Neutral Citation Number: [2024] EWCA Civ 751

Case No: CA-2023-000604

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)
JUDGE ELIZABETH COOKE
[2022] UKUT 16 (LC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/07/2024

Before :

LADY JUSTICE ANDREWS
LADY JUSTICE ELISABETH LAING
and
LADY JUSTICE FALK

- -

Between :

JANET MAUREEN JAFFE	**Applicant/ Respondent**
- and -	
TINGDENE MARINAS LIMITED	**Respondent /Appellant**

- -
- -

Michael Rudd (instructed by **Tingdene Marinas Ltd**) for the **Appellant**
Stephen Cottle (instructed by **Public Interest Law Centre**) for the **Respondent**

Hearing date: 6 June 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 3rd July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Andrews:

Introduction

1. The appellant, Tingdene Marinas Ltd ("Tingdene"), is the freehold owner of land known as Hartford Marina, Wyton, Huntingdon ("the Marina"), which comprises an artificial lake on which there is a marina with around 200 mixed residential and leisure berths. Around the lake is a road giving access to pontoons at which houseboats are moored, and there are also narrowboats and lodges.

2. Some time prior to 1998, the previous owner of the Marina applied for a patent for an invention comprising "a pontoon structure that will support a caravan on water, thus instantly converting the caravan into a houseboat..." The patent application explained that:

> "The invention enables a conventional and unmodified caravan of any type – but especially one of the mobile home variety – to be used as a houseboat, and its value depends on the lack of significant planning restrictions relating to houseboats, on the more pleasing visual appearance of a caravan in houseboat form … and on the increased security inherent in any building located on water as opposed to dry land. Basically, the invention proposes a pontoon structure that will support the caravan (at a suitable height) on water in just the same way as the hull of a ship supports the ship's superstructure, thus instantly converting the caravan from being a house on land to being a house on water – a houseboat".

3. The respondent, Ms Jaffe, lives in a Willerby caravan which is stationed on such a structure in the Marina at No.8 West Pontoon. To avoid confusion of terminology, I shall refer to the structure as a "float". The caravan, which has wheels, sits on the frame of the float and is not secured or otherwise attached to it. It can be rolled on and off the float by means of a detachable ramp. The entire unit, that is, the caravan and the float on which it sits, was marketed as a "Hartford houseboat".

4. Ms Jaffe owns the "Hartford houseboat." Tingdene owns the pontoon running into the lake from the shore, to which the float is attached, and the land underneath. The "Hartford houseboats" are moored in the Marina pursuant to licence agreements between Tingdene and their owners.

5. Ms Jaffe has been living in the caravan as her sole residence since 2017. This litigation was brought about by Tingdene's decision to serve her with notice to quit. In response to this, Ms Jaffe sought the protection of the Mobile Homes Act 1983 ("the 1983 Act") which applies to any agreement under which a person is entitled to station a mobile home on a "protected site" and to occupy that home as their sole or main residence. The 1983 Act provides a degree of security of tenure to those persons to whom it applies. One of the most important safeguards is that a court must be satisfied that the termination of the agreement by the owner of the site is reasonable.

6. Section 1(1) of the 1983 Act provides as follows:

> "This Act applies to any agreement under which a person ("the occupier") is entitled–
>
> a. to station a mobile home on land forming part of a protected site; and
>
> b. to occupy the mobile home as his only or main residence."

7. "Mobile home" is defined by section 5 of the 1983 Act as having the same meaning as "caravan" in Part 1 of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"), namely:

> "any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted…"

8. "Protected site" is defined by the same section as "having the same meaning as in Part 1 of the Caravan Sites Act 1968" ("the 1968 Act"). Section 1(2) of the 1968 Act provides, so far as is relevant, as follows:

> "For the purposes of this Part of this Act a protected site is any land in respect of which a site licence is required under Part 1 of [the 1960 Act]….. not being land in respect of which the relevant planning permission or site licence
>
> a. is expressed to be granted for holiday use only; or
>
> b. is otherwise expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation."

