



Neutral Citation Number: [2023] EWCA Civ 904

Case No: CA-2022-001504

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
David Elvin Q.C. (sitting as a Deputy High Court Judge)
[2022] EWHC 2301 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 July 2023

Before:

SIR KEITH LINDBLOM
(Senior President of Tribunals)
LORD JUSTICE LEWIS
and
LORD JUSTICE NUGEE

Between:

NASIR KAZALBASH

**Applicant/
Respondent**

- and -

**SECRETARY OF STATE FOR LEVELLING UP,
HOUSING AND COMMUNITIES**

**First Respondent/
Appellant**

- and -

LONDON BOROUGH OF HILLINGDON COUNCIL

**Second
Respondent**

Nina Pindham (instructed by the **Government Legal Department**) for the **First Respondent/Appellant**

Brendan Brett (instructed by direct access) for the **Applicant/Respondent**
The Second Respondent did not appear and was not represented

Hearing date: 11 July 2023

Approved Judgment

This judgment was handed down remotely at 5:00 pm on 27 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Keith Lindblom, Senior President of Tribunals:

Introduction

1. Did an inspector err in law when concluding that a proposed development involving the subdivision of a dwelling house in a residential street in a London suburb would “harm the character and appearance of the area”? The judge in the court below considered this conclusion “irrational”. We must decide whether he was wrong to do so.
2. With permission granted by Lewison L.J., the appellant, the Secretary of State for Levelling Up, Housing and Communities, appeals against the order dated 8 July 2022 of Mr David Elvin Q.C., sitting as a deputy judge of the High Court, by which he upheld a challenge brought by the respondent, Nasir Kazalbash, under section 288 of the Town and Country Planning Act 1990 (“the 1990 Act”), and quashed the decision of the inspector appointed to determine Mr Kazalbash’s appeal under section 78 against the refusal by the London Borough of Hillingdon Council, of planning permission for development at 26 Highland Road, Northwood. The council, as second respondent to the application, has taken no active part in the proceedings, either in this court or below.
3. As described in the council’s decision notice, the proposed development was the “[conversion] of existing dwelling to 1 x 3-bed unit and 1 x 2-bed unit with associated amenity space and parking”. It would subdivide the semi-detached dwelling house on the site to create an additional dwelling, with a garden and an area for car parking. The section 78 appeal was decided on written representations. The inspector carried out a site visit on 5 January 2022. His decision letter is dated 19 January 2022.
4. The inspector’s decision was challenged on two grounds: first, that he was wrong to rely on a concession allegedly made by Mr Kazalbash about the visibility from the street of a proposed fence to divide the back garden in two; and second, that it was irrational for him to conclude that the existing extension would harm the “street scene” when the development had been carried out, given there was to be no change to the exterior of the building. The judge saw some merit in the first ground, but allowed the application only on the second.

The issue in the appeal

5. The sole ground of appeal states simply that “[the] Judge erred in restricting the Inspector’s decision to contemplation of visual impact only”. This raises for us a single issue: whether the judge was right to hold that the inspector erred in law in concluding that the proposed development “would harm the character and appearance of the area ...”.

The council's decision to refuse planning permission

6. The application for planning permission came before the council's North Planning Committee on 19 May 2021. In his report to the committee the Head of Planning, Transportation and Regeneration said in sub-section 7.07, under the heading "Impact on the character & appearance of the area":

"... From No.26 Highland Road (the application site) which is the last property on the bend in the road, all the way to No.96 Highland Road (close to the junction with Cranbourne Road) there is a continuous line of properties with a rigid building line and uniform plot widths (which is replicated by the odd numbers across the road too). This very high degree of building uniformity gives a very strong character to the streetscene. By subdividing the plot in half it is considered that this would have a much more conspicuous impact than at other locations where there is less uniformity in the streetscene. Furthermore, the very narrow plot width of the subdivided new unit would it is considered result in a cramped form of development that would be harmful to the character of the Highland Road street scene.

