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UPPER TRIBUNAL (LANDS CHAMBER)

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**Location: Royal Courts of Justice, Strand,
London WC2A 2LL**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – SITE LICENSING – meaning of "caravan" – land covered by water – houseboat - whether a site is a protected site

**AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL
(PROPERTY CHAMBER)**

BETWEEN:

TINGDENE MARINAS LIMITED

Appellant

-and-

JANET MAUREEN JAFFE

Respondent

**Re: 8 West Pontoon,
Hartford Marina
Wyton,
Huntingdon,
PE28 2AA**

**Judge Elizabeth Cooke
Heard on: 28 October 2022
Decision Date: 20 January 2023**

Mr Michael Rudd for the appellant, instructed by Ryan & Frost
Mr Stephen Cottle for the respondent, instructed by Deighton Pierce Glynn

The following cases are referred to in this decision:

Balthasar v Mullane [1986] 51 P & CR 107
Carter v Secretary of State for the Environment [1994] 1 WLR 1212
Howard v Charlton [2002] EWCA Civ 1086
John Romans Park Homes Limited v Hancock and others [2018] UKUT 249 (LC)
Norfolk Caravan Park Limited v SSHCLG [2021] EWHC 2114 (Admin)
QM Developments (UK) Limited v Warrington Borough Council [2020] EWHC 1511 (Admin)
St Anne's Court Dorset Limited v SSHCLG [2021] EWHC 2954
Trump International Golf Club Limited v Scottish Ministers [2015] UKSC 74
Winchester City Council v SSCLG [2015] EWCA 563

Introduction

1. This is an appeal from a decision of the First-tier Tribunal ("the FTT") under section 4 of the Mobile Homes Act 1983, which provides that the FTT can "determine any question arising under this Act." The respondent Ms Jaffe asked the FTT to decide whether the 1983 Act applies to the agreement whereby she lives in her property on the appellant's land. The FTT decided that the Act does apply; the effect of that decision is that Ms Jaffe has some security in the face of threatened possession proceedings.

2. The appellant, Tingdene Marinas Limited, is the freehold owner of the Hartford Marina where Ms Jaffe's property is stationed. Her property is a houseboat, which in this context is not a technical term but refers to a structure comprising a caravan placed on a specially designed float, which is moored to the appellant's pontoon on the lake at the marina. The pontoon is provided for the purpose of mooring such houseboats. Ms Jaffe's case is that she lives in a caravan as defined in the Caravan Sites and Control of Development Act 1960, that the area on which her houseboat floats is a "protected site" as defined in that Act, and that therefore the 1983 Act applies.

3. The appellant was represented by Mr Michael Rudd and the respondent by Mr Stephen Cottle, both of counsel, and I am grateful to them.

4. After the hearing Mr Cottle asked for permission to make some further written submissions. I gave permission, and invited Mr Rudd to reply to those submissions which he has done. I found both sets of submissions extremely helpful.

The factual and legal background

5. The Hartford Marina is described by the FTT as an area around a lake created by a flooded gravel pit; on the lake is a marina with about 200 mixed residential and leisure berths. Around the lake is a road giving access to pontoons at which houseboats are moored, and there are also narrowboats and lodges.

6. A previous owner of the Marina, Mr Perry, designed and marketed the "Hartford Houseboat", comprising a static caravan (of the "Willerby" brand) which stands - complete with wheels – on a float. It can be rolled on and off the float by means of a detachable ramp. The whole (caravan + float) cannot be moved together on land; if the caravan needs repair it has to be taken off the float.

7. A number of Hartford Houseboats are moored on the lake; their floats are attached to pontoons running into the lake from the shore. The pontoons belong to the appellant and the houseboats are moored pursuant to licence agreements with their owners, who pay a fee to the appellant.

8. The marina benefits from a number of planning permissions; the one applicable to the "West Pontoon" where Ms Jaffe's houseboat is moored and to the immediately surrounding water

is a permission granted in 1998 by the local planning authority, the Huntingdonshire District Council, for:

> "Retention of use of land for 15 houseboats for holiday use, moorings, parking and ancillary development at: Hartford Marina, Huntingdon Road, Wyton."

