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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2019] EWHC 383 (Admin)

CO/5129/2018

Royal Courts of Justice

Thursday, 24 January 2019

Before:

ROBIN PURCHAS QC

(Sitting as a Deputy Judge of the High Court)

B E T W E E N:

LONDON BOROUGH OF BRENT

Appellant

- and -

(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT  
(2) OAKINGTON MANOR PIMARY SCHOOL

Respondents

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DR A. BOWES (instructed by Prospect Law) appeared on behalf of the Appellant.

MR M. SMITH (instructed by the Government Legal Department) appeared on behalf of the First Respondent.

MR M. HENDERSON (instructed by Browne Jacobson LLP) appeared on behalf of the Second Respondent.

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J U D G M E N T

THE JUDGE:

- 1 The appellate authority applies for permission to appeal against the decision of the first respondent dated 28 November 2018 allowing the second respondent's appeal against an enforcement notice issued on 12 April 2017. The decision was made following an inquiry held on two days in April 2018.
- 2 The appellant relies on two grounds: first, that the inspector failed to grapple with the contention of the appellant that the material change to the use enforced against occurred in 2016 involving a change in character of the mixed use from that previously on the site and, second, that the inspector failed to have regard to a material consideration in respect of the offsite impacts of the use in determining whether the change in use was material.
- 3 In this court, in light of the indication from the Court that permission would be granted on ground one, Dr Bowes has not pursued ground two. In my judgment he was wise not to have done so and in granting permission I am only granting permission on ground one.
- 4 I will give my short reasons in that respect. In my view it is arguable that the inspector here has not grappled with the issue when the character of the mixed use involving the intensity prevailing at the time the notice was issued commenced, involving a change in character of the use of the site, whether or not there had previously been a mixed use involving public parking which had pre-existed on the site. That was arguably an issue raised in the submissions before the inspector: see particularly para.29 of the closing submissions as noted in the inspector's decision letter at paras.12 and 19.
- 5 At para.14 the inspector concluded that the question before her was whether or not the use started on 24 March 2007 with up to 60 vehicles parking at the appeal site was a de minimis use or the introduction of a new primary use in a mixed use planning unit. That question may indeed have been relevant, but it arguably does not address the question whether the intensity of parking on the site from 2016 as part of the mixed use and at the time of the notice was a material change of use from any earlier mixed use, including a primary parking use.
- 6 In my view it is arguable that this issue was not addressed by the inspector's finding that a primary parking use started in 2007 in para.20 of the decision letter. Reading paras.20-22 as a whole, in my judgment it is arguable that the inspector has simply dealt with this on the basis that there was a material change of use to include primary public parking from 2007 and that parking continued as part of the mixed use for ten years before the notice was served without addressing the issue whether the mixed use at the time of the notice and to which the notice applied was materially different in character from that which had continued on the site from 2007 until 2016. For those reasons, permission is granted on ground one.

I need to make directions at this stage. Are there any special directions the parties are asking for?

DR BOWES: We are not seeking any, my Lord.

MR SMITH: No, my Lord.

THE JUDGE: In those circumstances, the standard directions will apply. The defendant and any other person served with a claim form who wishes to contest the claim or support it on additional grounds must file and serve detailed grounds for contesting the claim or

supporting it on additional grounds and any written evidence within 35 days of service of this order.

Any reply and any application by the claimant to lodge further evidence must be lodged within 21 days of the service of the detailed grounds for contesting the claim. The claimant must file and serve a trial bundle not less than four weeks before the date of the hearing of the matter. The claimant must file and serve a skeleton argument not less than 14 days before the date of the hearing. The defendant and any interested party or second respondent must file and serve a skeleton not less than seven days before the date of the hearing. The claimant must file an agreed bundle of authorities and statutory sources not less than three days before the date of the hearing.

As permission has been granted on only ground one, if there is to be a request that the decision be reconsidered at a hearing by filing and serving a completed form 86B within seven days of the order that reconsideration hearing can be fixed, but if the parties agree and time allows then consideration of the additional ground can take place immediately before the substantive hearing.

In terms of listing, what time are you asking to be allowed?

DR BOWES: I would say half a day.

THE JUDGE: Half a day is sufficient?

DR BOWES: Maybe excluding judgment, my Lord.

THE JUDGE: Yes. The appeal will be listed for two and a half hours, the parties to provide a written time estimate if they disagree with this direction before hearing.

Unless there is a submission to the contrary, costs to be in the appeal.

DR BOWES: Thank you, my Lord. May I ask that the appellant's costs occasioned by this application be in the appeal as the order rather than costs.

THE JUDGE: Costs of this hearing in the appeal.

DR BOWES: Yes. Thank you.

THE JUDGE: I hope that is clear.

So it is clear, the point I made about the additional ground, of course here we are in an appeal situation and there had to be an oral application in any event so there is no question of a renewal. Simply, if you are to raise any matters about ground one, you will have to apply and that can be done at the hearing, unless there is objection to that course being taken.

MR SMITH: My Lord, may I just clarify that your order will read costs in the appeal.

THE JUDGE: Costs in the appeal is what I intend. I do not know if that emerged from the discussion.

MR SMITH: I am grateful.

THE JUDGE: Thank you very much indeed.

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This transcript has been approved by the Judge.