Case Name: *Jaffe v Tingdene Marinas Ltd* [2024] EWCA Civ 751 (03 July 2024)

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Commentary: This was an appeal relating to application of the Mobile Homes Act 1983 to what is described in the judgment as a "Hartford houseboat". The case's planning interest derives from the discussion as to interpretation of a retrospective planning permission, the effect of a certificate of lawfulness and the distinction if any between a caravan stationed on land and a houseboat moored at a pontoon.

The "Hartford houseboat" is a caravan stationed on a float structure, which is itself moored to a pontoon in a lake. The Applicant (who was the Respondent in this appeal) had lived in the houseboat since 2017, but the freeholder (the Appellant) had recently served notice on her to leave. The Applicant sought to rely on the protection of a provision of the Mobile Homes Act 1983, which applies to the occupiers of permanent residential caravans. For present purposes, it is worth noting that the courts below had found that the Hartford houseboat was a caravan stationed on land (notwithstanding that the caravan is positioned on a float, and notwithstanding that the land is covered by water).

A site only qualifies as a "protected site" (critical in order for the safeguards for occupiers to apply) if it has planning permission for the permanent stationing of caravans for residential purposes – i.e. not for holidaying or occasional use. This particular site had a 1998 permission for the "use of land for 15 houseboats for holiday use…" and the first condition on that permission required that the houseboats be used solely for holiday accommodation and not as a main residence. The local planning authority had in 2014, however, granted a certificate of lawfulness confirming that the breach of that condition had persisted for more than 10 years and that the occupation of the houseboat in question as a "sole residence" was lawful. Section 191 of the Town and Country Planning Act 1990 provides that a such a certificate is to be treated as a planning permission for the purposes of granting site licences, and the Upper Tribunal had determined that this chain of events had led to the qualification of the site as a "protected site". The freeholder now appealed to the Court of Appeal on the basis that the courts below had wrongly found the marina to be a "protected site" as that term is defined in the Act.

The Court of Appeal held that the term "houseboat" within the planning permission and subsequent certificate applied to the Hartford houseboat and, interestingly, that appeared to be based at least in part on the fact that the Hartford houseboat was in situ at the time that the planning permission was granted. The permission for the houseboat was found necessarily to encompass the caravan, and the fact that the caravan could not be in its approved location without the aid of the float was irrelevant.

The judgment also recaps the law relating to conditions and limitations, Andrews LJ

observing that a permitted use is expressed in the grant of permission and any restrictions in the operation of that use are to be expressed by condition. In this case, there was a functional limitation in the description of development authorised by the planning permission, as well as a condition: both relating to the holiday use of the houseboats. The Appellant had attempted to argue that the certificate of lawfulness only overcame the condition, and did not overcome the limitation within the permission. The Court of Appeal disagreed, concluding that the certificate legitimised the use of the land and therefore operated as a planning permission for the purposes of caravan site licensing legislation. The appeal was, therefore, dismissed.

Case summary prepared by Aline Hyde