Case Name: *Gallagher Ventures Ltd, R (On the Application Of) v Secretary of State for Housing Communities And Local Government & Anor* [2021] EWHC 3007 (Admin) (11 November 2021)

Full case: Click Here

Commentary: This claim concerned an application for a Certificate of Lawfulness of Proposed Use and Development ("CLOPUD") for a 188-unit retirement village and associated facilities. The application was refused by Torbay Council (the "Council") and the claimant's subsequent appeal was dismissed by an Inspector.

This statutory challenge turned on the correct interpretation of a planning permission granted by the Council on 19 December 2008 (the "2008 permission"). It was agreed by all parties that the 2008 permission was a free-standing permission granted under section 70 of the Town and Country Planning Act 1990 – not a section 73 permission or discharge of reserved matters. However, there were two earlier planning approvals also relevant to this claim: (1) An outline permission granted by the Council on 21 June 2006 (the "2006 outline permission"); and (2) A reserved matters approval for part of the 2006 outline permission granted by the Council on 29 November 2007.

Critical to the Council's refusal of the CLOPUD application and Inspector's dismissal of the claimant's subsequent appeal was the geographical scope of the 2008 permission. There was no approved site plan listed on the 2008 permission but drawing PL 12.001/A was submitted with the application for the 2008 permission. PL 12.001/A only identified a central area, not the full area of the site to which the 2006 outline permission relates (the "2006 Site"). 10 of the 188 units within the CLOPUD application were within the red line boundary of the 2006 Site but outside the area within the red line on PL 12.001/A.

In interpreting the 2008 permission, the court applied the approach described in R v Ashford Borough Council ex parte Shepway District Council [1999] PLCR 12 to first look at the planning permission itself and then any intrinsic application documents, and if there is any ambiguity in the wording of the permission, to look at extrinsic material such as the relevant planning officer's report.

The court considered the 2008 permission itself and the 2008 application together with the covering letter and drawing PL 12.001/A, which all parties agreed were incorporated by reference into the 2008 permission. Generally, the court concluded that these documents "pointed towards" the 2008 permission having the same geographical scope as the 2006 outline permission. While the covering later stated that the "application relates to the existing Reserved Matters approval, and we attach plan PL 12.001/A indicating the boundary for this application", PL 12.001/A was not an approved plan on the 2008 permission and the court concluded that the lack of an approved site plan was supportive of the claimant's case that Council understood the site would remain the same as the 2006 Site.

Although the court was of the view that the intrinsic evidence weighed in favour of finding that the geographical scope of the 2008 permission was the same as the 2006 outline permission, the court accepted that there was sufficient doubt to permit regard being had to extrinsic evidence. The officer's report relating to the 2008 permission "manifestly" described the 2006 Site and not the far smaller area shown on PL 12.001/A. Statutory declarations about the intended scope of the 2008 permission were consistent with the officer's report but the court did not consider it appropriate to give regard to this other extrinsic evidence.

The court concluded that the geographical scope of the 2008 permission was the same as the 2006 Site such that it included all 188 units and allowed the claim on that basis.

Case summary prepared by Nikita Sellers