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When a “Second Appeal” Isn’t: Dharmeshkumar v Secretary of State for Housing, Communities and Local Government & Anor [2026] EWCA Civ 247

Dharmeshkumar v Secretary of State for Housing, Communities and Local Government & Anor [2026] EWCA Civ 247

Date: 10 March 2026

Judges: The President of The Family Division, Lady Justice Elisabeth Laing and Lord Justice Holgate

Key Words:

Planning enforcement, Town and Country Planning Act 1990, Section 289, permission to appeal, first appeal, second appeal, Civil Procedure Rules, CPR 52.6, CPR 52.7, Access to Justice Act 1999, Court of Appeal, High Court, implied repeal, statutory interpretation

Summary

The judgment in *Dharmeshkumar v Secretary of State for Housing, Communities and Local Government & Anor* [2026] EWCA Civ 247 addresses a preliminary procedural issue regarding the correct legal test for granting permission to appeal to the Court of Appeal in planning enforcement cases [8]. The core question was whether an appeal from the High Court under section 289 of the Town and Country Planning Act 1990 (TCPA 1990) should be treated as a "first appeal" (governed by CPR 52.6) or a "second appeal" (governed by CPR 52.7) [2]. The Court of Appeal unanimously ruled that such appeals are to be treated as "first appeals," meaning they are subject to the standard "real prospect of success" test and permission can be granted by either the High Court or the Court of Appeal [1, 2 79-82].

Key Themes:

1. ***Planning Enforcement Appeals****: The procedures and statutory framework under Part VII of the TCPA 1990, specifically section 289 appeals to the High Court and Court of Appeal [8-12].*
2. ***Civil Procedure Rules (CPR)****: The distinction between the "first appeals" test under CPR 52.6 and the stricter "second appeals" test under CPR 52.7 (and s.55 of the Access to Justice Act 1999) [13-14, 22-27].*
3. ***Statutory Interpretation and Implied Repeal****: The strong legal presumption against general legislation (like the Access to Justice Act 1999) impliedly repealing earlier, specific statutory*

provisions (like s.289 of the TCPA 1990) [45-46].

Background

The appellant, Mr. Amin Dharmeshkumar, converted a former office building in Wembley into twelve residential flats, completing the conversion and occupying the flats by April 2023 [3-5]. In August 2023, the London Borough of Brent (LBB) served an enforcement notice against him, alleging a breach of planning control for making a material change in use without necessary planning permission [5]. Mr. Dharmeshkumar appealed to a Planning Inspector, who dismissed his main grounds in October 2024, concluding that the development was not carried out in accordance with approved details [6].

The appellant then appealed to the High Court under section 289 of the TCPA 1990 [7]. In October 2025, a Deputy High Court Judge dismissed his appeals [7]. Mr. Dharmeshkumar subsequently applied directly to the Court of Appeal for permission to appeal the High Court's decision [8]. Lord Justice Lewison directed an oral hearing to settle a preliminary issue: which legal test the Court of Appeal should apply when deciding whether to grant permission [8].

Legal Issues and Analysis

The central legal conflict was between two distinct statutory rules for granting permission to appeal to the Court of Appeal:

1. **Section 289(6) of the TCPA 1990:** Allows permission to be granted by *either* the High Court or the Court of Appeal [14, 12(5A), (6)]. It operates as a specific, largely self-contained code for planning enforcement [20].
2. **Section 55(1) of the Access to Justice Act 1999 (AJA 1999) & CPR 52.7:** Imposes a stricter "second appeals" test, requiring an important point of principle/practice or a compelling reason, and mandates that *only* the Court of Appeal can grant this permission [2, 23, 27].

The Secretary of State argued that the stricter second appeals test (CPR 52.7) should apply, or alternatively, that the court should exercise discretion to adopt a "heightened scrutiny" test similar to the approach taken in the Supreme Court case Cart [35-38].

