Neutral Citation Number: [2021] EWHC 2954 (QB)

Case No: CO/0614/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/11/2021

Before:

JAMES STRACHAN QC
(Sitting as a Deputy Judge of the High Court)

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Between :

ST. ANNE'S COURT DORSET LIMITED	**Claimant**
- and -	
SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**First Defendant**
-and-	
DORSET COUNCIL	**Second Defendant**

- -
- -

Mr Andrew Fraser-Urquhart QC (instructed by **Stephen Scown**) for the **Claimant**
Mr Alistair Mills (instructed by **Government Legal Department**) for the First **Defendant**
The Second Defendant did not appear and was not represented

Hearing date: 7 July 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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JAMES STRACHAN QC

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be at 10am on 4 November 2021.

Mr James Strachan QC (Sitting as a Deputy High Court Judge):

1. This is a claim made under section 288 of the Town and Country Planning Act 1990 ("the 1990 Act"). It is made by claim form dated 19 February 2021. The Claimant seeks to challenge a decision of a planning inspector appointed by the First Defendant given by decision letter dated 12th January 2021 ("the DL"). By that DL, the inspector dismissed the Claimant's appeal under section 195 of the 1990 Act against a refusal of Dorset Council to grant a lawful development certificate under section 192 of the 1990 Act in respect of use at land at St Anne's Cottage, Horton, Three Legged Cross, Dorset BH21 6SD ("the Site") for the stationing of static caravans for the purposes of human habitation.

2. The claim is brought with the permission of Lang J given by Order dated 15 April 2021.

3. The main issue raised by this claim is whether the inspector erred in law in interpreting the planning permission describing the development permitted as use of the Site for "touring caravans" as one which was effective to limit the permitted use to "touring caravans" in the absence of any condition imposing such a restriction. In reliance upon *I'm Your Man v Secretary of State for the Environment* (1999) 77 P&CR 251, the Claimant argues that absent such a condition, the reference to "touring caravans" in the description was not an effective limitation and, in consequence the Inspector should have found that the planning permission permits use of the Site for "static caravans".

4. The Claimant was represented by Andrew Fraser-Urquhart QC and the First Defendant was represented by Alistair Mills. I am very grateful to both of them for the clarity and concision of their written and oral arguments. I am also grateful to the parties for the way in which both the claim bundle and bundle of authorities were prepared.

Factual Background

5. The Claimant is the freeholder owner of the Site has been since 2018. Dorset Council is the local planning authority for the area within which the Site lies.

6. By notice dated 24 June 1980 conditional planning permission was granted under reference number no 3/80/1284 by Wimborne District Council - the local planning authority for the area at that time - for use of the Site as a "site for Touring Caravans" ("the 1980 Planning Permission").

7. Conditions attached to the 1980 Planning Permission included the following:

> "2. Not more than 15 touring camping units shall be stationed on the site at any one time and no unit shall remain on the site for more than 14 consecutive nights."
>
> 3. The site shall be used as a touring caravan/camping site only during the period from 1 March to 31 October in any year and no camping units shall be permitted on the site other than during this period.
>
> Reason: To ensure that the site is used as a touring caravan/camping site.

> 4. No camping units on the site shall be used as permanent residential units.
>
> Reason: To ensure that the site is used as a touring caravan/camping site."

8. The reasons given for the imposition of these conditions were:

> "Reasons for above Conditions
>
> 2. In accordance with the provisions of the approved South East Dorset Structure Plan.
>
> 3. and 4. To ensure that the site is used as a touring caravan/camping site.
>
> …"

9. By a certificate of lawful existing use or development dated 5 April 2016 issued under section 191 of the 1990 Act by East Dorset District Council – the local planning authority for the area at that time – the following was certified as a lawful use of the Site as at 20 November 2015 ("the 2016 Certificate"):

> "1. The use of the land as a touring caravan site between the months of the 1 April to the 30 September each calendar year of not more than 50 caravans at any one time;
>
> The use of the land for the siting of non-occupied touring caravans between the months of the 1 October to the 31 March each calendar year: not more than 22 caravans at any one time;
>
> The use for the siting and residential occupation of a mobile home for occupation associated with the day-to-day operation of the site as a touring caravan park."

10. The 2016 Certificate explained that its grant was based on there being sufficient evidence, on the balance of probabilities, to show that the claimed use or development described in the First Schedule to the Certificate had existed for a period in excess of four or ten years (as prescribed by the legislation) back from the date of the application. Given the nature of what was described, it is apparent that the relevant period would have been ten years.

11. By application dated 26 September 2018 made under section 192(1)(a) of the 1990 Act to East Dorset District Council, the Claimant sought certification that "[u]se of land for the stationing of caravans for human habitation (a caravan site)" would be lawful.

12. East Dorset District Council refused that application by notice dated 29 November 2018. The Claimant appealed against that refusal under section 195 of the 1990 Act (Appeal Reference APP/U1240/X/18/3217904). The planning inspector appointed to determine that appeal dismissed it by a decision letter dated 26 February 2020 ("the 2020 DL"). By the time of the determination of the appeal East Dorset District Council had amalgamated with other local planning authorities to form Dorset Council.

13. In his decision letter, the Inspector reasoned (amongst other things) as follows:

> "The permission and condition 4
>
> 9. The planning application form in 1980 required that the brief nature of the proposed development be described. It is described as 'site for touring caravans' which is then used on the Council's decision notice.
>
> 10. At the hearing, time was spent considering how condition 4 of the permission should be interpreted. This is because some of the planning conditions, but most importantly for the purposes of this appeal condition 4, refer to camping units. I address throughout my decision the reasons for the importance of condition 4.
>
> 11. I raised at the hearing whether any of the plans or documentation submitted with the planning application referred to a camping use. Whilst I appreciate this is now held on a microfiche system, and so the quality of the printed copies are poor, the parties were unable to identify any reference to camping units.
>
> 12. However, it appears clear to me that the context of the permission does also relate to camping units. This is otherwise to say tents, as defined by the appellant. This is because a camping use is referenced in other planning conditions of the permission as well as in their reasons for being imposed. These therefore cast light on the extent of the permission when it is read as a whole.
>
> 13. However, it is highly improbable that a tent would be used as a permanent residential unit; indeed, to give it this effect would amount to an absurdity. Whilst the appellant suggested that for clarity the condition perhaps should have also included the words 'touring caravans', it clearly cannot be re-written. I am therefore inclined to interpret the condition, as part of an objective exercise, in a common-sense way to give it a sensible meaning, which a reasonable reader would understand, rather than by what the parties may or may not have intended at the time. My overall approach is consistent with relevant case law in such matters[3].
>
> 14. Accordingly, I find that condition 4 does relate to the prohibition of touring caravans on the site used as permanent residential units, noting reference to this type of caravan on both the application form and throughout the decision notice. It is therefore not an invalid or void planning condition and does serve a useful planning purpose.

Whether conditions 2, 3 and 4 of the permission are capable of enforcement action

15. At the hearing the Council accepted that the certificate amounted to a breach of conditions 2 and 3 and therefore these conditions would not be capable of any form of successful enforcement action.

16. The appellant contends that the terms of the certificate, in particular that relating to the residential occupation of a mobile home, amounts to a breach of condition 4 of the permission. This was put forward on the basis that I found condition 4 to relate to caravans as opposed tents, which I have. I will now address the issue of the type of caravan.

17. It was asserted by the Council that the permission had a narrow description which related to touring caravans only. The inference being that a different type of caravan would be outside the scope of the permission and thus be a breach of planning control. The Council however could not provide any authorities to support this strict interpretation. My attention was however later drawn to the Matchams Drive appeal decisions[4], the relevance being that conditions can restrict the use to a particular type of caravan, such as touring caravans, as is the case with the permission. This is so, even though the Caravan Sites and Control of Development Act 1960 (as amended) does not separately define different types of caravans.

18. The Council also asserted that it was clear from the permission that it was for a seasonal or holiday use only. The lawfulness of the mobile home was therefore inconsistent with the permission and so rather than being a breach of condition, it was a stand-alone breach of planning control.

19. I am not convinced that the lawfulness of the mobile home is necessarily inconsistent with the permission given the terms of the certificate refer to the use of the mobile home for occupation associated with the day to day operation of the site as a touring caravan park. However, given my findings in relation to condition 4, namely that it relates to touring caravans, as opposed any type of caravan, the certificate relating to the residential occupation of a mobile home could not amount to a breach of this condition. It is therefore a stand-alone breach of planning control. Condition 4 is therefore still capable of enforcement action.

20. The appellant however indicated at the hearing that the proposal was likely to result in the stationing of static caravans, or otherwise commonly known as mobile homes. Conditions 2 and 3 of the permission have been breached and so have been set-aside. Based on my findings, it follows that the unfettered

human habitation of mobile homes would not be in breach of condition 4 of the permission. The appeal therefore hinges on the terms of the certificate and whether the unfettered stationing of mobile homes for human habitation would amount to a material change of use.

Whether the certificate amounts to a limitation on use

21. The certificate of lawfulness represents a snapshot in time, in this case from 2016. At the hearing the parties agreed that the terms of the certificate could not cut-down the scope of the permission. A certificate also cannot be automatically breached in the same way as a planning condition; which could then otherwise be remedied, for example, by a breach of condition notice.

22. It was also agreed by the parties at the hearing that the certificate does not represent a new planning chapter at the site. The permission as well as the certificate therefore provide the baseline from which to consider whether there has been or would be a breach of planning control.

23. It was further agreed by the parties at the hearing that it was better to consider the certificate as particularising the extent of the lawful uses as opposed providing a limitation on use. In respect of this appeal, in light of my findings, the question is whether the unfettered stationing of mobile homes for human habitation would amount to a material change of use.

Material change of use

24. The unfettered stationing of touring caravans for human habitation would be in breach of condition 4 of the planning permission, but this would not be the case in respect of mobile homes. Therefore, based on my findings, the appellant is reliant on the terms of the certificate relating to a mobile home.

