



Neutral Citation Number: [2024] EWHC 1986 (Admin)

Case No: AC-2023-LON-002846

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2024

Before :

KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE

Between :

THE KING	<u>Claimant</u>
(on the application of RAJIN MEHTA)	
- and -	
ROYAL BOROUGH OF KENSINGTON AND	<u>Defendant</u>
CHELSEA	
-and-	
C S HOSPITALITY LIMITED	<u>Interested</u>
	<u>Party</u>

Richard Harwood KC (instructed by **Town Legal**) for the **Claimant**
Jack Parker (instructed by **Royal Borough of Kensington and Chelsea**) for the **Defendant**
Tobias Davey (instructed by **Woodroffes Solicitors**) for the **Interested Party**

Hearing date: 21 May 2024

APPROVED JUDGMENT

Deputy High Court Judge Karen Ridge:

Introduction

1. The Claimant, Mr Mehta, is the current owner of land to the rear of 92-96 Kensington Park Road, London W11 2PN, (the development site) which is a backland site within the Ladbroke Conservation Area. The Defendant is the Royal Borough of Kensington and Chelsea (the Council) and the local planning authority for the area containing the site. The Interested Party is C S Hospitality Limited, the leasehold owner of adjoining land at 92-96 Kensington Park Road from where a high-end restaurant business operates.
2. This case concerns the Council's decision to revoke a Certificate of Lawful Proposed Use or Development (the CLOPUD or the Certificate) on the basis that materially false information had been submitted with the application for the Certificate.
3. The relevant planning history begins in 16 March 2009 when the Council granted planning permission for the construction of a single family dwelling in the car park to the rear of 92-96 Kensington Park Road. This was to comprise a double storey basement with a single storey at ground floor level. That permission was not implemented and a series of replacement and variation planning permissions were subsequently granted.
4. On 21 July 2010 planning permission PP/10/00479 was granted for the erection of a single family dwelling with two storey basement excavation. This was varied on 14 June 2013 by planning permission PP/13/00038 with an extended date for commencement under new condition 1 which required commencement before 14 June 2016.
5. On 17 October 2013 a further variation application (PP/13/6050) was made to seek alterations to the basement construction method and it was supported by a Design Note DN-S-01 dated 11 September 2013. The resultant planning permission PP/13/6050 (the Permission) dated 3 March 2014 repeated condition 1 to require development to begin before 14 June 2016. The application also sought alterations to accommodate fire access with services, basement construction method and positioning of void. The application was accompanied by a series of drawings (the approved plans) and secured by condition 2 which provided that:

“The development hereby permitted shall not be carried out except in complete accordance with the details shown on submitted plans, POS.00, EX.01, PR.00, PR.01, PR.02, PR.03 – Proposed Ground Floor Plan, PR.03 – Proposed Front Elevation, PR.04, PR.05, PR.06 Rev.A, PR.09, PR.10 (C068)”
6. The drawings comprise a redline plan showing the extent of the development site; a proposed roof plan; first floor plan; ground floor plan; lower ground floor plan and basement plan; as well as a section plan containing a cross section diagram depicting the configuration of the various floors, above and below ground and the relationship of the building to 92-96 Kensington Park Road.

7. It is relevant to note that the variation application was brought about, in part, by the need to vary the configuration of the permitted basement in order to facilitate what was described as a 1100mm exclusion zone between the walls of the underground basement and the wall of an adjacent building in order to provide sufficient space for the re-routing of a Thames Water pipe. The Design Note accompanying the application for variation confirmed that:

“The main site constraint today, which was not present in 2007, is the Thames Water pipe which runs right through the site. This requires a 1100mm exclusion zone in which no development is permitted.”

8. The note goes on to record the proposed structural scheme in the following terms:

“Contiguous piles have been selected to form the basement box as these are the most appropriate solution for a two-storey basement given the ground conditions.

The nature of contiguous piles is that they have to sit completely outside Thames Water’s 1100mm exclusion zone from the proposed new location of the pipe.”

9. Various drawings submitted with the Design Note show the contiguous piled walls in place and, in the sketch drawing accompanying the note, the walls (including the contiguous piling) are shown 1100mm away from wall of the adjacent building. These drawings do not comprise the approved plans but instead informed the application. The approved drawings show a gap of 1100mm between the above ground level wall and 92-96 Kensington Park Road to secure sufficient space for the relocation of the water pipe.
10. Between 10-13 May 2016, and shortly before the expiration of the time limit for commencement of development, the previous landowner sought to commence development by boring holes and constructing three piles to be used in the basement construction. Nothing happened for a number of years and then in April 2021 an application was made by the previous owner for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) pursuant to section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
11. The CLOPUD application was accompanied by a supporting statement and statutory declaration explaining the nature of the works (the Works) which had been undertaken. It said that the Works..

