



Neutral Citation Number: [2024] EWHC 2628 (Admin)

Case No: AC-2024-LDS-000057

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
SITTING IN LEEDS

Thursday, 17th October 2024

Before:
FORDHAM J

Between:
(1) LIONEL WATERHOUSE
(2) PATRICIA WATERHOUSE

Appellants

- and -

**(1) SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT**
(2) NORTHUMBERLAND COUNTY COUNCIL

Respondents

Harley Ronan (instructed by Richard Buxton Solicitors) for the **Appellants**
Riccardo Calzavara (instructed by GLD) for the **First Respondent**
Piers Riley-Smith (instructed by Northumberland CC) for the **Second Respondent**

Hearing date: 17.10.24

Judgment as delivered in open court at the hearing

Approved Judgment

FORDHAM J

Note: This judgment was produced and approved by the Judge.

FORDHAM J:

Introduction

1. This is an application for leave to appeal on a point of law, pursuant to section 289 of the Town and Country Planning Act 1990. There are issues about whether the grounds of appeal are viable, whether is to say that they are arguable, with “a real prospect of success” for the purposes of CPR 52.6(1)(a). There is a delay issue, framed by the Secretary of State as a strike-out (CPR 52.18) and by the Appellants (Mr and Mrs Waterhouse) as relief from sanctions (CPR 3.1(2)(a)). Issues have also been raised about reducing or extending the Aarhus ‘default’ costs caps. Everyone agrees I can put that to one side for now and focus on delay and arguability.
2. I have decided to address the viability (arguability) questions first in this ruling, to be able then to look at the question of delay on an informed basis and in the round. I am grateful to all three Counsel for the assistance they have given me, in the preparation and presentation of the materials and of the written and oral submissions for today. That includes the way in which they used the court time that had been allocated for this case.
3. The appeal is against a planning inspector’s decision (22.1.24). The references are APP/P2935/C/23/3316802 and /3316803. I give those planning references, as always in planning cases. That is because any interested reader can use them to find the inspector’s decision (the Decision Document) online. There are two reference numbers because there were two s.172 enforcement notices issued by the local planning authority (the LPA) on 15.2.23 against Mr and Mrs Waterhouse. They were for breaching planning control by using as a dwelling – ie. a change of use to residential use – a forestry-use container situated at their woodland (“English Wood”) near Hexham NE45 5RL. There has been a lot by way of exchanges so far as concerns the location, or more specifically the correct name for the relevant woods. The matter was clarified and resolved within the body of the Decision Document (§§2-5). Nothing really turns on that for the purposes of today, although I am asked to bear it in mind and I have done so. The land is Green Belt land, where such a change of use to residential use would need planning permission. Mr and Mrs Waterhouse – who are aged 75 and 80 – also own an unencumbered house in Chester (CH3 5LS). That is some 180 miles away and more than 3 hours’ drive.
4. I am entirely satisfied that it was (as it still is) common ground that the container was on site (at English Wood) by May 2017. The LPA had issued a decision (9.5.17) to confirm that use of the container (at English Wood) as use associated with forestry development, was permitted development (Decision Document §6).
5. Faced with the February 2023 enforcement notices, Mr and Mrs Waterhouse mounted their s.174 appeals to the inspector. They asked in an online appeal form (16.2.23) for their appeals to be dealt with by the “written representations procedure”. They then received a notice from the planning inspectorate (7.3.23) confirming that the appeals would be dealt with by the written representations procedure. They restated, this time in an online questionnaire (20.3.23), that they wanted their appeals to be dealt with by the written representations procedure.

