Neutral Citation Number: [2022] EWCA Civ 833

Case No: CA-2021-000649 (Formerly C1/2021/1075)

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT (PLANNING COURT)
HIS HONOUR JUDGE JARMAN Q.C.
[2021] EWHC 1200 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 June 2022

Before:

SIR KEITH LINDBLOM
(SENIOR PRESIDENT OF TRIBUNALS)
LORD JUSTICE MALES
and
LORD JUSTICE LEWIS

- -

Between:

BARTON PARK ESTATES LTD.	**Appellant**
– and –	
(1) THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Respondents**
– and –	
(2) DARTMOOR NATIONAL PARK AUTHORITY	

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Andrew Fraser-Urquhart Q.C. (instructed by **Stephen Scown LLP**) for the **Appellant**
Andrew Parkinson (instructed by the **Treasury Solicitor**) for the **First Respondent**
Timothy Leader (instructed by **County Solicitor, Devon County Council**) for the **Second Respondent**

Hearing date: 13 April 2022

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Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be not before 4pm on Tuesday 21 June 2022.

The Senior President of Tribunals:

Introduction

1. Did an inspector err in law when dismissing an appeal against the refusal of an application for a certificate of lawful use or development for the stationing of up to 80 caravans "for the purposes of human habitation" on land in the Dartmoor National Park? That is the basic question in this case. The relevant legal principles are familiar from previous decisions of this court and above. And in my view, when the inspector's decision is reviewed in the light of those principles, no error of law is to be found in it.

2. With permission granted by Lord Justice Stuart-Smith, the appellant, Barton Park Estates Ltd., appeals against the order dated 12 May 2021 of His Honour Judge Jarman Q.C., sitting as a deputy judge of the High Court, by which he dismissed an application under section 288 of the Town and Country Planning Act 1990 challenging the dismissal by an inspector appointed by the first respondent, the Secretary of State for Housing, Communities and Local Government, of an appeal under section 195 of the 1990 Act against the refusal by the second respondent, the Dartmoor National Park Authority ("the authority"), of an application under section 192 for a certificate of lawful use or development for the use of land at the Magpie Leisure Park, Bedford Bridge, Horrabridge, near Yelverton for "the stationing of up to eighty caravans for the purposes of human habitation". The section 192 application was submitted on 1 August 2018, and refused by the authority on 23 November 2018. In her decision letter, dated 29 June 2020, the inspector upheld the authority's refusal to grant a certificate. Barton Park Estates' challenge to the dismissal of the appeal was rejected by the judge on all grounds.

The main issues in the appeal

3. Permission to appeal was granted on four grounds. Those four grounds present two main issues for us to decide. The first is whether the inspector erred in concluding that the proposed use fell outside the scope of the relevant planning permissions. This embraces the first, second and third grounds of appeal. The second issue is whether the inspector was entitled to conclude that the proposed use would amount to a material change of use without planning permission. This, in effect, is the fourth ground.

Certificates of lawfulness under section 192 of the 1990 Act

4. Under section 57(1) of the 1990 Act planning permission is required for "the carrying out of any development", which is defined in section 55(1) as including a "material change in the use of any buildings or land".

5. Section 171A(1) provides that either "(a) carrying out development without the required planning permission" or "(b) failing to comply with any condition or

limitation subject to which a planning permission has been granted" constitutes a "breach of planning control".

6. Section 192 enables an application to be made for a certificate of lawfulness of proposed use or development. Subsection (2) provides:

> "(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."

7. The concept of lawfulness is described in section 191. Under subsection (2), uses and operations are lawful if "(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or 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".

8. Under section 195 an appeal may be brought against the refusal of an application for a certificate.

The 1987 planning permission

9. On 10 August 1987, Devon County Council granted planning permission "to carry out the development described in the application dated 7 July 1986 and the plans and drawings attached thereto …". Unfortunately, those documents have all been lost. But the "brief particulars" of the development given in the decision notice were these:

> "Proposed site enhancement scheme involving an amendment of existing provision at site to allow for 9 residential vans, 16 holiday chalets, 18 static vans & 30 touring units at Magpie Caravan Park, Bedford Bridge, Horrabridge".

10. Six conditions were imposed on that planning permission. Condition (a) required that the development be begun within five years; condition (b), that improvements to site access be made; condition (c), that the road frontage be landscaped; and condition (d), that a new septic tank and soakaway system be installed "before any of the new chalets or the new residential caravans are brought into use". Condition (e) stated:

> "(e) The chalets, static holiday caravans and pitches for touring units shall only be occupied between 15th March and 15th November in each year."

The reason given for the imposition of that condition was:

> "(e) To protect the character of this part of the Dartmoor National Park during the winter months".

Condition (f) stated:

> "(f) No touring unit shall remain on the site for more than 3 weeks in each year."

And the reason given for the imposition of that condition was:

> "(f) To ensure that part of the site remains available for use by touring caravans".

The 2013 planning permission

11. On 29 July 2013, the authority determined an application made under section 73 of the 1990 Act, granting planning permission for the "[variation] of condition e of [the 1987 planning permission] to allow longer time of holiday use from 8 months per year to 11 months, Magpie Leisure Park, Bedford Bridge, Horrabridge", subject to four conditions. This permission related to three pieces of land within the present appeal site. Condition (2) states:

> "(2) Any caravan within the application site shall only be occupied during the period 1 March to 31 January each year."

The reason given for the imposition of that condition was:

> "To prevent the creation of unjustified permanent residential accommodation in accordance with the Dartmoor National Park Authority Core Strategy Development Plan Document and in particular policies COR2 and COR15 together with the Development Management and Delivery Plan Document in particular policies DMD1a, DMD1b and DMD23."

