

**Case Name:** *Berkshire Assets (West London) Ltd, R (on the application of) v London Borough of Hounslow* [2018] EWHC 2896 (Admin) (01 November 2018)

**Full case:** [Click Here](#)

**Commentary:** Following a judicial review application by the Claimant developer, the Court quashed the London Borough of Hounslow (“LBH”) decision to refuse three applications for prior approval (under Part 3 Class O of the Town and Country Planning (General Permitted Development) Order 2015 (“GPDO”). This therefore meant that the change of use pursuant to the GPDO could be lawfully carried out.

This claim turned on a point of interpretation; whether an Article 4 direction is to be construed as removing permitted development rights from the date of the direction or whether specific sites which already benefit from extant permitted development rights (for the same type of permitted development i.e. Class O (office to residential)) are exempt from the application of the Article 4 direction.

In this case, the Claimant already had the benefit of two extant prior approvals (granted at appeal) pursuant to Class O of the GPDO to allow the lawful use of the building to change from offices to residential units. In order to maximise the development potential of the site, the Claimant submitted three further applications in December 2017.

An Article 4 direction removing the Class O PD right came into effect on 11th January 2018 (the “Direction”). The Direction contained an exclusion which meant it did not apply to “any building or land in relation to which prior approval under paragraphs O and W of Part 3 of Schedule 2 to the [GPDO] has been granted”.

The Claimant’s ground of challenge was that the wording of the Direction expressly excluded their site from its application because it was, in fact, a site for which prior approval for Class O change of use had been granted. The Defendant’s submission was that the plain reading of the Direction should be supplemented with extrinsic documentation and a more purposive approach to reflect the Defendant’s intention that it only intended to exclude development already permitted and not an overarching exemption for that building or site.

The Court reviewed the relevant case law on interpretation of public documents, starting with *Trump International Golf Club Scotland Limited v Scottish Ministers* [2015] UKSC 74 which stated that “regard to the natural and ordinary meaning of the relevant words” should be the approach and, supported by other cases, there is only limited scope for extrinsic material in the interpretation of public documents.

The Court sets out the following propositions:

1. starting point is the plain meaning of the words in the Direction; and
2. then you can look at the purpose and context of the Direction.

Following the application of those propositions, the Court held that the wording of the Direction was unequivocal and clear and favoured the Claimant’s approach that land or buildings which benefit

from extant prior approvals for Class O change of use will be exempt. There was only limited useful extrinsic evidence which could be looked at in this case and it did not support the Defendant's more restrictive interpretation.

The Court quashed the Defendant's decision refusing the three applications for prior approval relating to the site in question.

*Case summary prepared by Spencer Tewis-Allen*