

ENGLAND AND WALES / JUDGMENT

Singhal UK Limited v Secretary of State for Levelling Up Housing and Communities & Anor

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Neutral Citation Number: [2025] EWHC 1967 (Admin) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION PLANNING COURT ADMINISTRATIVE COURT Royal Courts of Justice Strand, London, WC2A 2LL Date: 01/08/2025 Before : HIS HONOUR JUDGE JARMAN KC Sitting as a judge of the High Court AC-2023-LON-001705 In the matter of a planning statutory review Between : SINGHAL UK LIMITED

- and -

(1) SECRETARY OF STATE FOR LEVELLING UP HOUSING AND COMMUNITIES

(2) HOUNSLOW LONDON BOROUGH COUNCIL Claimant Defendants AC-2023-LON -001703 And in the matter of an appeal under section 289 of the Town and Country Planning Act 1990 Between: SINGHAL UK LIMITED

- and -

(1) SECRETARY OF STATE FOR LEVELLING UP HOUSING AND COMMUNITIES

(2) HOUNSLOW LONDON BOROUGH COUNCIL Appellant Respondents Mr Bhupendra Singhal (as director) for the Claimant/Appellant Mr Piers Riley-Smith (instructed by Government Legal Department) for the First Defendant/Respondent The Second Defendant/Respondent did not appear and was not represented. Hearing date: 22 July 2025

- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 1 August 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. HIS HONOUR JUDGE JARMAN KC Judgment Approved by the court for handing down. Singhal UK Ltd v SSLUHC & Anor HHJ JARMAN KC:

Introduction

2. With permission of Tim Smith KC, sitting as a Deputy High Court Judge, the Claimant/Applicant (hereinafter the Claimant) appeals and seeks a statutory review, under sections 288 and 289 of the Town and Country Planning Act 1990, of an appeal decision dated 5 May 2023 of a planning inspector appointed by the First Defendant/Respondent, the Secretary of

State. The nature of the appeal decision requires challenges to be brought under both sections. It related to an enforcement notice (the notice) which the Second Defendant/ Respondent, as local planning authority (the authority) served as long ago as 9 September 2014, because it appeared that there had been a breach of planning control, under section 1711A(1)(a), at 72 Bath Road, Hounslow, a semi-detached dwelling, owned by the Claimant. The appeal succeeded in part, and planning permission was granted for the erection of a single- storey rear extension, subject to condition. That condition provided that notwithstanding the provisions of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO), no building or enclosure, swimming or other pool shall be provided, erected or installed within the curtilage of the dwellinghouse without the prior written notice of the authority. The Claimant is particularly aggrieved at the imposition of that condition, as it prevents, amongst other things, the erection an outbuilding “required for a purpose incidental to the enjoyment of the dwellinghouse” which would otherwise be permitted development. The breaches alleged in the notice were the construction of a self-contained residential outbuilding, the erection of a single storey rear extension, the erection of a link extension between the two, and the use of the main dwelling as three self-contained residential units. The notice set out what was required, which included the demolition of the constructions and the cessation of use of the main dwelling as three residential units.

Background

3. This is the third challenge in the High Court to the notice and involves the third decision of a planning inspector in respect thereof. The notice was first appealed under section 174 of the 1990 Act by Bhupendra Singhal, a director and sole shareholder of the Claimant, and his wife, the company secretary. They were represented at that appeal hearing by John Hobson QC, as he then was. Apart from a change of wording in the notice to “the material change of use of the main dwelling house from use as a dwelling house to use as 3x self-contained residential units” the appeals were dismissed by the first inspector in a decision letter dated 15 December 2016 and the notice was upheld. However, the Claimant then appealed to the High Court under section 289(6) of the 1990 Act. The permission hearing took place before Rhodri Price Lewis QC, as he then was, sitting as a Deputy High Court Judge. He gave permission, on the basis that it was arguable that the inspector erred in law as to the availability of permitted development rights in respect of the outbuilding, Judgment Approved by the court for handing down. *Singhal UK Ltd v SSLUHC & Anor* 4. 5. 6. That led the parties to agree a consent order, approved by the court on 5 April 2019, allowing the appeal and remitting it back to the Secretary of State for redetermination, on the basis amongst other matters that the inspector erred as to the availability of permitted development rights in respect of the outbuilding and rear extension. At that hearing, the claimant was represented by Richard Harwood QC, as he then was. By a decision dated 14 September 2021, the second inspector amended the wording of the notice in similar ways to the first, extended the time for compliance to six months but otherwise upheld the notice.