The inspector's decision letter

12. The inspector said her assessment was confined to "the narrow issue of determining whether the use described in the application would be lawful if instituted at the date of the application" (paragraph 4 of the decision letter). She said the use of the appeal site was "governed by the 1987 [permission]" (paragraph 28), and that under the 2013 permission the use of the land to which it relates may instead comply with the "varied" condition (paragraph 29). Having noted that there were "no conditions which restrict the number, or type of occupation, of the caravans permitted on the land" (paragraph 30), she considered the first instance decisions in *I'm Your Man Ltd. v Secretary of State for the Environment* (1999) 77 P. & C.R. 251 and *Cotswold Grange Country Park v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin) and that of the Divisional Court in *R. (on the application of Resul Altunkaynak) v Northampton Magistrates' Court and Kettering Borough Council* [2012] EWHC 174 (Admin) (paragraphs 31 to 33). Although the description of development in the 1987 permission referred to specific numbers of caravans, it was common ground that "this does not limit the use of the land to the numbers specified" and "an increase in the number of caravans would not be a breach of condition, because there is no condition limiting numbers" (paragraph 34). It had been conceded by Barton Park Estates' planning witness, and the inspector agreed, that

conditions (e) and (f) "would frustrate any attempt to occupy touring units for permanent residential, rather than holiday, use". She also agreed, as had been accepted by the council's planning witness, that the occupancy restriction in condition (e) "would be applicable to static caravans in use for holiday purposes, but not those in use for residential purposes" (paragraph 35).

13. Barton Park Estates had submitted that in the absence of a condition limiting the number of residential caravans on the site, or the use of the residential and static caravans occupied for non-holiday purposes, the 1987 permission expressly provided for an unrestricted number of residential caravans for year-round occupation (paragraph 36). The inspector was "not persuaded that this approach is supported by the case law". She recalled that in *Altunkaynak*, Lord Justice Richards had accepted that "if a limitation is to be imposed on a permission [this] has to be done by condition", but "not … that the description of development granted by the permission itself could somehow be ignored" (paragraph 37). And she reminded herself that in *Winchester City Council v Secretary of State for Communities and Local Government* [2015] EWCA Civ 563, Lord Justice Sullivan had referred to a possible "misunderstanding of the effect of the *I'm Your Man* line of authorities" and had stressed "[the] simple proposition … that the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself" (paragraph 40).

14. In conclusion on the lawful use of the site, the inspector said (in paragraphs 46 and 47):

> "46. Bringing all this together, I am not persuaded by the Appellant's argument that in the absence of conditions limiting the number or type of occupation of caravans permitted on the appeal site, the existing grant of planning permission allows for any number of caravans for residential purposes. Keeping the proposition that *the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself* clearly in sight, … the development permitted by the 1987 Permission is: "Proposed site enhancement scheme involving an amendment of existing provision at site to allow for 9 residential vans, 16 holiday chalets, 18 static vans & 30 touring units at Magpie Caravan Park, Bedford Bridge, Horrabridge". That is the existing lawful use of the appeal site. This description does not, for the reasons discussed above, serve to limit the number or type of caravan that may be stationed on the site, but that does not mean it can simply be disregarded.
>
> 47. In my judgment, the words in the 1987 Permission permit a caravan site at which caravans provide both permanent residential accommodation and holiday accommodation, the year-round use of the latter being prevented by condition. The proposed use for "the stationing of up to eighty caravans for the purposes of human habitation" would be a change from this permitted use, in that it would encompass the use of any and all caravans on the site to provide permanent residential accommodation, with no holiday use at all."

15. Turning to the question of whether, as a matter of fact and degree, this change would constitute a material change of use, she said (in paragraph 50):

> "50. … [The] proposed use would not be of a different type to the existing lawful use, in that the planning unit would remain a caravan site. The intensification of an existing use can, but will not necessarily, amount to a material change of use: what is at issue is whether the extent and nature of the change amounts to a change in the *character* of the existing use …".

She found that the "character of the use of [the] central area would undergo considerable and significant change if up to 80 caravans were to be stationed on the planning unit for unrestricted occupation". A "seasonal pattern of occupation, with peaks in the summer holidays and troughs in the winter, would be replaced by unrestricted residential occupation that would generate a steady level of activity throughout the year". Areas of the site "currently devoid of light and other human activity during the winter months would acquire a year-round domestic presence" (paragraph 59). A "similar effect would occur in the eastern part of the planning unit, where the chalets are sited". The "proposal for the stationing of up to 80 caravans on the planning unit could only be in addition to the existing chalets and the protected trees, not in place of them" (paragraph 60), and "[any] caravans placed in this part of the site for unrestricted residential occupation would, as within the central area, introduce lights, noise, and domestic activity where, during the winter months, there is currently none" (paragraph 61). The "pattern of movements to and from the planning unit would … be likely to change significantly" (paragraph 62). The "most noticeable visual change would be the stationing of caravans on the open grassed areas at either side of the entrance". Caravans in "year-round residential occupation stationed within [those areas] would be clearly visible from the road, and would have the effect of visually extending the existing caravan site". Their "presence would thoroughly domesticate the existing areas of open grass, at the expense of the rural character of this part of the countryside" (paragraph 63).

16. The inspector concluded (in paragraph 65) that these changes "would bring about a substantial and fundamental change in the character of the appeal site's use", and (in paragraph 66) that the proposed use "would amount to a material change of the use of the land, for which planning permission would be required". So the certificate applied for could not be granted.

