

GLS Legitimate Expectation Webinar

CASE REFERENCE

R. (on the application of Majed) v Camden LBC

Court of Appeal (Civil Division)

06 July 2009

Westlaw Case Analysis 4 pages

Official Transcript 12 pages

Status:  Positive or Neutral Judicial Treatment

R. (on the application of Majed) v Camden LBC

Court of Appeal (Civil Division)

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Case Analysis

Where Reported

[2009] EWCA Civ 1029; [2010] J.P.L. 621; [Official Transcript](#)

Case Digest

Subject: Planning

Keywords: Building extensions; Legitimate expectation; Notification; Planning applications; Planning permission; Statements of community involvement

Summary: There had been a breach of legitimate expectation where, contrary to the terms of a local planning authority's statement of community involvement, the occupant of a property had not been notified of a planning application involving an extension to his neighbour's home.

Abstract: The claimant (M) applied for judicial review of a planning permission granted by the defendant local planning authority to the interested party (K) for the erection of a first-floor side extension to his home. The local authority had adopted a statement of community involvement pursuant to the [Planning and Compulsory Purchase Act 2004 s.18](#). The statement recorded that the local authority was "required to follow what it says". Annex 6 of the statement set out the "minimum standards for notifications by letter, site notice and by advertisement". In respect of planning applications involving alterations, additions or demolition works, the notes in the annex stated as follows: "The statutory requirement is either a site notice or letter. The occupiers of the application premises and adjoining occupiers likely to be affected by the proposals will receive a letter". Owing to an administrative error, M, who was K's closest neighbour, was not notified of the application and did not discover the existence of the planning permission until building works had commenced. M argued that there had been a breach of legitimate expectation.

Application granted. Legitimate expectation came into play when there was a promise or a practice to do more than that which was required by statute. The statement of community involvement issued by the local authority was a paradigm example of such a promise and a practice. The local authority had made an unequivocal statement as to who would be notified, and it was accepted that M fell within annex 6. However, it would not be appropriate to quash the planning permission. The extension had been completed and was now occupied. If the planning permission was quashed, the local authority would have to take the existence of the extension and the costs and disruption involved in removing it into account as material considerations when deciding whether to grant retrospective planning permission for the extension or whether it would be expedient to issue an enforcement notice requiring its removal. In view of the history of the matter, in particular the lack of any development plan objection, the lack of any real planning harm to M and, by contrast, the very real and obvious prejudice that would be suffered by K, enforcement action was inconceivable. It would, however, be appropriate to grant declaratory relief to the effect that

there had been a breach of legitimate expectation.

Judge: Arden, L.J.; Moore-Bick, L.J.; Sullivan, L.J.

Counsel: For the claimant: R Harwood. For the defendant and interested party: M Beard, D Kolinsky.

Solicitor: For the claimant: Foresters. For the defendant: In-house solicitor. For the interested party: David Cooper & Co.

All Cases Cited

R. (on the application of Smith) v Cotswold DC

[\[2007\] EWCA Civ 1341](#); [Official Transcript](#); CA (Civ Div); 2007-11-21

Simplex GE (Holdings) Ltd v Secretary of State for the Environment

[\(1989\) 57 P. & C.R. 306](#); [\[1988\] 3 P.L.R. 25](#); [\[1988\] J.P.L. 809](#); [\[1988\] E.G. 65 \(C.S.\)](#); [Times, June 2, 1988](#); [Independent, May 16, 1988](#); [Daily Telegraph, May 13, 1988](#); CA (Civ Div); 1988-05-06

Key Cases Citing

Applied

R. (on the application of Kelly) v Hounslow LBC

[\[2010\] EWHC 1256 \(Admin\)](#); [Official Transcript](#); QBD (Admin); 2010-05-11

All Cases Citing

Mentioned by

R. (on the application of Lewisham LBC) v Secretary of State for Health

[\[2013\] EWHC 2381 \(Admin\)](#); [\[2013\] P.T.S.R. 1298](#); [\[2013\] B.L.G.R. 665](#); [Official Transcript](#); QBD (Admin); 2013-07-31