“included the installation of three piles which will form part of the proposed contiguous piled wall around the basement pursuant to (and in accordance with) the approved drawings. The Works included the following operations:

- (i) excavating/boring the ground to create three excavations to receive piled foundations;

(ii) installing three caged steel reinforcement bars into the foundation excavations; and

(iii) pouring concrete.”

12. The declaration exhibited an annotated drawing which showed the location of the three piles and depicted them forming part of the ‘contiguous wall’. The Council determined the application, concluding that it was satisfied on a balance of probabilities that the carrying out of development would be lawful given that the permission had been lawfully implemented.

13. The Officer’s Report of 17 June 2021 (the first office report) addressed the question of implementation as follows:

“3.9 On the balance of probabilities, there is satisfactory evidence to show that, in this case, the works form part of the development, were carried out in accordance with the approved drawings, are sufficient to constitute the implementation of the permission and have been carried out before the expiry date. Based on this, the works approved have been determined to have ‘begun’ and planning permission has not expired but works in accordance with the permission PP/13/06050 may be lawfully completed in the future.

3.10 The works were carried out before the pre-commencement condition relating to Considerate Constructors was complied with. However, this pre-commencement condition did not go to the heart of the condition, and so failure to comply with it in itself does not result in the whole development being made unlawful. Taking the above into account, it is concluded that the specified works are lawful, and that the Certificate should be granted.”

14. The CLOPUD Certificate was issued on 17 June 2021. The legal effect of that certificate was to confirm that the development approved under permission PP/13/06050 had been lawfully implemented and could be carried out and completed.

15. In March 2022 the Council received requests from local neighbours and the Interested Party asking the Council to revoke the CLOPUD because it was claimed that the works were not in accordance with the Permission. The Interested Party submitted a report from GIA Surveyors which records the location of the piles and contains image 3 which depicts the location of each pile overlaid on the approved drawing showing the contiguous line of piles.

16. The Council also received correspondence from the Ladbroke Association with photographs showing the heads of the piles and a tape measure used to measure from the centre of each pile to the nearest building. The distance between the edge of the piles and the rear wall of the restaurant was approximately 745mm as recorded in the Council report.

17. Mr Mehta was informed of these requests and a site visit was undertaken by Council Officers. The Council conducted its own site visit and measurements and the first officer report recorded that:

“3.6 A site visit was carried out on 6 October 2022 with officers and the applicant present. The Works were covered by concrete but the rectangular area of concrete covering the Works could be identified. Measurements of the rectangular concreted area were taken. The near side of the concreted area was measured as 600mm from the rear wall of the restaurant, the far side was 1270mm. The concrete cover was 580mm wide. A sketch drawing showing the measurements was made. A second site visit was undertaken on 31 January 2023 with the owner, their structural engineer and officers from the planning enforcement and building control departments present. The piles were not exposed in their entirety. In the absence of any Building Regulations submission (such as a Building Notice or full Building Regulations application) the Building Control officer was not able to advise on the integrity of the piles. The rectangular concrete cover had been removed and the heads of the reinforcement cages were revealed as being located centrally within the rectangular area of concrete. The diameter of the concrete reinforcement cages is approximately 300mm, from the rear wall of the restaurant to the edge of the concrete casing is approximately 750mm. (officer photograph and sketch drawing attached at Appendices 9 & 10).”

18. The Claimant, as current owner of the CLOPUD land, and the previous owner of the CLOPUD land each submitted representations in response. Those representations included a Technical Note TN001 submitted by Green Structural Engineering (GSE) acting on behalf of Mr Mehta. That note addressed the conclusions of the GIA report and depicted a construction sequence using the existing piles which would maintain the 1100mm exclusion zone. The note explained how the 3 piles would be used to construct the approved development:

“The 3 No Piles which have been constructed on the site will be incorporated within our detailed design and overall sequence of construction. Appendix A identifies clearly indicates the evolution through the current site condition through to the completion of the basement envelope. This drawing has been based on the measured pile tolerances taken at the site and demonstrates that, following the approved sequence of works the 1100mm exclusion zone can be achieved. GIA is therefore wrong to say that it is necessary to remove the piles in order to observe the exclusion zone. The drawing at Appendix A also demonstrates that the piles in situ can be incorporated within the development.”

19. After considering the various representations the Council issued a notice of intended revocation of the CLOPUD on 17 May 2023, together with a supplementary report.

This was on the basis that materially false information had been submitted in support of the CLOPUD.

