Case Name: *Save Britain's Heritage, R (On the Application Of) v Herefordshire Council* [2023] EWCA Civ 723 (23 June 2023)

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Commentary: This was an unsuccessful appeal against the decision of the High Court to dismiss a claim for judicial review. The initial decision which had given rise to the challenge related to a Council's determination that the proposed demolition of a non-designated heritage asset would be permitted development.

Class B, Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") provides that demolition is permitted, subject to exclusions listed therein. In this case, it was the exclusion of buildings which have "been rendered unsafe or otherwise uninhabitable" which was in issue. The relevant exclusion has three parts which, if all are satisfied, mean that the proposed demolition is not permitted by the Order:

i) the building has been rendered unsafe or uninhabitable;
ii) by the action or inaction of any person having an interest in the land; and
iii) it is practicable to secure safety or health by works of repair or works for affording temporary support.

The Appellant, a charity promoting the conservation of historic buildings, submitted that in determining that the proposed demolition would be permitted by the Order, the Council had erred in its interpretation of this exclusion. The officer had recorded in his report that the building had not been "intentionally rendered unsafe or inhabitable" but this was wrong: it did not matter whether it was intentional. The High Court had agreed that the Council had erred in this way but found that it was clear that the officer's judgment was that the building was not unsafe or uninhabitable – he had noted that it was in good structural condition. Having concluded that the first limb of the test was not satisfied, the judge found that any errors made by the officer in applying the second two limbs of the test were immaterial. Accordingly, she had dismissed the application for judicial review.

The appeal against the judgment of the High Court was made on two grounds, that the judge had been wrong to find that the Council's decision was lawful because:

1. The Council did not conclude that the building was uninhabitable, but if it did, that the conclusion would be infected by the error of importing a test of intention; and
2. Wording used by the officer in his report indicated that he thought that stabilising works were a necessary benchmark for determining whether the building was unsafe, but a building might be judged to be unsafe even if lesser works than stabilisation are needed.

Giving the leading judgment in the Court of Appeal, Lewis LJ concluded that, though the report could have been more clearly worded, the officer had clearly made a finding that the building was not unsafe or uninhabitable and he did so based on his observations at the site visit, rather than from any consideration as to what might have been intended by persons with an interest in the land. The judge also considered that the reference to stabilising works was the officer's attempt to summarise the third limb of the relevant test, rather than a factor he took into account in deciding whether the building was unsafe. Accordingly, the appeal was dismissed.

The sage remarks of Sir Keith Lindblom SPT at the end of the judgment are a reminder that interpretational disagreements are avoidable by using the specific wording of the legislation, and framing the assessment of the proposal using that language.

Case summary prepared by Aline Hyde