Neutral Citation Number: [2019] EWHC 1869 (Admin)

Case No: CO/4944/2018 & CO/5074/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 July 2019

Before :

MRS JUSTICE LANG DBE

- -

Between :

CO/4944/2018

KHALID IKRAM	**Claimant**
- and -	
SECRETARY OF STATE FOR HOUSING, COMMUNITIES, AND LOCAL GOVERNMENT	**Defendant**
(1) LONDON BOROUGH OF BRENT **(2) SAYED VEQAR HUSSAIN** **(3) TRUSTEES OF THE CHARITY KNOWN AS INTERNATIONAL ISLAMIC LINK** **(4) BABUL MURAD CENTRE**	**Interested Parties**

CO/5074/2018

THE QUEEN **on the application of**	**Claimant**
KHALID IKRAM	
- and -	
SECRETARY OF STATE FOR HOUSING, COMMUNITIES, AND LOCAL GOVERNMENT	**Defendant**
(1) LONDON BOROUGH OF BRENT **(2) SAYED VEQAR HUSSAIN** **(3) TRUSTEES OF THE CHARITY KNOWN AS INTERNATIONAL ISLAMIC LINK** **(4) BABUL MURAD CENTRE**	**Interested Parties**

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Charles Streeten (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Robert Williams (instructed by the **Government Legal Department**) for the **Defendant**
The **First Interested Party** did not appear and was not represented
Saira Kabir Sheikh QC (instructed by **James Smith (Planning Law Services) Limited**) for the **Second, Third and Fourth Interested Parties**

Hearing dates: 1 May & 24 June 2019

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Approved Judgment

Mrs Justice Lang :

1. The Claimant seeks to challenge the decision of the Defendant, made on his behalf by an Inspector, on 1 November 2018, to grant planning permission under sections 177(1)(a) and 177(5) of the Town and Country Planning Act 1990 ("TCPA 1990") for a change of use of the land at 852A to C and rear, Harrow Road, Wembley HA0 2PX ("the Appeal Site") from a mixed use as a builders yard and residential, to a mixed use as a place of worship and residential.

2. The Claimant resides with his extended family at 854 Harrow Road, next to the Appeal Site.

3. The Third Interested Party ("IIL") is a registered charity, whose trustees include the Second Interested Party (Mr Hussain) and three other individuals. The register of title records the named trustees of IIL as the freehold owners of the Appeal Site. IIL operates a mosque (Masjid Iman Ali) at the Appeal Site.

4. IIL also operates the Babul Murad Centre at Nos 856 & 858 Harrow Road, on the other side of the Claimant's house at 854 Harrow Road. It is authorised as a place of worship, and used as a community centre.

5. From 2012, IIL developed the Appeal Site, in breach of planning controls. The First Interested Party (hereinafter "the Council"), which is the local planning authority, issued an enforcement notice on 12 June 2017, alleging several breaches of planning control, including that there had been a material change of use of the Appeal Site to a mixed use as residential and as a place of worship.

6. Mr Hussain appealed against the enforcement notice, on behalf of IIL and the other trustees. The Defendant allowed the appeal, quashing the enforcement notice, and granting planning permission for the material change of use of the Appeal Site to a mixed use as residential and a place of worship, subject to conditions.

7. The Claimant issued a claim for statutory review under section 288 TCPA 1990 and a claim for judicial review, which were linked for hearing together. Ouseley J. granted permission for both claims on the papers on 31 January 2019. By the date of the hearing, the jurisdictional issues were no longer in dispute.

Planning history

Nos 856 & 858 Harrow Road

8. Nos 856 & 858 were constructed as two semi-detached dwelling houses and were in residential use for many years. The Claimant lives next door to Nos 856 & 858. IIL, which owns both properties, extended the premises in 2007 and commenced use of the premises as a place of worship and community centre, in breach of planning controls. The Council granted retrospective planning permission on 19 March 2009, subject to conditions which were intended to address concerns about the unacceptable impact on residential amenity, parking and traffic. The conditions included a Travel Plan and a limit of 100 persons on site at any one time.

9. In 2011, the Council granted planning permission to regularise further development which had taken place.

10. On 13 September 2011, the ground floor at Nos 856 & 858 was certified as a place of worship under the Places of Worship Registration Act 1855. Both women and men worship there, in segregated areas, especially at Friday prayers. However, its primary use is as a community centre.

The Appeal Site

11. The Appeal Site comprises a former builders' yard, located to the rear of a dwelling house that has been converted into flats. A driveway runs down one side of the dwelling house, giving access to the former builders' yard and buildings behind. There is a public open space on the other side of the driveway.

12. IIL purchased the Appeal Site in 2012. Thereafter, IIL demolished and constructed buildings, and made material changes of use, in breach of planning controls. A Mosque was established on the ground floor of a former workshop. The upper floor was converted to residential use. A kitchen and washing facilities were constructed in the yard.

13. On 24 September 2012, IIL applied for retrospective planning permission at the Appeal Site in the following terms:

> "change of use of workshop into prayer hall; demolition of buildings used as stores and studio flat; construction of buildings to be used as toilet and washing facilities; external alterations to existing buildings; former store re-roofed and converted to kitchen (with extraction flue); area of car parking created; replacement of entrance gates."

14. The planning officer's report ("OR") recorded numerous objections from neighbours and local residents. There were complaints about high levels of vehicles parking at or near the Appeal Site and obstruction of traffic flow. A site observation by the Council confirmed that the Appeal Site and Nos 856 & 858 were being used in conjunction with one another, and that the approved Travel Plan for Nos 856 & 858 was not being adhered to.

15. The OR summarised the impact on neighbouring amenity in the following terms:

> "**Impact on neighbouring amenity**
>
> Concerns have been raised by neighbouring residents about the operation of the premises. These concerns relate to the activities taking place, the number of people arriving and leaving, and the associated activity and disturbance associated with the use - both by itself and in conjunction with the existing place of worship at 856-858 Harrow Road. Brent Policy DMP1 states that development will be acceptable provided it is not

unacceptably increasing exposure to noise, dust, smells, waste, light and the generation of disturbance.

There has been no statement of use provided by the applicant; however, the objections refer to over 150 people attending the events (with a large marquee being put up). This is in addition to prayers and during times of Ramadan the site is used every day. The lawful use of the property is as a builders yard and the area is primarily residential in nature. Therefore, the prospect of over 150 individuals congregating at the property, and moving between the existing place of worship at 856-858 Harrow Road, would lead to noise and disturbance for neighbouring residents. The rear area of the property is also used as a kitchen which involves generating odour in the area that is not typical of the suburban rear garden setting. Security lights are also used on site. There are residential dwellings to the front, rear and on one side of the site. The dwelling to the side is now sandwiched between the two parts of the place of worship. The dwellings are situated within a suburban residential area where one should reasonably expect a certain environment.

