Neutral Citation Number: [2020] EWHC 3076 (Admin)

Case No: CO/2189/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 November 2020

Before :

MRS JUSTICE LANG DBE

- -

Between :

FREDERICK ADAMS	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendants**
(2) HUNTINGDONSHIRE DISTRICT COUNCIL	

- -
- -

Michael Rudd (instructed by **Stephens Scown LLP**) for the **Claimant**
George Mackenzie (instructed by the **Government Legal Department**) for the **First Defendant**
The **Second Defendant** did not appear and was not represented

Hearing date: 27 October 2020

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Approved Judgment

Mrs Justice Lang :

1. The Claimant applies under section 288(1) of the Town and Country Planning Act 1990 ("TCPA 1990") to challenge the decision of the First Defendant, made on his behalf by an Inspector on 6 May 2020, to dismiss the Claimant's appeal, and to refuse to grant the Claimant a certificate of lawfulness for a proposed use or development ("CLOPUD"), pursuant to section 192 TCPA 1990, in respect of a caravan site known as Fenside Caravan Park, Puddock Road, Warboys, PE28 2UA ("the Site").

2. The Second Defendant (hereinafter "the Council") is the local planning authority for the area in which the Site is situated. On 19 December 2018, the Claimant applied for a CLOPUD for the siting of touring caravans, including those used as a person's sole or main place of residence. The Claimant appealed under section 195 TCPA 1990, following the Council's failure to determine the Claimant's application.

3. The issue is whether the Inspector erred in her interpretation of the certificate of lawful use granted on 16 November 2016 when she concluded that it did not authorise the stationing of touring caravans as a person's sole or main place of residence, as opposed to holiday use.

4. Permission was granted on the papers by Kerr J. on 27 July 2020.

Planning history

5. On 10 March 1999, planning permission was granted on appeal for "the proposed change of use to camping and touring caravan site…" ("the March 1999 permission"). This was subject to seven conditions. Condition 4 limited the number of caravans to 16. Condition 6 provided that the caravans (other than the caravan occupied by the site manager) could only be used for holiday purposes and must not remain on site for more than 14 days in any month. Condition 7 prohibited the stationing of caravans (other than the caravan occupied by the site manager) over the winter period between 1 October and 31 March.

6. Condition 7 was "varied" by the Council in a decision dated 18 November 1999 ("the November 1999 permission"), altering the dates of the closed season to between 31 October and 1 March. All other conditions from the March 1999 permission were expressly incorporated into what the Inspector found was "a new and separate permission" (paragraph 10 of the Decision Letter "DL 10").

7. On 7 April 2004 the Council granted a further planning permission ("the 2004 permission") described as "Renewal of permission … for use of land as touring caravan site", subject to 8 conditions. Condition 5 limited the number of caravans to 16. Condition 7 provided that the caravans (other than the caravan occupied by the site manager) could only be used for holiday purposes and must not remain on site for more than 14 days in any month. Condition 8 prohibited the stationing of caravans (other than the caravan occupied by the site manager) between 1 October and 31 March. There were also conditions relating to hard and soft landscaping works. Although phrased as a "renewal", the Inspector found that this was a new permission. The Inspector said, at DL 12, that it appeared likely that the 2004 permission was implemented, as she was

informed that the Council had issued correspondence relating to the issue of conditions, although copies were not supplied to her.

8. On 16 November 2016 the Council issued a certificate of lawfulness of existing use or development in respect of the Site ("the 2016 CLEUD"). The 2016 CLEUD is in the following terms.

> "The Huntingdonshire District Council hereby certify that on the 23rd April 2015 the operation described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:
>
> 1. Note to applicant.
>
> The applicants have provided adequate evidence to satisfy the Local Planning Authority that, on the balance of probability, the claimed use of the site for a caravan site has been implemented, and confirmed by the LPA in the letter dated May 2014. Therefore consent should be issued for the use as it is immune from enforcement action and as such is lawful.
>
> 2. Note to applicant.
>
> The applicant is reminded of the restriction of the [*sic*.] how many caravan are allowed to be pitched at the site at any one time, and the length of time the caravans can be positioned at the site, i.e. condition 4 — 7 of the planning decision notice from the Planning Inspectorate.
>
> **First Schedule**
>
> Certificate of lawful use (existing) for use as touring caravan site.
>
> **Second Schedule**
>
> OS2568 and 3073 Puddock Hill Warboys.
>
> **Notes**
>
> 1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended).
>
> 2. It certifies that the operation specified in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the specified date and thus was not

> liable to enforcement action under section 172 of the 1990 Act on that date.
>
> 3. This certificate applies only to the extent of the operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action."

