Neutral Citation Number: [2021] EWHC 2114 (Admin)

Case No: CO/653/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 July 2021

**Before** :

**MRS JUSTICE LANG DBE**

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**Between :**

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| **NORFOLK CARAVAN PARK LIMITED** | **Claimant** |
| **- and -** | |
| **(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT** | **Defendants** |
| **(2) BROADLAND DISTRICT COUNCIL** | |

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**Andrew Fraser-Urquhart QC** (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 dates: 13 & 14 July 2021

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# Approved Judgment

**Mrs Justice Lang :**

1. The Claimant applies for a statutory review, pursuant to section 288 of the Town and Country Planning Act 1990 ("TCPA 1990"), of the decision dated 15 January 2021, made by an Inspector appointed on behalf of the First Defendant, to dismiss the Claimant's appeal against the refusal by the Second Defendant ("the Council") to issue a lawful development certificate ("LDC") in respect of Merryhill Country Park, Telegraph Hill, Honingham NR9 5AT ("the Site"), under section 192(1)(a) TCPA 1990.

2. The Claimant has been the owner of the Site, which is used as a caravan park, since 23 April 2018. It applied for a LDC for residential use of the caravans on the Site.

3. The Council is the local planning authority for the area in which the Site is situated. It refused the application on the basis that the current planning permission, dated 13 April 2016, was subject to conditions which only allowed caravan occupancy for holidays, and prohibited residential use. The First Defendant dismissed the Claimant's appeal.

4. I granted permission to proceed with the claim on 30 March 2021.

## Planning history

5. The Site, which is some 5.47 hectares in size, is situated in a rural location. At the date of the appeal, there were some 94 pitches on the Site occupied by static caravans or mobile homes. There is also an area for touring caravans and amenities, including a swimming pool.

6. Since 1989 there have been a number of grants of planning permission on various parts of the Site, as summarised by the Claimant in its Statement of Case in the appeal. These have included permissions for "holiday home units", "touring pitches", "static holiday caravans", "permanent touring caravan pitches" and "static holiday homes" (also described as "holiday caravans" in the same permission). There were various occupancy conditions restricting use to certain times of the year. There were no grants of planning permission for any use other than holiday use.

### The 2004 Permission

7. The permission was simplified on 3 March 2004 when the Council granted a single planning permission in respect of the major part of the Site ("the 2004 Permission"). The Plan attached to the 2004 Permission was named "Holiday Home Site" by the applicant. The description of the development was "Use of Land for Holiday Caravan Park". It was subject to 5 conditions.

8. Condition 4 provided:

> "4. The holiday accommodation shall not be occupied by any person for a period exceeding four consecutive weeks and such a person shall not return within two weeks of such period."

9. The stated reason for Condition 4 was that "The site of this proposal lies outside an area in which the Local Planning Authority normally permits residential development.".

10. Condition 5 provided:

> "No static holiday accommodation shall be located within the following areas as shown on the amended plan dated 1 March 2004:
>
> i. The landscaping belt (edged and hatched green),
>
> ii. The two amenity areas (edged yellow),
>
> iii. The existing touring caravan area (edged pink); and,
>
> iv. The two house and garden areas and the covered swimming pool (edged blue)."

11. The reason for Condition 5 was stated as:

> "To ensure the satisfactory development of the site in accordance with Policy GS3 of the Broadland District Local Plan and (RD) GS4 of the proposed Broadland District Local Plan Replacement Version as agreed by the Council for publication of the Revised Deposit."

12. The 2004 Permission included a record of the Council's reasons for the grant of permission:

> "The Reasons for granting Planning Permission are:
>
> ..…
>
> The site lies outside of the development boundary as identified by Policy GS1 of the local plan. However the site is a well-established holiday park which benefits from planning permission. Numerous planning permissions relate to the site and the purpose of this application is to simplify the planning situation. This consent therefore applies to the entire site and is subject to a widely accepted holiday occupation condition. This is a significantly simpler solution to the previous situation and will allow a site licence to be issued. Other benefits include the identification of a wide landscaping belt, which will enhance the Area of Important Landscape Quality, and areas where caravans can be located. There are no residential amenity issues.
>
> ..…"

## Daffodil Cottage

13. On 26 October 2015, the Council granted a LDC to the occupiers of a static mobile home on the Site (Daffodil Cottage), because of their continued residential occupation in breach of condition 4 of the 2004 Permission, beyond the expiry of the time for taking enforcement action.

## The 2016 Permission

14. In 2016, the previous owner of the Site applied to vary Condition 4 of the 2004 Permission, pursuant to section 73 TCPA 1990. The application succeeded and planning permission was granted, subject to conditions, on 13 April 2016 ("the 2016 Permission"). The type of application was stated to be "Amendment Section 73". The description of the development was:

> "Variation of Condition 4 (Holiday Occupancy) of Planning Permission 200040023 – Use of Land for Holiday Caravan Park"

15. The 2016 Permission was granted subject to a single condition with three separate elements, and read as follows:

> "1(1) The caravans are occupied for holiday purposes only.
>
> (2) The caravans shall not be occupied as a person's sole or main place of residence.
>
> (3) The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans and of their home address, confirmed by two proofs of residence and shall make this information freely available at all reasonable times to the local planning authority."

16. The stated reason for the condition was:

> "To prevent the occupation of seasonal holiday accommodation on a permanent basis in accordance with the requirements of Policy E3 of the Development Management DPD 2015."

17. The 2016 Permission included an informative as follows:

> "This application relates solely to Condition 4 of 20040023 and there are conditions attached to the previous approval of 20040023 permission which may still be applicable."

## The Claimant's application for a LDC

18. On 23 May 2018, the Claimant applied under 192(1)(a) TCPA 1990 for a LDC for "the use of the land for the siting of caravans for the purposes of human habitation including as a person's sole or main place of residence" (hereinafter "residential use").

19. On 22 November 2018, the Council refused the application on the basis that the condition to the 2016 Planning Permission only permitted occupancy for holiday purposes, and prohibited occupancy for residential use. The Council was satisfied that the 2016 Planning Permission had been implemented because the previous owner provided the Council with a copy of the register of occupants in compliance with condition 1(3) of the 2016 Planning Permission.

## The Inspector's decision

20. The Inspector (Mr Stephen Brown MA (Cantab) DipArch RIBA) conducted a virtual hearing. By a decision letter dated 15 January 2021 ("DL"), he dismissed the appeal.

