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CO/3213/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 July 2022

**Before**:

**Timothy Mould QC**
**(sitting as a Deputy High Court Judge)**

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**Between:**

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|---|---|
| **HAYTOP COUNTRY PARK LIMITED** | **Appellant** |
| **- and -** | |
| **SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT** | **First Respondent** |
| **-and –** | |
| **AMBER VALLEY BOROUGH COUNCIL** | **Second Respondent** |

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**Richard Harwood QC** (instructed by **Stephens Scown LLP**) for the **Appellant**
**Anjoli Foster** (instructed by **Government Legal Department**) for the **First Respondent**
**Richard Kimblin QC** (instructed by the **Borough Solicitor**) for the **Second Respondent**

Hearing dates: 23 and 24 March 2022

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# Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 2pm on 15 July 2022.

**Timothy Mould QC (sitting as a Deputy High Court Judge):**

## The appeal before this Court

1. This is an appeal under section 289 of the Town and Country Planning Act 1990 **['the TCPA']** from the decision of an inspector appointed by the First Respondent to dismiss the Appellant's appeal against an enforcement notice **['the EN']** issued by the Second Respondent on 15 March 2019. The inspector made her decision by letter dated 20 August 2021 **['the DL']**. The EN relates to land at Haytop Country Park, Alderwasley Park, Whatstandwell, Derbyshire DE4 5HP **['the site']** and concerns operational development carried out at the site. In addition to her decision on the Appellant's appeal against the EN, in the DL the inspector determined a further appeal against a second enforcement notice and an appeal against refusal to grant a certificate of lawful use and development in relation to the site. The appeal to this court, however, is concerned only with the lawfulness of the inspector's determination of the appeal against the EN, which for ease of reference she referred to as the 'Operational Development Notice'. The Appellant also challenges the lawfulness of a costs decision letter issued on 20 August 2021 **['the CDL']**, in which the inspector determined an application made by the Appellant for an award of costs against the Second Respondent. She refused that application. The Appellant seeks an order remitting both the appeal against the EN and the costs application to the First Respondent for redetermination in accordance with the opinion of this court. On 8 December 2021 following an oral hearing Lang J granted permission to appeal.

## The grounds of appeal

2. The Appellant advances the following grounds of appeal against the inspector's determination of the appeal against the EN –

   (1) The inspector erred in law in concluding that the operational development enforced against under the EN was not permitted development by virtue of article 3(1) of and Part 5 Class B of schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 **['the GPDO']**. In particular, the Appellant contends that the inspector was in error in finding that the conditions on a caravan site licence issued on 27 July 1968 **['the 1968 licence']** under the Caravan Sites and Control of Development Act 1960 **['the 1960 Act']** did not require the construction of the roadways and caravan hardstandings to which the EN referred, since those conditions remained in force regardless of whether caravan standings at the site were located in the group areas shown within the plan accompanying the 1968 licence.

   (2) The inspector erred in law in concluding that the operational development enforced against under the EN was not permitted development, by failing to give effect to condition 17 of the 1968 licence which required the provision of at least 20 car parking spaces, without limiting the location of car parking spaces to any particular area within the licensed site.

   (3) The inspector erred in law in failing to take into consideration the fallback position that a new caravan site licence would be granted in accordance with current national

and local model standards and conditions, whose terms would require the construction of hard surfaced roadways, hardstandings and the installation of services and lights. The Appellant contends that, at the public inquiry into the appeals, it was common ground between the Appellant and the Second Respondent that such a new licence would be granted.

(4) In respect of the EN's requirement to remove the roadway, the inspector erred in law in failing to take into consideration the position agreed with the Second Respondent's planning witness that, as the roadway would be permitted development if constructed under the fallback position of a new caravan site licence, planning permission should be granted on the deemed planning application in respect of the existing roadway.

(5) In respect of the EN's requirement to remove service connections, the inspector erred in law in failing to take into consideration the fact that such services would be required under the conditions attached to a modern site licence and the absence of any planning harm resulting from the presence of those services. On that basis and in light of the concessions made by the Second Respondent's planning witness, the inspector erred in law in failing to grant planning permission on the deemed planning application in respect of the existing service connections.

3. The Appellant advances the following grounds of appeal against the inspector's determination of its application for an award of costs –

(6) The inspector's decision to refuse the application for costs is vitiated by her legal errors in determining the appeal against the EN. Her dismissal of the appeal against the EN was the basis for her decision to refuse the Appellant's application for costs. It follows that the costs decision cannot stand if the decision to dismiss the appeal against the EN is found to be in error of law.

(7) The application for costs arising in the Appellant's successful appeal against the second enforcement notice (the "Change of Use Notice") was founded upon the irrefutable proposition that, on the evidence, the appeal had been bound to succeed. The Appellant had been put to unnecessary costs in defending the appeal. In rejecting that case in CDL17 and CDL18, the inspector misconstrued the terms of the Change of Use Notice. That legal error also vitiates her decision to refuse the application for an award of costs.

## Procedural matters

4. At the outset of the hearing of this appeal, there were two outstanding procedural issues.

5. The Appellant sought permission to rely upon a series of documents which superimpose the layout of the caravan site as shown on a plan known as the '1966 Layout Plan' on aerial photographs taken of the site in the years since 1966. The First Respondent objected that these documents had not been before the inspector. That is obviously correct, but I saw no reason to decline to receive documents which, as Mr Richard Harwood QC for the Appellant submitted, had been produced for the assistance of the court. In the event, I have not found it necessary to refer to those overlays for the purpose of reaching my decision on the substantive issues before the court.

6. The First Respondent also applied for permission to admit certain additional documents. Objection was raised to one of those documents, but only on the ground that it was a duplicate of a document already before the Court. Again, I have not found it necessary to refer to the additional documents produced by the First Respondent for the purpose of reaching my decision on the substantive issues before the court.

## The factual background

7. Haytop Caravan Park was first established at the site in the early 1950s. On 27 March 1952 planning permission was granted for the use of the site for the siting of 30 mobile dwellings and one wooden bungalow. A further grant of planning permission on 17 June 1966 **['the 1966 permission']** authorised the extension of the existing caravan site from 30 to 60 caravans, for seasonal and towing use. Included in the evidence before the inspector was an overlay plan which overlays the site boundaries related to each planning permission. As the inspector said in DL31 -

> "*There is significant overlap in area with the 1952 and 1966 permissions, the main differences being that the 1966 area extends north east down to the river and slightly further south beyond the bungalow and includes the Lodge. It excludes an area included in the 1952 permission in the lower part of the site, east of the Lodge*".

8. The 1966 permission was granted subject to 11 conditions. It is necessary to set out condition 2 –

> "*All caravan standings shall be sited within the area shown as groups A-H on the attached plan, subject to compliance with the requirements of Conditions 7, 8 and 9 and notwithstanding any requirement of the Town and Country Planning General Development Order 1963, every standing and every caravan in groups C, D and H shall be oriented in a northeast to southeast direction. Groups A, B and F, shall be limited to maxima of nine, eleven and three caravans respectively*".

9. It was common ground before the inspector that the plan referred to in condition 2 (*"the attached plan"*) could not be identified with certainty. In its statement of case, the Appellant stated that its solicitors had searched the Second Respondent's planning file but the plan in question was not found on the file. On 28 July 2017, the Second Respondent provided the Appellant with two drawings. The first drawing had the file name 'Layout Plan 1966.jpg' but lacked any markings linking it to the 1966 permission. The second drawing had the file name '1966 plan.pdf' and a hand written planning application reference number but was not stamped as approved. Both drawings were put in evidence before the inspector. At DL30 having referred to condition 2 of the 1966 permission, she said –

> "*Two plans were included in the evidence but neither can be said by the parties with any certainty to be the application or approved plans*".

10. At DL103 and DL104 the inspector returned to the first drawing, to which she referred as 'the 1966 Layout Plan'. I shall need to return to the inspector's consideration of the 1966 Layout Plan in those paragraphs. I note at this stage that the 1966 Layout Plan appears to show caravans stationed in groups under letters A-H arranged within the central area of the site.

11. On 27 July 1968 Belper Rural District Council issued the 1968 licence to Mr W.H. George of Haytop Farm. The 1968 licence authorised the use of the site as a caravan site, subject to the imposition of 18 conditions. It is necessary to set out conditions 1, 4, 6, 7, 8 and 17 –

> "*1. The licensed site shall be as shown edged in red on the plan attached to the licence.*
>
> *4. The caravan standings shall be sited within the area shown as groups A-H on the plan attached to the licence.*
>
> *6. Every caravan shall be not less than 20 feet from any other caravan in a separate occupation, and not less than 10 feet from a carriageway.*
>
> *7. Each caravan and toilet block shall be no more than 150 feet from a road and shall be connected to a carriageway by a footpath with a hard surface, and the footpath shall be not less than 2'6" wide.*
>
> *8. Each caravan must stand on a hard standing of concrete, tarmacadam, or other approved material which shall extend over the whole area occupied by the caravan, and shall project not less than 3 feet outwards from the entrance to the caravan.*
>
> *17. The licensed site shall be provided with suitable surfaced parking spaces for at least 20 cars*".

