

Case Name: *Adams v Secretary of State for Housing, Communities And Local Governmen & Anor* [2020] EWHC 3076 (Admin) (17 November 2020)

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Commentary:

The case was a challenge under section 288(1) of the Town and Country Planning Act 1990 (the "TCPA 1990") of a decision by a Planning Inspector to dismiss the claimant's appeal and hence refuse to grant a certificate of lawfulness for a proposed use or development (a "CLOPUD") in respect of a caravan site in Huntingdonshire. The claim was dismissed.

The claimant applied for a CLOPUD for the siting of touring caravans at the caravan site, 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 application.

Lang J described the key issue in the case as being whether or not the Planning Inspector had erred in her interpretation of a previously granted certificate of lawfulness of existing use or development (the "CLEUD") 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.

The Inspector dismissed the appeal, finding that section 193(5) TCPA 1990 applied and so the conditions imposed on an extant planning permission which confined the use of the caravans to holiday purposes only would still be operative, notwithstanding the subsequent CLEUD referring to 'use as a touring caravan site' without any limitation. As such, the CLOPUD could not be granted because the proposed use would constitute a breach of condition on a subsisting planning permission.

Section 193(5) TCPA 1990 provides that a certificate of lawfulness 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. Lang J rejected the Claimant's argument that section 193(5) TCPA 1990 applied in specific circumstances only and was inapplicable in this case. She held that the Inspector was correct in finding that it clearly encompasses a situation where a certificate of lawfulness is issued for development implemented under a planning permission which is subject to conditions and where no breach of condition has occurred. Further, it cannot be used to circumvent conditions imposed on an existing permission.

As regards the Inspector's application of section 193(5) TCPA 1990, Lang J found the Inspector's legal analysis to be sound. The Inspector concluded that a planning permission subject to a condition that prevented the proposed use of caravans as a sole or main residence had been implemented. She acknowledged that the lawfulness of the use of the site as a 'touring caravan site' was conclusively presumed from the issue of the CLEUD (per section 191(6) TCPA 1990) and that this, by definition, did not preclude the use as a person's sole or main place of residence. However, section 193(5) TCPA 1990 was engaged on the basis that a planning permission had been implemented on the site and imposed conditions

on such use.

The Claimant's argument that the Inspector was not entitled to go beyond the words in the Schedule to the CLEUD defining the lawful use when determining its scope was also rejected by Lang J. The only reference to planning permission and conditions in the CLEUD was in the informative notes to the applicant but Lang J found that these formed a legitimate part of the CLEUD, explaining why, and to what extent, the use specified in the Schedule was lawful. The notes indicated that the use was lawful on the basis of implementation of a planning permission and gave details of the conditions attached to the grant of planning permission.

Lang J relied on the Supreme Court's decision in *LBC v Secretary of State for Housing Communities and Local Government* to support her finding that the Inspector was entitled to read the CLEUD as a whole, as well as to examine the planning permissions as an aid to interpretation in order to determine which was the extant permission and the relevant conditions. In sum, any reasonable reader of the 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.

Case summary prepared by Victoria McKeegan