6. The ground of appeal which they advanced, and which matters for present purposes, is called ground (d). It is that, because four years had elapsed beginning with the date of breach (s.171B(2)), there was immunity from enforcement by the time of the enforcement notices (s.174(2)(d)). It was said by Mr and Mrs Waterhouse that they had been living in the container, as their residence and dwelling, since December 2017.
7. Two features of the case are worth having in mind from the outset. Both of them were known to the inspector. One feature is that on 23.7.19 and again on 23.2.21 Mr and Mrs Waterhouse had given specific indications to the LPA, in writing, that the couple was not treating the Hexham woodland as their residence and dwelling. On 23.7.19 it was an email which also said they remained resident at their house in Chester. On 23.2.21 it was in formal declarations in response to a PCN relating to a campervan. It is not necessary to get into this first feature in any more detail. Mr Ronan for Mr and Mrs Waterhouse had points to make about those communications. But it is, in my judgment, fair to say that they bring into sharp focus the questions about Mr and Mrs Waterhouse evidencing their later claimed position. It was in essence, as I have said, a claim about use as a dwelling for residence from December 2017 onwards.
8. The second feature is that Mr Waterhouse is a retired local government principal engineer and land surveyor, who had attended many planning hearings in the course of his government and local government employment, as he told the inspector in the course of written representations in the appeals.

The Need for Evidence

9. Mr and Mrs Waterhouse knew that they needed to provide evidence in their appeals, in support of their contention that they had been treating the container as a residence ever since December 2017, and had the necessary 4 years for the statutory immunity from enforcement action. They also knew that the LPA's case was that it had been later, between March 2020 and May 2021, that the couple had begun to use the container as a dwelling. They told the inspectorate (24.3.23) that they were "preparing and collecting evidence to support our appeal". They subsequently provided what they described as "a statement/ affidavit" from their Chester neighbour, Mr Andrew Stephens.

The 2017 Photo

10. A photo was put forward by Mr and Mrs Waterhouse in support of their appeals. It was dated 18.6.17. It showed that the container was on site in the woodlands at that date. It was relied on in support of the appeals, as a photo which "dates the building". But – so far as the four year breach point was concerned – that went nowhere. It was not in dispute that the container had been on site in June 2017. There was a confusion about which land, or which name, but it was resolved. What Mr and Mrs Waterhouse needed to show, on the balance of probabilities, was that they had been using the container as residence or dwelling as they claimed, since December 2017 (on their case) or in any event for a 4 year period which elapsed prior to 15 February 2023. That was what they were claiming. No photos were submitted which substantiated that claim. They have said they were living off-grid, reliant on a mobile phone. No explanation was or has been given as to why they had no photos, or would have no

photos. This was an obvious point, especially given that one 2017 photo was being relied on.

The “To Whom It May Concern” Emails

11. Mr and Mrs Waterhouse put forward four emails headed “to whom it may concern”. One was from a Holly Santana, who had, she said, visited the forestry land “several times” since 2016 and who said that Mr and Mrs Waterhouse had been staying there “to conduct forestry work”. The others were from a Louise Black and two from Andrew Stephens. The first of the Stephens emails was described as the “statement/ affidavit”. These emails stated that Mr and Mrs Waterhouse had been occupying their forestry building for over 5 years now (Mr Stephens by his email on 28.2.23) and living in their cabin since before Christmas 2017 (Ms Black by her email 1.5.23).

