



Courts and Tribunals Judiciary

Clarke-Holland, West Lindsey District Council & Braintree District Council

-v-

Secretary of State for the Home Department & Anr.

Judgment Summary

Important note for press and public: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment is the only authoritative document. [The judgment is a public document and is available online.](#)

1. The Claimants seek judicial review in relation to the announcement in Parliament on 29 March 2023, by the Minister for Immigration, that the decommissioned Ministry of Defence sites at Wethersfield and Scampton are to be used to accommodate asylum seekers (§1).
2. Particular aspects of the decision making under challenge include as follows:
 - (i) An (undated) statement outlining "the emergency" which is said to thereby permit lawful reliance on a deemed grant of planning permission under the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - (ii) The direction(s) and/or reliance on the direction(s) issued by the Secretary of State for Levelling Up, Housing and Communities, pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 directing that the use of the site in question is not likely to have significant environmental effects.
 - (iii) The discharge of the public sector equality duty by the Secretary of State and the content of an Equalities Impact Assessment.
 - (iv) The approach taken by the Secretary of State to value for money considerations. (§2).
3. For the reasons given in the judgment, the claims for judicial review are dismissed (§120).

Reliance on Class Q permitted development right

4. Whilst the Claimants' submissions were cogently expressed they are, in the Court's view, defeated by the ordinary meaning of the words used in Part Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
5. The definition of 'emergency' in Part Q.2(1) of the Order is intended to be comprehensive, so far as it relates to the application of Class Q. The term must therefore be understood in its

stipulated sense and the Court must take care not to apply a judicial paraphrase or other gloss on a statutory definition (§59).

6. On the interpretation of Class Q arrived at by the Court, for the Secretary of State to lawfully rely on the Class Q permitted development right, she must have been able to demonstrate the existence of an event or situation which threatens serious damage to human welfare in the UK by virtue of homelessness, which in the present case, relates to asylum seekers (§64). The Secretary of State used the legally correct construction of emergency in the emergency statement (§66). The Secretary of State's reliance on Class Q was, in the Court's view, lawful (§68).

Environmental Impact Assessment screening direction

7. The decision on the development to be screened for its environmental impacts is a matter of fact specific, judgment for the primary decision maker(s), subject to judicial review on the usual public law grounds (R (Ashchurch RPC) v Tewkesbury BC [2023] PTSR 1377) (§95).
8. The judgment by the Home Office and the Department for Levelling Up, Housing and Communities that, as of March 2023, the project was a 12 month project was lawful (§102). For similar evidential reasons, at the time of the Screening Directions, there was no obligation to consider the cumulative effects of the proposed development with any other (or future) use of land at the sites for asylum accommodation (§103).
9. On the facts of the present case, the Class Q permitted development route was seen as a 'stand-alone' or discrete solution to the urgent difficulties faced by the Home Office in light of the Secretary of State's statutory duty to accommodate asylum seekers. It was being pursued by the Home Office independently of any prospect of the development continuing beyond 12 months, albeit it was considered likely that longer use of the sites would be required (§96). No decision about the duration of use of the sites had been made by late March 2023. The precise location, nature, type, and scale of any potential future use had not been discussed (§98). Decisions about the future of the sites depended in material part on the outcome of policy efforts to reduce the numbers of asylum seekers requiring accommodation (§92). Where a development is justified on its own merits and would be pursued independently of another development this may indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme (R (Wingfield) v Canterbury County Council [2020] JPL 154) (§96).
10. Beyond an understanding that it was likely that the sites would continue in use (if further planning permission was obtained) the discussions about the future were at such an early stage that there was no reliable information available to officials to undertake a satisfactory cumulative assessment of any potential Home Office development beyond the proposed development. The future of the sites was too inchoate (R (Littlewood) v Bassetlaw DC [2009] Env. L.R. 21 at §413-415 and R (Substation Action Ltd v Secretary of State [2023] PTSR 975 at §198) (§102).

Equalities Impact Assessment

11. It was not irrational for the Secretary of State to rely on her department's understanding as to the risk of community tensions gained from the department's previous experience of housing asylum seekers in other parts of the country (§111). The significance of the risk was acknowledged internally. The Secretary of State did not defer discharge of her duty, only the practical details of implementation of the response to the risk identified, which her department had previous experience of managing (§112). The Equality Impact Assessment proceeded on the basis that the sites would be used for as long as was expedient, which is consistent with

the lack of certainty about future plans for the sites beyond the 12 month period afforded by the Class Q permitted development right (§114).

Value for Money

12. Given the context of the decision making, value for money was not so obviously material that it was irrational for the Secretary of State to rely on the submission that her permanent secretary was content with the value for money analysis without inquiring into the details of the underlying analysis. Other obvious motivating factors for the decision making included the Secretary of State's statutory responsibility to accommodate asylum seekers and the difficulties with current arrangements with hotels, which extended beyond costs, to legal action by local authorities to prevent their use. Accounting Officers are personally responsible to Parliament for the stewardship of its resources, not to the Secretary of State. There is no evidence before the Court that the Secretary of State was operating under a mistaken understanding that value for money was satisfied however long the sites were used for (§119).