20. The supplementary report said:

“2.3 The Council maintains that false information was submitted in the application, irrespective of whether Annexure AJ3 shows the precise location of the piles or the approved drawings show the foundations/piles.

2.4 Paragraph 1.9 of the Supporting Statement for the application states that “In advance of the Expiry Date, works ("the Works") have been undertaken at the Property which included the installation of three piles which will form part of the proposed contiguous piled wall around the basement pursuant to (and in accordance with) the approved drawings” This position is consistent with the drawing at Annexure AJ3 to the statement of Mr Jewell who also states that the works were carried out in accordance with the approved drawings.

2.5 As such, the information submitted with the application made clear that the three piles that were installed would form part of the piled wall around the basement and that such work was carried out in accordance with the approved drawings. The approved drawings show that the walls of the proposed development would be set back by 1100mm from the wall of the adjacent building.

2.6 However ... the Council’s investigation has established that the piles are only 750mm away from the wall of the adjacent building. ... The Council is satisfied that the information submitted with the application was false because it was suggested that the piles (which were stated to form “part of” the walls of the development) were constructed in accordance with the drawings (i.e. 1100mm away from the wall of the adjacent building) when in fact they have been constructed less than 1100mm away from the adjacent wall.”

21. The report continued:

“2.9 The Council considers that the planning permission is clear and unambiguous insofar as it requires the wall of the proposed development to be constructed 1100mm away from the wall of the adjacent building.

2.10 The approved drawings PR.01, PR.02, PR.03, and PR.10 clearly show a 1100mm separation between the wall of the proposed building and the rear wall of the adjacent building (the restaurant) to the east. This means that, at ground level, the wall of the proposed building must be constructed 1100mm away from the rear wall of the adjacent building. The floors

below ground level are set back even further from the wall of the adjacent building, as shown in PR.10.”

22. The Council therefore had considered whether the Works undertaken were comprised in the development. The Council accepted that construction methods could be employed to incorporate the Works undertaken into the development. It considered the Technical Note submitted by GSE Engineering depicting the sequence of works to incorporate the piles such that the walls would be 1100mm when finally constructed. It concluded that the sequence of works necessary to arrive at this position would effectively render the works which had purported to implement the permission entirely redundant. For this reason, the Council concluded that the Works were not part of the development.

THESE PROCEEDINGS

23. Following pre-action protocol letters, the claim was issued on 27 September 2023. Permission to apply for judicial review was refused on the papers by Robert Palmer KC sitting as a Deputy High Court Judge. At a renewal hearing on 1 February 2024, permission was granted to proceed on three grounds by James Strachan KC sitting as a Deputy High Court Judge. The grounds are:

“(i) the Council made an error of law by misinterpreting the planning permission as requiring the foundations of the building to be at least 1100 mm from a nearby building;

(ii) the Council were wrong and irrational in concluding that the CLOPUD application was asserting that piled foundations were 1100 mm from the adjoining building. They were instead part of the walls in the way that all foundations are, and as such did not have to be directly under the wall;

(iii) the Council was wrong and irrational to assert that the piles were not comprised in the development and were ‘entirely redundant’ and ‘cannot be used to construct the building’ when the undisputed engineers’ drawing showed the approved development;”

24. On 4 April 2024, the leaseholders of adjoining land applied to be added as an Interested Party. That application was granted by Lang J on 16 April 2024 with further directions given for the filing of detailed grounds and evidence. Whilst the Interested Party did file detailed grounds, at the substantive hearing Mr Davey confirmed that these additional grounds were not relied upon. The Interested Party agrees with and endorses the Council’s decision to revoke the Certificate and joins with the Defendant in resisting this claim.
25. I was greatly assisted by the written and oral submissions of all counsel at the substantive hearing on 21 May 2024.

THE LEGAL FRAMEWORK

26. Implementation of a Planning Permission: section 56(2) of the Town and Country Planning Act 1990 provides that:

“development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.”
27. By s 56(4):

“material operation” means matters which include:

 - (a) any work of construction in the course of the erection of a building; ...
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building; ...
 - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b)...”
28. In order for lawful implementation to have taken place a decision maker must be satisfied that the work has been done in accordance with the relevant planning permission; and that the work that has been carried out is material in the sense of not being “de minimis.” (*Riordan Communications Limited v South Bucks DC [2000] 1 PLR 45*).
29. The question of whether the works carried out were comprised in the approved development has been considered by the courts previously. In *Spackman v Wiltshire County Council (1976) 33 P & CR 430* Willis J held that the construction of a soakaway 35 feet from the nearest one shown on the plans and a deviation in an access way position did not prevent those works constituting the commencement of development.
30. The Spackman principles were applied in *Commercial Land Ltd v SSTLGR [2003] J.P.L. 358 (Admin)* when Ouseley J held that the question of whether certain material operations were “comprised in the development” could not necessarily be answered simply by comparing them with the approved plans. Differences between the approved plans and the operations relied on need not be fatal to the capability of the operations to be effective in commencing the development. It was necessary also to consider the significance of the differences and is ultimately a matter of planning judgment for the decision maker who should consider the degree of compliance with the approved plans and the substantial usability of the works in the permitted development.
31. Finally, the Supreme Court in *Hillside Park Ltd v Snowdonia National Park Authority [2022] UKSC 30* has confirmed that a departure from the approved plans needs to be material to prevent works from amounting to commencement of development and that what is material is a matter of fact and degree.
32. Certificates of Lawful Proposed Use or Development: are granted under section 192(1)(b) TCPA 1990 following an application to ascertain whether any operations

proposed to be carried out in, on, over or under land, would be lawful. The risks of relying on a CLOPUD were enunciated by Holgate J in *R (Ocado Retail Ltd) v Islington LB* [2021] EWHC 1509 (Admin):

“The impact of section 193(7) on the CLEUD process¹² is that an applicant assumes a risk (which passes to or affects successors in title) that any certificate he obtains may be revoked if it turns out that materially inadequate or false information was provided on the application. That risk is likely to be greater if he takes a minimalist approach to the provision of information. In practical terms, an applicant takes on responsibility for supplying information to verify his application that will not give rise to action under section 193(7).”

33. Revocation of CLOPUD: Section 193(7) TCPA 1990 provides that a local planning authority may revoke a certificate under [section 191 or 192] if, on the application for the certificate—

“(a) a statement was made or document used which was false in a material particular; or (b) any material information was withheld.”

34. The principles applicable to s.193(7) are set out in the *Ocado* case at paragraphs 81-108:

- i) A CLOPUD may only be revoked by a local planning authority on the grounds set out in section 193(7) and the power may be exercised at any time.
- ii) S.193(7)(a) does not require the party who made or relied upon the statement or document to have known that it was false, or to have been reckless on that issue. There is no requirement that the making of a statement was deliberately false or dishonest (at 92).
- iii) As to the phrases “in a material particular” in s.193(7)(a), a local planning authority is entitled to consider the materiality of matters cumulatively as well as individually (at 94).
- iv) To be “material,” the local authority must be satisfied that the false information submitted *could* (rather than *would*) have resulted in the application for a certificate being refused or being granted in different terms. The materiality test may be satisfied because the relevant information could have resulted in the authority making a different factual finding (or drawing a different inference) to one made previously and that could have resulted in the application under section 191 or section 192 being determined differently (at 95-96)
- v) Subject to the authority correctly understanding the relevant principles, the application of the law to the facts is a matter for the authority. The authority is required to assess the evidence submitted in support of an application for a CLEUD, weigh the material supplied along with any weaknesses or gaps in it,

and make findings of fact and draw inferences from that material. These are all matters of judgment for the decision-maker in an evaluative process. The authority's evaluation may only be challenged on Wednesbury principles (at 100).

- vi) Where an authority reaches a judgment as to whether a false statement or withheld information is "material," that judgment can only be challenged on public law grounds (at 101).
- vii) If either paragraph (a) or (b) is met, section 193(7) confers a discretion on the local authority as to whether to revoke a certificate under section 191 or section 192. The local authority is free to have regard to such factors as it considers relevant in the exercise of its discretion unless 'Wednesbury' unreasonable (at 105).

ANALYSIS

- 35. A local authority's decision to revoke a certificate comprises three elements; firstly, there must be a finding that false statements were made, or information withheld on the facts of the case; secondly there needs to be a finding that any false statements or withheld information were material. Finally, if positive findings are made in each of those, then it is for the local authority to decide whether to exercise its discretion to revoke the Certificate. The question for this court is whether the Council erred in the way in which the planning permission was interpreted and whether the Council was irrational in exercising its planning judgment in the way that it did.
- 36. The Council granted the Certificate on the basis of the information it was provided regarding the nature of the Works undertaken. As a matter of principle, it was therefore accepted by the Council that the piling works were capable of implementing the Permission. The piling works are not shown on the approved drawings but it also follows that some piling works were inevitably needed in the development and as such piling works were deemed to be part of the works necessary to implement the permission. The issue between the parties revolves around the conformity of the piles which have been inserted with the approved plans and whether any identified disparities were material to the question of the issuing of the CLOPUD. There is also the question as to the utility of the piles inserted so as to enable a conclusion that the piles which had been driven were part of the development permitted.