25. In terms of the particularisation of the certificate I accept that the occupation of the mobile home itself is unfettered as whether or not it is occupied in association with the day to day operation of the site as a touring caravan park would not amount to a material change of use.

26. However, the certificate particularises a mobile home, which is singular. I also observed only one mobile home on the appeal site during my visit. In my view, materially different planning consequences arise from one mobile home for human habitation, to an otherwise unquantified and therefore unfettered number – particularly on a site of significant size as is the case here. This does not relate to planning merits or land use designations, but rather a fundamental and material change in both the character

> of the proposed use, given the likely number of mobile homes, as well as intensification, given the likely number of occupiers and associated vehicle movements, over that of one mobile home. Accordingly, development is proposed that neither has the benefit of the permission nor lawfulness arising from the certificate.
>
> **Conclusion**
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> 27. The appellant has therefore not satisfactorily demonstrated his case. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
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> …
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> ---
>
> [3] At the hearing the Council referred to the case of Trump International which formed the basis for discussion - Trump International Golf Club Scotland Ltd v Scottish Ministers [2015] UKSC 74
>
> [4] APP/U1240/X/3152283 and APP/U1240/X/17/3179428"

14. The Claimant submits that the inspector in the 2020 DL made the following relevant findings to the decision now under challenge:

    (1) Condition 4 to the 1980 permission applied only to "touring caravans" and not to other types of caravans (such as static caravans or mobile homes).

    (2) The 2016 Certificate did not represent a new chapter in the planning history and could not cut down the scope of the 1980 permission.

15. As will become apparent, the inspector who determined the appeal that is the subject of this claim considered the 2020 DL and, in particular, distinguished some of the reasoning of that inspector in the 2020 DL at paragraphs 15-20.

16. By an application dated 28 February 2020 made under section 192(1)(a) of the 1990 Act, the Claimant made another application, this time to Dorset Council, in respect of the Site seeking certification that "[u]se of land for the stationing of static caravans/mobile homes for the purposes of human habitation" would be lawful.

17. By notice 15 July 2020 the Council refused the application. The Claimant consequently submitted the appeal which was determined by the inspector in the DL which is now under challenge in this claim.

The Inspector's DL

18. In paragraph 4 of the DL the inspector noted that the application form to Dorset Council had referred to "mobile homes", but that the reference to "mobile homes" had been

substituted for "static caravans" during the course of the determination by Dorset Council. He therefore determined the appeal on that basis.

19. In paragraphs 5 and 6 of his DL the inspector identified the main issue arising on the appeal as follows:

> "**Main Issue**
>
> 5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded.
>
> 6. Firstly, I shall identify the existing lawful use of the site by considering the existing planning permission, including any conditions attached to it, and the existing certificate of lawful development. I shall then consider whether the proposed use of the land for the stationing of static caravans for the purposes of human habitation would fall within the existing lawful use or be in breach of any existing conditions. If it would not, I shall then consider whether the proposed use would be a material change of use from the existing lawful use. If a material change of use would occur, this would amount to development requiring planning permission. If it would not, the certificate could be granted."

20. In his oral submissions on behalf of the Claimant, Mr Fraser-Urquhart submitted that there was nothing controversial about the steps the Inspector had identified in DL6. I agree. The Inspector correctly directed himself as to the relevant issues he needed to consider to determine the main issue.

21. In the remaining parts of his DL the Inspector set out his reasons for dismissing the appeal having followed those steps. Given that the challenge relates to this reasoning, it is relevant to set out the reasoning in full:

> "**Reasons**
>
> *Planning History*
>
> 7. The appeal site benefits from a planning permission (the Permission) granted in 1980[1] for a 'site for touring caravans', subject to 7 conditions. Condition 4 states:
>
> *No camping units on the site shall be used as permanent residential units.*
>
> *Reason: To ensure that the site is used as a touring caravan/camping site.*

8. An LDC was granted in 2016[2] (the Certificate) on the following terms:

1. The use of land as a touring caravan site between the months of the 1 April to the 30 September each calendar year of not more than 50 caravans at any one time;

2. The use of land for the siting of non-occupied touring caravans between the months of the 1 October to the 31 March each calendar year, of not more than 22 caravans at any one time;

3. The use for the siting and residential occupation of a mobile home for occupation associated with the day to day operation of the site as a touring caravan park.

9. A further LDC[3] was sought for "Use of land for the stationing of caravans for human habitation (a caravan site)". This was refused and subsequently dismissed on appeal[4].

10. The Certificate does not restrict the scope of the Permission, as confirmed by the Inspector in the previous appeal. Both the Certificate and the Permission are to be considered in determining whether the proposed use would be lawful.

Interpretation of the Permission

11. The description of the development as set out in the Permission specifies 'touring caravans'. There are no conditions which restrict the number or type of occupation of the caravans permitted on the land. In order to weigh the implications of this, it is necessary to have regard to the relevant case law.

12. In *I'm Your Man Ltd v Secretary of State for the Environment* [1999] 77 P&CR 251, the High Court considered the terms of a grant of planning permission for "additional use of warehouse/factory for sales, exhibitions and leisure activities for a temporary period of seven years at Weston Business Park", which was not subject to any condition requiring the cessation of the use after seven years. The Court held that the planning permission as granted permitted the change of use of the buildings, and (in the absence of a condition) did not impose any limit on the period for that use. This principle was endorsed in *R (oao) Altunkaynak v Northamptonshire Magistrates Court & Kettering Borough Council* [2012] EWHC 174 (Admin).

13. In *Winchester CC v SSCLG* [2013] EWHC 101 (Admin) it was held that planning permission for the use of land as a 'travelling showpeople's site' was a limited grant of planning

permission for that use. Although there were no conditions limiting the occupation of the site to travelling showpeople, it could not be interpreted as planning permission for a residential caravan site and no conditions were necessary for the local planning authority to enforce against use by people who were not travelling showpeople.

14. In the case of *Cotswold Grange Country Park v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin), the High Court considered the terms of a grant of planning permission "to erect and resite 40 caravans and provide 14 additional static caravans (within original area) and ancillary works (partially retrospective) all for year round holiday use", which was not subject to any condition restricting the number of caravans on the site. The Court noted that "…the determinative issue… is not whether the limitation is imposed merely in terms of a restricted description of the permission granted, but whether it is in the form of a condition. That is the *I'm Your Man* principle." It held that there is a difference between a limitation of numbers of caravans in the description in the grant of permission, and a limitation of such numbers in the form of a condition, and that only the latter was capable of imposing a limitation at law.

15. The circumstances in the case before me are slightly different to the Cotswold case in that the Permission refers to a specific type of caravan rather than numbers. However, in *Wood v SSCLG & the Broads Authority* [2015] EWHC 2368 (Admin) the Court held the principle that "if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition" extends beyond limitations of a "temporal" nature; it applies to "substantive" limitations as well.

16. In *Lambeth LBC v SSCLG & Aberdeen Asset Management, Nottinghamshire CC & HHGL Ltd* [2019] UKSC 33 the Supreme Court considered whether a condition restricting the use of the premises should be implied into a planning permission granted under s73 by the local planning authority or, alternatively, whether the planning permission should be interpreted as containing such a condition. Summarising existing caselaw and interpretation, Lord Carnwath held that 'Whatever the legal character of the document in question, the starting-point – and usually the end-point – is to find "the natural and ordinary meaning" of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense" and "The obvious, and…only natural, interpretation…is that the Council was approving what was applied for."

17. The appellant has also referred me to *Breckland District Council v Secretary Of State for Housing, Communities and Local Government and Plum Tree Country Park Ltd* [2020]

EWHC 292 (Admin). However, that case involved a site that benefitted from a CLD for "use of land as a caravan and camping site including associated amenity area", which did not, as a matter of fact, specify any restrictions on the type of caravans that could be lawfully sited on the land. In the appeal before me, the description of the Permission does in that it states "site for touring caravans" [my emphasis].

18. Having regard to the above case law, it is necessary to consider what the Permission permits. Following the approach set out in Lambeth, the starting point is to find "the natural and ordinary meaning" of the words used in the Permission. The description of the development set out in the decision notice for the Permission is "site for touring caravans". Furthermore, the conditions attached to the Permission frequently refer to touring caravans. Whilst there is no limitation in the description of the development as to how the caravans are to be used, planning permission was granted as a site for touring caravans only. Nevertheless, the conditions limit the use of the site as a touring caravan/camping site between 1 April and 30 September and that no unit shall remain on the site for more than 14 consecutive nights.

19. Given the above, the natural and ordinary meaning of the wording of the Permission, read in conjunction with the conditions attached to it, can only reasonably mean that planning permission was granted for a caravan site for touring caravans for holiday use and that the Council was approving what had been applied for.

20. The appellant argues that the previous Inspector did not accept the Council's proposition that the descriptive term of "touring caravans" is enforceable. The Inspector commented that: "It was asserted by the Council that the permission had a narrow description which related to touring caravans only. The inference being that a different type of caravan would be outside the scope of the permission and thus be a breach of planning control. The Council however could not provide any authorities to support this strict interpretation". However, he did not go as far as to say that there was no merit in the argument; only that the Council had not provided any authority to support it. In the appeal before me, I have been presented with various caselaw on the matter.

21. Consequently, the siting of static caravans for human habitation would fall outside the definitional scope of what was granted planning permission.

22. Turning to the conditions attached to the Permission, condition 4 of the Permission refers to "camping units". The Inspector in the previous appeal[5] found that this included touring caravans as it would be an absurdity to interpret it as only preventing the use of tents as permanent residential units. He also found that as this condition relates to touring caravans, as opposed to any type of caravan, the unfettered human habitation of mobile homes would not be in breach of it. Looking at the natural and ordinary meaning of the wording of this condition, I concur with this conclusion. The appellant contends that the Inspector's interpretation of the condition amounts to its alteration. However, no argument is advanced justifying this, although they concede that this point does not affect their intentions for the site.