Environmental Health have confirmed that they have considered the fact that this is a retrospective application and they have looked at whether there have been previous complaints. A complaint was received on 2012 regarding noise from the use of the microphone in the prayer hall however no further action was taken regarding this complaint. There are a number of objections from local residents to this planning application on the basis of the noise and disturbance associated with the use.

Due to the close proximity of residents and based on the frequency of events proposed, the number of people who would attend the events as well as the hours of use of the proposed facility, this location does not appear not suitable for this proposed use.

There is no management plan in place to mitigate these impacts, and it appears unlikely that a management plan could actually mitigate these impacts. Residents have raised concerns with large numbers of people coming and going, noise sometimes until late at night, dust, odour, significant waste located in front and around the property. The impact of these environmental effects is particularly severe for those houses located in between and near to these two religious premises, and it is considered that the site is inappropriate for the proposed use.

It was also commonly noted by objectors that the disturbance has resulted in a vermin problem for the area, which is of

particular concern due to the nearby play area which children in the area use. These is controlled through other legislation so could not be considered through the planning application..

Conclusion

Overall, the change of use has resulted in a facility which would have an unacceptable impact on the highway network. The travel plan submitted with application 11/0586 did have initiatives that were welcomed, however, the travel plan has not been effective and excessive parking and vehicles driving between the two sites (30m distance) is not acceptable. In addition to this, the proposal would have a significant and unacceptable impact on the amenity of neighbouring residents. The application is recommended for refusal."

16. On 9 May 2017, the Council refused the application for planning permission on the grounds of (1) unsafe vehicular movements and over-spill parking; and (2) unacceptable noise and disturbance to the significant detriment of amenities of the residents of adjoining and nearby properties.

17. On the basis of a report from the Council's enforcement officer, an Enforcement Notice was issued on 12 June 2017, alleging a breach of planning control by a material change of use of the premises to mixed use as residential and a community centre/place of worship. Unauthorised development (erection of floodlights, a flag and signage) was also alleged.

18. The reasons for issuing the notice were stated as follows:

"**SCHEDULE 3**

REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the material change of use and unauthorised development took place within the last 10 years and within the last 4 years.

The unauthorised change of use of the premises to a community centre/place of worship, by reasons of siting of the premises, the level public transport accessibility and the insufficient level of parking provisions for the use results in unsafe vehicular movements and over-spill parking on the surrounding streets where such parking cannot be safety accommodated, and as such has a significant detrimental impact on the free and safe flow of traffic and pedestrians on the local highway network, contrary to Policies DMP 1 and DMP 12 of the Brent Local Plan Development Management Policies 2016.

The unauthorised change of use of the premises to a community centre/place of worship, by reason of the intensity and nature of the use and the proximity to residential dwellings and their

> gardens, results in unacceptable levels of incidental noise and disturbance to the significant detriment of amenities of the residents of the adjoining and nearby properties. This is therefore contrary to Policy DMP 1 of the Brent Local Plan Development Management Policies 2016 and paragraph 123 and 144 of the National Planning Policy Framework (2012).
>
> The erection of floodlights to the premises results in unacceptable levels of light pollution from artificial light, having an adverse impact on the surrounding residents of nearby properties. This is contrary to Policy DMP 1 of the Brent Local Plan Development Management Policies 2016, Policy CP17 of the Brent's Core Strategy 2010, and paragraph 125 of the National Planning Policy Framework (2012).
>
> The erection of a flag and signage to the premises has a detrimental impact on the appearance and character of the area, contrary to Policy DMP 1 of the Brent Local Plan Development Management Policies 2016, Policy CP17 of the adopted Brent's Core Strategy 2010, and SPG8 - "Advertisements (Other than Shops)"."

19. The Notice required cessation of the unauthorised use and removal of the unauthorised development within one month (by 18 August 2017).

20. Mr Hussain appealed against the Enforcement Notice, on behalf of IIL. In respect of the unauthorised use, he appealed under ground (a) that planning permission ought to be granted for the development; and under ground (g) that the time for complying with the notice was too short.

21. Mr Hussain's Statement of Case submitted that the grant of planning permission for Nos 856 & 858, and its successful operation, in accordance with conditions, demonstrated that it was appropriate to grant planning permission on the Appeal Site too, and that the concerns of local residents could be addressed by conditions. Mr Hussain stated, in paragraph 4.4, that prayers took place twice a day in the Mosque, at 1300 and 1930, at which some 15 to 20 worshippers were in attendance. The Appeal Site had space for about 20 cars, which was more than adequate to meet the demand. He referred to the Travel Plan prepared for Nos 856 & 858.

22. According to Mr Hussain, "in the past, the problems associated with the site are mainly related to the impact of the well attended religious festivals, which take place on twelve occasions each year" (paragraph 4.6). Large numbers of people attended, and activities took place in the yard as well as inside the Mosque. A marquee was usually erected in the yard. At the hearing before the Inspector, it was explained that this was the festival of Muharram (mourning the Imans), at which matam (self-flagellation) is performed. At festival times, car parking space was inadequate because of the increase in numbers, and also because the yard was not available for parking. IIL was arranging parking at a sport centre nearby. Mr Hussain accepted that better management of these events was required. IIL was content to accept conditions on the frequency of the events and to provide a management plan to limit any harm (paragraph 4.6).

