Case Name: *Hedges v Secretary of State for Housing, Communities and Local Government & Anor* [2021] EWHC 2392 (Admin) (27 August 2021)

Full case: Click Here

Commentary: This was an appeal by Mrs Hedges under section 289 of the Town and Country Planning Act 1990 against the Inspector's decision to dismiss her appeal against an enforcement notice issued on 10 October 2019. The notice related to a field owned by Mrs Hedges ('the Land'). The breach of planning control alleged in the notice was that without planning permission there was a material change of use of the Land from a field used for agricultural purposes to holiday use for the stationing of caravans and tents.

The sole ground of appeal was that the Inspector erred in requiring evidence of actual use of the Land as a campsite in order to give rise to a material change of use. The High Court dismissed the appeal.

It was common ground that there was uninterrupted unlawful use of the Land as a holiday campsite since 2010. The disputed period was between 10 October 2009 (or earlier) and the end of 2009. The Appellant argued that in considering whether a material change of use took place before 10 October 2009 (so as to continue for 10 years before the date of the enforcement notice) the inspector failed to take into account factors other than actual use, such as the presence of mobile toilet and shower facilities on the Land, signs, advertisements and bookings, which pointed to the Land being used as a campsite from July 2009, or at least by October 2009.

The Inspector accepted that the mobile toilet and shower facilities were stationed on the Land from July 2019 for a period in excess of 28 days (the temporary permitted use period under the Town and Country Planning (General Permitted Development) Order 1995). However, he found that the presence of the mobile facilities did not equate to the use of the Land, and that their presence 'could easily have been seen as the temporary storage of the facilities'. Moreover, he found in any case that 'the mere presence of the mobile facilities on the Land, without evidence of actual use, would not have enabled the Council to enforce against a material change of use of the Land from its lawful agricultural use' as their impact on the character of the Land would have been de minimis. He accordingly proceeded to assess submissions relating to use, ultimately concluding that there was not sufficient evidence to show that, on the balance of probability, the Land was used for tent camping for a period in excess of 28 days during that year.

It was this approach that was challenged by Mrs Hedges. Relying on passages from the judgment of Lord Mance in Secretary of State for Communities and Local Government v Welwyn Hatfield Borough Council [2011] UKSC 15, she submitted that the Inspector placed too much stress on the need for actual use and failed to look at the matter in the round, as Welwyn required him to do. Moreover, case law demonstrated that useability could be taken into account. As everything was in place for tent camping in July 2009, the material change of use occurred at that time.

HH Judge Jarman QC held that the Inspector did have regard to factors other than actual use and was entitled to come to the conclusion that he had. The Inspector did not overly focus on use on a day to day basis – and to the extent to which he had, on the facts of this case he was entitled to do so. Lord Mance's warning about too great a focus on 'actual use' in dwelling cases was not as apposite where the use in question is camping or caravanning. Moreover, the context of Lord Mance's comments in Welwyn was important. Lord Mance was criticising too keen a focus on previous active use in circumstances where a builder had just built a house and was about to move in. Such a context did not exist on the circumstances before the Court.

Accordingly, the appeal was dismissed

Case summary prepared by Stephanie Bruce-Smith