9. On 19 December 2018, the Claimant applied for a CLOPUD for the siting of touring caravans, including those which were used as a person's sole or main place of residence. The Claimant appealed under section 195 TCPA 1990, following the Council's failure to determine the Claimant's application. The Council subsequently indicated to the Inspector that it would have refused the application, if it had determined the application.

10. The appeal before the Inspector was heard by way of written representations. The Inspector dismissed the appeal, finding that a refusal by the Council would have been well-founded. She held that section 193(5) TCPA 1990 applied and so the conditions previously imposed on an extant planning permission would still be operative, regardless of whether they were expressly referenced in the certificate. She concluded:

> "30. On the date of the current application the proposed use would not have been lawful because the use as a touring caravan site could not have included use as a person's sole or main place of residence as it would have been in breach of condition. Whichever permission the use operates under, there is a condition confining the use to holiday purposes only. A condition also required the caravans to be removed for part of the year which is incompatible with a sole or main residence.
>
> 31. Therefore, a LDC cannot be issued for the proposed use because it would constitute a breach of condition on a subsisting planning permission."

Grounds of challenge

11. The Claimant's grounds of challenge were as follows:

    i) In determining the lawful use of the Site, the Inspector was not entitled to go beyond the unambiguous words in the First Schedule to the 2016 CLEUD which stated that the lawful use was as a "touring caravan site" without limitation as to the purpose of use, the period of use, or the number of caravans, as contained in the conditions to the 1999 and 2004 planning permissions.

    ii) Alternatively, if the Inspector was entitled to go beyond the words of the First Schedule, her interpretation was flawed and inadequately reasoned. There was inadequate evidence to support her conclusion that the use identified as lawful was the use subject to the conditions in the extant planning permission.

iii) The Claimant also submitted that the Inspector erred in applying subsection 193(5) TCPA 1990 to this case, for the reasons set out in the Claimant's representations to the Inspector.

iv) In the course of his submissions, Mr Rudd submitted that the Inspector did not find, and was not entitled to find, that the 2004 permission was implemented.

12. In response, the First Defendant submitted that the Inspector was correct to find that section 193(5) TCPA 1990 applied to the 2016 CLEUD. The conditions attached to the planning permission continued to be effective, as the certificate did not expressly exclude them. The proposed use would have breached the conditions restricting caravan use to holiday purposes only and preventing the Site from being used by caravans in the winter months.

13. The Inspector did not need to "go behind" the 2016 CLEUD in order to identify the conditions as the certificate expressly referred to the existence of planning conditions attached to a planning permission which restricted the use of the Site. Thus, a reader of the CLEUD would have been put on notice that the use was subject to conditions, which could be viewed in a public document. It was not essential for this information to be included within the First Schedule. The form in Schedule 8 of the Town and Country (Development Management Procedure)(England) Order 2015 ("the DMPO") did not prescribe where conditions/limitations on use should be included.

14. Furthermore, the Inspector was entitled to consider the planning permissions as extrinsic material as an aid to interpretation because they were expressly referred to in the certificate.

15. The First Defendant's fallback submission was that the 2016 CLEUD was ambiguous because the text in the "Reasons" section of the certificate referred to a planning permission with conditions which restricted the lawful use set out in the First Schedule. Because of the ambiguity, it was permissible to consider extrinsic material as an aid to interpretation, although this was not the approach taken by the Inspector.

Statutory framework

16. Section 191 TCPA 1990 makes the following provision for a certificate of lawfulness of existing use or development:

> "191.— Certificate of lawfulness of existing use or development.
>
> (1) If any person wishes to ascertain whether—
>
> (a) any existing use of buildings or other land is lawful;
>
> (b) any operations which have been carried out in, on, over or under land are lawful; or
>
> (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed."

17. Section 191 TCPA distinguishes between certification of the lawfulness of (a) existing use of buildings or land; (b) operations which have been carried out over land; and (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted.

18. Section 171A TCPA 1990 defines what is meant by taking enforcement action, and distinguishes between two different types of breach of planning control – carrying out development without the required planning permission and failure to comply with conditions or limitations subject to which planning permission has been granted.