23. The Council's Statement of Case referred to the OR and site observation, and submitted as follows:

> "3.1.6 At the time of the site visit on 27th January 2017, 14-15 vehicles were double parked within the rear of 852, with drivers having to be assisted by fellow worshippers. It should also be noted that the site visit was carried out at lunch time and not during the evening when the issues are exacerbated, or at the time of a major event. Furthermore, disruption is also heightened at the time of religious festivals whereby the premises cannot cope with the volume of visitors.
>
> 3.1.7 The site visit on 27 January 2017 was not undertaken during a major event. The impact on the local highways has been observed to be significant event even during a standard event. One can reasonably expect that traffic and parking conditions may be worse during major events, with an even greater level of impact on traffic and pedestrian flow and safety.
>
> 3.1.8 Both the appeal site (No. 852) and the nearby site (No. 856-858) are sued in conjunction with each other. Planning permission 11/0586 granted for No. 856-858 to be used as a D1 community centre in 2011, is subject to a number of conditions relating to parking.
>
> 3.1.9 As per the site visit carried out on the 27th January 2017, the highways officers observed many vehicles parked within the front garden of 856-858. This is in breach of conditions 3 and 8 of planning permission 11/0586 which specifies that one disabled parking space will be provided within the front garden and that this area and will be used as a drop off area only. The conditions of planning permission 11/0585 continue to be flouted and in the Council's experience it is simply not possible to control the number of people visiting the premises. Therefore the Council strongly disagrees with the appellants claim that the above matters can be controlled by planning conditions and management.
>
> 3.1.10 The use of the premises results in over-spill parking and conditions significantly prejudicial to highway flow and safety in the vicinity of the site. This is contrary to the National Planning Policy Framework and policy DMP1 and DMP12 of the adopted London Borough of Brent Development Management Policies document, 2016.
>
> 3.1.11 The unauthorised change of use of the premises to a community centre/place of worship, by reason of the

intensity and nature of the use and the proximity to residential dwellings and their gardens, results in unacceptable levels of incidental noise and disturbance to the significant detriment of amenities of the residents of the adjoining and nearby properties. This is therefore contrary to Policy DMP1 of the adopted London Borough of Brent Development Management Policies document, 2016 and paragraph 123 and 144 of the National Planning Policy Framework, 2012.

3.1.12 Reports from neighbouring residents refer to over 150 people sometimes attending events and large marquees have been known to have been erected in the past to assist in accommodating people during events and religious festivals. The area is primarily residential in nature, therefore the total number of individuals congregating at the property, and moving between the existing place of worship at 856-858 Harrow Road, has led to a significant increase in noise and disturbance for neighbouring residents. Given the sheer volume of people congregating at the site it would be impossible to argue otherwise. This is contrary to Policy DMP1 whereby development should only be acceptable provided it does not unacceptably increase exposure to noise and other forms of pollution. Furthermore the domestic residential property sandwiched between the two places of worship experience a significant loss of amenity being hemmed in on both sides.

3.1.13 The area to the rear of the site is also used as a large kitchen in connection with the unauthorised use, as shown in Image 2 of Appendix 4, which involves generating noise and odour in the area that is not typical of the suburban rear garden setting. This, contrary to the appellants claim, forms part and parcel of the unauthorised use as a community centre/place of worship. Policy DMP1 states that development should not unacceptably increase exposure to noise, smells, waste and generation of disturbance.

3.1.14 Floodlights, a large flagpole and signage have also been erected on site. There are residential dwellings to the front, rear and on one side of the site. The residential dwelling to the side is now sandwiched between the two parts of the place of worship. The dwellings are situated within a suburban residential area where one should reasonably expect a certain environment and the recent additions are not considered to complement the residential locality. Brent Policy DMP1 also states that development

> should not unacceptably increase exposure to light pollution which the floodlights are seen to cause. Furthermore, the floodlights, the erection of a flag and signage to the premises, are considered to be associated with the unauthorised use.
>
> 3.1.15 Within refused planning application 12/2554, residents have raised concerns with large numbers of people coming and going, noise sometimes until late at night, dust, odour, significant waste located in front and around the property. The impact of these environmental effects is particularly severe for those houses located in between and near to these two religious premises, and it is considered that the site is inappropriate for the proposed use."

24. Numerous submissions were sent to the Planning Inspectorate ("PINS") opposing the appeal. Some of these are summarised below.

25. The Council's Planning Enforcement Manager sent a submission to PINS in support of the Council's Statement of Case expressing his concern about IIL's repeated breaches of planning controls, and the disturbance caused to local residents in terms of noise, traffic, parking problems and environmental issues.

26. On 26 January 2018, the Claimant submitted a letter to PINS, supported by photographs, which described the problems experienced by his family at No. 854 caused by the activities at the Appeal Site, including:

    i) Food waste. Bins were overflowing with uneaten food, cans, plastic bottles etc. which was spilling over into their front garden, causing very bad smells, and encouraging rodents.

    ii) Rodents. Rats and mice from the Appeal Site were entering their front and back garden, and their home. They were clearly visible in the photos.

    iii) Parking. IIL has employed private parking wardens who prevent the Claimant and other residents from parking in the Harrow Road outside their homes every Friday and Saturday evening, and during events. During events, it was not possible to park anywhere nearby because of the number of cars visiting the community centre and Mosque. The Claimant's driveway has been blocked. Attendees at the two sites were parking on the pavement, obstructing free passage.

    iv) Noise. People attending No. 852 talked loudly outside, and banged car doors, even late at night, when the Claimant and his family were trying to sleep. Outside there was singing with music and prayers; a tremendous noise of men shouting and beating themselves; and noise from the PA system beyond the 11 pm watershed.

    v) Light pollution. Floodlights were switched on till late at night whilst events were in progress.

27. A group of Councillors submitted a statement to PINS stating that a large number of complaints had been received from residents living in the vicinity of the Appeal Site about the impact of activities at Nos 856 & 858 and the Appeal Site:

    i) Overspill parking into nearby streets by users of 852 Harrow Rd displacing local residents in heavily parked streets;

    ii) Highway and traffic management problems;

    iii) Use of a kitchen at 852 Harrow Rd causing noise and odours;

    iv) Poor waste management causing overflowing waste bins; and

    v) Noise disrupting the lives of neighbours, e.g. alleged drumming, loud chanting.

28. The Gauntlett Court Residents Association wrote to PINS on 19 January 2018 outlining the main concerns of residents as follows:

    i) Large amount of extra traffic causing congestion when the Appeal Site was in use;

    ii) Residents could not find a place to park because of the parked cars belonging to attendees at the Appeal Site;

    iii) Attendees congregated on the pavement so that passers by were forced to walk in the road;

    iv) Noise and bright lights during Ramadan; and

    v) Inadequate food disposal resulting in rats in the neighbouring park.

29. Ms Kaul, a local resident, sent a letter by email on PINS on 7 February 2018, expressing her concern that the Appeal Site was being "used for large events alongside … Nos 856 and 858 Harrow Road". Most of the events at the Appeal Site took place after 6 pm. Attendees at the two sites generated traffic congestion in Harrow Road, and parked on the pavement, obstructing free passage. There were large quantities of food being prepared at the Appeal Site, and food wastage was attracting rats to the park and neighbouring homes.