23. The terms of the Certificate also only refer to touring caravans, with the exception of (3), which is for the siting of a mobile home for residential occupation. However, this is clearly a single mobile home and is to be occupied in association with the day to day operation of the touring caravan park. I note that this term refers to the site as a "touring caravan park".

24. Given the above, the proposed stationing of static caravans for the purposes of human habitation would not be in breach of a condition attached to the Permission or any limitations of the Certificate.

25. In my judgment, the Permission and the Certificate permit the use of the appeal site for touring caravans for holiday use between 1 April to 30 September. That is the existing lawful use of the appeal site. I have established that the proposed development would fall outside the scope of the Permission but would not be in breach of any conditions attached to it or the terms of the Certificate.

Whether there would be a material change of use

26. My attention turns to consider whether the use of the site for the stationing of static caravans for the purposes of human habitation would amount to a material change of use. If it would not, there would not be a breach of planning control. In assessing whether there would be a material change of use comparisons should be drawn between the existing lawful use and the proposed development.

27. Following the granting of the Certificate, conditions 2 and 3 attached to the Permission are no longer enforceable. The terms of the Certificate restrict the number of caravans to no more than 50 at any one time. Therefore, the number of static caravans

would be no greater than the number of touring caravans permissible on the site. Although static caravans are typically larger than touring caravans, touring caravans frequently have awnings attached to them, which can almost double their size. In addition, touring caravans often have domestic paraphernalia such as outdoor seating, a washing line, outdoor cooking facilities, similar to what may be found accompanying a static caravan used for permanent residential use. In terms of their positioning, there is nothing to satisfy me that the static caravans would not be arranged in a similar pattern as the existing touring caravans are.

28. In terms of traffic generation, there would likely be an increase in the number of traffic movements as static caravan residents may travel to and from work; deliveries of groceries and parcels would be made more frequently; and, there would be more general comings and goings as a result of visitors, school runs, general shopping etc. However, I do not consider that such movements would increase to such an extent that it would, in isolation, result in a material change in the use of the site.

29. The Council also argue that there would be an intensified impact on the Dorset Heaths Special Area of Conservation and Dorset Heathlands Special Protection Area as a result of the likely increase in cat ownership due to the proposed use. However, my consideration of whether there would be a material change in the use of the site does not take into account the planning merits of the proposal. I accept that there will likely be some degree of cat ownership amongst the residents of the site, which would likely have a negative impact on protected species and the Dorset Heaths Special Area of Conservation and Dorset Heathlands Special Protection. However, my consideration is on the basis of whether there would be any material change in the use of the site, not whether there would be any harm. I do not consider that the increase in the number of cats within the locality would amount to a material change in the use of the site.

30. Notwithstanding the above, the Certificate restricts the use of the site as a touring caravan site to between the 1 April and 30 September. Whilst non-occupied caravans can be sited on the land between 1 October and 31 March, this is limited to only 22 caravans at a time. *Moore v SSCLG & Suffolk Coastal DC* [2012] EWCA Civ 2101 held that it was not correct to say that using a dwelling for commercial holiday lettings would never amount to a material change of use or that it would always amount to a material change of use. Rather, in each case it would be a matter of fact and degree and would depend on the characteristics of the use as holiday accommodation. Applying this to the case before me, whether there would be a material change of use from touring caravans for holiday purposes to static caravans for

permanent residential purposes between 1 October and 31 March is a question of fact and degree and the particular characteristics of the use.

31. During this period of non-occupation, between 1 October and 31 March, the nature of the site no doubt changes significantly as there would be far fewer traffic movements in and around the site and far fewer people going about their daily activities, indeed this would likely be limited to staff and possibly the occasional visit from caravan owners to check on their caravans. Furthermore, there would be a reduction in the number of touring caravans on the site, awnings would likely be taken down and general domestic paraphernalia stored away. Therefore, the overall effect on the visual amenities of the site and the surrounding area would be significantly reduced compared to the other times of the year.

32. The proposed use would result in the typical activities and comings/goings of site residents that I have identified above continuing throughout the year. For example, residents traveling to and from work, carrying out school drops offs/pickups as well as parcel and grocery deliveries being made. In addition, general residential activities would continue to take place on the site, such as the domestication of the caravans and their plots, including the placement of outdoor furniture, planting, erection of boundaries, storage sheds and washing lines. Furthermore, there would be lights (internal and external) and noise generated by site residents and the movement of vehicles. This would all be in marked contrast to the existing character of the site between the period of 1 October and 31 March, which is largely devoid of such activity during these months.

33. Overall, this would result in the character of the site fundamentally changing from that of a typical seasonal, tourist accommodation site to a year-round, permanent residential site. Therefore, whilst there would not be a material change in the use of the site when compared to the existing use taking place between 1 April and 30 September, as a matter of fact and degree, there would be when compared with the use of the site between the period of 1 October and 31 March.

34. The appellant has referred me to a number of appeal decisions for sites elsewhere where the Inspector allowed the appeal and granted an LDC. I acknowledge that there are similarities between the appeal before me and these appeals. However, the cases of Meadowview Park6, Matchams Drive[7], Greenacres[8] and Castle View[9] predate *Lambeth*. Therefore, these appeals were determined against a different caselaw backdrop to the appeal before me.

35. In the case of Meadowview Park, the Inspector was not persuaded that a change in the use of a caravan park from the siting of touring caravans to the siting of static caravans would constitute a material change of use. However, there were no seasonal conditions on the relevant planning permission unlike the case before me, which I find to be a determinative factor on which my decision turns.

36. The Inspector in the Matcham's Drive appeal considered that the term "Holiday" in the planning permission was permissive rather than restrictive. However, following the judgment of *Lambeth*, in the case before me the consideration of the wording of the Permission does not necessarily mean that other caravan types are permitted, or indeed restricted. The *Lambeth* case involved both non-food and food use which fell within the same use class and therefore there was no material change of use. However, in the case before me, the assessment of whether there would be a material change of use is necessary.

37. In the Greenacres appeal, the Inspector was considering a breach of condition notice and therefore it was not open to her to consider whether there would be a material change of use. That is not the case in the appeal before me.

38. The Castle View appeal was for an LDC in relation to the all year round use of a caravan site in breach of a condition. The Inspector found that the condition was badly worded and as the all year-round use would not be in breach of this condition there would not be a material change of use. However, there was no limitation on the type of caravan that was permitted. In the case before me, there would be a different type of caravan to the existing and an all year-round residential use. Therefore, I do not draw any similarities with the Castle View decision that weigh in the proposal's favour.

39. I have also been referred to the Ruda Holiday Park[10] appeal, which concerned the use of a parcel of land that fell within the red lined area of a planning permission for caravans for short term holiday let as per the planning permission. The Ruda case did not relate to any change in the period of use. It is these changes that I have found to be determining factors in the consideration of whether there is a material change of use. Whilst he does not explicitly say there was no material change of use, in paragraph 13 of his decision, the Inspector states "Moving their location within land covered by a planning permission for such a use as holiday accommodation or swapping one caravan for another, provided they still meet the definition of being a caravan and they are to be used for the same purpose, would not be development requiring planning permission each time this happened."

40. In the case before me, the static caravans would be used differently to how the existing touring caravans are used. Furthermore, they would be in use all year round, as opposed to the six month period the existing caravans are currently occupied for. Therefore, the resultant material change of use I have found would be development requiring planning permission.

41. Finally, in the Romansleigh[11] appeal referred to me by the appellant, the site benefitted from planning permission for "Use of land as site for 45 caravans and construction of toilet block and septic tank". There was no specific reference to touring or static caravans and there was no restriction on year-round use, unlike the appeal before me.

42. The appellant contends that it is not necessary to consider whether there would be a material change of use as the proposal falls squarely within what is permitted by the planning permission. Accordingly, the appellant has provided little evidence regarding the effects of the proposed development in comparison to the existing. Based on the evidence before me, I am not satisfied that there would not be a material change of use that would require planning permission.

Other Matters

43. The appellant refers to an extract from the Inspector Training Manual. However, this is a constantly evolving document and is merely to be used as a training aid.

Conclusion

44. I have found that the proposed siting of caravans for all year-round occupation for the purposes of human habitation does not fall within the scope of the Permission or the Certificate. It would amount to a material change in the use of the land that would require planning permission.

45. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the siting of caravans for all year-round occupation for the purposes of human habitation was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

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1 Council Ref 3/80/1284

2 Council Ref 3/15/1223/CLU

3 Council Ref 3/18/2668/CLP

4 Appeal Ref APP/U1240/X/18/3217904

5 Appeal Ref APP/U1240/X/18/3217904

6 Appeal Ref APP/U1430/X/16/3164696

7 Appeal Refs APP/U1240/X/16/3152283 and

APP/U1240/X/17/3179428

8 Appeal Refs APP/J1535/C/14/2225843 and APP/J1535/A14/2225844

9 Appeal Ref APP/C1435/X/17/3190604

10 Appeal Ref APP/X1118/X/18/3217206

11 Appeal Ref APP/X1118/X/20/324950

The Grounds of Challenge

22. The Claimant draws particular attention to paragraphs 5, 6, 10-1, 14-15, 18-22, 24-34 and 36 of the DL in its submissions in support of this claim. The Claimant submits that the Inspector:

(1) Noted that there were no conditions which restricted the number or type of occupation of caravans on the land (para 11) and that the stationing of static caravans would not be a breach of condition (para 24).

(2) Noted the existence of the *I'm Your Man* principle that a limitation on the use of land within the general confines of the description of development had to be derived from a condition and could not be derived from the description of development.

(3) Noted that the recent Supreme Court authority of *Lambeth* compelled a reading of the permission to find the "natural and ordinary meaning" of the words used.

(4) Accepted that "*there is no limitation in the description of the development as to how the caravans are to be used*" (para 18).