19. Section 187A TCPA 1990 provides for the enforcement of conditions subject to which planning permission has been granted.

20. Section 193(5) TCPA 1990 provides that:

> "(5) A certificate under section 191 or 192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate."

21. The Planning Practice Guidance ("PPG") advises on the grant of a certificate where there is an extant grant of planning permission with conditions (Reference ID: 17c-011-20140306):

> "How does a lawful development certificate relate to conditions on an existing planning permission?
>
> A lawful development certificate may be granted on the basis that there is an extant planning permission for the development; however, that development still needs to comply with any conditions or limitations imposed on the development by that grant of permission, except to the extent specifically described in the lawful development certificate."

22. Article 39 of the DMPO provides, in so far as is material:

> "39.— Certificate of lawful use or development
>
> (1) An application for a certificate under section 191(1) or 192(1) of the 1990 Act (certificates of lawfulness of existing or proposed use or development) must be made on a form published by the Secretary of State (or on a form substantially to the same effect) and must, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the particulars specified or referred to in the form.
>
> (2) An application to which paragraph (1) applies must be accompanied by—
>
> (a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;

> (b) such evidence verifying the information included in the application as the applicant can provide; and
>
> (c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.
>
> ……
>
> (14) A certificate under section 191 or 192 of the 1990 Act must be in the form set out in Schedule 8 or in a form substantially to the same effect."

23. Paragraph 1 of Article 9 reflects the distinction made in section 191 TCPA 1990 between certificates of lawfulness for "use, operation or other matter in question".

24. The prescribed form in Schedule 8 to the DMPO is annexed to this judgment. The body of the form contains the formal certification and the reasons for it, to be inserted by the local planning authority. It provides that the use or operations or other matter which is certified as lawful is described in the First Schedule. The Council is required, by note (d), to insert a "full description of use, operations or other matter, if necessary by references to details in the application or submitted plans …" in the First Schedule. The site is specified in the Second Schedule.

25. Section 195 TCPA 1990 confers a right of appeal against a refusal of a certificate, wholly or in part, under section 191 TCPA 1990. By subsection (4), the right of appeal includes "a modification or substitution of the description in the application of the use, operations or other matter in question". In my view, this could include the description in any part of the form; it is not limited to the description in the First Schedule.

Conclusions

26. Because of the overlap between the Claimant's grounds, it is convenient to address them together.

27. The Claimant submitted that the Inspector erred in applying section 193(5) TCPA 1990 to this case. He submitted that subsection 193(5) applied in specific circumstances only, such as where a certificate was expressly granted on the basis of an extant planning permission, in which case it would not be necessary to list all the conditions in the permission. Subsection 193(5) could also apply where a certificate was issued in respect of a specific breach of condition referenced in the certificate, in which case other conditions which were not referenced in the certificate would remain in force. The provision could not be used more generally to require an alignment between the terms of a certificate and planning conditions previously imposed.

28. In my judgment, the Claimant's narrow interpretation of the scope of subsection 193(5) TCPA 1990 was not supported by the words of the statute, the PPG or any authority. I agree with the Inspector who said that its effect was that "the LDC procedure cannot be used to circumvent conditions imposed on an existing permission, unless the permission

itself is invalid" (DL 22). The Inspector rightly rejected the Claimant's submission that it was simply "a mechanism to clarify that a specific certificate identifying a breach of one condition does not suggest immunity to other conditions". The Inspector correctly said that it "clearly encompasses a situation where a LDC is issued for development implemented under a planning permission which is subject to conditions and where no breach of condition has occurred" (DL 25).

29. Turning to the application of subsection 193(5) TCPA 1990 in this case, the Inspector reviewed the planning history and found that the 1999 and 2004 permissions included conditions which would prevent the proposed use of caravans for use as a sole or main residence. The conditions included a restriction on caravan use for holiday purposes only and caravans were prohibited at the Site during the winter months. The Inspector found that it was likely that the 2004 permission was implemented (DL 12). She based this conclusion on the representations of the Claimant's planning consultant who said that on 17 May 2013 the Council issued correspondence in respect of the discharge of conditions on the Site, although he failed to provide a copy of the letter. At the hearing Mr Rudd submitted that the Inspector had not reached a concluded view that the permission was implemented, and on the evidence the Inspector was not entitled to conclude that the permission had been implemented. I allowed Mr Mackenzie's application to adduce in evidence the letter of 17 May 2013 from the Council's Planning Services Manager which clearly stated that the development had been commenced within the specified period, the permission remained valid, and the conditions remained in force. Therefore, I consider that the Inspector's finding that it was likely that the 2004 permission had been implemented was sound.

