Case No: AC-2024-LON-001262

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT
[2024] EWHC 2321 (Admin)

The Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 25 July 2024

BEFORE:
MRS JUSTICE LANG DBE

BETWEEN:

THE KING
on the application of
LONDON BOROUGH OF NEWHAM

Claimant

- and -

COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Defendants

- and -

(1) GOOD HOTEL LONDON LIMITED
(2) GBZ V.O.F
(3) ROYAL DOCKS MANAGEMENT AUTHORITY LIMITED
(4) GLA LAND AND PROPERTY LIMITED

Interested Parties

MR T STRAKER KC and **MS V SEDGLEY** (instructed by the London Borough of Newham) appeared on behalf of the Claimant.
MR R HONEY KC and **MR B DU FEU** (instructed by HM Revenue and Customs) appeared on behalf of the Defendants.
MR P TUCKER KC (instructed by Winckworth Sherwood LLP) appeared on behalf of the Second Interested Party.
The First, Third and Fourth Interested Parties did not appear and were not represented.

JUDGMENT
(Approved)

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1. MRS JUSTICE LANG: This is a renewed application for permission to apply for judicial review of the determination by the defendants' appointed person ("AP"), on 29 February 2024, that the Good Hotel was not a building and so not chargeable development for the purpose of the Community Infrastructure Levy Regulations 2010 ("the CIL Regulations"). Accordingly, there was no liability to pay the CIL, in the sum of £1,601,719.96, charged by the claimant in the liability notice dated 30 October 2023.

2. The determination by the AP was made on appeal by the second interested party under Regulation 114 of the CIL Regulations, following its unsuccessful application for a review under regulation 113 of the CIL Regulations.

3. The claimant is the local planning authority and charging authority for the purposes of the CIL Regulations. The second interested party ("IP2") is the tenant and owner of the inferior leasehold estate. The other interested parties named took no part in the proceedings.

4. Permission was refused on the papers by Mould J on 13 June 2024.

5. On 4 August 2023, the claimant granted planning permission for the Good Hotel at the Royal Victoria Dock in the following terms: "Mooring of a 160 room hotel on a floating platform with associated access, car parking and landscaping". Previously, temporary planning permission had been granted for the Good Hotel in September 2016.

6. The AP described the Good Hotel at Appeal Decision paragraph 2 ("AD/2") as "a floating concrete non-propelled accommodation platform moored in the Royal Victoria Dock". She added, "I understand it was originally constructed and used as an inland river barge before lying idle for some time. It was then re-purposed as a pop-up hotel moored in Amsterdam, before being floated across the North Sea to its current location in the Royal Victoria Dock in 2016".

7. At AD/10, the AP said that the development for which planning permission was granted was the act of mooring the hotel (i.e. securing it at the dock), not the erection or building of a hotel.

8. At AD/25, the AP concluded that the proposed development was not a "building" under the provisions of the CIL Regulations and therefore determined that the CIL charge should be nil.

9. The claimant submits that the AP adopted an incorrect legal interpretation of "building" for the purposes of CIL.

10. The specific grounds may be summarised as follows:

Ground 1

11. The AP failed to heed the purpose of the legislation, namely, to ensure that costs incurred in supporting the development of an area can be funded by owners and developers of land.

Ground 2

12. The AP failed to heed the fact that the meaning of "building" for the purposes of the CIL Regulations was not the same as its meaning under the Town and Country Planning Act 1990 ("TCPA 1990").

Ground 3

13. The AP wrongly interpreted the decision in *Skerritts of Nottingham Limited v. Secretary of State for the Environment, Transport and Regions (No.2)* [2000] 2 PLR 102.

Ground 4

14. The AP wrongly considered that a vessel could not be a building; it had to be either a vessel or a building.

Ground 5

15. The AP failed to consider the alternative dictionary interpretations of "building" and/or wrongly assumed that all dictionary interpretations of "building" must be met in order for a thing to be considered a "building".

Conclusions

Grounds 1 and 2

16. In my view, grounds 1 and 2 are unarguable. The AP correctly identified and applied the statutory framework as follows.

17. For the purposes of CIL, chargeable development is defined in regulation 9(1) of the CIL Regulations as "the development for which planning permission is granted".

18. Development for the purposes of the Planning Act 2008 ("PA 2008") and the CIL Regulations is defined in section 209(1) PA 2008 as: "(a) anything done by way of or for the purpose of the creation of a new building or (b) anything done to or in respect of an existing building".

19. There is no statutory definition for the term "building" within the CIL Regulations. The wide definition of "building" at section 336(1) TCPA 1990, which includes any "structure or erection", is explicitly excluded from the CIL Regulations made under Part 11 of PA 2008 by section 235(1) PA 2008.

20. In my view, the AP applied well-established principles of statutory interpretation by considering the natural meaning of the word "building" in its statutory context. Although the purpose of CIL is broadly expressed, parliament determined that CIL would only be levied against buildings. The AP, therefore, correctly identified, at AD/14, that the issue in the appeal was as follows:

> "Therefore, I am of the view the parties are correct, this appeal turns on the definition of a building and whether the subject is a vessel, as argued by the appellant, or a building as argued by the CA".