12. Conditions 10 to 14 imposed requirements in relation to water supply, sanitary and laundry facilities, waste and waste water disposal. Condition 16 required that every caravan standing be provided with covered storage space.

13. The approved site licence plan shows groups A-H as specified in condition 4 of the site licence itself. Groups A-H as shown on the approved site licence plan groups appear to correspond almost exactly (if not exactly) in their location to groups A-H as shown on the 1966 layout plan.

14. A series of aerial photographs showing the site, its roadways and caravans stationed on the site in July 1966 and thereafter from 1993 until 2016 were in evidence before the inspector.

15. In 2016, the Appellant acquired the site. What then happened is recorded by the inspector in DL14 and DL15 –

> "*14. Around 2016, the appellant acquired the site and commenced the clearing and re-modelling works. Whilst some*

> *caravans (statics) remained when these works were being undertaken, these were subsequently removed from the site with the exception of one….*
>
> *15. The site has been laid out to provide 23 new caravan bases, accessed off a newly created internal road as identified on [the Operational Development Notice]. Terraces stepping up the hillside have been formed to provide a level platform associated with each base. These are retained by gabion walls of various heights. Services have been provided. The operational development carried out to date is to the south west of the historic wall within the caravan site. This development forms the basis of [the Operational Development Notice]….*"

16. On 15 March 2019, the Second Respondent issued two enforcement notices. The 'Change of Use' enforcement notice alleged as the breach of planning control *"Without planning permission, the material change of use of the Land for the stationing of residential caravans that are not trailer caravans designed and constructed for drawing by cars (aka "static caravans").* The Change of Use enforcement notice required the cessation of the allegedly unauthorised use and removal of all static caravans from the site.

17. The Second Respondent also issued the EN, which alleged the following breach of planning control –

> "*Without planning permission –*
>
> *(i) Engineering operations and other operations to re-contour the Land, creating a series of terraced platforms.*
>
> *(ii) The construction of concrete bases, hardstandings, gabion retaining walls, lighting columns and service connections on the Land.*
>
> *(iii) The construction of a new roadway (approximate location identified by a hatched area on the attached Plan) on the Land.*
>
> *(iv) The construction on the Land of raised wooden decking structures and brick skirting around the caravans*".

18. Amongst its stated reasons for issuing the EN, the Second Respondent included the following explanation –

> "*The unauthorised development of Haytop Country Park has included the substantial engineering and reprofiling of the land and the construction of concrete bases with gabion retaining structures to enable the stationing of static caravans on the site. The new roadway and infrastructure have then been constructed to facilitate the occupation of the residential units*".

19. The EN required the following steps to be taken in order to remedy the alleged breach of planning control –

> "*(i) Reprofile the Land to restore it to its previous level and condition.*
>
> *(ii) Remove all concrete bases, hardstandings, gabion retaining walls, service connections and lighting columns from the Land.*
>
> *(iii) Remove the roadway (identified by a hatched area on the attached plan) from the Land.*
>
> *(iv) Remove all raised wooden decking structures and brick skirtings from the Land*".

20. Following service of the enforcement notices, the Appellant exercised its right of appeal to the First Respondent. On 18 March 2019 the Appellant also made an application to the Second Respondent for the grant of a certificate of lawfulness of use for *"Proposed siting of 30 static caravans for permanent residential occupation and 30 static caravans for 12 month holiday occupation"* at the site. On 10 September 2019 the Second Respondent refused that application.

21. Between 26 January 2021 and 3 February 2021 the inspector held a public inquiry into both appeals against the enforcement notices and an appeal by the Appellant against the refusal to grant the lawful development certificate – the 'LDC appeal'. In DL8, she records that she heard all the evidence from the main parties on the LDC appeal and on the legal grounds of appeal against the enforcement notices on oath. She carried out a visit to the site on 5 February 2021.

22. It is helpful to summarise the structure of the inspector's reasons. In DL13 to DL23 she set out the background to the three appeals before her for determination. Between DL24 and DL36, she set out the content of the two planning permissions and of the 1968 licence. DL37 to DL39 are headed "Interpretation of the planning permissions" –

> "*37. It is necessary to interpret the planning permissions from the outset since it is central to these appeals and establishing the baseline position against which any changes are to be assessed. The use for which planning permission had been granted has to be ascertained by interpreting the words in the planning permission itself. The principles for doing so were well rehearsed by the parties.*
>
> *38. In Trump International Golf Club Scotland Ltd v the Scottish Ministers [2015] UKSC 74, Lord Carnwath held that the process of interpreting a planning permission should not be regarded as differing materially from that appropriate to other legal documents which must be interpreted in a particular legal and factual context. A planning permission is a public document which may be relied on by parties unrelated to those originally involved. The approach is to consider what the reasonable reader would understand the words to mean in the context of the*

> *overall purpose of the planning permission and with common sense.*
>
> *39. The basic rule is that a planning permission should stand by itself and the meaning should be clear within the four corners of the document. If something is not clear but the planning permission clearly incorporates the application and plans, they may be used as aids to interpretation or to understanding the scope of what is permitted. Generally, in order to resolved ambiguity, it is permissible to look at extrinsic evidence including but not limited to the application form and other documents, depending on the circumstances of the individual case.*
>
> *40. It was held in Cotswold Grange Country Park LLP v SSCLG & Tewkesbury BC [2014] JPL 981 that only a condition was capable of imposing a limitation on a use in law; the grant identifies what is permitted and can be done in so far as the use of land is concerned, whereas any conditions identify what cannot be done – what is forbidden. Put simply, something that is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed (or in respect of [the Change of Use Notice] alleged) is a material change of use, for which planning permission is required, it will only be things effectively prohibited by condition that cannot occur and that would be in breach of the relevant condition….*".

23. In DL41 to DL70 the inspector applied those principles of interpretation to carry out a detailed analysis of both the 1952 planning permission and the 1966 permission (and the relationship between those planning permissions) for the purpose of reaching her decision on the LDC appeal. In DL71 she concluded that the development described in the LDC application would fall within the scope of the 1966 permission read with its conditions. In DL72 she allowed the LDC appeal under section 195 of the TCPA. The certificate itself is attached to the DL.

24. DL73 to DL90 set out the inspector's reasoning and conclusion on the appeal against the Change of Use Notice. In summary, she allowed the appeal on ground (c) in section 174(2) of the TCPA. In DL89, she concluded on the basis of her interpretation of the 1966 permission and the historic use of the site that, on the balance of probabilities –

> "*…no breach of planning control comprising a material change of use by "the stationing of residential caravans that are not trailer caravans designed and constructed for drawing by car (aka "static caravans")" has occurred…".*

25. She allowed the appeal on that basis and quashed the Change of Use Notice. In DL90 she added –

> "*In these circumstances the appeal under the various grounds set out in section 174(2) to the [TCPA] as amended and the application for planning permission deemed to have been made*

> *under section 177(5) of the [TCPA] do not need to be considered*".

26. DL91 to DL179 set out the inspector's reasoning and conclusions on the Appellant's appeal against the EN. The inspector addressed each of the Appellant's four grounds of appeal in turn. In DL92 to 109 she dealt with the appeal on ground (c) in section 174(2) of the TCPA. In DL110 to DL173 she addressed the appeal on ground (a) and the deemed planning application (under section 177(5) of the TCPA) for the operational development described in the EN. In DL174 and DL175, she dealt with the appeal on ground (f). Finally, in DL177 and DL178 she addressed the appeal on ground (g). In DL180 the inspector stated her overall conclusion that the appeal against the EN should not succeed. She upheld the EN subject to limited corrections and refused to grant planning permission on the deemed planning application.

27. The corrections to the EN are set out in DL6. The words 'lighting columns' are deleted and, in part 3 (ii) of the EN, replaced with the words 'CCTV columns'. The date of 18 October is deleted from the period of compliance as stated in the EN.

## The inspector's determination of the EN appeal

### *Ground (c)*

28. Section 174(2)(c) of the TCPA enables an appeal to be brought against an enforcement notice on the ground that the matters stated in the notice do not constitute a breach of planning control (which, for the purposes of the TCPA, includes carrying out development without the required planning permission – see section 171A(1)(a) of the TCPA). In the present case, the Appellant contended that the operational development enforced against under the EN was not in breach of planning control, since it was permitted development by virtue of article 3(1) of and Part 5 Class B of schedule 2 to the GPDO.

29. Article 3(1) of the GPDO grants planning permission for the classes of development known as permitted development set out in schedule 2 to that Order. Class B of Part 5 of schedule 2 to the GPDO **['the Class 5B permitted development right']** permits –

> "*B. Development required by the conditions of a site licence for the time being in force under the 1960 Act*".