9. The First-tier Tribunal (Lands Chamber) found that Ms Jaffe was entitled to rely on the provisions of the 1983 Act, and the Upper Tribunal ("UT") dismissed Tingdene's appeal. Tingdene now appeals to this court with the permission of Stuart-Smith LJ, on the ground that the UT erred in law in concluding that the land in question is a "protected site".

10. Tingdene was refused permission to appeal on a further ground, namely, that the UT wrongly concluded that Mrs Jaffe's agreement with Tingdene entitled her to station a mobile home on Tingdene's land (thus satisfying the first of the requirements under section 1(1)(a) of the 1983 Act). The argument it sought to pursue was that the agreement between Tingdene and Mrs Jaffe only permitted her to moor her "houseboat" at a pontoon on the land; the "houseboat" comprised the caravan, the float and other associated paraphernalia as a whole and singular unit, and therefore there was no agreement providing for Mrs Jaffe to station her caravan (alone) on that land.

11. The Upper Tribunal (Judge Elizabeth Cooke) gave that argument short shrift at paragraphs [27] to [33]. She accepted that the "Hartford houseboat" as a whole does not meet the statutory definition of "caravan" because it cannot be towed or otherwise safely moved as a composite unit on land. However, Ms Jaffe lives in a Willerby

caravan which *does* meet the statutory definition, and her agreement with Tingdene entitles her to live in it on Tingdene's land (which for these purposes includes the water covering the land). It was immaterial that the statutory caravan happened to be situated on a float and to form part of a houseboat. The judge also rejected Tingdene's fallback argument that Mrs Jaffe was only entitled to place the caravan on a float, which in turn she was allowed to place on land (including the water covering the land). She said that she failed to see that the presence of a float between the caravan and the water meant that the caravan was not on land. The float made no more legal difference than any other base or support.

12. As I shall explain, the refusal of permission to challenge those findings on appeal seriously undermines one of the aspects of the surviving ground of appeal. However, for the reasons set out in this judgment I have concluded that irrespective of that problem, when considered in more depth, the arguments advanced by Tingdene have little or no merit. The UT did not make any error of law, as Tingdene alleges, and this appeal should therefore be dismissed.

The statutory framework

13. The policy of the 1983 Act is, as the Deputy President of the Lands Chamber, Martin Rodger, succinctly put it in *John Romans Park Homes Ltd v Hancock* [2018] UKUT 249 (LC) at [1]: "to confer statutory protection on the occupiers of permanent residential caravans or mobile homes, but not on the occupiers of caravans intended only for holiday or seasonal use."

14. The full legislative history and the policy considerations underlying its development are usefully set out in the judgment of Hugh Mercer KC (sitting as a Deputy High Court Judge) in *Dean v Mitchell* [2023] EWHC 1479 (KB); [2023] HLR 44 at [7] to [45], albeit in more detail than is necessary for the purposes of this appeal. Suffice it to say that one of the main aims of the 1983 Act and its predecessors was to put those whose permanent residence is a mobile home on a similar footing to private tenants of housing. Thus, for example, section 3 of the 1968 Act contained provisions protecting occupiers of mobile homes on protected sites from eviction and harassment, and section 4 granted power to the court to suspend eviction orders.

15. Section 1 of the 1960 Act prohibits the use of land as a "caravan site" without a site licence, which by virtue of section 3 of that Act is issued to the occupier by the local authority in whose area the land is situated. Section 1(4) defines "caravan site" as:

> "land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed."

Section 1(1) provides:

> "Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used."

Section 3(3) makes provision for the issue of licences by the relevant local authority:

> "A local authority may on an application under this section issue a site licence in respect of the land if, and only if, the applicant is, at the time when the site licence is issued, entitled to the benefit of a permission for the use of the land as a caravan site granted under Part III of the [Town and Country Planning Act 1947][1] otherwise than by a development order."