The Claimant again sought to appeal the second inspector's decision under section 289 of the 1990 Act. The matter of permission came on before me, and by order dated 8 December I granted permission on the ground that it was arguable that the inspector failed to consider whether planning permission should be granted for the rear extension and outbuilding on their own merits. When the substantive hearing came on before me, counsel for the Secretary of State indicated that the appeal was not resisted, and by order dated 27 April 2022 the matter was again remitted for redetermination because of that failure. At the hearing before the third inspector, the Claimant was again represented by Mr Harwood KC, as he had become. The result was as indicated above. The present challenge in the High Court followed and the statement of facts and grounds set out five grounds, as settled by Mr Harwood KC. At the permission hearing, the Claimant was represented by its director Mr Singhal, as it was on the substantive hearing before me, and the Secretary of State was represented by Mr Riley-Smith, as she was before me. Permission was given on only three grounds, as set out and renumbered below.

7. The grounds, as drafted by Mr Harwood KC are as follows: i) ii) iii) The inspector acted unfairly in including the condition removing permitted development rights, The inspector failed to take into account, or if he did, failed to give adequate reasons since he did not mention it, the National Planning Policy Framework (NPPF), In concluding that one of the three rooms in the outbuilding would not be required for a purpose incidental to the enjoyment of the dwelling house, the inspector failed to take into account material considerations or failed to give adequate or intelligible reasons. The inspector's approach

8. Each of these challenges arise from the inspector's consideration of ground (a) under section 174(2) of the appeal before him, namely that in respect of any breach of planning control which may be constituted in the notice, planning permission ought to be granted. The inspector set out his approach in decision letter (DL) [16]: "At the start of the Hearing, the appellant indicated that he only intended to pursue two of the potential sixteen permutations that had been identified, namely: (1) two flats in the main building as extended, with the outbuilding not in residential use Judgment Approved by the court for handing down. *Singhal UK Ltd v SSLUHC & Anor* and (2) main building as extended as a single dwellinghouse, with the outbuilding ancillary to that dwelling. I have therefore focused my consideration of this ground of appeal on the two permutations now favoured by the appellant but will also consider below all remaining permutations including the full deemed planning application that arises under Section 177(5) of the 1990 Act."

9. The inspector found that permutation 1 would not provide an acceptable standard of living conditions for the occupiers in terms of internal space, external space, outlook and privacy and therefore would conflict with policies D6, SC5 and SC6 of London Borough of Hounslow Local Plan and with its Supplementary Planning Document (SPD). In respect of permutation 2, the inspector found that the external amenity spaces would fall some 16.6 m² shy of the minimum figure of 75 m² for a dwelling with five habitable rooms as required by Figure SC5.2 in policy SC5. He then went on to say this at DL[50]: "Furthermore, the layout of that amenity space is not suitable in terms of shape, aspect and siting as required by Figure SC5.2. As described above, the space is effectively in two corridors that are perpendicular to each other to form an 'L' shape. The 'corridor' of amenity space that runs east-west is

sandwiched between the single-storey extension and the outbuilding. The ‘corridor’ of amenity space that runs north-south is sandwiched between the flank wall of the main dwelling and the brick east boundary wall. To a greater or lesser degree, both spaces are oppressive to be in. Part of the space that runs north-south is overshadowed by the large tree in the neighbouring property, such that it would receive little or no sunlight. The other part is directly overlooked. Moreover, there is not a single square or rectangular area that could form a usable garden space, especially for children to play in. The latter is an important consideration in relation to a dwelling potentially having four bedrooms and occupied by up to six people.” 10. The inspector then went on to consider permutation 3 and dealt with it in this way: “Permutation 3: main building as extended as a single dwellinghouse, with no outbuilding. “68. This is not a permutation favoured or advanced by the appellant. However, the single-storey rear extension is part of the matters stated in the notice and, in the light of the judgment of the High Court, is nonetheless one that I must consider.