The Court of Appeal rejected the Secretary of State's arguments based on the following analysis:

1. **No Implied Repeal:** Applying the principles from earlier cases like *Henry Boot* and *Smith*, the Court noted there is a strong presumption against implied repeal [45-47]. Parliament expressly repealed certain provisions when enacting the AJA 1999 but explicitly left s.289(6) of the TCPA 1990 untouched [49-51]. Therefore, s.55(1) of the AJA 1999 did not repeal the High Court's power to grant permission under s.289(6), meaning the second appeals test in s.55(1) does not apply [54-57].
2. **CPR 52.7 Does Not Override s.289:** Because CPR 52.7 essentially replicates s.55(1) of the AJA 1999, it cannot be applied broadly to oust the specific provisions of s.289(6) [59-60, 67-69].
3. **Rejection of the *Cart* Analogy:** The Court distinguished this context from *Cart*. In *Cart*, restricted access to judicial review was necessary because there was no alternative remedy for systemic errors of law [73-75]. Here, Parliament already provided adequate statutory remedies [74]. Section 289 proceedings share fundamental characteristics with section 288 statutory reviews, which are routinely treated as first appeals [77-78].

Conclusion

Lord Justice Holgate concluded that the correct test for deciding whether to grant permission for an appeal to the Court of Appeal under s.289(6) of the TCPA 1990 is the first appeals test laid down in CPR 52.6, not the second appeals test in CPR 52.7 [79-80]. Lady Justice Elisabeth Laing and the President of the Family Division both entirely agreed with this judgment [81-82].

Key Takeaway:

*When a party wishes to appeal a High Court decision regarding a planning enforcement notice to the Court of Appeal under s.289 of the TCPA 1990, it is treated as a **first appeal**. Consequently, the appellant only needs to demonstrate a "real prospect of success" (or some other compelling reason), and they may seek this permission from either the High Court or the Court of Appeal [1-2, 79-82].*

Parting Thoughts

In the end, the Court of Appeal approached the issue with the calm confidence of people who have seen this sort of statutory argument before and are not easily impressed by elaborate procedural gymnastics. The Secretary of State's case essentially invited the court to treat a clearly drafted statutory appeal route as though Parliament had quietly swapped the rulebook when nobody was looking. The court declined the invitation.

*The reasoning is deceptively simple. Section 289 of the Town and Country Planning Act 1990 is part of a **specific and carefully constructed statutory code governing enforcement appeals**. It expressly allows permission to appeal to the Court of Appeal to be granted either by the High Court or by the Court of Appeal itself. That mechanism survived the Access to Justice Act 1999 untouched. When Parliament intends to dismantle a procedural structure, it normally says so. Here, it didn't.*

*And that matters. Because once the argument that section 55 of the 1999 Act somehow rewired the system falls away, the rest of the Secretary of State's case collapses with the quiet inevitability of a poorly founded planning application. CPR 52.7—the "second appeals" rule—simply doesn't apply. The only remaining candidate is CPR 52.6, the ordinary permission test requiring **a real prospect of success or some other compelling reason**.*

The court also dealt briskly with the suggestion that it should apply a form of "heightened scrutiny" inspired by Cart. That analogy was politely but firmly shown the door. Unlike the tribunal structure in Cart, Parliament has already provided a perfectly adequate appellate pathway: Inspector → High Court → Court of Appeal. No procedural rescue mission required.

*So the result is both unsurprising and quietly significant. Appeals to the Court of Appeal under section 289 are **first appeals in procedural clothing**, not the judicial equivalent of a third attempt at the exam. The standard permission threshold applies, and both the High Court and the Court of Appeal retain their statutory roles in granting it.*

In practical terms, the message from the Court of Appeal is refreshingly straightforward:
If Parliament builds a planning appeal route and leaves it standing, the courts will use it exactly as designed.

No implied demolition orders required.

#PlanningLaw #PlanningEnforcement #Section289 #TownAndCountryPlanningAct #CourtOfAppeal #HighCourt #PermissionToAppeal #FirstAppeal #SecondAppeal #CivilProcedureRules #CPR52 #AccessToJusticeAct #ImpliedRepeal #UKLaw #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Statutory Interpretation and Implied Repeal

This is the most critical theme in the judgment, providing the foundational reasoning for resolving the direct conflict between the specific permission provisions in the Town and Country Planning Act 1990 (TCPA 1990) and the general provisions of the Access to Justice Act 1999 (AJA 1999).