Mentioned by

R. (on the application of Halebank PC) v Halton BC

[\[2012\] EWHC 1889 \(Admin\)](#); [Official Transcript](#); QBD (Admin); 2012-07-19

Mentioned by

R. (on the application of Vieira) v Camden LBC

[\[2012\] EWHC 287 \(Admin\)](#); QBD (Admin); 2012-02-21

Mentioned by

R. (on the application of Mageean) v Secretary of State for Communities and Local Government

[\[2010\] EWHC 2652 \(Admin\)](#); [\[2011\] Env. L.R. 9](#); [\[2011\] J.P.L. 158](#); [Times, October 4, 2010](#); [Official Transcript](#); QBD (Admin); 2010-07-28

Mentioned by

R. (on the application of Stamford Chamber of Trade and Commerce) v Secretary of State for Communities and Local Government

[\[2010\] EWCA Civ 992](#); [Official Transcript](#); CA (Civ Div); 2010-06-23

Applied

R. (on the application of Kelly) v Hounslow LBC
[\[2010\] EWHC 1256 \(Admin\); Official Transcript](#); QBD (Admin);
 2010-05-11

Significant Legislation Cited

[Planning and Compulsory Purchase Act 2004 \(c.5\) s.18](#)

Legislation Cited

General Development Procedure Order
[Planning and Compulsory Purchase Act 2004 \(c.5\) Part 1](#)
[Planning and Compulsory Purchase Act 2004 \(c.5\) s.17](#)
[Planning and Compulsory Purchase Act 2004 \(c.5\) s.18](#)
[Planning and Compulsory Purchase Act 2004 \(c.5\) s.23](#)

Journal Articles

Changing times: the importance of proper consultation
 Consultation; Legitimate expectation; Notification; Planning authorities' powers and duties; Planning procedures; Statements of community involvement.
[J.P.L. 2011, 11, 1447-1454](#)
R. (on the application of Majed) v Camden LBC: Planning and Compulsory Purchase Act 2004 s.18 - statement of community involvement - legitimate expectation
 Conservation areas; Legitimate expectation; Mistake of fact; Notices; Planning authorities' powers and duties; Remedies; Statements of community involvement; Supplementary planning guidance.
[J.P.L. 2010, 5, 621-630](#)

Books

Cross on Local Government Law
 Chapter: Chapter 22 - Planning and Urban Regeneration
 Documents: [22-21D Documents](#)
Cross on Local Government Law
 Chapter: Chapter 22 - Planning and Urban Regeneration
 Documents: [22-32 Notice and publicity requirements](#)
De Smith's Judicial Review 7th Ed.
 Chapter: Chapter 7 - Procedural Fairness: Entitlement And Content
 Documents: [Section 3. - Statutory Requirements of Fair Procedures](#)
Sweet and Maxwell's Planning Law: Practice and Precedents
 Chapter: Chapter 3 - Planning Permission: Practice and Procedure
 Documents: [3.31A Notice to neighbours: legitimate expectation](#)

Insight

[Judicial review](#)

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Case No: C1/2008/3011

Neutral Citation Number: [2009] EWCA Civ 1029
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
(HIS HONOUR JUDGE MITTING)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday, 6th July 2009

Before:

LADY JUSTICE ARDEN
LORD JUSTICE MOORE-BICK
and
LORD JUSTICE SULLIVAN

Between:

THE QUEEN on the Application of MAJED

Appellant

- and -

LONDON BOROUGH OF CAMDEN

Respondent

ADAM KAYE

**Interested
Party**

(DAR Transcript of
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Mr R Harwood (instructed by Foresters) appeared on behalf of the **Appellant**.

Mr M Beard & D Kolinsky (instructed by Louise McLaughlin Senior Legal Advisor & David Cooper & Co) appeared on behalf of the **Respondent and the Interested Party**.

