

ENGLAND AND WALES / JUDGMENT

ELY & Anor, R (on the application of) v Secretary of State for Housing, Communities and Local Government [2026] EWHC 927 (Admin) (24 April 2026)

[2026] EWHC 927 (Admin)

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Neutral Citation Number: [2026] EWHC 927 (Admin) Case No: AC-2025-LON-004306 IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION ADMINISTRATIVE COURT IN THE MATTER OF AN APPLICATION FOR PERMISSION TO BRING A CLAIM FOR JUDICIAL REVIEW Royal Courts of Justice Strand, London, WC2A 2LL Date: 24/04/2026 Before : THE HONOURABLE MRS JUSTICE LIEVEN

- ----- Between : The King (on the application of) (1)

(1) ELY (a child, by his litigation friend, EMS) and (2)

(2) EMP (a child, by his litigation friend, ECP) Claimants

- and – Secretary of State for Housing, Communities and Local Government Defendant

- and – Council of the London Borough of Hackney Interested Party

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- ----- Charles Streeten and Michael Feeney (instructed by Leigh Day) for the Claimants Julia Smyth KC and Robert Williams KC (instructed by Government Legal Department) for the Defendant Case No: AC-2025-LON-004300 IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION ADMINISTRATIVE COURT IN THE MATTER OF AN APPLICATION FOR PERMISSION TO BRING AN APPEAL UNDER s.289 TCPA 1990 Royal Courts of Justice Strand, London, WC2A 2LL Date: 24/04/2026 Before : THE HONOURABLE MRS JUSTICE LIEVEN

- ----- Between : The King (on the application of) Talmud Torah London Limited Appellant

- and – (1)

(1) Secretary of State for Housing, Communities and Local Government (2)

(2) Council of the London Borough of Hackney Respondents

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- ----- Charles Streeten and Michael Feeney (instructed by Leigh Day) for the Appellant Julia Smyth KC and Robert Williams KC (instructed by Government Legal Department) for the First Respondent Hearing dates: 25 March 2026

- ----- Judgment Approved This judgment was handed down remotely at 11:30 on Friday 24th April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Mrs Justice Lieven: This is an application for permission to bring an appeal under s.289 Town and Country Planning Act 1990 ("TCPA") and for judicial review of the decision of the Secretary of State for Housing, Communities and Local Government, made through his planning inspector (the Inspector) dated 29 October 2025. The decision concerned an enforcement notice related to Talmud Torah school, 69 Amhurst Park, London N16 ("the site"). The Claimant was represented by Charles Streeten and Michael Feeney of counsel and the Defendant by Julia Smyth KC and Robert Williams KC. The Grounds The claim is advanced on the four grounds. In summary:

- (1) Ground 1: The Inspector acted contrary to section 6(1) of the Human Rights Act 1998 ("HRA"), as the Decision disproportionately infringes the Claimants' rights under the European Convention on Human Rights ("ECHR").
- (2) Ground 2: The Inspector erred in law by excluding from her assessment a matter capable of being relevant, and/or in failing to have regard to an obviously material consideration, and/or acting irrationally in her approach to the Council's duties, including to provide sufficient school places, under the 1996 Act, and the question of whether or not Policies LP24 and LP8 of the Local Plan were out-of-date.
- (3) Ground 3: In considering the children's rights under the ECHR, the Inspector failed to have regard to an obviously material consideration, failed to give adequate reasons in relation to her conclusions and/or her conclusions were irrational.
- (4) Ground 4: The Inspector erred in law by departing from the expert evidence on noise and/or national planning policy on noise without having cogent and compelling reasons for doing so, and/or by failing to give adequate reasons in relation to her conclusions on noise, and/or by failing to act fairly in her approach to the Appellant's expert evidence and/or by reaching an irrational conclusion. This is a permission application, so I am only considering arguability on the basis of the relatively low threshold in *Ramdass v Minister of Finance*