30. The Claimant submitted that the effect of the 2016 CLEUD was that the lawfulness of the use described in the First Schedule as a touring caravan site was conclusively presumed, pursuant to subsection 191(6) TCPA 1990. The Claimant relied upon the well-established principle in *Broxbourne Borough Council v Secretary of State for the Environment* [1980] QB 1 that the use that is presumed to be lawful is that set out in the certificate, which precludes the necessity to investigate the actual use at the date of the grant of the certificate.

31. In *Broxbourne*, the description of the use in the certificate was wider than the actual use. Goff J. held at [10 C]-[11 D]:

> "In my judgment, this criticism of the Secretary of State's approach is not well-founded. The purpose of an established use certificate is clear. It does not render a use lawful. To that extent, it is unlike a grant of planning permission. Therefore, if, for example, the use specified in an established use certificate is abandoned, it cannot lawfully be resumed. Its function is to render the specified use, as long as it persists, immune from an enforcement notice. It therefore precludes the necessity of investigating events which may have occurred many years before as to what was the established use at the date of the issue of the certificate. If Mr Fay's submission were to be correct, it would deprive an established use certificate of all efficacy. In each case, it would be necessary to investigate the actual use at the date of the issue of the certificate in order to ascertain whether there had in fact been a material change of use, a fresh

> investigation which it was the object of the established use certification procedure to obviate. Nor, in my judgment, does it assist Mr Fay to argue that the certificate specifies no particular level or intensity of activity and therefore to submit that the level or intensity of activity was not a matter stated in the certificate and so was a matter on which the certificate was not conclusive. The short answer on this point is that the use was a matter stated in the certificate. Since no limit was placed upon either part of the Site to be so used or the intensity of the Site, the use so specified was without limit as to space within the Site or intensity. Mr Fay cannot, therefore, now complain that the Secretary of State has erred in law in holding that there has been no material change of use by reason of the area of the Site now employed or the present intensity of the use.
>
> It follows, in my judgment, that the Secretary of State applied the correct test in the present case. It is clear from the decision letter that the Secretary of State was somewhat unhappy as to the conclusion he felt bound to reach, having regard to the findings of fact in the Inspector's report, which appears to indicate that the use by the planning authority's predecessor in title specified in the established use certificate was somewhat wider than the use actually enjoyed at the time of the issue of the certificate. Indeed, as the argument proceeded, it became only too clear that what Mr Fay was seeking to do was to invite the court to read the certificate in a qualified manner, but the duty of the Minister and this court is to apply the correct legal principles and if it were not to do so and were to accept Mr Fay's submissions, the result would be that established use certificates would be deprived of their proper force. Their purpose would be undermined and indeed purchasers of land in respect of which there existed established use certificates might be misled into paying too high a price for the land.
>
> For these reasons, in my judgment, the appeal under section 246 should be dismissed. It must therefore follow that the originating motion under section 245 should likewise be dismissed.
>
> But the case has a moral. It demonstrates that planning authorities should exercise great care concerning the terms of established use certificates which they issue. If a certificate is not drawn with care and expressly limited to the precise use in question, then its issue can lead to the consequence that the authority may, through its own act, find itself thereafter precluded from preventing a use for which a planning permission would not have been granted simply because the certificate had been used in terms wider than were necessary."

32. The principle in *Broxbourne* was approved in *R (Tapp) v Thanet* DC [2001] EWCA Civ 559, [2002] 1 P & CR 7 and in *Hannan v Newham LBC* [2014] JPL 1101 at [23]. More recently, in *Breckland DC v Secretary of State for Housing Communities and*

Local Government [2020] EWHC 292 (Admin), I applied the principle in *Broxbourne* stating, at [51]:

> "In the light of my conclusion that the correct interpretation of the 2006 CLEUD was that the site could be used for caravans, as statutorily defined, and for camping in tents, it follows, applying *Broxbourne*, that the Claimant could not go behind the 2006 CLEUD on the basis that it was inconsistent with the actual use of the Site for touring caravans for leisure use rather than mobile homes for permanent residential use when issuing the enforcement notices or refusing the CLOPUD."