(5) Nevertheless concluded that the wording could "*only reasonably mean that planning permission was granted for a caravan site for touring caravans* ***for holiday use***" (para 19) (emphasis added by the Claimant).

(6) Concluded that Condition 4 prevented only the year round occupation of touring caravans and not mobile homes. Accordingly, there were no conditions on the permission which would prevent the year-round use of mobile homes.

(7) Concluded that the pattern of use of a static caravan was not materially different from the pattern of use of a touring caravan (paras 27-29).

(8) Concluded that the use of the site as a touring caravan site was restricted by the Certificate to the period 1 April to 30 September.

(9) Concluded that there was a material change of use on the basis that the site would be occupied throughout the year, rather than just between 1 April and 30 September and relied on that as the determinative reason for refusing the Certificate.

(10) Considered that other relevant Inspectors' decisions, which pre-dated *Lambeth*, "*were determined against a different caselaw backdrop*" (para 34) and concluded that "*following the judgment of **Lambeth**, in the case before me the consideration of the wording of the Permission does not necessarily mean that other caravan types are permitted, or indeed restricted."* (para 36).

23. The Claimant submits that in so concluding, the Inspector erred in law in three respects articulated as three grounds of challenge. During the course of his oral presentation, Mr Fraser-Urquhart merged what were grounds 1 and 3 of the grounds of claim into one. I will deal with those grounds together on that basis.

Ground 1 and 3

24. Under ground 1, the Claimant submits that the Inspector erred in concluding that was proposed involved any change of use at all. It submits that the ground of challenge is founded on the essential and trite principle that before there can be a material change of use capable of constituting development requiring planning permission, there must be a change of use (material or non-material).

25. The Claimant frames this submission by reference to what Sullivan LJ stated in *Wall v Winchester CC* [2015] JPL 1184 at paragraph 22 as follows:

> "It can be seen that in none of these cases was there an alleged change of use from the permitted use to some other use. If such a change is alleged in an enforcement notice, then in the absence of any condition limiting the use of the site e to the permitted use, the question in every case will be: has the alleged change of use taken place and, if so, is it a material change of use for planning purposes? If the answer to either of these questions is "no" there will have been no development, so planning permission will not be required. If the answer to both these questions is "yes" there will have been development and planning permission will be required. The position was accurately summarised by Hickinbottom J in paragraph 15 of his judgment in *Cotswold Grange County Park*."

26. The Claimant submits that the Inspector erred in concluding that the terms of the 1980 permission could not encompass the proposed use for the stationing of static caravans for human habitation because of the principle established in the case of *I'm Your Man*, as considered in (a) the *Cotswold Grange Country Park* case referred to in the judgment above: see *Cotswold Grange Country Park v SSCHLG* [2014] EWHC 38 (Admin) and

(b) in R *(Altunkaynak) v Northampton Magistrates' Court* [2012] EWHC 174 (Admin). It is submitted that the *I'm Your Man* principle is summarised by Richards LJ in *Altunkaynak* as follows: "The relevant principle, drawn from the wording of the statute, is a general one: if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition."

27. The Claimant says that the Inspector correctly concluded at DL24 that "*the proposed stationing of static caravans for the purposes of human habitation would not be in breach of a condition attached to the permission or any limitations of the Certificate*." It contends that in accordance the principle derived from *I'm Your Man*, it was if, and only if, the description of development precluded on its face the manner in which caravans located on the site were to be used, that the permission could be construed in such a manner that the application for the Certificate could fail. It argues that the Inspector's finding that there was no condition preventing the year-round occupation of the site by mobile homes would have otherwise led inevitably to the grant of the certificate.

28. The Claimant also says that the Inspector correctly concluded at DL18 that: "*there is no limitation in the description of the development as to how the caravans are to be used*".

29. In this context, the Claimant seeks to place reliance on the definition of a "caravan" in section 29 of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"). This provides:

> "'Caravan' means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted…"

30. The Claimant relies on the fact that the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") provides that the term "*caravan*" has the same meaning as in the 1960 Act. It argues that "touring caravans" and "static caravans" are not defined separately under the legislation. In this context, it seeks to refer to *Breckland DC v SSHCLG* [2020] EWHC 292 (Admin) that considering a certificate of lawfulness relating to a "caravan and camping site" in which Lang J stated at [43]:

> "There is no reason in principle why the Site should not include a mix of campers in tents, touring caravans and permanently situated mobile homes."

31. In light of this decision, the Claimant contends it has been recognised that there is no change of use in the land as between a touring caravan site and a static caravan site or (in the *Breckland* case) a combination of the two, and consequently the type of caravan does not change the land use. In this context, the Claimant also refers to the definition of the term "*caravan site*" in section 1(4) of the 1960 Act, also adopted in the GPDO, as follows: "*… land on which a caravan is station for the purposes of human habitation and land which is used in can conjunction with land on which a caravan is so stationed."* The Claimant referred to what was stated in the *Breckland case* at [34]-

[37] and further submitted that the relevance of the statutory definition of "*caravan*" and "*caravan site*" was acknowledged in *Wyre Forest DC v SSE* [1990] 2 AC 357 per Lord Lowry at 369.

32. Against this background, the Claimant argues that the 1980 Planning Permission, correctly interpreted, granted permission for a caravan site, and the use of the word "touring" does not serve as a definition of the essential land use permitted. It says a form of limitation of the essential land use permitted which cannot, absent a relevant effective condition, bring about a limitation of the permission. It refers to what Hickinbottom J (as he then was) stated in *Cotswold Grange* at [15]: "*the grant identifies what can be done – what is permitted – so far as use of land is concerned; whereas conditions identify what cannot be done – what is forbidden*."

33. In response to the First Defendant's reliance on the analysis of *I'm Your Man* by Sullivan LJ in *Wall v Winchester CC*, and the consequential submission that the word "touring" is a "functional specification" which does have effect to limit the types of caravan that are permitted to be stationed on the site, the Claimant argues that all that can be drawn from *Wall* is that the first step is to assess whether the use claimed to be lawful falls within the "essential land use" permitted by the description of development. In undertaking that exercise in this case, the Claimant submits that:

(1) It is an exercise of construction based upon the wording of the description of development. That is a matter for the Court, not a matter of planning judgment for the Inspector.

(2) It is central to the *I'm Your Man* principle that not all words in a description of development have effect to impose a limitation on the use of the land. To consider every word of a description of development as a "functional limitation" would be wholly to undermine the *I'm Your Man* principle.

(3) A "functional limitation" must be just that – based upon the essential function in land use terms of what is permitted.

(4) All of the cases considered by Sullivan LJ as endorsing the notion of a "functional description" pre-date the *I'm Your Man* line of authority and would, quite conceivably, have been considered in different terms in light of that principle. A more modern consideration of those principles, in the light of the *I'm Your Man* principles, is seen in *Manchester CC v SSCHLG* [2021] EWHC 858 (Admin) at paras 23-27.

34. During the course of argument, Mr Mills on behalf of the First Defendant accepted the principle set out in (1) above, namely that the correct interpretation of the 1980 Planning Permission was a matter of law for the court, rather than a matter of planning judgment for the inspector, but he submitted that the inspector had correctly interpreted it.

35. By contrast, the Claimant argued that the word "touring" is not the same type of functional limitation seen in the other cases considered in *Wall* and submitted that:

(1) The type of caravan relates to its construction, not its function. The only definitive difference between a touring caravan and a static caravan is that a touring caravan has wheels and is *capable* of being moved, whereas a static caravan requires lifting

onto a low loader. However, there is nothing which *compels* a touring caravan to move. A touring caravan can, and does often, remain static all year and indeed for many years. The essential function of each is the same, namely to provide a facility for human habitation of a particular type.

(2) The conditions, far from compelling a conclusion that "touring" is a functional limitation, were explicitly found by the Inspector not to "*restrict the number or **type of occupation** of the caravans permitted on the land*" (DL paragraph 10 [….], with the Claimant's emphasis added).

(3) The Inspector accepted at DL18 that "… *there is no limitation in the description of the development as to how the caravans are to be used …*". In the light of that finding, the Site falls squarely within the statutory definition of "caravan site" and that is the essential land use.

(4) The word "touring" is not a functional limitation which fundamentally affects the nature of the land use permitted by the description of development. Instead it is a limitation which could only have legal effect if imposed by condition.

(5) This conclusion is buttressed by the Inspector's own conclusions as to the fact that the patterns of land use as between caravans occupied for holiday purposes and caravan occupied for residential purposes were not materially different (see DL paras 27-29). Contrary to the First Defendant's submission, it goes not to the purpose of ascertaining whether there has been a material change of use (which is what Sullivan LJ deprecated in *Wall*) but instead is relevant as an illustration that there is no functional difference between different types of caravan stationed on the land.

36. The Claimant therefore contended that these considerations led inevitably to the conclusion that the description of development did, as a matter of law, encompass the proposed use. It argued that there was no need for the inspector to consider if there was a *material* change of use, since there was no change of use (whether material or non-material) from that already permitted by the planning permission. It is said that if the Inspector had done as he ought, he would have concluded that the patterns of land use as between caravans occupied for holiday purposes and caravan occupied for residential purposes were so similar that no change of use would occur, such that the description of development in the 1980 permission authorised the use for which the certificate was sought. However, so the Claimant submits, the Inspector fell into legal error in concluding at DL18 that "*planning permission was granted as a site for touring caravans only*". The Claimant submits the use of the word "only" makes plain that the Inspector regarded the word "touring" as imposing an effective limitation on the permission, but this was an error of law.