16. The UT followed a decision of this court in finding that in order for a caravan site (requiring a site licence) to be a protected site, it must have planning permission. In *Balthasar v Mullane* [1986] 51 P&C R 107, Glidewell LJ said at page 117:

> "In my judgment the meaning of a protected site in section 1(2) of the Caravan Sites Act 1968 involves the site being one in respect of which planning permission has been granted for the stationing of one or more caravans. If planning permission has not been granted, then the site is not a protected site within the meaning of that Act, or, thus, within the meaning of the 1983 Act."

17. As Judge Cooke explained at [41]:

> "The Court of Appeal reasoned that Parliament cannot have intended occupation of a mobile home to be protected by the 1983 Act if it contravenes the planning legislation, since that would generate a situation where the 1983 Act gave the occupier security even though the owner of the land was committing a criminal offence in not removing the occupier in response, say, to an enforcement notice."

Therefore, as she said, in order for Ms Jaffe's pitch to be a protected site it must have planning permission, and the relevant planning permission or site licence must not be "expressed to be granted for holiday use only" or otherwise so expressed that the caravan cannot be lived in all year round.

The planning permission

18. The Marina is covered by a number of different grants of planning permission. On 9 November 1998, Huntingdonshire District Council, the relevant local planning authority, granted Tingdene's predecessor in title planning permission (98/0115) for:

> "Retention of use of land for 15 houseboats for holiday use, moorings, parking & ancillary development at Hartford Marina Huntingdon Road Wyton in accordance with your application received on 27 Jan 1998 and the plans, drawings and documents which form part of the application."

The permission was subject to four conditions, only one of which is relevant:

[1] The governing statute is now the Town and Country Planning Act 1990.

"1. The houseboats hereby approved shall be used only as holiday accommodation and shall not be used as the sole or main residence of any person."

19. It is agreed that this planning permission concerned 15 "Hartford houseboats" moored to the West Pontoon of the Marina including "Houseboat 8", which subsequently became Ms Jaffe's home. The original planning application and its attachments are no longer available, but is common ground that the permission that was granted was retrospective, and related to what was already there on site.

The Certificate of lawful use

20. Section 191 of the Town and Country Planning Act 1990 is entitled "Certificate of lawfulness of existing use or development." The relevant provisions are as follows:

"(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 … 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 … 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…

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.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission –

a. section 3(3) of the Caravan Sites and Control of Development Act 1960…"

21. On 6 July 2014 (three years before Ms Jaffe purchased her home) the relevant local planning authority issued a Certificate of Lawful Use ("the Certificate") in these terms:

"The Huntingdonshire District Council hereby certify that on the 23rd April 2013 the use 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:

On the balance of probability the evidence submitted with the application has demonstrated that the accommodation has been occupied continuously as a sole or main residence in breach of condition 1 of planning permission 980115 for a period of more than 10 years prior to the date of the application.

First Schedule

Certificate of lawful use (as existing) for occupation as a sole residence.

> **Second Schedule**
>
> Houseboat 8 West Pontoon
> [there follows the full postal address.]"

The attached plan depicts the lake and the West Pontoon with numbered Hartford houseboats radiating off it. Edged in red is one houseboat, numbered 8, and the immediately surrounding water.

22. The reference to 10 years in the "reasons" section of the Certificate is a reference to the relevant time for taking enforcement action prescribed in section 171B(3) of the Town and Country Planning Act 1990, which is (and was at all material times) ten years beginning with the date of the breach.

23. The UT found that the 1998 planning permission gave permission for caravans, forming part of houseboats, to be on the land, therefore the area to which the planning permission relates is a "caravan site" as defined by section 1(4) of the 1960 Act. Ms Jaffe is living in a statutory caravan which is stationed on land in accordance with that planning permission. Judge Cooke observed at [49] that:

> "It is a permission for a limited form of caravan site, but a caravan site nonetheless. Planning permission for the stationing of houseboats on land covered by water is not a permission for the stationing of caravans on dry land; like the description of the use in [*Winchester City Council v Secretary of State for Communities and Local Government* [2015] EWCA Civ 563] the permission incorporates a functional limitation."