Ground 1

- 37. The Permission: ground 1 depends upon the true interpretation of the Permission. That issue is an objective question of law for the court to determine. Holgate J gave a concise summary of the relevant legal principles in *Swire v Canterbury City Council* [2022] EWHC 390 (Admin):

"31. The principles governing the interpretation of planning permissions and related documents, and which materials may be taken into account, are well-established in the authorities and do not require lengthy citation or analysis here (see e.g. *Trump International Golf Club Scotland Limited v Scottish Ministers* [2016] 1 WLR 85; *Lambeth London Borough*

Council v Secretary of State for Housing Communities and Local Government [2019] 1 WLR 4317; DB Symmetry Limited v Swindon Borough Council [2021] PTSR 432; R v Ashford Borough Council ex parte Shepway District Council [1999] PLCR 12; Patel v Secretary of State for Housing, Communities and Local Government [2021] EWHC 2115 (Admin); Norfolk Homes Limited v North Norfolk District Council [2021] PTSR 863).

32. In general, the same principles apply to the interpretation of a planning permission as apply to other legal documents. The question is what would a reasonable reader understand the words used in a permission to mean, read in the context of the conditions and the consent as a whole. The court has regard to the natural and ordinary meaning of the words used, and the purpose of the consent and other conditions casting light on those words. The context in which a planning permission or a condition must be interpreted includes the legal framework within which permissions are granted. Accordingly, the reasonable reader must be treated as being equipped with some knowledge of planning law and practice.

33. Because the interpretation of a planning permission is an objective question of law, it is irrelevant to ask what were the intentions of the parties involved in its genesis (e.g. the developer or the local authority) or to have regard to the subsequent conduct of any such party (Lewison: The Interpretation of Contracts (7th Edition) paras. 1.04 to 1.05 and chapter 3 section 19; Norfolk Homes at [40] to [42]).”

38. On behalf of the Claimant, Mr Harwood submits that the Council made an error of law in misinterpreting the planning permission as requiring the foundations of the building to be at least 1100mm from the adjoining building.
39. The approved plans comprise PR.01, PR.02 and PR.03 which depict the development above ground level. Those plans are the roof plan, first floor plan and the ground floor plan. All three plans have a blue line drawn between the outer edge of the exterior wall of the proposed building and the nearest wall at 92-96 Kensington Park Road. The distance is indicated as 1100mm between those two points. Also, on PR.03 there is a dotted blue line indicating the proposed new Thames Water route running alongside the south-western flank of the proposed building, closest to 92-96.
40. The plans depicting the floors underground are PR.04 lower ground floor plan and PR.05 basement plan. Both of these plans depict the lines of the existing and proposed Thames Water routes but they do not indicate any separation distances. Plan PR.10 is a cross-section diagram which depicts the 1100mm separation distance at ground floor with a lip underground where the wall steps in by 725mm.
41. The Council submit that the planning permission is clear and unambiguous, and it requires the exterior wall of the proposed development to be constructed 1100mm away from the wall of the adjacent building. This is depicted at ground level on the

plans PR.01, PR.02, PR.03 and PR.10. The floors below ground level are set even further back from the wall of the adjacent building, thus maintaining the 1100mm exclusion zone. Mr Parker for the Council points out that, when the plans are read together, it is obvious that the walls below ground must necessarily be even further away from the adjacent building than the above ground level walls. This is because of the profile of the external wall to the proposed building is stepped in below ground level. Those propositions represent a logical reading of the permission and approved plans.

42. The Claimant does not accept that there is a 1100mm exclusion zone. On behalf of Mr Mehta, Mr Harwood argues that condition 2 simply requires what is shown on the plans to be constructed. Mr Harwood says that because the Design Note dealing with underground construction is not incorporated in the Permission there is no requirement for development to be in conformity with the Design Note. That is also correct as a matter of law. There is no condition setting out how the basement should be constructed or conditioning construction in accordance with the Design Note.
43. From the above it is clear that the plans require a separation distance between the outer wall of the constructed dwelling and the nearest building of at least 1100mm at ground floor level with an additional set back below ground. The plans clearly anticipate that the Thames Water pipe will be routed underground within this gap. The Permission is silent as to the location of the foundations, although I accept that the Technical Note clearly anticipates that the piled foundations would form part and parcel of the external wall.
44. It is clear to me that the Council did not misinterpret the Permission. The Council had regard to the fact that the Permission required the external wall to be 1100mm away from the adjacent building and when granting the CLOPUD and subsequently revoking the CLOPUD, it looked at all information in light of this requirement. This aspect of the interpretation of the Permission was the basis on which the CLOPUD application was determined and it formed the starting point when assessing whether false information had been submitted.
45. There is therefore no dispute between the parties regarding the interpretation of this aspect of the Permission and therefore no need to look at extrinsic material on this point. Accordingly ground 1 must be rejected.