21. As I have already stated, at AD/10, the AP identified the development for which permission was granted as the act of mooring the hotel (ie securing it at the dock) not the erection or building of a hotel. The conditions attached do not alter the terms of the permission or the development.

22. The defendants have provided an extract from the Government's consultation paper on the introduction of CIL which states at paragraph 4.9 that, in the Government's view, the "definition of a building for CIL purposes does not include caravans and houseboats unless they have become fixed permanent structures. A pitch for a caravan or a mooring for a houseboat is demonstrably not a building, so they will not be CIL liable". Obviously, this is not decisive or conclusive but it is persuasive.

23. For these reasons, I refuse permission on Grounds 1 and 2.

Ground 3

24. The Court of Appeal in *Skerritts* applied a test derived from the judgment of Jenkins J in *Cardiff Rating Authority v. Guest Keen Baldwin's Iron and Steel Co. Ltd.* (1949) 1 KB 385, set out in the judgment of Pill LJ at [113]:

> "Jenkins J stated a threefold test that involved considering size, permanence and degree of physical attachment in considering whether an item was a building or structure. In relation to permanence, he said,
>
>> 'It further suggests some degree of permanence in relation to the hereditament, ie, things which once installed on the hereditament would normally remain in situ and only be removed by a process amounting to pulling down or taking to pieces. In my judgment, that test introduces a degree of flexibility into the approach to permanence. It does so first by qualifying the word "permanence" by the expression "some degree". Secondly, it does so by using the word "normally". Thirdly, it does so by introducing the concept of removing the building "by taking to pieces"'."

25. The AP recognised that *Skerritts* and the other case law cited in the appeal was merely persuasive and not binding as it was decided under different statutory tests in the TCPA 1990. However, since the parties to the appeal cited *Skerritts*, and the issues of size,

permanence and physical attachment were clearly relevant to the main issue in the appeal, the AP was entitled to refer to it.

26. In my view, it is unarguable that the AP misinterpreted the *Skerritts* case. On size, the ratio of *Skerritts* is that, when a structure is constructed on site, as opposed to being brought onto site readymade, it is more likely to be considered a building. The Good Hotel, though large, was brought onto site readymade. Applying the guidance in *Skerritts,* this counts against it being a building.

27. The *Skerritts* guidance on permanence was also applied. The AP accepted that there was an intention for the Good Hotel to remain in situ for at least 30 years which amounted to permanence, but that the Good Hotel was also capable of being disconnected and moved in one piece in a short period of time. On balance, therefore, the AP concluded that the Good Hotel did not meet the test of permanence. This was a judgment that was lawfully open to her.

28. On the issue of the relevance of "attachment to the ground", the AP did not rely on *Elitestone* or consider herself bound by it. She stated merely that it was considered. She made an exercise of judgment, on the evidence, that the connections to the mooring and services could be easily disconnected and the hotel moved. On that basis, she concluded that it was not sufficiently attached to the ground to become a building for the purposes of the CIL Regulations.

29. In my view, on all these issues, the AP made judgments on the evidence relating to this particular development which were rationally open to her. Therefore, permission on Ground 3 is refused.

Ground 4

30. In my view, Ground 4 is unarguable. A vessel is not a building, but a vessel may be adapted into a structure which has the characteristics of a building. The AP did not confine her consideration to the difference between a building and a vessel. She addressed the dictionary definition of a building and the case law on the meaning of a building. She expressly considered whether a floating accommodation platform that

has been fitted out for use as a hotel could be described as a "permanent fixed thing built for accommodation" within the meaning of the dictionary definition (AD/17). After assessing the relevant factors, she concluded that they pointed to the conclusion that the Good Hotel remained a vessel and had not become a permanent fixed thing. She compared it to a mobile home on a residential site.

31. In my view, her exercise of judgment does not disclose any arguable error of law and permission is, therefore, refused on Ground 4.

Ground 5

32. The *Oxford English Dictionary* definition of "building", referred to by the AP at AD/17 reads as follows: "A thing which is built; a structure; an edifice; a permanent fixed thing built for occupation, such as a house, school, factory, stable, church, etc".

33. The claimant contends that the AP erred in not considering whether the hotel met the dictionary definition of "a thing which is built" and erred in applying the definition of "a permanent fixed thing built for occupation".

34. In my view, this ground is unarguable. The dictionary definition had to be read as a whole. The literal meaning of "building" - "a thing which is built" - would not have enabled the AP to determine the meaning of "building" in the context of the CIL Regulations because it is too broad. The defendants cited an apt passage from the judgment of Byles J in *Stevens v. Gourlay* (1859) 141 ER 752 at [757] where he said:

> " … What is a 'building'? Now, the verb 'to build' is often used in a wider sense than the substantive 'building'. Thus, a ship or a barge-builder is said to build a ship or a barge, a coach-builder to build a carriage; so, birds are said to build nests: but neither of these when constructed can be called a 'building'".

35. For these reasons, I refuse permission on Ground 5.

36. In conclusion, I am in agreement overall with the reasons given by Mould J when refusing permission on the papers and, accordingly, I confirm his order that permission should be refused.

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