Together the above policies require that new development is of the highest possible standards of design and layout, and that it can take place without material detriment to the existing character of the area. The development is considered to be harmful to the character and appearance of the street scene. It would therefore be contrary to Policy BE1 of the Hillingdon Local Plan: Part One – Strategic Policies (November 2012), Policies DMHB 11 and DMHB 12 of the Hillingdon Local Plan: Part 2 – Development Management Policies (2020)."

7. The officer concluded in section 10:

"The proposal ... cannot be supported, as the development proposed would not be in keeping with the character of the local area by reason of its design, scale, siting and relationship within the plot boundaries. The proposed 2 bed dwellinghouse would unbalance the symmetry of the pair of semi-detached dwellings. It would result in a cramped form of development that would be harmful to the character and appearance of the street scene."

8. On 24 May 2021 the council refused planning permission for a single reason:

"The application property forms part of a continuous line of properties with a rigid building line and uniform plot widths. It is considered that the proposed sub-division of the property would, by reason of the resultant narrow plot widths, result in a cramped form of development which would be harmful to the character and appearance of the street scene. It would be contrary to Policy BE1 of the Hillingdon Local Plan: Part One – Strategic Policies (November 2012), Policies DMHB 11 and DMHB 12 of the Hillingdon Local Plan: Part 2 – Development Management Policies (2020) and Policy D6 of the London Plan (2021)."

The policies of the local plan on which the council relied

9. Policy BE1 in Part 1 of the local plan, “Strategic Policies”, is headed “Built Environment”. It states that “the Council will require all new development to improve and maintain the quality of the built environment in order to create successful and sustainable neighbourhoods ...”. It sets out 11 general requirements for “[all] new developments”. The first requirement is to “[achieve] a high quality of design in all new buildings, alterations, extensions and the public realm which enhances the local distinctiveness of the area, contributes to community cohesion and a sense of place”. The second, in part, is that development “[be] designed to be appropriate to the identity and context of Hillingdon’s buildings, townscapes, landscapes and views, and make a positive contribution to the local area in terms of layout, form, scale and materials ...”.
10. Policy DMHB 11 in Part 2 of the local plan, “Development Management Policies”, is headed “Design of New Development”. So far as is relevant here, it states:
- “All development, including extensions, alterations and new buildings will be required to be designed to the highest standards and ... incorporate principles of good design including:
- i) harmonising with the local context by taking into account the surrounding:
- scale of development, considering the height, mass and bulk of adjacent structures;
 - building plot sizes and widths, plot coverage and established street patterns;
 - building lines and setbacks, rooflines, streetscape rhythm, for example, gaps between structures and other streetscape elements, such as degree of enclosure;
- ...
- iv) protecting features of positive value within and adjacent to the site ...
-”
11. Policy DMHB 12, “Streets and Public Realm”, requires, in part A, that “[development] should be well integrated with the surrounding area and accessible”. It then sets out seven specific requirements, none of which seems relevant here.

The definition of “street scene” in the National Design Guide

12. In the National Design Guide, as updated by the Government in January 2021, this definition of the concept of “street scene” is provided (on p.16):

“Street scene: The appearance of all of the elements of a street, including the carriageway, pavement, street furniture, planting, and the buildings or structures along its edges, particularly the composition of buildings on each side of the street.”

The parties’ written representations in the section 78 appeal

13. In the appeal statement submitted to the Planning Inspectorate on behalf of Mr Kazalbash by his planning consultants in June 2021, section 5.0, “The Appellant’s Case”, addressed the council’s reason for refusal under three headings. On “Building Line and Plot Width”, it said (in paragraphs 5.2.7 to 5.2.9):

“5.2.7 ... [The] fundamental criticism of the scheme is that the proposed development would interrupt the uniform plot sizes. In this regard ... the appeal site is significantly wider than the adjacent property and those further along Highland Road. No.26 is twice as wide as the other properties which, it is acknowledged are more uniform, this characterisation does not apply to the appeal site.

5.2.8 Turning to the subject proposal, it would involve the subdivision of the existing site to create two plots, the garden width would vary due to the nature of the plot. ... [The] proposed gardens would [be] similar in width to the adjacent property as a result of the appeal proposal.

...

5.2.9 The subdivision of the garden would result in a more uniform situation when compared with the other properties on Highland Road. In this regard, the Council’s assessment is spurious.”

