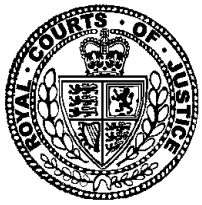

Neutral Citation Number: [2020] EWCA Civ 486

Case No: C1/2018/2727

IN THE COURT OF APPEAL (CIVIL DIVISION)
MR DAVID ELVIN Q.C. (sitting as a deputy judge of the High Court)
[2018] EWHC 3843 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 April 2020

Before:

Lord Justice Lindblom
Lord Justice Peter Jackson
and
Lady Justice Asplin

- -

Between:

Alison Hook — **Claimant**

- and -

(1) Secretary of State for Housing, Communities and Local Government
(2) Surrey Heath Borough Council — **Defendants**

- -
- -

Mr Ashley Bowes (instructed by **Leigh Day**) for the **Claimant**
Mr Cain Ormondroyd (instructed by **the Government Legal Department**) for the **First Defendant**
Mr Ned Westaway (instructed by **Surrey Heath Borough Council**) for the **Second Defendant**

- -

Hearing date: 28 January 2020

- -

Judgment Approved by the court
for handing down
(subject to editorial corrections)

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 1630 on 3 April 2020.

Lord Justice Lindblom:

Introduction

1. In an appeal against the refusal of planning permission for the retention of a "dwelling", did the inspector err in law in concluding that the "dwelling" was not a "[building] for agriculture" and was thus "inappropriate development" in the Green Belt – despite it being suggested by the appellant that a condition could be imposed to restrict its occupancy to a person working in agriculture on the land? That is the central question in this case. It does not involve any new issue of law.

2. Under section 288 of the Town and Country Planning Act 1990, the claimant, Ms Alison Hook, applies for an order to quash the decision of an inspector appointed by the first defendant, the Secretary of State for Communities and Local Government (now the Secretary of State for Housing, Communities and Local Government), to determine her appeal under section 78 of the 1990 Act against the decision of the second defendant, Surrey Heath Borough Council, to refuse planning permission for development at "Hookmeadow", Philpot Lane, in Chobham. The site is in the Metropolitan Green Belt, in open countryside outside the settlement boundary. The application for planning permission had been made, in part, under section 73A of the 1990 Act. The development was described in the council's decision notice as the "[erection] of an occupational [worker's] dwelling ancillary to use of the land for horticultural and agricultural purposes (retrospective), and erection of a single storey extension to form [an] enlarged bedroom". The inspector conducted a hearing and undertook a site visit on 20 June 2018. His decision letter is dated 6 July 2018. In a separate decision, also dated 6 July 2018, he refused Ms Hook's application for an award of costs against the council.

3. Permission to proceed with the application under section 288 was twice refused in the court below: initially by Lang J. on the papers on 2 October 2018, and again by Mr David Elvin Q.C., sitting as a deputy judge of the High Court, at a hearing on 7 November 2018. Ms Hook applied to this court for permission to appeal. On 11 June 2019, I granted permission to apply for "planning statutory review" under CPR r.52.10(5), and under CPR r.52.10(6) ordered that the application would be determined in this court.

The issues before the court

4. Three issues arise from the grounds of the application: first, whether the inspector, when he concluded that the development was "inappropriate development" in the Green Belt under national planning policy, failed to have regard to the agricultural occupancy condition for which Ms Hook contended (ground 1); second, whether he acted in breach of the rules of natural justice when he rejected that condition in his decision on the application for costs (ground 2); and third, whether he failed to provide lawful reasons for rejecting it (ground 3).

Government policy for the Green Belt

5. At the time of the inspector's decision, the Government's planning policy for England was contained in the National Planning Policy Framework, published in 2012 ("the NPPF").

Policy for the Green Belt was set out in section 9, "Protecting Green Belt land". Paragraph 79 said that "the essential characteristics of Green Belts are their openness and their permanence". Paragraph 87 said that "… inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances". The policy in paragraph 88 was that, "[when] considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt", and that "'[very] special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations". Paragraph 89 said that "[a] local planning authority should regard the construction of new buildings as inappropriate in [the] Green Belt", but identified six exceptions. The first exception was "buildings for agriculture and forestry". That exception re-appeared in identical terms in the corresponding policy in the revised version of the NPPF published in July 2018 (in paragraph 145), and again in the replacement version published in February 2019 (in paragraph 145).

6. The meaning of these policies, and their predecessors, has been considered by the courts on a number of occasions (see, in particular, the judgments given in this court in *R. (on the application of Lee Valley Regional Park Authority) v Epping Forest District Council* [2016] EWCA Civ 404; [2016] Env. L.R. 30 and *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466; [2017] 2 P. & C.R. 1, both recently cited with approval by the Supreme Court in *R. (on the application of Samuel Smith's Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3).

7. From the relevant cases, some basic points emerge:

   (1) The concepts referred to in NPPF policy for the Green Belt – "inappropriate development", "very special circumstances", the preservation of the "openness" of the Green Belt, the impact of development on "the purposes of including land within it", and so on – are not concepts of law. They are broad concepts of planning policy, used in a wide range of circumstances (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City* Council [2012] UKSC 13; [2012] 2 P. & C.R. 9, at paragraph 19). Where a question of policy interpretation properly arises, understanding those concepts requires a sensible reading of the policy in its context, without treating it as if it were a provision of statute. Applying the policy calls for realism and common sense.

   (2) In dealing with the "threshold" question of whether a proposal is for "inappropriate development" in the Green Belt, and then in deciding whether the proposal is acceptable and ought to be given planning permission, the decision-maker must establish relevant facts and exercise relevant planning judgment. If called upon to review the decision, the court will not be drawn beyond its limited role in a public law challenge (see the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780G-H). The interpretation of planning policy falls ultimately within that role, but the decision-maker's application of policy will only be reviewed on traditional public law grounds (see the judgment of Lord Reed in *Tesco v Dundee City Council*, at paragraphs 18 and 19). As this court has emphasized more than once, excessive legalism must be avoided (see, for example, *East Staffordshire Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 893, [2018] P.T.S.R. 88, at paragraph 50). The court will not second-guess the decision-maker's findings of fact unless some

obvious mistake has occurred, nor interfere with the decision-maker's reasonable exercise of planning judgment. But if an error of law is demonstrated – such as a misinterpretation of relevant policy leading to a failure to exercise a planning judgment required by that policy – its duty is to act.