Ground 2

46. The Works: ground 2 is predicated on the allegation that the Council were wrong and irrational to conclude that the application for a CLOPUD was asserting that the piled foundations were 1100mm away from the adjoining building. As a consequence, the Claimant says that the Council's conclusion that false information was submitted was irrational and not one which it could reasonably have arrived at.
47. The works which were undertaken are not in dispute. Those works included the drilling of three holes into the ground which then received three caged steel reinforcement bars and then had concrete poured around them. The statutory declaration of Mr Jewell, a chartered surveyor, in support of the CLOPUD stated that the Works were undertaken in accordance with the approved drawings. A drawing appended at AJ3 to his declaration showed the location of the piling work which had

been carried out with the three piles depicted as red dots within the line of dots depicting the outer wall on the approved plan.

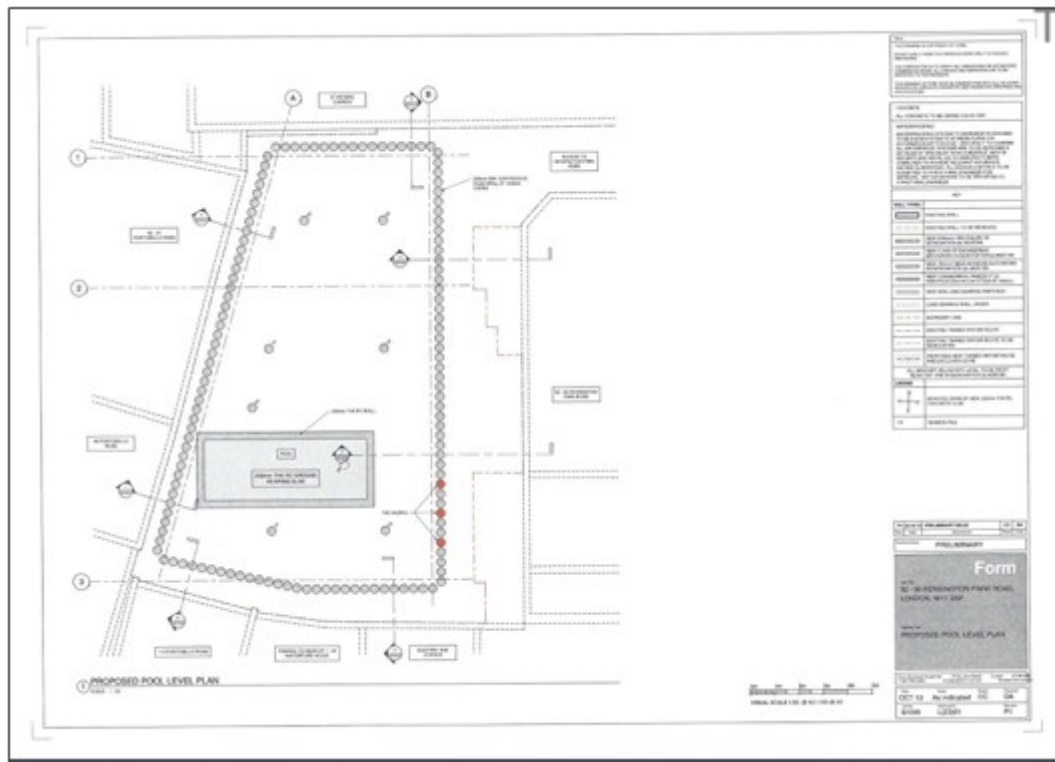


Exhibit AJ3 in the Statutory Declaration of Mr Jewell

48. It is indisputable that the plans depict the profile of the external wall of the dwelling and its separation distance from the adjacent property at all levels above and below ground. The approved plans clearly require this external wall to be at least 1100mm away from the adjacent property at ground level and set slightly further away below ground.
49. The supporting statement for the CLOPUD Paragraph 1.9 of the Supporting Statement for the application states that:

“In advance of the Expiry Date, works ("the Works") have been undertaken at the Property which included the installation of three piles which will form part of the proposed contiguous piled wall around the basement pursuant to (and in accordance with) the approved drawings”
50. The plan AJ3 and the words of the supporting statement create a clear inference that the piling works were part and parcel of the external wall of the finished dwelling. That is reinforced by the reference to the works being in accordance with the approved drawings, it is a reference to the location of the external wall and the required separation distance. The Council were being told that the three piles were installed and that they would form part of the (contiguous, piled) wall around the basement in accordance with the approved drawings.
51. It was not irrational of the Council to conclude that the statement in support of the CLOPUD was asserting that the works undertaken were piling works which formed

part of the external wall. That is different to an assertion, which the Claimant contends for, that the piled foundations had been undertaken and they were going to support the external wall which had to be 1100mm away from the nearest building.