14. As for the “Impact on the Street Scene”, it quoted the definition of the term “street scene” in the National Design Guide (in paragraph 5.2.10) and stated (in paragraphs 5.2.11, 5.2.12 and 5.2.14):

“5.2.11 The above definition sets out what constitutes the street scene. In terms of the subdivision of the existing dwelling, the application proposes no alterations to the external appearance of the building, as such the appeal site building would remain in the same condition as present. In this regard, the only alteration is the erection of a fence to the rear of the property, this would not require planning permission under Part 2, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended

5.2.12 Focusing on the street scene, as defined above by the National Design Guide, the proposed development would not result in any change to the subject building that forms part of the street scene or the composition of the buildings. The appellant considers that given no alterations are proposed and as such there would be no evidence that the building had been subdivided, no harm to the street scene would occur should the appeal be allowed.

...

5.2.14 Both proposed units would comply with the space standards and benefit from large gardens of a similar size to the properties along Highland Road, plainly, the scheme would not result in cramped development.”

15. On “Compliance with Planning Policy”, the appeal statement began with Policy BE1 of the local plan. It said that “[the] townscape would remain the same as the existing situation”, that “[a] fence would be the only indication of the appeal scheme” (paragraph 5.2.18); that “[the] scheme would not result in any material impact in terms of local character” (paragraph 5.2.19); and that “the only alteration is the positioning of a fence that could be constructed without the need for planning permission” (paragraph 5.2.20). On part A of Policy DMHB 11 it said (in paragraph 5.2.21):

“5.2.21 ... [What] constitutes development is the subdivision of the house and the construction of the fence subdividing the garden. Part (i) of the policy states that new development must harmonise with the existing local context. The proposed development would provide two units that meet the space standards, no external alterations to the buildings are proposed, therefore the appeal scheme would be harmonious.”

Policy DMHB 12, it said, had “no relevance to the appeal proposal” (paragraph 5.2.22).

16. In section 6.0, “Conclusion”, it said:

“6.1.3 In terms of the impact on the street scene, as established the proposed development would not result in a material difference owing to no external alterations being proposed that would be perceived at street level. The plot fundamentally differs from the other properties to the south of the appeal site given that it is a triangular shape and much larger. In this regard, the subdivision of the plot would not result in harm to the existing development pattern.”

17. The council’s appeal statement, submitted in December 2021, said its case was “set out in the Planning Officer’s committee report, which should be read in conjunction with this statement ...”. (paragraph 1.3). In section 2, “LPA Comments on Appellant’s Statement of Case”, it said (in paragraph 2.4) that “... the current form is in character with the neighbouring properties”, and that “[alterations] including subdivision of the plot would significantly impact the character and appearance of the area detrimentally by creating a cramped form of development”. In section 3, “Conclusion”, it said (in paragraph 3.2):

“3.2 The proposal would result in a cramped form of development which would be harmful to the character of the area and appearance of the street scene, contrary to [the four development plan policies referred to in the council’s reason for refusal]. ...”.

18. The “final comments” submitted on behalf of Mr Kazalbash later in December 2021 included these:

“ ...

Based on the Statement of Case, the council’s primary issue with the scheme is the subdivision of the plot through the erection of a fence in the existing garden. The street scene will remain completely unaffected. ...

The proposed fence would not be viewable from the public domain, it would only be viewable from the rear windows and gardens of the proposed units and very limited views from no.28 upper floor windows. It would not be viewable from no.24 as there are no windows that overlook the site from the flank elevation that faces the appeal site. ... The fence would not be readily viewable [. When] it is, the gardens would relate to the wider area.

... ”.

The inspector’s decision letter

19. The inspector identified the “Main Issue” in the appeal in this way (in paragraph 3 of his decision letter):

“3. The main issue is the effect of the proposal on the character and appearance of the area.”

20. He set out his assessment under the heading “Reasons” (in paragraphs 4 to 9):

“4. No.26 Highland Road is a semi-detached dwelling with a two-storey side extension, rear garden and paved area to the front. The side extension is set back from the front elevation of the host building and extends past the rear elevation. This part of Highland Road comprises a mix of semi-detached and detached dwellings. Generally speaking, properties here display similar plot widths and lengths and are set back a consistent distance from the road. This creates a strong front building line and a pleasant rhythm in the street scene which contributes positively to the character and appearance of the area.