(3) The nature of the decision-maker's task will differ from one kind of development to another. For example, whether a proposal is for "buildings for agriculture and forestry" – the first category of "new buildings" that are not to be regarded as "inappropriate development" under the policy in paragraph 89 of the NPPF – will be largely if not wholly a matter of fact. There is no proviso in that category (see *Lee Valley*, at paragraph 19). By contrast, assessing whether a proposed "[facility] for outdoor sport" – the second category in paragraph 89 – would "preserve the openness of the Green Belt" is largely a matter of planning judgment. The same applies to proposals for "mineral extraction" or "engineering operations" – two categories of "other forms of development" that are potentially "not inappropriate" under the policy in paragraph 90, which are subject to the same proviso. The requisite planning judgment will turn on the particular facts. It is not predetermined by the general statement in paragraph 79 that one of the "essential characteristics" of Green Belts is their "openness" – meaning, in that context, the mere presence of buildings, regardless of any visual impact they might have (see *Lee Valley*, at paragraph 7). In the context of a development control decision, as Sales L.J. observed in *Turner* (at paragraph 14), "[the] word "openness" is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case", and (at paragraph 15) "[the] question of visual impact is implicitly part of the concept of [the] "openness of the Green Belt" as a matter of the natural meaning of the language used in para. 89 of the NPPF".

8. In this case there is no dispute on the meaning of Green Belt policy. We are concerned, however, with the inspector's application of the policy in paragraph 89 of the NPPF, in particular his conclusion that the proposal he was considering was for "inappropriate development" in the Green Belt because it was not a "[building] for agriculture".

The appeal site and its planning history

9. The site lies to the east of Philpot Lane. According to the application and appeal forms, it has an area of "0.1 hectare(s)" – in fact, we were told, 0.07 ha. It is part of a larger plot extending to about two hectares. On it stands a timber cabin of 63 square metres, which is Ms Hook's home.

10. There is a long planning history. Ms Hook acquired the site in 2002, and began living on it in a horsebox. In December 2003, she made an application for planning permission for the erection of a single-storey wooden cabin, to be used as a dwelling. That application was refused by the council in April 2004, and the subsequent appeal dismissed in April 2005. In September 2004, the council granted retrospective planning permission for the erection of two buildings, to be used as stables and for the storage of hay. In April 2005, Ms Hook applied for planning permission for the erection of a single-storey cabin, to be used as a groom's quarters, which the council refused in October 2005. In August 2005, she converted a field shelter on the site to a dwelling, and she began living there in September 2005. In February 2009, the dwelling was extended by the addition of a porch.

11. In October 2009 the council took enforcement action against the material change of use of the land from "grazing" to "ancillary residential", and against the construction of a dwelling-house within the field shelter. Ms Hook appealed against the enforcement notices. Her appeals were dismissed in May 2010, and the notices upheld. There was no appeal to the High Court against those decisions. The enforcement notices had to be complied with by the end of February 2011, but were not. In fact, Ms Hook carried out further work on the site without planning permission, extending the dwelling-house in October 2013. An injunction requiring compliance with the enforcement notices was granted in October 2014. It required – among other things – the cessation of any residential use by 30 April 2015, and the demolition of the dwelling-house by 30 April 2016. It has not been complied with.

12. In September 2015 Ms Hook made another application for planning permission for development described in the subsequent appeal as "[retrospective] change of use of former field shelter to single-[storey] residence with porch and extension and surrounding curtilage & landscaped area". The council refused that application in February 2016. Ms Hook's appeal against that decision was dismissed by an inspector in a decision letter dated 2 August 2016. Under the heading "Is the development inappropriate in the Green Belt?" that inspector said:

> "39. The NPPF explains that the construction of new buildings is inappropriate in the Green Belt. I have explained above that the Dwelling is a building and applying the NPPF guidance it must be inappropriate development. There are exceptions to this and those exceptions are set out in paragraph 89 of the NPPF. None of the exceptions apply in this case."

He also concluded that the "change of use of grazing land to garden and patio" involved the making of a material change of use of land, and this too was "inappropriate development" in the Green Belt (paragraphs 40 and 41). He went on to conclude that other considerations, including those put forward by Ms Hook as "very special circumstances", did not outweigh the "harm to the Green Belt, its openness and the character of the area" (paragraph 72).

The application for planning permission and the council's refusal of planning permission

13. The application for planning permission in this case was submitted to the council on 25 April 2017. Planning permission was refused on 13 July 2017, for three reasons. The first reason stated that the council did not consider "the use of the land for the purposes described in [the] application" gave rise to an "essential need for a rural worker to live permanently on the site"; that it had "not been demonstrated that the horticultural business undertaken is financially viable and is or can become a sustainable form of rural development"; and that the proposed development did "not comply with the aims and objectives of [the NPPF] …". The second reason stated that "[the] proposed development constitutes inappropriate development in the Green Belt"; that, "[in] addition to the by definition harm which results by way of inappropriateness the development erodes the rural character of the site and the wider area, reduces openness and encroaches into the countryside thereby conflicting with one of the purposes of including land in the Green Belt"; and that "[there] are no very special circumstances … to clearly outweigh the identified harm to the Green Belt and accordingly the proposal is contrary to the aims and

objectives of the Core Strategy and Development Management Policies 2012 and [the NPPF] 2012". The third reason for refusal is of no relevance to the issues before us.

The suggested occupancy condition

14. In an appendix to its appeal statement, the council provided a "Schedule of Conditions (without prejudice)", for the inspector to consider if he disagreed with its contention that planning permission should be refused. Condition 4 in that list was this:

> "4. The occupation of the development hereby permitted shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.
>
> Reason: To enable the Local Planning Authority to retain control over the nature of use of the development in the Green Belt and to accord with Policy DM1 of the Surrey Heath Core Strategy and Development Management Policies 2012 and Chapter 9 of [the NPPF] 2012."

15. At the hearing, the inspector produced an agenda, in which he included, as item 4, "Conditions", and, in the usual way, there was a discussion of the conditions that might be imposed if planning permission were granted. Ms Hook's advocate, Mr Ashley Bowes, took part in that discussion and made submissions about condition 4.