24. The UT then went on to find that the relevant planning permission was not expressed to be granted for holiday use only, by virtue of the Certificate. Judge Cooke accepted the argument that the effect of that Certificate was to authorise the change of use from holiday to residential; and that by virtue of section 191(7) of the Town and Country Planning Act 1990 the Certificate had effect as if it were a grant of planning permission under section 3(3) of the 1960 Act. That was the relevant planning permission under section 1(2) of the 1968 Act, because following the grant of the Certificate the 1998 permission no longer defines the permitted use of Ms Jaffe's pitch. Therefore the site is a protected site. She said that it was helpful to note that this was consistent with the policy of the legislation, which is to give some security to those who live in caravans as their home, but the effect of the Certificate seemed to her to be clear without any need for a purposive construction.

The issues on this appeal

25. On behalf of Tingdene, Mr Michael Rudd contended that the UT erred in finding that there was a planning permission for the stationing of caravans on the land because on its true interpretation the 1998 permission applies only to houseboats (as a single indivisible unit) and not to caravans. Alternatively, if that argument is not accepted, he submitted that the Certificate was not granted pursuant to section 191(1)(a) of the Town and Country Planning Act 1990 but pursuant to section 191(1)(c). He conceded that if it were granted pursuant to section 191(1)(a) the Judge's analysis and her conclusion as to the effect of the Certificate would be unimpeachable, but submitted

that if it were granted under section 191(1)(c), the only effect of the Certificate would be that condition 1 in the planning permission would no longer be enforceable. The scope of the permission would be unaffected.

26. Mr Stephen Cottle, on behalf of Ms Jaffe, submitted that the judge's analysis and her conclusions were right for the reasons she gave. This was a case about rights created by legislation, and Parliament's intention was to confer security of tenure on people who lived in mobile homes as their sole or main residence, and not on people who occupied mobile homes for holidays. The UT had found that Ms Jaffe had an agreement with Tingdene to station a mobile home (complying with the statutory definition of "caravan") on its land (covered by water) and that she was permitted to and did occupy that mobile home as her only residence. It was immaterial that the mobile home was supported on the water by a float. The ultimate question was whether the relevant statutory provisions, construed purposively, were intended to apply to this situation, viewed realistically, and they obviously were; the fact that the mobile home in which Ms Jaffe lives happens to be floating on a lake instead of stationed on dry land does not mean that she should not have the same protection as any other occupant of a mobile home as their main or sole residence who was lawfully permitted by the owner of the land on which it was stationed to use it for that purpose.

27. Mr Cottle contended that Tingdene's argument that there was planning permission for "houseboats" and not for caravans lost much of its force in the light of the refusal of permission to appeal on the first ground, which challenged a rejection by the UT of an identical analysis of what was permitted by the licence agreement. If in law there is a caravan on Tingdene's land, and Ms Jaffe is permitted by agreement with the owner of the land, i.e. Tingdene, to reside in that statutory caravan, it retains its identity as a statutory caravan notwithstanding that it is sitting on a float which is moored to a pontoon on a lake. Therefore, the land occupied by Ms Jaffe's "houseboat" is unquestionably a "caravan site" within the definition in section 1 of the 1960 Act.

28. The only issue was therefore whether Tingdene had planning permission for the stationing of the mobile home on that part of its land, and it plainly did. The original planning permission granted in 1998 related to precisely the same arrangements in substance and reality as were the subject of the licence agreement. The Certificate of Lawful Use granted in 2014 was the relevant grant of planning permission for site licensing purposes, and all limitations or restrictions on the permitted use of the caravan for holiday use only had fallen away.