30. An Inspector (Mr Tim Belcher FCII LLB) was appointed by the Defendant. Following a site visit on 26 September 2018, and a hearing, he issued his Appeal Decision on 1 November 2018. After concluding that there was no community centre use at the Appeal Site, he allowed the appeal, quashed the Enforcement Notice, and granted planning permission. The terms of the "Formal Decision" section of the Decision Letter ("DL") read as follows:

    "**Formal Decision**

    61. It is directed that the Enforcement Notice be corrected by:

a) Deleting the words and punctuation mark "community centre/" in Schedule 2.

b) Deleting the word "flag" and substituting the word "flagpole" in Schedule 2.

Subject to these corrections the appeal is allowed, the Enforcement Notice is quashed and planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act for the development already carried out, namely:

a) The material change of use of the Appeal Site to a mixed use as residential and a place of worship.

b) The erection of floodlights.

c) The erection of a flagpole.

d) The erection of the Signage

all on the land at 852A to C and rear of Harrow Road, Wembley, HA0 2PX referred to in the Enforcement Notice, subject to the following conditions:

(1) The Mosque shall only be used as a place of worship.

Reason: To establish the use sought and for the proper planning of the area.

(2) The use referred to in Condition 1 above shall only take place between 12:00 hours and 22:30 hours.

Reason: To ensure that the permitted use of the Mosque does not cause any unacceptable disturbance for residents living within or near the Appeal Site.

(3) The Mosque shall not be occupied by more than 30 people at any one time.

Reason: To ensure that the permitted use of the Mosque does not cause any unacceptable disturbance for residents living within or near the Appeal Site.

(4) No amplified sound equipment shall be used within the Appeal Site.

Reason: To ensure that the permitted use of the Mosque does not cause any unacceptable disturbance for residents living within or near the Appeal Site.

(5) The floodlights within the Appeal Site shall be switched off by 23:00 hours and shall not be switched on before 07:00 hours on the following day.

Reason: To ensure that the use of the floodlights within the Appeal Site does not cause any unacceptable disturbance for residents living within or near the Appeal Site."

Grounds of challenge

31. In summary, the Claimant's grounds of challenge were as follows:

i) **Ground 1**. The Inspector failed to consider the application for planning permission which was before him and erred by limiting his consideration of the change of use to "the Limited Use of the Mosque". Even if it was open to the Inspector to limit his consideration of the use in the way that he did, the Inspector then further erred by failing to impose conditions ensuring that the Appeal Site could not be used beyond "the Limited Use of the Mosque" that he had considered. The unilateral undertaking subsequently entered into under section 106 TCPA 1990 did not cure these defects in the Decision.

ii) **Ground 2.** The Inspector erred in imposing a condition limiting to 30 the number of people who could occupy the Mosque at any one time, without taking into account a material consideration, namely, the Council's view that it would be impossible to enforce such a condition, and without giving reasons.

iii) **Ground 3.** The Inspector failed to have regard to a material consideration, namely, the cumulative impact of the use of Nos 856 & 858 in conjunction with the use of the Appeal Site.

iv) **Ground 4**. The Inspector made an error of fact in finding that the nearest Mosque that catered for Urdu speaking Shia Muslims was over 6 miles away in Stanmore.

v) **Ground 5.** The Inspector conducted the Hearing in a manner which was procedurally unfair, and unfairly refused to accept further evidence submitted by the Claimant after the hearing.

vi) **Ground 6.** Breach of the Human Rights Act 1998. This ground not pursued at the substantive hearing.

The Inspector's witness statement

32. The Defendant sought to adduce in evidence a witness statement from the Inspector, addressing issues raised in the Claimant's grounds. This was opposed in part by the Claimant.

33. In *R (Lanner Parish Council) v Cornwall Council & Anor* [2013] EWCA Civ 1290, the Court of Appeal applied to the planning field some well-established principles restricting the admission of post-decision evidence. Jackson LJ said:

> "59. In support of this argument Mr Coppel relies upon the Court of Appeal's decision in *R v Westminster City Council, ex parte Ermakov* [1996] 2 All ER 302...
>
> 60. The Court of Appeal held that since the respondent was required to give reasons at the time of its decision and those reasons were deficient, the decision should be quashed. Hutchison LJ gave the leading judgment, with which Nourse and Thorpe LJJ agreed. At 315 h-j Hutchison LJ stated:
>
> > "The court can and, in appropriate cases, should admit evidence to elucidate or, exceptionally, correct or add to the reasons; but should, consistently with Steyn LJ's observations in *Ex p Graham*, be very cautious about doing so. I have in mind cases where, for example, an error has been made in transcription or expression, or a word or words inadvertently omitted, or where the language used may be in some way lacking clarity. These examples are not intended to be exhaustive, but rather to reflect my view that the function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. Certainly there seems to me to be no warrant for receiving and relying on as validating the decision evidence – as in this case – which indicates that the real reasons were wholly different from the stated reasons."
>
> 61. In my view that principle is applicable to the present case. The Council was required by article 31 of the 2010 Order to give reasons for its decision. The planning permission with the reasons attached is a public document, which anyone is entitled to inspect. The first paragraph of those reasons states that the proposed development accords with policy H20. That paragraph reveals a misunderstanding of policy H20. The Council should not have been permitted to adduce evidence contradicting its own stated reasons."

34. In *Secretary of State for Communities and Local Government v Ioannou* [2014] EWCA Civ 1432; [2015] 1 P. & C.R. 10, Sullivan LJ said obiter:

> "I would merely endorse Ouseley J.'s observation at [51] of the judgment:"
>
> > "I would strongly discourage the use of witness statements from Inspectors in the way deployed here. The statutory obligation to give a decision with reasons must be fulfilled by the decision letter, which then becomes the basis of challenge. There is no provision for a second letter or for a challenge to it. A witness

> statement should not be a backdoor second decision letter. It may reveal further errors of law ….”.”

35. Applying these principles to this case, I accepted the Claimant’s submission that the Inspector’s evidence should only be admitted insofar as it set out his recollection of what did, or did not, occur at the hearing, in response to the criticisms made against him. However, I excluded those parts of the witness statement in which he sought to explain or justify his conclusions, namely, paragraph 19, the last sentence of paragraph 20 and the last sentence of paragraph 21) I considered that these passages were an impermissible attempt to supplement the DL, in the light of the Claimant’s challenge.

Statutory framework

36. Development is defined in section 55(1) of the TCPA 1990 to include both: (1) the carrying out of building, engineering, mining, or other operations in, on, over or under land (“operational development”); and (2) a material change in the use of land (“material change of use”).