1. *Smith International Inc v Specialised Petroleum Services Group Limited* [2005] EWCA Civ 1357; [2006] 1 WLR 252 *— Relied upon to establish that a general later enactment (like section 55(1) of the AJA 1999) does not impliedly repeal a specific earlier statutory procedure that grants lower courts the express power to grant permission to appeal to the Court of Appeal. The Court applied this principle directly to section 289(6) of the TCPA 1990, ruling that section 55(1) cannot apply in combination with it, nor does it render the High Court's power to grant permission meaningless.*
2. *Henry Boot Construction (UK) Limited v Malmaison Hotel (Manchester) Limited* [2001] QB 388 *— Relied upon for the core principles regarding the doctrine of implied repeal. The Court noted that because Parliament explicitly chose to repeal certain provisions when enacting the AJA 1999 but deliberately left others untouched, section 55(1) of the AJA 1999 should not be construed as having impliedly repealed the specific permission requirements in earlier statutes.*
3. *Miaris v Secretary of State for Communities and Local Government* [2015] EWHC 2094 (Admin); [2015] 1 WLR 4333 *— Relied upon as a clear and careful prior analysis by the High Court that reached the same correct conclusion: section 55(1) of the AJA 1999 did not impliedly repeal section 289(6) of the TCPA 1990.*
4. *H v Lord Advocate* [2012] UKSC 24*;* [2013] 1 AC 413 *at [30] — Relied upon for the general and strong presumption in modern statutory interpretation against the implied repeal of an earlier statutory provision by a later one.*
5. *Lane v Esdaile* [1891] AC 210 *— Cited during the discussion of Henry Boot to establish the ancillary principle that a refusal by a lower court to grant permission for a further appeal is final and is not a "judgment or order" that can be further appealed to the Court of Appeal.*

Rejection of Alternative Second Appeal Analogies and Broad Interpretations

This theme groups cases used by the Secretary of State (SSHCLG) to argue for alternative ways to apply a stricter "second appeals" test or "heightened scrutiny," which the Court of Appeal ultimately rejected.

1. *R (Cart) v Upper Tribunal* [2011] UKSC 28; [2012] 1 AC 663 *— The SSHCLG relied on this case to argue the Court should use its discretion to apply a "second appeals" test for policy reasons. The Court rejected this analogy, explaining that Cart applied a stricter test to judicial reviews because there was no alternative remedy for systemic errors of law, whereas Parliament has already provided adequate specific statutory remedies under section 289(6) of the TCPA 1990.*
2. *Clark (Inspector of Taxes) v Perks* [2001] 1 WLR 17 *at [13] — The SSHCLG relied on this case to argue that CPR 52.7 is broadly cast and should apply to these appeals. The Court rejected this, clarifying that Clark was specifically addressing section 55(1) of the AJA 1999 and that subsequent case law (Smith) had already established that the broad language used in Clark was incorrect regarding permission provisions not explicitly repealed by the AJA 1999.*
3. *Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734*;* [2002] 3 All ER 279*) — The SSHCLG relied on this case to argue for a "robust approach" or "heightened scrutiny" when*

dealing with appeals from specialist tribunals. The Court rejected the analogy, stating that section 289 appeals are much more analogous to section 288 statutory reviews (which are treated as first appeals) than to the social security tribunal system discussed in Cooke.

4. *E I Dupont de Nemours & Co. v S.T. Dupont* [2003] EWCA Civ 1368; [2006] 1 WLR 2293 — *The SSHCLG relied on this to argue that even though CPR Part 52 is subject to the special provisions of section 289(6), the CPR shouldn't be entirely ignored, and CPR 52.7 could still be applied. The Court rejected this application, noting that the CPR does not allow a court to simply pick between CPR 52.6 and 52.7 based on what it thinks is "more appropriate."*

The Nature of Section 289 Planning Enforcement Appeals

This theme covers cases that define the specific characteristics, limits, and mechanics of the section 289 appeal framework within planning law.

1. *R v Kuxhaus* [1988] QB 631 — *Relied upon to establish that a section 289 appeal is a "possible integral part" of the initial section 174 enforcement notice appeal, rather than a completely separate self-contained right. This confirmed that Part VII of the TCPA 1990 represents a detailed, largely self-contained code.*
2. *R (Walsall Metropolitan Borough Council) v Secretary of State for Communities and Local Government* [2013] EWCA Civ 370*; [2013] JPL 1183 at [20] — Relied upon to establish that an appeal to the High Court under section 289 is confined strictly to points of law, making it highly akin to judicial review or statutory review under section 288 of the TCPA 1990.*
3. *R (Leeds City Council) v First Secretary of State* [2004] EWHC 2477 (Admin) — *Relied upon to confirm the mechanics of the court's relief: if a section 289 appeal is successful, the High Court cannot remake the decision itself but must remit the matter to the Secretary of State for re-hearing and re-determination.*
4. *Binning Property Corporation Limited v Secretary of State for Housing, Communities and Local Government* [2019] EWCA Civ 250; [2019] J.P.L 844 — *Cited to confirm that under the specific provisions of section 289, permission to appeal to the High Court in the first instance may only be granted by the High Court itself.*