52. The supporting statement, when read with the plan of Mr Jewel, leaves no doubt that the three piles were incorporated into, and would form part of, the contiguous piled (external) wall depicted on the approved drawings and sited more than 1100mm away from the adjacent building. This interpretation is supported with the reference in the application to the Works constituting three piles that were installed [and] would form part of the wall and the work having been carried out in accordance with the approved drawing. The clear meaning is that the piles were at least 1100mm away from the adjacent building.
53. The Location of the Piles: when considering revocation the Council had the report of GIA which contained images depicting the exact location of the piles. Each pile is some 300mm in diameter. The outer edge of pile 1 is some 915mm from the adjacent building, pile 2 is some 830mm away and pile 3 is some 800mm away. As such GIA concluded that the 3 piles each encroached within the 1100mm zone.
54. The Council had conducted its own site visit and measurements and had concluded that the piles which had been bored and installed were in fact only 750mm away from the wall of the adjacent building. The Claimant does not appear to dispute these measurements and his consultants, GSE, in their report and sequenced drawings show the existing piles within the 1100mm zone.
55. The submitted information was deemed by the Council to be false because the CLOPUD application had stated that the piles were to form 'part of' the walls of the development and that they had been constructed in accordance with the approved drawings and the 1100mm separation distance. The Council says that this was material to its determination because, had it appreciated that the piling which was to form part of the walls was only 750mm away from the adjacent wall, that could have affected its judgment as to whether the piling works were comprised in the development and sufficient to amount to implementation.
56. On behalf of the Claimant, Mr Harwood contends that the 3 piles are not in contravention of the approved plans or condition 2 given that there is nothing in the permission requiring the foundations to be outside the 1100mm separation distance. That may be so, however the simple point is that the statutory declaration of Mr Jewell stated in terms that the piling works undertaken were part of the 'contiguous piled walls' as depicted on the plan in exhibit AJ3. Mr Jewell was a chartered surveyor who would have understood the importance of providing accurate information to the Council in terms of the works undertaken.
57. The AJ3 plan clearly depicts the three piles in red forming part of the external wall and the footprint of the building. That statement was made by a chartered surveyor and was what the Council relied on in granting the CLOPUD. It was incorrect. I am satisfied that this was a piece of misinformation. As was the Supporting statement which separately confirmed that the driven piles were part of the contiguous wall.
58. On behalf of the Interested Party, Mr Davey raises an additional point regarding the withholding of information when the application for the CLOPUD was submitted. He

says that material facts such as the depth, strength, specification and actual positions, actual diameter and actual strength, alignment, spacing and load-bearing abilities of three piles were withheld. I am reminded of the warnings of Holgate J in the Ocado case to the effect that an applicant for a CLOPUD assumes a risk of revocation when applying for a Certificate and that risk increases if a minimalist approach to the provision of supporting information is taken.

59. The Council had to assess the application for a Certificate on the basis of the information provided. That information related to the excavation of three holes to receive piled foundations, the installation of three caged steel bars and then the pouring of concrete around those bars. The Council accepted that those works were capable of being material operations and assessed the application on the information provided. Revocation was based on the Council's conclusion that the information was false in a material particular. There is no suggestion that information was withheld. It is always possible for an applicant to submit further and more detailed information, the more information which is supportive of the grant reduces the risk of revocation. In this case, whilst there is always further information which could have been submitted, that is a step removed from a conclusion that information was purposely withheld.
60. Was the false information material? The Council, in the exercise of its planning judgment, concluded that the false information was material to the decision to grant the Certificate. Mr Parker asserts that, had the Council been informed that the piles were closer to the adjacent building and within the 1100mm separation distance, it could have made a different decision. The Council could have arrived at a different view as to whether the piling works formed part of the development.
61. Mr Mehta's engineers, GSE, explained how the piles would be part of the constructed building by reference to a sequence of drawings. The sequence depicts the existing piles remaining in situ, a void being dug to underpin the adjacent building, the existing piles would then be cut down to almost basement level and capped. The engineer said the piles would bear the weight of the wall through the beam and the underground walls would be built up against the remaining part of the piles.
62. The Design Note and the statutory declaration and supporting statement are all consistent in their use of the words "contiguous piled wall". As the Design Note explained: "The nature of contiguous piles is that they have to sit completely outside Thames Water's 1100mm exclusion zone from the proposed new location of the pipe." The supporting statement referred to the works including 'the installation of three piles which will form part of the proposed contiguous piled wall around the basement'.
63. The context in which the application for the Permission had been made was the need to reconfigure the basement construction to accommodate enough space to relocate the Thames Water pipe. The nature of the works and their location was not only relevant to the decision on the CLOPUD, they were of significance because of the planning history and the context and the need to ensure that development was in conformity with the approved plans. I am satisfied that, if the correct information had been provided, it could have resulted in the Council making a different finding on the question of implementation and the issue of the Certificate.