37. Section 57 TCPA 1990 sets out the requirement to obtain planning permission for development.

38. Section 72 TCPA 1990 empowers the grant of planning permission to be made subject to conditions. A condition must: (1) fulfil a planning purpose; (2) fairly and reasonably relate to the development permitted; and (3) be reasonable (*Newbury DC v Secretary of State* [1981] AC 578).

39. Under section 73 TCPA 1990, an application may be made to the local planning authority to modify or discharge conditions. If the application is successful, a fresh grant of planning permission will be made. There is a right of appeal against refusal.

40. Section 106 TCPA 1990 permits any person interested in the land in the area of a local planning authority to enter into an obligation *inter alia* to restrict the development or use of land, or to require the land to be used in a specified way. Such obligations:

    i) bind the land, including successors in title, and must be registered as a local land charge (section 106(3) and (11));

    ii) are enforceable only by the local authority identified, and not by members of the public (section 106(3) and 106(9)(d)); and

    iii) may be modified or discharged by agreement (section 106A).

41. Part VII of the TCPA 1990 concerns enforcement. Enforcement action by a local planning authority is discretionary. The TCPA 1990 provides a number of enforcement powers for remedying breaches of planning control (defined by section 171A(1)(a) to include carrying out development without the required planning permission).

42. Amongst a local planning authority's enforcement powers is the power, pursuant to section 172 TCPA 1990, to issue an enforcement notice where it appears expedient to do so to remedy a breach of planning control. Failure to comply with an enforcement notice is an offence punishable by unlimited fine, pursuant to section 179 TCPA 1990.

43. Section 174 TCPA 1990 confers a right of appeal against an enforcement notice. An appeal may be brought by a person having an interest in the land to which the enforcement notice relates, or a relevant occupier of that land (section 174(1)). The grounds of appeal are set out under section 174(2). Insofar as relevant to this case, they include:

    i) ground (a) that planning permission ought to be granted in respect of any breach of planning control which may be constituted by the matters specified in the notice; and

    ii) ground (g) that any period specified in the notice falls short of what should reasonably be allowed.

44. The inspector's powers on appeal under section 174 TCPA 1990 include the power to dismiss the appeal, vary the terms of the enforcement notice, or quash it (section 176 TCPA 1990). He may also grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control (section 177 TCPA 1990).

45. Section 180 TCPA 1990 makes clear that the effect of granting planning permission for development subject to an enforcement notice is to disapply the enforcement notice insofar as it is inconsistent with the grant of planning permission.

46. The local planning authority, appellant, and any other person having an interest in the land may appeal to the High Court against the decision of the Secretary of State in an enforcement appeal. Other members of the public do not have this statutory right of appeal. They are not, however, prohibited by statute from bringing a claim for judicial review of the inspector's decision to quash an enforcement notice. Section 285(1) TCPA 1990, which states that the validity of an enforcement notice may not, except by way of appeal under Part VII, be questioned in any proceedings whatsoever, does not operate as a bar to this claim, since it does not involve a challenge to the validity of an enforcement notice. On the contrary it is a challenge to an inspector's decision to quash an enforcement notice.

Ground 1

47. Under Ground 1, the Claimant submitted that the Inspector erred in limiting his consideration to the use of the Mosque, and in failing to consider the use of the other parts of the Appeal Site, which were also the subject of the enforcement notice. Alternatively, even if it was open to the Inspector to limit his consideration to the use of the Mosque, he should have imposed conditions to ensure that the Appeal Site could not be used beyond the limited use of the Mosque which he had considered.

48. Perhaps because Mr Streeten did not draft the Statement of Facts and Grounds, his submissions on Ground 1, as set out in his skeleton argument, were slightly different. There was no application to amend the pleading, and so he was only entitled to develop the submission on Ground 1, not to alter it. In my view, Mr Streeten's submission that the Enforcement Notice could be quashed in respect of the Mosque but maintained in respect of the remainder of the Appeal Site, in effect creating two planning units instead of one, went significantly beyond the pleaded case in this Court, and was not raised at the hearing before the Inspector. Therefore it could not properly be pursued.

49. Mr Hussain's ground (a) appeal was an application for planning permission for a material change of use of the entire Appeal Site to mixed use as residential and as a place of worship. However, following discussion at the hearing, he reduced the scope of his appeal to the Mosque alone, as recorded by the Inspector in DL 9:

> "At the Hearing the Appellant confirmed that he was seeking planning permission through the Ground (a) appeal to use the Mosque for twice daily prayers with a maximum attendance of 30 people. I will refer to this as "the Limited Use of the Mosque"."

50. At DL 1, the Inspector defined the Mosque as the "ground floor of the main building to the rear of No. 852".

51. The Inspector decided at DL 12 that his "considerations of this appeal were restricted to the Limited Use of the Mosque". The Council and Mr Hussain agreed to this course.

52. At DL 11 and 12, the Inspector accepted the proposal of the Council and Mr Hussain that he should not consider or decide the planning issues which arose during "the Festival Use of the Appeal Site" – a 12 day period within the time of Muharram when in the past over 300 people had attended the Appeal Site. In previous years a marquee was erected during the Festival Use of the Appeal Site. The marquee would require planning permission and so the planning issues could be considered at a later date, if an application for planning permission was made.

53. The Inspector then proceeded to consider the issues raised in the appeal in respect of the Limited Use of the Mosque, as defined. He concluded:

    i) at DL 33, that there were sufficient on-site car parking spaces available for the Limited Use of the Mosque;

    ii) at DL 36, that the Limited Use of the Mosque would not interfere with the Highway;

    iii) at DL 47, that the Limited Use of the Mosque, together with the operational development (floodlights, flagpole and signage) would not materially harm the character and appearance of the area;

iv) at DL 52, that the Limited Use of the Mosque, and the floodlights, would not result in any material harm to the living conditions of local residents by reason of noise and disturbance;

v) at DL 54, that the Limited Use of the Mosque would not cause any harm to the users of the adjacent Public Open Space;

vi) at DL 55, that he had been advised that the kitchen was no longer in use;

vii) at DL 56(a), that there was no reason why vermin would be a particular problem and this did not weigh against the Limited Use of the Mosque;

viii) at DL 56(b), the clothing banks had been removed; and

ix) at DL 56(c), Mr Hussain said that litter left after the Festival Use of the Appeal Site would be removed by volunteers, but in any event the issue of the Festival Use of the Site was not a matter to be decided by him.