Judgment
(As Approved)

Lord Justice Sullivan:

1. This is an application for judicial review of a planning permission dated 4 March 2008, granted by the respondent to the interested party for the erection of a first floor side extension to the interested party's home: Spedan Towers, 17 Branch Hill, London NW3. Spedan Towers is a modern dwelling house which was granted planning permission in 2000 as a replacement for two existing cottages. To the north-east of Spedan Towers is a property that was formerly The Chestnuts Hotel. That property has been divided into two, and the appellant and his wife live in the northern half which is now called Holme Vale House. The southern half is another dwelling called The Chestnuts, which is occupied by Mr and Mrs Nobileau.
2. At the bottom of the rear garden of Holme Vale House is an outbuilding which is to be used as a nanny's cottage. Spedan Towers is on the other side of the boundary. The rear garden of Holme Vale House is at a lower level than Spedan Towers. When looking out of the rear lower ground floor windows of Holme Vale House one sees the nanny's accommodation. Above that there is a substantial fence and above that the upper part of the top storey and the roof of Spedan Towers. In addition to the fence there are also some trees along the boundary.
3. The application for planning permission was made on 10 December 2007. The respondent's case officer, Mr Neising, carried out a site inspection on 23 January 2008. He made no notes and did not visit the appellant's house. The respondent has adopted a Statement of Community Involvement ("the Statement") pursuant to Section 18 of the Planning and Compulsory Purchase Act 2004 ("2004 Act"). The Statement is dated November 2006 and Part 1 explains what it is:

"1.1 The Statement of Community Involvement sets out how the Council intends to involve stakeholders and local communities in the preparation of development plans for the area and for the consideration of planning applications. The Statement of Community involvement is a requirement under planning legislation.

1.2. It sets out

- What the Council is seeking community involvement on
- Where the community involvement will be sought
- How the community involvement will be organised and
- Who will be involved.

1.3 Where the Statement of Community Involvement is adopted by the Council, the Council

is required to follow what it says. The Government also says that the Statement of Community Involvement should enable people to get involved at an early stage in the process before policies are firmed up.”

4. Annex 6 of the Statement sets out the “minimum standards for notifications by letter, site notice and by advertisement”. In respect of planning applications involving alterations, additions or demolition works, ie proposals likely to result in a direct effect upon adjoining occupiers such as increased overlooking, loss of daylight et cetera, the notes in the Annex say:

“The statutory requirement is either a site notice or letter. The occupiers of the application premises and adjoining occupiers likely to be affected by the proposals will receive a letter. Where alterations are proposed to an elevation which fronts a highway, the letter will be sent to the occupants of properties or sites on the opposite side of the highway, site notice and web advert in addition if in conservation area.”

5. Eighteen neighbouring properties were notified of the application, including Savoy Court, a property to the north of the appellant’s house, and Leavesden Cottage and Leavesden, two properties to the south of the appellant’s house. The respondent accepts that, due to an administrative error, neither the appellant nor his neighbour Mr Nobileau were notified. A site notice dated 6 February 2008 was displayed on a lamppost in the street about seven metres from the entrance to Spedan Towers on the other side of the entrance to the appellant’s house. Spedan Towers is a backland development and its access way runs alongside and to the north of the appellant’s house and garden. The appellant did not see the site notice and was unaware of the application, as was Mr Nobileau.
6. Planning permission was granted by the respondent’s Head of Planning under delegated powers following consideration of a Delegated Report (Members’ Briefing) (“the Report”) which was prepared by Mr Neising. The Report said that, of eighteen persons notified of the application, one had objected. It briefly described the site and the planning history and listed the relevant policies in the Camden Unitary Development Plan. They were policies S1, S2 and SD1 dealing the quality of life; policy SD6 dealing with amenity for occupiers and neighbours; policy B1, dealing with general design principles; policy B3 dealing with alterations and extensions; and policy B7 dealing with the conservation area. The Report then described the proposals. It noted that:

“No windows would be incorporated within the northeast elevation.”

That is the elevation that faces the appellant’s house.