[2025] UKPC 4 . The case was listed for a day, so I will set out some of the material, however I have closely in mind that the test is merely arguability. The Background Talmud Torah is a boys primary faith school that serves the local Charedi Jewish community in Stamford Hill, within the London Borough of Hackney. There is a large Charedi community in the area. For this community attending a Charedi school is a religious obligation, and certainly for the purpose of the enforcement notice appeal and this application, attending

mainstream education is not an option. There is no dispute that there is a significant shortage of school places in the area for Charedi children and that this has been a longstanding issue. The planning background is that there was a change of use of the site to school use without planning permission. An application for retrospective planning permission was refused by Hackney. The enforcement notice ("the EN") was issued on 20 April 2025, and an inquiry was held over 5 days in September 2025. There are two other schools in close proximity to the site, both of which materially impact on the noise environment, although there are times when the School operates but the other two schools do not. The Decision Letter The material parts of the DL all relate to the appeal under ground (a) of s.174 TCPA 1990. The Inspector set out the main issues under the Ground A appeal at DL27. At DL28 she referred to the Human Rights Act 1998 and in particular Article 2 of the First Protocol (A2P1) (the right to education) as well as Articles 8, 9 and 14. The first main issue was whether the development was acceptable in principle. The Inspector referred to LP24 of the Hackney Local Plan (adopted 2020), which sought to prevent the loss of housing. Condition (vi) is that the development should be an essential community use for which there is a demonstrable unmet need. Having considered the level of unmet need and the results of the Applicant's Alternative Sites Assessment (ASA), she concluded at DL44 that the development was acceptable in principle because of the demonstrable need for school places for Charedi children. The second main issue was the impact on living conditions of local residents. At DL45 the Inspector referred to NPPF para 198 and to Local Plan policy LP2 which states that new development should not have an adverse impact on the amenity of occupiers or neighbours. DL47 needs to be set out in its entirety because it demonstrates the level of problems that the school use is creating for local residents; "47. Since the school first opened, neighbouring residents have consistently complained to the Council's Planning and Environmental Protection Service about noise/disturbance, light pollution and loss of privacy in connection with the use of the school. Noise nuisance is resultant from the use of the playground by children when the school is open, including balls being continually kicked against the playground's timber fencing and from the use of the fire escape staircase. In addition, there is significant use of megaphones, public address systems, and whistles by staff to control the children throughout the day. The school bell also rings every half hour. Residents who live in the properties on Bergholt Crecent adjoining the school playground told the Inquiry that they have had to change the way that they occupy their homes since the school opened. They can no longer work from home in the rooms at the back of their house during the day, nor sit in the garden when the school is open, due to the noise and disturbance which is incessant. It also impacts on when they can entertain and have friends over. There has been a resultant impact on their mental health and quality of life." In DL48-49 the Inspector set out the times when the children are in the playground. In DL49 she said that there is very little time during the school day when the playground is not in use. The school day is from 9.00am to 5.00pm. The school is in use on Sundays and Bank Holidays, although not Jewish holidays. At DL50 the Inspector referred to the evidence of the neighbours. They accepted that there was noise from the other schools,

but said that the noise and disturbance had become intolerable since the site had operated as a school. At DL52 there is reference to the fire escape on the building which was used for circulation by the school, and which being in an elevated position causes further noise and disturbance. At DL53-54 the Inspector referred to the Environmental Noise Impact Assessment (ENIA), which had been produced by the Applicant. She accurately sets out the conclusions of that report in terms of the noise from the playground being 10dBa below background noise levels, using an LAeq16hr scale. At DL55-6 she said; "55. However, the assessment and calculations are based on a period of 16 hours, which is considerably longer than the length of a school day. I am also mindful that technical methods, while providing guidance, are not the only way in which noise and disturbance can be assessed. For example, the calculations indicate that the sound generated by the school activities at No 69 would not be significantly different to background noise levels when the school is not in use, which is not the experience of neighbouring residents.