5. Due to its location on a bend in the road, No.26 has a wider rear garden than most other properties in the street. However, the proposal to sub-divide the plot and the addition of a fence to the rear would cause the resulting two plots to appear narrower than other properties due to the resulting plot forms. This would appear contrived and highlight the incongruity in the street scene.

6. Moreover, the side extension, which would become a separate dwelling, would be set well back from the established front building line of this side of the street, contrary to the prevailing pattern of development on Highland Road. While this may have aided in the extension appearing subservient to the host dwelling when constructed, as a separate dwelling it would appear

incongruous in the street scene. In combination, these effects would cause harm to the character and appearance of the street scene.

7. I take on board the appellant's point that the fence would only be partially visible from the street and that no other works are required to facilitate the sub-division externally. I am also informed the fence would fall under permitted rights as given in Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Be that as it may, it would be unlikely that a fence would be erected in this manner without the proposal to sub-divide the plot. As such, this limits the weight I afford this fallback position. In any event, the fence is part of the proposal before me, and I have assessed the proposal as it is presented.

8. To conclude, the proposal would harm the character and appearance of the area, contrary to Policies BE1 of the Hillingdon Local Plan: Part 1 Strategic Policies (adopted November 2012) and DMHB 11 and DMHB 12 of the Hillingdon Local Plan: Part 2 Development Management Policies (adopted January 2020). Those seek, among other things, for development to harmonise with the local context, including building plot sizes and widths, established street patterns and building lines and setbacks.

9. Policy D6 of the London Plan is also quoted on the decision notice. However, D6 relates to housing quality and standards, particularly in relation to internal and external space and other aspects such as daylight and sunlight. From my understanding of the evidence before me, the Council does not take issue with matters such as those included in D6 and as such, the proposal would comply with this policy."

21. The inspector's "Conclusion", therefore, was that "the appeal should be dismissed" (paragraph 12).

The judge's conclusions

22. On the first ground of the challenge the judge concluded that the inspector had wrongly taken into account a "supposed concession", which was not made and was inconsistent with Mr Kazalbash's case (paragraph 44 of the judgment). But he was "not prepared to treat the error as demonstrating a failure by the inspector to reach his own conclusion on the issue of visibility ..." (paragraph 45). If this had been the only issue in the case he would have exercised his discretion to refuse relief (paragraph 47).
23. On the second ground the judge did not think the inspector had considered the "street scene" to be the same as the "character and appearance of the area" in the broad sense of the local plan policies (paragraph 62(1) of the judgment). The policies referred to "a broader concept of design[,] character and appearance". In paragraph 6 of the decision letter the inspector was "considering visual incongruity" (paragraph 62(2)). The judge said it was "difficult to understand why the unchanging appearance of the extension would appear incongruous "as a separate dwelling" when there is no change

proposed to the extension, other than the internal change in the rear subdivision of the garden ...” (paragraph 62(3)). While the inspector had referred to “character and appearance”, his consideration in paragraphs 5, 6 and 7 was “directed primarily to visual issues”. It was “this matter of visual impact, “in combination” with the subdivision issue, that is the straightforward reading of the harm he identified to the character and appearance of the “street scene”” (paragraph 63). It followed that the inspector “did take into account an immaterial consideration, since nothing was identified in [paragraph 6 of the decision letter] which would change the physical form or appearance of the extension when it became a separate dwelling, which would impact on the street scene”. The “set-back, strong building line and a “pleasant rhythm in the street scene” would not be changed”. Conscious of the “limits of ... judicial intervention”, the judge considered the inspector’s conclusion here “an irrational one” (paragraph 64).

Did the inspector err in law?