30. The Appellant's case was that the conditions of the 1968 licence, which remained in force, required provision of bases, hardstandings, footpaths, roadways. It was necessary to provide level and stable surfaces for reasons of stability, practicality and comfort. Re-profiling works, terracing and retaining walls had been carried out and constructed for those purposes. Services had also been renewed. All of these works fell within the scope of the Class 5B permitted development right, since all were works that were required by one or more of the conditions of the 1968 licence. There was no breach of planning control.

31. The inspector summarised the Appellant's case in DL92 and DL93, pointing out, correctly, that the onus was on the Appellant to demonstrate that the operational development enforced against under the EN was not in breach of planning control.

32. In DL94 to DL97 the inspector dealt with the status of the 1968 licence. She noted that the 1968 licence had not been transferred to the Appellant but had not been revoked. The Second Respondent had refused to grant a new site licence, a decision that was now the subject of appeal to the First Tier Tribunal which had been stayed pending her decision on the appeal against the Change of Use Enforcement Notice.

33. In the first sentence of DL98 the inspector concluded that the 1968 licence remained in force. She then turned to the principal issue under the ground (c) appeal –

> "*98. …Nevertheless it still remains necessary to consider whether the development is required by the conditions of the site licence such that Class B would grant planning permission for them. The appellants referred me in particular to condition 7 of the licence that requires 'each caravan and toilet block to be not more than 150 feet from a road and shall be connected to a carriageway by a footpath with a hard surface'; condition 8 that requires 'each caravan must stand on a hard standing of concrete, tarmacadam or other approved material which shall extend over the whole area occupied by the caravan and shall project not less than 3 feet outwards from the entrance of the caravan'; and condition 17 that 'the licensed site shall be provided with suitable surfaced parking spaces for at least 20 cars*".

34. In DL99, the inspector summarised the Second Respondent's case in response–

> "*99. The Council argued that what has occurred goes well beyond what is authorised by the site licence since it contains conditions that, amongst other things, govern the location of caravan hardstandings (condition 4)…".*

35. In DL100 and DL101, the inspector stated her conclusions as to the correct approach to the application of the Class 5B permitted development right –

> "*100. …condition 4 of the 1968 licence is in effect the same as condition 2 of the 1966 permission, requiring caravan hardstandings to be sited within the areas shown as groups A-H on the plan attached to the licence. To my mind, it must follow that the location of any roads and hardstandings required would need to also reflect where the caravan hardstandings must be grouped to also satisfy this condition. The location of roads and services would in turn, have to be guided by this.*
>
> *101. Notwithstanding the views of the appellant, I consider the development permitted by the GPDO must only relate to development that would be required to satisfy the conditions of a licence when read as a whole rather than to satisfy any single condition in isolation whether or not that development would be contrary to another condition of the licence. I consider this would be entirely counter-productive*".

36. In DL102 to DL107, the inspector applied that stated approach to the various main elements of operational development at the site against which the EN sought to enforce. She began by considering, in the light of the available evidence, how the caravan site had developed in the years prior to and following the grant of the 1966 permission and the 1968 licence –

> "*102. The evidence demonstrates that prior to permission being granted in 1966 that in addition to the roads that provided access beyond the site (past the Mill House and Bungalow), the internal road layout wrapped around the recreational green. A further internal road branched into the site to the south west of the wall, and these were linked by a narrower access way of some description. This appears to have been retained post 1966 with the link being more formalised and an additional loop added to provide access to caravan 'sites' 21-25.*
>
> *103. The [1966 layout plan] …is clearly denoted as that referred to in the site licence. I note that the Areas A-H are all depicted on the plan. In addition, the number of caravans shown in Areas A, B and F correspond with the numerical limitations of nine, eleven and three set out in condition 2 of the planning permission. The caravans depicted in areas C, D & H are broadly orientated in a NE to SW direction as required by condition 2. Whilst the location of only 57 caravans is shown, that is not surprising since there is a further area for touring vans and the overall limitation of 60 caravans includes touring vans. A 'lay by' as referred to in condition 4 is indicated on this plan. It also shows a 'site for touring vans' as referred to in condition 10 albeit this appears to be outside the extent of the application site.*
>
> *104. Furthermore, the internal road layout on this layout plan broadly corresponds in my view with that shown on the 'Caravan Park Layout Plan' and the 'Historical Overlay Plan'. The link I referred to previously is shown with a dotted line and the additional loop would have provided access to that depicted as Area D. From the aerial photos provided it appears likely that this road layout remained in the upper part of the site, south west of the wall, until the re-modelling works commenced to provide the layout seen today. In my view, and in the absence of anything to the contrary, it is more probable than not that this historic road layout corresponded with the layout required by conditions 2 and 4 of the planning permission and site licence respectively and reflects that shown on the '1966 Layout Plan'.*"

37. In DL105 to DL107, the inspector stated her main conclusions on the ground (c) appeal in the light of her analysis of the evidence –

> "*105. Whilst it may be perfectly reasonable to upgrade or provide new caravan hardstandings, roads and other operational development within the scope of the 1966 permission*

> *and 1968 site licence, the location of some of the concrete bases, hardstandings, gabion retaining walls and service connections may not, on the balance of probability, be in locations consistent with condition 4 of the licence. The engineering operations and other operations to re-contour the land to create a series of terraced platforms are all associated with the provision of hardstandings and bases and so, again, it has not been demonstrated on the balance of probability that these are required by the licence.*
>
> *106. As can be seen on the plan attached to the notice, the alignment of the road that is the subject of [the EN] materially differs from that which previously existed and bears little resemblance to the site licence plan. Rather than continue to wrap around the former green and wind down to the break in the wall, it takes a far more direct alignment. It seems unlikely, based on the evidence before me, that a road of the alignment constructed is required to ensure that each caravan would not be more than 150 feet from a road whilst also satisfying condition 4 of the site licence (and condition 2 of the planning permission).*
>
> *107. For these reasons, I consider it is more probable than not that the development that has occurred is inconsistent with the conditions of the 1968 site licence when read together. This is further reinforced by the apparent need to remove protected trees to accommodate the current layout. I do not therefore consider, on the balance of probability, that the matters alleged (the operational development) is development required by the conditions of a site licence irrespective of whether the 1968 licence could be said to be "for the time being in force". There is no requirement in the licence for the raised wooden decking structures and brick skirtings (item (iv) of the alleged breach*".

38. The inspector's reference to tree felling is explained in DL9, where she recorded that in 2017, some 121 trees on the caravan site were felled in contravention of a Tree Preservation Order then in force. She also recorded that a Tree Replacement Notice had since been issued requiring the replanting of 100 trees on the site, an order that was subject to a proposed appeal at the date of the inquiry.

39. In DL109, the inspector concluded that the Appellant had failed to demonstrate on the balance of probability that the operational development enforced against under the EN was permitted development. The appeal on ground (c) of section 174(2) of the TCPA therefore failed.

***Ground (a)***

40. Section 174(2)(a) of the TCPA enables an appeal to be brought against an enforcement notice on the ground that planning permission ought to be granted in respect of the matters stated in the notice to constitute a breach of planning control. By virtue of

section 177(5) of the TCPA, where an appeal is made on ground (a), an application for planning permission is deemed also to have been made in respect of those matters.

41. In the present case, in pursuing its appeal on ground (a) the Appellant relied upon a fallback position, on the basis stated by Lindblom LJ at [27] in *R(Mansell) v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, [2019] PTSR 1452 –

> "*[27] The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three things can be said about it –*
>
> *Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker.*
>
> *The relevant law as to a "real prospect" of a fallback development being implemented was applied by this court in the Samuel Smith Old Brewery case….As Sullivan LJ said in the Samuel Smith Old Brewery case [2009] JPL 1326, in this context a "real" prospect is the antithesis of one that is "merely theoretical": para 20. The basic principle is that "for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice": para 21…..as Sullivan LJ emphasised, "'fallback' cases tend to be very fact-specific": para 21. The role of planning judgment is vital. And, at [2009] JPL 1326, para 22:*
>
> *"[it] is important…not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal decisions within judicial formulations that are not enactments of general application but are themselves simply the judge's response to the facts of the case before the court*".
>
> *Therefore, when the court is considering whether a decision-maker has properly identified a "real prospect" of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in every case, the "real prospect" will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand*".

42. In the present case, the Appellant advanced and relied upon the following "fallback position" in the event that its appeal on ground (c) failed –

(1) The siting of up to 80 caravans, which might be statics, on the site.

(2) Retention of operational development not included in the EN (including the bungalow and metalled roads).

(3) Operational development outside the area of the site covered by the EN (including terraces, tracks, parking spaces, sheds and services).