37. In his oral presentation, Mr Fraser-Urquhart essentially rearticulated those submissions in contending that there was no valid restriction on the use of the caravans. He also submitted (amongst other things) that what Sullivan LJ was identifying in *Wall* is that if there is no change of use at all, within the description of development, then additional words attached to the permission have to be given effect. However, he submitted the word "touring" did not have that effect in this case. He also to distinguish the other cases referred to in *Wall* as being ones concerned with a descriptions of development

with a particular pattern or type of land use, that was not present here. So, for example, he submitted that:

(1) an "agricultural cottage" reflected an agricultural pattern and type of occupation which was inherently different from occupation a normal worker, with hours of use likely to be different from that of a normal worker and the pattern of use likely to be different;

(2) a depot for "cattle transport lorries" concerned a particular type of use with activity associated with a particular cargo that marked them out as different to other lorries; he argued that there is no direct parallel in such cases with the present case, but in any event there was a direct essential relationship with the nature of the use for a cattle lorry as opposed to use by lorries for a "run of the mill" storage site;

(3) A "travelling showpeople" site would have had no meaning without the reference to "travelling showpeople" and this made it a functional limitation, in distinction to the situation here where the word "touring" was not essential.

38. Referring to the statutory definitions of a caravan and caravan site set out in his skeleton argument, he submitted that: there is no distinction in the statutory definitions between touring and static caravans; the statutory definitions are to be read across in this context, with a focus on the nature of the essential land use; the type of caravan is an example of construction, but not one which goes to the essential features of the use of land; a caravan is a place of human habitation of a limited size which is capable of being moved from its location – a touring caravan may hitched up and moved, whereas a static caravan has to be on a low-loader to be moved, but there is nothing to compel either caravan to move in terms of practicalities and there are many examples of where a touring caravan is located in one position on a permanent basis and does not move more frequently than a static caravan; there is no intrinsic difference between the way land is used as between a touring and static caravan; consequently, the word "touring" is not part of the essential land use, but it is a limitation or restriction which could only be given effect by way of a condition; if the local planning authority had wanted to restrict the site to use by touring caravans, they had to do that by imposing a condition to that effect.

39. Under Ground 1 and also under Ground 3, which Mr Fraser-Urquhart took together at the hearing, it was submitted that insofar as the Inspector relied on the Supreme Court decision in *Lambeth* to bring into question the correct approach to the *I'm Your Man* principle, the inspector erred in law in so doing. The Claimant argued that that the Supreme Court in *Lambeth* referred to the *I'm Your Man* principle in terms which can only be read as an endorsement of that principle, as follows:

> "26. … In line with the decision in I'm Your Man… [Counsel for the appellants] did not seek to argue that the proposed wording could be treated as an enforceable "limitation". He accepted the need to establish that the permission was subject to a legally effective condition in that form."

40. Mr Mills on behalf of the First Defendant submitted that the correct approach in relation to Ground 1 was set out by Sullivan LJ in *Wall v Winchester CC.* He submitted that if a local planning authority wants to control what is permitted, there are two main

options. The first is through the description of what is permitted and the second is by the use of conditions. The decision in *I'm Your Man* as explained in *Wall* is that the consequences of these two types of control is different. If there is a restriction in what is permitted, then a question will arise as to whether what is proposed constitutes a material change of use. If there is a restriction in the form of a condition, a restriction can arise because what is proposed may constitute a breach of that condition regardless of whether it is a material change of use or not. He submitted that is what Sullivan LJ identified in *Wall*.

41. Consequently Mr Mills contended that what was permitted by the 1980 Planning Permission was a site for "touring caravans" and that one could not ignore the word "touring" when giving effect to that permission, as it was more specific than just "caravan". He argued this interpretation was also consistent with the conditions imposed.

42. Mr Mills submitted that the Claimant had fallen into error when considering whether a functional limitation exists by looking at whether another use would be materially different from it. This, he argued, was not relevant for the purposes of determining what is permitted and whether any functional limitation exists and the Claimant was wrongly focusing on whether there is a material difference in use of the site by a touring caravan and a static caravan.

43. Even if it were relevant to consider that question, he submitted the Claimant was incorrect in suggesting that there is no material difference in any event. He relied upon the decision in *JBS Park Homes v SSCLG* [2018] 6 WLUK 349, His Honour Judge Cotter QC at [37] referring to a distinction in principle between use by a touring and use by a static caravan.

44. Mr Mills also sought to distinguish the decision in *Altunkaynak* on the basis that the words in the description of the development in that case would not have mattered in relation to the grant of permission that was effected. He also referred to the approach of Lindblom J (as he then was) in *Wood* v *SSCLG* [2015] EWHC 2368 (Admin) at [57] on the importance of establishing what the words of the permission mean. Mr Mills submitted that the other decisions identified in *Wall* could not be distinguished in the way the Claimant suggested, and the reasoning in *Breckland* could not be relied upon by the Claimant here, particularly where Lang J had doubted whether the definition of a caravan site was applicable at all in that case.

45. In short, Mr Mills maintained that the inspector was correct to interpret the 1980 Planning Permission as a site for touring caravans and this set the scope for what was permitted and whether what was proposed would be a material change of use and the inspector's decision was correct.

46. In relation to the other submission made under Ground 1 and under Ground 3, Mr Mills submitted that the inspector did not suggest that the *I'm Your Man* principle had been removed by the Supreme Court's decision in *Lambeth*, but rather the inspector had carefully considered the principle and correctly decided that it did not justify a finding that the 1980 Planning Permission was for any type of caravan. The inspector had been entitled to take into account Lord Carnwath JSC's judgment on the approach to the interpretation of planning permissions when deciding what the 1980 Planning Permission meant.

Analysis

47. In my judgment, in considering the correct approach to the interpretation of the 1980 Planning Permission, subject to the 2016 Certificate, and its effect in this particular case, the most useful starting point is the analysis as to the application of the *I'm Your Man* given by Sullivan LJ in *Wall v Winchester City Council (supra)*.

48. In that case, the Deputy Judge had to analyse the effect of *I'm Your Man* to a planning permission which granted "change of use of agricultural land to travelling showpeoples' site". The planning permission in question had a number of conditions, but no occupancy condition restricting occupancy to any other person other than travelling showpeople. A subsequent enforcement notice had alleged a material change in the use of the land from use as "Travelling Showperson's site" to a use of the site for the siting of "caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons", along with other associated activity.

49. The planning inspector allowed an appeal against the issue of that enforcement notice. He did so on the basis that the decision in *I'm Your Man* meant that the planning permission in question should be construed as a permission for the use of land as a residential caravan site, with no restrictions on whom may occupy the site because there was no condition. The Deputy Judge allowed the local planning authority's appeal against that decision under s.289. Having considered a number of authorities, the Deputy Judge reasoned in his judgment:

> "45. The unifying feature of *I'm Your Man, Altunkaynak* and *Smout* is that the use remained the same, with or without the purported restriction or limitation. The restrictions all related to the manner in which the use could be exercised, not as to the extent of the use itself. This case is very different, because the issue turns on the extent of the use itself.
>
> 46. In my judgment everything points to the 2003 grant being one of permission to use the land as a travelling showpeoples' site. Not only is this what was applied for, and was granted in the short description, it is also consistent with the conditions which I have set out in paragraph 6 of this judgment. Nowhere is it described as a residential caravan site, nor are the conditions taken as a whole appropriate for such a site. The only sensible construction is that it was a site for travelling showpeople only.
>
> 47. In short, this was not the grant of permission to use the land as a residential caravan site, with an ineffective attempt to limit that use to travelling showpeople. It was the grant of permission to use the land as a travelling showpeoples' site, which is a distinct and narrower use, without any further attempt to limit that use."

50. The Court of Appeal subsequently dismissed an appeal against the Deputy Judge's decision. In so doing Sullivan LJ (with whom McFarlane LJ and Blake J agreed), stated at [12] that he was in no doubt that the Deputy Judge's understanding of the effect of *I'm Your Man* was correct and the inspector's application of that decision had been

wrong. He then set out his reasons for so concluding which contain a helpful analysis of a number of decisions which preceded the decision in *I'm Your Man* to which reference has been made in the current claim.

51. Given both the comprehensive and authoritative nature of that analysis, it is convenient to set it out that judgment in some detail. It began with an analysis of a number of cases where a similar issue of interpretation as to the effect of a planning permission relating to specific forms of development had been considered, as follows:

> "12. … In Wilson v West Sussex County Council (1963) 14 P&CR 301 the Court of Appeal had to consider the effect of a planning permission for the erection of an "agricultural cottage". The local planning authority subsequently modified the planning permission by the addition of an agricultural occupancy condition and the question was whether that modification entitled the owner to compensation. The Lands Tribunal said "no". On appeal the Court of Appeal said that compensation might be payable, because while there was a limitation upon the permitted user of the cottage in the absence of an occupancy condition, it would be a question of fact and degree whether use by a non-agricultural occupant would be a material change of use.
>
> 13. Wilmer LJ, with whom Danckwerts LJ agreed, said at page 311:
>
> "But in the particular circumstances of this case I am satisfied that this particular cottage was subject, by the terms of the respective planning permissions, to a limitation in relation to its user. What the position would have been if there had been no modification order, and supposing, after being occupied by a person bona fide engaged in agriculture, there had been a change of occupant to somebody not engaged in agriculture, I do not think it is possible for this Court here and now to decide. It would be a question of fact having regard to all the circumstances of the case whether the change amounted to a material change of use. Whether the possible right to install a subsequent non-agricultural occupant had a cash value, which has been lost as a result of the condition now imposed by the modification order, is a matter which the parties no doubt will consider. If they cannot agree the question will have to be determined by the Lands Tribunal."
>
> Diplock LJ said at page 315:
>
> "The permission was thus a permission for two kinds of development, development by erection of a building viz. a cottage, and development by change of use, viz. to use the cottage after erection for occupation by a person engaged in the business of agriculture. It is not, I think, strictly accurate to say that it was a permission to erect a cottage subject to an implied

condition that it should not be occupied by a person who was not engaged in the business of agriculture. In any context other than that of the Town & Country Planning Act, 1947, this might be a convenient way of putting it; but Section 23 draws a distinction between carrying out development without permission and non-compliance with conditions subject to which permission was granted, and this distinction is an important one. (See *Francis v. Viewsley Urban District Council*, 1958, 1 Q.B., 478). The true legal position in my view under the outline and final permissions granted in 1956 and 1959 respectively is that if the cottage upon erection were used for occupation by a person not engaged in the business of agriculture, this would be a material change of use of the land from its use as grazing or for pig-styes for which permission had not been granted; while if, after erection and occupation for some time by a person engaged in the business of agriculture, the cottage were occupied by someone not so engaged, this would be a change of use and it would be a question of fact whether it were a "material change of use" and thus the carrying out of development without permission."

