



Braintree District Council

-v-

***(1) Secretary of State for the Home Department
(2) Secretary of State for Defence***

PRESS SUMMARY:

This press summary does not form part of the Court's judgment. It is provided by the Court for the assistance of the press and the public.

References in square brackets are to paragraphs in the Court of Appeal's Judgment

Background

1. RAF Wethersfield is a former airfield near Braintree in Essex which is owned by the Ministry of Defence and is Crown land. The Secretary of State for the Home Department (the "Home Secretary") proposes using an area of 6.5 hectares within the airfield to provide accommodation for up to 1,700 asylum seekers. [2]
2. Braintree District Council (the "council") is the local planning authority. It issued proceedings seeking an injunction under section 187B of the Town and Country Planning Act 1990 to restrain the Home Secretary from using the airfield in that way. It argued that the change of use would breach planning control. [2]
3. Waksman J (the "Judge") dismissed the application for an injunction by order dated 24 April 2023 [2]. The council appealed to the Court of Appeal which heard the appeal on 12 June 2023.
4. There were three intervenors in the appeal, none of whom played any part in the proceedings below. The first was West Lindsey District Council whose administrative area includes RAF Scampton which the Home Secretary also proposes to use for accommodation for asylum seekers. The second was Mr Gabriel Clarke-Holland who lives next to the airfield which is the subject of this appeal. The third was Rother District Council whose administrative area includes a site at Bexhill which the Home Secretary is currently considering using to provide accommodation for asylum seekers. The three sites, namely RAF Wethersfield, RAF Scampton, and the site at Bexhill, are known as the "pathfinder" sites. [4]
5. In addition to the council's application for an injunction which was the subject of this appeal, the council has issued judicial review proceedings against the Home Secretary, as has Mr Clarke-Holland, in relation to the airfield at Wethersfield. West Lindsey District Council has issued judicial review proceedings against the Home Secretary in

relation to RAF Scampton. The Administrative Court will consider whether to grant permission for these three judicial reviews at a hearing on 12 and 13 July 2023. [5]

Issues in the appeal

6. Two questions arose in the appeal: (i) Did the High Court have jurisdiction to restrain by injunction the Government's proposed development of accommodation for asylum seekers? (ii) If the Court did have such jurisdiction, could the Government rely on permitted development rights for the proposal so that it did not have to make an application for planning permission? [1], [7], [8]

Court of Appeal's conclusion

7. In a judgment handed down at 4:10pm on Friday 23 June 2023, the Court dismissed the council's appeal. [57], [66]
8. On the first issue, the Court held that the Judge was right to conclude that he lacked jurisdiction to grant an injunction against the Crown in this case [45]. The Court's reasons are at [46]-[55]. Section 296A of the Town and Country Planning Act 1990 (set out at [30], and which applies to Crown land) presented a statutory bar to the council's application and the Court lacked jurisdiction [56].
9. That meant that the second issue of whether the Government could rely on permitted development rights did not need to be determined [58]. The rights which were in issue were contained in Class Q, Part 19 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 [4], set out at [59]-[61]. It was neither necessary nor desirable that the Court should express a view on the Class Q issue [64].

Ends