The Inspector’s Decision

12. The inspector was unpersuaded by the evidence adduced. He identified difficulties with the nature of the emails, in light of the claim made about “a statement/ affidavit”. He explained that these were email letters – not formal witness statements or affidavits – and he considered that they could be afforded “little weight”. Secondly there were the contents of the emails. The inspector was looking for detail and specificity. He said that the contents of the letters indicated that Mr and Mrs Waterhouse had been living in the container “during the four year period prior to the date of the issue of the enforcement notice”, but that the letters did not indicate that that use as a dwelling had been “continuous”. Then there was a third point. The inspector thought it was important. He said that “furthermore and of particular importance” there was no supporting documentary evidence, no dated photos and no documents indicating residential use of the forestry building. In the light of all of that, there was no “sufficient”, “precise and unambiguous” evidence to demonstrate, on the balance of probability, that the use of the forestry building as a dwelling commenced more than four years before the issue of the enforcement notices; nor that its use as a dwelling had been “continuous” throughout the four year period. All of this can be seen in the Decision Document where the inspector addresses the ground (d) appeals at §§9-15.
13. In my judgment, the decision was – on its face – a clear, reasoned rejection of the claim, because of the insufficiency of the evidence, viewed against the relevant legal requirement and the relevant standard of proof.
14. Basic legal principles are found in Ravensdale Ltd v SSCLG [2016] EWHC 2374 (Admin) at §§3-5 in particular, under the heading “applicable law and policy”. They are as follows. (1) The onus of proof in establishing, on the balance of probabilities, that a period of immunity has accrued falls on the appellant. (2) The appellant must be able to establish that the LPA could have taken enforcement action against the breach at any time during the relevant period: in other words, that the lawful change of use must be active and continuous. (3) It is incumbent on parties to a planning appeal to place before an inspector the materials on which they rely. (4) The inspector is entitled to reach a decision on the basis of the materials before him. (5) The duty to give adequate reasons can be appropriately encapsulated in the question whether the reasons in the decision leave room for “genuine as opposed to forensic doubt” as to “what the inspector has decided and why”; on a straightforward and down-to-earth

reading of the decision letter, without “excessive legalism or exegetical sophistication”.

15. Mr Ronan says there are six arguable grounds of appeal, each of which has a real prospect of success, any one of which is sufficient.

Unfairness

16. One ground is that this was a case where determination on the “written representations procedure” was unfair. Reliance is placed on West v First Secretary of State [2005] EWHC 729 (Admin) at §45. That passage explains that there are exceptional cases where, on the particular facts, fairness requires the inspector to do something more; for example, by requesting further information or departing from the written procedure and holding an oral hearing. Here, says Mr Ronan, the inspector arguably needed to hold a hearing or public inquiry or at least request further information. There was the nature of the dispute of fact, about when Mr and Mrs Waterhouse were living in the container on the land and when (including any question as to their truthfulness), which needed to be fairly determined. There were the practical difficulties. As to the difficulties regarding the nature of the written process these, says Mr Ronan, can be likened to cases of deciding questions such as intention, where a written process proves inadequate for a fair determination. There were also the practical difficulties faced by Mr and Mrs Waterhouse themselves. There was their struggle using a mobile phone with no computer or printer and poor Wi-Fi. There was the fact that they were acting in person without legal representation. And, says Mr Ronan, it is nothing to the point that they had agreed to the process; nor for that matter that they had funds that they might have chosen to use in different ways. The inspector should have spotted from all of these circumstances, and from the points being made in the written representations and email communications, that fairness required more than simply proceeding to determine the issues. It needed a further enquiry; or a further opportunity for a hearing.
17. In my judgment, this ground of appeal has no real or realistic prospect of success. The onus was on Mr and Mrs Waterhouse as appellants to prove their case, on the balance of probabilities, and with evidence. The June 2017 photo went nowhere. They said “if necessary, we can provide many more different sources of confirmation” (24.3.23). They said “we can provide full substantive evidence” and “we can provide many sources of confirmation” (1.5.23). They requested that the inspectorate “confirm what has already been sent is sufficient evidence” (12.4.23). They said they were keeping it simple, because they were using a mobile phone. But there was no arguable unfairness. There was a full and fair opportunity to adduce evidence. At no stage was it said or suggested by the inspectorate that what had been provided was “sufficient”. The inspector, fairly determining the case on the agreed written representations procedure, decided that it was not sufficient.
18. At its high water-mark, Mr Ronan says the request email (12.4.23), read with an earlier communication, was and should have been read as being a complaint that the process was stopping Mr and Mrs Waterhouse from being able to put forward materials that they wanted to adduce. The inspector should have appreciated that, and should have done more in the light of it. What the email of 12 April 2023 actually says is by reference to “deadlines”. It raises a concern: “we are concerned that the considerable variation of information we have available isn’t precluded from this