Ms Hook's case before the inspector

16. In his speaking note for the hearing, Mr Bowes confirmed that planning permission was "sought retrospectively for operational development comprising the erection of a structure, and prospectively for a modest extension to that structure" (paragraph 1), and that the permission, if granted, would be "for a building "*ancillary to the use of the land for horticultural and agricultural purposes*"" (paragraph 15). Citing the first instance decision in *Hancock v Secretary of State for the Environment* (1986) 55 P. & C.R. 216, upheld by the Court of Appeal (1988) 57 P. & C.R. 140, he reminded the inspector that, "as a matter of law, a farmhouse and garden area can be treated for the purposes of planning legislation as being "*used for agriculture*"" (paragraph 16). He referred to government policy in paragraph 89 of the NPPF, which, he said, "deems the construction of new buildings "*for agriculture*" as appropriate development in the Green Belt" (paragraph 17). And he submitted that there was "therefore no need to demonstrate "very special circumstances" to outweigh any Green Belt or other harm" (paragraph 18).

17. In response to the council's contention that the current use of the land was not "for agriculture", Mr Bowes submitted (in paragraph 19a):

> "a. … The Council advances a condition to restrict the use of the building for agriculture, should permission be granted. In our view, this condition could be strengthened further to refer to working on the appeal site. Should planning permission be granted and the Council consider the use of the building was not ancillary to agriculture [or] forestry, its remedy is to take enforcement action for a breach of that condition."

18. He continued (in paragraph 19b and c):

> "b. The Appellant is of the firm view that the present use (and future intended use) of the land is agricultural and would robustly defend any enforcement proceedings which asserted the contrary. Indeed, that appears to be the view of the Council's witness, Mr Bloor[:] "*the appellant runs a small scale horticultural enterprise from Hookmeadow*["]. By s.336(1) [of the 1990 Act], "agriculture" is defined as follows:
>
> ["]*"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly*["];
>
> c. As such, the use of the land for horticulture and growing of seeds all falls well within the definition of "agriculture". The use of land for grazing horses in the context of the statutory definition was considered by Donaldson LJ in [*Sykes v Secretary of State for the Environment* (1981) 42 P. & C.R. 19, at p.28]:
>
> "*If horses are simply turned out on to the land with a view to feeding them from the land, clearly the land is being used for grazing. If, however, horses are being kept on the land and are being fed wholly or primarily by other means so that such grazing as they do is completely incidental and perhaps achieved merely because there are no convenient ways of stopping them doing it, then plainly the land is not being used for grazing but merely being used for keeping the animals. On the other hand, of course, if animals are put on to a field with a view to their grazing and are kept there for 24 hours a day, seven days a week over a period, it would not, I would have thought, be possible to say that, as they were being kept there, they were not being grazed.*"
>
> Here, the horses are primarily fed from the land and topped up with feed. Accordingly, all the uses of the land are "for agriculture" and the building ancillary to those purposes is also "for agriculture" and therefore appropriate development in the Green Belt."

19. Finally on this question, Mr Bowes submitted that "[in] any event, even if the Council took the view that was not the case, as the use of land or buildings for agriculture does not require planning permission (s.55(2)(e) [of the 1990 Act]), the change of use of the land and building to agriculture would not require permission and so the present use of [the] land would not amount [to an] impediment to implementing this permission if granted" (paragraph 19d).

The council's case before the inspector

20. The council's case in the appeal was not that the inspector should grant planning permission subject to the agricultural occupancy condition. It was opposing the appeal and

seeking to have its own decision refusing permission upheld. Condition 4 was put forward only to assist the inspector if he were to find, contrary to the council's case, that the dwelling on the site was agricultural or "ancillary" to agriculture. The council's position was that the condition was unworkable and unreasonable, and would not overcome its opposition to the development, even if strengthened as Mr Bowes suggested.

21. That case was supported by Mr Alan Bloor, an independent agricultural consultant, whose statement was before the inspector. In his statement Mr Bloor said that Ms Hook ran "a small scale horticultural enterprise from Hookmeadow", and had "two horses for her own leisure use" (paragraph 6.1). In his view, she was "a self-employed gardener providing horticultural services (gardening) to a small client base", which involved "working away from the appeal site" (paragraph 6.2). There was "no justification in the small scale horticultural activities taking place at the site that [required] an essential need for a permanent worker to live on site" (paragraph 6.3). Ms Hook's "business plan [confirmed] that the majority of the income generated [was] from gardening services to clients which involve working away from the appeal site" (paragraph 6.4).

The inspector's decision letter

22. In his decision letter the inspector said his decision was based on the description of the development given in the council's decision notice and in Ms Hook's appeal form, which had been agreed at the hearing (paragraph 3 of the decision letter).

23. The inspector identified four "main issues", the first of which was "whether the proposed development [was] inappropriate development in the Green Belt …" (paragraph 6). On that main issue he said (in paragraphs 7 to 13):

> "7. Paragraph 89 of [the NPPF] states that new buildings are inappropriate in the Green Belt unless they fall within the given list of exceptions. One exception is a building for agriculture and forestry. It was not suggested to me that the dwelling is a building for forestry.
>
> 8. I was directed to the case of *Hancock* … where it was stated that it is a matter of fact and degree, not law, as to whether a house for an agricultural worker is a building for agriculture. At the Hearing the discussions focussed on whether or not the dwelling is ancillary to the use of the land which, it was not disputed, has at least some degree of agricultural use. I agree with the Council that the use of the word ancillary in the description of the development used on the decision letter does not presuppose the dwelling is considered ancillary. Consequently it is necessary to consider the scale of the use of the land to ascertain whether or not the dwelling is ancillary to that.
>
> 9. Firstly, there is a horticultural aspect to the use of the land. This primarily comprises the use of a greenhouse/potting shed for propagation, an adjacent outdoor area in which more established plants are grown in containers, and a larger area nearer the house where ground based plants are grown from which cuttings are taken. The plants are then sold to the appellant's clients of her landscape gardening business. There were also some raised beds in which vegetables were growing and a row of

fruit trees. The produce from these are also sold to her clients as well as being consumed by the appellant.