7. The Report identified three material considerations: overlooking and loss of privacy, design and materials, and loss of daylight and sunlight. In respect of overlooking, the Report said:

“The subject property is located approximately 25 metres from the nearest neighbouring property and is well screened, ie from the west/northwest by mature trees. It is also noted that large windows in the northwest and a roof terrace with balustrades on the southwest elevation at second floor level already exists. It is therefore not considered that the proposed 2000mm x 50mm window in the northwest elevation or the proposed roof terrace would result in any additional amount of overlooking that would cause harm to the amenities of the neighbouring properties in terms of overlooking and loss of privacy.”

8. In respect of design and materials, the Report concluded that the proposal would preserve and enhance the character and appearance of Hampstead Conservation Area, in which both Spedan Towers and the appellant’s property are situated, there being no objection to the proposal from the Hampstead Conservation Area advisory committee.

9. In respect of loss of daylight and sunlight, the Report said:

“Due to the location of the dwellinghouse in relation to all neighbouring properties, the proposal would not result in any loss of daylight or sunlight, detrimental to the amenities of the neighbouring properties.”

The conclusion in the Report was as follows:

“In the light of the above the proposal is considered to comply with the relevant policies on London Borough of Camden Unitary Development Plan, Camden Planning Guidance and Hampstead Conservation Area Statement.”

The recommendation was to grant planning permission with conditions.

10. Building work did not start immediately. On 12 June 2008 the appellant and his wife arrived back home to find that scaffolding had been erected around that part of Spedan Towers which backs onto their garden. They spoke to Mr Nobileau, who had not been notified of any planning application or permission; they then made enquiries of the interested party and the respondent and discovered the existence of the planning permission on 16 June and commenced these proceedings on 20 June. Permission to apply for judicial review was refused on the papers by Wilkie J and by HHJ Denyer,

sitting as a deputy High Court judge after an oral renewal hearing. Laws LJ granted permission to apply for judicial review and directed that the substantive application should be heard by the Court of Appeal.

11. In his skeleton argument on behalf of the appellant Mr Harwood identified five issues which for convenience I will summarise under the following headings: (1) legitimate expectation; (2) separation distance; (3) conservation guideline 43; (4) summary reasons; (5) quashing order or declaratory relief. I will deal with these five issues in turn.

(1) Legitimate expectation

12. Mr Harwood suggests that this is a paradigm case of a breach of legitimate expectation. The Statement is part of the respondent's local development scheme (see section 17 of the 2004 Act) and was prepared, submitted for independent examination, and adopted in accordance with the procedures which are set out in sections 19, 20 and 23 of the 2004 Act. The Statement sets out how the respondent intends to involve local communities in the consideration of planning applications: see paragraph 1.1. It sets out who is going to be involved, see paragraph 1.2; and it tells the public that when the Statement is adopted "the council is required to follow what it says".
13. There can be no doubt that the appellant should have been notified of the planning application in accordance with the terms of Annex 6, see above. The sole reason why he was not notified is the respondent's administrative error. On the face of it, therefore, one has a case of both a promise to notify and a practice to notify in accordance with Annex 6 of the Statement, both the promise and the practice being underpinned by the provisions of the 2004 Act, which required the respondent to prepare the Statement.
14. On behalf of the respondent and the interested party, Mr Beard and Mr Kolinsky submitted that there was no legitimate expectation. It was submitted that, since there was a specific statutory code -- the General Development Procedure Order ("GDPO") -- which regulates the balance between the various interests, applicants and local residents, as to who should and who should not be notified, it would be wrong to impose some rigid requirement to notify in accordance with the terms of Annex 6. It was submitted that this would upset the balance that had been struck by the statutory requirements. It seems to me that reference to the statutory requirements is of no real assistance. Legitimate expectation comes into play when there is no statutory requirement. If there is a breach of a statutory requirement then that breach can be the subject of proceedings. Legitimate expectation comes into play when there is a promise or a practice to do more than that which is required by statute. It seems to me that the Statement is a paradigm example of such a promise and a practice. As I understood it, Mr Beard accepted that this appellant falls within Annex 6. Although he submitted there was an element of discretion, that is not relevant in the circumstances of the present case. No doubt if an officer had given consideration to the matter and had concluded that, for example, this appellant was so far away from the proposed development that he could not fairly be

