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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT
[2019] EWHC 3954 (Admin)

CO/4490/2018

Royal Courts of Justice

Tuesday, 26 February 2019

Before:

THE HONOURABLE MR JUSTICE HOLGATE

B E T W E E N :

SINGHAL UK LIMITED — Claimant

- and -

SECRETARY OF STATE
FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT — Defendant

THE CLAIMANT (through Mr Bhupendra Singh) appeared in Person.

MR L GLENISTER (instructed by Government Legal Department) appeared on behalf of the Defendant.

J U D G M E N T

(Transcribed without the benefit of documentation)

MR JUSTICE HOLGATE:

1 Singhal UK Limited seeks permission to apply for statutory review of the determination by the first defendant's inspector of one of three of the appeals dealt with in a decision letter dated 1 October 2018, namely, Appeal C, against a refusal by Bromley London Borough Council to grant approval under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.

2 The appeal was made by Mr Ramesh Singhal. He is the father of Mr Bhupendra Singhal, who is the owner of the land, the barn situated on the land, the subject of the appeal, and also the sole director and shareholder of the claimant company.

3 The Deputy Judge, Mr John Howell QC, who refused permission for this application to go forward, decided, amongst other things, that the claimant company lacks standing to make this application; in other words, it is not within the words of the statute "an aggrieved person". A key authority in this area is the decision of the Court of Appeal in *Eco-Energy GB Ltd v. First Secretary of State* [2005] 2 P and CR 5.

4 A not entirely dissimilar point arose in an earlier application made by Mr Ramesh Singhal under s.288 of the 1990 Act in relation to another appeal decision in relation to the same building. I heard that matter, as a renewed application, on 27 April 2017 and, on that occasion, Mr Bhupendra Singhal was allowed by the court to act on his father's behalf. On that occasion, there was an out-of-time application to substitute the company for Mr Ramesh Singhal, which, applying the decision in *Eco-Energy,* was refused. So that application failed in part through lack of standing. So, Mr Bhupendra Singhal, who is the driving force behind the various planning appeals and the litigation before the High Court, and sometimes the Court of Appeal, is well aware of the requirements for standing.

5 He seeks to deal with standing in two ways, possibly three ways. Latterly, in his submissions on standing, he took me to a notice of appeal, which is in the renewal bundle at p.6, which was made in his own name and also, apparently, in the name of the company, Singhal UK Limited. This sent the court, momentarily, on a wild goose chase because, in fact, this was not a document which led to an appeal before the inspector. The appeal was closed by the Planning Inspectorate and no further action was taken on that. It does not take the argument on standing any further at all.

6 The second way is that Mr Bhupendra Singhal - who represents the company today and has helpfully prepared a written skeleton argument and answered questions from the court on the position as it was before the inspector, said that he had actively taken part in the appeal. He gave evidence and he was cross-examined for the best part of a day at the inquiry. That does not satisfy the requirement for standing. He was taking part in the appeal, not as an appellant, but simply as the director and sole shareholder of the company.

7 After the judge had refused permission to apply relying in his reasons for refusal upon the standing point, Mr Bhupendra Singhal, produced in support of his renewal application, at that late stage, a document described as an "Option Agreement" between himself, as owner of the barn, and Singhal UK Limited. It is dated 11 September 2014. It is incomprehensible as to why this document should not have been produced before. In any event, it is a strange document. Normally an option is granted in the context of a landowner seeking to gain planning permission for his land to a developer, perhaps, who has a defined period of time

within which to obtain planning permission. In return for taking the risk and incurring the costs of that process, a developer will normally obtain and will be granted an option so that, if he is successful in obtaining a planning permission which is regarded as being acceptable in accordance with the agreement, he is able to purchase the land on defined terms. This document is nothing like that. Somewhat bizarrely, clause 3 says that:-

> "The owner and/or his relatives may make various kinds of planning applications and appeals and mount legal challenges where necessary to develop the above property for residential developments."

In other words, it does not envisage that only the grantee of the option will be making applications for planning permission. The option in clause 4 is then exercisable if planning permission is obtained, not necessarily by the company but, indeed, by anybody, not even the people listed in clause 3. The company then has an option to purchase the property within three months by paying the market price less a discount of 10 per cent for increase in market value through the obtaining of planning permissions.

8 When one bears in mind that this is an option being granted by Mr Bhupendra Singhal, as the sole owner of the land, to a company of which he is the sole shareholder and director, it is apparent that it serves no commercial purpose whatsoever. If he wants to transfer the land to his company, he can do so at any time that he wishes to and, if the company wishes to obtain the land, it does not need an option for that purpose. So the way in which this document comes before the court, almost like a proverbial rabbit out of the hat, is somewhat unsatisfactory. There is no evidence as to the circumstances in which it was executed or why it has been produced now. A point is taken by the Secretary of State as to the identity of the signatory for the company, which has not been answered, and, when I asked Mr Bhupendra Singhal about the purpose of the agreement, he did not seek to suggest that it had any commercial purpose.