33. In response, Mr Mackenzie correctly submitted that the application and the certificate only related to the lawfulness of the use (despite the erroneous reference to an "operation" in the certificate). There was no application and no certificate relating to the continued lawfulness of the conditions attached to any extant planning permission. The statutory scheme clearly distinguishes between certification for use, or for operations, or for other matters (conditions and limitations).

34. Furthermore, the Inspector distinguished *Broxbourne* and the subsequent authorities at DL 17 – 20:

> "17. These were not cases where a LDC followed the grant of planning permission to confirm the lawfulness of the same development which was previously approved. The cases are relevant to the extent that the Council contests whether a 'touring caravan site' can be used for the purposes applied for. As the term denotes the type of caravan that can be placed on the site, it does not by definition preclude the use as a person's sole or main place of residence. There is no reason why a touring caravan could not as a matter of principle be occupied as a sole or main residence, but the matter does not end there.
>
> 18. Clearly, the 2016 LDC a 'consent' operating as a planning permission. By virtue of section 195 it could only certify the existing use which was considered to be lawful. The lawfulness of the use of the appeal site as a touring caravan site is conclusively presumed from the 2016 LDC (section 191(6)). The real crux of the issue is whether in issuing the LDC, the Council inadvertently certified the lawfulness of the site as a touring caravan site free from any conditions and restrictions.
>
> 19. An LDC cannot be subject to conditions, but it can specify the precise level or scale of use. *R v Thanet DC ex parte Tapp & Anr* [[2000] EWHC, [2001] EWCA Civ 5592] concerned the limits on a local planning authority in granting a LDC for a proposed use expressed in very generalised terms. Unlike section 191(4), which is applicable to existing uses, there is no equivalent power under section 192 to allow the modification of the description. The decision acknowledges that precision is equally desirable under both provisions. The High Court gave as

> one example a proposed use for a caravan site and suggested that if the authority was concerned that to issue a certificate in such terms might open the door to unfettered intensification, it could ask the applicant to provide a more precise description of the proposed use e.g. caravan site for 12 touring caravans. The appellant uses this to illustrate how the First Schedule of the 2016 LDC could have been expressed more specifically with reference to numbers and use, but it did not do so.
>
> 20. That scenario is not on a par with this appeal where planning permission had already been implemented. There was no risk of allowing unfettered intensification because the 2016 LDC does no more than confirm that the use which was granted permission was lawful on the application date."

35. In my judgment, the Inspector's legal analysis was correct. The certificated use in the *Broxbourne* line of authorities was not subject to conditions attached to an extant planning permission which had been implemented, and section 193(5) TCPA 1990 was not engaged in those cases.

36. The Claimant submitted that the Inspector was not entitled to go beyond the words in the First Schedule of the 2016 CLEUD when determining the scope of the certificate of lawfulness, relying on the terms of Article 39 and Schedule 8 of the DMPO. The only mention of planning permission and conditions was in the "Note to applicant", 1 and 2. These were "informative notes" which were not authorised by the form in Article 8 of the DMPO and accordingly they did not carry any legal status or weight: see PPG paragraph 026 Reference ID: 21a-026-20140306, and *QB Developments Ltd v Warrington Borough Council* [2020] EWHC 1511 (Admin), per Dove J. at [20].

37. I accept Mr Mackenzie's submission that, on a proper reading of the form in Article 8 of the DMPO, the "Note to applicant" 1 and 2 were not unauthorised informatives of the kind referred to in the PPG and in *QB Developments*. The Council was required to give reasons for the certification and the "Note to applicant" 1 and 2 were inserted in the space left blank in the form for reasons to be inserted. Note 1 gave reasons for the certification, namely, that use of the Site as a caravan site had been implemented and confirmed by the LPA in the letter dated May 2014. Therefore consent should be issued for the use as it was immune from enforcement. Use of the word "implemented" suggested the implementation of a planning permission, though the reference to immunity from enforcement did not. Note 2 went on to give details of the restrictions in the grant of planning permission, stating that "[t]he applicant is reminded of the restriction of [the] how many caravans are allowed to be pitched at the site at any one time, and the length of time the caravans can be positioned at the site, ie condition 4 - 7 of the planning decision notice from the Planning Inspectorate". In my view, both "Notes" formed a legitimate part of the certificate, explaining why and to what extent the use described in the First Schedule was lawful. As Mr Mackenzie said, in a case where it is necessary to identify the parameters of a lawful existing or proposed use (such as identifying conditions to which the certified use is subject), article 39 and schedule 8 of the DMPO do not prescribe the manner or form in which this can be done. It was open to the Council to insert this information in the section for "reasons".