described as an adjoining occupier then, absent Wednesbury unreasonableness, the court would not interfere with that exercise of discretion. In the present case no discretion was exercised and administrative mistake was made. It was submitted by the respondent and the interested party that, even though there was a clear statement that a person in the position of the appellant would be sent a letter, there was nevertheless no unequivocal assurance that they would be notified. I am quite unable to accept that submission given the clear terms of paragraph 1.3 of the Statement which tells the public that when the Statement is adopted by the council it is “required to follow what it says”. It would be difficult to imagine a more unequivocal statement as to who would, and who would not, be notified.

15. There was therefore, in my judgment, a clear breach of the appellant’s legitimate expectation that he would be notified of planning applications, such as the application made by the interested party, in accordance with the terms of annex 6 to the Statement. The appellant therefore succeeds on issue 1. It does not necessarily follow that the grant of planning permission was unlawful. It is unnecessary in the circumstances of this particular case to decide whether a claimant in the appellant’s position must, in order to establish procedural unfairness, also demonstrate prejudice as a result of failure to notify him, because the question whether the appellant was prejudiced by the failure to notify him in accordance with the Statement (and, if so, to what extent) is plainly relevant to the exercise of the court’s discretion as to whether the permission should be quashed or whether declaratory relief should be granted (see issue (5) below).

(2) Separation distance

16. I turn therefore to issue (2), separation distance. I have already mentioned that the Report said that Spedan Towers was located “approximately 25 metres from the nearest property...” That was wrong. There is a dispute as to the precise distances. The appellant says that the existing building is around 13 metres from the appellant’s house, and only two-and-a-half metres from the proposed nanny’s accommodation at the bottom of the garden. Perhaps the more relevant dimension would be the distance from the extension, which is set back some 4.8 metres from the north-eastern wall of the existing building. According to the appellant, the distance between the extension and Holme Vale House is 17.6 metres. That distance, according to the respondent, is 18.6 metres, and the extension, according to the respondent, is 6.8 metres from the nanny’s accommodation. I find it unnecessary to resolve that relatively minor discrepancy. While an error of fact is capable of leading to an error of law, for example, because it may result in a failure to have regard to a material consideration or the taking into account of an immaterial one, I am satisfied that this particular error could not have had that consequence. The separation distance of 25 metres was given in the context of overlooking and loss of privacy. A glance at the drawings shows that, because there will be no windows in the north-eastern wall of the extension, whatever other effects it may have on the appellant’s house, the extension will not cause any overlooking or loss of privacy. The window in the existing north-eastern elevation of Spedan Towers is somewhat closer to the appellant’s property than the blank wall of the proposed extension. It should be noted that the

windows in the nanny's accommodation face towards the appellant's house, not Spedan Towers.

17. Mr Harwood rightly accepts that there was no sustainable objection on overlooking or loss of privacy grounds so far as the appellant's property was concerned. The question of overlooking relates to the properties to the north-west and the south-west where the separation distances from Spedan Towers are approximately 22 metres rather than 25 metres.
18. Turning to the second consideration mentioned in the Report, Design and Materials, there is nothing to suggest that the character and appearance of the conservation area would be materially affected by the precise distance, whether it be 25 metres 18.6 metres or 17.6 metres between Spedan Towers and the appellant's home. Mr Harwood again accepted that this consideration was not affected by the error as to separation distance. That leaves loss of daylight and sunlight. However, in this respect there is nothing to suggest that Mr Neising's conclusion that "due to the location of the dwelling house in relation to all neighbouring properties, the proposal would not result in any loss of daylight or sunlight detrimental to the amenities of neighbouring properties" was based on the erroneous separation distance of 25 metres. As the appellant's evidence points out, assessing the impact on daylight and sunlight would depend not merely on the distance between, but also on the relative heights of, the extension and the affected windows in the appellant's house. This was a modest proposal for an extension, slightly lower than the existing Spedan Towers and set back, so that it is somewhat further away than the existing Spedan Towers from the appellant's property. Mr Neising says in his witness statement that he attended the property on the site inspection:

"...and was able to assess the location of the proposed first floor side extension in relation to the host building, the distances between the surrounding properties and existing trees and vegetation.