64. The Council have demonstrated in both reports that it correctly understood the relevant legal principles and the application of the law to the facts which was a matter of planning judgment for the Council. It was not irrational of the Council to conclude that the misinformation was material to its decision to issue a Certificate. Ground 2 must also be rejected.

Ground 3

65. This ground alleges that the Council was wrong and irrational to assert that the piles were not comprised in the development and were ‘entirely redundant’ and could not be used to construct the building.
66. The Claimant submitted the GSE technical note which contains the sequence of 13 stages showing how the construction works would progress, and the piles would ultimately be incorporated into the finished development. As a matter of fact, the cut down piles on the drawings would be incorporated within the finished development. However, as Mr Parker points out the existing piling work below first basement level proposed to be retained and forming part of the external basement envelope would be within the 1100mm¹ required separation distance.
67. The Council’s supplementary report set out the Council’s planning judgment on this matter:

“2.24 The Council has considered whether the works can be used in the construction of the building through an engineering approach. It is recognised that piles may not be drilled in a straight line. The Council previously requested that the developer submit a report explaining how the Works can be used to construct the building. A technical note has been produced by Green Structural Engineering (GSE) (see Appendix 11 of the original report). The report produced by GSE includes a drawing showing a sequence of works showing how the piles can be incorporated into the building in such a way that the walls would eventually be 1100mm away from the adjacent wall. This sequence of works would involve further building works to form the walls of the development which will render the Works entirely redundant. As such it is the view of the Council that the Works cannot be used to construct the building and are not comprised in the development.”

68. The removal of the piling at first basement level reveals that aspect of the piling work to be entirely redundant. Moreover, it is indicative of an attempt to respect the 1100mm separation distance whilst incorporating the driven piles into the final development. I agree that this is more likely to indicate a retrospective attempt to justify the utility of the piles in the construction process. It was not irrational of the Council to come to such a conclusion.
69. For all of these reasons I am satisfied that the Council was entitled to exercise its judgment on the utility of the piles in the way it did. That judgment does not in any way appear to be irrational.

¹ That separation distance is further increased at this level due to the step in.

70. In terms of the Council's decision to exercise its discretion and revoke the Certificate, it is apparent that the Council was aware of the adverse consequences for the Claimant. There is no complaint about the revocation process which the Council followed which afforded the Claimant a full opportunity to address the allegations made by third parties and the concerns of the Council. The report recognised that a decision on revocation had to be made:

“The Council therefore considers that the criteria set out in s.173(7)(a) are met, and that it is open to the Council to exercise its discretion under s.173 to revoke the certificate. In these circumstances, the Council proposes to revoke the certificate. This is primarily because of changes in policy since 2013 which mean that, if PP/13/06050 has not been lawfully implemented, it is unlikely that permission would now be granted for a fresh application. Local Plan Policy CL7 (Basements) was introduced in 2015 to address significant and widespread concern about basement development which had been expressed by residents, as cited in the justification for the policy. The Council consider that the construction of new basements has an impact on the quality of life, traffic management and the living conditions of nearby residents. To address those concerns Policy CL7 requires all basement development to (amongst other things) to not comprise more than one storey. The development that was authorised by PP/13/06050 clearly does not comply with Policy CL7. In the circumstances it is considered that there is therefore considerable public interest and policy support for avoiding further large-scale basement development, such as that which had been authorised by PP/13/06050. The Council therefore considers that it would be justified in exercising its discretion to revoke the certificate, given the significant doubts over whether PP/13/06050 was lawfully implemented by the Works.”

71. The discretion to revoke was reasonably exercised and was not irrational. Ground 3 must also be rejected.
72. It follows that the claim fails on all three grounds. I am satisfied that the Council's interpretation of the Permission and the decision to revoke the Certificate was lawful. I would ask Counsel to draw up an Order to reflect this judgment. The Order should also make provision in relation to costs or further submissions in relation to costs.