Though the Court of Appeal in Wilson was concerned with the Town and Country Planning Act 1947 the same distinction between the carrying out of development without permission and non-compliance with conditions subject to which permission has been granted, remains in the 1990 Act.

14. The Court of Appeal's decision in Wilson was followed by Sir Douglas Frank QC, President of the Lands Tribunal in Williamson and Stevens v Cambridgeshire County Council [1997] 34 P&CR 117. The Lands Tribunal had to determine the compensation payable for land, which had been acquired for use by the County Council as a Gypsy caravan site. The land had the benefit of a deemed planning permission for use "as a site for caravans occupied by gypsies". Compensation was sought upon the basis that the planning permission permitted a use as a general caravan site. Sir Douglas Frank, applying the Court of Appeal's decision in Wilson, rejected that submission. Having concluded that the words "occupied by gypsies" had a functional significance and were to be construed as limiting the proposed use to one as to occupation by gypsies (see page 119), Sir Douglas Frank continued:

"Mr Marder [who was counsel for the complainant] argues that such a limitation is not capable of enforcement. He refers to the definition of gypsies as in section 16 of the Caravan Sites 1968 namely:

It means persons of nomadic habit of life whatever their race or origin but does not include members of an organised group of travelling showmen or of persons engaged in travelling circuses travelling together as such.

And says that great difficulties could be encountered on deciding who are 'persons of nomadic habit.' What is a site owner to do if a person comes along asking for a site and he says he is of nomadic habit and he is not? He gave other demonstrations of the difficulty of enforcing that limitation. As I listened I heard echoes of the illustrations given in the case of Fawcett Properties Limited v Bucks County Council, where great play was made of the difficulty in enforcing a condition restricting a house to occupation by agricultural workers. But whether the limitation would be difficult to enforce is not the question before me. When there is a limitation, the question is whether it is a valid limitation. If there is a difficulty that either the Planning Authority overcome it or they fail to enforce the limitation; that does not invalidate the limitation as such, nor do I think, to deal with another argument, that there is no power to grant a permission subject to a limitation."

Having referred to the judgments in Wilson, Sir Douglas Frank continued:

"So there was a case where it was held that in an expressed permission granted by the planning authority the words in dispute were a limitation.

Returning to the matter of the difficulty of enforceability, of course whether there has been a breach of a condition of limitation becomes a question for the planning authority (or an appeal to the Secretary of State), and whether occupation is by gypsies as defined would have to be determined on the particular facts at the time. In any event, even assuming in Mr Marder's favour that the words concerned are not a limitation, the question arises whether it would be a material change of use to use the land as a site for 'general caravans'. In my judgment there can be no doubt that it would be a material change of use. The County Council has gone out of its way to make specific provision for fulfilling a duty in relation to sites for gypsies..."

15. Both Wilson and Williamson and Stevens were applied by Hodgson J in Waverly District Council v Secretary of State for the Environment [1982] JPL page 105. Planning permission had been granted for the use of an old brickworks "as a depot for cattle transport lorries". Following another intermediate use, the land was then used as a general haulage depot. The Secretary of State allowed the appeals against the enforcement notices upon the basis that a general haulage depot use was not materially different from a depot for cattle transport lorries. The local planning authority appealed. Hodgson J accepted the following propositions, which were advanced on behalf of the local planning authority:

"1. If planning permission was granted for use A it did not permit the recipient to carry on use B, even though use B would not be a material change of use from use A. Planning permission for use A only permitted use B if, on a proper construction of use A, it comprehended use B. The question whether another use would be a material change of use was immaterial.

2. If there was planning permission for use A and the land was actually being used for use A, then no planning permission was needed for use B, if use B was not a material change of use from use A. This was not because planning permission for use A included use B but because there was no material change of use from the one being used, that question being of course one of fact and degree.

If there was planning permission for use A and the land was used for use X and a further change of use from use X to use B was made it was wholly irrelevant that use B would not be a material change of use from use A, because the change was not from A but from X.

In those equations in this case, A equalled use as a depot for cattle lorries, B equalled general haulage use and X equalled the intermediate use found to have taken place ..."

16. It was submitted on behalf of the Secretary of State that the limitation to "cattle" transport lorries was meaningless except as a description of a certain type of vehicle. Hodgson J said at page 107 that he:

"had no doubt that the word 'cattle' had just as functional a meaning as 'agricultural' and 'for the use of gipsies'. The word 'cattle' could no more be construed as descriptive of a particular type of vehicle than the word 'agricultural' could be construed as describing a particular type of building. Nor did he find anything vague in the word 'cattle': it seemed to be every bit as clear and precise a limitation as those in the cases to which he had referred."

17. Those cases included, as I have mentioned, both Wilson and Williamson and Stevens. Hodgson J concluded that use as a general haulage depot did not fall within the

> permitted use as a depot for cattle transport lorries, and allowed the Council's appeal."

52. Having analysed those cases and the principles they contained, Sullivan LJ then went on to apply them to the planning permission before the court as follows:

> "18. Applying these principles to the present case, 'A' is a planning permission for a change of use to travelling showpeoples' site and 'B' is alleged in the enforcement notice to have been a material change of use to a use for the siting of caravan/residential mobile homes by persons who are not travelling showpersons.
>
> 19. The planning permission in the present case was for a change of use of agricultural land to travelling showpeoples' site. It permitted that change of use and no other. It did not permit a change of use to a use for the stationing of caravans for residential purposes by persons who were not travelling showpeople. Since there was no occupancy condition use of the site by occupiers who were not travelling showpeople was not prohibited. Whether the site was being used by non-travelling showpeople and, if so, whether that use was a material change of use from an initial use by travelling showpeople, were matters of fact and degree, which the Inspector should have determined, but did not, because he misunderstood the effect of the decision in I'm Your Man.
>
> 20. The limitation of the use to a site for travelling showpeople is just as much a functional limitation on the 2003 planning permission as were the limitations to "agricultural cottage" or "site for caravans occupied by gypsies" or "depot for cattle transport lorries". When the planning permission was granted in 2003 it was clear from Circular 22/91 "Travelling Showpeople" that there were specific characteristics that sites had to meet if they were to be suitable for travelling showpeople."

53. In an important passage which then follows from that analysis, Sullivan LJ went on to identify how the *I'm Your Man* line of authorities had been misunderstood by the appellants and mis-applied by the inspector in that case:

> "21. The I'm Your Man line of authorities has, in my judgment, been misunderstood by the appellants, and it was misapplied by the Inspector in paragraph 26 of his decision. It was not relevant, in the circumstances of the present case, when the allegation in the enforcement notice was that there had been a material change of use from use as a travelling showpeoples' site to use as a caravan site for persons who were not travelling showpersons. As Mr Mott said in paragraph 45 of his judgment, the unifying feature of the I'm Your Man line of authorities is that the use remained the same. Thus:

(i) In I'm Your Man the same warehouse/factory for sales, exhibitions and leisure activities use continued after the expiration of the 7-year period. Plainly, a continuation of the same use did not amount to a material change of use. It simply does not follow that the planning permission for the change of use was granted for a period of more than 7 years.

(ii) In Altunkaynak [2012] EWHC 174 (Admin) the same restaurant takeaway and hot food takeaway business was continuing, but in No 15B alone and not in No 15 - see paragraph 20 of Cotswold Grange County Park LLP v Secretary of State for Communities and Local Government [2014] EWHC 1138 (Admin). Continuing a use which has been taking place in two adjoining premises in only one of those premises is not a material change of use of the premises in which the use continues.

(iii) In Cotswold Grange the use of the site for the stationing of caravans remained the same. There was simply an increase in the number of caravans - a further six caravans in addition to 54 existing caravans. While the planning permission permitted the stationing of 54 and not 60 caravans, there was no material change of use from the permitted 54 caravans.

(iv) Smout v Welsh Ministers and Wrexham County Borough Council [2011] EWCA Civ 1750 was concerned with planning permissions for landfilling which envisaged, but did not require, that the landfilling would be carried out in phases lettered A to F. Simply changing the order in which the permitted landfilling was carried out did not amount to either a material change of use or operational development without planning permission.

22. It can be seen that in none of these cases was there an alleged change of use from the permitted use to some other use. If such a change is alleged in an enforcement notice, then in the absence of any condition limiting the use of the site to the permitted use, the question in every case will be: has the alleged change of use taken place and, if so, is it a material change of use for planning purposes? If the answer to either of these questions is "no" there will have been no development, so planning permission will not be required. If the answer to both these questions is "yes" there will have been development and planning permission will be required. The position was accurately summarised by Hickinbottom J in paragraph 15 of his judgment in Cotswold Grange Country Park:

"...the grant identifies what can be done – what is permitted – so far as use of land is concerned; whereas conditions identify what cannot be done – what is forbidden. Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use – for which planning permission is required, because such

a change is caught in the definition of development – generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition, a breach of condition being an enforceable breach of planning control."