The judgment in the court below

17. The judge concluded that the inspector was "correct in paragraph 47 of the decision letter to interpret the 1987 permission as permitting a caravan site providing both permanent residential accommodation, and holiday accommodation, the latter in the sense that year round use is prevented by condition" (paragraph 39 of the judgment). It was "clear that [she] did focus on one of the scenarios of the proposed use where all 80 caravans … would be used as permanent residential accommodation". But she also "understood that the proposed use would "encompass the use of any and all of the caravans" to provide such accommodation" and "could include such a scenario but could include other scenarios", and that "even in this extreme scenario, holiday accommodation, limited by condition (e) to occupation other than in the winter months, could continue". In paragraph 60 of the decision letter she had observed that the proposal for stationing of up to 80 caravans on site "could only be in addition to the existing chalets … , not in place of them" (paragraph 45). She had "applied the

correct test" in considering whether the proposed use would bring about a material change in the character of the use of the site. The "proposed use would not simply amount to a caravan site "on a larger scale" as in *Hertfordshire County Council v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1473, or "simply an increase in the number of caravans" as in *Cotswold Grange*". The inspector was "entitled to conclude, as she did … , that the proposed use would bring about a material change in the definable character of the use on the site" (paragraph 55).

Does the proposed use fall outside the scope of the planning permissions?

18. For Barton Park Estates, Mr Andrew Fraser-Urquhart Q.C. submitted that the brief particulars of the development in the 1987 planning permission make clear that the land may lawfully be used as a "caravan site" within the definition in the section 1(4) of the Caravan Sites and Control of Development Act 1960, which would include use for either entirely "residential" or entirely "holiday" purposes (see *Wyre Forest District Council v Secretary of State for the Environment* [1990] 2 A.C. 357). Caravans of both kinds – "residential" and "holiday" – fall within the general definition of a "caravan" in section 29(1) of the 1960 Act and in the Town and Country Planning (General Permitted Development) (England) Order 2015, by contrast with the approach adopted by Parliament to the definition of a "dwellinghouse" in Part 3 Class C3 of the Town and Country Planning (Use Classes) Order 1987. They are all "merely caravans". The 1987 planning permission was for a "caravan site" as defined in section 1(4) of the 1960 Act, including both caravans and chalets. They were the two forms of accommodation in that planning permission. The descriptive terms "residential" and "holiday" do not signify any difference in land use. In *Breckland District Council v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 292 (Admin), Mrs Justice Lang said (at paragraph 39) that "[where] two alternatives are separated by the word "and", the natural and ordinary meaning is one can do both or either", and "[one] alternative does not restrict the scope of the other". Here, the use of a comma, rather than the word "and", had the same effect.

19. Mr Fraser-Urquhart emphasised the fact that the 1987 and 2013 planning permissions contain only temporal restrictions on the use of holiday chalets, holiday caravans, and touring caravans. There are no conditions controlling the use or occupation of the site as a whole. The judge was wrong to think that condition (e) on the 1987 permission is "inconsistent with permanent residential occupation caravans on most of the site". That condition is not concerned with caravans in a residential "tenure". It would not be breached if 80 caravans on the site were used for residential purposes. The conditions on the 1987 permission do not prevent the use of the land for any form of caravan site – residential or holiday. The effect of the authorities stemming from *I'm Your Man* – endorsed as good law by the Supreme Court in *Lambeth London Borough Council v Secretary of State for Housing, Communities and Local Government* [2019] UKSC 33; [2019] 1 W.L.R. 4317 – is that such a restriction can only be achieved by a planning condition. The fact that specific numbers of residential and holiday caravans are referred to in the brief particulars does not limit the type or number of caravans stationed on the site. This is inherent in the "*I'm Your Man* principle". The council chose not to impose a condition controlling caravan tenure. In the absence of such a

condition, submitted Mr Fraser-Urquhart, any form of tenure is permitted. It followed that the proposed use fell within the scope of the permissions.

20. I cannot accept that argument. As was submitted by Mr Andrew Parkinson on behalf of the Secretary of State, and by Mr Timothy Leader for the authority, it is, I think, impossible to reconcile with the true interpretation of the relevant planning permissions. And it misapplies the *I'm Your Man* jurisprudence.

21. The correct approach to interpreting planning permissions is well known (see the judgment of Mrs Justice Lieven in *UBB Waste Essex Ltd. v Essex County Council* [2019] EWHC 1924 (Admin), at paragraphs 32 and 51). But some of the basic points are worth stating again:

(1) The proper interpretation of a planning permission is ultimately a matter of law for the court (see the judgment of Lord Justice Keene in *Barnett v Secretary of State for Communities and Local Government* [2009] EWCA Civ 476; [2009] J.P.L. 1597, at paragraph 28). It follows that the question of whether a particular use is capable of coming within the scope of a planning permission is also a matter of law for the court. But the question of whether that use is truly within the scope of the permission will be a matter of fact and judgment for the decision-maker.

(2) A planning permission must be interpreted as a whole, consisting not only of the grant but also the conditions imposed and the reasons for their imposition (see the judgment of Mr Justice Keene, as he then was, in *R. v Ashford Borough Council, ex parte Shepway District Council* [1999] P.L.C.R. 12, at p.19C, citing *Slough Borough Council v Secretary of State for the Environment* (1995) J.P.L. 1128 and *Miller-Mead v Minister for Housing and Local Government* [1963] 2 Q.B. 196, and the judgment of Lord Carnwath in *Lambeth London Borough Council*, at paragraph 35).