9 I am left in very considerable doubt as to whether this company has standing to apply for statutory review. However, I will not rest my decision on the application for permission on that aspect. Suffice to say that, if this matter was to go to a substantive hearing, I have very considerable doubts as to whether, on proper examination, standing would be established.

10 Turning to the substance of the application, a number of points are raised, but, in fact, it is only necessary to focus on one aspect. The permitted development right granted by Class Qin Part 3 of the 2015 Order is for a change of use of a building and any land within its curtilage from use as an agricultural building to a C3 use class, a dwelling house, and, additionally, building operations reasonably necessary to convert the building to that permitted use. However, the deemed planning permission does not arise if the circumstances in Class Q.1(a) apply. That provides that development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on *inter alia 20* March 2013. Mr Singhal confirms that the only date which the inspector needed to consider for this purpose was 20 March 2013.

11 Section X in Part 3 contains some definitions of expressions used in that test. In particular, "agricultural building" means a building, excluding a dwelling house, used for agriculture and which is "so used for the purposes of a trade or business". "Agricultural use" refers to such uses.

12 There is an issue between the parties as to how the words "for the purposes of a trade or business" are to be interpreted. Mr Singhal, supported I think by counsel who appeared on his behalf at the planning inquiry, Mr Stemp, suggests that the expression is not limited to a

trade or business of an agricultural nature. The Secretary of State, on the other hand, says that, when this phrase is read as a whole and in the context of the surrounding parts of the legislation with which it interlocks, the only sensible way of construing that phrase is to treat it as limited to an agricultural trade or business. For the purposes of determining the application for permission today, it is not necessary for me to resolve that issue, although I feel able to say that I would be inclined to accept the Secretary of State's submission It is perfectly clear that the permitted development right only arises where an agricultural use relates to a trade or business. It would, arguably, be surprising if that requirement could be satisfied simply by an agricultural use of some ancillary or subservient nature in relation to a trade or business. I, for my part, have not come across such a case. But, be that as it may, what matters for the purposes of today is whether there was any legal defect in the way in which the inspector approached the question as to whether the evidence before him showed that there was some trade or business, even a non-agricultural one, to which the agricultural activities described in the evidence could be ancillary.

13 The evidence in this case was unusually sparse, in my experience. It consisted only of statutory declarations and, in addition, a statutory declaration from Mr Singhal, supplemented by his own oral testimony, that, so far as he is concerned, he came to the site as a purchaser in March or April 2014, about a year after the critical date in the statutory instrument. His own knowledge, as to what was happening on the site in the period up to and including March 2013, is based on what he has gleaned from other parties and what he saw on some visits in early 2013.

14 I have considered the evidence that was before the inspector very carefully and taken some time to go through it with Mr Singhal. Dealing, first of all, with Mr Wright's declaration of a little over one page, he describes in para.4 cutting the fields for hay over a number of years - before and after he made a planning application, I think in 2008, for the barn - the cutting back of brambles and so on. The field was also dressed once with fertiliser in 2011. He says that the barn was used for storing tractors and hay. Hay was made from the land every year "in the last four years", so that would cover the period 2010 to 2014. The hay was then stored in the barn on the land and also "for the last four years" there were 100 to 120 sheep on the fields for about four to five weeks every year. That is the extent of it. He then goes on to express his belief that the land was in agricultural use for agricultural trade both before and after the erection of the barn during the period of "our ownership". He does not expressly deal with the date 2013 but, in favour of the claimant, I assume that he was covering that.

15 To some extent, the belief that he expresses in para.6 was, in fact, one of the questions that the decision maker had to determine himself, but what the declaration does not do is to describe or identify the trade or business, agricultural or otherwise, to which these activities could be referable. The evidence was deficient.

16 A little more detail was given in a letter from Mr Wright to the local planning authority of 17 February 2017 where he explains that, from 2006 onwards, he was seeking to farm the land to trial projects suitable for farming as a smallholding, so that he could write up his experiences in a magazine. Unfortunately, however, because it took over five years to get planning permission from the local planning authority, by the time the barn was completed, a rival publisher had brought out a similar magazine, so his project did not get off the ground. That letter, as Mr Singhal accepted, did not describe any business activity to which the agricultural activity could be referable on Mr Wright's part.