procedure”. So the point being made was about time and deadlines. It was not a point being made about technology. It was not a point being made about the written procedure. And it was not a point being made about having a hearing at which oral evidence could be heard. It was, moreover, within that email that the request was made that the inspectorate should state whether the evidence already provided was “sufficient” or whether more was required. As to that, it was said that “contact” could be made with “other persons”, but with an extension of time. That, again, was not about the means or mechanism to provide evidence on the appeal; nor that there should be an oral hearing. As I have already said, the inspectorate never replied giving any assurance or evaluation as to sufficiency. That was a matter for the inspector. It is beyond argument in my judgment, that the inspector was entitled – acting fairly – to decide the case on the basis of the evidence that Mr and Mrs Waterhouse had chosen to put forward.

19. I pause to make this further point. Mr and Mrs Waterhouse say there is an injustice in this case. They say they could have proved their case, given a further opportunity. In Counsel’s skeleton argument (7.3.24) the case of West is cited. There is a passage in West which deals with the question of prejudice. It is at §§52-53 in the judgment of Richards J. In that passage the judge said it was “striking” in that case that, “even now”, the claimant had not “pointed to the existence of any further material” that could actually have been put forward if given an opportunity. Richards J went on to say that, in a challenge based on procedural unfairness, it is for the claimant to show that there has been “real unfairness causing substantial prejudice”. He said that the “complete absence of evidence to show that it might have made a difference” would “at the very least” have been a basis for a refusal of any relief. Here, there is a further witness statement from Mr Waterhouse (7.3.24). But, even now, there are no photos showing life in the container as a dwelling, from Christmas 2017 or after that. What is said is that Mr and Mrs Waterhouse spend some £2.6k per month, including on living expenses; that they have never been back – even overnight – to their house in Chester since December 2017. There is no documentary evidence – even now – to support their contention that they have been at Hexham in the woodlands, as their home, from December 2017 onwards. Where is the injustice if “the cupboard is still bare?” That was the point made in West. It applies here. And I cannot accept that there is, even arguably, identifiable prejudice based purely on not having an oral hearing or not allowing for signed statements or sworn affidavits. The point about the absence of supporting documents, which is an obvious one, is one that was straightforwardly emphasised within the Decision Document (§14). It reflects a common sense point about how to go about supporting, proving and corroborating assertions that are being made.

Unlawfulness

20. Mr Ronan says that the inspector arguably made various errors of law. One is that his reference to “sufficient precise and unambiguous evidence” ran “the risk of” or did elevate the civil standard of proof. Especially because the inspector said “sufficient” and not “sufficiently”. But this recognised standard (precise and unambiguous) relating to evidence – which has been said to reflect an “obvious” point (see Ravensdale §7) – has long been recognised as being consistent with the standard of proof (the balance of probabilities), to which the inspector repeatedly referred. In Ravensdale, these features all fitted together without clash or inconsistency (see

§§4(1), 6-7); and the inspector there had said something very similar (see §15). There is nothing, in my judgment, even arguably in the point that seeks to place weight on the difference between the word “sufficient” and the word “sufficiently”. And on both of the occasions in the Decision Document where the inspector spoke about “precise and unambiguous evidence”, within the very same sentence there was a clear and accurate description of the civil standard of proof (Decision Document §§12 and 15).

