

Case Name: Paolo Di Mambro v East Renfrewshire Council

Case Ref No: P1001-20

Date of Hearing: Friday 25 February 2022

Division: Extra Division

Agents for the petitioner: Paolo Di Mambro (Party Litigant)

Agents for the respondents: Morton Fraser LLP

Case Description

This reclaiming motion concerns a petition for judicial review of a decision of the respondents' Local Review Body dated 4 November 2020 upholding a decision by the respondents' 'Appointed Officer' to refuse the petitioner's application for planning permission. By interlocutor dated 24 February 2021, the Lord Ordinary refused permission for the petition to proceed. The petitioner appeals against the Lord Ordinary's decision under section 27D(2) of the Court of Session Act 1988.

The petitioner is the owner and occupier of 29 East Kilbride Road, Busby, Renfrewshire. On 4 June 2020 he applied to the respondent for planning permission to erect a 'one and a half story side extension following demolition of the existing extension'. Residents of neighbouring properties objected to the application. On 4 September 2020, the Appointed Officer, under the respondents' scheme of delegation (see The Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2013), refused the application. The refusal was on the basis that the proposed extension would contravene development plans the respondents had adopted and which decisions require to be made in accordance with: The Town and Country Planning (Scotland) Act 1997, s. 25. Three reasons were given for deciding that the proposed extension would contravene the development plans, *viz.* (i) it would detract from the visual amenity of the area, (ii) it would detract from the character and design of the area and (iii) this would be caused by a number of the design features including that it exceeds 50% of the width of the original house. The petitioner requested a review of the decision and a hearing was convened before the respondents' Local Review Body on 4 November 2020. The Local Review Body upheld the decision of the Appointed Officer for the same reasons given by him. The petitioner subsequently complained to the respondents regarding the conduct of the hearing, in particular, that the Local Review Body had been misled about the width of the original house. In a substantive response dated 1 December 2020, the

respondents rejected the petitioner's complaints and advised him of his right to complain to the Scottish Public Services Ombudsman.

Before the Lord Ordinary, the petitioner argued that the width of his house had been miscalculated and that this had impacted the assessment that the extension would exceed 50% of the house's original width. The respondents took a plea to the competency of the petition based on an understanding that the petitioner's challenge was to the response to his complaint in relation to which he had not exhausted all statutory remedies. The Lord Ordinary concluded that the petition did not have a real prospect of success for the following reasons. (1) The alleged error was only in relation to the third reason of refusal and did not affect the first or second reasons. There is no possibility the Local Review Body would have decided differently had the error not been made (cf *Bova v Highland Council* 2013 SC 510 at para 57). (2) The width of the petitioner's original house was only one of four features relied on in the third reason. The others, visual amenity and character and design, are qualitative judgments that cannot be challenged based on an immaterial error or mere disagreement. (3) Any challenge to the complaint response would be incompetent. (4) Article 6, ECHR is not breached having regard to the proceedings as a whole, which includes the petitioner's resort to the court.

The petitioner appeals that decision. In doing so, he need not show that the Lord Ordinary erred (cf *PA v Secretary of State for the Home Department* [2020] CSIH 34 at para 33 per Lord President (Carloway)). The petitioner argues that the 'existing extension' formed part of the original house. The calculation by the respondents, in which the kitchen area was treated as an extension subsequently built, was therefore erroneous. In any event, he argues that the existing extension has become part of the original house through the operation of prescription: Prescription and Limitation (Scotland) Act 1973. The respondents' error is a material error of fact and means that they had regard to an irrelevant consideration in reaching their decision.