(4) The fact that as a lawful caravan site, the site would have a modern site licence issued which would give Class 5B permitted development rights for the required operational development in any event, including concrete or similar roads, caravan bases, parking spaces, services and lighting (all in accordance with the Second Respondent's Model Conditions). The consequence would be that, in any event, the Appellant would be able lawfully to carry out the operational development enforced against under the EN (save for the decking).

43. Expanding on that asserted fallback position, the Appellant argued that there would be no planning benefit in requiring the current bases and terraces to be removed, when new bases and terraces would be required in order to meet modern licensing requirements. A modern caravan site licence would require the provision of hard surfaced roads to serve the individual caravan plots. There was no sense in requiring the removal of the roadway when there would be a right to replace it. Planning permission should be granted for the roadway in any event. The same argument applied to the services. Services would be required under a modern site licence. Planning permission should obviously be granted for the retention of the services. Likewise, the CCTV columns.

44. For her part, the inspector recognised that she needed to form a judgment about the baseline position against which she should consider and determine the ground (a) appeal and the deemed planning application. In DL111, she said that there was much discussion at the inquiry about that baseline position. In DL112 she stated her conclusion on that issue –

> "*112. I consider that the baseline position for the land identified in [the EN] is one reflecting the scope of the 1966 planning permission having regard to the constraints of the appeal site prior to the felling of the protected trees and earth re-profiling*".

45. DL113 to DL116 set out her reasons for that conclusion. In particular –

> "*113. Both the 1966 planning permission and site licence require the caravans to be stationed within areas referred to as A-H, with condition 2 of the permission specifying numbers and orientation of caravans in some of those areas. As previously referred to, the reasons for the imposition of conditions on the 1966 permission acknowledge the site is situated in an area of great scenic importance in a stretch of the Derwent Valley indicated in the approved Development Plan as an area of great*

> *landscape value. Reason (a) explains that the further concentration of caravans, otherwise than in the approved groupings, would be likely to expose them to view from the A.6 Trunk Road and the Derby – Manchester railway line, from both at which they are at present effectively concealed, and from many vantage points in the surrounding area.*
>
> *114. Even though the parties cannot point to a plan that they consider to be the layout plan referred to in the planning permission, the reasons for imposing the conditions clarify that the locations described in condition 2 are locations that would not expose the caravans from various views and vantage points. This puts in context, as a starting point, what I consider to be "the baseline position". This is consistent with the evidence from various witnesses who are familiar with the site and who described it as a caravan site largely nestled in woodland and relatively inconspicuous. Conditions imposed on the 1966 permission sought to retain that position notwithstanding the greater concentration of caravans permitted in 1966. I consider some weight can be afforded to the '1966 Layout Plan' in so far as it seems to reflect the description of what may have been considered an acceptable layout and the site licence plan*".

46. In DL115, the inspector referred to an aerial photograph of the site taken in September 2016 which –

> "*shows the caravan site as it existed prior to the works that have been carried out…sufficient numbers of mature trees remained within the northern area of the site, which together with the retention of semi-mature trees to the east and north of the central green, supported a sustained woodland character within the site, notwithstanding the open central area*".

47. In DL116 the inspector said –

> "*116. It is important to remember that the [EN] does not include any land in the lower part of the site to the north east of the wall that was included in the 1966 permission, and so it would not be appropriate to make a direct comparison to the potential to accommodate operational development associated with the stationing of 60 caravans when assessing the ground (a) appeal. There is no evidence that 60 twin unit caravans could be physically accommodated on the site in any event….The numerical baseline would, I consider, be up to around 40 caravans on the appeal site, of which no more than 30 could be occupied permanently. Some 23 bases have been provided to date and are the subject of [the EN] along with the other operational development cited. An illustrative plan show 26 bases within the appeal site area*".

48. Having established the baseline for the purposes of her consideration of the ground (a) appeal and the deemed planning application, in DL119 the inspector set out the main issues. Those main issues had to do with the effect of the operational development enforced against in the EN on the setting of the Derwent Valley Mills World Heritage Site (the site being within that protected site's Buffer Zone), upon the character and appearance of the Alderwasley Conservation Area, upon the setting of Alderwasley Hall, a Grade 11 listed building and upon the character and appearance of the surrounding Special Landscape Area. In the case of each main issue, having assessed the effect of that operational development, the inspector concluded that the effect would be harmful. In the case of each main issue, she reached that judgment having taken account of the baseline position that she had identified in DL112.

49. Thus in DL135, in considering the effect of the operational development on the World Heritage Site, the inspector said –

> "*135. The appellants argue that 23 bases for caravans would be preferable to the number lawfully permitted by the 1966 permission. That may have been so had the reduction in numbers corresponded with a sympathetic layout and design that paid due regard to the protected trees, surrounding landscape, and character of the area together with a consideration of viewpoints into the site. However, what has occurred in the creation of the current layout is the clearance of protected trees in and around the site, together with the substantial alterations to levels resulting in the need for significant retaining structures and little consideration overall to the length and alignment of the access road, or the use of sympathetic materials for the access roads and hard standings. I heard at the inquiry that replacement trees cannot be re-planted in the same locations (as specified in the plan attached to the TRO); and the ability to plant trees between and in front of bases has , I consider, been seriously compromised*".

50. In DL136, she contrasted the historic with the current layout of the caravans, finding the current layout to add to the urbanising and harmful appearance of the development. In DL137 she considered that the changes that had resulted from the operational development enforced against *"impact negatively on the ability to appreciate the relict landscape which is an important attribute of the WHS buffer zone"*.

51. In DL139, she concluded that *"the unauthorised operational development of the land at Haytop Country Park, having regard to the baseline position, does not preserve or enhance the setting of the WHS…"*.

52. In her consideration of the effect of the unauthorised operational development on the conservation area and the setting of the listed building, the inspector drew the following comparative assessment in DL150 –

> "*150. Notwithstanding that the baseline position would allow for a greater number of caravans and thus infrastructure associated*

> *with them, I am not satisfied, based on the evidence before me, that the operational development that has occurred preserves the character and appearance of the Alderwasley Conservation Area or setting of Alderwasley Hall. I refer to my assessment of the harm caused by the alignment of the road and regimented layout of bases that corresponds with that alignment in particular. The terraced platforms are an alien feature, clearly at odds with the parkland setting. The wooden decking, brick skirts and the like all sit on those substantial terraced platforms and cannot therefore be viewed in isolation*".

53. In DL151 she said that she had *"had regard to the development that can reasonably occur within the scope of the 1966 permission whilst having regard to the constraints of the site prior to the felling of protected trees"*. Nevertheless, she concluded that the unauthorised operational development neither preserves nor enhances the character of the conservation area; nor does it preserve the setting of the listed building.

54. Turning to the effect of the unauthorised operational development on the character and appearance of the Special Landscape Area, in DL163 she repeated her judgment about the urbanising impacts of the operational development, finding that "*the site has become more pronounced and conspicuous as a result of the re-design of the layout of the site and the operational development within the SLA"*. In DL165, she found that *"the alignment of the road in particular, in combination with the extent of the regimented layout of the bases and loss of trees, draws the eye to the appeal site, which appears as an incongruous feature on the wooded hillside"*.

55. In DL167 and DL168 she considered the public benefits offered by retaining the unauthorised development. In DL168, she stated that "*the 1966 permission would not prohibit…the upgrading of the site in accordance with the terms and conditions of that permission. I therefore afford the public benefits advanced little weight since they do not rely on the operational development that has taken place and for which permission is sought*".

56. In DL169 to DL 173 the inspector drew her conclusions on the ground (a) appeal. She found the operational development to be in conflict with the development plan as a whole and not to comply with the heritage policies of the National Planning Policy Framework. She stated her overall conclusion in D172–

> "*172. To conclude overall, whilst there are some benefits associated with the development, I find very little justification for the harm that flows from the operational development that has occurred. I consider that there are no material considerations, including the provisions of the Framework, of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan*".

57. The ground (a) appeal failed.

## The costs decision

58. The Appellant applied for a full award of costs against the Second Respondent. In CDL2 to CDL14 the inspector summarised the parties' submissions. Her summary of the headline points made for the Appellant included –

> "*2….In brief, it is submitted that the Council has acted unreasonably in a substantive sense by issuing the enforcement notices and refusing the LDC, causing the appellants to incur the unnecessary expense of the appeal process (PPG ID: 16-030).*
>
> *3. In respect of Notice 1 (the Use Notice), the ground (d) appeal was bound to succeed as all the available evidence showed that the site had been used for the siting of a substantial number of static caravans for more than 10 years prior to 2016. The Council have been aware of this since 2017 and yet proceeded anyway. The Council have produced no evidence that a change from single unit to twin unit statics would be a material change of use.*
>
> ….
>
> *7. [In respect of the EN] In any event, the acknowledged fallback position that a modern, permanent residential site licence would be granted along the lines of the Council's own model conditions meant that most of the development would be capable of being carried out in the future anyway. The acceptance that planning permission should be granted for single unit statics inevitably carried with it an acceptance of significant, necessary infrastructure. The Council simply failed to address what difference, if any, that would make. The elements which would not be covered by a site licence, such as decking or CCTV columns are minor and would obviously not add materially to the impact of the accepted development*".

