celerity' and failed to show good reason to extend time [131].

Conclusion

Despite the reasonable prospects of success under Ground 1 in respect of the failure to adequately consult, the application to extend time was refused and so the application for permission to apply for judicial review failed. The claimant was also found liable to pay the Defendant's costs, subject to a £5,000 limit.

Case summary prepared by Gregor Donaldson