24. On behalf of the Secretary of State, Ms Nina Pindham submitted that the inspector’s use of the expression “the street scene” was not confined to visual considerations alone. The relevant local plan policies extend to broader considerations relating to “character and appearance”. They refer to the prevailing pattern of development in the area, including the building line, set-back distances, plot sizes and widths. The inspector knew there would be no change to the external fabric of the building. But a new and separate dwelling was to be created. A fence was to be erected to divide the rear garden in two. The inspector found that the fence would cause the resulting two plots to appear narrower than those of neighbouring dwellings, which would be incongruous in the “street scene”. The side extension, set back from the established building line, would be, and would be seen as, a new dwelling. This would be inconsistent with the prevailing pattern of development on Highland Road. These were the changes the inspector had in mind when concluding that the development would harm the “character and appearance of the area”. As he said in paragraph 8 of the decision letter, the proposal would conflict with the relevant policies of the local plan, which require development to “harmonise with the local context, including building plot sizes and widths, established street patterns and building lines and setbacks”. In reaching this conclusion, he did not take into account any immaterial consideration. Nor was it an irrational conclusion in the light of the definition of “street scene” in the National Design Guide.
25. For Mr Kazalbash, Mr Brendan Brett submitted that the inspector considered the harm in question to be “visual” harm, experienced from the street. He concluded that if the extension were to be used as a separate dwelling it “would appear incongruous in the street scene”. The word “appear” is significant. It means that the side extension would look out of keeping with surrounding buildings and features if it were used as a separate dwelling. But the inspector failed to recognise that, when viewed from the street, the existing building would not appear any different once it had been divided internally. The building line and the set-back of the extension would be unchanged. There would be no visual impact from the internal alterations. The “character and appearance of the street scene” would not be changed. No explanation of the concept of the “street scene” is to be found in any of the local plan policies on which the council relied. As the judge observed (in paragraph 62(2) of his judgment) those

policies cover the broad concept of “design[,] character and appearance”, extending well beyond the matters considered by the inspector in paragraph 6 of his decision letter. The definition in the National Design Guide makes it clear that the “street scene” is a visual concept – the “appearance of all the elements of a street”, among them “the composition of buildings on each side of the street”. After the proposed development had been carried out, the extension would look exactly as it had since it was built 14 years ago. The “street scene” would be unaltered. For the inspector to conclude otherwise was indefensible.

26. Applying the well-known principles on which the lawfulness of an inspector’s decision-making is to be reviewed (see the leading judgment in *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government and another* [2018] PTSR 746, at paragraph 6), I think Ms Pindham’s submissions are essentially correct. The inspector’s decision letter, read as a whole, does not betray any error of law. On a fair reading of his conclusions, I am satisfied that he dealt appropriately with the decisive considerations in the section 78 appeal. His planning assessment is logical, coherent, properly reasoned, and sufficient to discharge his statutory obligations as decision-maker under section 70 of the 1990 Act and section 38(6) of the Planning and Compulsory Purchase Act 2004. It is not infected by irrationality. It is, I think, legally impeccable.
27. One can start with the obvious point that the subject-matter of this case is very simple, and the decision letter suitably short – only two pages. As always, but especially in a case such as this, an over-complicated approach should be avoided. The proposed development was the subdivision of an existing semi-detached dwelling and its plot to form two dwellings, in a residential street which is not in a conservation area, and to which no specific protection or designation applies under the planning regime. The content of the relevant planning policies and guidance is in clear terms, its meaning uncontroversial. Planning permission had been refused for a single reason, in which the council relied on three policies of the local plan and one in the London Plan. In the section 78 appeal the parties made written representations amplifying their opposing cases on the matters raised by that single reason for refusal. The inspector considered those written representations, and conducted a site visit. In paragraph 3 of his decision letter he stated the one “main issue” in the appeal, and in the following six short paragraphs – paragraphs 4 to 9 – he set out his conclusions on that issue. The criticism of his decision goes to the assessment in those six paragraphs, which largely involves the exercise of planning judgment. More precisely, it goes to the assessment in paragraphs 4 to 8; paragraph 9 concerns the council’s reliance on Policy D6 of the London Plan.
28. No complaint is made about the inspector’s identification of the “main issue”, nor could it be. It was the issue he drew from the parties’ written representations, with the benefit of his site visit. It reflected the council’s opposition to the proposal expressed in the decision notice and elaborated in its appeal statement, which expressly incorporated the officer’s assessment in the report to committee.
29. The task the inspector set himself was to exercise his own planning judgment in assessing “the effect of the proposal on the character and appearance of the area”. And as one would expect, the conclusion he ultimately reached, in paragraph 8 of the decision letter corresponds exactly to that issue: “[to] conclude”, he said, “the proposal would harm the character and appearance of the area”, contrary to the three

policies of the local plan on which the council had relied. Both at the beginning of his assessment and in its outcome one sees a consistent description of the main contentious matter in the section 78 appeal.