59. The inspector refused the Appellant's application for costs for the reasons given in CDL15 to CDL23. Her reasons included the following –

> "*17. I do not agree in respect of Notice 1 (the Use Notice), that if the Council has accepted that single unit static caravans could be stationed on the site earlier, that the ground (d) appeal was bound to succeed. Whilst I note that there was substantial evidence to show that the site had been used for the siting of static caravans for more than 10 years prior to 2016, the evidence on how the static caravans had been occupied and if for permanent residential occupation, how many and for how long, was simply not known to the Council.*
>
> *18. For ground (d) to succeed it would have been necessary to demonstrate, on the balance of probability, not only that the stationing of static caravans had occurred for a continuous period of 10 years or more, but that at least some were also occupied throughout the period for permanent residential*

> *accommodation, since the notice refers to residential static caravans. It is therefore feasible that ground (d) may not have succeeded. This assessment was also relevant to the other grounds of appeal in order to establish the baseline position.*
>
> *…*
>
> *20. …The Council was able through its witnesses to substantiate its reasons for maintaining that planning permission should not be forthcoming. I do not consider it has behaved unreasonably in this respect.*
>
> *21. In respect of [the EN]. I have not found in favour of the appellant on any grounds. It follows therefore that it was not clear the appeal made on ground (c) appeal would succeed…*".

**Relevant legal principles**

60. I have already referred to the relevant provisions of sections 171A, 174 and 177 of the TCPA.

61. Ms Anjoli Foster for the First Respondent drew attention to the familiar principles which govern the court's determination of a challenge to the validity of a planning appeal decision brought under section 288 of the TCPA. Those principles are set out at [6]-[7] in the judgment of Lindblom LJ in *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643. In the present case I am concerned with an appeal on a point of law under section 289 of the TCPA. Nevertheless, I am satisfied that essentially the same principles must govern my decision in the present case. The following principles are of particular relevance to the present case (from *St Modwen's* case at [6]) –

    (1) An inspector's decision on an appeal against a refusal of planning permission is to be construed in a reasonably flexible way. Decision letters are written principally for the parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to rehearse every argument relating to each matter in every paragraph of the decision.

    (2) The reasons for a planning appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues. The reasons need refer only to the main issues in the dispute; they need not refer to every material consideration.

62. Both Ms Foster and Mr Richard Kimblin QC for the Second Respondent relied upon the judgment of Lord Hodge in *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74, [2016] 1 WLR 85 at [34] –

> "*34. When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would*

> *understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense. Whether the court may also look at other documents that are connected with the application for the consent or are referred to in the consent will depend on the circumstances of the case, in particular the wording of the document that it is interpreting. Other documents may be relevant if they are incorporated into the consent by reference….or there is an ambiguity in the consent, which can be resolved, for example, by considering the application for consent*".

63. See also Lord Carnwath at [16] in *London Borough of Lambeth v Secretary of State for Housing, Communities and Local Government* [2019] UKSC 33, [2019] 1 WLR 4317.

64. Section 1 of the 1960 Act prohibits the operation of a caravan site without a site licence having first been obtained and remaining in force. Section 3(1) of the 1960 Act permits the occupier of land to apply to the local authority in whose area the land is situated to issue a site licence in respect of that land. Section 3(3) of the 1960 Act states –

> "*3(3) A local authority may on an application under this section issue a site licence in respect of the land if, and only if, the applicant is, at the time when the site licence is issued, entitled to the benefit of a permission for the use of the land as a caravan site granted under Part III of the Act of 1947 otherwise than by a development order*".

65. Section 5(1) of the 1960 Act empowers a local authority to attach such conditions to a site licence as it may think it necessary or desirable to impose on the occupier of the land, in the interests of persons dwelling in caravans on that land, or of any other class of persons, or of the public at large. Section 5(6) of the 1960 Act requires a local authority, when deciding what (if any) conditions to attach to a site licence, to have regard to any model standards specified by the Minister with respect to the layout of, and the provision of facilities, services and equipment for, caravan sites or particular types of caravan site. In *Babbage v North Norfolk District Council* (1989) 59 P&CR 248, 252, Fox LJ (with whom the other members of the court agreed) said that section 5 of the 1960 Act does not justify the inclusion in a caravan site licence of conditions which are imposed *"for purely planning reasons"*. In that case, the Court of Appeal held that the local authority was not empowered by section 5 of the 1960 Act to impose a condition on a caravan site licence which purported to control the siting of caravans on the site solely for the benefit of the visual amenities of the land: see page 255.

## Ground one

*Submissions*

66. Mr Harwood submitted that having correctly found the 1968 licence to remain in force, the inspector had nevertheless erred in law in concluding that the operational

development enforced against by the EN was not permitted development by virtue of the Class 5B permitted development right. The true position was straightforward. The principal elements of that operational development (the bases, hardstandings, roadways and services) were all located within the red line of the 1968 licence plan and required under the conditions of the 1968 site licence. See, in particular, conditions 1, 6, 7, 8 and 16 of the 1968 licence.

67. Mr Harwood submitted that it was immaterial that the location of caravans, since the operational development had been carried out, did not correspond to the groups identified on the 1968 licence plan and so, at least arguably, failed to conform with condition 4 of the 1968 licence. The works comprised in the operational development were required by certain conditions of the 1968 licence and so were permitted development under the Class 5B permitted development right, whether or not the caravans were in those identified groups. The position of the roadways was not fixed by the conditions of the 1968 licence. It was for the site operator to determine their location. That was what had been done in this case. The brick skirts and wooden decking were insignificant in their own right and a common feature of caravan sites.

68. The inspector had been wrong to approach the question whether the operational development fell within the scope of the Class 5B permitted development right by applying the principles stated by Lord Hodge at [34] in *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74, [2016] 1 WLR 85. The relevant question was whether the principal elements of the operational development enforced against were required by one or more of the conditions of the 1968 licence. It was obvious that those elements were so required. If it were the case that their location was not in accordance with the layout shown on the 1968 licence plan, the Second Respondent had ample powers under the 1960 Act to enforce the 1968 licence.

69. Moreover, the inspector's reasons in DL105 revealed that she had found some elements of the operational development covered by the EN to be located within the area of the groups identified on the 1968 licence plan. She erred in law in failing to uphold the Appellant's ground (c) appeal at least in respect of those elements, since they were plainly within the scope of the Class 5B permitted development right on the inspector's own approach to the question whether the operational development was required by the conditions of the 1968 licence.

*Conclusions*

70. The question raised by this ground of appeal is whether the inspector was correct in law to follow the approach that she states in DL101 in applying the Class 5B permitted development right to the operational development enforced against by the EN –

> "*…the development permitted by the GPDO must only relate to development that would be required to satisfy the conditions of a licence when read as a whole rather than to satisfy any single condition in isolation whether or not that development would be contrary to another condition of the licence*".

71. In my judgment, the inspector's approach was correct in law, for two reasons –

(1) It founds upon the express terms of the Class 5B permitted development right.

(2) It accords with the proper approach to the construction of a public document such as a caravan site licence issued under section 3 of the 1960 Act.

72. I have set out the terms of the Class 5B permitted development right in paragraph 29 of this judgment. It authorises development *"required by the conditions of a site licence for the time being in force under the 1960 Act"*. In my view, the terms in which the permitted development right is expressed require the decision maker to determine not merely whether the development under consideration includes elements which are required by a condition of a caravan site licence read in isolation, but also whether the development is in accordance with the conditions of that site licence read as a whole. I cannot accept that the Class 5B permitted development right is to be read as authorising development on a caravan site which, although containing elements which accord with individual conditions of the site licence issued in respect of that site, nevertheless is contrary to the conditions of that site licence when read and applied as a whole. It is to be noted that the Class 5B permitted development right is granted in terms which require consideration of what is *"required by the conditions of a site licence"* (plural); rather than merely required by *"a condition"* of a site licence.

73. Turning to the conditions of the 1968 licence, it is important to have well in mind that section 5(1) of the 1960 Act empowers a local authority to impose a condition on a caravan site licence –

> "*(c) for regulating the positions in which caravans are stationed on the land for the purposes of human habitation and for prohibiting, restricting, or otherwise regulating, the placing or erection on the land, at any time when caravans are so stationed, of structures and vehicles of any description whatsoever and of tents*".