21. In summary, the Inspector concluded:

    i) residential use would not fall within the scope of the 2004 Permission since a holiday use was a "distinctly different purpose from that of everyday or permanent residential accommodation" (DL 14, 18);

    ii) residential use would amount to a breach of Condition 4 of the 2004 Permission (DL 15);

    iii) as a matter of fact and degree, residential use would amount to a material change of use in that "the effect would be to introduce permanent residential accommodation into an area where it would not normally be permitted" (DL 16);

    iv) the condition on the 2016 Permission "imposes the clear restriction that the caravans on the site are to be occupied for holiday purposes only" (DL 18);

    v) the 2016 Permission had been implemented (DL 20);

    vi) the LDC granted to Daffodil Cottage did not apply to the entire Site and it was open to the Council to issue enforcement notices in respect of individual pitches, defining the alleged breach in each case (DL 21- 27).

## Grounds of challenge

22. The Claimant relied on three grounds of challenge.

### Ground 1

23. Ground 1 was founded upon the principle that there was no change of use at the Site. It was divided into three parts:

    i) The Inspector erred in law in concluding that Condition 4 to the 2004 Permission was effective to prevent the use of the Site for static residential caravans.

    ii) The Inspector therefore erred in his conclusion that, notwithstanding the principles in the *I'm Your Man Ltd v Secretary of State for the Environment*

[1998] 4 PLR 107 line of authority, the terms of the 2004 Permission did not permit the use of the Site for static residential caravans.

iii) The Inspector erred in concluding that the 2016 Permission (which does contain an effective condition preventing the use of the site for static residential caravans) had been implemented and had the consequence of preventing reliance on the 2004 Permission to render lawful the use of the site for static residential caravans.

**Ground 2**

24. The Inspector's conclusion (in DL 16) that "as a matter of fact and degree the proposed use should be seen as a material change in that the effect would be to introduce permanent residential accommodation into an area where it would not normally be permitted….." was fundamentally flawed because he failed to consider the effects of the different land uses, and there was insufficient evidence to justify his conclusion.

**Ground 3**

25. The Inspector failed to give any, or any adequate, reasons for his conclusion that there was a material change of use, and failed to identify what evidence he relied upon.

26. The First Defendant responded by identifying the discrete issues which were in dispute. It was common ground that, by section 192(2) TCPA 1990, the proposed residential use fell to be tested at 23 May 2018, which was the date of the Claimant's application for the LDC ("the relevant date"). The First Defendant submitted that, as at the relevant date, the Inspector was entitled to conclude that:

i) The 2016 Permission had been implemented and was capable of being enforced;

ii) The proposed residential use would have amounted to a breach of Condition 4 of the 2004 Permission;

iii) The proposed residential use would not amount to use as a "holiday caravan park" and so would fall outside the scope of the 2004 and 2016 Permissions;

iv) The proposed residential use would amount to a material change of use from the holiday use which was permitted at 23 May 2018, and was currently in operation.

## Legal framework

### (i) Applications under section 288 TCPA 1990

27. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with, and in consequence, the interests of the applicant have been substantially prejudiced.

28. In *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [2018] PTSR 746, at [6] – [7], Lindblom LJ set out the principles upon which the Court will act in a challenge under section 288 TCPA 1990.

29. The general principles of judicial review are applicable. Thus, the Claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

30. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits….."

31. A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

32. The Inspector was under a duty to give reasons for his decision. In *South Buckinghamshire District Council v Porter* (No 2) [2004] 1 WLR 1953, Lord Brown reviewed the authorities and gave the following guidance on the nature and extent of the inspector's duty to give reasons:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner,

> recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

33. Lord Brown's classic statement was held to be applicable in all planning decision-making in *R (CPRE Kent) v Dover District Council* [2017] UKSC 79, [2018] 1 WLR 108, per Lord Carnwath, at [35] – [37].

**(ii) Lawful development certificates**

34. By section 192 TCPA 1990, a person may apply for a certificate of lawfulness of proposed use or development. Section 192(1) and (2) provide:

> "(1) If any person wishes to ascertain whether—
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> (a) any proposed use of buildings or other land; or
>
> (b) any operations proposed to be carried out in, on, over or under land,
>
> would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
>
> (2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
>
> ….."

35. By section 195 TCPA 1990, an applicant may appeal to the Secretary of State against a refusal of an application under section 192 TCPA 1990.

**(iii) Planning permission and conditions**

36. Under section 55 TCPA 1990 "development" means the "carrying out of building, engineering or other operations in, on, over or under land" or "the making of any material change in the use of any building or other land".

37. Section 57 TCPA 1990 provides that planning permission is required for development.

38. By section 70(1)(a) TCPA 1990, a local planning authority "…may grant planning permission, either unconditionally or subject to…such conditions as they think fit".

39. Section 72 TCPA 1990 confers power to impose conditions upon the grant of planning permission. It provides, so far as is material:

> "**Conditional grant of planning permission**
>
> 72 (1) Without prejudice to the generality of section 70(1), conditions may be imposed on the grant of planning permission under that section –
>
> (a) for regulating the…use of any land under the control of the applicant…so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission…"

40. Section 73 TCPA 1990 provides, so far as is material:

> "**Determination of applications to develop land without compliance with conditions previously attached.**
>
> 73(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
>
> (2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
>
> (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
>
> (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
>
> …"

41. Section 73A TCPA 1990 provides:

> "**73A.— Planning permission for development already carried out**.
>
> (1) On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.
>
> (2) Subsection (1) applies to development carried out—

> (a) without planning permission;
>
> (b) in accordance with planning permission granted for a limited period; or
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> (c) without complying with some condition subject to which planning permission was
>
> granted.
>
> (3) Planning permission for such development may be granted so as to have effect from—
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> (a) the date on which the development was carried out; or
>
> (b) if it was carried out in accordance with planning permission granted for a limited period,
>
> the end of that period."

42. Long-established policy on the imposition of conditions was re-stated in the National Planning Policy Framework ("the Framework"). Paragraph 55 states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

## Conclusions

43. Whilst not intended any discourtesy to Mr Fraser-Urquhart QC, I consider it is more helpful to analyse the issues in the manner set out by Mr Mackenzie, with some alteration to the sequence.