It was considered that the distances between the buildings were sufficient to warrant that the proposal would not cause any harm to the amenities of the neighbouring properties, including the possible loss of daylight and sunlight that the Claimant alleges will arise from allowing the proposed first floor extension"

19. In my judgment Mr Neising was perfectly entitled to assess this issue of daylight and sunlight on the basis of the impressions formed on his site visit. This was not a case where he was required to carry out detailed daylight/sunlight calculations in order to assess the impact of this modest proposal. It is perhaps not without significance that Mr Abbott, the planning consultant who was instructed by the appellant after the appellant discovered the existence of the planning permission, does not say in his witness statement that there would have been a valid objection on the grounds of loss of either

daylight or sunlight. He merely says that there is insufficient information to undertake a detailed assessment.

20. The extension has been in existence since September 2008. There has therefore been ample time to make the necessary calculations and to seek to introduce fresh evidence, if necessary, in order to demonstrate that there would be a material loss of daylight or sunlight. The mere fact that there would be some impact on daylight and sunlight would not be enough to warrant a refusal of planning permission. The respondent's Planning Guidance, "Daylight and Sunlight", cited by Mr Abbott, makes it clear that a planning application may be refused:

"where it is found that a proposed development of whatever type has an unreasonable impact on amenity ..." (emphasis added)

21. Mr Abbott also says that the Report fails to consider the degree to which the extension would be overbearing or increase the sense of enclosure at Holme Vale House. Again, Mr Abbott is very careful not to express any view as a Chartered Town Planner as to whether or not there would be a valid objection on this ground. In my judgment, that is not surprising given the fact that the extension is both lower than the existing building and set back from the existing rear wall.
22. For these reasons there is, in my judgment, no substance in issue (2). There a factual error but it was not a material one.

(3) Conservation Guideline H43.

23. I can deal with this issue very shortly. It is said that the Report should have considered guideline H43 in the Hampstead Conservation Area Statement, which is non-statutory supplementary guidance. Guideline H43 says:

"Normally the infilling of gaps between buildings will be resisted where an important gap is compromised or the symmetry of the composition of the building impaired. Where side extensions would not result in the loss of important gap they should be single storey and set back from the front building line."

24. Mr Harwood submits that this extension at first floor level conflicts with the guideline that side extensions should be single storey. He says that the single storey must be at ground floor level. This is, in my view, a good illustration of how not to read Conservation Area Guidelines. Such Guidelines are not enactments; they are practical guidelines to be read in a common sense way and not in a pedantic or legalistic manner. The Guideline is concerned with the infilling of gaps between buildings. Its principal concern (see the first sentence) is that important gaps should not be compromised. Where this does not occur because the gap is not important or because it is not compromised (see second sentence) then extension should be single storey and set back from

the front building line. Both sentences of the Guideline should be read together and when that is done common sense suggests that when the Guideline advises that side extensions, which do not result in the loss of important gaps, should be single storey and set back from the front building line, it is not concerned with the circumstances of this backland development where there is no gap and no front building line.

25. It should be observed that the reports did consider the effect of the extension on the design of the existing building and concluded that it was acceptable. The critical question in respect of this site in a conservation area was of course whether the proposal would preserve or enhance the character and appearance of the conservation area. The Report concluded that the proposal would do so. There is therefore no substance in issue 3.

(4) Summary Reasons

26. The reasons for granting planning permission were as follows:

“The proposed development is in general accordance with the policy requirements of the London Borough of Camden Replacement Unitary Division Plan 2006, with particular regard to policies S1, S2, SD1, SD6, B1, B3 and B7. For a more detailed understanding of the reasons for the granting of this planning permission, please refer to the officers report.”