21. Mr Ronan says the inspector arguably thought erroneously that the four years had to end with the date of the enforcement notice. The legal point can be seen in R (Ocado) v Islington LBC [2021] EWHC 1509 (Admin) [2021] PTSR 1833 at §135. But the inspector was very well aware that four years – at any time before the enforcement notice – would suffice, and he expressly said so (Decision Document §§9, 15). Mr Ronan says that the inspector arguably thought that “continuous” meant more than a subsisting breach. This legal point can be seen in Ocado at §51-53 and 58. But again that has no traction at all, reading the Decision Document fairly. Indeed, the context was that use of the container in relation to forestry use was acceptable. The question was about use as a dwelling, as a subsisting breach. Moreover, the contention by Mr and Mrs Waterhouse was – as I have explained – that they had stayed there since December 2017, leaving their Cheshire home empty.
22. Next, Mr Ronan says the inspector arguably decided the case on evidence that was absent, instead of deciding it on the evidence before him. That meant that he was “speculating” as to other evidence. On this part of the case, Mr Ronan says it is one thing to say (a) that an assertion has no documentary support so that there is nothing of weight to add to it, but it is another if (b) the lack of documentary support is being relied on to “reduce the weight” of the assertion. First, he says (b) is impermissible and involves “speculation”. Second, he says that on a fair reading of the Decision Document the inspector fell into this as a legal error. But I am unable to accept even arguably that either of those submissions is correct.
23. The inspector decided the case on the evidence: see West §42. What the inspector was doing, in his third point (§12 above) was making the perfectly fair – and common sense – point that no documentary or photographic evidence had been adduced which actually supported the claims made. An inspector decides the case on the evidence: Ravensdale §28. There is no duty to explain what evidence would have satisfied him: Ravensdale §31. An explanation of the sort of evidence that is absent is not unlawful: see Ravensdale at §22 (in the inspector’s reasoning) and §23 (in the PPG general advice). This is not to “speculate”, as to which see Ravensdale at §26. It cannot possibly, even arguably, be unlawful to make the point that no documentary evidence has been adduced at all, and then to refer to types of documentary evidence. I have done the same. Mr and Mrs Waterhouse say they have no footprint in the Hexham woods when it comes to utilities and council tax, to which the inspector referred. But they say they live off Mr Waterhouse’s pension, and they spend the £2.6k per month to which I have referred. As I have said, they have produced no photos or documents, on the central claims being made. There was no documentary evidence whatsoever to support that life, in the woods in Hexham, that began in December 2017. In saying this, I am not speculating. I am not making a decision based on evidence which is absent. I am describing a category of evidence which is conspicuously absent, without explanation. It is the same point which can be made where any assertion is uncorroborated or has no contemporaneous documentary support. That can perfectly

legitimately, in my judgment, lead to this conclusion: that what is being asserted cannot be accepted as having been proved. I am unable to see, as a principled or workable distinction, the idea that an absence of documents is something which may be unable to add any weight to assertion, but is something which cannot assist in deciding what to make of an assertion, including whether or not to accept it. There is therefore, in my judgment, no substance in any of the alleged errors of law.

Unreasonableness

24. Mr Ronan has an unreasonableness point. But it turns on treating the inspector's use of the word "during" as having meant "throughout". It also treats an observation about what is indicated in the contents of the emails (Decision Document §14) as though these were being accepted by the inspector. This is said arguably to undermine the reasonableness of the inspector's ultimate conclusion. The answer is that the inspector was saying, and was accepting, that use as a dwelling had taken place (as to which see Decision Document §7). This was "during" the last four years. The LPA had used the word "within" the last four years (Decision Document §11). What matters is that the inspector did not say there was good and sufficient evidence supporting a finding of use as a dwelling "throughout" the four years. That is the whole point. There is no arguable unreasonableness.