**Issue 1: was the Inspector entitled to conclude that, as at the relevant date, the 2016 Permission had been implemented and was capable of being enforced?**

44. The Inspector concluded that the 2016 Permission had been implemented in the circumstances described in DL 17 - 20:

> "17. The 2016 permission was for the same development – that is, use of the land as a holiday caravan park, but without complying with Condition 4 of the 2004 permission. It is apparent from correspondence that the s.73 application was submitted in order to introduce a less restrictive condition than that imposed in 2004, in that it would no longer prevent an owner or other occupant from occupation on two consecutive weekends.
>
> 18. Part 1 of the condition on the 2016 permission imposes the clear restriction that the caravans on the site are to be occupied for holiday purposes only. As I have found above, use of the

> words 'holiday purposes' indicates a distinctly different type of use from 'residential purposes'. Furthermore part 2 says that none of the caravans shall be occupied as a person's sole or main place of residence. Part 3 then requires that the owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans and of their main home address confirmed by two proofs of residence. This latter part effectively prevents owners/occupiers from establishing permanent residential status for individual caravans by means of LDC applications.
>
> 19. As the appellant says, the new permission does not take away or replace the earlier permission, and there is no requirement to commence the new permission. However, the Supreme Court judgement in *Lambeth* [*Lambeth London Borough Council v SSHCLG & Others* [2019] UKSC 33] endorses the view taken in *Pye* [*Pye v SSETR* [1999] PLCR 28] that where a permission is granted under s.73 it is open for a developer to choose whether to implement the new permission or the one originally granted. In this case the appellant could choose whether to operate the site in accordance with conditions on the 2004 planning permission or the condition on the 2016 planning permission. However, it is not open to him to pick and choose one permission or the other.
>
> 20. It is apparent that the site owner has complied with the 2016 condition in that the required register of site occupants has been maintained. Indeed I would find it surprising if this had not been the case, since the newer condition is significantly less onerous than that on the 2004 permission, and the then owner had made his application on that basis. However, in either case I consider use of the caravans as sole or main places of residence would be in breach of condition."

***Claimant's submissions***

45. The Claimant rightly accepted that, if the 2016 Permission had been implemented, the proposed residential use would have been in breach of the condition which expressly only permitted occupation for holiday purposes, and prohibited occupation as a person's sole or main place of residence, and therefore his application for a LDC could not succeed.

46. However, the Claimant criticised the Inspector's findings and conclusions on implementation on the following basis:

    i) there was no evidence upon which the Inspector could rationally draw the conclusion that the site register was introduced in response to condition 1(3) of the 2016 Permission, rather than as a normal business practice;

ii) there was no evidence before the Inspector that the pattern of occupation of the Site changed after the grant of the 2016 Permission, reflecting the removal of the restrictions in Condition 4 of the 2004 Permission;

iii) it was impossible to conclude that the prohibition on residential use in the 2016 Permission had been complied with, as the Council's Schedule recorded 35 units in residential use from at least 2010.

***Conclusions***

47. The Claimant did not take issue with the Inspector's analysis of the effect of the 2016 Permission, as correctly set out in DL 19. Essentially, its challenge was to the Inspector's analysis of the evidence before him. Whether or not the previous owners had decided to implement the 2016 Permission was quintessentially a matter of fact and judgment for the Inspector to decide, and it was not open to the Claimant to re-argue the substance of those issues in this Court.

48. In my judgment, the Inspector was entitled to accept the evidence and submissions from the Council that the 2016 Permission had been implemented.

49. The Council's Decision Notice refusing the LDC, dated 22 November 2018, included as part of the reasons for refusal:

> "The current planning permission that relates to the Land is ref: 20160288 which came about through the s.73 application dated 13 April 2016 (the "Current Permission"). This Current Permission has been implemented because Broadland District Council was provided with a copy of the register referred to in Condition 1(3) of the Current Permission by the previous owners of the site.
>
> …. As stated, the Current Permission has been implemented given that the previous owners provided the Council with a copy of the register they were obliged to provide pursuant to Condition 1(3) of the Current Permission."

50. The Council's Statement of Case for the appeal stated:

> "5.3 …… The Council considers that the 2016 Permission is the relevant and current permission which has been implemented on the site. Part (3) of the condition of that permission requires the owners/operators to maintain an up-to-date register of the names of all owners/occupiers of individual caravans and of their main home address.
>
> The register, which is evidence of the owners/occupiers individual caravans having separate main home addresses (not being the caravan) is in existence and a copy can be provided confidentially as it contains personal information, if required by the Inspector, as this is in fulfilment of part (3) of the condition.

> It is considered to be good evidence of the implementation of the 2016 permission."

51. The Claimant did not challenge the Council's assertion that the register had been provided to the Council by the previous owners. Nor did it submit that the register was maintained and provided to the Council as part of normal business practice, rather than in compliance with Condition 1(3) to the 2016 Permission. In my view, if it did not accept that the register had been provided, and/or that it had not been provided in order to comply with Condition 1(3), it would have requested production of the register at the appeal, when the Council offered to produce it, and then challenged the Council's evidence.

52. Instead, the Claimant presented its case on the basis that the register had indeed been provided to the Council, but that fact was not sufficient to establish implementation of the permission. In its Statement of Case, the Claimant said: "The LPA identify that the site operator appeared to comply with the requirements of the 2016 permission and have sought to interpret that, as a consequence the permission has therefore been implemented" (paragraph 66). The Claimant then submitted that, as a matter of law, the act of providing the register could not have commenced the development. In a subsequent submission, called "Final Comments", the Claimant again did not challenge the Council's factual evidence on the submission of the register (paragraph 10).

53. I turn to address the Claimant's criticisms set out at paragraph 46 above.

54. In my view, the register required by Condition 1(3) of the 2016 Permission went significantly beyond what might reasonably be expected as normal business practice for an operator of a caravan site, in two respects. First, it required an occupant to provide two proofs of residence at their main home address. Second, it required that the information be made available to the local authority. There was no requirement to maintain and provide such records before 2016.

55. Neither the Council nor the Claimant adduced any evidence about the pattern of occupation either before or after the 2016 Permission, and therefore the Inspector did not make a finding on this point. If it was a point that the Claimant wished to rely upon, one would have expected it to produce evidence about it, based on the business records which must be in his possession. After all, the burden of proof rested on the Claimant, both in the application for a LDC under section 192(1)(a) TCPA 1990, and in the appeal to the Inspector under section 195 TCPA 1990.