9. It is agreed that that is a permission for the retention of what was already there, namely the Hartford Houseboats moored at the pontoon at that date, in one of which Ms Jaffe now lives.

10. There were several conditions to the 1998 planning permission, of which the first read:

> "The houseboats hereby approved shall be used only as holiday accommodation and shall not be used as the sole or main residence of any person."

11. On 6 July 2014 the local planning authority issued a certificate under section 191 of the Town and Country Planning Act 1990, which certified the "lawful use (as existing) for occupation as a sole residence" of "Houseboat 8 West Pontoon" as shown edged red on an attached plan. The plan depicts the lake and the West Pontoon with numbered houseboats radiating off it; edged red is just one houseboat (numbered 8) and the immediately surrounding water.

12. Ms Jaffe bought that houseboat in 2017 from its previous owner, Mr Gerard Bol, and it has been her home ever since. She has now been served with notice to quit by the appellant, and she therefore claims the protection of the Mobile Homes Act 1983.

13. Section 1 of the Mobile Homes Act 1983 provides:

> "(1) This Act applies to any agreement under which a person ("the occupier") is entitled–
>
> (a) to station a mobile home on land forming part of a protected site; and
> (b) to occupy the mobile home as his only or main residence."

14. Ms Jaffe seeks to establish that the Mobile Homes Act 1983 applies to the agreement whereby she occupies her property on the appellant's land.

15. Ms Jaffe has a licence agreement with the appellant, which does not say in terms that she can live on the houseboat. But the FTT at paragraph 124 of its decision said that it was agreed that Ms Jaffe was not a trespasser and that she had permission to station her houseboat where it floats and to use it as her sole residence. So her agreement with the appellant goes beyond the terms of her written licence; the FTT at its paragraph 147 found that she had an agreement that gave her permission to station a mobile home on the site and to live in it as her sole residence, and there is no appeal from that finding.

16. In order to show that the Mobile Homes Act 1983 applies to that agreement Ms Jaffe has to show first that the agreement entitles her to station a mobile home on land, and second that that land is a protected site. Ms Jaffe's case on the second question is put only in relation to her own "pitch", namely the part of the lake on which her houseboat floats, being the area comprised in the 2014 Certificate of Established Use, and I refer to that area as "Ms Jaffe's pitch".

17. The FTT's decision was first issued on 25 November 2021; a second version was issued on 13 January 2022, said to have been corrected under rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which enables the correction of typographical errors and accidental slips or omissions. The decision was that the agreement entitles Ms Jaffe to station a mobile home on the appellant's land, and that Ms Jaffe's pitch is a protected site. The FTT granted permission to appeal in terms that permitted an appeal on both those points.

The first question: is Ms Jaffe entitled to station a mobile home on the appellant's land?

The legal background to the first question

18. The first question is not a question about planning permission. Section 1 of the 1983 Act is about an agreement under which the occupier is entitled to station a mobile home on land. The entitlement therefore comes from the agreement. The first question comprises two separate issues: is Ms Jaffe living in a structure that is a mobile home, and is she entitled by the agreement to station it on land?

19. Section 5 of the Mobile Homes Act 1983 states that "mobile home" has the same meaning as in Part I of the Caravan Sites and Control of Development Act 1960, in which section 29 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…"

20. The parties have referred to a structure so defined as a "statutory caravan", and I adopt that term. The definition includes a proposition about design or adaptation for human habitation (which is not in issue here), and what has been referred to as the "mobility test" (which is). And it is well established that in order to pass the mobility test the caravan must be capable of being moved as a whole without being dismantled; in *Carter v Secretary of State for the Environment* [1994] 1 WLR 1212 it was held that a structure made of four prefabricated sections that had to be bolted together on site was not a statutory caravan. There is provision for "twin unit" caravans in section 13 of the Caravan Sites Act 1968, which is not relevant here.

