

High Court quashes application for change of use due to “serious flaws” in the consultation procedure



The case of Strongroom Limited (Strongroom) -v- London Borough of Hackney (LBH) and Belvedere Realty Investments Limited (IP) highlights the importance of ensuring that consultation procedures have been properly followed by local authorities before planning applications are granted.

Background

The IP is a developer and owner of 117-121 Curtain Road, Hackney (the Site). Strongroom is an adjacent business operating recording studios and a bar which is a well-established music venue.

The IP made its first application to change the use of the Site from commercial to residential on 5 August 2022 (the First Application) with the intention of converting it into 6 residential flats. Following receipt of the First Application, LBH sent a letter to Strongroom as part of its neighbourhood consultation exercise.

Strongroom objected, expressing concern that residents of the flats might complain about noise from their recording studios and bar. They argued that as the IP is the business responsible for the change in character of the area, they should be responsible for managing the impact of the change (the Agent of Change principle). LBH refused the First Application for reasons which were unrelated to Strongroom’s objections. Having sought to address the concerns raised by LBH following the First Application, the IP submitted a further application for prior approval in November 2022 (“the Second Application”).



Consultation for the Second Application

LBH sent a consultation letter to 84 people and posted up a Site Notice. Strongroom was not one of the recipients of the consultation letter.

LBH granted prior approval on 9 January 2023. Strongroom became aware of the prior approval on 30 May 202 when it saw it on LBH's planning portal.

The proceedings

Strongroom challenged the decision of LBH to grant prior approval following the Second Application without consultation, as it had done previously, on the following grounds:

- i) Breach of legitimate expectation of proper notification and consultation;
- ii) Irrational exercise of discretion;
- iii) Mistake of fact;
- iv) Failure to have regard to a material consideration.

LBH conceded that Strongroom had not been properly consulted, but denied that this would have made any difference to the outcome of their decision to grant prior approval.

Under Section 31(2A) Supreme Courts Act 1981 (S31 (2A) SCA 1981), the court must refuse to grant relief on an application for judicial review if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not happened.

LBH submitted that the court should refuse to grant relief to Strongroom on the basis that it had already considered Strongroom's objections when determining the First Application and decided that they could be dealt with by imposing conditions on the prior approval. It argued that even if Strongroom had been given the chance to raise objections to the Second Application, it would have made no difference to their decision and therefore Strongroom had suffered no prejudice.

LBH and the IP submitted that the IP would suffer significant prejudice if the prior approval were quashed as the IP would not be able to make another application for Prior Approval because LBH had issued an Article 4 Direction preventing the use of permitted development rights to convert offices to residential use since the prior approval was granted. The IP had applied to LBH for full planning permission since the Second Application was made and it submitted that if the prior approval were to be quashed and the application for planning permission were to fail, then the IP would be unfairly prejudiced because it would not be able to rely on the previous grant of prior approval as a fallback position.

Judgment

The Judge found that the consultation procedure carried out by LBH was "seriously flawed" and so was not satisfied that the outcome of the Second Application would not have been substantially different if Strongroom had been consulted. The judge accepted that the IP would be prejudiced by a quashing order, but took the view that the prejudice suffered by Strongroom in being deprived of the opportunity to object was greater. The judge therefore issued a quashing order.

How we can help

If you would like advice on any of the issues raised in this article, please get in touch with our [Property Dispute](#)



[Resolution Team.](#)



[Nitej Davda](#)

Partner



[Rosie Harvey](#)

Solicitor Apprentice