56. At the appeal, the Council produced a Schedule giving details of occupation of 35 units, as at the relevant date (23 May 2018). I infer that the Schedule was based upon information gathered by the Council from the Claimant's register and its own enquiries. At the appeal, the Claimant did not dispute its contents. In my view, Mr Fraser-Urquhart QC's analysis of the Schedule as set out in paragraph 46(iii) above was mistaken. The limitation period for enforcement is 4 years, not 10 years. There were only 12 caravans on the Site, not 35 caravans, that had been in residential use for 4 years or more and therefore were now immune from enforcement. The Schedule showed that 5 caravans were in residential use unlawfully. There were 8 caravans which were compliant with Condition 1 in the 2016 Permission, and a further 6 caravans which were potentially compliant, but confirmation was awaited.

57. At DL 21 to 26, the Inspector considered the Claimant's submission that because of the LDC granted in respect of Daffodil Cottage, and the 12 units in the Schedule which had established lawful residential use, it was not possible to implement the 2016 Permission across the entire Site. The Inspector accepted the Council's legal submission that, applying *St Anselm Development Co. v FSS and Westminster City Council* [2003] EWHC 1592 (Admin), each caravan pitch should be considered separately for the purposes of enforcement. The Inspector found that there were 94 pitches on the Site. As lawful residential use had only been established for 12 units and Daffodil Cottage, it was not "impossible" to conclude that Condition 1 to the 2016 Permission had been substantially complied with.

58. For these reasons, I conclude, on Issue 1, that the Inspector was entitled to conclude that, as at the relevant date, the 2016 Permission had been implemented and was capable of being enforced.

***First Defendant's late submissions***

59. In his skeleton argument filed shortly before the hearing, Mr Mackenzie relied on an unpleaded point which was not raised before the Inspector, namely, that the 2016 Permission must have been granted pursuant to section 73A TCPA 1990 because it was retrospective, whereas the wording of section 73(1) TCPA 1990 envisages a prospective development. The only "development" was the original change of use of the land from agricultural use to use as a caravan park many years previously. A variation of condition is not "development".

60. Mr Mackenzie went on to submit that where retrospective permission is granted, whether it be under sections 73 or 73A TCPA 1990, it takes effect immediately, relying upon the case of *Lawson Builders Ltd v Secretary of State for Communities and Local Government* [2015] EWCA Civ 122.

61. In my judgment, Mr Mackenzie's submission was misconceived. Although the wording in section 73(1) TCPA 1990 envisages a prospective development, it is well-established that it may be relied upon in cases where the development has already taken place, and variation of conditions is the only change sought: see *Lambeth*, per Lord Carnwath at [12] to [14].

62. The purpose and scope of section 73A TCPA 1990 is different to that of section 73 TCPA 1990 in several respects: see the annotations to section 73A in volume 2 of the *Encyclopedia of Planning Law and Practice*, at P73A.04, and *R (Wilkinson) v Rossendale BC* [2003] JPL 82. The power under section 73A TCPA 1990 to grant planning permission retrospectively is limited to the cases set out in subsection (2), namely, where development has been carried out (a) without planning permission; (b) in accordance with planning permission granted for a limited period; or (c) without complying with some condition subject to which planning permission was granted. The present case does not fall within any of these categories.

63. The case of *Lawson* is plainly distinguishable on the facts. In *Lawson*, the Court held that the grant of permission under section 73A TCPA 1990 took effect at the date of grant, and the applicant had no choice in the matter, because the development had been completed, in breach of conditions, and the sole purpose of the grant of retrospective

planning permission was to regularise the development. In contrast, in this case, the applicant for the 2016 Permission could elect whether to continue to operate the caravan park under the 2004 Permission or to implement the 2016 Permission. Either option was lawful, though the election could only be made once. See DL 19, where the Inspector summarised this principle, citing *Lambeth*, per Lord Carnwath at [9], and *Pye v Secretary of State for the Environment, Transport and the Regions* [1999] PLCR 28.

64. Therefore Mr Mackenzie's alternative submission on Issue 1 does not succeed.

**Issue 2: was the Inspector entitled to conclude that the proposed residential use would not amount to use as a "holiday caravan park" and so would fall outside the scope of the 2004 and 2016 Permissions?**

**Issue 3: was the Inspector entitled to conclude that, as at the relevant date, the proposed residential use would have amounted to a breach of Condition 4 of the 2004 Permission?**

65. It is convenient to consider Issues 2 and 3 together.

66. The Inspector's conclusions on Issues 2 and 3 were as follows:

> "12. The appellant argues that there is no enforceable condition that prevents occupation of the caravans on the site as a person's sole or main place of residence. Further, an application made and approved under s.73 of the Act does not take away or replace the earlier planning permission but results in a new permission that may or may not be implemented. The judgement in the High Court case *I'm Your Man [I'm Your Man Ltd v Secretary of State for the Environment* [1999] 77 P&CR 251] establishes that any restriction on use following implementation of a planning permission must be imposed by way of conditions, and a condition cannot be implied.
>
> 13. Regarding Condition 4 on the 2004 planning permission the appellant accepts as uncontroversial this is intended to control occupation of the caravans by precluding periods of occupation and return. However, he goes on to say that the permission does not prevent other caravans of a different type from being stationed on the site, nor is use of a caravan as a person's sole or main place of residence precluded.
>
> 14. In my view the approach to be employed is to consider what use or uses have been granted by the permissions, and whether the proposed use would fall within the permitted use or uses. The use permitted in 2004 was as a holiday caravan park. 'Holiday' is defined on the Shorter Oxford Dictionary as 'cessation from work', or as 'recreation'. Taking this as the ordinary meaning, it follows that the caravans are sited for a distinctly different purpose from that of everyday or permanent residential