54. In my judgment, once Mr Hussain limited the scope of his ground (a) appeal to the Limited Use of the Mosque, it followed that the Inspector was entitled to limit his consideration of the grant of planning permission to the Limited Use of the Mosque. In so far as the Claimant's Ground 1 contended otherwise, it was mistaken.

55. However, the Inspector's "Formal Decision" at DL 61 extended far beyond granting planning permission for the Limited Use of the Mosque. The Inspector quashed the Enforcement Notice preventing a material change of use at the Appeal Site. He then granted planning permission for a material change of use to a mixed use as residential and as a place of worship for the entire Appeal Site, not just the Mosque. Thus, the outside space and the outbuildings could all be used as a place of worship as well. However, the Inspector had not properly considered or determined the highly contentious planning issues which arose in respect of the entire Appeal Site. The Inspector limited his consideration to the Limited Use of the Mosque. In my view, this was a fundamental defect in the Decision.

56. The Defendant and IIL initially sought to rely upon the restriction imposed by condition 1, which read "The Mosque shall only be used as a place of worship" as if it read "Only the Mosque shall be used as a place of worship". However, in the light of the observations made by Ouseley J. when he granted permission, and my own scepticism about the proposed re-drafting of the condition in this way, they rightly conceded that the wording of condition 1 did not restrict the use of the remainder of the Appeal Site.

57. In an attempt to rectify the position, on 18 April 2019, the trustees of International Islamic Link made a unilateral undertaking under section 106 of the TCPA 1990, which included the following covenants in clause 3:

> "3.1.1. not to allow any part of the Land other than the Mosque to be used for the purposes of religious worship pursuant to the Planning Permission; and

> 3.1.2. not to permit the Mosque to be attended by more than 30 … people at any one time for the purposes of religious worship in accordance with condition 3 on the Planning Permission."

58. Mr Streeten submitted that residents would be at a disadvantage in seeking to enforce a planning obligation under the section 106 agreement, as they would be reliant upon the Council enforcing the agreement by applying for an injunction under section 106(5), which the Council might not have the resources or willingness to do. In contrast, it would be possible for residents to bring a private criminal prosecution for the offence of breach of an Enforcement Notice under section 179 TCPA 1990. Furthermore, the unilateral undertaking executed pursuant to section 106 could be varied at a later date, by agreement between the Council and IIL, without the public consultation required upon an application to vary a condition attached to a grant of planning permission.

59. In response, Mr Williams referred me to *R (TWS) v Manchester CC and FC United Ltd* [2013] EWHC 55 (Admin) in which Lindblom J. said, at [3], "[i]t was not in dispute that a planning obligation in suitable terms was capable of putting right a defect in the conditions originally imposed on a grant of planning permission". He submitted that planning obligations can, and frequently are, used to control the use of land so as to prevent or ameliorate potential harm arising from a grant of planning permission.

60. I accept Mr Williams' submission that, in practice, there was a limited difference between the procedural safeguards afforded to third parties in relation to the variation of a condition as opposed to the variation of a planning obligation. In particular:

    i) Copies of planning obligations, as with grants of planning permission, are required to be kept on the local planning register: Article 40(4)(f) Town and Country Planning (Development Management Procedure) (England) Order 2015. The local planning register must also contain any particulars of any modification to or discharge of any planning obligation: Article 40(4)(g).

    ii) If a party to a planning obligation makes an application to modify or discharge an obligation under section 106A, the local planning authority is required to serve notice of the application on owners and occupiers of adjoining land: Reg 5(1) of Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992.

    iii) In deciding whether to agree to any amendment of the planning obligation the local planning authority would be subject to the public law duties. This would, in an appropriate case, require the local planning authority to give prior notice to third parties, see *R(on the Application of Wet Finishing Works Limited) v Taunton Deane Borough Council* [2017] EWHC 1837 (Admin).

61. I also accept Mr Williams' submission that, with regard to enforcement, the appropriate comparison was with the enforcement of a condition, not taking action for breach of an enforcement notice. Members of the public are not able to bring an action to require compliance with a condition attached to a planning permission. Just as with a planning obligation, the power to take enforcement action lies with the local planning authority.

62. However, I consider that Mr Streeten was correct to submit that the covenants in the section 106 agreement, read with the conditions imposed by the Inspector, did not cure the defects in the Inspector's Decision.

63. In my judgment, the defects in the Inspector's decision-making were particularly significant because of the planning history. As Mr Rolt, the Planning Enforcement Manager, observed in his submission to PINS, IIL wish to expand the activities at the Mosque and Appeal Site. However, any such expansion had to be regulated by the planning regime, in order to strike a fair balance between the aspirations of IIL and the impact on local residents, applying local and national planning policies.

64. IIL developed the Appeal Site without authorisation, and in breach of planning controls. It then applied for retrospective planning permission. There was a similar pattern at its other site, Nos 856 & 858. The Council also reported that planning conditions at Nos 856 & 858 were not being adhered to. This history implied a lack of respect for the purpose of planning controls.

65. From 2012, IIL's unauthorised activities at the Mosque and at the Appeal Site have been much more extensive than proposed at the Hearing before the Inspector, and it seems that IIL offered to restrict its activities, in order to obtain planning permission and to overcome strong objections from local residents.

66. In the light of this history, the Inspector should have given careful consideration to the need to impose appropriate conditions to control use. The Inspector recognised the need for conditions to control use, but regrettably erred in the manner in which he approached his task. This appeal was an opportunity to establish a workable scheme which would be clear and enforceable, but unfortunately this Decision failed to achieve that objective.

67. I now turn to consider the defects in the Decision.

68. **Use of the Mosque**. Although the Inspector in DL 9 carefully defined the term "Limited Use of the Mosque" as "use for twice daily prayers with a maximum attendance of 30 people", he inexplicably did not incorporate these terms into the conditions. Use of the Mosque was not limited to "twice daily prayers"; it was only limited to use "as a place of worship" in condition 1. The covenants in the section 106 unilateral undertaking also allowed "religious worship" without any restriction to twice daily prayers. In condition 2, the Inspector also permitted the Mosque to be used for ten and a half hours each day (between the hours of 12.00 and 22.30), in response to the Council's view that the hours for prayers varied throughout the year and so should not be unreasonably restrictive.