74. In my view, condition 4 of the 1968 licence will have been imposed by the local authority for that statutory purpose. It was plainly intended to regulate the positions in which caravans are to be stationed at the site, requiring caravans to be stationed within the groups shown on the 1968 licence plan. It is clear to me that, in order to determine whether the construction of a base or hardstanding on which to station a caravan at the site is required by the conditions of the 1968 licence, it is necessary to consider whether that operational development is located in accordance with condition 4 of the 1968 licence.

75. It is no answer to say that the Second Respondent retains the power to enforce compliance with the conditions of 1968 licence. Whether the operational development falls with the scope of the Class 5B permitted development right is a logically prior question. That question must be answered by considering the conditions imposed on the 1968 licence. Either the operational development is required by those conditions or it is not. In my view, it cannot properly be concluded that the operational development is so required if it fails to conform with one or more of those conditions. That was the inspector's approach in DL107, where she said –

> "*For these reasons, I consider it is more probable than not that the development that has occurred is inconsistent with the conditions of the 1968 site licence when read together*".

The inspector was correct to approach the question raised by the express terms of the Class 5B permitted development right in that way.

76. I cannot accept Mr Harwood's submission that the inspector was wrong to approach the question whether the operational development fell within the scope of the Class 5B permitted development right by applying the principles stated by Lord Hodge at [34] in *Trump*. Although in that case the Supreme Court was concerned with the proper approach to interpretation of a condition imposed on a grant of planning permission, I have no doubt that the principled approach to that issue stated by Lord Hodge is properly to be applied to the interpretation of a caravan site licence issued under the 1960 Act.

77. Fundamental to the correct application of that principled approach to interpretation is the need to read any given condition in the context of the other conditions imposed on the site licence and of the site licence as a whole. That was the inspector's approach to the interpretation and application of the conditions of the 1968 licence in DL100 to DL107.

78. The inspector's approach was correct in law, whereas the Appellant's argument is simply contrary to the principled approach stated by Lord Hodge at [34] in *Trump*. On Mr Harwood's argument both before the inspector and before me, one is required to read each condition of the 1968 licence in isolation and to ignore the context set by the other conditions of the 1968 licence read as a whole. In particular, one is required to ignore condition 4 and the clear regulatory requirement which it imposes (*"…shall be sited within the area…"*) upon the location of caravan standings within the licensed caravan site as a whole. In my judgment, the inspector was correct in law to reject the Appellant's approach. Had she accepted it, she would have been acting contrary to the principles stated by the Supreme Court in *Trump's* case.

79. Having adopted the correct approach in law to the question whether the operational development enforced by the EN was required by the conditions of the 1968 licence, the inspector's consideration of that question on the facts was, in my view, beyond legal reproach. She was correct in DL100 to read condition 4 of the 1968 licence as not only regulating the position of caravan standings within the licensed site, but also driving the location of internal roadways and services by virtue of the requirements of conditions 6, 7 and 8 to 10 of the 1968 licence. She gave clear reasons in DL105 to DL106 for finding that the operational development against which the EN was directed did not conform to the regulated site layout imposed by the conditions of the 1968 licence read as a whole. That reasoning provided a proper justification for her conclusion in DL107, that the operational development enforced against by the EN had not been shown to be required by the conditions of the 1968 licence; and so did not fall within the scope of the Class 5B permitted development right.

80. Mr Harwood's subsidiary argument was that, even if the inspector's approach to the application of the Class 5B permitted development right was correct in law, she failed to identify those elements of the operational development that had been carried out in locations which accorded with condition 4 of the 1968 licence. That, however, was not a case that the Appellant advanced to the inspector. The Appellant did not seek to identify those elements of the operational development which had been carried out within the areas shown on the 1968 licence plan and so consistently with condition 4 of the 1968 licence. On the contrary, the Appellant's argument on ground (c) was that

condition 4 was immaterial to the question that the inspector was required to determine, since its requirements were said not to affect the judgment as whether the operational development enforced against was within the scope of the Class 5B permitted development right. Having properly rejected that case, the inspector did not err in law in reaching her overall conclusions in DL107. She was under no legal obligation to embark on an analysis that the Appellant argued to be immaterial, namely to carry out a detailed analysis of each element of the operational development by reference to the 1968 licence plan and condition 4 of the 1968 licence.

81. For these reasons, ground one must be rejected.

## Ground two

*Submissions*

82. Mr Harwood drew attention to condition 17 of the 1968 licence, which required the provision within the caravan site of parking spaces for at least 20 cars. There was no limit on the location of those parking spaces. They were not tied by the licence to the location of the caravan standings. Nor was the location of those parking spaces regulated by condition 4 of the 1968 licence. All that the 1968 licence required was that there should be at least 20 parking spaces provided within the licensed site.

83. It was submitted that the inspector was well aware of condition 17 of the 1968 site licence: she mentioned it in DL98. However, she failed to address that condition in her conclusions on the ground (c) appeal. Had she applied her mind to condition 17, she would have recognised that the parking spaces provided as part of the operational development enforced against by the EN were authorised by virtue of the Class 5B permitted development right. No less than 20 parking spaces were required under condition 17 of the 1968 licence. The parking spaces that had been constructed as part of the operational development carried out since 2016 (see DL14 and DL15) should have been considered by the inspector in her determination of the ground (c) appeal. She erred in law in failing to do so.

*Conclusions*

84. It is important to understand what has actually been done on the site. The operational development involved the construction of 23 new caravan bases and hardstandings, with access provided off a newly created internal road. There is no suggestion that the Appellant constructed a car park, parking areas or parking spaces within the licensed site as distinct from the operational development described by the inspector in DL15. In other words, the Appellant's case is that the hardstandings constructed to accommodate individual caravans on the new layout would serve (amongst other purposes) as parking spaces for the occupiers of those caravans. I note that in closing submissions at the public inquiry, the Appellant did not seek to draw any distinction between those hardstandings and the provision of parking spaces. Nor was any distinction drawn between the internal roadway and the use of that roadway for parking. Indeed the Appellant did not specifically rely on condition 17 of the 1968 licence in closing submissions on ground (c) (nor, as I read it, in its statement of case in support of its ground (c) appeal).

85. When considered against this context, it seems to me that the inspector cannot be faulted in law on this ground. In DL105, she considered whether caravan bases and hardstandings whose construction she had described in DL15 had been provided in accordance with condition 4 of the 1968 licence and the licence plan. It is obvious to the informed reader that she did so on the understanding that those elements of operational development incorporated parking spaces. There was no suggestion in the case before her that parking spaces had been provided elsewhere on the licensed caravan site in purported fulfilment of the requirement of condition 17 of the 1968 licence.

86. In short, the Appellant's chosen means of providing car parking spaces was to do so as part of the operational development carried out since 2016. Those parking spaces were subsumed within the newly constructed bases and hardstandings which, on her correct approach to interpretation of the 1968 licence conditions (in particular condition 4), fell outside the scope of the Class 5B permitted development right. It was unnecessary for her to say more about condition 17 or the provision of parking spaces, in explaining why she had concluded that the operational development enforced against did not benefit from the Class 5B permitted development right.

87. Ground two must be rejected.

## Ground three

*Submissions*

88. Mr Harwood submitted that even on the assumption that the ground (c) appeal failed, the site remained a lawful caravan site. As such, an application for a modern caravan site licence would be granted and a new site licence would be issued incorporating conditions based upon national and local model conditions. In order to comply with the conditions of such a modern caravan site licence, the Appellant as site operator would be required to construct caravan bases, hardstandings, internal roadways, services and external lighting. These matters were common ground, as they had been agreed in evidence by the Second Respondent's most senior witness, the Assistant Director (Planning).

89. In short, the Appellant would be required to carry out the operational development enforced against in order to comply with the conditions attached to a modern caravan site licence. This fallback position was central to the Appellant's case in support of its ground (a) appeal. As was submitted in the Appellant's closing submissions to the inspector, it was common ground between the two main parties that the operational development enforced against by the EN was likely to be carried out at the site in future, since it would be necessary in order to fulfil the conditions of a modern caravan site licence. Moreover, it would be lawful development, since it would fall within the scope of the Class 5B permitted development right. This fallback position fell plainly within the scope of the scenarios postulated by Lindblom LJ at [27(3)] in *R(Mansell) v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, [2019] PTSR 1452. In this case, the Appellant had stated precisely that it would make use of the Class 5B permitted development right in order to carry out the operational development required to fulfil the conditions of a modern caravan site licence.

90. Mr Harwood submitted that the inspector had failed to address this fallback position in her reasoning or conclusions on the ground (a) appeal. Yet it was a principal issue in her determination whether planning permission should now be granted on the deemed application for the operational development enforced against by the EN. That was a failure to have regard to a material consideration that was vital to her decision and an error of law. The fact that she had mentioned the Appellant's case on this *"acknowledged"* fallback position in passing in CDL7 did not save her decision on the ground (a) appeal and the deemed planning application. CDL7 offered no clue as to how she had addressed that fallback position in reaching her decision to dismiss the ground (a) appeal and to refuse planning permission for that operational development.