(3) As Lord Hodge said in *Trump International Golf Club Scotland Ltd. v Scottish Ministers* [2015] UKSC 74; [2016] 1 W.L.R. 85 (at paragraph 34), if the court is interpreting planning conditions 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, said Lord Hodge, 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". More recently, the Supreme Court has held that "the starting-point and usually the end-point is to find "the natural and ordinary meaning" of the words … used, viewed in their particular context (statutory or otherwise) and in the light of common sense" (see the judgment of Lord Carnwath in *Lambeth London Borough Council*, at paragraph 19, citing his own observations to similar effect in *Trump*, at paragraphs 53 and 66). The court will have in mind that under the statutory scheme a condition may be imposed "for regulating the development or 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 …" (section 72(1)(a) of the 1990 Act, and its predecessor, section 30(1)(a) of the Town and Country Planning Act 1971).

Conditions must "fairly and reasonably relate to the permitted development" (see the judgment of Lord Hodge in *Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Co. Ltd.* [2017] P.T.S.R. 1413, at paragraph 30, approving the observations of Lord Scarman in *Newbury District Council v Secretary of State for the Environment* [1981] A.C. 578, at p.619).

22. Approached with those basic points in mind, the interpretation of the 1987 and 2013 planning permissions is not, I think, a difficult task. Each permission must be read in a straightforward way, together with the conditions regulating the grant. It is essential in this exercise to ascertain the real meaning and scope of the grant itself.

23. The 1987 permission is for a specific mix of caravans and chalets, comprising four distinct elements of caravan and chalet accommodation, each of which is expressly identified both in type and in number – namely "9 residential vans, 16 holiday chalets, 18 static vans & 30 touring units". Of the 73 caravans and chalets identified in the brief particulars, only nine – about one eighth of the total – are specifically for "residential" use. On its face, therefore, the description of development in the grant does not look like a planning permission for a development of 73 units, or more, of permanent "residential" accommodation on the site. That is not the development for which planning permission was granted.

24. What then is the effect of conditions (e) and (f), read with the reasons for their being imposed? They are an integral component of the planning permission, regulating the grant itself and indispensable to it – because, self-evidently, the permission would not have been granted without them. They manifestly relate to the development authorised by the permission. They match the grant, and reflect its terms.

25. In my view the effect of condition (e) is quite plain. It corresponds to three of the four elements in the grant: the 16 holiday chalets, the 18 static vans – described in the condition as "static holiday caravans" – and the pitches for the 30 touring units. It limits the occupation of those parts of the development to a period of eight months each year, between specific dates – 15 March and 15 November. It does not include any such temporal limitation on the occupation of the nine "residential [caravans]". Such a limitation would have made no sense, for it would have negated the residential use of those nine caravans. The purpose of the condition, as the reason states, is "[to] protect the character of this part of the Dartmoor National Park during the winter months". And this is achieved by preventing year-round residential occupation of most of the development permitted – all but nine of the 73 units referred to in the grant.

26. The effect of condition (f) is also clear. It corresponds to the 30 touring units in the grant. For that part of the grant, it reinforces the limitation on residential occupation under condition (e) by forbidding the retention on site of any "touring unit" for more than three weeks each year. Its purpose is apparent in the reason given for its imposition: "[to] ensure that part of the site remains available for use by touring caravans". Its effect is both to ensure a regular change of touring caravans on the site in the course of the eight months allowed under condition (e), and also to consolidate the permitted use of the site principally for different forms of holiday accommodation.

27. Three main conclusions may therefore be drawn on the interpretation of the 1987 planning permission. First, the "reasonable reader" referred to by Lord Hodge in *Trump* would not say that planning permission had been granted simply for a "caravan site", as defined in section 1(4) of the 1960 Act. This is a permission explicitly for caravan and chalet accommodation as it is deliberately and precisely defined in the description of development. Though the permission is for what may broadly be called a "caravan site", the grant is specifically for that particular mix of "residential" and "holiday" use. It is for caravans of several types in the numbers it states, which, both in the brief particulars and in the conditions, are carefully denominated and differentiated in functional terms. The fact that they would all come within the general definition of a "caravan" in the 1960 Act does not nullify the distinction made between them in the description of development and, correspondingly, in the conditions. Had the intention been merely to permit the development of a "caravan site", neither the grant nor the conditions would have been framed as they were.

28. Secondly, the absence of a condition specifically restricting the number of residential caravans on the site does not have the effect of altering the description of development in the grant itself. It does not change what the planning permission is actually for. The permission is for the development described in the brief particulars, restricted by the conditions limiting the occupation and use of that development. It is not for some other proposal, formulated in different terms from the grant.

29. Thirdly, the permission, construed as a whole, plainly does not envisage that all the caravans on the site would ever be used for permanent residential occupation. Use other than for such purposes is predominant in the mix. The permission prevents permanent residential occupation in all but nine of the 57 caravans referred to in the brief particulars. It does so by fixing, through condition (e), the four-month period for which the other elements of the mix may not be occupied each year. And it strengthens that restriction by limiting, through condition (f), the presence of most of the caravans on the site – the 30 "touring units" in the total of 57 caravans – to three weeks in each year. It thus ensures that "holiday" or non-"residential" use of the caravans on the site will predominate. The 2013 permission, through its condition (2), varied the restriction in condition (e) on the 1987 permission as it applied to three pieces of land within the appeal site, preventing the occupation of "[any] caravan" other than during the period from 1 March to 31 January each year. And the reason for that condition was explicitly "[to] prevent the creation of unjustified permanent residential accommodation …".

30. In short, given the precision with which each type of caravan accommodation is identified in the description of development and the restrictions in conditions (e) and (f), the assertion that the 1987 permission was merely for "use as a caravan site" or – as Mr Fraser-Urquhart put it – "a caravan site with some chalets" is, I think, untenable. And so is the proposition that if one leaves aside the "holiday chalets", the rest of the development permitted on the site could provide entirely "residential" accommodation.