69. In this scenario, the dwelling as extended would have a floor area of some 107m². With the outbuilding removed, the total garden area would be some 104m². Some of that garden space would suffer from the same defects highlighted with the previous permutations in terms of being overshadowed, overlooked and not particularly usable. However, with the Judgment Approved by the court for handing down. *Singhal UK Ltd v SSLUHC & Anor* outbuilding removed, a broadly rectangular external space measuring some 7.2m by 10.4m would be created. This would provide approximately 75 m² of usable external amenity space which would not be in shadow and would not be directly overlooked, to which the less usable external space would be an addition. Applying the benchmark standards set out in Figure SC5.2, that amount of usable external space would be suitable for a dwelling with 5 habitable rooms and over. In my view, this permutation would provide an acceptable standard of accommodation.
70. In granting planning permission for this permutation, it is open to me to impose a condition removing the permitted development rights provided by Class E, Part 1, Schedule 2 of the GPDO. Such a condition would meet the relevant tests set out in the Planning Practice Guidance (PPG). In particular, it would be relevant to the development to be permitted and necessary to overcome the harms that I have identified in relation to Permutation 2, in which the single-storey extension and the outbuilding are both in place. It would of course be open to the appellant to apply for planning permission for an outbuilding, which the Council could then determine on its own merits.
71. I conclude that Permutation 3 would accord with the development plan. Accordingly, I conclude that planning permission ought to be granted for this Permutation, subject to a condition removing certain permitted development rights.” 11. 12. It was not disputed before me that the inspector was right to consider permutation 3, even though it was not advanced by either party. This is because it was an obvious alternative which would have overcome the planning difficulties at less cost and disruption than upholding the notice as amended (see *Tapecrow Ltd v First Secretary of State* [2006] EWCA Civ 1744 and *Moore v*

Secretary of State for Communities and Local Government & Anor [2012] EWCA Civ 1202). The inspector then went on to consider other permutations but found no evidence that any of them which included subdivision of the main dwelling would accord with the external amenity space standards set out in SC5. He then added at DL[75]: “As part of that, I have considered whether a smaller outbuilding would be acceptable within those permutations, particularly in terms of making more usable external space available. A smaller outbuilding than that existing could still form part of the matters stated in the notice. However, I do not have any details relating to a smaller outbuilding and it would not be appropriate for me to impose a smaller outbuilding on the appellant (or for that matter the Council) without having such details available.” Ground 1 Judgment Approved by the court for handing down. Singhal UK Ltd v SSLUHC & Anor 13. 14. 15. 16. The particular grievance under ground 1 is that the inspector acted unfairly in including the condition removing permitted development rights, without warning of his change of mind, when he had raised the question of removing permitted development expressly saying that he did not think he had the power to do so in this case, and the parties agreed with him that the potential removal of such rights did not apply. The ground continues that the inspector changed his position and moved away from an agreed matter without warning and without an opportunity to address his proposal. That is based on an extract of a transcript from an audio recording which Mr Singhal took of the hearing, with, it was not disputed, the inspector’s permission. The way the evidence about this was presented to the court was not wholly satisfactory. The fact that this was only an extract was raised in written submissions by the Secretary of State in these proceedings as long ago as October 2024 and repeated in Mr Riley- Smith’s submissions before me. However, he conceded that no direct request had been made of the Claimant for a full, or fuller, transcript and no application had been made for specific discovery of the recording. There was written evidence from the inspector whereby he said he did not recall making such a statement about permitted development rights and doubting that he would have made such a statement. However, as I understood Mr Riley-Smith’s final position at the hearing before me, it was that the transcript is accepted to be accurate as far as it goes, but with the caveat remaining that it is only an extract. That records the inspector as referring to a scenario where the use of the main building reverts to that of a single dwelling and saying that that would be the only scenario where there could be a condition removing permitted development rights and asking whether that was permissible if the use reverts to lawful use. Counsel for both parties agreed that on that scenario such rights were pre-existing and could not be removed. The inspector then asked if the outbuilding were allowed, whether a condition preventing further outbuildings being erected could be opposed. Again the parties were agreed that if planning permission were given for the retention of the outbuilding as ancillary residential use, it could be constructed again in the future under permitted development right irrespective of such permission and the only question would be whether any further outbuilding is ancillary to the residential use. It was not in dispute before me that on those scenarios those discussion accurately reflected the position that a condition could not be imposed removing permitted development rights. What that discussion did not expressly deal with is permutation 3, which is the one eventually preferred by the inspector,

where the use reverts to that of a single dwelling house, planning permission is given for the rear extension, but not for the outbuilding. The challenge to this decision was not put on the basis that it was not permissible to attach such a condition in this scenario, but rather that the parties had no opportunity to deal with whether it was appropriate to do so on the facts of the present case.