23. There is no suggestion in I'm Your Man, Cotswold Grange Country Park or Altunkaynak that the Court of Appeal's decision in Wilson or the decisions in which Wilson was subsequently applied were wrong, nor could there have been such a suggestion since I'm Your Man and Cotswold Grange Country Park were first instance decisions and Altunkaynak was a Divisional Court decision. Understandably, in these circumstances, Mr Rudd placed considerable emphasis upon the decision of the Court of Appeal in Smout in support of his submission that the imposition of a limitation in the 2003 planning permission to travelling showpeoples' site was unlawful. The basis for this submission was said to be paragraph 20 of the judgment of Laws LJ, with whom Pitchford LJ and Lloyd Jones J, as he then was, agreed.

24. Having referred to the Inspector's conclusion that there was nothing in either the planning permission or the plans which required the permitted landfilling to be carried out in any particular sequence, Laws LJ said this in paragraph 20 of his judgment:

"20. In my judgment the inspector was right. Specifically, there is nothing in the planning permission to require the phases to be developed in alphabetical order. If a planning authority desires to impose a restriction or limitation upon development being permitted by the permission in hand, that must be done by means of a condition attached to the planning permission: see the decision of Mr Robert Purchas QC, sitting as a divisional judge of the Queen's Bench in I'm Your Man Limited v Secretary of State [1999] 77 P&CR 251. Here the conditions attached to the planning permission are set out in Annex C. There is no condition requiring the phases to be developed in alphabetical order. Mr Harwood referred this morning to the terms of the environmental statement in the case, consolidated as I have indicated in 1992. He says that that shows the importance of fulfilling the phases in order. However, the environmental statement plainly does not constitute a planning condition."

25. In the context of the planning permissions for landfill in that case, the proposition that if the local planning authority wished to ensure that the landfilling was carried out in a particular sequence of phases, then it had to impose a condition to that effect is wholly unexceptional. However, those

> observations of Laws LJ are not authority for the proposition that any limitation in the form of a description of the development that is permitted in a planning permission is unlawful. Wilson is not referred to in Smout. That is not surprising as there was no need to do so, because in Smout there was no change from the operational development that had been permitted, namely landfilling.
>
> 26. It is possible that the use of the word "limitation" in the judgments has contributed to the misunderstanding of the effect of the I'm Your Man line of authorities. The simple proposition which should not be lost sight of is that the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself. Whether other uses would or would not be materially different from the permitted use is irrelevant for the purpose of ascertaining what use is permitted by the planning permission. If the permitted use has been implemented, and a change to the permitted use takes place, then it will be a question of fact and degree whether that change is a material change of use."

54. Applying those principles to the facts of the present claim, I similarly have no hesitation in concluding that the inspector's interpretation of the effect of the 1980 Planning Permission (as affected by the 2016 Certificate) was correct and the Claimant's challenge under Ground 1 must be dismissed.

55. Taking first the principles that Sullivan LJ derived from the authorities which he analysed in paragraphs 12-17 of the judgment in *Wall* and the way in which he applied those principles in that case with all necessary changes, I consider that "A" is the planning permission for use of the "site for "touring caravans", whereas 'B' is the proposed use of the site set out in the certificate application for use of the Site "for the stationing of static caravans for the purposes of human habitation". The 1980 Planning Permission permitted use of the site for touring caravans and for that use and no other. It did not permit a use of the site for the stationing of static caravans for the purposes of human habitation. As there was no condition preventing the stationing of static caravans on the Site, that use was not itself prohibited by the 1980 Planning Permission. Accordingly the question of whether use of the site for the stationing of caravans for the purposes of human habitation would constitute a material change of use from the permitted use of the site for touring caravans was a matter of fact and degree for the inspector to determine (as he went on to do in his DL). As in *Wall*, the application of these principles involves no misunderstanding of the effect of *I'm Your Man.* To the contrary, the Claimant's reliance upon *I'm Your Man* in this context betrays the same misunderstanding and misapplication that Sullivan LJ identified in *Wall* itself.

56. In my judgment, the limitation of the use to a site for "touring caravans" is just as much as of a functional limitation on the 1980 Planning Permission as were the limitations to "agricultural cottage" in *Wilson*, or "site for caravans occupied by gypsies" in *Williamson* or "depot for cattle transport lorries" in *Waverly* or "travelling showpeoples' site" in *Wall*.

57. I reject the submission that the word "touring" relates merely to the construction of a caravan, rather than its function. In my judgment, there is an obvious functional connotation to the description of a "touring" caravan as opposed to a "static" caravan. The fact that this functional limitation will necessarily also relate to the way in which such a caravan is constructed does not detract from it being a functional limitation.

58. In my judgment, Mr Fraser-Urquahart's valiant attempt to distinguish the approach in *Wilson* as applied in subsequent cases is ultimately misguided. In each case, the court gave effect to the natural and ordinary meaning of the words used to recognise a functional "limitation" in what was being permitted by those words. It may in fact be the case that some of those functional distinctions involve elements of difference in construction (such as a cattle transport lorry, as compared with an ordinary lorry), but that does not affect the basic point. There remains a relevant functional distinction between a touring caravan and other types of caravan, such as a static caravan, which governs what was permitted in the case.

59. By the same token, the fact that both a "touring" caravan and a "static" caravan are capable of being moved, but neither necessarily has to be moved and a touring caravan could remain static for a long time, does not alter the analysis. I consider there to be an obvious difference between a "touring" caravan and a "static" caravan which is reflected in those adjectives as a matter of commonsense. It is therefore no surprise to see that difference reflected in the analysis of the court in the *JBS Park* case to which Mr Mills referred, albeit it is not a necessary part of my analysis that such a distinction has been recognised. It is a distinction which is self-evident from the words used.

60. I agree with Mr Mills that Mr Fraser-Urquhart's reference to what he describes as the "essential" land use does not add to the Claimant's case. It has a tendency to increase the potential for the error of approach that Sullivan LJ pointed out in *Wall* as needing to be avoided. That error is in confusing the question of what use is permitted by the permission, with the different question of whether what is proposed is a material change of use from the use permitted.

61. What is permitted by this permission is use of the site for touring caravans, rather than, for example, use for static caravans. In circumstances where the permission does not specifically prohibit use of the site for static caravans, the subsequent question of whether use of the site for static caravans would constitute a material change of use arises. But that is a different question to ascertaining what the permission itself permits in accordance with ordinary principles of construction.

62. In the circumstances, I consider that the Claimant's reliance upon what the inspector stated at DL18 that "there is no limitation in the description of the development as to how the caravans are to be used" is taken out of context. The inspector went on to qualify that statement with additional words, so that the sentence reads as a whole as follows: "Whilst there is no limitation in the description of the development as to how the caravans are to be used, planning permission was granted as a site for touring caravans only."

63. This was in a paragraph in which the inspector had correctly identified that it is necessary to consider what the planning permission permits, taking the starting point in *Lambeth* of finding "the natural and ordinary meaning" of the words used in the permission. The important point that the inspector correctly identified, in my judgment,

was that the permission was granted for use of the site for "touring caravans", not for other sorts of caravans. In so recognising, this does not give effect to a limitation in a way which is contrary to the *I'm Your Man* line of authorities, but rather simply properly identifies what the planning permission permits as a matter of basic interpretation.

64. By the same token, I do not consider that the Claimant's reliance on the wording of the conditions, or the effect of the 2016 Certificate on those conditions affects the analysis. Thus, for example, the inspector concluded at DL24 (in the Claimant's favour) that the stationing of static caravans for human habitation would not breach condition 4, or any other condition or limitations of the 2016 Certificate. He therefore did not dismiss the appeal on that basis, but went on to consider whether such a use would be a material change of use requiring planning permission. The fact that such a use would not be a breach of any relevant condition does not mean that it was a use that was permitted by the planning permission itself and, in this case, does not alter the correct interpretation of what was permitted set out above.

65. Similarly, I consider the Claimant's attempt to rely upon the statutory definitions of a "caravan" and "caravan site" in the 1960 Act and GPDO to be mistaken in this context. The planning permission in question was permitting use of the site for "touring caravans" rather than "caravans" and it was permitting use of the site for touring caravans, rather than its use as a "caravan site". In the circumstances, it does not assist to consider what would have been the effect if a permission had been granted for the stationing of caravans, or use of the site as a caravan site as that ignores the words actually used.

66. Indeed, the Claimant's argument only serves to emphasise why its interpretation is incorrect. That is because it involves either ignoring the effect of one of key words used in the permission itself, namely the adjective "touring" to describe the caravans that are permitted to use the site, or giving no effect to that adjective in substance. Had the intention been to seek permission for an unrestricted use of the site for all caravans, no doubt such an application could have been made. It was not. Had the intention been to grant such a permission, no doubt the planning permission would have used such unqualified descriptions. It did not.

67. I do not consider the decision in *Breckland* to assist the Claimant either. Lang J was there concerned with the interpretation of the effect of a permission expressed in different terms to what which arises here. Nor does the decision in *Wyre Forest DC* recognising the relevance of the statutory definitions assist the Claimant here, given that the question remains as to what the words of the planning permission used in this case mean.

68. In its written skeleton argument, the Claimant notes that the *Wilson* line of cases considered by Sullivan LJ in *Wall* pre-date the *I'm Your Man* line of authority and it is faintly suggested that they would "quite conceivably" have been considered in different terms in light of that principle and it is said that a "more modern" consideration of those principles in light of *I'm Your Man* is provided in *Manchester CC v SSHCLG* [2021] EWHC 858 (Admin) at paras 23-27. This point was not pursued with any enthusiasm in oral submissions. In my judgment, it has no merit. The decision in *Manchester* turned (amongst other things) on an analysis of whether the inspector had made an error in respect of the relevant planning units and failed to impose conditions which reflected his intentions. More fundamentally, the approach set out in *Wall* is an authoritative

decision of the Court of Appeal that is binding in any event. It specifically considered the approach to be adopted to the question that arises here in light of the *I'm Your Man* line of authorities.

69. Consequently I agree with the submissions made by Mr Mills on behalf of the First Defendant that the principle articulated in *I'm Your Man* does not undermine the inspector's analysis, nor the correct interpretation of the meaning and effect of the 1980 Planning Permission, taken together with the 2016 Certificate that I have identified above.