> occupation. I do not consider the permitted use can be widened out to include this proposed use.
>
> 15. Condition 4 imposed on the 2004 permission then restricts occupation of the holiday accommodation to periods of four weeks after which the occupants may not return for a period of two weeks. I take use as a sole or main place of residence to mean that occupants could live in the accommodation permanently or for such periods as they freely chose. I accept that the description of the development in the 2004 permission as 'use of the land as a holiday caravan park' does not explicitly exclude other caravans of a different type, provided no material change of use were entailed, and may be regarded as permissive. However, Condition 4 imposes a clear restriction on all the caravans–as holiday accommodation–and requires a somewhat regimented and intermittent pattern of occupation. In my view this is an explicit condition that restricts the extent of the permitted use, such that it removes the freedom to occupy the caravans permanently or at will. There may be other uses, not specifically for holiday purposes, that could coincide with such an intermittent pattern. While I have difficulty in imagining what they might be, they cannot be seen as providing a sole or main place of residence as it is reasonably understood.
>
> 16. The proposed use cannot on the balance of probabilities be regarded as use for the siting of holiday caravans and does not fall within the use permitted by the 2004 permission. …
>
> 17. The 2016 permission was for the same development – that is, use of the land as a holiday caravan park, but without complying with Condition 4 of the 2004 permission. ...
>
> 18. Part 1 of the condition on the 2016 permission imposes the clear restriction that the caravans on the site are to be occupied for holiday purposes only. As I have found above, use of the words 'holiday purposes' indicates a distinctly different type of use from 'residential purposes'. Furthermore part 2 says that none of the caravans shall be occupied as a person's sole or main place of residence. …"

***Claimant's submissions***

67. The Claimant accepted that the restrictions on periods of occupancy in Condition 4 applied to the caravans that were in use for holiday purposes. However, it submitted that Condition 4 did not apply to caravans that were in use for other purposes, in particular, residential use because it only applied to "[t]he holiday accommodation", as referred to in the first line of the Condition. Similarly, Condition 5 drew a distinction between the area for touring caravans and the pitches where static caravans were situated.

68. The Claimant further submitted that the Inspector erred in concluding that the permitted use was that of a holiday caravan park and therefore the proposed residential use fell outside the terms of the permission.

69. His conclusion was contrary to the well-known principle established in the case of *I'm Your Man* and further considered, in the context of caravans, in *Cotswold Grange Country Park v Secretary of State for Communities and Local Government* [2014] EWHC 38 (Admin) and again in *R (Altunkaynak) v Northampton Magistrates' Court* [2012] EWHC 174 (Admin). The principle is summarised in the following short extract from the Divisional Court's judgment in *Altunkaynak*:

> "The relevant principle, drawn from the wording of the statute, is a general one: if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition."

70. The grant of permission was for a caravan site. The use of the word "*holiday*" cannot serve as a definition of the essential land use permitted. Instead, it is a form of limitation of the essential land use permitted, which cannot, absent a relevant effective condition, bring about a limitation of the permission. A restriction on the manner in which caravans on a caravan site can be used clearly amounts to a limitation and therefore can only be secured by condition. As Hickinbottom J. held in the *Cotswold Grange* case at [15]:

> "the grant identifies what can be done – what is permitted – so far as use of land is concerned; whereas conditions identify what cannot be done – what is forbidden."

71. The Caravan Sites and Control of Development Act 1960 ("the 1960 Act") defines a "caravan" in section 29 as follows:

> "'Caravan' means 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…"

72. The term "caravan site" is defined in section 1(4) of the 1960 Act as:

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

73. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") adopts these definitions in the 1960 Act.

74. Touring caravans and static caravans are not defined separately under the relevant Acts. As confirmed in *Breckland DC v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 292 (Admin), in the context of a certificate of lawfulness which permitted a "caravan and camping site", it was held per Lang J. at [43]:

> "There is no reason in principle why the Site should not include a mix of campers in tents, touring caravans and permanently situated mobile homes."

Thus, it was recognised that the type of caravan did not change the land use.

***Conclusions***

***Legal principles***

75. The leading authorities are *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 WLR 85 and *Lambeth LBC v Secretary of State for Housing, Communities and Local Government* [2019] 1 WLR 4317.

76. In *Trump* at [34], Lord Hodge said:

> "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. Whether the court may also look at other documents that are connected with the application for the consent or are referred to in the consent will depend on the circumstances of the case, in particular the wording of the document that it is interpreting. Other documents may be relevant if they are incorporated into the consent by reference …..or there is an ambiguity in the consent, which can be resolved, for example, by considering the application for consent."

77. In *Lambeth*, the Supreme Court affirmed the principles set out in *Trump*. Lord Carnwath concluded at [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."

78. In *Lambeth*, a DIY store applied under section 73 TCPA 1990 for a variation of a condition to the grant of planning permission to widen the range of goods which could be sold from the premises, whilst maintaining the existing restriction on the sale of food. The local planning authority granted the application, thereby creating a new planning permission, but the decision notice only referred to the restriction on the sale of food in a description of the variation which had been approved, instead of imposing a condition

to that effect, and did not incorporate the relevant condition from the previous permission.

79. Lord Carnwath recorded, at [26], that in line with the decision in *I'm Your Man*, the local planning authority did not seek to argue that the proposed wording could be treated as an enforceable "limitation" on the permission. Counsel for Lambeth accepted the need to establish that the permission was subject to a legally effective condition. The Court accepted his submission that the correct interpretation of the permission was that it imposed the condition described in the operative part of the grant.

80. *Lambeth* did not address the issue which has arisen in this case, namely, the scope of the principle enunciated in *I'm Your Man*, and the class of cases where the Court has interpreted the grant of permission as being subject to a functional limitation.

81. In *Wall & Ors v Winchester CC* [2015] EWCA Civ 563, the Court of Appeal held that a grant of planning permission for use of land as "a travelling showpeoples' site" was a distinct and narrower use than a use as a residential caravan site. It was not a grant of permission to use the land as a residential caravan site with an ineffective attempt to limit that use to travelling showpeople.