Reasons

25. Finally, it is said by Mr Ronan that there were arguably legally inadequate reasons. Here, reliance is placed on Ouseley J's judgment in Mahajan v SSSLGR (2002) JPL 928. On the facts of that case, legally adequate reasons were absent, in circumstances where the photographic evidence could have been interpreted differently (see §44). That meant the council's photos, said by the inspector to be inconsistent with the letters put forward by the appellant, could in fact have been consistent with them. In those circumstances, Ouseley J was left in "real doubt" as to whether inspector actually "grappled" with the evidence supporting the appellant's case (§44), and needed explicitly to weigh the written statements against the photos, and against probabilities derived from external circumstances (§46). Again, in those circumstances, it was insufficient simply to give untested evidence limited weight (§41). Mahajan is a decision on its own facts and features, as Ouseley J himself emphasised.
26. In the present case, there is no room even arguably for any doubt as to what the inspector decided. The balance of probabilities standard had not been met by the "to whom it may concern" letters, in light of the complete absence of any documentary support, and in a context where the inspector was looking for evidence that was clear as to it being precise and as to it being unambiguous. The conclusion was clear and intelligible. It grappled with the material. It resolved the principal controversial issue. It meets the test, of no genuine doubt as to what was decided and why: see Ravensdale §§5 and 32. There is, in my judgment, no real prospect of success on this final ground either.

Extension of Time

27. The parties had started with the issue of the extension of time. Mr Calzavara's written submissions urged me to start with that issue. However, even in the Secretary of

State's delay-based application to strike out the appeal notice, there was reference to a cursory consideration of the merits and the arguability of the grounds of appeal. As I have indicated, I wanted to look at the case in the round, and be in a position to think about the case in the round. Nobody disagreed that it was appropriate to hear all submissions on delay and arguability. As I have made clear, I decided in this ruling to focus as a first topic on the question of arguability. In the light of the conclusions that I have reached, nothing can turn on the delay points, in the sense that the appeal would not receive leave to appeal in any event. But I think it important that I do address and make observations on the question of delay.

28. On the question of delay, it is common ground that the Denton principles apply: see R (Ibrar) v Dacorum BC [2022] EWHC 3425 (Admin) [2023] JPL 668 at §62. There is a 28 day deadline for a s.289 appeal, found in CPR PD54D §6.1: see Ibrar at §13. In this case, the deadline was 19 February 2024.

29. An email from the Planning Inspectorate to Mr and Mrs Waterhouse (22.1.24), to which the decision document was attached, referred to the "strictly enforced deadlines" for challenging. But it then said this:

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

30. As it seems to me, the first key point is that Mr and Mrs Waterhouse decided to take precisely that course. They decided they wanted to speak to the Administrative Court in London and to get hard copy forms. Their evidence is that they then had difficulty getting through on the phone and by emails, and getting the hard copy forms they needed. An email of 18.2.24 records that first contact was made with the Court in London on 30.1.24, followed by another phone conversation on 12.2.24, after unanswered emails. It explains that Mr and Mrs Waterhouse were still waiting for the forms to appeal, having been told they would be sent by post, but they had not arrived. On the evidence, the forms were received on 22.2.24, and were filed on 24.2.24 but were then rejected by the Leeds Administrative Court (26.2.24) because they were the wrong forms. The Secretary of State is now complaining about the delay. It will be for the Secretary of State to consider or reconsider future messaging, and to liaise with the Administrative Court as to the messaging. I venture to suggest, for consideration, that it may be better in the messaging to give a clear statement of what the relevant strictly enforced deadline is, for the type of decision in question; and to emphasise that information and forms can all be found online.

31. The second key point is that Mr and Mrs Waterhouse plainly thought that they had 6 weeks. They said that in the email on 18.2.24, which was why for them it was becoming urgent. That 6 weeks was a mistake, and it was their mistake. On the evidence, it was not induced by anything they were told by the Inspectorate or by the Court.

32. The third key point is that, in the meantime, Mr and Mrs Waterhouse were not inactive. On 8.2.24, they had emailed a "Skeleton Case" to a London Administrative Court's skeleton arguments email address. That document was, in substance, an appeal document, impugning the decision and outlining the basis for impugning the

inspector's decision. It has, very fairly, been recognised in Court today that the email address used was a correct Administrative Court (skeleton arguments) email address. Mr and Mrs Waterhouse would not therefore have received a non-receipt bounceback email. This third key point, alongside the first key point, does – it seems to me – make this a case with very particular facts and circumstances.