56. The sounds of children playing can be perceived as less disturbing than industrial noise, as it is a natural noise. However, the variation in the level and quality of the noise can also result in it being intrusive. High pitched screaming, shouting, kicking of balls against the fence and continual blowing of whistles to control behaviour are all described by neighbours as irritating and intrusive. It is also understood that the fences along the southern boundary of the playground, whilst having some acoustic value, are also often climbed by children to retrieve balls and climb trees. This makes the atmosphere particularly difficult for the residents of No 30 as they are closest to the extended playground and have habitable rooms facing the school. Although the school related noise is during the daytime, neighbouring residents work from home, and the school is also open and in use on Sundays and Bank Holidays, which is when residents might wish to relax outdoors and, in the summer, have their windows open." At DL57 she said; "I have no doubt from what I have seen and heard that the noise and disturbance generated by the use of the playground is incessant and has a harmful impact on the living conditions of neighbouring residents, who have a reasonable expectation to some peaceful enjoyment of their home and garden." At DL58 she considered whether conditions could mitigate the harm identified, but concluded that given the use on Sundays and Bank Holidays and the number of pupils in the School any condition with a Management Plan was not going to be effective. At DL60 she said; "60. For the reasons given above I conclude that the school has a substantial harmful effect on the living conditions of neighbouring residents. I have found that the use of conditions could not mitigate that harm, and thus the development is contrary to the development plan, including Policy LP2 of the HLP, Policy D14 of the LP and the provisions of the NPPF, the aims of which are set out above." At DL61-66 she considered the impact on the character and appearance of the area and found that there was a harmful effect. At DL81 the Inspector considered whether the local authority was in breach of its duty under the Education Act 1996 to ensure sufficient school places, but said that was not a matter for her. She found that the development plan was not out of date, because the Area Action Plan was currently being examined. Therefore, the tilted balance in the NPPF did not apply. At DL86-96 the Inspector

carries out the planning balance under Appeal A. At DL87 she sets out her conclusions on the impact on living conditions and says; "In this case I have concluded that the development is contrary to policies in the development plan and the NPPF which seek to protect the living conditions and amenity of neighbouring residents. This harm arises from the intensive and perpetual use of external areas, including the playground and external staircase. The noise and disturbance associated with that use has a significant and substantial harmful effect on the living conditions of neighbouring residents, the peaceful enjoyment of their homes and their quality of life. This impact has not been shown to be capable of being successfully mitigated through conditions. The harm identified attracts substantial weight in the planning balance." She refers to her findings on need and the Human Rights Act considerations in some detail. She acknowledges at DL93 that refusing the appeal will impact on children's education; "A lack of success in this appeal would mean that the children attending the school may experience disruption to education and interference with their Article 8 rights. However, dismissing the appeal would not violate their right to an education under Article 2 of the First Protocol, albeit it would prevent them from access to education at this unauthorised site. Whilst recognising the demonstrable need for additional school places for Charedi children, it may, however, be possible for Talmud Torah to gain planning permission for a school elsewhere, for example, by converting another more suitable residential property. Alternatively, a consideration may be to reduce the intensity of the development and redevelop a smaller well-planned school on this Land, such that there is no conflict with the design and amenity objectives of the development plan." Mr Streeten grouped the Grounds into Grounds 1 and 3 which relate to the Human Rights Act 1998 (HRA) and Grounds 2 and 4. Under Ground 1 he submits that the Inspector erred in respect of the proportionality balance under Articles 8 (right to private and family life), Article 9 (freedom of religion) and Article 2 Protocol 1 (A2P1) (right to education) and Article 14 (discrimination). The core point was that there is a very large shortfall of school places for Charedi children, which is not in dispute. However, the Stamford Hill Area Plan has not addressed this shortfall. This is dealt with further under Ground Three. Mr Streeten's submissions under Ground 1 focused on A2P1, the right to education. He referred to *A v Essex*

[2010] UKSC 33 and *Jehovah's Witness Case* ECtHR [36915/10 and 8606/13]. The interference in issue must deprive the individual of the "very essence of the right". He submits that the decision of the Inspector has that effect on the children at the School. There is a very severe shortage of school places for children in the Charedi community in Stamford Hill. It is critical for the children and families' religious beliefs that they are educated at a Charedi school, so mainstream education is simply not possible. The effect of the decision is that the children are very likely/at great risk of being left without education if the School has to close. He relied on the Supreme Court decision in *Shvidler v Foreign Secretary*

[2025] 3 WLR 346 to submit that the Court should undertake the proportionality balance itself, and consider the evidence itself for that purpose. He did however accept that in the context of a planning appeal the Court should give special weight to the Inspector's conclusions. Mr Streeten submits under Article 14 that the discrimination is on a suspect ground, because it is based on the Claimants' religious beliefs. In those circumstances it is necessary for the interference to be manifestly without reasonable foundation. On the question of the correct approach Ms Smyth relied on the ECtHR decision in *Chapman v UK* which concerned a planning decision about permission for a gypsy/traveller site. In *Chapman* the Court made clear that in a planning challenge at [106] - [114] the merits of the planning issues will be for the inspector, the Court said at [114]; "In the circumstances, the Court considers that proper regard was had to the applicant's predicament both under the terms of the regulatory framework, which contained adequate procedural safeguards protecting her interest under Article 8 and by the responsible planning authorities when exercising their discretion in relation to the particular circumstances of her case. The decisions were reached by those authorities after weighing in the balance the various competing interests. It is not for this Court to sit in appeal on the merits of those decisions, which were based on reasons which were relevant and sufficient, for the purposes of Article 8, to justify the interferences with the exercise of the applicant's rights." Ms Smyth relies on *Belgian Linguistics*