27. Although the parties cited a number of authorities in their skeleton arguments, they were of limited assistance because there is no mechanistic formula for determining the question whether a summary of the reasons for granting planning permission is or is not adequate in any particular case. Much will depend on the complexity of the proposal and the extent to which it is contentious, and upon the number and complexity of the issues which the local planning authority has had to resolve in order to decide that planning permission should be granted.
28. This was a very modest proposal. The policies referred to in the summary of reasons deal with the three issues, overlooking and loss of privacy, design, including the impact on the conservation area, and loss of daylight and sunlight. This is not a case where no reasons at all were given, nor is it a case where it is in the least unclear as to why the planning permission was granted; for example, because the members disagreed with an officer's report. The court is not bound to quash a planning permission on this ground even if no reasons are given for granting it (see R (Wall) v Brighton and Hove City Council [2004] EWHC 2582. The principles in Wall were approved by the Court of Appeal in R (Smith) v Cotswold District Council [2007] EWCA Civ 1341, see per May LJ at paragraphs 13-16 and the Master of the Rolls at paragraph 18.

29. Mr Harwood did not submit that the alleged deficiency in the summary reasons would of itself justify quashing the planning permission. Rather he submitted the permission should be quashed because the inadequate reasons followed an inadequate consideration of the application because there was a failure to notify the appellant and because the Report was inadequate for the reasons discussed above.
30. For the reasons that I have already given, although there was a factual error in the Report as to separation distance, I do not consider that that error was significant. In these circumstances, issue (4) adds nothing material to the other complaints.

Issue (5) Quashing Order Or Declaration.

31. This leads me to issue (5). Mr Harwood referred to the well-known test in Simplex GE (Holdings) v The Secretary of State for the Environment (1989) 57 P&CR 306 that, if there has been an error in a decision letter, then the court has to be satisfied, if it is not to quash the decision, that the same decision would, not might, be reached by the decision taker notwithstanding the error.
31. That case was a statutory appeal against a decision by the Secretary of State that planning permission should be refused for development upon a mistaken basis. The circumstances in the present case are materially different. By the time these proceedings were started, the building works were underway and the extension was completed in early September 2008, and since then it has been occupied as part of the interested party's home. If the planning permission was quashed, the respondent would have to take the existence of the extension and the costs and disruption involved in removing it into account as material considerations when deciding whether to grant retrospective planning permission for the extension or whether it would be expedient to issue an enforcement notice requiring its removal. In view of the history of this matter, in particular the lack of any development plan objection, the lack of any real planning harm to the appellant, and, by contrast, the very real and obvious prejudice that would be suffered by the interested party, enforcement action is in my judgment inconceivable. In suggesting the contrary the appellant relies not on a real, but upon a wholly fanciful, possibility.
32. It would not therefore be appropriate to quash the planning permission; but for my part I would grant declaratory relief to the effect that there was a breach of legitimate expectation. Such declaratory relief is justified because the respondent has contended that the Statement which it has adopted did not give rise to a legitimate expectation that local residents would be notified of planning applications in accordance with its terms.
33. To that very limited extent I, for my part, would allow the appeal.

Lord Justice Moore-Bick:

34. I agree, and there is nothing that I wish to add.

Lady Justice Arden:

35. I also agree. I have no doubt that Mr Majed had a legitimate expectation that he would be sent notice of a planning application which directly affected his property. Mr and Mrs Majed's property was in fact closest to that of Mr Kaye. Mr Beard of counsel expressed concern about the position of Camden if there was a legitimate expectation as to notification and Mr Kolinsky was concerned about the position of the applicants for the permission. However, Camden places a list of neighbouring properties to which notice of planning application was sent on its website so that information is obviously easily ascertainable by Camden from Camden's records. Thus it would follow that Camden's officials would generally be able to check when the notice was sent to all neighbours directly affected by the application. Likewise, an applicant for planning permission can also take that course by looking at the website. The statement of community involvement is intended to promote a culture of open and participatory decision-making and the conclusion that Camden has promised that notice will be given to certain persons in normal circumstances is one it would normally be expected to fulfil and should occasion no surprise.

Order: Application allowed