10. The greenhouse/potting shed structure is very modest in size, and the raised beds and area of ground based shrubs are both domestic in scale. Moreover, from my site visit, I cannot conceive, despite the appellant's assertions, that tending to this part of her business occupies much of her time. Instead I consider the scale of this operation to be comparable to that which a keen amateur gardener could have at their home. Indeed, from the figures provided, only a minimal proportion of her income is derived from plant sales. Whilst I accept this may increase, as suggested in the projected figures, it would remain to be a minor part of her business.

11. The appellant also keeps two horses in stables at the site, which she rides for recreation. The appellant advised that she spends approximately two hours a day tending to the horses. I also acknowledge the other tasks she needs to undertake to maintain the four paddocks and the holding generally. When taking account of the paddocks, the ménage [sic], the stables and hay store, the area of land devoted to this use is substantially larger than the other uses at the site. Nonetheless, this is reflective of the nature of the use, rather than the scale of the operation, which I consider to be fairly small.

12. Overall, due to the small scale of the horticultural operation at the site and the keeping of just two horses for recreational purposes, I consider the dwelling is the primary development at this site and it is not ancillary to the use of the land. Consequently, the dwelling is a not a building for agriculture. Therefore the development does not fall within this exception to Green Belt policy in paragraph 89 of [the NPPF]. The parties agree that the dwelling does not fall within any other exception. As such I consider that the development is inappropriate in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt.

13. I understand that the change of use of land or buildings to agriculture does not require planning permission. Nonetheless, that is not the development before me."

24. On the second main issue, "the effect of the development on the openness of the Green Belt", the inspector found that "[although] visually the impact on openness is limited, due to its spatial impact … the harm to openness of the Green Belt, on balance, is moderate" (paragraph 17). He went on to acknowledge that "[substantial] weight should be given to any harm to the Green Belt", and that "[development] should not be approved unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations" (paragraph 18).

25. On the third main issue, "the effect on the character and appearance of the area", he found that the development did "not harm the rural character and appearance of the area" (paragraph 19).

26. And on the fourth main issue, "if the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it", he said this (in paragraphs 20 to 26):

"20. Paragraph 55 of [the NPPF] identifies that isolated homes in the countryside should be avoided, with one exception being if there is an essential need for a rural worker to live at their place of work. …

21. From the financial information provided, it is clear that the vast majority of the appellant's income is derived from her landscape gardening business. Profits from plant sales from 2004 to 2016 have rarely exceeded £100 a year whilst that from her gardening business, taking account of overheads, is comfortably over £5,000 annually. Although I understand that her ability to earn has been hampered by her long running disputes with the Council, I do not consider this would affect the uneven balance between profits from both sources. Equally, her projections for the coming years continue to show a steady growth in both aspects, but still a reliance on the landscape gardening aspects rather than plant sales. Indeed if the gardening business grows as she anticipates, there would be less time available to her to spend at the site, which would further weaken the tether between her and the site.

22. I accept plants take time to care for, especially when she wishes to provide the best quality plants for her clients. However I consider the level of care needed for the plants to be little more than that which a domestic gardener would be able to do in their spare time. Consequently I do not consider that there is an essential need for the appellant to reside permanently on the site to manage this part of the operation.

23. The horses on site and the associated management of the paddocks clearly takes more of the appellant's time, and it was agreed at the Hearing that the, roughly, two hours she spends each day on caring for the horses is reasonable. I am also in no doubt that the work she does to maintain the holding, and particularly in ensuring the paddocks are suitable for grazing, takes considerable effort. However I see no reason why her ability to undertake such tasks is dependent on her residing permanently at the site even though, by living elsewhere, more travel time would be inevitable.

24. I accept there may be times when a horse finds itself in difficulty which requires urgent attention, and I note with sadness the photos of a previous horse trapped in a ditch. Nonetheless, although I recognise that by only having two horses this recreational aspect is sensitive to further risks, I anticipate such emergencies would be very rare.

25. Based on her current income, living elsewhere nearby is not a viable option. However, whilst I sympathise, I share the view of the Inspector of a previous appeal for this site who, on this issue, commented "that is an argument that would be open to many people who seek to live within the Green Belt on the basis that they could not afford to live in nearby settlements."

26. Taking all these matters into account, I do not consider there is a need for the appellant to reside permanently at the site."

27. Finally, in striking the balance overall, the inspector concluded that "the weight of the other considerations does not clearly outweigh the harms and therefore there are no very special circumstances to justify the development", and "[consequently], the development conflicts

with [the NPPF] which aims to protect the Green Belt from inappropriate development" (paragraph 28); and that the appeal should be dismissed (paragraph 30).

The costs decision

28. In his decision on Ms Hook's application for costs, the inspector said (in paragraphs 8 and 9):

> "8. The second reason for refusal says that the development is inappropriate in the Green Belt. The Council's Statement of Case makes brief reference to the building being required or needed for agriculture, but this issue of need is not reflected in [the NPPF]. Nonetheless, their Statement also asserts that it cannot be reasonably said that the development is a building for agriculture. From the evidence taken as a whole, I do not consider the Council failed to correctly interpret paragraph 89. Notwithstanding this, as set out in my decision on the appeal, I agree that the building is not for agriculture.
>
> 9. Also, having found that the building is not agricultural, and despite the Council's suggestion, it would not be reasonable to change and then restrict the use of the building to agriculture by condition."

The decisions in the court below

29. Refusing permission on the papers, Lang J. identified the inspector's "key finding": that "the house in residential use by [Ms Hook] was the primary development at the site, and it was not ancillary to agricultural use of the land, namely, [her] small horticultural use and stabling of two horses", and was therefore "not a building for agriculture within the meaning of paragraph 89 of [the NPPF]". Thus the suggested condition "became irrelevant". The inspector was entitled to reject the argument that there could, in future, be a change of use to agricultural use, "as there was no evidence of any such actual or proposed change of use". He was under no obligation to address the condition in his decision on the appeal; it was "not a "principal important controversial issue" (per Lord Brown in [*South Buckinghamshire District Council v Porter (No.2)* [2004] 1 W.L.R. 1953, at paragraph 36)". It was also unarguable that there was any procedural unfairness. The potential relevance of draft condition 4 was discussed at the hearing, and Ms Hook "had the opportunity to make submissions about both current and potential use".