The FTT's decision

21. In its decision of 25 November 2021 the FTT defined the first issue before it as being "Whether the Property occupied by [Ms Jaffe] is a caravan as defined by the Caravan Sites and Control of Development Act 1960". It went on to say (at its paragraph 14) that "references to "the Property" include both Willerby caravan and float". It recorded Tingdene's argument that Ms Jaffe's property had to be considered as a whole and that it is therefore a houseboat, comprising float (with decking and handrail) and caravan, which fails the mobility test. After setting out the parties' arguments, at paragraphs 129 and following it concluded:

> "129. The Tribunal found that the Property is a caravan on a float, which is a type referred to on the site as the "Hartford Houseboat".
>
> 130. The Tribunal did not see any virtue in considering whether it could be moved as a whole. …[T]he Willerby caravan is clearly identifiable; it is not fixed to the float and can be moved on and off. …
>
> 131. To provide the Property with a particular nomenclature, such as the 'Hartford Houseboat' does not alter what it is, namely, a caravan on a float."

22. The FTT's decision was prefaced by a summary at paragraph 1; in paragraph 1 of the original decision of 25 November 2021 the FTT stated:

> "The Applicant's property is a caravan on a float."

23. In response to an application for permission to appeal the FTT, in its decision of 13 January 2022, revised the summary at paragraph 1 and paragraphs 129-131 so as to delete the words "caravan on a float" (where underlined above) and substitute the words: "caravan as defined in section 29 of the Caravan Sites and Control of Development Act 1960".

24. Thus paragraph 129 reads "the Property is a caravan as defined in section 29 of the Caravan Sites and Control of Development Act 1960". Yet the term "Property" was still defined by paragraph 14 as meaning the caravan and float together, so it is difficult to see what is being said. As the appellant now says, if the statutory caravan that the FTT found is the whole houseboat, then the mobility test is not passed.

25. In response to a further application for permission to appeal the FTT granted permission to appeal on this issue; it commented in its grant of permission that "The Tribunal views the float as the equivalent of the concrete base in respect of other Park Homes." The appellant says that it is not permissible for the FTT to add to its reasoning in that way in a permission decision.

26. In the face of the confusion generated by the FTT's decision in its two versions I examine the first question afresh.

The first question re-examined

27. The question in this case is not, as the FTT put it, whether Ms Jaffe's property is a statutory caravan. Her property taken as a whole is a houseboat, comprising a caravan on a float. Taken as a whole, her property is not a caravan because it fails the mobility test, as the appellant says; it cannot be towed (because the caravan has wheels but the float does not), and it was agreed between the parties' expert witnesses before the FTT that it cannot safely be moved as a whole. Mr Cottle does not seek to argue that the houseboat as a whole is a statutory caravan.

28. It is agreed between the parties that the Willerby caravan that forms part of the houseboat is by itself a statutory caravan.

29. Therefore as a matter of fact Ms Jaffe lives in a structure which is a statutory caravan. I see no force in the argument that the caravan by itself has to be ignored and only the entire houseboat can be considered; that argument will re-surface with renewed energy in the second question in the context of planning permission, but there is no basis for it in the first question so far as this issue is concerned which is simply about what the agreement permits as a matter of fact. Ms Jaffe is living inside a statutory caravan. It happens to be on a float and to form part of a houseboat, but the fact remains that she lives in a Willerby caravan which is agreed to be a statutory caravan, and her agreement with the appellant entitles her to do so.

30. Because I regard that issue as one of fact I have determined it without reference to authority. But the decision of the Court of Appeal in *Howard v Charlton* [2002] EWCA Civ 1086 is helpful by analogy; it was held that where an individual was entitled by agreement to station a statutory caravan on (dry) land, the attachment of a porch to the caravan did not take the structure outside that agreement even though the caravan with the porch attached could not be moved as a single unit and was too wide to be lawfully transported on the highway. So the statutory caravan did not lose its identity as such by having a (detachable) porch.