33. After the wrong forms were lodged, the Leeds Administrative Court responded promptly (26.2.24), identifying and providing the correct forms and also drawing specific attention to the correct (28 day) deadline. The correct form of notice of appeal was filed electronically on 7.3.24. By now, that was 18 days outside the strict 28 day deadline. Solicitors had been contacted on 27.2.24, when the deadline had passed and the correct forms had been received, by which time things were unravelling. Those solicitors made immediate contact with the Inspectorate (27.2.24), who provided them with documents relevant to the proposed appeal. Counsel then produced a fully researched and reasoned skeleton argument, at what must have been top speed, which accompanied the appeal documents (7.3.24).
34. There are cases about extensions of time where it is said that the refusal of an extension would infringe the very essence of a right of appeal, for the purposes of ECHR Article 6. That is not said in the present case.
35. Mr Ronan says that – although by definition it was serious and significant – this was in the end a short, non-prejudicial, period of delay in what he said was an arguable appeal, by an elderly couple who were acting in person and doing their best without a computer, following the information provided by the inspectorate about how to get documents and information; all in the context of criminal sanctions. The focus he says is on the reasonableness of what they did. Mr Calzavara says paper forms in this case are a red herring because in the end the solicitors filed the appeal electronically; and the delay is really because solicitors were only instructed after the 28 day period had passed. He also emphasises – supported by Mr Riley-Smith – that arguability could not of itself be a basis for extending time, because appeals need arguability as an independent precondition, and the delay rule would be emptied of content.
36. The 28 day period is an objective and accessible rule of law. There is no evidence, as I have said, that anyone in the inspectorate or the Courts (whether in London or Leeds) told Mr and Mrs Waterhouse that it was 6 weeks. The correct forms were not inaccessible online, and the appeal to the inspector had itself involved online documents. The inspectorate had referred to hard copy forms and had given an Administrative Court (London) phone number. But there was no indication from the inspectorate, or from the Court, that if phone calls did not elicit hard copy forms, that would excuse a late appeal. If the tug of pragmatism too readily leads Courts into extending time, the integrity of 28 days with the correct forms is undermined. Others will follow. A strict and clear framework unravels. Also, there are strong public interest considerations in promptness in relation to enforcement appeals: see Ibrar at §50. Eyre J in that case suggested that the merits might be a factor in support of an extension of time, especially if they are compelling: Ibrar at §68.
37. Here is where I have ended up. Had I found a viable ground of appeal, I would then have extended time, in the overall interests of justice. That would have been in light of viability of the appeal, and because of the combination of: (i) the messaging from the Secretary of State's inspectorate; (ii) the frustrating quest via phone calls and

emails for documents from the Admin Court to which the messaging directly led; and importantly (iii) the attempted filing of the “skeleton”. I would not have shut out an otherwise viable appeal. However, that is not where we are. I am going to refuse the extension of time, because (a) there is no viable ground of appeal and also (b) there was a material mistake on the part of Mr and Mrs Waterhouse about 6 weeks and not 28 days. I appreciate that in a sense none of this matters, in the light of my conclusions on arguability. But, in the light of having heard the arguments, and given the integrity that delay and the application for the extension of time have as a freestanding point, I have considered it appropriate to deal transparently with the delay question on the particular facts of this case.

Costs

38. I am aware of the various points that have been raised about the Aarhus default costs limits. I will hear submissions on whether I am being asked to make any further order and if so what order.