Legislation:

The Conflicting Statutory Appellate Frameworks (Primary Legislation)

This theme is given the highest priority as the direct conflict between the specific provisions of the planning code and the general restrictions on second appeals forms the central legal issue determined by the Court.

1. ***Town and Country Planning Act 1990*** ***(TCPA 1990)*** *— Section 289 of the Act provides a specific, self-contained statutory code for appealing decisions on planning enforcement notices to the High Court, and subsequently to the Court of Appeal. Section 289(6) establishes the core principle that an appeal to the Court of Appeal can be brought with the permission of either the High Court or the Court of Appeal. The judgment notes that appeals under s.289 are limited to points of law and share fundamental characteristics with statutory reviews under s.288 of the TCPA 1990. A successful s.289 appeal results in the matter being remitted to the Secretary of State under s.289(5)(a). The broader Part VII framework for enforcement notices (sections 171A, 173, 174, 175, and 177) is also analysed to establish that a s.289 appeal is an integral part of the enforcement notice appeal process. Section 78 is mentioned as the standard planning appeal process subject to s.288 review.*
2. ***Access to Justice Act 1999*** ***(AJA 1999)*** *— This Act introduced general restrictions on*

appellate rights. Section 54 enables rules of court to require permission to appeal. Most critically, section 55(1) establishes the "second appeals" framework, which mandates that permission for a second appeal may only be granted by the Court of Appeal and sets a strict test (important point of principle/practice or compelling reason). The Court determined that s.55(1) of the AJA 1999 did not impliedly repeal s.289(6) of the TCPA 1990. The Court heavily relied on Schedule 15 and section 106 of the AJA 1999, which listed specific statutes expressly repealed by the Act, to reason that Parliament deliberately chose not to repeal s.289(6).

The Procedural Rules (Civil Procedure Rules)

This theme is prioritised second as it contains the practical procedural tests (the "first appeals" vs "second appeals" tests) which the Court ultimately had to choose between for application in this case.

1. ***Civil Procedure Rules (CPR)*** *— The CPR governs the mechanics of appeals under Part 52. CPR 52.6 lays out the standard "first appeals" test (requiring a "real prospect of success"), which the Court ruled is the correct test to apply to s.289 TCPA appeals. CPR 52.7 lays down the stricter "second appeals" test, mirroring s.55(1) of the AJA 1999. The Court held that CPR 52.7 cannot be applied to s.289 appeals because CPR 52.7 does not override specific statutory provisions, and its scope is restricted to appeals covered by s.55(1) AJA 1999. The Court also referenced CPR 52.1(4), affirming that the general rules in Part 52 are subject to specific enactments like s.289. Other rules cited include CPR 52.3B and 52.7A (Supreme Court exceptions), CPR 53.22 (Planning Court specialist list), and Practice Direction 54D (remittal procedure).*

Statutory Precedents on Implied Repeal

This theme groups the specific statutes analysed by the Court in prior case law to establish the doctrine of implied repeal and interpret the reach of the AJA 1999.

1. ***Arbitration Act 1996*** *— Section 69(8) provides that an appeal from an arbitral award to the Court of Appeal requires the permission of the lower court. The Court relied on previous findings that s.55(1) of the AJA 1999 did not impliedly repeal this specific provision.*
2. ***Patents Act 1977*** *— Section 97(3) allows patent appeals to the Court of Appeal with the permission of either the Patents Court or the Court of Appeal. This was heavily relied upon as a direct equivalent to s.289(6) TCPA 1990, proving that a later general enactment (AJA 1999) does not impliedly repeal a prior specific statutory procedure.*
3. ***Insolvency Act 1986*** *— Section 375(2) was expressly repealed in part by the AJA 1999. The Court relied on this to highlight the contrast: Parliament explicitly repealed this provision to enforce the second appeals test, proving its failure to repeal s.289(6) TCPA was deliberate.*
4. ***Courts and Legal Services Act 1990*** *— Section 42(3) concerning the Conveyancing Appeals Tribunal was also expressly repealed by the AJA 1999. This further reinforced the principle that unrepealed provisions like s.289(6) TCPA were intentionally preserved.*

General Court Jurisdiction and Modern Tribunal Systems

This theme covers statutes used by the Court to contrast the specific planning regime with broader jurisdictional rules and modern specialised tribunals.

