

Case Name: *Lazari Properties 2 Ltd v The Secretary of State for Levelling Up, Housing And Communities* [2023] EWHC 353 (Admin) (21 February 2023)

Full case: [Click Here](#)

Commentary: The claimant is the owner of the Brunswick Shopping Centre located in Bloomsbury, London. The claimant sought a certificate of lawful use and development ("CLEUD") under s.191 of the Town and Country Planning Act 1990 ("TCPA") as follows: "Application to certify that the existing use of the Brunswick Shopping Centre within Class E and without compliance with Condition 3 of planning permission PSX0104561 is lawful". The entirety of the Centre (not individual units) was identified on the redline plan submitted with the CLEUD application.

Planning permission PSX0104561 was granted on 1 September 2003. Condition 3 provided: "Up to a maximum of 40% of the retail floorspace, equating to 2286m² (excluding the supermarket and eye-catcher), is permitted to be used within Use Classes A2 and A3 of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order."

This was a renewed application brought under s.288 TCPA to the following decisions of an inspector:

- (1) To dismiss an appeal made under s.195 TCPA following the London Borough of Camden's ("the Council") failure to make a decision on the claimant's CLEUD application; and
- (2) To make an order that the claimant should pay part of the costs of the Council.

The s.288 challenge was brought on several grounds.

The first and second grounds relate to the inspector's interpretation of Condition 3. The claimant said that the references in Condition 3 to Classes A2 and A3 now fell to be interpreted as references to any land use within Class E of the amended Use Classes Order. The inspector rejected that interpretation on the basis that he considered to do so would effectively render Condition 3 meaningless. The inspector also rejected the claimant's suggestion that Condition 3 was in the nature of a flexible permission which ceased to have effect after a period of 10 years had elapsed. Mr Justice Lane concluded that the claimant's submissions in relation to these two grounds are arguable.

Grounds 3 and 4 concerned the inspector's conclusions regarding the nature of the claimant's application for a CLEUD. The inspector noted that the PPG, reflecting what is required under s.191 TCPA, says an application needs to precisely describe the subject matter of the application and not simply the use class, and the land to which the

application relates. The inspector held that a use class is not a land use and the CLEUD application failed to describe precisely what was being applied for. A key complicating factor was that some 40+ units were included in the application with uses that would not fall within Class E. Mr Justice Lane concluded that the claimant's grounds 3 and 4 were unarguable.

Ground 5 considered the lawful use of some disputed units within the Centre. Mr Justice Lane held that the inspector was unarguably entitled to conclude on the evidence and in the exercise of his planning judgment that the disputed units included a primary hot food takeaway use (not within Class E).

Ground 6 concerned costs and the claimant's introduction during the first day of the hearing of an argument relating to the interpretation of Condition 3. The claimant submitted that since the matter was one which it was entitled to raise, it did not matter whether the Council had to deal with it at the point it arose as opposed to earlier and the inspector's costs decision was unlawful on that basis. Mr Justice Lane did not accept that the inspector arguably acted irrationally in making the costs order because the late raising of the issue contributed to the need for the hearing to have to go into a second day and work was needed which would not otherwise have arisen but for the unreasonable conduct of the claimant in raising the issue so late in the day.

Mr Justice Lane accepted that grounds 1 and 2 were severable and that these should be argued substantively so that the Court can reach a decision on the correct interpretation of Condition 3 before a fresh certificate application is made under s.191 or s.192 TCPA. Therefore, permission was granted on grounds 1 and 2, and permission was refused on all other grounds

Case summary prepared by Nikita Sellers