31. In my view therefore, as the judge held, the inspector's understanding of these two planning permissions was correct. She discerned the real meaning and scope of the 1987 permission, and the synergy between grant and conditions. The "existing lawful use" of the site was not simply "use as a caravan site". It was as described in the brief

particulars in that permission. The description of development in the permission could not "simply be disregarded" (paragraph 46 of the decision letter). The inspector rightly rejected the contention that the permission would allow an unlimited number of residential caravans to be present on the site for occupation throughout the year. And again rightly, she referred to the permitted use as "a caravan site at which caravans provide both permanent residential accommodation and holiday accommodation, the year-round use of the latter being prevented by condition" (paragraph 47).

32. None of this analysis, in my opinion, conflicts with the principle recognised in the *I'm Your Man* authorities. That principle, in its proper application, has not been doubted in this court, or above. It was acknowledged by the Supreme Court, without evident disagreement, in *Lambeth London Borough Council*, where Lord Carnwath (with whom the other members of the court agreed) noted that, in the particular circumstances of that case, counsel for the local planning authority, "[in] line with the decision of the High Court in [*I'm Your Man*], … did not seek to argue that the proposed wording could be treated as an enforceable "limitation"" and "accepted the need to establish that the permission was subject to a legally effective condition in that form" (paragraph 26). But as Sullivan L.J. explained very clearly in *Winchester City Council*, the *I'm Your Man* cases are liable to misunderstanding and misapplication. They deal only with a particular question which arises in the interpretation of planning permissions that truly fall within their reach. They should not be taken as establishing some larger principle than in fact they do.

33. In *Winchester City Council* planning permission had been granted for the "change of use of agricultural land to a travelling showpeople's site". The permission 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. But no occupancy condition had been imposed, providing that the site was not to be occupied by any persons other than travelling showpeople. The local planning authority took enforcement action alleging a material change of use "from use as a Travelling Showperson's site to a use for the siting of caravan/residential mobile homes for occupation by persons who are not Travelling Showperson's …".

34. Having considered three parallel cases – namely, *Wilson v West Sussex County Council* (1963) 14 P. & C.R. 301 and *Williamson and Stevens v Cambridgeshire County Council* [1997] 34 P. & C.R. 117 in the Court of Appeal, and *Waverley District Council v Secretary of State for the Environment* [1982] J.P.L. 105 at first instance – Sullivan L.J. emphasised the scope of the planning permission with which he was concerned. He said (in paragraph 19):

> "19. The planning permission in the present case was for a change of use of agricultural land to travelling [showpeople's] 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*]".

He added that "[the] limitation of the use to a site for travelling showpeople [was] just as much a functional limitation on the … planning permission as were the limitations to "agricultural cottage" [in *Wilson*] or "site for caravans occupied by gypsies" [in *Williamson and Stevens*] or "depot for cattle transport lorries" [in *Waverley District Council*]" (paragraph 20).

35. In Sullivan L.J.'s view, the *I'm Your Man* line of authority had been misapplied by the inspector in that case. It was "not relevant … when the allegation in the enforcement notice was that there had been a material change of use from use as a travelling showpeople's site to use as a caravan site for persons who were not travelling showpersons". The "unifying feature" of the *I'm Your Man* authorities was that "the use remained the same". This had been so in *I'm Your Man* itself, in *Altunkaynak*, in *Cotswold Grange* and in *Smout v Welsh Ministers and Wrexham County Borough Council* [2011] EWCA Civ 1750 (paragraph 21). In none of those cases had there been an alleged change of use from the permitted use to some other use. When such a change is alleged in an enforcement notice, "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?" (Sullivan L.J.'s emphasis). If both of those questions are answered "Yes", development will have occurred, and planning permission for it will be required (paragraph 22).

36. There had been no suggestion in *I'm Your Man*, *Cotswold Grange Country Park* or *Altunkaynak* that the Court of Appeal's decision in *Wilson* and those in which *Wilson* was subsequently applied were wrong, nor could there have been, because *I'm Your Man* and *Cotswold Grange Country Park* were first instance decisions and *Altunkaynak* was a decision of the Divisional Court (paragraph 23). And the relevant observations of Laws L.J. in *Smout* were "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" (paragraph 25).

37. Sullivan L.J. thought it possible that the use of the word "limitation" in the judgments had contributed to the misunderstanding of the effect of the *I'm Your Man* cases (paragraph 26). He went on to identify the crucial point (in the same paragraph):

> "26. … 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."

38. In this case the inspector clearly grasped what Sullivan L.J. meant when he said what he did in *Winchester City Council*. First, she undertook the interpretation of the two planning permissions, to ascertain what use they had actually authorised. She did this correctly, distinguishing the *I'm Your Man* authorities, directing herself properly on

the relevant principles of law, and concluding that the use described in the 1987 planning permission was "the existing lawful use of the appeal site" (paragraph 46 of the decision letter). Next, she considered whether the proposed use would be a change from the "permitted use", concluding that it would, "in that it would encompass the use of any and all caravans on the site to provide permanent residential accommodation, with no holiday use at all" (paragraph 47). That conclusion too was unimpeachable. As Mr Parkinson submitted, it was obvious that the proposed use, including 80 caravans in permanent residential use, was outside the scope of the 1987 planning permission, which was for 57 caravans, 30 of which, under conditions (e) and (f), could not be in permanent residential use. The inspector concentrated on what the grant permitted and what the conditions prevented, and compared it with the proposed use. She had well in mind that there was no condition positively requiring any of the caravans on the site to be used for "residential" or "holiday" purposes, or stipulating any particular split of "residential" and "holiday" tenure or occupation. Finally, therefore, she had to consider whether, as a matter of fact and degree, the change of use would be a material change of use. This was the critical question. Her answer to it was unequivocal. The existing lawful use and the proposed use might be within the same generic description, but were of a materially different character from each other. There would therefore be, as a matter of fact and degree, a material change of use from the permitted use (see the judgment of this court in *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1202; [2013] JPL 192, at paragraphs 27 to 36). This was a conclusion based on evaluative judgment, having regard to the facts of this particular case. It is the subject of the second main issue in this appeal, but I can say here that in my view it was a perfectly lawful conclusion.