30. The inspector was concerned to establish the effect of the proposed development not merely on the “appearance of the area”, but on the “character and appearance of the area”. This was the concept he adopted as the basis for his assessment. He was not using this expression as if it equated to the statutory concept of the “character or appearance of [a conservation] area” under sections 69, 70, 72 and 73 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Nor is it an expression one finds in any of the development plan policies on which the council relied. But it is self-evidently a larger concept than “appearance” alone. How much larger, and what considerations it might embrace, we do not need to determine. In my view, however, it would certainly include matters of the kind to which the parties referred in their written representations: building lines, plot widths, plot sizes, the “composition of buildings” on the street, and so on. Distinguishing here between considerations of “character” and those of “appearance” is not necessary.
31. Having framed the “main issue” in this way, the inspector went on to refer several times to “character and appearance”: in the final sentence of paragraph 4, “the character and appearance of the area”; in the last sentence of paragraph 6, “the character and appearance of the street scene”; and in the first sentence of paragraph 8, “the character and appearance of the area”.
32. Paragraphs 4 to 8 of the decision letter must be read as a piece. They form a continuous and complete consideration by the inspector of the “main issue” in the appeal.
33. His assessment begins, in paragraph 4, with a brief description of the site and its surroundings. None of the facts to which he referred is said to be inaccurate. He emphasised the “strong front building line” and “pleasant rhythm in the street scene” as two features of the part of Highland Road in which the appeal site is located. The existence of those two features is not contentious. Nor is there any criticism of the inspector’s view, as a matter of planning judgment, that this combination of features “contributes positively to the character and appearance of the area”.
34. This was the context in which he went on, in paragraphs 5 and 6, to consider the likely effects of the proposed development. In paragraph 5 he acknowledged the fact, on which Mr Kazalbash had strongly relied in his written representations, that 26 Highland Road has a “wider rear garden than most other properties in the street”. But having done that, he went on to state the finding, not attacked in these proceedings, that the subdivision of the plot and the addition of a fence to the rear of the building “would cause the resulting two plots to appear narrower than other properties due to the resulting plot forms”, and then the conclusion that “this would appear contrived and highlight the incongruity in the street scene”. As a matter of planning judgment, that conclusion seems to me to be unassailable. Taken at face value, it can only mean that in the inspector’s view the proposed development would harmfully change the “street scene”.
35. In paragraph 6, which begins with the word “Moreover”, he added to and reinforced his conclusion in paragraph 5. He found as a fact that the side extension to the

building, which in the development would become a separate dwelling, being “set well back from the established front building line of this side of the street” would be, as he put it, “contrary to the prevailing pattern of development”. Here too there is no attack on the finding of fact. It is followed by two further conclusions, each of which, again, was a matter of planning judgment: first, that the extension “as a separate dwelling ... would appear incongruous in the street scene”, and second, that “[in] combination, these effects would cause harm to the character and appearance of the street scene”. Like the conclusion in paragraph 5, they are, in my view, beyond criticism in a legal challenge.