31. The appellant then argues that if the Willerby caravan alone is the statutory caravan (as I have decided it is) Ms Jaffe is not entitled by the agreement to place it on land, but only to place it on the float, which in turn she is allowed to place on land (including the water that covers the land).

32. I do not accept that argument. It is not in dispute that "land" in the statute includes land covered by water (FTT decision paragraph 105). I do not agree that a structure is not "on land" merely because it is placed there with another physical structure between it and the surface of the earth or of the water covering the earth. Hence the obvious relevance of the FTT's comment (which I take as an explanatory comment which did not exceed the FTT's powers) about a concrete base; many caravans on dry land have a base, and that does not mean they are not placed on the land. I fail to see that the presence of a float between the caravan and the water means that the caravan is not on land (in the legal sense that includes land covered by water). Ms Jaffe has no permission to put the caravan alone on the water (whereupon it would sink), nor does she have permission to place it on dry land. She does not have to show that she has permission to do either of those things. If she had permission

to place it on land on a concrete or brick base (but not to place it on the bare earth) there would be no doubt that she had permission to station it on land, and the float makes no more legal difference than does any other base or support.

33. I have therefore reached the same conclusion as did the FTT: the answer to the first question is that Ms Jaffe's agreement with the appellant entitles her to station her statutory caravan on land. It is obvious to me that the FTT likewise, in its original and revised decisions, meant to say that the Willerby caravan was the statutory caravan, despite the confusion caused by its own definition of its term "Property" in paragraph 14 and by its imprecise formulation of the question before it in its paragraph 7. The appeal fails so far as the first question is concerned because the answer I have given is the same as the FTT's albeit reached by what I hope is a clearer path.

34. So I move on to the second question.

Is the land part of a protected site?

The legal framework

35. To re-cap, section 1 of the Mobile Homes Act 1983 requires Ms Jaffe to show that she is entitled under her agreement with the appellant to station a mobile home on land forming part of a protected site. The second question therefore (as the FTT correctly identified at its paragraph 7) is whether the land is a protected site. In order to say whether Ms Jaffe's pitch is a protected site we have to work through a number of definitions.

36. It is convenient to start with the definition of a "caravan site" in section 1(4) of the Caravan Sites and Control of Development Act 1960:

> "(4) In this Part of this Act the expression *"caravan site"* means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed."

37. Section 1(1) of that Act requires that a caravan site be licensed:

> "(1) Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used. …"

38. Section 3 of that Act makes provision about applications for and the grant of site licences:

> "(1) An application for the issue of a site licence in respect of any land may be made by the occupier thereof to the local authority in whose area the land is situated. …

((3) A local authority may on an application under this section issue a site licence in respect of the land if, and only if, the applicant is, at the time when the site licence is issued, entitled to the benefit of a permission for the use of the land as a caravan site granted under Part III of the Act of 1947 otherwise than by a development order.

39. Protected sites are a sub-set of caravan sites. Section 5 of the 1983 Act provides that a "protected site" is defined as in section 1(2) of the Caravan Sites Act 1968, which says that it is:

> "… any land in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 … not being land in respect of which the relevant planning permission or site licence—
>
> (a) is expressed to be granted for holiday use only; or
>
> (b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation."

40. Section 1(2) does not say in so many words that for a caravan site to be within the definition of a protected site it must have planning permission. There of course *ought* to be one, because the definition of a protected site is that it is a site for which a licence is required (under section 1 of the 1960 Act as we have seen) and a licence cannot be issued unless there is a planning permission for the use of the land as a caravan site (section 3 of the 1960 Act). Section 1(2) of the 1968 Act appears to be drafted on the assumption that there is one. The Court of Appeal has said that to be a protected site, the site must have planning permission. In *Balthasar v Mullane* [1986] 51 P & CR 107) Glidewell LJ said at page 117:

> "In my judgment the meaning of a protected site in section 1(2) of the Caravan Sites Act 1968 involves the site being one in respect of which planning permission has been granted for the stationing of one or more caravans. If planning permission has not been granted, then the site is not a protected site within the meaning of that Act, or, thus, within the meaning of the 1983 Act."