69. The breadth of these conditions meant that the Mosque could be used much more extensively than the Inspector envisaged when assessing the impact of granting planning permission. Some Mosques conduct prayers up to five times a day, and Friday prayers are more extensive. Although currently this Mosque only conducts prayers twice a day and does not hold Friday prayers, there is nothing to prevent this changing. Moreover, the term 'religious worship' is not limited to prayers, and so the Mosque may be used for other religious ceremonies, and activities, in addition to prayers. The evidence before the Inspector referred to weddings, funerals etc and also other events, which attracted high numbers of attendees, on Friday and Saturday

evenings, and during Ramadan. A more intensive use of the Mosque would be likely to have impacts on neighbours, in terms of traffic, parking, noise and other disturbances outside the Mosque. In the light of the objections, these impacts ought to have been assessed, and if appropriate, conditions imposed, but the Inspector failed to do so.

70. **Use of the Appeal Site outside the Mosque.** Although clause 3.1.1 of the section 106 unilateral undertaking restricted the use of the rest of the Appeal Site by providing that IIL would not "allow any part of the Land other than the Mosque to be used for the purposes of religious worship", neither the Inspector's Decision nor the section 106 unilateral undertaking identified what use was permitted on the "Land other than the Mosque".

71. It was apparent at the hearing before me that there remained an unacceptable degree of uncertainty as to what was authorised in the yard, driveway and outbuildings around the Mosque. Activities which were ancillary to the use of the Mosque as a place of religious worship would have to be permitted. Thus, attendees of the Mosque could drive and park in the Appeal Site and walk through the Appeal Site, on their way to and from the Mosque. The Inspector envisaged that worshippers would make some noise as they dispersed after worship but that the noise would not be unacceptable. However, he did not address the evidence that the noise of large number of attendees socialising and congregating outside the Mosque, and travelling to and from the Mosque was disturbing, especially late in the evening. Nor did he address the practice of attendees congregating outside the Mosque, before or after religious ceremonies in the Mosque, and during festivals, to socialise and take refreshment.

72. Neither the Decision nor the section 106 unilateral undertaking restricted the number of people who could congregate outside the Mosque, nor the hours during which they could be present. Although there was a restriction on the number of persons permitted to be in the Mosque at any one time, there was no limit on the number of persons who could congregate outside the Mosque at the Appeal Site. As Mr Streeten submitted, given the interaction with the community centre at Nos 856 & 858, and the possibility of an expansion in the activities in the Mosque, there may well be a "revolving door", in which the number of people in the Appeal Site waiting to go into the Mosque or congregating after leaving the Mosque far exceeds 30, even though the limit on 30 persons in the Mosque is complied with.

73. Although the Inspector hived off the planning issues raised by the intensive use of the Appeal Site during the festival of Muharram, the evidence of the Claimant and other objectors was that there were other activities at the Appeal Site which caused disturbance at other times of the year, not just during the major festival of Muharram. For example, during Ramadan, and on Friday and Saturday nights, when the number of attendees increased, and moved between the two IIL sites, causing traffic and parking problems, as well as noise. Moreover, the Council's planning and enforcement documents also suggested that there were significant problems at the Appeal Site, outside the Mosque, not just limited to the festival of Muharram. These issues were not considered by the Inspector in his Decision, and he did not address his mind to the question of conditions to control the extent of the use, parking and traffic flow.

74. In my judgment, the Inspector erred in failing to assess the planning issues arising from the use of the area outside the Mosque, and if appropriate, impose conditions to control such use. These defects were not sufficiently overcome by the section 106 unilateral undertaking.

75. In conclusion, for the reasons set out above, the Inspector erred in granting planning permission for a material change of use to a mixed use as residential and as a place of worship for the entire Appeal Site, without adequately assessing or determining the contentious planning issues before him, and the defects in his Decision were not cured by the section 106 unilateral undertaking.

76. For these reasons, Ground 1 succeeds.

Ground 2

77. Under Ground 2, the Claimant submitted that the Inspector erred in imposing a condition limiting to 30 the number of people who could occupy the Mosque at any one time, without taking into account the Council's position that it would be impossible to enforce such a condition, and without giving reasons.

78. In his witness statement, the Inspector stated:

> "18. Secondly, in relation to Condition 3 – limiting the occupancy of the Mosque – it is my recollection that the Council explained the difficulties of enforcing some types of conditions but I do not recall them claiming that it was "impossible" to enforce conditions limiting numbers of users. I appreciate that the Claimant … Ms Kaul… and Mr Pomery …state otherwise."

79. As I have already explained, I excluded as inadmissible the Inspector's evidence in paragraph 19 in which he gave some reasons for his conclusion on this issue.

80. The Council's Statement of Case stated at paragraph 3.1.9 that the conditions at Nos 856 & 858 continued to be flouted and in the Council's experience it is "simply not possible to control the number of people visiting the premises". Furthermore, I am satisfied on the basis of the witness statements of the Claimant, Ms Kaul and Mr Pomery, and the contemporaneous notes of Ms Kaul, that the issue of enforceability of this condition was expressly considered at the Hearing. Mr Rolt on behalf of the Council gave oral evidence that, in his opinion, this condition was not enforceable.

81. As enforceability of conditions was an issue listed in the Inspector's Agenda, and the issue was expressly discussed at the Hearing, I find it inconceivable that the Inspector failed to take the Council's evidence and submissions into account, or that he misunderstood them at the time, despite the fact that he could not recall the detail correctly when he came to write his witness statement subsequently. After all, it was a straightforward point. In my view, the most likely explanation for the imposition of the condition was that the Inspector did not agree with the Council's submissions, and considered the condition was enforceable. I consider that this was an exercise of planning judgment on the part of the Inspector which did not reach the high threshold

of *Wednesbury* unreasonableness. Conditions imposing maximum occupancy are commonplace.

82. In my judgment, the Inspector ought to have explained in his reasons why he was imposing a condition which the Council viewed as unenforceable. Applying the well-known test in *South Bucks District Council and another v Porter (No 2)* [2004] UKHL 33, per Lord Brown at [36], this was one of the "principal important controversial issues" because if conditions to ameliorate the detrimental impact of the use of the Appeal Site were unenforceable, then planning permission would most likely be refused by the Inspector, as it had been by the Council.

83. However, I do not consider that the Claimant has "genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision": per Lord Brown in *South Bucks* at [36]. There has been no substantial prejudice. Having attended the hearing, the Claimant must have heard the Inspector express orally the reason why he thought that the condition could be enforced. He said words to the effect that it would be possible for an enforcement officer to make an unannounced site visit and carry out a simple head count (see the second witness statement of Mr Pomery, dated 4 March 2019, at paragraph 15).