82. Sullivan LJ reviewed the authorities of *Wilson v West Sussex CC* [1963] 2 QB 764, *Williamson (Deceased) Executors v Cambridge CC* [1977] 34 P & CR 117 and *Waverly DC v Secretary of State for the Environment* [1982] JPL 105, at [12] – [17]. Applying the principles in those cases, he concluded as follows:

> "19. The planning permission in the present case was for a change of use of agricultural land to travelling showpeoples' site. It permitted that change of use and no other. It did not permit a change of use to a use for the stationing of caravans for residential purposes by persons who were not travelling showpeople. Since there was no occupancy condition use of the site by occupiers who were not travelling showpeople was not prohibited. Whether the site was being used by non-travelling showpeople and, if so, whether that use was a material change of use from an initial use by travelling showpeople, were matters of fact and degree, which the Inspector should have determined, but did not, because he misunderstood the effect of the decision in *I'm Your Man*.
>
> 20. The limitation of the use to a site for travelling showpeople is just as much a functional limitation on the 2003 planning permission as were the limitations to "agricultural cottage" or "site for caravans occupied by gypsies" or "depot for cattle transport lorries". When the planning permission was granted in 2003 it was clear from Circular 22/91 "Travelling Showpeople" that there were specific characteristics that sites had to meet if they were to be suitable for travelling showpeople.
>
> 21. The *I'm Your Man* line of authorities has, in my judgment, been misunderstood by the appellants, and it was misapplied by the Inspector in paragraph 26 of his decision. It was not relevant,

in the circumstances of the present case, when the allegation in the enforcement notice was that there had been a material change of use from use as a travelling showpeoples' site to use as a caravan site for persons who were not travelling showpersons. As Mr Mott said in paragraph 45 of his judgment, the unifying feature of the *I'm Your Man* line of authorities is that the use remained the same. Thus:

> (i) In *I'm Your Man* the same warehouse/factory for sales, exhibitions and leisure activities use continued after the expiration of the 7-year period. Plainly, a continuation of the same use did not amount to a material change of use. It simply does not follow that the planning permission for the change of use was granted for a period of more than 7 years.
>
> (ii) In *Altunkaynak* [2012] EWHC 174 (Admin) the same restaurant takeaway and hot food takeaway business was continuing, but in No 15B alone and not in No 15 — see paragraph 20 of *Cotswold Grange County Park LLP v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin). Continuing a use which has been taking place in two adjoining premises in only one of those premises is not a material change of use of the premises in which the use continues.
>
> (iii) In *Cotswold Grange* the use of the site for the stationing of caravans remained the same. There was simply an increase in the number of caravans — a further six caravans in addition to 54 existing caravans. While the planning permission permitted the stationing of 54 and not 60 caravans, there was no material change of use from the permitted 54 caravans.
>
> (iv) *Smout v Welsh Ministers and Wrexham County Borough Council* [2011] EWCA Civ 1750 was concerned with planning permissions for landfilling which envisaged, but did not require, that the landfilling would be carried out in phases lettered A to F. Simply changing the order in which the permitted landfilling was carried out did not amount to either a material change of use or operational development without planning permission.

22. It can be seen that in none of these cases was there an alleged change of use from the permitted use to some other use. If such a change is alleged in an enforcement notice, then in the absence of any condition limiting the use of the site to the permitted use, the question in every case will be: has the alleged change of use taken place and, if so, is it a material change of use for planning purposes? If the answer to either of these questions is "no" there will have been no development, so planning permission will not be required. If the answer to both these questions is "yes" there

will have been development and planning permission will be required. The position was accurately summarised by Hickinbottom J in paragraph 15 of his judgment in *Cotswold Grange Country Park*:

> "…the grant identifies what can be done – what is permitted – so far as use of land is concerned; whereas conditions identify what cannot be done – what is forbidden. Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use – for which planning permission is required, because such a change is caught in the definition of development – generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition, a breach of condition being an enforceable breach of planning control."

23. There is no suggestion in *I'm Your Man*, *Cotswold Grange Country Park* or *Altunkaynak* that the Court of Appeal's decision in *Wilson* or the decisions in which *Wilson* was subsequently applied were wrong, nor could there have been such a suggestion since *I'm Your Man* and *Cotswold Grange Country Park* were first instance decisions and *Altunkaynak* was a Divisional Court decision. Understandably, in these circumstances, Mr Rudd placed considerable emphasis upon the decision of the Court of Appeal in *Smout* in support of his submission that the imposition of a limitation in the 2003 planning permission to travelling showpeoples' site was unlawful. The basis for this submission was said to be paragraph 20 of the judgment of Laws LJ, with whom Pitchford LJ and Lloyd Jones J, as he then was, agreed.

24. Having referred to the Inspector's conclusion that there was nothing in either the planning permission or the plans which required the permitted landfilling to be carried out in any particular sequence, Laws LJ said this in paragraph 20 of his judgment:

> "20. In my judgment the inspector was right. Specifically, there is nothing in the planning permission to require the phases to be developed in alphabetical order. If a planning authority desires to impose a restriction or limitation upon development being permitted by the permission in hand, that must be done by means of a condition attached to the planning permission: see the decision of Mr Robert Purchas QC, sitting as a divisional judge of the Queen's Bench in *I'm Your Man Limited v Secretary of State* [1999] 77 P&CR 251. Here the conditions attached to the planning permission are set out in Annex C. There is

> no condition requiring the phases to be developed in alphabetical order. Mr Harwood referred this morning to the terms of the environmental statement in the case, consolidated as I have indicated in 1992. He says that that shows the importance of fulfilling the phases in order. However, the environmental statement plainly does not constitute a planning condition."

> 25. In the context of the planning permissions for landfill in that case, the proposition that if the local planning authority wished to ensure that the landfilling was carried out in a particular sequence of phases, then it had to impose a condition to that effect is wholly unexceptional. However, those observations of Laws LJ are not authority for the proposition that any limitation in the form of a description of the development that is permitted in a planning permission is unlawful. *Wilson* is not referred to in *Smout*. That is not surprising as there was no need to do so, because in *Smout* there was no change from the operational development that had been permitted, namely landfilling.

> 26. It is possible that the use of the word "limitation" in the judgments has contributed to the misunderstanding of the effect of the *I'm Your Man* line of authorities. The simple proposition which should not be lost sight of is that the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself. Whether other uses would or would not be materially different from the permitted use is irrelevant for the purpose of ascertaining what use is permitted by the planning permission. If the permitted use has been implemented, and a change to the permitted use takes place, then it will be a question of fact and degree whether that change is a material change of use."

83. I do not consider that *Cotswold Grange* provides support for the Claimant's approach. In that case, the site had planning permission to be used as a "Holiday Caravan Park", but without any condition restricting the type of use. The landowner applied for a LDC to certify that it would be lawful to station 6 residential caravans on the site. Hickinbottom J. did not hold that the stationing of these additional residential caravans was within the scope of the permission, despite the absence of a condition. Hickinbottom J. remitted the matter back to the Secretary of State to consider whether the siting of 6 residential caravans would materially change the use of the planning unit. If it did, it would be unauthorised and would require planning permission.