41. The Court of Appeal reasoned that Parliament cannot have intended occupation of a mobile home to be protected by the 1983 Act if it contravenes the planning legislation, since that would generate a situation where the 1983 Act gave the occupier security even though the owner of the land was committing a criminal offence in not removing the occupier in response, say, to an enforcement notice.

42. So for Ms Jaffe's pitch to be a protected site it must have planning permission, and the relevant planning permission or site licence must not be "expressed to be granted for holiday use only" nor otherwise so expressed that it cannot be lived in all year round. The FTT found in favour of Ms Jaffe on these issues, but granted permission to appeal. I have had the benefit of very detailed argument, arising in part in response to my questions of counsel at the hearing, and again it is convenient if I start afresh as I did with the first question.

43. I take this second question in stages, and consider first whether there is planning permission for the use of Ms Jaffe's pitch as a caravan site, and second whether, if so, the relevant planning permission falls within section 1(2)(a) or (b) of the 1968 Act so that it cannot be a protected site.

(1) Is there planning permission for the use of Ms Jaffe's pitch as a caravan site?

44. The appellant argues that there is no planning permission for caravans to be stationed on the land and therefore no permission for a caravan site. There is planning permission for houseboats, and the structures moored to the pontoon have to be considered as whole structures for this purpose. The planning permission cannot, the appellant says, be construed as permission for caravans; it is a permission for the entire houseboat units and not for any of their constituent parts. Mr Rudd has referred to authority on the construction of planning permissions, and I remind myself that I am to construe this one in accordance with the natural and ordinary meaning of the words: *Trump International Golf Club Limited v Scottish Ministers* [2015] UKSC 74. Mr Rudd argued that the fact that houseboats are caravans on floats does not mean that this is a planning permission for a caravan site; the term "houseboat" imports a functional limitation. Houseboats are a sui generis use distinct from caravans, and therefore this is not permission for a caravan site.

45. Mr Rudd relies upon the Court of Appeal's decision in *Winchester City Council v SSCLG* [2015] EWCA 563*,* where it was held that a planning permission for the siting of caravans for the use of travelling showpeople was a permission with a functional limitation; it did not permit the stationing of caravans on the land by persons who were not travelling showpeople. In the same way, Mr Rudd argued, the 1998 permission did not provide for use as a caravan site, only for use for houseboats. Similarly, in *Norfolk Caravan Park Limited v SSHCLG* [2021] EWHC 2114 (Admin) Lang J held that a planning permission for use as a "holiday caravan park" was not a permission that allowed residential use; and in *St Anne's Court Dorset Limited v SSHCLG* [2021] EWHC 2954 a planning permission for the siting of touring caravans did not permit the stationing of static caravans for residential use.

46. Mr Cottle argued that the local planning authority in 1998 knew exactly what the houseboats were and in giving permission for houseboats it was giving permission for the caravans that formed part of each houseboat.

47. I agree. The practical effect of the 1998 planning permission is that there is planning permission for caravans, forming part of houseboats, to be on the land. Therefore the area to which the 1998 planning permission applies is a caravan site as defined by section 1(4) of the 1960 Act. In granting permission for houseboats, the local planning authority gave permission for both of the two components of those houseboats to be on the land, albeit only when put together in the form of a houseboat. I have already found, as a matter of fact, in answer to the first question in the appeal that Ms Jaffe is living in a statutory caravan which is stationed on land. It is so stationed in accordance with the 1998 planning permission. The pitch is therefore a caravan site, being land on which a caravan is stationed for the purposes of human habitation, and it has planning permission.