1. ***Senior Courts Act 1981 (formerly Supreme Court Act 1981)*** *— Section 16(1) provides the Court of Appeal's general jurisdiction to hear appeals from the High Court. Section 18(1)(g) is referenced as another provision deliberately left unrepealed by the AJA 1999, establishing exceptions where a lower court's refusal of permission is final.*

2. ***Tribunals, Courts and Enforcement Act 2007*** *— Sections 11 and 13 define the appeals routes from the First-tier Tribunal to the Upper Tribunal, and subsequently to the Court of Appeal. This Act was used to demonstrate that when Parliament wishes to impose a second appeals test on modern specialist tribunals, it does so explicitly.*
3. ***The Appeals from the Upper Tribunal to the Court of Appeal Order 2008 (SI 2008 No.2834)*** *— Article 2 of this Order explicitly dictates a second appeals test for appeals leaving the Upper Tribunal. This regulatory instrument was relied upon to show that the reach of second appeal tests must be expressly mandated by Parliament.*
4. ***Tribunals and Inquiries Act 1992*** *— Section 11 (appeals to the High Court) was cited purely in the context of analysing the boundaries of older case law (Clark) and its overly broad interpretation of the second appeals reach.*

The Wider Planning Enforcement Heritage

This theme identifies the historical legislative evolution of planning appeals, providing background context to the current TCPA 1990 framework.

1. ***Planning and Compensation Act 1991*** *— Section 6(5) amended the TCPA 1990 to introduce the requirement to obtain permission for an appeal to the High Court in the first instance, specifically to stop landowners from launching meritless appeals to suspend enforcement notices. It also inserted s.289(4A) granting the court power to enforce a notice pending an appeal.*
2. ***Caravan Sites and Control of Development Act 1960*** *— Part II (s.34(4)) of this Act is cited for historical context, having first introduced the right of appeal from a Minister to the High Court and Court of Appeal, including the core requirement for permission.*
3. ***Town and Country Planning Act 1962*** ***&*** ***Town and Country Planning Act 1971*** *— Section 180(5) of the 1962 Act and Section 246(4) of the 1971 Act are cited to trace the unbroken historical lineage of the permission-to-appeal rules leading up to the current s.289 framework.*

Legal Texts & Commentary:

Principles of Statutory Interpretation

This theme is prioritised as the most important because the principles of statutory construction form the core legal reasoning the Court used to resolve the conflict between the specific planning statute and the general appellate statute.

1. ***Bennion, Bailey and Norbury on Statutory Interpretation (8th edition), sections 8.9 and 21.4*** *(Judgment para 45) — Relied upon by the Court to firmly establish the strong legal presumption against implied repeal. The text is used to support the specific rule of construction that an earlier, specific statutory enactment is presumed to override a later, general provision in the absence of sufficiently clear words to the contrary. This principle was central to the Court's finding that the Access to Justice Act 1999 did not impliedly repeal section 289(6) of the Town and Country Planning Act 1990.*

Legislative History and Policy Intent

This theme is of secondary priority; while it does not provide the direct legal tests used to decide the case, it provides essential background context regarding why the relevant statutory appellate filters were enacted by Parliament in the first place.

1. ***Sir Geoffrey Bowman, "Review of the Court of Appeal (Civil Division)" (1997 Report)*** *(Judgment para 23) — Cited to explain the legislative genesis of section 55 of the Access to Justice Act 1999. The report provides the foundational policy context for why Parliament acted to restrict "second appeals" to the Court of Appeal.*
2. ***Robert Carnwath QC, "Enforcing Planning Control" (Report to the Department of Environment)*** *(Judgment para 17) — Relied upon to explain the legislative intent and practical reasoning behind the amendment to section 289(6) of the TCPA 1990 by the Planning and Compensation Act 1991. The report highlighted that landowners were abusing the system by making meritless appeals solely to suspend the effect of enforcement notices, which directly prompted Parliament to introduce the strict requirement for obtaining permission to appeal to the High Court.*

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