17 The same is also true of a letter written by Mr Wright on 6 March 2017 to the local planning authority which explicitly raised the agricultural trade or business issue. Mr Wright stated in response:-

> "This land was kept in good heart, but it was not ultimately used for commercial purposes either in agricultural trade or in business".

He also said that:-

> "We also kept the land in good heart and replaced six dilapidated gates, renewed several hundred metre of fencing and paid money to have the footpath kept open each year … The grass was cut in the summer and the hay kept in the open part of the barn. The farmer who cut the hay had full use of it by himself in return for cutting the grass. In the enclosed part of the barn, we had up to four classic tractors which we could try out from time to time. (We published Tractor and Machinery Magazine from our offices in ……"

18 I understood Mr Singhal to accept that this letter, too, did not purport to describe any business or trade activity conducted by Mr Wright to which any agricultural activity could be related, even if that trade or business were to be regarded as non-agricultural. For the avoidance of any doubt, I would not accept that the mere running from time to time of classic tractors, even if they were linked to a magazine about farming machinery, would qualify under Class Q, but I did not understand Mr Singhal to rely upon that aspect. Indeed, he relies primarily upon a statutory declaration from Mr Hodson.

19 Mr Hodson made a declaration in May 2015. He says that, under an arrangement with the then owner, Mr Wright, he farmed the land for several years to produce and cut hay before the land was sold in 2014:-

> "I had not produced and cut the hay from the land for the maintenance of the land but did so as my agricultural business activity and generated income out of it."

He also said in para.4,

> "I can confirm that the primary and only use of the land was for grazing and haymaking and the barn on it was used for storing hay, agricultural machinery and cattle."

On that latter point, the reference to "cattle", the inspector noted a discrepancy between that statutory declaration and the declarations of Mr and Mrs Ulwood, who had said that the grazing of cattle had been carried out by a predecessor of Mr Wright. This serves to illustrate a difficulty, tactically, which Mr Singhal faced in the planning appeal. He was only able to produce the statutory declarations. They had to be assessed at face value. There was no opportunity for live evidence to be called from any of the authors or for them to be cross-examined or tested.

20 One of the problems with Mr Hodson's statutory declaration is that he asserts that an agricultural business activity was related to the cutting of a single crop of hay each year and that income was generated thereby, but he does not identify that business, the unit to which it related or provide any material which would enable weight to be given to that assertion. It is clear from cases, such as *South Oxfordshire District Council v. East* [1987] 56 P and CR 1112, that this is a fact and degree question, which is heavily dependent upon factual evidence and the quality of that evidence. Mr Ulwood has said in his statutory declaration,

produced in 2014, that during the years before and immediately after the erection of the barn, Mr Wright continued to have the fields cut for hay. He also refers to the maintenance of the land and says that "the barn on this land was used for storing tractors and hay. Hay was made from the land every year in the last four years". "The hay so made was stored in the barn on the land." During those four years, he also had about 100 to 120 sheep on the land for about four to five weeks every year. Again, he does not purport to describe any trade or business to which those activities were related. The same is also true for the statutory declaration of his wife which appears to have been written in almost identical terms.

21 In his decision letter, at para.38, the inspector concluded that the land was not in agricultural use for a trade or business on 20 March 2013. Mr Singhal criticises the inspector in part because he drew that finding, as he expressly stated, from his findings on Appeal A and Mr Singhal says that in that appeal the relevant issue for the Inspector to consider was whether that agricultural use for a trade or business had subsisted for a four-year period, I believe running to 2014, rather than just simply looking at the position as at 20 March 2013. But it is apparent that the findings of the inspector embraced both aspects. Indeed, it is important to note that the evidence that was put before him did not seek to distinguish between the four-year period and the position as at March 2013, such that rationally different outcomes might arise in these two parts of the decision.

22 When asked about that question, Mr Singhal said that his own evidence did focus on, for example, photographic material in February and/or around March 2013 and also a date in 2012. But, of course, photographic evidence is, literally, a snapshot. It shows what is going on on land at the time when the photograph is taken. Without descriptive text or evidence, it does not go to show what was happening as an activity, let alone a trade or business, over a period of time, or indeed on the date 20 March 2013, if the position was different on that day as compared with the four-year period.

23 Having reviewed the material before the inspector, I am in no doubt at all that he fairly summarised it in his decision letter at para.21 onwards. He concluded that the use of the land was not referable to any trade or business conducted by Mr Wright. He said in DL26

> "The only activity on the land that might be considered to have been associated with an agricultural trade or business was the cutting and storage of hay. This activity was carried out by Mr Hodson. With regard to his statutory declaration, it is not known what his agricultural business activity was at that time or how much income he generated from the cutting of hay on the land."