36. When one takes those two paragraphs together, it is, I think, clear that the inspector saw the prospect of detriment to “street scene” being caused by the proposed development; that he did so because the erection of the fence to the rear of the building would be a distinct physical change to the site at 26 Highland Road, which would have the effect of physically dividing the site into two narrower plots; that the resulting two plots would appear contrived and incongruous in the “street scene”; that because of that division into two plots and the set-back of the extension, the newly created dwelling would itself appear incongruous in the “street scene”; and that, in combination, these effects would be harmful to “the character and appearance” of that “street scene”. The proposed erection of the fence was therefore a factor of some importance. Taking everything into account, including the fence, and considering the effect overall of the several features to which he referred, he was in no doubt that there would be harm of the kind he described. This, in my view, was a perfectly lawful exercise of planning judgment.
37. Central to the dispute between the parties have been the meaning and significance of the term “street scene” in the inspector’s assessment. I do not think the debate is necessary, or helpful. The term “street scene” does not appear in the policies of the local plan on which the council relied. It does appear in the council’s decision notice, and in the parties’ written representations. The inspector used it three times in the decision letter: in the final sentence of paragraph 4, in the final sentence of paragraph 5, and in the final sentence of paragraph 6. Each of those references could equally well have been simply to the “street”, or perhaps to the “townscape”, which is a concept recognised in local plan policy. But there is no need to rewrite the decision letter to make sense of the inspector’s use of an expression whose meaning in its context is not hard to understand. What is clear, I think, is that he did not mean by his use of the expression “street scene” to limit himself to a consideration only of the “appearance” of the street, or to a purely visual assessment. It is, as he employed it, a concept that extends to considerations of “character” as well as to those of “appearance”. And he considered both.
38. He turned next, in paragraph 7, to the potential visibility of the fence from the street, and the strength of the “fallback position” put forward by Mr Kazalbash. He acknowledged Mr Kazalbash’s assertion – as he understood it – that the fence would be “only partially visible” from the street, the fact that no other external works were proposed, and his reliance on the availability of permitted development rights, which would have enabled him to erect the fence in any event, regardless of the proposed sub-division of the plot. Again as a matter of planning judgment, he gave limited weight to this fallback position, and concluded that the proposal should be assessed as

it was presented. No suggestion is made that these conclusions were unreasonable. And in my view they were not.

39. Paragraph 8 of the decision letter completes the inspector's assessment with his conclusions that the proposed development "would harm the character and appearance of the area", and that it would therefore conflict with relevant policies in the development plan, for the reasons he gave. To avoid any doubt about the particular elements of the policies that he had in mind, he pointed to them: the requirement for development to be in harmony with "the local context, including building plot sizes and widths, established street patterns and building lines and setbacks". Once again, this was an entirely lawful exercise of planning judgment.
40. When one looks at those five paragraphs, it is clear that the inspector, on the facts he found and by his exercise of planning judgment, accepted the case presented to him by the council and rejected that of Mr Kazalbash. His conclusions tackle the main contentions in the passages I have quoted from the parties' written representations and in the officer's report, on which the council relied (see paragraphs 6, 7 and 13 to 18 above).
41. Three further points may be made. First, the inspector was able to reach these conclusions in spite of the fact that there would be no, or no material, change to the exterior of the building itself, but only a change to its rear by the erection of the fence. He was well aware of that.
42. But secondly, he was also in no doubt that this change to the site would be visible – as Nugee L.J. put it in the course of argument, a change that would be "read". His use of the word "appear" in the relevant sentences in paragraphs 5 and 6 shows he was satisfied that the harm to which he referred would be noticeable. And he clearly considered that it would make the proposed development unacceptable. His exercise of planning judgment here, it should be remembered, was informed by his site visit, which enabled him to ascertain for himself, on the ground, what the effects of the development on the site and its surroundings would be.
43. And thirdly, the approach he took was true to the broad definition of "street scene" in the National Design Guide". That definition extends to "[the] appearance of all the elements of a street, including ... the buildings ... along its edges, particularly the composition of buildings on each side of the street". The idea of "the composition of buildings on each side of the street" must, I think, encompass the considerations on which the inspector concentrated here: the "front building line", the "rhythm in the street scene" (paragraph 4 of the decision letter), the "resulting plot forms" (paragraph 5), the fact of the extension being "set well back from the established front building line of this side of the street", the "prevailing pattern of development on Highland Road" (paragraph 6), and "the local context, including building plot sizes and widths, established street patterns and building lines and setbacks" (paragraph 8).
44. On that straightforward reading of the inspector's conclusions on the "main issue" in the appeal, I do not think his decision can be faulted in law.

Conclusion

45. For the reasons I have given, I would allow the appeal.

Lord Justice Lewis:

46. I agree.

Lord Justice Nugee:

47. I also agree.