[1968] 1 EHRR 252 at [76]-[78] on the limits of the rights under A2P1. It is apparent from that case that A2P1 gives no right to any specific education and does not create a positive obligation on the state to provide particular education. In respect of all aspects of the ECHR Articles Ms Smyth submits that the Inspector carefully considered the impacts on the children of upholding the EN, and in particular on their education. She weighed those impacts against the interference to local residents' Article 8 rights (i.e. the noise and disturbance suffered). Therefore, the interference is clearly proportionate and justified given the scale of noise and disturbance which she accepted. In my view the HRA Grounds here are clearly unarguable. All the Articles relied upon are qualified rights subject to proportionality. Although there may an interesting debate as to whether there are any differences in approach between *Shvidler* and *Chapman*, they do not arise in this case. Mr Streeten accepts that special weight should be placed upon the Inspector's conclusions. This must be correct. The Inspector is an expert tribunal, she went to the site and she heard the evidence, including having heard the evidence of the local residents who had experienced the noise and disturbance. Mr Streeten relies on the *Jehovahs' Witness Case*, but I note that case concerned a failure to allow for a place of worship, rather than engage A2P1. Further, the restriction, which was based on minimum size requirements, did not involve an interference with a third party's human rights, as is the case here. Even taking the Claimants' case at its highest on the scope and effect of A2P1, it remains a qualified right that has to be balanced against other rights and interests. On no possible argument can the right under A2P1 simply trump the local residents' rights under Article 8. The Inspector had to undertake a balancing exercise between competing rights and interests,

which she did. There was nothing even arguably wrong in her analysis of that proportionality balance. The facts of the case are analogous to those in *Chapman* where there were no sites available to the applicant, see [111] and this would cause considerable personal hardship for the individual, and thus impacted on the gypsy community. The ECtHR remained clear that the planning balance was one for the Inspector. The Inspector referred in detail to needs of the community for educational provision and the impacts on the children and their families if the School closes. It is apparent that she gave great weight to those considerations, see DL90. However, she also took into account, as she was legally obliged to do, and gave weight to the noise and disturbance impacts on local residents. The weight to be given to the different considerations is a matter for the Inspector, see Lord Hoffman in *Tesco Stores v SSE*

[1995] 1 WLR 759 . The Inspector found that the impact from the School use was at times "intolerable". That was a conclusion that she was entitled to come to on the basis of the evidence before her. I will deal with her assessment of the noise evidence, including the ENIA, under Ground Four. However, for the purposes of a proportionality balance there is no arguable case that the Inspector erred in law. Mr Streeten focused on the fact that there were a limited number of complainants and only four residents appeared before the Inspector and three of them were from the same house. He also referred to the proximity of two other schools in very close proximity. The Inspector was fully aware of these facts, but she came to a very clear conclusion about the level of noise and the really severe impact on residential amenity. She was entitled to take into account the level of the noise and the fact that the school use was taking place on Sundays and Bank Holidays when local residents could expect respite from the noise. She also took into account her view that the School had apparently taken few steps to control the disturbance. I asked during the hearing whether the School had put forward a management or mitigation plan to offer ways by which the residents' amenity could be protected, and Mr Streeten told me that no such plan had been put before the Inspector. He said that the School had proposed a condition that such a plan should be agreed. However, the Inspector expressly considered such a condition at DL58 and having heard the School's evidence did not consider that the School would control the noise and disturbance. The argument under Article 14 appears to be that because non-Charedi children do have sufficient educational places (at least by comparison) the Inspector should have allowed the appeal because of the discriminatory effect on the Charedi community. He argues that because the alleged discrimination is on the basis of religion the test is one of manifestly without reasonable foundation. However, to have allowed the appeal would have involved a significant interference into the residents' Article 8 rights. The balance between those rights was a matter for the Inspector, and there is nothing arguably unlawful about her approach. Given the level of the disturbance that the Inspector found and the consequential interference in the residents' rights, no argument about the approach to proportionality by the Court could lead to a different conclusion. Given the Inspector's findings there was plainly reasonable foundation for her conclusion. Therefore, Grounds One and Three are not arguable.