Discussion and conclusion

29. A "caravan site" is defined by the 1960 Act as land on which a caravan is stationed for the purposes of human habitation. In the light of the UT's findings in relation to the matter for which permission to appeal was refused, it cannot be disputed that these requirements are met. Therefore the first part of the definition of "protected site" is satisfied because the land occupied by the statutory caravan is "land in respect of which a site licence is required under [the 1960 Act]". The next issue is whether the land is "land in respect of which the relevant planning permission or site licence is expressed to be granted for holiday use only". There is no site licence, so the issue of restrictions in that document does not arise.

30. The relevant inquiry is a two-stage one. The first question is whether there is planning permission for a caravan to be stationed on the relevant land (see *Balthasar*, above). If there is, then the next question is whether "the relevant planning permission [pertaining to the land on which the caravan is situated] is expressed to be granted for holiday use only", which would preclude a site which would otherwise be protected from qualifying as a "protected site".

31. The interpretation of a planning permission involves considering the natural and ordinary meaning of the words used in the document, viewed in their particular legal and factual context and in the light of common sense. Were it necessary to cite any authority for that proposition it is to be found in the judgment of Lord Carnwath JSC in *Lambeth LBE v Secretary of State for Housing, Communities and Local Government* [2019] UKSC 33; [2019] 1 WLR 4317 at [15] to [19].

32. The grant of a planning permission identifies what is permitted, so far as the use of land is concerned. The scope of the permitted use of the land is defined by the grant. The use specified in the grant may be of a general nature, e.g. "agricultural" or "retail", or it may be limited to a particular function, e.g. "a restaurant". Any conditions attached to the grant of permission will specify what is *not* permitted, but they will qualify or limit the permitted use, whose scope is delineated by the grant itself. So, for example, the grant may be for a "restaurant" and a condition may specify that the opening hours are to be between 12 noon and 11 pm.

33. The distinction between the boundaries of permitted use which are defined by the scope of the grant, and limitations on permitted use which are imposed by conditions, is explained more fully by Sullivan LJ in the *Winchester City Council* case (above). Until that case there was a widespread misconception that a line of authorities including *I'm Your Man Ltd v Secretary of State for the Environment* [1999] 77 P&CR 251 laid down a principle that restrictions or limitations must always be expressly set out in conditions. That is only the case if the planning authority wishes to restrict the manner in which a permitted use is exercised. The Court of Appeal in *Winchester City Council* endorsed the analysis by the Deputy High Court Judge in that case (Philip Mott KC) which drew a distinction between restrictions relating to the manner in which the permitted use could be exercised (which must be contained in conditions) and the scope or extent of the permitted use itself (which necessarily excludes other uses). If as a matter of construction the planning permission only permits a narrow use (referred to by Mr Rudd as "a functional limitation"), wider uses will be excluded by necessary implication, without the need for express conditions.

34. By way of simple illustration, if planning permission were granted for use as a restaurant and the conditions limited the opening hours to 12 noon to 11pm, it is possible that after 10 years of continuous operation outside the permitted opening hours the landowner might obtain a certificate under section 191(1)(c) of the Town and Country Planning Act 1990 which would preclude the local planning authority from taking enforcement action in respect of the breaches of that condition, and enable him to continue trading until midnight. However, that certificate would not mean that the landowner could shut down the restaurant and open a corner store which operated during the same hours, and claim that he already had planning permission for that use. The scope of the planning permission would still be restricted to use of the premises as a restaurant.

35. As Sullivan LJ said in *Winchester City Council* at [26], "the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself." The permitted use here is "retention of use of land for 15 houseboats for holiday use, moorings, parking and ancillary development".

