

Case Name: *Great Hadham Country Club Ltd & Anor v Secretary of State for Housing, Communities and Local Government & Anor* [2019] EWHC 1203 (Admin) (10 April 2019)

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Commentary: A section 288 challenge to an Inspector's decision to refuse permission for caravans for holiday use was upheld after the Secretary of State had made a without prejudice offer to concede the claim and then, when circulating the consent order, stated that the concession only covered part of the claim.

Because statutory reviews under s.288 have a public law element, even if the claimant and the Secretary of State both concur that the decision should be quashed, and also agree as to the basis upon which it should be quashed, the court must be satisfied that the proposed basis is a proper one. There is a requirement, whenever a planning decision is quashed by consent, to define transparently and with proper particularity the ambit of the error which has been accepted. It was not appropriate to look at the settlement as an entirely private law dispute. The court was satisfied that the agreement to concede the ground and pay costs to the date of agreement was not dependent on the signature of the consent order but the agreement was subject to the court's approval.

The court is ultimately responsible for determining whether the decision of the planning inspector should be quashed or upheld. However, where the parties have agreed that the decision should be quashed this will be a material consideration. The court is obliged to examine the basis on which agreement has been reached and if it is satisfied that it is an appropriate basis, then, in general, that will be the basis on which the court will dispose of the claim.

The court upheld all three grounds of the claim. The Inspector had dismissed the appeal because he had treated the application as an application for residential development rather than holiday caravans and had concluded that a condition could not be imposed to restrict occupation of the lodges to holiday accommodation. The Inspector had decided that the conditions proposed by the claimants were unenforceable and had then failed to consider whether there were any other conditions, specifically, the conditions put forward by the Council or the conditions suggested in the Good Practice Guide, which might have addressed the concerns about enforceability that he had raised. The Court held that he had been in error on both of these points. He had also fallen into error in treating a local plan policy concerning special residential uses as lending weight to his approach.