48. There is no inconsistency here with the decision in *Winchester City Council*. It is important to note that the Court of Appeal did not decide, as Mr Rudd suggests, that the planning permission "did not provide for use as a caravan site". What the Court of Appeal decided was that the planning permission did not provide for the stationing of caravans by anyone other than travelling showpeople. The 1998 permission is a planning permission for a caravan site; it is not a permission for the stationing of caravans other than in the form of houseboats. It is a permission for a limited form of caravan site, but a caravan site nonetheless. Planning permission for the stationing of houseboats on land covered by water is not a permission for the stationing of caravans on dry land; like the description of the use in *Winchester City Council* the permission incorporates a functional limitation.

(2) Does the planning permission in relation to Ms Jaffe's pitch falls within section 1(2)(a) or (b) of the 1968 Act

49. I then have to consider whether Ms Jaffe's pitch is, as she claims, a protected site, namely that sub-set of caravan sites that is defined in section 1(2) of the Caravan Sites Act 1968. I therefore have to ask whether "the relevant planning permission" (since there is no site licence)

> "(a) is expressed to be granted for holiday use only; or
>
> (b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation."

50. Obviously, if Ms Jaffe relied only upon the 1998 planning permission she would fail; that permission is clearly expressed to be granted for holiday use only, both by virtue of the description of what is permitted (paragraph 8 above) which incorporates a functional limitation and by virtue of the first condition (paragraph 10 above).

51. However, Ms Jaffe relies upon the certificate of lawfulness of existing use or development granted in 2014 pursuant to section 191 of the Town and Country Planning Act 1990 which reads (so far as relevant) as follows:

> "(1) If any person wishes to ascertain whether—
>
> (a) any existing use of buildings or other land is lawful;
> (b) any operations which have been carried out in, on, over or under land are lawful; or
> (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,
>
> he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.
>
> (2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

> (a) the time for taking enforcement action in respect of the failure has then expired; …

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

> (a) specify the land to which it relates;
> (b) describe the use, operations or other matter in question …
> (c) give the reasons for determining the use, operations or other matter to be lawful; and
> (d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

> (a) section 3(3) of the Caravan Sites and Control of Development Act 1960."

52. Mr Cottle for the appellant made essentially three points: first, he argued that the 2014 certificate was issued under section 191(a) and authorizes a change of use, from holiday to residential, so that the use of Ms Jaffe's pitch is no longer governed by the functional limitation in the 1998 planning permission. Second, he argued that by virtue of section 191(7) the 2014 certificate has effect as a grant of planning permission under section 3(3) of the 1960 Act which, as we saw at paragraph 38 above, provides that a site licence may be issued if and only if the applicant is entitled to the benefit of a permission for the use of the land as a caravan site. Third, he argued that the "relevant permission" for the purposes of

section 1(2) of the 1968 Act (paragraph 39 above) is the same as the permission relevant to section 3(3), and that therefore the relevant planning permission is no longer "expressed to be granted for holiday use only".

53. Mr Cottle also relied upon the policy of the legislation, described as follows by the Tribunal (the Deputy President, Martin Rodger QC) at paragraph 9 of *John Romans Park Homes Limited v Hancock and others* [2018] UKUT 249 (LC):

> "The 1983 Act is intended to benefit the occupiers of permanent residential caravans or mobile homes, rather than the occupiers of caravans intended only for holiday or seasonal use."

54. Mr Cottle said that the purpose of the Act is to ensure due process and respect for the human rights of those who occupy caravans as their homes. Ms Jaffe bought her pitch after the 2014 certificate had been granted and relied on it. No policy objective is met by excluding her from protection.

55. Mr Rudd disagreed with all three of the propositions summarized at paragraph 52 above, and argued that where the law is clear there is no room for a purposive construction.