38. However, in my view, it is a valid criticism of the drafting of the certificate that more detail, in particular, references to the extant planning permission and the conditions attached to it, should have been included in the First Schedule, for clarity and the avoidance of doubt. But faced with the task of interpreting an imperfect document, I consider that the Inspector was entitled to read it as a whole, and to take into account the text in the body of the certificate (including the Notes), as well as the First and Second Schedules.

39. I draw support for that conclusion from *Lambeth LBC v Secretary of State for Housing Communities and Local Government* [2019] UKSC 33, [2019] 1 WLR 4317, where the Supreme Court overturned the decisions of the Inspector, the High Court, and the Court of Appeal, which held that Lambeth LBC's recital of the proposed variation of a condition restricting sales, contained in the body of the decision notice, did not take effect as a condition in the new permission. It was common ground at the hearings below that the text would have taken effect as a condition if the notice had been correctly drafted, by inserting the relevant text into the section of the notice headed "Conditions". Lord Carnwath, giving the judgment of the Supreme Court, took a less rigid approach than the Courts below, reading the decision notice as a whole and holding that its wording was "clear and unambiguous", despite the admitted drafting error. He held that the only natural interpretation of the notice was that Lambeth LBC was approving what was applied for, that is, the variation of the condition from the original wording to the proposed substituted wording (at [29]).

40. In *Lambeth*, Lord Carnwath reviewed the principles set out in *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 WLR 85, stating:

> "**Principles of interpretation**
>
> 15. We have received extensive submissions and citations from recent judgments of this court on the correct approach to interpretation. Most relevant in that context is *Trump International Golf Club Ltd v Scottish Ministers* [2015] UKSC 74; [2016] 1 WLR 85. An issue in that case related to the interpretation of a condition in a statutory authorisation for an offshore wind farm, requiring the developer to submit a detailed design statement for approval by Ministers. One question was whether the condition should be read as subject to an implied term that the development would be constructed in accordance with the design so approved.
>
> 16. In the leading judgment Lord Hodge (at paras 33-37) spoke of the modern tendency in the law to break down divisions in the interpretation of different kinds of document, private or public, and to look for more general rules. He summarised the correct approach to the interpretation of such a condition:
>
> > "34. When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the

> context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense."

17. He rejected a submission that implication had no place in this context:

> "32. [Counsel] submits that the court should follow the approach which Sullivan J adopted to planning conditions in *Sevenoaks District Council v First Secretary of State* [2005] 1 P & CR 186 and hold that there is no room for implying into condition 14 a further obligation that the developer must construct the development in accordance with the design statement. In agreement with Lord Carnwath JSC, I am not persuaded that there is a complete bar on implying terms into the conditions in planning permissions …
>
> 35. … While the court will, understandably, exercise great restraint in implying terms into public documents which have criminal sanctions, I see no principled reason for excluding implication altogether."

In the instant case, had it been necessary to do so, he would, at para 37, have "readily drawn the inference that the conditions of the consent read as a whole required the developer to conform to the design statement in the construction of the windfarm".

18. In my own concurring judgment, having reviewed certain judgments in the lower courts which had sought to lay down "lists of principles" for the interpretation of planning conditions, I commented:

> "I see dangers in an approach which may lead to the impression that there is a special set of rules applying to planning conditions, as compared to other legal documents, or that the process is one of great complexity." (para 53)

Later in the same judgment, I added:

> "Any such document of course must be interpreted in its particular legal and factual context. One aspect of that context is that a planning permission is a public document which may be relied on by parties

> unrelated to those originally involved … It must also be borne in mind that planning conditions may be used to support criminal proceedings. Those are good reasons for a relatively cautious approach, for example in the well established rules limiting the categories of documents which may be used in interpreting a planning permission … But such considerations arise from the legal framework within which planning permissions are granted. They do not require the adoption of a completely different approach to their interpretation." (para 66)
>
> 19. In summary, whatever the legal character of the document in question, the starting-point - and usually the end-point - is to find "the natural and ordinary meaning" of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense."

41. In *Trump*, Lord Hodge also set out, at [34] the well-established basis upon which extrinsic documents may be used as an aid to interpretation, if they are incorporated by express reference or needed to resolve ambiguity.