***The scope of the 2004 Permission***

84. In this case, the Inspector correctly followed the approach in *Winchester*, namely, "to consider what use or uses have been granted by the permissions, and whether the proposed use would fall within the permitted use or uses" (DL 14). The relevant words are the description of the permission as "Use of Land for Holiday Caravan Park". Just as the words highlighted by Sullivan LJ in *Winchester* at [20] were properly regarded

as "functional limitations" on the relevant planning permissions in the *Wilson* and *Williamson* & *Stephens* cases as well as in *Winchester* itself, the word "holiday" clearly qualifies the term "caravan park" in the 2004 Permission. The word "holiday" is just as much a component of the use permitted by the 2004 Permission as the word "caravan" and the scope of the 2004 Permission can only be ascertained if regard is had to this word.

85. In suggesting that the word "holiday" needs effectively to be ignored because it imposes a "form of limitation on the essential land use permitted" (Statement of Facts and Grounds paragraph 29) the Claimant has fallen into the trap identified by Sullivan LJ in *Winchester* at [26], of being confused by the use of the word "limitation" in *I'm Your Man*. As Sullivan LJ held at [20], any functional limitation in the grant of permission must be properly understood by a decision-maker who has to decide if a proposed use falls within, or outside, the scope of a permission.

86. In my view, the Site did fall within the broad statutory definition of a "caravan site" on which "caravans", as defined in the 1960 Act, were situated. However, planning permission was not granted for "a caravan site". As a matter of ordinary and objective language, a holiday caravan park is conceptually and linguistically different to a caravan site simpliciter, or a residential caravan park/site. Contextually, the 2004 Permission refers to "holiday accommodation", seeks to prevent medium and long term occupation of caravans by Condition 4, and states that the "site is a well-established holiday park". No reasonable reader would be under the illusion that the 2004 Permission was expanding the types of uses/tenures that could take place in the caravans or at the Site.

87. In my judgment, the Inspector's approach in DL 14 was correct. He had regard to the ordinary meaning of the word "holiday" and concluded that "the caravans are sited for a distinctly different purpose from that of everyday or permanent residential occupation" and the permitted holiday use could not be widened out to include the proposed residential use. It is obvious that a use of land for permanent residential accommodation is not exactly the same use as a "holiday caravan park.". As to whether the two uses are materially different, that is a different issue which the Inspector went on to consider later in his decision.

88. The Claimant's reliance on my judgment in *Breckland DC* was misconceived. In that case, I upheld an Inspector's finding that the natural and ordinary meaning of the words of the relevant LDC, which established the lawful use of the site to be "the use of land as a caravan and camping site", did not include any qualification or limitation on the type of caravan use permitted at the Site. The LDC was worded quite differently to the permission in this case, which clearly does qualify or limit the type of caravan use at this Site. I also accepted the Defendants' submission that the uses established as lawful by the LDC were not inherently incompatible with each other, and it was in that context that I observed, at [42], that there was no reason in principle why the site should not include a mix of campers in tents, touring caravans and permanently situated mobile homes. That observation does not assist the Claimant in this case where the permission does qualify or limit the type of caravan use.

89. Finally, the Inspector found that the 2016 Permission was for the same development – that is, use of the land as a holiday caravan park – as the 2004 Permission (DL 17). For the reasons I have set out above, that finding was clearly correct.

***Condition 4***

90. As to Condition 4, its natural and ordinary meaning was that the accommodation on the Site which was used by holidaymakers (as opposed to buildings or caravans used for administration or provision of amenities) was subject to occupancy restrictions. The reasonable reader would consider that the occupancy restrictions were so stringent as to be incompatible with residential use. The stated reason for the condition was that "the site lies outside an area in which the Local Planning Authority permits residential development", which the reasonable reader would take as confirmation that its purpose was to prevent residential use by restricting the amount of time which an occupier could spend in a caravan.

91. Condition 4 fell to be interpreted in the context of the permission as a whole, and the stated reasons for it. The permission was for use as a "Holiday Caravan Park", indicating that the occupants of the caravans would be on holiday. The reasons for the grant of permission reinforced the holiday use of the Site, describing it as a "well-established holiday park". It also stated that "This consent therefore applies to the entire site and is subject to a widely accepted holiday occupation condition". This sentence suggested that the "entire site" was subject to the "holiday occupancy condition" i.e. Condition 4.

92. Condition 5 restricted the location of "static holiday accommodation" within the Site. The stated reason was to ensure the satisfactory development of the Site, in accordance with the Local Plan. This was also referenced in the reasons for the permission, which referred to the identification of a wide landscaping belt, and areas where caravans can be located. The reasonable reader would consider that this restriction on the location of static caravans within the Site would logically apply to all the static caravans on the Site, and any exceptions would have been specified in the permission. As to the Claimant's submission on Condition 5, the reasonable reader, interpreting Condition 5 in the context of the permission as a whole, would conclude that both the static caravans and the touring caravans were for holiday purposes.

93. The Inspector's conclusion, in DL 14, that Condition 4 imposed a clear restriction on all the caravans on the Site which was incompatible with use as a sole or main place of residence, is unassailable in my view.

94. Therefore, I conclude on Issue 2 that the Inspector was entitled to conclude that the proposed residential use would not amount to use as a "holiday caravan park" and so would fall outside the scope of the 2004 and 2016 Permissions.

95. On Issue 3, I conclude that the Inspector was entitled to find that, as at the relevant date, the proposed residential use would have amounted to a breach of Condition 4 of the 2004 Permission.