17. Mr Riley-Smith makes a number of points in submitting that such an opportunity was not necessary. The first is that the authority in its statement of case before the inspector referred to an outcome where the rear extension alone were retained and said that removal of the outbuilding “in its entirety” would remove the authority’s objections in relation to the useable outdoor amenity space and would be an acceptable resolution. Although there was no express mention in the statement of the Judgment Approved by the court for handing down. *Singhal UK Ltd v SSLUHC & Anor* imposition of a condition removing permitted development rights, Mr Riley-Smith submits that this is implicit in the phrase “in its entirety” and that the only way that could be achieved is by removing permitted development rights. He further submits that the retention of the rear extension is of benefit to the Claimant, and even if there had been an opportunity to discuss the imposition of such a condition, there would be little if anything that the Claimant could say against it. He also submits that the Claimant would be entitled to revert to lawful rights by demolishing the rear extension and then relying on permitted development rights to build an outbuilding which is reasonably required for a purpose “incidental to the enjoyment” of the dwelling house. However, the inspector found that the retention of the rear extension was acceptable in planning terms. By requiring demolition of the outbuilding and the removal of permitted development rights, the right of the Claimant to erect an outbuilding for a purpose “incidental to the enjoyment” of the dwelling is taken away, whatever the size and situation of such an outbuilding. The inspector considered a smaller outbuilding, in the context of other permutations, particularly in terms of making more usable external space available, and observed, as indicated above, that a smaller outbuilding than that existing could still form part of the matters stated in the notice. It is true, as Mr Riley-Smith submits, that the inspector made no finding to that effect, but the reason for that is that he considered that he did not have enough details. He did not dismiss the acceptability of a smaller outbuilding on the ground, for example, that even that would give rise to the harm he identified in relation to permutation 2. Had he raised with the parties the imposition of such a condition, or a variant thereof, that would have given them an opportunity to deal with any such details. To what extent they would be able to do so is to some extent a matter of speculation, but in my judgment they should have been given the opportunity to do so, which may well have impacted upon the justification for the imposition of such a condition, or at least in the absolute terms in which it was in the event imposed. This ground will only be made out if it shown that there was procedural unfairness which substantially prejudiced the Claimant (see *George v Secretary of State for the Environment* (1979) 77 LGR 689 and *Hopkins Developments Limited v Secretary of State for Communities and Local Government* [2014] PTSR 1145). In my judgment there was procedural unfairness in not giving the parties the

opportunity to deal with the imposition of a condition relating to permitted development rights, which substantially prejudiced the Claimant. 18. 19. 20.

21. Mr Riley-Smith also submits that this challenge should fail because the inspector would have reached the same conclusion without this omission, citing *Simplex (GE) Holdings v. Secretary of State for the Environment* [1998] 3 PLR 25. However, for the reasons given I do not accept that submission. Ground 2 22. Ground 2 focuses upon DL[70] as set out above. Paragraph 54 of the 2021 NPPF, current at the time of the decision, requires planning conditions restricting permitted development rights to have ‘clear justification’. The inspector does not expressly reference this in his decision, and the Claimant submits that he ignored this. Judgment Approved by the court for handing down. *Singhal UK Ltd v SSLUHC & Anor* 23. In *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) at [19], Lindblom J, as he then was, set out seven familiar principles in dealing with challenges to decisions in planning cases. The sixth was as follows: “ Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).” 24. PPG explains and clarifies NPPF (see *Mead Realisations Ltd v Secretary of State for Housing, Communities and Local Government* [2025] EWCA Civ 32). In my judgment it is clear from DL[70] that the inspector had regard to the tests set out in PPG in relation to the removal of permitted development rights and clearly appreciated the need for justification. This he gave, namely to prevent a further outbuilding being erected with the resulting harm which he had identified in permutation 2. 25. Ground 2 fails. Ground 3 26. Turning to the final ground, the inspector dealt with the outbuilding in this way: “58 The existing outbuilding, as shown, has a footprint of some 45.9m². The footprint of the original dwelling is some 41m² with the corresponding floor area of the original dwelling being some 82m². Put another way, the footprint of the outbuilding exceeds that of the original dwelling and is more than half of the total floor area of the original dwelling.
59. It is settled case law that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E1. Nevertheless, the Courts have held that the size of the outbuilding is a material consideration and indeed that, when the matter is looked at as a whole, size may be an important consideration. In this case, it is not the size of the outbuilding in terms of square metres that important: it is relationship of that size that to the main dwelling. In that context, it is difficult to accept that the outbuilding can be regarded as being genuinely incidental to the enjoyment of the dwellinghouse as such.