Ground Two is that the Inspector should have determined whether the London Borough of Hackney is in breach of its statutory duty under s.13 and 14 of the Education Act 1996 by failing to make provision for sufficient school places for Charedi children. Mr Streeten submits that the Inspector should have grappled with this issue and found a breach of the local authority's statutory duty. He argues that the Inspector erred in law because she did not determine this matter. Mr Williams submits that it was not for the Inspector to make findings on breach of a statutory duty by the local education authority. He points out that the duty is a target duty, and to find any breach would necessarily be a highly legally complex issue. In any event, the Inspector did take into account the arguments about Hackney's failure to ensure sufficient school places under the Education Act. She found that there was a significant level of unmet need, and that led to her conclusion in DL44 that the development was acceptable in principle. Therefore, a finding of breach against Hackney would not have made any difference to the determination of the appeal. In my view this Ground is unarguable. Firstly, it is not for the Inspector to make legal rulings on whether the Local Education Authority ("LEA") is in breach of a duty to provide sufficient school places. That would be a matter for the Administrative Court of the High Court in a judicial review. Inspectors do sometimes have to make legal determinations, but that would generally be in relation to land related issues, not in respect of a public law duty not directly related to the use of the land. The duty here was upon the Education Authority, not the Planning Authority, and raises issues well outside the scope of the inquiry or the Inspector's powers. This is the case although, of course, the two authorities are corporately the same organisation. Secondly, the duty in question is a target duty and as such any finding of breach would be hard to establish. Thirdly, and probably most importantly, the Inspector did take into account the unmet need for school places, and it was that finding that led to her conclusion that the development was acceptable in principle. Even if the Inspector had said that she considered that Hackney, as the LEA, was in breach of a statutory duty it is very difficult to see how such a finding could have made any difference to the planning balance. She took into account the unmet need, but had to weigh that against the harm to local residents. A finding of breach would not alter that balance. In my view for all those reasons this Ground is not arguable. Ground Four is that the Inspector should not have departed from the expert noise evidence, or that she was procedurally unfair in respect of that evidence. The Claimant had produced the ENIA, which concluded that the noise at the residents' property did not exceed the background noise, measured over a 16 hour period (LAeq16hour). Mr Streeten submits that the Inspector rejected this evidence without putting her concerns to the expert. He focused on two points, the 16 hour LAeq as opposed to the shorter period of the School operating hours, and the level of background noise from the other schools in the vicinity. The expert, who had produced the ENIA, was present at the inquiry and available to answer questions. However, neither the Inspector nor the local authority asked that the witness give oral evidence and answer questions on his approach in the report. Mr Williams submits that it is trite planning law that an inspector is entitled to depart from expert evidence, see *Newsmith v SSETR*

[2001] EWHC Admin 74 . In respect of the Inspector's comments at DL55 about not simply relying on the 16 hour LAeq, it is apparent from the Planning Policy Guidance (PPG) that there is no one noise measure that has to be adopted. There was no error in the Inspector focusing on the subjective evidence of the local residents, and on the period when the school was operating rather than the longer 16 hour period used in the ENIA. This is hardly surprising given that only the School was open on Sundays, so the residents were in a good position to describe the level of noise caused by that School alone. In respect of the noise from the other schools, at DL46 the Inspector was clear that the residents could differentiate between noise from the School and the adjoining schools. In my view this Ground is again unarguable. This Ground is a challenge to the Inspector's conclusions on the planning merits, here the noise impact. There is no arguable error of law. She was not bound by the expert report. She was fully entitled to place great weight on the evidence of the residents, and to reach the conclusion that in the light of that evidence the impact would be intolerable. The Inspector was not departing from the expert report in the sense that she was saying the ENIA should not have used LAeq16 hour, rather she was weighing up the expert evidence against the other factors including the school hours; the fact that the School was open on Sundays and Bank Holidays; the use of the fire escape; and the School's use of whistles, loudspeakers and shouting to control the children. There was evidence before her on all these points. These were matters for the Inspector and there is no prospect of the Court overturning such findings in this challenge. For those reasons I refuse permission for statutory appeal/judicial review. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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