30. The analysis of the deputy judge on the submissions made at the hearing before him was similar. In his view, the proposition that the proposal was for an occupational worker's dwelling ancillary to horticultural and agricultural use, and that the future use of the land indicated by the application was horticultural and agricultural, "proceeds on a wholly unreal basis". The inspector had found, "primarily by reference to the development of the dwelling which had already occurred", that it was "not agricultural"; it was "the primary development and … not ancillary to an agricultural or horticultural use". Though it might be possible for there to be a change of use to agriculture under section 55 of the 1990 Act, he had "rightly found that this was not the development currently before him" (paragraph 11 of the judgment). Having found this was not an agricultural development, he did not have to consider the imposition of an agricultural occupancy condition tying the occupancy

of the dwelling to a worker in agriculture or last employed in agriculture, "given that he had rejected the primary basis for the application" (paragraph 12). It was "not incumbent on [him] … to impose a condition which was not related to the development for which the application had been made and which, on the evidence before him, would not have changed its character as a result of the grant of permission". Indeed, as the decision letter confirms, the evidence before him had been that "the appellant would continue to use the holding in the same manner, i.e. to use the dwelling for a non-agricultural purpose" (paragraph 13). It followed that the issues on the costs decision did not arise (paragraph 14).

Did the inspector unlawfully fail to have regard to the possibility of an agricultural occupancy condition?

31. Section 70 of the 1990 Act provides, so far as is relevant here:

> "(1) Where an application is made to a local planning authority for planning permission –
>
> (a) subject to section 62(5) and sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit …
>
> (2) In dealing with an application for planning permission … the authority shall have regard to …
>
> (a) the provisions of the development plan, so far as material to the application, …
>
> (c) any other material considerations."

By section 79(4), those provisions apply to an inspector determining an appeal under section 78.

32. Section 72(1) provides that "[without] prejudice to the generality of section 70(1), conditions may be imposed on the grant of planning permission under that section … (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) …".

33. It is settled law that, to be valid, a planning condition must satisfy three basic requirements. First, it must be imposed for a "planning" purpose and not for any ulterior purpose. Secondly, it must fairly and reasonably relate to the development permitted by the planning permission. Thirdly, it should not be so unreasonable that no reasonable planning authority could have imposed it (see the speeches in the House of Lords in *Newbury District Council v Secretary of State for the Environment* [1981] 1 A.C. 578; the judgment of Lord Hodge in *Elsick Development Company Ltd. v Aberdeen City and Shire Strategic Development Planning Authority* [2017] UKSC 66; [2017] P.T.S.R. 1413, at paragraphs 43 to 46; and the judgment of Lord Sales in *R. (on the application of Wright) v Resilient Energy Severndale Ltd. and Forest of Dean District Council* [2019] UKSC 53, at paragraphs 32 to 42).

34. Section 73A of the 1990 Act provides:

> "(1) On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.

(2) Subsection (1) applies to development carried out –
(a) without planning permission;
…

(3) Planning permission for such development may be granted so as to have effect from –
(a) the date on which the development was carried out; …

… ".

35. Mr Bowes submitted that the inspector ought to have concentrated on the agreed description of development in the council's decision notice, which he did not question. He had erred in law in failing to consider the possibility of imposing an agricultural occupancy condition in the form of condition 4, or substantially in that form, to control development as thus described. Such a condition would have been a suitable and effective means of regulating the use of the building. It would have ensured that the building was a "[building] for agriculture" under the policy in paragraph 89 of the NPPF, and therefore not "inappropriate development" in the Green Belt. It was, Mr Bowes submitted, a material consideration – indeed, the "critical" consideration in the appeal. From the inspector's failure to mention it in his decision letter the court may infer that regard was not had to it (see the speech of Lord Lloyd of Berwick in *Bolton Metropolitan Borough Council v Secretary of State for the Environment* [2017] P.T.S.R. 1091, at pp.1095 and 1096).

36. As Mr Bowes accepted, the application for planning permission did not seek approval for any change of use. But he pointed out that planning permission was not required for a change of use to agriculture. He submitted that although the inspector had found that the present use of the site was not agricultural, this did not prevent him from considering an agricultural occupancy condition. To suggest that it did was to misunderstand the scope of the power in section 73A to grant planning permission for development "carried out before the date of the application". Unlike a decision-maker applying the provisions of section 177 of the 1990 Act, an inspector considering a proposal to retain a building under section 73A can lawfully grant planning permission subject to a condition allowing it to be used for a different purpose from its present use. That power, said Mr Bowes, derives either from section 73A(3) or from the combined effect of sections 70(1) and 73A(1).

37. Mr Bowes relied on the reasoning in the judgment of Mr George Bartlett Q.C., sitting as a deputy judge of the High Court, in *R. v Mid-Bedfordshire District Council, ex parte Grimes* (2000) 80 P. & C.R. 311, in particular this passage (on p.319):

> "The wording of [section 73A(3)] is so clearly permissive that it would not be right … to construe it as providing that any permission granted under the section, unless it relates to development carried out under a limited period planning permission, has effect from the date on which the development was carried out. … In order to see whether development is permitted by the planning permission on which reliance is placed, whether it has been granted on an application under section 73A or otherwise, it is necessary to look at the planning permission as a whole, including both the description of the development and the conditions imposed. Here the permission was for the retention of the building as an agricultural building. Condition 2 effectively imposed a positive requirement to use it for agricultural

> purposes, and the building had to be removed if it ceased to be so used. It was not the effect of the permission to make the building lawful, no matter what use it might be devoted to. Until it began to be used for agricultural purposes, in my judgment, it remained an unlawful building (and the enforcement notice requiring its removal remained effective); and, if it began to be used, but then ceased to be used, for agricultural purposes, it had to be removed under the second part of condition 2. The building was lawful only if it was used for agricultural purposes and only so long as it was so used."

38. On that reasoning, Mr Bowes submitted, section 73A makes it possible to grant planning permission for a building already erected, subject to a condition that it be used only for purposes ancillary to agriculture, even if that is not the present use of the land. In this case, therefore, there was nothing to prevent the inspector having regard to the suggested agricultural occupancy condition. He should have done so. And if he was to reject that condition, he had to give reasons for doing so. He failed to do either.