*Conclusions*

91. Mr Harwood is correct to say that the inspector did not in terms set out the fallback position advanced to her in the Appellant's closing submissions. It is fair to say that she did provide an accurate summary of that fallback position in CDL7. Nevertheless, it is necessary to consider whether the lack of any specific reference in the DL to the fallback position advanced on behalf of the Appellant (and accepted by the Second Respondent's witness in evidence) vitiates the inspector's determination of the ground (a) appeal and the deemed planning application for planning permission for the operational development which formed the subject matter of the EN.

92. The starting point is to consider what the inspector, and indeed the Second Respondent's witness, a senior planner, would have understood the Appellant to have meant by the reference to the site as a *'lawful caravan site'*. It seems to me that they would have understood the Appellant to have been relying on the 1952 planning permission and, in particular, the 1966 permission as the basis for characterising the site in that way. Whilst there was a dispute as to the type of caravan that was authorised to be stationed on the site and as to the purpose for which they could be occupied, it was common ground before the inspector that the effect of those two planning permissions was to authorise the use of the site as a caravan site for the stationing of up to 60 caravans: see DL13.

93. By virtue of section 3(3) of the 1960 Act, a local authority may issue a caravan site licence if and only if at the time when that site licence is issued, the applicant is entitled to the benefit of planning permission for the use of the site as a caravan site. On the facts as they stood before the inspector, it was the 1952 planning permission and the 1966 permission which would provide the lawful basis for the Appellant to apply for and for the Second Respondent to issue a modern caravan site licence in respect of the site.

94. The 1966 permission had been granted subject to conditions. I have set out the terms of condition 2 in paragraph 8 of this judgment. The reasons given for imposing that condition included the following justification –

> *"That the further concentration of caravans, otherwise than in the approved groupings, would be likely to expose them to view from the A.6 Trunk Road and the Derby-Manchester railway line, from which they are at present effectively concealed, and from many vantage points in the surrounding area".*

95. As I have said, there was an evidential difficulty in understanding the area shown as groups A-H within which condition 2 of the 1966 permission required all caravan standings to be sited, due to the absence from the Second Respondent's planning files of the *'attached plan'*. Nevertheless, it was clear on the face of the 1966 permission, read subject to its conditions, that it had effect to restrict the stationing of caravans only to that area which was shown as groups A-H on the plan which was attached to the permission.

96. It follows that in order to understand the extent of the lawful use of the site for the stationing of caravans resulting from the fact that the site benefitted from the 1966 permission, the inspector needed to identify as best she could, on the available evidence, the area of the site referred to in condition 2 of the 1966 permission. It was necessary for the inspector to do so, because it was in that area of the site that a modern site licence granted in accordance with section 3(3) of the 1960 Act would be expected to require the provision of caravan bases and hardstandings; and it was to that area that the operational development needed to construct caravan bases and hardstandings, and to run services and provide internal roadways, was likely to be directed by conditions imposed on a modern site licence.

97. The inspector addressed those matters in DL112 to DL114, which I have set out in paragraphs 44 and 45 of this judgment. Her reasoning in those paragraphs demonstrates that she was seeking to identify the scope of the 1966 permission, since it was the 1966 permission, read subject to its conditions, which authorised the use of the site as a *'lawful caravan site'*. She recognised the role played by condition 2 of the 1966 permission in defining the scope of that authorised use. She acknowledged the evidential difficulty presented by the absence of the plan referred to in condition 2 of the 1966 permission from the Second Respondent's planning files. Nevertheless, she considered the available evidence in order to do the best she could to identify the *'area shown as groups A-H'* referred to in condition 2 of the 1966 permission. In DL114 she concluded that *"some weight can be afforded to the '1966 layout plan' in so far as it seems to reflect the description of what may have been considered an acceptable layout and the site licence plan"*.

98. In my judgment, it is the inspector's reasoning in DL112 to DL114 which explains why she did not find it necessary to say more about the Appellant's asserted fallback position. Put shortly, the Appellant's argument was based on the premise that the site's status as a *'lawful caravan site'* enabled the Appellant as site operator to recreate the site layout which had been the product of the operational works carried out since 2016, subject only to the issue of a modern site licence. On the inspector's analysis in DL112 to DL114, she found that premise to be, at the very least, questionable. Her own assessment was that the authorised caravan site was one whereby the number and location of caravan standings and the location of services and internal roadways was defined by the 1966 permission and, in particular, by the requirements of condition 2 of that permission. She described that as the *'baseline position'* for the site in DL112.

99. In my judgment, it is clear that it was that baseline position that she considered to represent the realistic fallback position in the event that the ground (a) appeal failed. She returned to that baseline position as the likely fallback against which to compare and evaluate the effect of the operational development in the course of her planning assessment in DL119 to DL172. I have referred to the relevant paragraphs earlier in this judgment. By way of example, I draw attention to DL151, in which the inspector said

that in concluding that the unauthorised operational development resulted in substantial harm to the designated heritage assets -

> "*...I have had regard to the development that can reasonably occur within the scope of the 1966 permission whilst having regard to the constraints of the site prior to the felling of protected trees*".

100. In *R(Mansell) v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, [2019] PTSR 1452 at [27], Lindblom LJ emphasised that it is for the planning decision maker to evaluate an asserted fallback position. In *South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953 at [34], Lord Brown of Eaton-under-Heywood said that the scope for drawing an inference that an inspector had not fully understood the materiality of a particular matter would be limited to the main issues and then only when all other known facts and circumstances appear to point overwhelmingly to a different conclusion.

101. In my judgment, there is no proper basis for concluding that the inspector failed to understand or to take account of the fallback position asserted by the Appellant. On the contrary, her analysis to which I have referred shows that she both considered it and rejected it in favour of her own asserted baseline position. She did so because, in the light of her analysis of the scope of the 1966 permission on the basis of the available evidence, she reached the view that it was the layout of the caravan site as controlled by condition 2 of the 1966 permission, and not the layout that was the product of the operational development carried out since 2016, which was the realistic fallback position available to the Appellant, in the event that the ground (a) appeal failed. There was no need for her to say more than she did in order to explain why she reached that judgment.

102. The flaw in the Appellant's argument was not that it was unrealistic to expect the issue of a modern caravan site licence, as the Second Respondent's senior planning officer rightly acknowledged; the flaw was to assume that such a licence would result in the reinstatement of the operational development carried out at the site since 2016. Given that use of the site as a lawful caravan site was primarily controlled by the 1966 permission, the only realistic fallback open to the Appellant in the event that ground (a) failed, was to reinstate the layout authorised by condition 2 of the 1966 permission. I note that in the context of her consideration of the ground (g) appeal – that is to say, whether the time for compliance with the requirements of the EN should be extended – the inspector at DL178 referred to the need for time to agree *"an alternative layout…having regard to…the conditions of the 1966 permission"*.

103. For these reasons, I reject the Appellant's submission that the inspector failed to address the Appellant's asserted fallback position in her determination of the ground (a) appeal and the deemed planning application.

## Ground four

*Submissions*

104. Leading Counsel drew attention to the Appellant's closing submissions to the inspector. Any modern caravan site licence would require the provision of hard surfaced internal

roads to serve the caravan site. A road would be required running alongside the green in the central area of the site. The Class 5B permitted development right would authorise the operational development needed to provide the required internal roads. In the light of these matters, the Second Respondent's principal planning witness had agreed that the correct course would be for the inspector to grant planning permission to retain the internal road constructed as part of the operational development undertaken since 2016.

105. It was submitted that the inspector had failed to address this issue in her determination of the ground (a) appeal and the deemed planning application. Whilst she was not bound to accept the position agreed by the Second Respondent's planning witness, if she disagreed with that position it was necessary for her to give her reasons. She had not done so. It was to be noted that condition 2 of the 1966 permission did not prescribe the position of internal roads serving the caravan site.

*Conclusions*

106. In my judgment, there is no merit in this ground of appeal. In DL132, the inspector explained why she considered the newly constructed road to be unacceptable in its impact on the landscape setting which forms an important element of the buffer zone of the World Heritage Site –

> "*Significantly, the overall, length and alignment of the newly constructed road is particularly harmful in those views. The historic caravan pitches that were previously accommodated in gaps between mature trees, have been replaced with regimented rows of bases following that road alignment*".

107. In DL136, the inspector emphasised how that new internal road was an integral element of the new layout of caravan standings which had been created through the unauthorised operational development since 2016 –

> "*Their current locations also correspond to the alignment of the prominent new internal road…the continuation of this linear form for the full extent of the appeal site adds to the urbanising and harmful appearance of the development*".

108. The inspector reached essentially the same judgment about the harmful impact of the newly constructed road in her assessment of the impact of the operational development enforced against on the character and appearance of the conservation area and the setting of the listed building. In DL150 she said –

> "*…I refer to my assessment of the harm caused by the alignment of the road and regimented layout of bases that corresponds to that alignment in particular*".