56. Leaving aside the policy for the moment, it is important to consider what the 2014 certificate did. It said this:

> "The Huntingdonshire District Council hereby certify that on 23rd April 2013 the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged red on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:
>
> On the balance of probability the evidence submitted with this application has demonstrated that the accommodation has been occupied continuously as a sole or main residence in breach of condition 1 of [the 1998 planning permission] for a period of more than ten years prior to the date of the application.
>
> First Schedule
>
> Certificate of lawful use (as existing) for occupation as a sole residence
>
> Second Schedule
>
> [description of Ms Jaffe's pitch, with a plan]
>
> Date 6th June 2014
>
> Notes:

> 1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended)
>
> 2. It certifies that the use specified in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the specified date and thus was not liable to enforcement action under section 172 of the 1990 Act on that date.
>
> 3. This certificate applies only to the extent of the use specified in the First Schedule and to the land specified in the Second Schedule …"

57. Mr Rudd pointed to the reason given for the grant of the certificate which was that condition 1 to the 1998 planning permission had become unenforceable. Therefore, he said, the certificate was granted only under section 191(1)(c), and related to an "other matter" constituting a failure to comply with a condition. It was not granted under section 191(a) and did not authorise a change of use.

58. Therefore Mr Rudd argued that the 1998 permission is affected by the certificate only in respect of its first condition. The condition is unenforceable, but the grant of permission with a functional limitation to holiday use remains. Therefore the site is not a protected site because the permission is still expressed to be granted for holiday use only.

59. Mr Rudd further referred to section 193(5) of the 1990 Act which states:

> "(5) A certificate under section 191 or 192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate."

60. This, he said, means that all other conditions in the 1998 planning permission remain in place. I agree. But it seems to me that the certificate does not simply authorise a breach of condition, and does not simply declare that the first condition is unenforceable; it states the lawful use of the property, and it is difficult to see how the description of the permitted use in the 1998 permission is thereby unaffected.

61. I note that the FTT thought that the certificate was given under section 191(1)(c), no doubt because the reason given refers to a breach of condition. But the certificate says that the use described in the First Schedule was lawful, and describes that use as "use (as existing) for occupation as a sole residence." It does not need any purposive construction to read this certificate as stating that use as a sole residence is lawful. And since it is clear that a planning permission for holiday use is not a permission for residential use (*Norfolk Caravan Park* Limited, paragraph 45 above) it makes no sense to say that the permitted use set out in the 1998 planning permission remains in effect so far as Ms Jaffe's pitch is concerned. That would be both contradictory and pointless.

62. The only reference to the first condition is in the reason given for the grant of the certificate, and I do not see why that reason should limit the certificate's operation to the first condition. The fact that the first condition to the 1998 planning permission was by 2014 unenforceable

was a good reason both to authorise the breach of condition and to certify that the use of the property was lawful, rendering obsolete the limitation to holiday use in the 1998 planning permission as well as the first condition to that permission.

63. Therefore I have no difficulty in regarding this as a certificate given under section 191(1)(a) that changed the permitted use of Ms Jaffe's pitch, rather than merely declaring a condition to be unenforceable. That is consistent with the statement in note 2 to the certificate that it prevented enforcement action under section 172 of the 1990 Act in respect of residential use. I accept that the notes have no legal effect (*QM Developments (UK) Limited v Warrington Borough Council* [2020] EWHC 1511 (Admin), Dove J at paragraph 20) but it is helpful that they are consistent with the clear meaning of the words that precede the notes.

64. The certificate is therefore a certificate under section 191 "in respect of the use" of the land, as section 191(7) says, and therefore it has effect as if it were a grant of planning permission for the purposes of section 3(3) of the 1960 Act. I find that it is the "relevant planning permission" under section 1(2) of the 1968 Act, because following the grant of the certificate the 1998 planning permission no longer defines the permitted use of Ms Jaffe's pitch. It is not expressed to be for holiday use only, nor subject to the sort of condition described in section 1(2)(b), and therefore the site is a protected site.

65. It is helpful to note that this is consistent with the policy of the legislation, which is to give some security to those who live in caravans as their home; but the effect of the 2014 certificate seems to me to be clear without any need for a purposive construction.

Conclusion

66. Accordingly the appeal fails, since I have come to the same conclusion as did the FTT; the Mobile Homes Act 1983 applies to the agreement under which Ms Jaffe occupies her pitch on her houseboat.

Upper Tribunal Judge Elizabeth Cooke

20 January 2023

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case

an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.