39. In his skeleton argument, though not in oral submissions, Mr Bowes submitted that there was an inconsistency between the observations made by the deputy judge in the passage I have quoted from his judgment in *ex parte Grimes* and his later judgment in *Binabik Holding Ltd. v Secretary of State for Communities and Local Government* [2009] EWHC 3350 (Admin). In *Binabik Holding Ltd.*, he found that the application for planning permission was not "in effect, an application for a new building", but "an application for the retention of the partly constructed building under section 73A … , as well as planning permission for its alteration and completion" (paragraph 18). He concluded that because the building in that case "was not constructed for the purposes of agriculture, it was inappropriate development", the inspector was entitled to treat it "not as inappropriate development in the Green Belt but as appropriate development" (paragraph 19). He went on to say that the inspector's "approach, looking at the building as it was and taking into account the prospect of adaptation, was … entirely appropriate in terms of the policy of PPG2, and it properly reflected the realities of the case before him" (paragraph 25). This would mean, submitted Mr Bowes, that on an application under section 73A it would be impossible for a building not originally constructed for agriculture to be treated as an "agricultural building", even if an agricultural occupancy condition was imposed. That, he contended, was not correct.

40. I do not see any conflict between the deputy judge's conclusions in those two cases. The circumstances of those two cases were materially different, and the outcome in each turned on the particular facts. *Ex parte Grimes* concerned two buildings on an agricultural holding – a farm called Boxhedge Farm – for one of which planning permission had been granted subject to a condition that it be used solely for agricultural purposes, but which had not been put to that use. It was held that on the determination of a subsequent application under section 73A, the retrospective planning permission, as properly interpreted, could only take effect when the change of use contemplated by that permission took place. In *Binabik Holding Ltd.* it was held that an inspector had been entitled to conclude, on the particular facts, that the exception for agricultural buildings in Green Belt policy was not engaged when the proposal was to retain and repair a building not originally constructed for agricultural use.

41. The central question here, however, though similar to that in *Binabik Holding Ltd.*, is not the same as in either of those cases. It is whether, on the evidence before him, the inspector

was entitled lawfully to find, essentially as a matter of fact and degree, that the development for which planning permission was being retrospectively sought by Ms Hook under section 73A was not a "[building] for agriculture" within the relevant category of exception under the policy in paragraph 89 of the NPPF – which led to the conclusion that it was, therefore, "inappropriate development" in the Green Belt. If the crucial findings of fact generating that conclusion were lawfully made, the inspector was not, in my view, required to consider the imposition of a condition to control the occupancy of the building on the assumption, contrary to those findings, that it was, or would in the future become, a "[building] for agriculture". On his findings of fact, that was not the proposal he was dealing with. The suggested agricultural occupancy condition related to a different development, which – as he found on the evidence before him – did not exist, and was not going to exist. It depended on the building being a "[building] for agriculture", in the sense of the policy in paragraph 89 of the NPPF. But the building he was considering, as he found, was not a "[building] for agriculture". The suggested condition did not, therefore, relate to the actual development on the ground, which was the subject of the application for planning permission. Nor could it have the effect of changing that development from what it actually was to something it was not.

42. There is – as Mr Bowes confirmed – no challenge to the findings of fact set out in paragraphs 7 to 13 and 20 to 25 of the decision letter, or to the conclusions that followed. In particular, it is not contended that the inspector erred in finding that the present use of the site was not agricultural use, or that the building on the site was not a "[building] for agriculture", or in concluding that it was therefore "inappropriate development" in the Green Belt.

43. No such submission could sensibly be made. Both the question of the use of the appeal site and adjacent land in Ms Hook's ownership and the question of whether the dwelling on the site – in its existing state and as it would be once extended – was a "[building] for agriculture" were classically matters of fact and degree, which the inspector, as decision-maker, had to resolve (see the judgment of Glidewell L.J. in *Hancock*, at p.222).

44. As Ms Hook's intended use of the land was already in existence, and the building for which retrospective planning permission had been sought was already in place, the inspector was able to see for himself what the proposed development involved. And his relevant findings of fact are, in my opinion, beyond criticism. The main findings, that "… due to the small scale of the horticultural operation at the site and the keeping of just two horses for recreational purposes, … the dwelling is the primary development at this site and it is not ancillary to the use of the land" and that "[consequently], the dwelling is not a building for agriculture" (paragraph 12 of the decision letter), are legally sound. They are supported by the more specific findings: that the "scale" of Ms Hook's landscape gardening business was "comparable to that which a keen amateur gardener could have at their home", that "only a minimal proportion of her income [was] derived from plant sales", that whilst "this may increase, as suggested in the projected figures, it would remain … a minor part of her business" (paragraph 10), and that the activity involved in keeping two horse stabled at the site, which "she rides for recreation", amounted to a use that was "fairly small" (paragraph 11). It is also clear that the inspector had well in mind Ms Hook's intentions for the future. He referred to the evidence on her projections for the landscape gardening business in "the coming years", in the light of which he still "[did] not consider that there [was] an essential need for [her] to reside permanently on the site to manage this part of the operation" (paragraphs 21 and 22). And he found that her ability to perform the tasks she would

continue to undertake in managing the paddocks and caring for her two horses was not "dependent on her residing permanently at the site …" (paragraph 23).

45. The inspector's main conclusions, that because "the development does not fall within [the relevant] exception to Green Belt policy in paragraph 89 of [the NPPF]" it is "inappropriate in the Green Belt" (paragraph 12), and that although "the change of use of land or buildings to agriculture does not require planning permission …, that [was] not the development before [him]" (paragraph 13), are also, in my view, unassailable. Only if those conclusions were perverse, inadequately reasoned, or undermined in some other obvious way that offended the relevant principles of public law, could they be overturned by the court. They are not vulnerable to any such attack. They embody, in my view, an entirely lawful application of national Green Belt policy.