36. Mr Rudd's primary argument is that what is permitted by the grant is the use of the land for "houseboats" and not "caravans" and that this in and of itself was a functional limitation. He submitted that a houseboat was a single indivisible unit and could not be equated to one of its component parts. The float could not be equated to a concrete base or stand for the caravan were it to be situated on dry land, because the base would be treated as part of the land, and the float is not. However, it is completely artificial to suggest that the permission was only granted for a single indivisible unit, particularly as the caravan is not attached to the float. The argument relating to the planning permission is just as flawed as the similar argument relating to the licence agreement [see paragraphs 10 and 11 above] and was rightly rejected by the UT.

37. The reality is that what is described in the permission as a "houseboat" (which is not a term of art) is not what someone might immediately associate with that label, namely the sort of vessel which is commonly found moored in rivers and canals. This "houseboat" is not a boat or vessel of any description. Instead the expression is used to describe what was already there on the land at the time that permission was granted, namely, a statutory caravan which sat on a float which its inventor had explained in the patent application was the means of converting a caravan into a houseboat – as the application put it, a house on water rather than a house on land.

38. It was also envisaged and intended that people would occupy those caravans. Tingdene's predecessor in title was permitted to attach floats to the pontoon, on which up to 15 statutory caravans would be positioned, and people could stay in those caravans for holidays. This was both practically and legally a caravan site on water instead of a caravan site on dry land. A planning enforcement officer could not turn up at the Marina and legitimately accuse Tingdene of breaching planning control on the basis that it was allowing people to occupy caravans at the West Pontoon. Since the land in question was and was always intended to be covered in water it is irrelevant that the permission does not extend to stationing caravans on dry land (or anywhere other than on a float moored to a pontoon).

39. I agree with Judge Cooke that in granting permission for the stationing of houseboats on land covered by water, the local planning authority gave permission for both of the components of the "houseboats" to be on that land, configured in the way in which they were (and are) configured. Permission for the houseboat to be stationed on the land necessarily encompassed permission for the caravan to be stationed there. If a reasonable person who had seen the drawings for the patent application or who had been down to the Marina and seen the 15 Hartford houseboats moored to the West Pontoon in 1998 had been asked: "does the planning permission permit Tingdene to station caravans on that part of its land for the purposes of human habitation?" their answer would be "of course". The fact that the caravans cannot be so stationed without a float (or else they would sink) is irrelevant; the permission also encompassed the use of the floats which converted the caravans into houseboats, as well as the stationing of the caravans on the water which the floats made possible.

40. Turning to Mr Rudd's second point, this rests on the phrase "for holiday use" which appears within the description of the use of the land for which permission was granted. The permission is "for use [of the land] for 15 houseboats for holiday use". The UT accepted that these were words of functional limitation, though if they are, condition 1 would be unnecessary. I accept that this duplication does not mean there is no functional limitation. Conditions are sometimes included in a permission as a "belt and braces" precaution. Moreover, this permission pre-dates by many years the seminal decision in the *Winchester City Council* case, and Sullivan LJ's exposition of the distinction between the extent of the permitted use and restrictions on the manner in which the use can be exercised. But even if there is both a functional limitation and an overlapping condition, Mr Rudd's argument that the Certificate merely removed the condition is based on a misinterpretation of section 191 of the Town and Country Planning Act 1990.

41. Section 191(1)(a) covers the situation where a person wishes to ascertain whether "any existing use of…land is lawful". That encompasses both a use of the land which is outside the scope of the governing planning permission, and any use which is prohibited by one or more of the conditions attached to that grant. Section 191(1)(b) concerns operational development, which is not relevant for present purposes. Section 191(1)(c) concerns the situation where the person wishes to ascertain "whether *any other matter* constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful" (emphasis supplied). That covers any matter which amounts to a breach of conditions or limitations on planning permission, and therefore potentially exposes an infringer to enforcement action, but which does not fall within sub-sections 1(a) or 1(b). A material change of use can, and frequently does, involve a breach of a condition or limitation imposed on a grant of planning permission, but section 191(1)(c) has no application where the question that the planning authority has been asked to consider is whether an existing use of the land is lawful.