[Later]

39. Having done so, I now have had to consider various strands relating to costs. Everyone agrees that this is an Aarhus claim, and everybody also agrees that the “default” Aarhus costs caps apply to each of two Appellants – Mr and Mrs Waterhouse – individually. That means there would by default be a £5,000 cap in relation to Mr Waterhouse’s costs exposure and the same in relation to Mrs Waterhouse, with an aggregate therefore of £10,000. Mr Ronan has submitted, in writing and orally, that that default position should be reduced down to an aggregate of £5,000 between the two of them. That is in light of the realities of the case which they jointly bring, and in order to avoid the proceedings being “prohibitively expensive”. Mr Calzavara and Mr Riley-Smith oppose that course. Neither of them contends for the default caps to be increased. That is one strand of the costs picture. A second strand is that both Mr Calzavara and Mr Riley-Smith make applications for summarily assessed costs. Subject to the position as to the Aarhus caps, they invite assessed costs in full. The costs for the Secretary of State are a grand total of £9,316.99 and for the LPA £6,000 (including VAT). Those applications are opposed by Mr Ronan on the basis of an analogy with the provision in CPR 52BPD §8.1, emphasising that the court did not order the attendance of either of the Respondents. That is a second strand of the costs position. The third strand relates to the relationship between the First and Second Respondents. As between them, it is common ground that the primary position as to costs is that of the Secretary of State and that if the LPA is to recover any costs at all it would be such costs as remain within the Aarhus cap.
40. I have considered all of the arguments, in writing and orally, and all of the features of the case. I have decided as follows. I reject the application to reduce the Aarhus default caps by halving them down from the aggregate of £10,000 to an aggregate of £5,000. I do not accept that the costs to a level of £10,000 constitutes a cost risk which makes these proceedings prohibitively expensive. The evidence filed by Mr and Mrs Waterhouse has explained the position, including their budgeting of £35,000 to pay their own lawyers through to a substantive hearing of this appeal. They have their unencumbered house in Chester as well as the level of savings which have been

disclosed. It would in my judgment be unjust to reduce the accepted aggregated Aarhus caps. The costs exposure that is relevant is therefore the aggregate £10,000.

41. It does not follow from that conclusion that costs orders should follow. Separate consideration needs to be given, and I have given it, to the legal merits of the costs applications that have been made. I am, however, quite satisfied in the particular circumstances of this case that it is just in all the circumstances that costs orders should be made, both in favour of the Secretary of State and in favour of the LPA, but only up to a maximum of the £10,000. The nature of this case and its background made it all but inevitable that there would be the sort of participation by the Respondents at this hearing that has taken place. This was a scheduled half-day oral hearing, at which there was a lot that was contested and a lot that needed to be considered. It was, in my judgment, entirely foreseeable on the part of Mr and Mrs Waterhouse – in the circumstances of this proposed appeal – that they would face the written and oral submissions on behalf of both Respondents. The court has been materially assisted by all three of the advocates. In my judgment it is appropriate in the interests of justice, and just in all circumstances, that costs order should be made reflecting the success of the Respondents at today's hearing. I have not been invited to comb through the costs schedules on an item by item basis, but I make clear that I would not in any event be ordering indemnity costs. I need to look at matters in the round and have regard to the overall justice. Having done so, I am satisfied that the costs orders in aggregate should go up to the combined cap of £10,000, but of course they cannot go beyond it. The most direct consequence of that ceiling is in fact for the LPA whose costs are limited by the fact that they stand second in line, as they accept. I will summarily assess the Secretary of State's costs in the sum of £7,500 and the LPA's costs in the sum of £2,500. And unless any party considers that further reasoning than that is needed, in fairness to their clients, I will leave the costs position there.

Order

42. I make the following Order: (1) The Appellants' application for an extension of time is refused. (2) The Appellants' application, to reduce the Aarhus default cap of £5,000 per Appellant to an aggregate of £5,000 for both Appellants collectively, is refused. (3) The Appellants shall pay the Respondents costs, summarily assessed in the sums (including any VAT) of £7,500 in respect of the First Respondent and £2,500 in respect of the Second Respondent.

17.10.24