42. Applying these principles of interpretation, I consider that the Inspector was entitled to interpret the certificate in the way that she did, at DL 26 to 29:

> "26. In my view this case falls squarely within section 193(5). There is no breach of any condition described in the 2016 LDC and the conditions previously imposed on an extant permission would continue to apply. Those conditions would still bite regardless of whether they were referenced in the certificate. As it is, the note added to the certificate alerts the reader to the presence of planning conditions restricting the use albeit the details are incomplete and other permissions had been issued. The appellant asserts that the 'relevant' permission was from 2013. This appears to be in error as I have not been made aware of a permission from that year. Regardless of date, the evidence indicates there was an extant permission with conditions on occupation.
>
> 27. Caselaw makes clear that it is not possible to import significant limitations into a historic LDC, but that does not override the operation of section 193(5). An existing planning permission under which the appeal site has operated cannot simply be ignored or disregarded on the basis that an informative note was unclear as to which specific permission applied.
>
> 28. All that the 2016 LDC confirms is the lawfulness of the use as a touring caravan site. It was lawful because planning permission had been implemented for such use. That is plain from the reasons for issuing the LDC (which explicitly say the use was 'implemented') without looking behind the LDC. The

> certified use is precisely that for which planning permission was granted. It does not certify a use in breach of condition. The question was not asked whether it had been lawful to use the site as a touring caravan site in breach of planning permission. Thus, this is not a case where a LDC has been issued for breach of the conditions restricting its use or a different use from that already approved. The 2016 LDC does no more than establish, as a matter of fact, that the approved use remained lawful at the date of the application.
>
> 29. The appellant acknowledges that where a LDC confirms a particular permission is extant, it would not be necessary to list all the conditions that would be enforceable as the LDC would simply confirm an extant permission. That is effectively what has happened here."

43. Furthermore, I consider that, since a planning permission and conditions were expressly referenced in the certificate, the Inspector was entitled to examine the planning permissions as an aid to interpretation, in order to determine which was the extant permission and the relevant conditions. The Inspector found that the certificate referred to the conditions in the March 1999 planning permission – the references to the numbering of the conditions in the certificate matched the numbering in the March 1999 permission. The permissions which followed the March 1999 permission were described on their face as a variation and a renewal. However, the Inspector found that their effect was to replace the previous permissions, and so the extant permission was the 2004 permission. As the conditions were nearly identical, the error was not significant.

44. Whilst I acknowledge the importance of clarity and certainty in a certificate of this nature, any reasonable reader of the 2016 CLEUD would have been put on notice that the use certified as lawful, namely, a use as a touring caravan site, was subject to a number of conditions in a planning permission. The planning permissions have at all times been readily available on the planning register to members of the public, and interested professionals such as conveyancing solicitors and planning consultants.

45. For these reasons, the decision of the Inspector does not disclose any error of law. It is not necessary for me to determine the First Defendant's fallback submission.

46. The claim under section 288 TCPA 1990 is dismissed.

ANNEXE

SCHEDULE 8 TO THE GPDO

Town and Country Planning Act 1990: sections 191 and 192
Town and Country Planning (Development Management Procedure) (England) Order 2015: article 39

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

The (a) ..... Council hereby certify that on (b) ..... the use/operations/matter* described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged/hatched/coloured* (c)..... on the plan attached to this certificate, was/were/would have been/would be* lawful within the meaning of section 191/192* of the Town and Country Planning Act 1990 for the following reason(s):

……..……..
.....
Signed.....(Council's authorised officer)
On behalf of (a).....Council
Date.....

First Schedule
(d)
Second Schedule
(e)

Notes
1 This certificate is issued solely for the purpose of section 191/192* of the Town and Country Planning Act 1990.
2 It certifies that the use/operations/matter* specified in the First Schedule taking place on the land described in the Second Schedule was/were/would have been/would be* lawful, on the specified date and, therefore, was not/were not/would not have been* liable to enforcement action under Part 7 of the 1990 Act on that date.
3 This certificate applies only to the extent of the use/operations/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter* which is/are* materially different from that/those* described or which relate/s* to other land may render the owner or occupier liable to enforcement action.
*4 The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

*delete where inappropriate

Insert:
(a) name of Council
(b) date of application to the Council
(c) colour used on the plan
(d) full description of use, operations or other matter, if necessary, by reference to details in the application or submitted plans, including a reference to the use class, if any, specified in an order under section 55(2)(f) of the 1990 Act, within which the use referred to in this certificate falls
(e) address or location of the site