

Case Name: *Barton Park Estates Ltd v Secretary of State for Housing, Communities and Local Government & Anor* [2022] EWCA Civ 833 (21 June 2022)

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Commentary: This case heard by the Court of Appeal concerned whether a Planning Inspector erred in law in dismissing an appeal against the refusal of an application for a certificate of lawful use or development for the stationing of up to 80 caravans “for the purposes of human habitation” on land in the Dartmoor National Park. The High Court had dismissed the Appellant’s statutory challenge of the Inspector’s decision.

Lindblom LJ explained in his judgment that the four grounds of appeal presented two main issues to decide: the first was whether the Inspector erred in concluding that the proposed use fell outside the scope of the relevant planning permissions and the second was whether the Inspector was entitled to conclude that the proposed use would amount to a material change of use without planning permission.

Planning permission was granted in 1987 (and amended in 2013) to “allow for 9 residential vans, 16 holiday chalets, 18 static vans & 30 touring units” on the site. There was no condition attached to the permission limiting the number of caravans and chalets to those specified in the description of development, although there were conditions restricting the number of months for which the chalets, static vans and pitches for touring units could be occupied and the period of time for which the touring units could remain on site. In 2018, the site owner applied for a certificate of lawful use or development for the stationing of up to 80 caravans “for the purposes of human habitation” on the site which was refused.

The Inspector dismissed the Appellant’s appeal, finding that: “the words in the 1987 Permission permit a caravan site at which caravans provide both permanent residential accommodation and holiday accommodation, the year-round use of the latter being prevented by condition. The proposed use for “the stationing of up to eighty caravans for the purposes of human habitation” would be a change from this permitted use, in that it would encompass the use of any and all caravans on the site to provide permanent residential accommodation, with no holiday use at all.” The Inspector went on to find that, as a matter of fact and degree, this would bring about a substantial and fundamental change in the character of the site’s use which amounted to a material change of use requiring planning permission. The High Court found that the Inspector had applied the correct assessment and was entitled to reach this conclusion.

Lindblom LJ addressed the two main issues identified in turn in his judgment. As to whether the proposed use fell outside the scope of the planning permissions, the Appellant argued that the planning permissions made it clear that the site could lawfully be used as a “caravan site” which would include use for entirely residential or entirely holiday purposes (caravans for both purposes being “merely caravans”). Relying on

authorities including "I'm your Man", the Appellant argued that the conditions did not restrict the use of the land for any particular form of caravan site; a restriction on the type or number of caravans could only be achieved by way of planning condition.

Lindblom LJ noted that he could not accept this argument which he found impossible to reconcile with the proper interpretation of the relevant planning permissions and which misinterpreted "I'm Your Man". The planning permissions allowed a specific mix of 73 caravans and chalets, only 9 of which were authorised for residential use and the conditions matched the grant, and reflected its terms, preventing year-round residential occupation of most of the development permitted. He concluded that (1) the reasonable reader of the planning permission would not say that it had been granted simply for a "caravan site" but, rather, the combined effect of the description of the development and the conditions was to grant permission for caravans of several types in the numbers stated; (2) the absence of a condition specifically restricting the number of residential caravans does not have the effect of altering the description of development in the grant itself and; (3) the permission as a whole did not envisage that all the caravans on the site would ever be used for permanent residential occupation. Lindblom LJ emphasised in his judgment that these conclusions did not conflict with the I'm Your Man authorities, which did not apply where there was a material change of use.

As to whether the proposed use amounted to a material change of use, Lindblom LJ noted that the question for the decision-maker was whether, as a matter of fact of degree, there had been a change in the character of the use. He found that the Inspector, having reached the conclusion that the planning permissions were not merely for a "caravan site" but instead a caravan site housing a mixture of both permanent residential and holiday accommodation, found lawfully that the proposed use would be a change from the permitted use because it "would encompass the use of any and all caravans on the site to provide permanent residential accommodation, with no holiday use at all". He concluded that she was entitled to find, as a matter of fact and degree, that the proposed use would be a material change of use – since it "would bring about a substantial and fundamental change in the character of the appeal site's use". This conclusion was predicated on the following findings which were found to be justifiable: (1) in place of a seasonal pattern of occupation, there would be unrestricted residential occupation which would generate a steady level of activity throughout the year; (2) there would be a year-round presence in presently unoccupied parts of the site; (3) the pattern of movement to and from the planning unit would likely change significantly; and (4) caravans in year-round occupation adjoining the entrance would have the effect of visually extending the existing caravan site.

Accordingly, the appeal was dismissed.

Case summary prepared by Victoria McKeegan