46. They are not rendered irrelevant – or, as Mr Bowes put it, an "exercise in futility"– by the description of development the parties had agreed. That description of the proposal distinguishes between the two parts of the proposal, the retrospective and the prospective. The retrospective part was intended to regularize the situation on the ground. Its purpose was to gain planning permission for the dwelling that had been constructed on the site without the required permission. It comprised everything in the description of development preceding the word "(retrospective)" – that is, the "[erection] of an occupational [worker's] dwelling ancillary to use of the land for horticultural and agricultural purposes (retrospective)". The prospective part was the "erection of a single storey extension to form [an] enlarged bedroom". So the proposal was for operational development alone. No mention is made of any intended change of use.

47. On behalf of the Secretary of State, Mr Cain Ormondroyd submitted, as did Mr Ned Westaway for the council, that the inspector was not compelled by the description of development in the council's decision notice, or by the suggested agricultural occupancy condition, to decide the appeal on a false basis. In establishing whether the building for which retrospective planning permission had been applied for was, in truth, a "[building] for agriculture" under Green Belt policy, he had to look at the reality of what was proposed. If this were not so, Mr Ormondroyd submitted, applicants for planning permission could seek to justify the assertion that a proposed dwelling in the Green Belt was a "[building] for agriculture" without providing any substantive proposal for agricultural use, but merely on the strength of a suggested condition.

48. Those submissions, in my view, are legally correct – as well as according with common sense. There can, I think, be no suggestion that the inspector failed to consider the application before him in accordance with the provisions of sections 70 and 73A. He had to deal with the substance of the proposal, as it was, not as it might have been. Regardless of any change he might legitimately have made to the description of the development, he was not constrained by it, or by the suggested agricultural occupancy condition, to adopt an unreal conception of the proposal as the basis for his decision. He was not bound to assume an agricultural enterprise that had not in fact been proposed or described to him in evidence. Neither the description of development nor the suggested condition required him to find that the operational development for which Ms Hook was seeking "retrospective" permission under section 73A was, or would become, a "[building] for agriculture" or "ancillary" to an agricultural use. He had to focus on reality. And he did. As he said, accepting the council's position, "the use of the word ancillary in the description of the development used on the decision [notice] does not presuppose the dwelling is considered

ancillary", and it was therefore "necessary to consider the scale of the use of the land to ascertain whether or not the dwelling is ancillary to that" (paragraph 8 of his decision letter).

49. There can be no suggestion that, in doing this, he failed to have regard to all the relevant evidence, including the financial information provided by Ms Hook, and in particular her "projected figures", to which he referred (in paragraphs 10 and 21), as well as the evidence of Mr Bloor, the agricultural consultant instructed for the council (see paragraph 21 above). It was with the benefit of the whole evidential picture before him, the submissions made at the hearing, and his site visit, that he was able to establish that the dwelling Ms Hook wanted to retain on the site was not now, and was not going to be, a "[building] for agriculture", and was, therefore, "inappropriate development" in the Green Belt.

50. To put it shortly, contrary to the case presented to him on behalf of Ms Hook, the inspector found, as he was entitled to find, that the development for which retrospective planning permission had been sought was not, in fact, a "[building] for agriculture" within the relevant exception in paragraph 89 of the NPPF.

51. It follows, in my view, that the inspector was entitled, and right, not to take the suggested agricultural occupancy condition into account when determining the appeal. Logically and legally, the condition did not fall to be considered until it was first established that the proposed development was a "[building] for agriculture". Only then could a condition restricting occupancy to an agricultural worker be regarded as consistent with the principle that a planning condition must fairly and reasonably relate to the development permitted. Had the inspector been satisfied that the building proposed to be retained was in fact, or would become, a "[building] for agriculture", the suggested condition would have been a relevant matter to consider, because it might have been an appropriate and necessary means of ensuring that the building would remain an agricultural worker's dwelling. But the condition had no bearing on the prior question of whether the dwelling on the site truly was a "[building] for agriculture". That question was addressed by the inspector and answered contrary to the case put forward for Ms Hook, without any error of law.

52. The need to impose an agricultural occupancy condition did not, therefore, arise. The suggested condition was not a material consideration, let alone – as Mr Bowes submitted – a "main issue" in the appeal. The inspector, though obviously aware of it, did not act unlawfully by omitting to have regard to it in making his decision. He was not required to take into account a condition that was incompatible with the proposal before him.

53. In my view, therefore, the inspector's approach was both realistic and correct. Given his findings of fact and conclusions in the light of the cases advanced at the hearing, he did not have to consider granting a planning permission that would be effective only upon a future change of use neither proposed nor even in prospect. Had he granted planning permission subject to an agricultural occupancy condition, his decision would have been inconsistent with those findings of fact and conclusions. It would have offended the principle that planning permission ought not to be granted subject to a condition unrelated to the development. And as was conceded by Mr Bowes in his submissions at the hearing, it would also have created the possibility of the building remaining on the site in breach of the condition until the council took the necessary enforcement action.

54. I would reject this ground.

Did the inspector act in breach of natural justice?

55. This ground alleges a breach of the rules of natural justice on the part of the inspector because, in his decision on costs, he concluded (in paragraph 9), "having found that the building is not agricultural, … it would not be reasonable to change and then restrict the use of the building to agriculture by condition", without giving Ms Hook the opportunity to produce evidence or make submissions to show the condition was reasonable. This, said Mr Bowes, offends the principles of procedural fairness, which require a party to a planning appeal to know the case it has to meet, and to have a reasonable opportunity to put its own case (see *Hopkins Developments Ltd. v Secretary of State for Communities and Local Government* [2014] EWCA Civ 470; [2014] P.T.S.R. 1145, in particular the judgment of Jackson L.J. at paragraph 62, and the judgment of Beatson L.J. at paragraphs 85 to 90). At the hearing, the condition was not controversial and Ms Hook did not know she had to show it was "reasonable". This "procedural unfairness" caused her "material prejudice".