109. In her assessment of the impact of the unauthorised operational development on the character and appearance of the protected landscape, she returned to this theme at DL163 –

> "*…I have already described what I consider to be the urbanising impacts of the operational development. The site has become more pronounced and conspicuous as a result of the re-design of the layout of the site and the operational development within the [Special Landscape Area]*".

110. It is clear from the reasoning to which I have referred that the inspector reached the planning judgment that the impact of the newly constructed internal road was a source of considerable harm. As I have found in my conclusions on ground three, the inspector judged the realistic fallback position available to the Appellant to be the layout of the caravan site as controlled by condition 2 of the 1966 permission, and not the layout that was the product of the operational development carried out since 2016. That being the case, there was no need in law for her to say any more than she did to explain why she was not willing to grant planning permission on the deemed application to retain the newly constructed internal road in its existing position.

111. Ground four must be rejected.

## Ground five

*Submissions*

112. Mr Harwood submitted that the provision of water, sewage and electricity to individual caravan standings would be required under a new caravan site licence. It would form part of the matters required under model conditions. The provision of such services was not in itself objectionable from a planning point of view. In large part, such services would be run below the surface of the ground. Even were it necessary in future to alter the position of those services from their current arrangement, that did not justify requiring their removal. Again, the Second Respondent's principal planning witness had agreed that such services would be needed to serve a modern, licensed caravan site and should receive planning permission.

113. It was submitted that the inspector had failed to take these matters into consideration. She had failed to explain why, in the light of them, she nevertheless decided that planning permission for retention of those existing service connections.

*Conclusions*

114. I cannot accept that these matters disclose any error of law. The service connections formed part of the unauthorised operational development which the Appellant had carried out since 2016 in order to create the new layout of the caravan site. As Ms Foster submitted, those services were integral to that operational development, since they were intimately connected with the location of the concrete bases and the hardstandings which had been formed as part of the unauthorised works.

115. In those circumstances, in my view, it was plainly open to the inspector in law to address the case for retention of the services as part of her overall assessment of the planning merits of the unauthorised operational development as a whole, in her determination of the ground (a) appeal and the deemed planning application.

116. There is no reason to doubt that the inspector approached matters in that way. She was entitled to focus on the harmful impacts of the unauthorised operational development without distinguishing between the service connections and other particular elements, given that the purpose of that development had been to create a new layout for the caravan site which she assessed, for sound planning reasons, to have resulted in considerable harm. As Mr Kimblin submitted, it is of relevance that the inspector rejected the Appellant's argument on its ground (f) appeal, that the steps required by the EN to be taken to remedy the breach of planning control were excessive. Amongst the requirements of the EN was the removal of all service connections from the site. The obvious conclusion to draw from her detailed planning assessment on ground (a), including her explanation of the baseline position, is that the inspector was not prepared to draw any relevant distinction between the service connections and the unauthorised operational development as a whole. Her judgment was that the unauthorised works undertaken to create the new caravan site layout had resulted in considerable harm which could not be justified: see DL172. For these reasons, ground 5 must be rejected.

## Ground six

117. As pleaded, this ground of challenge to the validity of the inspector's determination of the Appellant's costs application assumes that the Appellant has succeeded in establishing that the inspector erred in law in her determination of its substantive appeal against the EN. In other words, this ground of challenge founds upon either one or more of grounds one to five being made out.

118. I have rejected all of the Appellant's grounds of appeal against the inspector's determination of the substantive appeal against the EN. I am in no doubt that the inspector's determination of the Appellant's application for costs in relation to those substantive appeal proceedings discloses no legal error. She was reasonably entitled to refuse that part of the Appellant's application for costs for the reasons she gave in the CDL.

## Ground seven

*Submissions*

119. Mr Harwood submitted that there had been extensive evidence to the public inquiry attesting to the use of the site for stationing static caravans. That evidence confirmed that static caravans had been stationed at the site in substantial numbers for more than 10 years before the Appellant acquired the site. In CDL17, the inspector had accepted that the evidence was that static caravans had been stationed at the site for more than 10 years prior to 2016.

120. Notwithstanding that established factual position, the inspector had declined to conclude that the appeal on ground (d) against the Change of Use Notice would have been bound to succeed, had it been necessary for the inspector to determine the appeal on that ground.

121. Mr Harwood submitted that the inspector's reasons for declining to reach that conclusion disclosed an error of law. In CDL18 she said –

> "*For ground (d) to succeed it would have been necessary to demonstrate, on the balance of probability, not only that the stationing of static caravans had occurred for a continuous period of 10 years or more, but that at least some were also occupied throughout the period for permanent residential accommodation, since the notice refers to residential static caravans. It is therefore feasible that ground (d) may not have succeeded*".

122. It was submitted that the inspector had misunderstood the breach of planning control alleged in the Change of Use Notice. The alleged breach was *'without planning permission, the material change of use of the Land for the stationing of residential caravans that are not trailer caravans designed and constructed for drawing by car (aka "static caravans")".* The Change of Use Notice was concerned with the use of the site for the stationing of static rather than towable caravans. It was not concerned with whether the caravans on site had been in permanent residential occupation.

123. It followed that the inspector had asked herself the wrong question. The relevant question was whether the ground (d) appeal had been bound to succeed on the evidence of extensive use of the site for the stationing of static caravans for more than 10 years prior to the date of issue of the Change of Use Notice. The Second Respondent had substantial evidence of that fact before it decided to issue the Change of Use Notice. The inspector had excused the Second Respondent from the costs consequences of having initiated unnecessary enforcement proceedings on a false premise.

*Conclusions*

124. It seems to me that there is some force in this ground of challenge to the inspector's decision on the costs application. Mr Harwood is correct to point to the terms in which the alleged breach of planning control is put in the Change of Use Notice. On the face of it, the complaint is directed at a change in the type of caravan that is stationed on the site, rather than the particular character of residential occupation of those caravans.

125. However, I have been persuaded by Ms Foster's submissions in response, that the inspector's reasoning in CDL18 is not founded upon a misunderstanding of what the Second Respondent was seeking to enforce by issuing the Change of Use Notice. The reasons given for issuing that notice included the following statement –

> "*The current unauthorised use of the Land for the stationing and permanent occupation of the static caravans represents a material change of use of the Land due to the intensification of the use which has substantially changed the character and appearance of the caravan park*".

126. As Ms Foster points out, In DL18 the inspector drew upon that statement and stated that both parties had prepared and presented their cases on the basis that, in the Change of Use Notice, the phrase *'residential caravans'* was being used as a term for caravans occupied permanently. Her own judgment was that it was unclear on the evidence how the caravans had been occupied over previous years: see DL88.

127. In the light of these matters, I have come to the conclusion that the inspector's reasoning in CDL18 of which Mr Harwood complains does not reveal the misunderstanding for which he contends. The nature of the residential occupation of the caravans stationed on site had been put in issue by the Change of Use Notice. The evidence on that issue was such that, in my view, it was reasonably open to the inspector to conclude as she did, that it was feasible that the ground (d) appeal may not have succeeded, had she been required to determine that ground of appeal. For these reasons, I reject ground seven.

## Disposal

128. The appeal is dismissed.

## Costs

129. Both the Appellant and the First Respondent have made brief written submissions on costs. It is common ground that the Appellant should pay the costs of the appeal and that I should make a summary assessment of those costs. The First Respondent seeks costs in the sum of £18,671. The Appellant submits that sum is disproportionate for a two day planning statutory appeal; and that the hours claimed for both solicitors and counsel's time are on the high side. The Appellant invites me to assess costs in the sum of £12,000. The First Respondent submits that the sum of costs claimed is in proportion to the burden placed upon him in responding to the appeal. This was a complex case both factually and legally, with extensive reading material to master and the need to respond to seven grounds of appeal. In addition to the substantive 2 day hearing, there had been a contested oral hearing of the application for permission to appeal.

130. I agree with the Appellant that the time spent by the First Respondent's lawyers in responding to the appeal appears somewhat on the high side. However, I am not persuaded that it is fair to characterise the sum of costs claimed by the First Respondent as disproportionate. This was a case with a complex factual background and involving some legal complexity. Both the parties and the court needed to take the time to master that background. The reading material was extensive; and, more so than in some cases of this kind, it was necessary to get fully to grips with the detail of most if not all of it in order to do justice to the issues raised in the appeal. The significance of the Appellant's schedule of costs is not that it attested to a considerably greater sum than is now claimed by the First Respondent, but rather that it also speaks to the time needed to be spent by diligent lawyers on the documents and in preparing both for a contested oral permission hearing and for the two day substantive hearing of the appeal.

131. For these reasons, I assess the First Respondent's costs in the sum of £18,671.

132. Finally, I wish to record my thanks both to all Counsel and to those supporting them in these proceedings.