60. It is also settled case law that, in order to qualify as permitted development under Class E, an outbuilding must be required for some incidental purpose (emphasis added). It is therefore necessary to identify the purpose and incidental Judgment Approved by the court for handing down. *Singhal UK Ltd v SSLUHC & Anor* quality in relation to the enjoyment of the dwellinghouse, and whether the outbuilding is genuinely and reasonably required to accommodate the use and thus achieve that purpose.
61. The Oxford English Dictionary (OED) defines 'required' as 'needed for a purpose'. In relation to Class E, the Courts have interpreted 'required' as meaning 'reasonably required'. In the context of Class E, this translates as reasonably needed for a purpose incidental to the enjoyment of the dwellinghouse as such.
62. The proposed outbuilding, as shown in Drawing Nos S/467/01 and 02, is effectively divided into three spaces. One space is shown as a gym, with some storage. Another space is shown as an office. The third space has no particular use attached to it but is shown as accommodating some white goods.
63. At the time of my site visit, there was some gym equipment in the space designated as a gym. The space/equipment did not give the impression of being well- used, but the equipment was nevertheless there. The space designated as an office is of a size that could reasonably be considered to be incidental to the enjoyment of the dwellinghouse as such, in the form of a study. The small size of the original dwelling is such that a study could not reasonably be accommodated within it.
64. The difficulty is with the third space. The fact that the space is not specifically identified or designated for a specific purpose suggests that it is not actually required for any purpose incidental to the enjoyment of the dwellinghouse as such. I accept that the installation of the white goods there would be useful given the small size of the original dwelling, as would the additional space for storage. Nevertheless, the entirety of the area of this third space cannot be considered as being as reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.
65. For these reasons, I consider that the outbuilding proposed in Permutation 2 is not, when taken as a whole and as a matter of fact and degree, genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. It follows that the size of the outbuilding is larger than it needs to be in order to accommodate those purposes that are reasonably required (the gym and the office). As such, it would not constitute permitted development under Class E, Part 1, Schedule 2 of the GPDO.
66. I have no reason to doubt that the appellant has the funds and motivation to erect both the outbuilding and the single- Judgment Approved by the court for handing down. *Singhal UK Ltd v SSLUHC & Anor* storey extension, and in that sense rebuilding the outbuilding would be a realistic prospect. It is of course entirely possible that a smaller outbuilding could qualify as permitted development under Class E. However, a smaller outbuilding would be more desirable than the existing outbuilding, and therefore would not constitute a viable

fallback position.” 27. 28. 29. Several important points are readily apparent from those passages. The first is that that inspector found that an outbuilding for a gym and office was reasonably required. He also found that the installation of white goods there would be useful as would additional storage space. Further he accepted the possibility that a smaller outbuilding could qualify as permitted development. The Claimant submits that the inspector ignored an indication on the plan that the third space was intended to accommodate a standing boiler, which is currently housed in a small external shed which makes access for maintenance difficult. Mr Singhal submits that this omission was despite the fact that he showed the inspector this boiler on the site visit and he gave evidence about the need to relocate it in the third space. Whilst I accept that the reference to “white goods” is not usually apt to describe a boiler, in my judgment it is highly unlikely that the inspector ignored the boiler which was clearly marked on the plan which he expressly refers to and shown on the site view. The plan has no scale on it, but has measurements on it. As well as an annotation in capital letters showing the boiler in the third space, the boiler in its current position is marked with the annotation, again in capitals “Boiler will be moved to out building.” It is clear from the plan that even with the boiler, white goods and storage cupboard in the third space, there remains significant free space. Some idea of this is likely that have given on the site view, although the boiler and the white goods are not currently there, as shown on photographs of the third space in the hearing bundle before me. In my judgment, the inspector was entitled to take into account that the third space was not identified on the plan for a specific purpose. He did not place a great deal of weight on this, merely saying that it “suggests” that it was not required for any purpose incidental to the enjoyment of the dwellinghouse. His reasoning however, was that the entirety of the third space cannot be considered as so required and that outbuilding, taken as a whole, and as a matter of fact and degree, cannot be considered as reasonably required for purposes incidental to the enjoyment of the dwellinghouse. He expressly had regard to authority to the effect that the size of the outbuilding is not of itself determinative of the issue. He therefore did not fall into the trap which the inspector fell into in *Emin v Secretary of State for the Environment & Anor* (1989) 58 P&CR 416, by regarding the relative size as the sole test of whether the use is incidental. 30. In my judgment, those were conclusions which the inspector was entitled to come to. This final ground fails.

Conclusion

31. The outcome is therefore that the challenge succeeds, but only on the narrow ground that the parties should have been given an opportunity to make submissions on the imposition of the condition taking away permitted development rights. The fact that Judgment Approved by the court for handing down. *Singhal UK Ltd v SSLUHC & Anor* the Claimant may apply for permission does not detract from the fact that its rights which have been completely removed. The parties may of course agree a position in light of this judgment, or failing that, agree a proportionate and appropriate mechanism to deal with this. In default of any such agreement, then the parties can make written submissions on this and any other

consequential matter arising out of this judgment, which will then be determined on the basis of such submissions, and which should be filed within 14 days of hand-down of this judgment. This is not an opportunity to re-argue the merits.

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Prepared on 26 October 2026 · Esheria