70. The Court of Appeal in *Wall* endorsed the approach of the Deputy Judge that the unifying feature in the *I'm Your Man* line of authorities is that the use remained the same, as can be seen from Sullivan LJ's analysis of the decisions in *I'm Your Man, Altunkaynak, Cotswold Grange County Park* and *Smout* at paragraph 21. In none of those cases was there an alleged change of use from the permitted use to another use. Thus, for example, *I'm Your Man* concerned the effect of a limitation on the duration of the permission set out in the description of the development which was not given effect by way of a condition. Consequently, the continuation of the development permitted after that temporary period referred to in the description had expired would not have involved any change in use, but simply continuation of what had already been permitted, albeit for longer than had been intended.

71. As Sullivan LJ identified in *Wall* at paragraph 21, if a change of use is in issue, then in the absence of any condition limiting the use of the site to the permitted use, the question in every case will be whether the alleged change of use has taken place and, if so, is it a material change of use for planning purposes.

72. In the case of an application for a lawful development certificate (as here) which is seeking to establish the lawfulness of a proposed change, the first question posed can effectively be assumed for those purposes to be answered in the affirmative, as the applicant is testing the lawfulness of a change that it is proposing will occur. Accordingly, the question then becomes whether the change of use proposed (in this case from use of the site for touring caravans to use of the site for static caravans for human habitation) constitutes a material change of use. That is what the inspector went on to consider, consistently with the approach laid down in *Wall,* endorsing the approach of Hickinbottom J (as he then was) in *Cotswold Grange*:

> "...the grant identifies what can be done – what is permitted – so far as use of land is concerned; whereas conditions identify what cannot be done – what is forbidden. Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use – for which planning permission is required, because such a change is caught in the definition of development – generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition, a breach of condition being an enforceable breach of planning control."

73. As pointed out in *Wall*, there is no suggestion in any of the *I'm Your Man* line of authorities that the Court of Appeal's decision in *Wilson* or the decisions in

which *Wilson* was subsequently applied were wrong, nor could there have been such a suggestion since *I'm Your Man* and *Cotswold Grange Country Park* were first instance decisions and *Altunkaynak* was a Divisional Court decision. That observation now needs to be seen in the context where *Wall* itself is now an authoritative Court of Appeal decision. The decision of the Court of Appeal in *Smout* is not one which undermines the effect of those authorities for the reasons set out by Sullivan LJ in *Wall* itself.

74. In my judgment, the Claimant's challenge under ground 1 continues to the use the concept "limitation" referred in *I'm Your Man* to misunderstand the effect of those line of authorities. As Sullivan LJ emphasised in *Wall*, the simple proposition which should not be lost of is that the use for which a planning permission granted must be ascertained by interpreting the words in the planning permission itself. Whether other uses would or would not be materially different from the permitted use is irrelevant for the purpose of ascertaining what use is permitted by the planning permission.

75. I agree with the submission of Mr Mills that in the analysis advanced by Mr Fraser-Urquhart, this approach is not observed. His analysis and interpretation of the planning permission involves considering whether or not the use of the site for static caravans would be materially different from the use of the site for touring caravans and this is not relevant for ascertaining what use is permitted by the planning permission. That use is use of the site for touring caravans, not static caravans, for the reasons I have already identified.

76. For broadly similar reasons, I also do not consider there to have been any error in the inspector's reliance on the Supreme Court decision in *Lambeth*. The Claimant's submission is advanced on a contingent basis that insofar as the inspector relied on that decision to bring into question the correct approach to *I'm Your Man,* he erred in so doing. But that is not what the inspector did. To the contrary, the inspector applied the basic principles that are articulated in *Lambeth* to his approach to the interpretation of the planning permission which, in any event, I have found to be the correct interpretation of that permission. I do not consider that the process of interpreting the effect of the planning permission correctly involves any questioning of the approach set out in the *I'm Your Man* line of authorities, for the reasons set out above, let alone any incorrect analysis of the decision of the Supreme Court in *Lambeth*.

77. Grounds 1 and 3 of the grounds of claim fall to be dismissed.

Ground 2

78. Under Ground 2, the Claimant submits that even if the inspector was entitled to conclude that there was a change of use, he erred in law in concluding that a material change of use had occurred

79. The Claimant's contention is that the sole basis upon which the inspector concluded that there was a material change of use was that the occupation of the site would continue throughout the year, whilst the lawful use was constrained to the period 1 April to 30 September. The Claimant submits this was a finding was not lawfully open to him as he had concluded that Condition 4 served only to restrict the period in which *touring* caravans could occupy the site. It argues that Condition 4 had no application to the use of the site by static residential caravans which he was considering.

80. The Claimant therefore argues that the 1980 permission contained no restriction on the period during which static residential caravans could occupy the site and the inspector conflated the provisions of the Certificate (which does refer to a time-limited period of occupation) so as to conclude that the lawful use of the site was time-limited. The Claimant complains that he drew such a conclusion notwithstanding that he had already concluded that the Certificate does not restrict the scope of the Permission.

81. The Claimant submits that if the inspector had done as he ought, which was to consider the terms of the permission as it governed the situation at the current time (ie with conditions 2 and 3 being unenforceable) he would have concluded that the year round occupation by residential static caravans was permitted, such that the absence of a material difference in the patterns of land use as between caravans occupied for holiday purposes and caravan occupied for residential purposes meant there was no material change of use.

82. In his oral submissions, Mr Fraser-Urquhart developed this theme and submitted that the inspector had inappropriately relied upon fluctuations in use as affecting the analysis on whether there was a material change. He referred to the position of a school which would have different levels of intensity during the year, but then would fall silent outside term time, but this would not constitute a material change in the use itself. In relation to the 2016 Certificate, he argued that there was no temporal restriction once conditions 2 and 3 of the 1980 Planning Permission had gone and there was nothing to stop year round occupation by touring caravans and that the inspector had not recognised this.

83. In response, Mr Mills submitted that the inspector had reached a conclusion that an all-year round residential use of static caravans would constitute a material change of use. This was essentially a finding that the proposed use of the site, taking into account not only the summer months but also the winter months, would be more intensive than the existing lawful use. He referred to the fact that the inspector had stated at DL42 that: "the appellant has provided little evidence regarding the effects of the proposed development in comparison to the existing" and submitted that the inspector's conclusion was lawfully open to him as a matter of fact and degree.

84. Mr Mills also submitted that the Claimant was wrong that this conclusion was not open to the inspector because of his finding that condition 4 related only to the use of touring caravans, rather than static caravans. In considering whether there was a material change of use, the Inspector was comparing the proposed use with the current lawful use. His decision in relation to the current lawful use was that touring caravans could be occupied only during the summer months. When he compared this with the proposed use of year-round occupation of static caravans, it was relevant to consider that there would be occupation in the winter months. Mr Mills argued that in relying on the fact that condition 4 does not refer to static caravans, the Claimant misunderstood the task the Inspector was undertaking: he was considering whether the proposed use would be a material change from the current lawful use. He therefore submitted that the fact that Condition 4 did not restrict the use of static caravans was nothing to the point.

Analysis

85. I agree with the submissions of Mr Mills essentially for the reasons he has given.

86. In light of what I have identified above, it is axiomatic that the decision as to whether use of the Site for the stationing of static caravans for human habitation, as compared with use of the Site for touring caravans, was a material change of use was a matter of fact and degree for the Inspector (see *Wall* per Sullivan LJ at [19]).

87. The Inspector engaged in detail with that question at DL26-42 and I am unable to discern any error of law in his approach. In relation to the existing permitted use of the site, the inspector correctly considered the effect of the unenforceability of conditions 2 and 3 in light of the 2016 Certificate at DL27. He reached a number of conclusions that were in the Claimant's favour, such as: both types of caravans had paraphernalia associated with them and static caravans could be arranged in a similar pattern as the existing touring caravans (see DL27); whilst there might be an increase in the number of traffic movements for static caravans in terms of travelling to and from work and in terms of deliveries etc, he did not consider such movements would increase to such an extent that they would, in isolation, give rise to a material change in use (DL28); and any increased impact on the Dorset Heaths SAC and Dorset Heathlands SPA as a result of increase in cat ownership did not mean there was a material change of use and the increase in the number of cats did not amount to such a change (DL29).

88. By contrast, he correctly noted that the 2016 Certificate did still restrict the use of the site as a touring caravan site between 1 April and 30 September (see DL29). Whilst non-occupied touring caravans could remain sited on the land between 1 October and 31 March, they were restricted to 22 in number. Mr Fraser-Urquhart's submissions that there were no restrictions at all are not correct.

89. The inspector then correctly directed himself that holiday use did not always amount to a material change of use, but it would be a question of fact and degree depending on the characteristics of the holiday accommodation. He went to address the question as a matter of fact and degree as to whether the introduction of static caravans for permanent habitation on the site between 1 October and 31 March would constitute a material change. For the reasons he set out in DL31-33 he went on to explain why he considered there would be a fundamental change in the use for this period in light of the increase in traffic movements, the reduction in touring caravans present, the effect on visual amenities and the associated activities which he considered would be in marked contrast to the existing use taking place between 1 October and 31 March. The inspector then went on to distinguish the various other appeal decisions upon which reliance had been placed. In my judgment, these were all findings open to the inspector and there is no basis for impugning his exercise of judgment in the way the Claimant suggests.

90. In many respects, seems to me that the Claimant's analysis to large degree replicates the error of approach that I have identified under Ground 1. The fact that condition 4 of the 1980 Planning Permission did not prevent use of the site for static caravans during that winter period does not affect the lawfulness of the inspector's analysis of whether using the site for static caravans in that period (whilst not prevented by condition 4) would constitute a material change of use from what was permitted by the 1980 Planning Permission.

91. Ground 2 of the claim also falls to be dismissed.

92. Accordingly, for the reasons set out above this claim is dismissed.