**Issue 4: was the Inspector entitled to conclude that the proposed residential use would amount to a material change of use from the predominantly holiday use which was in existence at the relevant date? Did he give adequate reasons for his conclusions?**

96. The Inspector's findings and conclusion on Issue 4 were as follows:

> "14. In my view the approach to be employed is to consider what use or uses have been granted by the permissions, and whether the proposed use would fall within the permitted use or uses. The use permitted in 2004 was as a holiday caravan park. 'Holiday' is defined on the Shorter Oxford Dictionary as 'cessation from work', or as 'recreation'. Taking this as the ordinary meaning, it follows that the caravans are sited for a distinctly different purpose from that of everyday or permanent residential occupation. I do not consider the permitted use can be widened out to include this proposed use.
>
> …
>
> 16. The proposed use cannot on the balance of probabilities be regarded as use for the siting of holiday caravans and does not fall within the use permitted by the 2004 permission. Further, I consider as a matter of fact and degree the proposed use should be seen as a material change in that the effect would be to introduce permanent residential accommodation into an area where it would not normally be permitted. This might be for reasons such as lack of services and employment opportunities and effects on countryside interests.
>
> …
>
> 27. As I have found, the change to sole or main residential use would be a material change from the permitted use, and it would be open for the Council to take enforcement action against breaches of condition(s) controlling occupancy. It follows that on the balance of probabilities the proposed use would not be lawful, and that the Council's decision was well-founded.
>
> The appellant put forward various court cases and appeal decisions in support of his case. The *Cotswold Grange* [*Cotswold Grange Country Park LLP v SSCLG & Tewksbury District Council* [2014] EWHC 1138 (Admin)] case mainly concerned restrictions on the numbers of caravans on the site and is of limited application in this case. The Dennington Caravan Park appeal decision [Appeal decision ref. APP/A0665/X/09/2109738, dated 16 February 2010] was largely on the basis of the non-existence of an approved map defining where residential caravans could be located, and that the number size and location of caravans were matters outside of planning control. Again, I consider this of limited application in this case."

***Claimant's submissions***

97. The Claimant submitted that the Inspector's findings and conclusion were fundamentally flawed for the following reasons:

i) Determination as to whether there has been a material change of use is not dependent on whether the use is or is not ordinarily permitted in a given area. It must be based upon actual consideration of the differing land-use effects of the two different activities, which the Inspector failed to undertake. The land-use effects of a caravan occupied by a person on holiday are not likely to be intrinsically different from those of a caravan occupied by a person as their residence.

ii) The Inspector's reliance upon matters such as lack of services, and employment opportunities and effects on countryside interest was not supported by any evidence.

98. The Claimant also submitted that the Inspector failed to give adequate reasons for his conclusions.

***Conclusions***

99. The Inspector correctly applied the guidance given by Sullivan LJ in *Wall*, at [26], namely, that "if the permitted use has been implemented, and a change to the permitted use takes place, then it will be a matter of fact and degree whether that change is a material change of use".

100. In considering whether or not there had been a material change of use, the Inspector relied upon the available evidence. At the relevant date, there were 94 static caravans/mobile homes at the Site. The Council had found that 12 of these were in lawful residential use. The 2004 Permission stated that the Site "lies outside an area in which the Local Planning Authority normally permits residential development" in the reason for Condition 4. The Council's development plan was considered in more detail in the reasons for granting planning permission, which explained that the Site "lies outside the development boundary as identified by Policy GS1 of the local plan". However, it was noted that it was a well established "holiday park". The reasons confirmed that "This consent …. applies to the entire site and is subject to a widely accepted holiday occupation condition".

101. The Inspector found that the 2016 Permission was for the same development as the 2004 Permission, namely, use of the land as a holiday caravan park. The condition to the 2016 Permission expressly restricted the use to "holiday purposes" and did not permit residential use. The policy basis for the restriction was again confirmed in the reason for the condition:

> "To prevent the occupation of seasonal holiday accommodation on a permanent basis in accordance with the requirements of Policy E3."

102. Thus, there was clear evidence within the terms of the Permissions to support the Inspector's conclusion that "the effect would be to introduce permanent residential accommodation into an area where it would not normally be permitted" (DL 16).

103. The Council's Statement of Case gave the following details about the location of the Site and the issues concerning residential use:

> "1.2 Merryhill Caravan Park is located in an isolated rural position served by single width country lanes with no footpaths, the nearest settlements are Honingham; which is a village approximately 2.5 km to the south of the site via Taverham Road and beyond the busy A47 trunk road and the village of Ringland which is approximately 3 km to the east of the site via Honingham Lane. Neither Honingham nor Ringland are considered to be large enough to warrant being defined with a settlement limit in the Council's adopted Site Allocation DPD 2016 as neither village has a shop, school, medical facilities or access to public transport."
>
> "5.4 …….
>
> If the use described in this proposed use certificate of lawful development application were to apply across the whole site, that is the use of the land for siting residential caravans for sole or main residential use, this would involve a significant material change of use from the use permitted by either the 2004 or the 2016 permission. If the 94 caravans across the whole site were used in this way, the resulting use of the site would produce significant levels of traffic on the surrounding network of narrow country lanes, and increased pedestrian movements where no footpaths exist, there would be more pressure placed on the medical and educational services in the larger settlements in the wider area as none exist in Honingham or Ringland as residents and their families, rather than holiday makers, would have an expectation to use the medical and educational services in the locality of the appeal site rather than at their home address. There is also a likelihood that more on-site facilities would be required, and increased site management would be required all of which would combine to amount to a material change if use of the site to the significant detriment to the appeal site and surrounding area."

104. In response, the Claimant said in his "Final Comments", at paragraph 21:

> "21. The LPA's reason for refusal is based on a flawed assessment of the 2004 permission and the subsequent necessity for later permissions as well as the effect of a s73 permission on the original permission. The LPA case furthermore is based on a flawed interpretation of the immunity of the acknowledged breach of the condition of the 2004 permission. The LPA's decision was not well founded and a certificate should be issued."

105. The Inspector was entitled to accept the evidence and submissions from the Council, which was sufficient to support his conclusions. He was entitled to conclude that, as a matter of fact and degree, the proposed use would be a material change because of the potential effects of introducing permanent residential accommodation into an area where it would not normally be permitted. Obviously he could not be certain of the

detail, given the limited evidence before him, which is why he used the words "might be" when listing the potential effects. This was an exercise of judgment by the Inspector which does not disclose any public law error.

106. Finally, I consider that the Inspector's reasons met the required standard set out by Lord Brown in *Porter*. As the Claimant participated fully in the appeal by way of written and oral submissions, it must have been obvious to the Claimant and his representative when they received the decision that the Inspector had accepted the Council's evidence and submissions, in preference to their own. A reasons challenge will only succeed if a claimant can satisfy the court that it has been genuinely been substantially prejudiced by a failure to provide an adequately reasoned decision. That is patently not the position here.

107. Therefore, on Issue 4, I find that the Inspector was entitled to conclude that the proposed residential use would amount to a material change of use from the predominantly holiday use, and that he gave adequate reasons for his conclusions.

## Final conclusion

108. For the reasons set out above, the Claimant's claim is dismissed.