39. The inspector's approach was not at variance with the *I'm Your Man* authorities. It was faithful to the principle, as Sullivan L.J. put it in *Winchester City Council* (at paragraph 26), that "the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself". It avoided the error of overlooking the terms of the grant and looking only at the conditions restricting that grant. The inspector did not conclude that in the absence of a condition prohibiting an increase in the number of "residential" caravans on the site, any such increase would be immune from enforcement on the basis that a breach of condition notice could not have been served. She considered, as she had to, whether the proposed use in the application for a certificate would nevertheless be a breach of planning control under the first limb of section 171A(1)(a) of the 1990 Act because it would be a material change of use without planning permission. She recognised that the proposed use – including 80 caravans in permanent residential use – would be unlawful because it exceeded the scope of the 1987 permission and would be a material change of use, even though it would not amount to a breach of any planning condition.

40. The first ground of appeal contends that the judge erred in failing to consider whether the 1987 planning permission permitted, and did not prevent by condition, the use of the land as a caravan site at which the "tenure of the caravans could fluctuate over time and could be either 100% "residential" or 100% "holiday" at any given point in time". There is, in my view, no force in this contention. It was unnecessary for the inspector to consider relative percentages of tenure. Nor did the judge have to do so. What had been applied for was a certificate under which it would have been

permissible for all the caravans on the site to be put to permanent "residential" use and occupation. The inspector did not have to resolve what percentage short of 100% "residential" tenure might have accorded with the planning permission and its conditions, or what fluctuation in the relative proportions of tenure might do so. She did not have to grapple with every possible permutation, or work out what hypothetical mix of "residential" and "holiday" accommodation might not be a material change of use. She was right, as was the judge, to consider the lawfulness of a use consisting of 100% permanent "residential" occupation of 80 caravans on the site. As Mr Parkinson said, if Barton Park Estates had wanted a certificate of lawfulness for another balance of "tenure", it could have applied for that, but it did not.

41. The second ground asserts that the judge erred in holding that the proposed use was not permitted by the 1987 permission because the "permanent residential occupation [of] caravans on most of the site" would be "inconsistent with condition (e)". This argument is also mistaken. The judge did not misconstrue condition (e), or condition (f). His understanding of those two conditions, their relationship to the grant, and their place in the proper interpretation of the planning permission as a whole, was essentially correct.

42. The third ground contends that the judge erred in holding that the inspector found that "holiday use" on the site could continue even in the "extreme scenario" in which the proposed use was "a 100% residential use". I see no merit in that contention. There was no misunderstanding. Reading paragraph 45 of his judgment fairly, it is clear that the judge was distinguishing the "holiday chalets" from the caravans, and acknowledging that they would remain in "holiday" use even if the caravans were all in "residential" use. This does not affect the inspector's conclusions on change of use, which centred on the use of the caravans, not the use of the chalets. She knew that the proposed stationing of up to 80 caravans on the site would be "in addition to the existing chalets … , not in place of them" (paragraph 60). Neither she nor the judge was at fault on this point.

Does the proposed use amount to a material change of use?

43. Mr Fraser-Urquhart submitted that the inspector's conclusion on this issue was flawed. She could not lawfully conclude that the proposed use would bring about a material change of use. She had found that the site's "generic land use", as Mr Fraser-Urquhart put it, would remain the same if it were used as the application for a certificate described. A change of use would only satisfy the test for material changes of use set out by Pill L.J. in *Hertfordshire County Council* if the character of the "generic land use type" had changed. The inspector had concluded that the land would remain a "caravan site", whatever mix of tenure the proposed use allowed for. She should therefore have concluded that there was no material change of use. The judge was wrong to hold otherwise.

44. I reject that argument. The premise for it is false. The inspector's relevant findings and conclusions were not founded on the concept of the lawful use of the site being a "generic land use". She did not use that expression herself. Nor did she describe the lawful use as simply being use as a "caravan site". She went no further than to accept

that the proposed use "would not be of a different type to the existing lawful use, in that the planning unit would remain a caravan site". She then said, correctly, that the intensification of an existing use can amount to a material change of use, and that the issue here was "whether the extent and nature of the change amounts to a change in the *character* of the existing use" (paragraph 50 of the decision letter). This was the question she had to address. It was the crucial point in the section 195 appeal.