He also pointed out that his declaration differed in some respects from others. In other words, there was a degree of evidential uncertainty about its quality, underscoring the importance that he attached to the lack of substantiating information on the key question with which he had to grapple. This is a point to which he returned in DL27.

24 The court is left in the position that there is no arguable basis for asserting an error of law in the findings which were made by the inspector on the material which was before him. Indeed, I would go further. I find it difficult to see how, rationally, an inspector could have reached a conclusion on this particular issue favourable to the claimant, given the material with which he was presented. It seems to me that the failure of the appeal on this aspect was inevitable given that material.

25 In addition, I remind myself of the observation of Mr Howell QC in his order refusing permission that, under the permitted development right, it had to be demonstrated that the site was used solely for an agricultural use as part of an established agricultural unit. In that context, the inspector was entitled to decide that the keeping of classic tractors on the property, initially four, but ultimately, perhaps, only one, was not an agricultural activity. That was a finding as a matter of fact and degree to which he was entitled to come.

26 The claim form contained an allegation against the inspector of bias. That is always a very serious allegation to be made against a decision maker. It is one which should not be made without supporting evidence. In his reasons refusing permission, Mr Howell QC stated:-

> "Insofar as the claimant is alleging that the inspector was biased, it has produced no evidence of the alleged statement on which he relies from any person to whom it was allegedly made."

27 As a result of that, the claimant has seen fit, belatedly, to produce a statutory declaration from Mr Alan Powell, dated 24 January 2019. The most import point is an assertion made in paras.3 and 4 that during the lunch break on the first date of the public inquiry he and Mr Hibbett, who was another person present in the audience, were having a conversation with the planning inspector presiding at the inquiry and during that conversation he alleges that the inspector told us that " he does not agree with the Government's policy regarding allowing barn conversions in the green belt and is against it." He offers a comment on this evidence by continuing:-

> "I was stunned by his comment as he was the inspector deciding on a Class Q permitted development in the green belt. I challenged his comment as a lot of farms are located in the green belt. Before I could finish challenging him, he made a quick exit and he would not finish the conversation we were having with him. I turned to Nick Hibbett and said that the inspector will find a reason to refuse the appeal. "

In addition, an additional statutory declaration from Mr Hibbett was provided to the court today to the same effect.

28 The inquiry did not conclude on the first day, 14 August 2018. A site inspection was carried out on 15 August and the inquiry concluded on 22 August, just over a week later. I am told by Mr Singhal that at least one of these two gentlemen was previously known to him and he was somebody with whom he might have conversations from time to time. He was aware of his presence in the hall where the inquiry was conducted. It is astonishing that somebody, who purports to have heard a conversation of this nature and reacts to it in the way in which this declaration says, did not raise it at the time, not even with Mr Singhal. That must call the declaration into question. There was no explanation as to why it was not raised at the time, an obvious question which one would have thought would be put to the person making it. There is no explanation as to why these declarations have not been produced sooner. Mr Singhal, if I understand correctly, says that he became aware of this aspect when one of the declarants contacted him once the inspector's decision was announced, but that decision was issued as long ago as 1 October 2018.

29 At all events, the inspector has been able to respond to the first of those two declarations. He briefly, but nonetheless trenchantly, denies the allegation made against him. Mr Singhal did not suggest that there should be cross-examination in this case, though it is not a point that I feel that I should hold against him, bearing in mind that he is a litigant in person. If permission were to be granted, it is almost inevitable that cross-examination of all these persons would have to take place.

30 I have to consider whether it would be appropriate to grant permission because of this allegation of bias put forward in this unusual manner. I feel that I should take into account the fact that Mr Singhal has had the benefit of legal representation from time to time. He was represented by counsel at the public inquiry and some of the documents which have been put before this court for this application do bear the hallmarks, perhaps, of having been drafted by a lawyer.

31 I am, nonetheless, firmly of the view that the material put forward to deal with the central issue was so exiguous that no reasonable decision maker could have found that a trade or business existed so as to enable the landowner to rely upon Class Q. Accordingly, I fail to see how the court could quash the inspector's decision on the basis of this relatively late allegation of bias in any event.

32 However, I feel that I should not leave this aspect without reiterating my concern at the way in which such a serious allegation should be made against a tribunal in this way. It was not properly advanced in the first place and then, purportedly, supported by later material only very recently. There is no explanation as to how that material came into existence and why it was not produced much closer in time to the date when the inquiry was held or even when the decision was issued.

33 For all these reasons, I conclude that this application for permission should fail. Thank you very much.

CERTIFICATE

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This transcript has been approved by the Judge.