42. Mr Rudd accepted that an application could have been made under section 191(1)(a) in the present case, but he contended that in fact it was made and granted under section 191(1)(c), with markedly different consequences. However, where the relevant breach of planning control consists of an unauthorised use (an expression I use to encompass both a use which is not permitted and a use for a purpose which is prohibited) the Certificate of Lawful Use could only have been granted under section 191(1)(a), and unsurprisingly that is reflected in the terms of the Certificate itself. Mr Rudd sought to refer to the report of the planning officer which preceded the grant of the Certificate in the present case; but that would only be permissible as an aid to interpretation if there was any ambiguity in the language used in the Certificate itself, which there is not. He also cited a number of authorities for the proposition that a Certificate of Lawful Use cannot be retrospectively interpreted to give effect to a conclusion which is not evident from the application and assessment of the planning authority at the time. But here the conclusion *is* evident.

43. The "use" of the land specified as "houseboat 8 West Pontoon" and denoted on the attached plan that the local planning authority certified to be lawful is "(as existing) for occupation as a sole residence". That means that by using her "Hartford houseboat" as her sole residence and not as a holiday home Ms Jaffe is not in breach

of planning control, because that use was expressly permitted as from the date in April 2013 identified in the Certificate.

44. Although the reasons given for the grant of the Certificate were that the accommodation had been occupied continuously as a sole or main residence in breach of condition 1 for a period of more than 10 years, the reasons simply explain why the planning authority have reached the conclusion that the existing use described in Schedule 1 is lawful (and that they are therefore obliged to certify it as such). That use cannot be lawful if it is outside the scope of the planning permission. The reasons do not identify the subsection pursuant to which the certificate is granted, but since the question the authority resolved, which must have been the question it was asked to resolve and certify, was whether the present use of the houseboat is lawful, it can only have been subsection 1(a). It is the fact that there has been a use of the houseboat in a manner which was not permitted – namely, continuous occupation as a sole residence - and which has continued for more than 10 years without enforcement action - which matters. The fact that the reasons state that this was a breach of Condition 1 – which was an accurate statement – does not negate the fact that the effect of the Certificate was to legitimise that use of the land even if it would also have fallen outside the permitted uses for the same 10 year period.

45. Judge Cooke's conclusion at [60] was that the Certificate:

> "does not simply authorise a breach of condition, and does not simply declare that the first condition is unenforceable; it states the lawful use of the property, and it is difficult to see how the description of the permitted use in the 1998 permission is thereby unaffected."

I respectfully agree. The Certificate does not simply afford Ms Jaffe a defence to enforcement action for breach of condition 1, or cause that condition to fall away whilst at the same time maintaining an identical "functional restriction" on the use of the land occupied by her caravan. It permits her to live in the caravan on the float as her sole residence and it operates as a grant of the necessary planning permission for that use by virtue of section 191(7).

46. As Judge Cooke pointed out at [61] it makes no sense to say that the permitted use set out in the 1998 permission remains in force so far as Ms Jaffe's pitch is concerned, because a planning permission for holiday use is not a planning permission for residential use, and the two are mutually inconsistent. I also agree with Judge Cooke's observation at [62] that the fact that condition 1 had become unenforceable by 2014 was a good reason both to authorise the breach of condition and to certify that the residential use of the property was lawful, thereby rendering obsolete the limitation (or "functional restriction") to holiday use in the 1998 planning permission.

47. The upshot is that the UT was right to hold that the Certificate is the "relevant permission" for the purposes of ascertaining whether the site is a "protected site". That deemed permission has superseded the terms of the 1998 permission as the "relevant permission" for site licensing purposes.

48. It follows that the site is indeed a "protected site," and Ms Jaffe is entitled to the protection afforded by the 1983 Act. I would therefore dismiss this appeal.

Lady Justice Elisabeth Laing:

49. I agree.

Lady Justice Falk:

50. I also agree.