56. I would reject this argument, for three reasons. First, as I have said, it is normal practice for inspectors determining planning appeals to consider, with the help of the parties, whether conditions should be imposed on any grant of planning permission, and what conditions might be suitable. In this case the inspector had included "Conditions" in his hearing agenda. Ms Hook was represented at the hearing by experienced counsel. And it cannot be said that, at the hearing, she was unaware of the need to make any comment she wanted to make on the suggested agricultural occupancy condition. Secondly, the condition was discussed at the hearing. Ms Hook had a fair opportunity to state her position, and she took that opportunity. Mr Bowes made a clear submission on the condition in his speaking note. And thirdly, when we asked him what else would have been said at the hearing had the inspector made the parties aware that the reasonableness of the condition, or a condition like it, was in question, Mr Bowes pointed to the Government's advice on the tests for planning conditions in the Planning Practice Guidance. The inspector would have been familiar with that advice. I cannot accept that drawing it to his attention would have made any difference to his decision on Ms Hook's appeal.

Did the inspector fail to provide lawful reasons for rejecting the agricultural occupancy condition?

57. Mr Bowes submitted that the inspector failed to give adequate reasons, in accordance with rule 16(2) of the Town and Country Planning (Hearings Procedure) (England) Rules 2000 for concluding, in his costs decision but not in his decision letter on the appeal itself, that the agricultural occupancy condition was not "reasonable". Mr Bowes relied on the well-known passage in the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No. 2)* (at paragraph 36): reasons must be "intelligible", "adequate" and "enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues"". On this matter there was, he submitted, room for "genuine … doubt" as to "what has been decided and why" (see the judgment of Sir Thomas Bingham M.R. in *Clarke Homes Ltd. v Secretary of State for the Environment* (1993) 66 P. & C.R. 263, at pp.271 and 272). An agricultural occupancy condition is acceptable in principle (see *Fawcett Properties Ltd. v Buckinghamshire County Council* [1961] A.C. 636), and may be imposed on a retrospective planning permission (see *ex parte Grimes*, at p.319). The council, having suggested the condition, plainly regarded it as reasonable in principle – a practical restriction whose effect

would be to ensure that the dwelling on the site could only be ancillary to agricultural use and thus a "[building] for agriculture", which would not be "inappropriate development" in the Green Belt. The inspector should therefore have considered it. Mr Bowes relied on the decision of the Court of Appeal in *Brightwell v Secretary of State for the Environment* (1997) 73 P. & C.R. 418, where a "time condition" had been canvassed before an inspector, and in his judgment (at p.427) Lord Woolf M.R. said that such a condition was "obviously a possibility and was relevant, as is recognised by the specific reference by the local planning authority", and the appellant was "not being unreasonable in making a criticism of the inspector for not making any mention of that possibility".

58. Mr Bowes' alternative submission was that the reason the inspector gave for ignoring the condition, as stated in his costs decision, was not a rational one. Restricting the use of a building by a condition was a measure commonly employed to make development acceptable and compliant with policy. The agricultural occupancy condition suggested here was a typical example. To reject it as "unreasonable" was irrational.

59. I cannot accept those submissions. In my view, following from the analysis I have already set out, the premise for them is false. There is no dispute that an agricultural occupancy condition can be acceptable in principle, provided it satisfies the basic legal tests for the validity of a planning condition (see paragraph 33 above). But in this case the possibility of imposing such a condition did not arise, because on the evidence he received and the submissions he heard, the inspector was not satisfied that the present or proposed future use of the building on the site was ancillary to an agricultural use. As he said in paragraph 12 of his decision letter, "the dwelling is the primary development at this site and it is not ancillary to the use of the land" and "[consequently] … is not a building for agriculture", and, in paragraph 13, "the change of use of land or buildings to agriculture … is not the development before me".

60. In these circumstances, the case was materially different from *Fawcett Properties Ltd.* and *ex parte Grimes*, and others where conditions controlling the occupancy of an agricultural worker's dwelling or requiring an agricultural building to be used for agricultural purposes have been lawfully imposed. It is also distinguishable from *Brightwell*, where the central issue was not whether the dwelling was "ancillary to the use of the land" and consequently a "[building] for agriculture", but whether the agricultural enterprise relied upon to justify planning permission being granted for a dwelling was a viable enterprise, and, in that context it was relevant to consider whether a "time condition" should be imposed to allow the financial sustainability of the enterprise to be proved.

61. In my view, therefore, in the circumstances of this case there was no obligation on the inspector to explain in his decision letter why he was not granting planning permission for the proposal before him subject to an agricultural occupancy condition. His findings and conclusions in paragraphs 7 to 13, and in paragraphs 21 to 25, made that unnecessary. The requirement for "intelligible" and "adequate" reasons, explaining sufficiently why Ms Hook's section 78 appeal was dismissed, and identifying the inspector's conclusions on the "principal important controversial issues", was satisfied. On a fair reading of the decision letter itself, here is no room for "genuine doubt" about the basis for the decision. But in his costs decision the inspector also explained why he had disregarded the condition. This he did succinctly, in terms corresponding to the findings and conclusions in the decision letter itself. As he said (in paragraph 9), it "would not be reasonable to change and then restrict the use of the building to agriculture by condition". That statement, it seems to me, is an

obvious corollary of the conclusions on which he based his decision to dismiss the appeal. And it was not irrational.

Conclusion

62. For the reasons I have given, I would dismiss the application before us.

Lord Justice Peter Jackson

63. I agree that the application should be dismissed for the reasons given by my Lord. The argument that the inspector had to assume the existence of facts that he unassailably found did not exist is so weak that even Mr Bowes could not sustain it. The complaints of procedural unfairness are no stronger.

64. I only wish to add something about the planning history described at paragraphs 10-12 above. This tiny site has consumed years of official and legal attention at considerable public expense. Even before the multiple appeals arising from the latest planning application, which have now dragged on for three years, the planning history stretches back a further 15 years. During that time, Ms Hook made applications for planning permission in 2003 (refused, appeal dismissed 2005), 2005 (refused 2005), faced enforcement action (appeal dismissed 2010), been subject to an injunction to desist and demolish (2015, ignored), and applied again (refused, appeal dismissed 2017). For all that had been achieved in regularising the planning situation for or against Ms Hook, these events might as well not have happened. Whatever the human situation, she is a planning recidivist. Yet she now claims that it is the council and the inspector who were acting illegally in respect of her fourth planning application. Her claims must be, and have been, fairly considered on their objective merits, but one wonders what purpose is being served by an apparently endless series of applications, decisions and technical appeals whose outcomes are seemingly neither obeyed nor enforced.

Lady Justice Asplin

65. I agree with both judgments.