45. In law, the question of whether a material change of use has occurred in the relevant planning unit is resolved by considering whether there has been a change in the character of the use. This is a matter of fact and degree for the decision-maker. In *East Barnet Urban District Council v British Transport Commission* [1962] 2 Q.B. 484 (at p.491), Lord Parker C.J. said that "what is really to be considered is the character of the use of the land, not the particular purpose of a particular operator". And in *Hertfordshire County Council*, this court held that "the test for deciding whether there has been [a material change of use] is whether there has been a change in the character of the use" (see the judgment of Lord Justice Pill, with whom Lord Justice Toulson and Lord Justice Munby agreed, at paragraph 9). The cases on "intensification" of use show the principles in practice (see, for example, the judgment of Lord Evershed M.R. in *Guildford Rural District Council v Fortescue* [1959] Q.B. 112, at p.124; the judgment of Mr Justice Simon Brown, as he then was, in *Lilo Blum v Secretary of State for the Environment* [1987] J.P.L. 278, at p.280; and the judgment of Mr Justice Sullivan, as he then was, in *R. v Thanet District Council, ex parte Tapp* [2001] 81 P. & C.R. 37, at paragraph 54). In *Thanet District Council*, Sullivan J. referred to the possibility of a material change of use occurring by "an increase in one use at the expense of other uses in a previously mixed use". And in *Wipperman v Barking London Borough Council* (1966) 17 P. & C.R. 225, as Mr Leader pointed out, the Divisional Court held (at p.239) that where a planning permission permits land to be used for more than one kind of activity, "[merely] to cease one of the component activities in a composite use of the land would not by itself … ever amount to a material change of use". However, as the court went on to say (at p.240), "there can be a material change of use if one component is allowed to absorb the entire site to the exclusion of the other, but whether or not there is a material change of use is a matter of fact and degree". If the decision-maker resolves that essential question – whether, as a matter of fact and degree, there has been, or would be, a change in the character of the use – the court will only interfere with the outcome on *Wednesbury* grounds.

46. In this case the inspector did resolve the essential question. She clearly understood that a proposed use can be of the same "type" as an existing lawful use but still be a material change of use. This is plain in paragraph 50 of her decision letter, where she distinguished between the concept of the proposed use "not [being] of a different type to the existing lawful use" and the concept of "the extent and nature of the change [amounting] to a change in the *character* of the existing use".

47. There can be no complaint that she should have regarded the existing lawful use as a "generic" use of the land as a "caravan site" use, or the proposed use as if it could also be described in this way. Nor can it be said that she ought to have considered the proposed use on some basis other than its full potential for the stationing of 80 caravans as permanent residential accommodation on the site. To have done either of those things would have been to make a false comparison between the proposed use

and the existing lawful use. The phrase "for the purposes of human habitation" in the application clearly included use of all the caravans on the site, up to a total of 80, as permanent residential accommodation.

48. The inspector found that the 1987 planning permission was not merely for a "caravan site" but a "caravan site at which caravans provide both permanent residential accommodation and holiday accommodation, the year-round use of the latter being prevented by condition". Having come to that conclusion, she found, lawfully, that the proposed use would be a change from the permitted use because it "would encompass the use of any and all caravans on the site to provide permanent residential accommodation, with no holiday use at all" (paragraph 47). In my view, she was entitled to find, as a matter of fact and degree, that the proposed use would be a material change of use – since it "would bring about a substantial and fundamental change in the character of the appeal site's use" (paragraph 65). Her conclusion on this issue was the product of evaluative judgment on the facts she found. It did not offend *Wednesbury* principles. Any other conclusion would have been not only surprising but at least arguably unreasonable in the *Wednesbury* sense. But we do not have to go that far. We need only accept that the inspector's conclusion is legally unassailable.

49. Based as it is on findings of fact which are not themselves the subject of any attack, that conclusion is, in my view, wholly sound in law. The main findings were these. First, the character of the use of the central part of the site "would undergo considerable and significant change if up to 80 caravans were to be stationed on the planning site for unrestricted occupation". In place of a "seasonal pattern of occupation", there would be "unrestricted residential occupation that would generate a steady level of activity throughout the year" (paragraph 59). Secondly, in both the central and eastern parts of the site, areas "currently devoid of light and other human activity would acquire a year-round domestic presence" (paragraphs 59 and 60). Thirdly, "the pattern of movement to and from the planning unit would also be likely to change significantly" (paragraph 62). And fourthly, "caravans in year-round occupation stationed within the grassed areas adjoining the entrance would be clearly visible from the road, and would have the effect of visually extending the existing caravan site" (paragraph 63). Those findings amply justify the inspector's conclusion that the proposed use would be a material change of use.

50. The fourth ground of appeal repeats the argument rejected by the judge: that the inspector was not entitled to conclude that the proposed use would bring about a material change in the definable character of the use of the land, having accepted that the "generic land use" would stay the same. As the judge recognised, there is nothing inconsistent between the conclusion that the land would remain, generically, a "caravan site" if the proposed use came about, and the conclusion that this would entail a "substantial and fundamental change in the character of [its] use". There is no viable *Wednesbury* challenge here.

Conclusion

51. For the reasons I have given, I would dismiss the appeal.

Lord Justice Males:

52. I agree that the appeal must be dismissed, for the reasons given by the Senior President of Tribunals. However, I add some thoughts on the *I'm Your Man* line of cases (*I'm Your Man Ltd v Secretary of State for the Environment* [1998] EWHC 866 (Admin), (1998) 4 PLR 107) as they appear to one not deeply versed in planning law.

53. The planning permission granted in 1987 was for 9 residential vans, 16 holiday chalets, 18 (holiday) static vans and 30 touring units. The site owner now seeks a certificate of lawful use or development for the stationing of up to 80 caravans on the site which are intended to be for, or at least available for, year-round permanent residential occupation.

54. I would have liked to be able to decide this case on the straightforward basis that, if you have planning permission for 9 residential caravans on a site, it is outside the scope of the existing permission and is not a lawful use to station up to 80 such caravans there. That seems to me to accord with the principle that the meaning of a grant of planning permission must be determined by reference to what a reasonable reader would understand, viewing the grant as a whole, including any conditions and the reasons given for them (*Trump International Golf Club v Scottish Ministers* [2015] UKSC 74, [2016] 1 WLR 85 at [34]). It reflects also the statutory provision in section 171A of the Town and Country Planning Act 1990 that failure to comply with any limitation subject to which planning permission has been granted constitutes a breach of planning control.

