

Recent Developments in Case Law

Presented by
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Introduction – Overview

- Case law updates always a problem; never comprehensive enough
- Many filters; and we do not always identify the *most* important cases
- Claims issued are those Claimant has thought it worthwhile
- Cases reported represent those Defendant thought worth defending
- Planning Court / Court of Appeal strong filters on what gets on; thus
- Many interesting areas unexplored or not fully considered
- Any case law update – only a partial picture of what's happening
- Focus today on cases from Court of Appeal or higher – more useful
- Considering common areas of concern to all practitioners

Certificate of lawful use determinative?

- *Roland Stafford-Flowers v Linstone Chine Management Co Ltd* [2017] EWCA Civ 202
- Breach of restrictive covenant. Stipulation that bungalow to be used for holiday home/leisure purposes; only to be used certain periods of time; A & wife lived there permanently;
- CLEUD application made; lived there continuously for 10 years;
- Discharging of covenant said to be '*thin end of the wedge*'
- **Lesson:** not enough to secure CLEUD to discharge covenant; may have the same effect; court entitled to look at wider practical benefits, wider situation and implications.

Planning Conditions

- *Dunnett Investments Ltd v SSCLG* [2017] EWCA Civ 192
- Change of use application for prior approval from B1(a) (offices) to C3 (dwellings); council failed to respond properly/in time; A sought CLEUD, refused; appeal to Inspector then dismissed and High court;
- Appeal to CA dismissed. Interpretation of conditions; when appropriate caution exercised, no bar to implying words into conditions (*Trump v Scottish Ministers* [2015] UKSC 74)
- **Lesson:** care required when assessing flexibility which goes with permission because planning conditions may expressly or impliedly take away permitted development rights.

Enforcement

- *Kestrel Hydro v SSCLG* [2016] EWCA Civ 784
- EN requiring unauthorised use to cease; the site to revert to lawful use *and* removal of structures & hardstanding; the question related to relationship between the two;
- Authority entitled to regard breach of planning control subject to 10 year limit instead of the four year limit;
- Requirement to remove hardstanding & other structures could be properly imposed (s.173(4)(a))
- Correct to find hardstanding & structures 'integral to unauthorised use and ancillary to it;

Enforcement II

- *Miaris v SSCLG* [2016] EWCA Civ 75 – case all about relationship between ground (a) and ground (f);
- Unauthorised change of use from restaurant to use as drinking establishment / nightclub; DJs performing at the premises;
- Appeal solely under Ground (f); exceeding that which was needed to remedy the breach; no appeal under Ground (a); that pp ought to be granted. **Thus issue:** where no permission sought under (a); whether SoS could entertain appeal against notice on basis its requirements exceed that which is necessary. Appeal under ground (f) could not achieve that, in absence of appeal on ground (a)

Enforcement II Continued...

- Held that there was substantial difference in scope between appeals on grounds (a) and (f); this was clearly evident and anyone seeking to benefit from one had to include the other in grounds of appeal;
- Not reduced by changes in the Localism Act 2011; which meant no longer a deemed application for planning permission unless an appeal has been made on ground (a)

Tree Preservation Orders

- *Barney-Smith v Tonbridge and Malling DC* [2016] EWCA 1264
- Lindblom LJ dealt with the planning acts as a comprehensive scheme; TPO provisions are aimed at being integral part of that;
- Exemptions to both grant of planning permission and the exemptions under the 2012 regulations are intended to work together; *“clear relationship between grants or deemed grants of planning permission for development and tree preservation orders, whose purpose is to protect trees from development.”*

Valued Landscape Paragraph 109

- Well known area where previously held that, in the absence of designation, for a site to be valued, it had to have ‘some demonstrable physical attribute’. (*Stroud*)
- However the judge did not deal with where the site is “valued by neighbouring residents’
- *Forest of Dean DC v SSCLG* [2016] EWHC 2429 (Admin);
- Framework made clear distinction between ‘valued landscape’ and ‘designated’. **But ‘valued’ meant to have physical attributes taking it out of the ordinary; absence of designation not necessarily mean an absence of landscape value.**

Reports and Reasons

- Soundness requires planning judgment: *Cooper Estates Strategic Land v Royal Tunbridge Wells BC*
- A decision maker who differs from his inspector does not have to give reasons for his reasons – helpfully restated in *SSCLG v Allen & Bedford Borough Council* [2016] EWCA Civ 767
- The scope for decision maker to differ from a reporting inspector also clearly set out – *Keith Langmead Ltd v SSCLG* [2017] EWHC 788 (Admin)
- Inspector’s report is the starting point from which SoS then make planning judgement – *Wind v SSCLG* [2017] EWHC 788 (Admin)

Reports and Reasons

- *Oakley v South Cambridgeshire DC* [2017] EWCA Civ 71 – reasons given for grant of planning permission. Grant of pp for football stadium in GB; LPA officer recommended refusal, committee approved proposal, no reasons – LPA granted permission.
- Appeal allowed. Question re the duty to give reasons from LPAs or generally by public bodies. Differing views on extent to which reasons should be given by LJs: (1) if there is a pressing special need, or where person's private interest particularly affected by decision. (2) BUT committee's rejection of officers' advice does not automatically trigger a duty to give reasons.

Reports and Reasons

- Two practical points to take away:
- (1) There may be trend for courts to hold there is a duty to give reasons in more situations than fewer;
- (2) Planning committees that recommend planning permission be granted against recommendation and where the reasoning of officers is in contravention of local/national policy should expect permission to be challenged.

Time Limits for bringing JR

- *John Croke v SSCLG* [2016] EWHC 2484 – Reminder of practical difficulties in issuing claim until the afternoon of the last day of limitation for a S288 application.
- A claim issued out of time will be struck out.
- No issue of discretion arises.

Discretion

- *R(oao) Anne-Marie Loader v Rother District Council* [2016] EWCA Civ 795;
- The general reluctance of the Court of Appeal to overturn the discretion exercised by a judge at first instance remains in place.
- The weight to be accorded that exercise of discretion is also enhanced where the judge has a particular expertise in the area in question.

Costs

- Amendment to CPR to create more scope to argue about the fixed costs regime (Aarhus costs); likely to fuel some satellite litigation;
- More information is required early on about means, to be put in statements along with supporting evidence;
- *R (oao) East Bergholt Parish Council v Babergh District Council* [2016] EWHC – question re whether to apply £35k cap before or after deciding proportion of C's costs;
- **Answer:** Proportion to be applied *before* any question of apportionment is applied, thus successful party receives only a proportionate order for costs – a proportion of the capped sum, not of the capped sum *before* the cap is applied.

Miscellaneous

- **Farm Buildings** – *Hibbitt v SSCLG* [2016] EWHC 2853
- **PD Basements** – *Eatherley v LB Camden* [2016] EWHC 3108
- **Habitats Regulations**; mitigation measures; Case C-323/17 *People Over Wind v Coillte Teoranta* (12 April 2018)
- **Housing, policy meaning**: [Hopkins Homes v SSCLG \[2017\] UKSC 37](#)
- **AONB**: *Wealden DC v SSCLG* [2017] EWCA Civ 39

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THANK YOU

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