84. For these reasons, Ground 2 does not succeed.

Ground 3

85. I address this Ground on the basis on which it was pleaded in the Statement of Facts and Grounds. In his skeleton argument, Mr Streeten expanded the scope of Ground 3 to include matters which were not pleaded in the Statement of Facts and Grounds. A Claimant's reply was filed, but there is no provision for a pleaded reply in this jurisdiction. Any amendment to the pleaded grounds should have been made by way of an application for permission accompanied by a draft amended pleading: see the 'Administrative Court Judicial Review Guide 2018' at paragraphs 6.10.1 and 9.2.1.

86. Under Ground 3, the Claimant submitted that the Inspector failed to have regard to a material consideration, namely, the cumulative impact of the use of Nos 856 & 858 in conjunction with the use of the Appeal Site. This was not pleaded as an error of fact.

87. The OR in respect of the application for planning permission (paragraph 15 above) referred to the way in which the two sites were used in conjunction with one another, with large numbers of people moving between them, leading to noise and disturbance for local residents. The Council's Statement of Case (paragraph 23 above) reiterated that the two sites were used in conjunction with one another. The evidence before the Inspector also highlighted the cumulative effect on traffic congestion and parking as a result of so many people attending the two sites.

88. It is apparent from the DL that the Inspector was aware of the evidence in respect of Nos 856 & 858: see DL 30, 31 and 39. The Inspector expressed the view, at DL 31, that the traffic problems generated by Nos 856 & 858 were a distinct problem that should be addressed through the planning conditions attached to the 2011 planning permission. At DL 28 and 29, the Inspector accepted that there had been highway and parking problems arising from activities at the Appeal Site. He decided not to address

the highway and parking problems during the Festival Use of the Appeal Site. He was apparently satisfied that these problems would be resolved by limiting the number of occupants in the Mosque to 30.

89. As this issue was taken into account by the Inspector, Ground 3 does not succeed.

Ground 4

90. The Claimant submitted that the Inspector made an error of fact in finding that the nearest Mosque that catered for Urdu speaking Shia Muslims was over 6 miles away in Stanmore. That was an error, as Nos 856 & 858 were certified as a place of religious worship, on the basis of which IIL claimed exemption from rates.

91. The requirements for establishing a mistake of fact giving rise to a mistake of law are as follows:

    i) There must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter;

    ii) The fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable;

    iii) The Claimant (or his advisers) must not been have been responsible for the mistake;

    iv) The mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning: *E v Secretary of State for the Home Department* [2004] EWCA Civ 49.

92. In this case, the second requirement was not satisfied as the evidence and submissions on behalf of IIL were to the effect that Nos 856 & 858 were in use as a community centre, not as a Mosque, despite registration as a place of worship.

93. For this reason, Ground 4 does not succeed.

Ground 5

94. I address this Ground on the basis on which it was pleaded in the Statement of Facts and Grounds, which Mr Streeten further supported in his skeleton argument, by reference to the Town and Country Planning (Hearings Procedure) (England) Rules 2000 ("the Hearings Procedure Rules").

95. The Claimant submitted that the Inspector conducted the Hearing in a manner which was procedurally unfair.

96. First, the Claimant submitted that, by limiting the scope of the appeal to the Limited Use of the Mosque, many issues of concern to the Claimant were excluded from consideration and given little weight. As I have already found in the Claimant's favour on Ground 1, it is unnecessary to consider issues about the scope of the appeal under this ground too.

97. Second, the Claimant complained that his evidence was not fully taken into account. I accept the Inspector's evidence, at paragraph 9 of his witness statement, that the Claimant was permitted to give oral evidence, during which he showed video evidence. After watching four clips, the Inspector asked whether the remaining clips showed anything different from the clips he had seen and was told by the Claimant that they did not, and so the Inspector decided not to watch the remaining clips. In my judgment, the Inspector was entitled to limit the evidence which he received if he considered it was repetitive, in the exercise of his discretion. I do not consider that this was unfair or a breach of rule 11(6) and (7) of the Hearings Procedure Rules.

98. Third, the Claimant complained that the Inspector did not consider Ms Kaul's letter and video evidence. Ms Kaul had submitted written representations to PINS prior to the hearing. Just before the end of the Hearing, after Ms Sheikh QC, counsel for Mr Hussain, had made her closing submissions, Ms Kaul applied to submit a letter and video evidence. Ms Sheikh QC objected. In my judgment, the Inspector was entitled, in the exercise of his discretion, to rule that it was too late to consider the material at the Hearing. The letter was accepted in evidence, the parties were given an opportunity to comment on it, and the Inspector considered it. It is unclear why the video evidence was not circulated as well. I do not consider that this was unfair or a breach of rule 11(6) and (7) of the Hearings Procedure Rules.

99. Fourth, the Claimant alleged that the Inspector shouted at Ms Kaul, which inhibited him from putting forward many of his concerns. Ms Kaul's statement confirms this. The Inspector said at paragraph 5 that the Hearing was attended by around 60 people and lasted over 7 hours; it was contentious as many people had strongly-held views, and tempers flared from time to time. He added, at paragraph 22 of his witness statement:

> "I have no recollection of becoming aggressive towards, or shouting at, Ms Kaul or any of the Hearing attendees. As the Hearing became rowdy on one or two occasions, I may have raised my voice a little, but no more."

100. Taking into account the difficulties that arose at the Hearing, I do not consider that the Inspector's behaviour fell below the standards to be expected, or rendered the Hearing procedurally unfair.

101. Fifth, the Claimant submitted that it was unfair to exclude the evidence which he submitted to PINS following the hearing. The hearing was on 26 September 2018, and the Claimant sent a letter, attaching a calendar of religious events, to PINS on 25 October 2018. PINS refused to accept the evidence on the grounds that it was too late. The Inspector confirmed that he did not accept the evidence because there had been a full Hearing and he was mindful of the logistical problems of making sure that everyone who attended the Hearing was made aware of such representations.

102. In my judgment, the refusal to accept the late evidence was not procedurally unfair, and it was in accordance with standard practice. The Claimant had submitted written representations prior to the hearing and given oral evidence at the hearing. IIL's submissions on the number of festivals celebrated at the Appeal Site was set out in its Statement of Case, and so the Claimant could have filed rebuttal evidence prior to the

Hearing. The calendar was referred to in the OR in respect of the application for planning permission, so it was available well before the Hearing.

103. For these reasons, Ground 5 does not succeed.

Conclusion

104. For the reasons set out above, the claims for statutory review and for judicial review are granted, on Ground 1 alone.