

Case Name: *UBB Waste Essex Ltd v Essex County Council* [2019] EWHC 1924 (Admin) (18 July 2019)

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Commentary: The High Court allowed UBB Waste Essex Ltd.'s judicial review claim, finding that, on the proper principles of interpreting planning decision documents, a certificate of lawfulness for a proposed use or development (CLOPUD) issued by Essex County Council under section 192 of the Town and Country Planning Act 1990 was unlawful.

UBB contracted with the Council in 2012 to develop and operate the Tovi Eco Park waste treatment facility in Basildon, Essex. For that purpose the Council in its capacity as Waste Planning Authority (WPA) granted planning permission in 2012, but then fell into dispute with UBB on the types of waste permitted to be treated at the facility (the dispute is the also subject of separate proceedings in Technology and Construction Court). The Council, in its capacity as Waste Disposal Authority (WDA) seeking to maximise the facility's lawful usage to treat public waste, applied on 7 December 2018 to itself as WPA for a CLOPUD under section 192 to certify, pursuant to the 2012 planning permission, the lawfulness of proposed treatment at the facility of "source-segregated green garden water" (SSGGW) from household waste recycling centres (HWRCs). The Council as WPA granted such a CLOPUD on 12 February 2019. UBB brought their judicial review claim against this grant on the grounds that, in issuing the CLOPUD, the WPA erred in certifying as lawful the proposed treatment of SSGGW from HWRCs at the facility, because the effect was to set too widely the types of waste that can lawfully be treated there. Specifically, UBB claimed that the 2012 planning permission excluded SSGGW from HWRCs from being treated at the facility, and therefore such treatment is unlawful.

The judge reviewed the case law on principles of interpreting planning decision documents, including Lord Hodge's dicta in *Trump* that the words of a public document should be interpreted objectively as a reasonable reader would understand them given their natural and ordinary meaning in the context of the document as a whole, by exercising common sense, and by considering other relevant documents as appropriate in the circumstances of the case, for instance documents that are incorporated by reference into the main document at issue. The judge also reviewed Lord Carnwarth's judgment in *Lambeth* on principles of interpretation, which agreed with Lord Hodge in *Trump*.

The judge found that the 2012 planning permission – when construed in accordance with *Trump* and *Lambeth*, which she held required the Court to give effect to the 2012 permission's "planning purpose [on] a holistic view" covering several documents incorporated into the permission – limited the waste permitted to be treated at the facility to "residual waste", whose proper meaning under the permission did exclude SSGGW from HWRCs.

The judge therefore quashed as unlawful the CLOPUD for its certification as lawful the

proposed treatment of SSGW from HWRCs at the facility.

Case summary prepared by George Morton Jack