55. On one view, however, the *I'm Your Man* line of cases may preclude this straightforward approach. Thus in *R (Altunkaynak) v Northampton Magistrates Court* [2012] EWHC 174 (Admin) the Divisional Court (Lord Justice Richards and Mr Justice Maddison) said that the reasoning in *I'm Your Man* was not limited to temporal conditions, but applied more generally:

> "39. … 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 it has to be done by condition."

56. The statutory provision to which Lord Justice Richards referred was section 72 of the Town and Country Planning Act 1990, which provides:

> "(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 development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, 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;
>
> (b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.

> (2) A planning permission granted subject to such a condition as is mentioned in subsection (1)(b) is in this Act referred to as 'planning permission granted for a limited period'."

57. For my part I see nothing here to insist that the only way of imposing a limitation on a grant of permission is by way of a condition. The scope of the permission granted, including any limitations imposed, ought to be a matter of construction of the grant of permission as a whole. It seems to me that permission to station nine residential caravans on a site imposes its own limitation: permission is granted, but with the numerical limitation that the number of caravans must not exceed nine. But that seems not to be the approach which some of the cases have taken.

58. In *Cotswold Grange County Park v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin), [2014] JPL 981, Mr Justice Hickinbottom said at [21] that the passage which I have cited from *Altunkaynak* "succinctly and perfectly encapsulates the principle derived from *I'm Your Man*". He held that a grant of planning permission to station "54 caravans" on a site, but with no express condition limiting the number of caravans to 54, permitted the stationing of more than 54 caravans:

> "30. Therefore, whilst I accept that the Inspector acknowledged the principle derived from *I'm Your Man*, I have come to the firm conclusion that he failed properly to apply it. He failed to respect the difference between a limitation of numbers of caravans in the description in the grant (present in this case), and a limitation of such numbers in the form of the condition (not present in this case). In that failure, unfortunately, the Inspector (and the Council before him) materially erred in law, because only the latter was capable of imposing a limitation at law."

59. For my part I have difficulty in understanding why there is any difference between (1) a grant of permission which says "you have permission to station 54 caravans on the site" and (2) a grant of permission which says "you have permission to station 54 caravans on the site", together with a condition which says "you must not station more than 54 caravans on the site". To my mind, both mean the same thing: there is a limitation on the number of caravans for which permission has been granted, which means that it is a breach of planning control (i.e. is not lawful) to station more than 54 caravans on the site. This in my view would be understood by any reasonable reader.

60. However, I must recognise that the *I'm Your Man* line of cases includes decisions of this court which are binding on us and which have approved the reasoning of Mr Justice Hickinbottom in the *Cotswold Grange* case, for example *Winchester City Council v Secretary of State for Communities and Local Government* [2015] EWCA Civ 563. That decision affirmed the *I'm Your Man* line of cases, while insisting that they should not be misapplied. It clarified that they did not apply in the event of a material change of use. In addition, *I'm Your Man* has been referred to with approval in the Supreme Court (*Lambeth London Borough Council v Secretary of State for Housing, Communities and Local Government* 2019] UKSC 33, [2019] 1 WLR 4317 at [26]).

61. It may therefore be necessary to accept that the limitation on numbers in the grant of permission in 1987 does not in itself mean that the stationing of 80 residential

caravans on the site would be unlawful; and that it would only be unlawful if the stationing of those caravans would amount to a material change of use.

62. The appellant says that it would not be a material change, because the site would continue to be a caravan site, or at any rate a caravan site with some chalets in addition, and because intensification of an existing use does not amount to a material change (*Hertfordshire County Council v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1473 at [9]). However, whether there is a material change of use is a fact-sensitive issue which is for the Inspector to determine. I would accept the respondents' submission that the Inspector was entitled to conclude, as a matter of planning judgment, that there would be a change in the character of the use of the site. It was open to her, on the facts of this case, to conclude that there is a material difference between (1) a caravan site which is principally for holiday use but has some limited provision for residential caravans and (2) a caravan site which is primarily or entirely residential. The character of the use would be different in each case. On that basis the Inspector was entitled to conclude that the proposed use would amount to a material change of use and that a certificate of lawful use should be refused. Because this is a matter of planning judgment, and the Inspector's conclusion is not *Wednesbury* unreasonable, the court will not interfere with it.

63. This reasoning is broadly similar to the reasoning of Lord Justice Sullivan in the *Winchester City Council* case, where permission was granted for the stationing of caravans for use by travelling show people, but with no condition preventing use of the site by occupiers who were not travelling show people. Nevertheless it was said to be a question of fact and degree whether use of the site by show people who did not travel was a material change of use – and it was found that it was.

64. Accordingly, while I would have preferred to decide the case on the straightforward basis which I have indicated at [54] above, in the event I agree that the appeal must be dismissed on the basis that the proposed use is outside the scope of the existing planning permission and would represent a material change of use.

65. While this achieves what I regard as the correct outcome in this case, it is not altogether satisfactory, at least in theory. It requires consideration of what in my view ought to be an unnecessary question, i.e. whether there has been a material change of use. It means that, in another case, where a site owner stationed a greater number of caravans on a site than allowed in the grant of planning permission and there was no condition spelling out that this was not permitted, but there was nothing which would qualify as a material change of use, the site owner would (paradoxically, to my mind) be entitled to a certificate of lawful use despite exceeding the limits of what was permitted by the grant. In practice, however, that concern may be illusory. The *Winchester City Council* case rightly emphasises the importance of rigorous attention to the true scope of a grant of planning permission, which must be ascertained by interpreting the words in the planning permission, considered as a whole. In most cases, as in *Winchester City Council* and the present case, once the true scope of the grant has been properly ascertained, the question of material change of use is likely to answer itself.

Lord Justice Lewis:

66. I agree that the appeal should be dismissed for the reasons given by the Senior President of Tribunals.