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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
(CROWN OFFICE LIST)

CO/728/98

Royal Courts of Justice
The Strand

Friday, 4 September 1998

Before:

MR PURCHASE QC
(Sitting as a Deputy High Court Judge)

I'M YOUR MAN LIMITED

APPLICANT

-v-

SECRETARY OF STATE FOR THE ENVIRONMENT

RESPONDENT

(Transcript of the handed down judgment of
Smith Bernal Reporting Limited, 180 Fleet Street,
London EC4A 2HD
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Official Shorthand Writers to the Court)

MR P BROWN (Instructed by Messrs Davies & Partners, Gloucester GL4 7RT) appeared on behalf of the Applicant.

MR R SINGH [MS S DAVIES - for judgment] (Instructed by the Treasury Solicitors) appeared on behalf of the Respondent.

JUDGMENT
(As approved by the Court)

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JUDGMENT

THE DEPUTY JUDGE: In this application I'm Your Man Limited applies under Section 288 of the Town and Country Planning Act 1990, to quash the decision of an Inspector appointed by the First Respondent dismissing the Applicant's appeal from the refusal by the Second Respondent of planning permission for the permanent use for sales, exhibitions and leisure activities of buildings at Weston Business Park, the Airport, Locking Moor Road, Weston-Super-Mare. This application gives rise to an important point of principle concerning "limitations" imposed on planning permission. Put shortly, on the 15th February 1995 an Inspector on appeal granted planning permission for the use of the buildings for "sales, exhibitions and leisure activities for a temporary period of seven years". No condition was imposed requiring cessation of that use at the end of seven years. Would continuance of the use beyond seven years constitute a breach of planning control? In other words, was the permission in effect permanent or temporary. Additionally there are related issues (1) whether the status of the permission was material to the decision with which this application is concerned and (2) discretion. Mr Paul Brown, who appears for the Applicant, accepts that, if on its true construction the earlier permission was temporary, his application must fail. I will deal with the main issue before considering the other issues.

Permanent or Temporary?

Background

The appeal premises comprise two large hangars and ancillary accommodation on the former Weston Airport. In 1994 application was made for planning permission for the use of the buildings for sales, exhibitions and leisure activities for a temporary period of seven years. An appeal was made against non-determination. The appeal was conducted by written representations. In his decision letter dated the 15th February 1995, at paragraph 6, the Inspector identified the main issue as "the effect of the vehicle movements the proposal would generate on the free and safe flow of traffic on the A371." At paragraph 14 he concluded that the traffic generated would not be unduly detrimental in that respect. At paragraph 18 he allowed the appeal and granted "planning permission for additional use of warehouse/factory for sales, exhibitions and leisure activities for a temporary period of seven years at Weston Business Park ... in accordance with the terms of the application" subject to various conditions, none of which required cessation of the use after seven years. On the 17th April 1997 the Applicant applied for the permanent use

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of the premises for the same purposes. That application was refused. The Applicant appealed, relying, inter alia, on the ground that the 1995 permission was in effect a permanent planning permission. The appeal was also conducted by written representations. In the representations at para. 1.03, the Applicant explained that what was sought was confirmation that the permitted use was permanent. In Section 5 of the representations it set out reasons why the 1995 permission was in effect permanent. In their response the Second Respondent commented on the Applicant's representations, including the following:

> "8.1 Much of the (Applicant's) statement strives to justify why the existing seven year temporary consent is in fact permanent ... the Local Authority would suggest that the temporary seven year period was implicit in the previous consent and unambiguously stated within the description. Seven years was the period applied for and it was clearly on this basis that the Inspector reached his decision. There appears to the Local Authority to be no justification whatsoever either legislative or otherwise to disregard this unequivocal statement by the Department of the Environment.
>
> 8.2 The authority fails to understand the (Applicant's) claim that the permanent use of the site would somehow be exempt from enforcement action. It is a statutory obligation of any local planning authority to investigate breaches of planning permission and then act accordingly."

In his decision letter dated the 16th January 1998 the Inspector referred to the competing contentions at paragraphs 20 and 21. He continued:

> "Whereas as I accept as a general point the thrust of your argument that the 1994 and 1995 permissions are material considerations in relation to this appeal, it is not for me to reach a conclusion as a matter of law as to whether or not the latter consent is of a temporary or permanent nature. Nevertheless, the fact that planning permission was granted conditionally on appeal in 1995 for the development now applied for is clearly a matter to which I shall afford weight in this appeal."

The Inspector did not thereafter make a clear finding whether or not the 1995 permission was temporary or permanent in effect. I will deal with the remainder of the decision letter, so far as relevant, later in this judgment. He dismissed the appeal.

The Statutory Provisions

It is convenient in the first place to set out the relevant statutory provisions. By Section 57(1) of the 1990 Act, subject to the subsequent provisions of the Section, planning permission is required for the carrying out of any development of land. So far as relevant, by Section 55(1) development means the making of any material change in the use of any buildings or other land. By Section 58 planning permission may be granted by a Development Order or by the Local Planning Authority (or the Secretary of State) on application to the authority in accordance with a

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Development Order.

By Section 60(1) planning permission granted by a Development Order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the Order. I would comment that that provision has remained in substantially the same form since the Town and Country Planning Act 1947 (see 1947 Section 13(2)). Thus, in the Town and Country Planning General Development Order 1988 and the current General Permitted Development Order 1995 planning permission was and now is granted "subject to any relevant exception, limitation or conditions specified in the schedule". For example, Part 4, Class B of the 1995 Order permits the use of land for not more than 28 days in total in any calendar year subject to specified limitations and exceptions. While no conditions are specified under Class B, Class A (which deals with temporary buildings) is subject to conditions requiring that the buildings be removed and the land reinstated.

By Section 70(1) of the 1990 Act, where an application is made to the authority for planning permission, the authority may grant planning permission either unconditionally or subject to such conditions as it thinks fit or it may refuse permission. By Section 79 and Schedule 6 the Secretary of State or an Inspector on appeal may deal with the application as if it had been made to him in the first instance. Those provisions have also remained in substantially the same form since the 1947 Act (1947 Sections 14(1) and 16(2)).

Section 72(1) provides:

> "Without prejudice to the generality of Section 70(1), conditions may be imposed on the grant of planning permission under that section ... (b) for requiring the removal of any building or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of the specified period, and the carrying out of any works required for the reinstatement of land at the end of that period."

Article 22 of the General Development Procedure Order 1995 requires that a decision notice shall "state clearly and precisely the full reasons ... for any condition imposed ...". Section 78 (1)(a) provides a right of appeal where the Planning Authority "refuse an application or grant it subject to conditions".

I note that, in contrast to the power granted in respect of the grant of planning permission by Development Order (which expressly includes the imposition of limitations) and the provisions specifically providing for the imposition of and appeal against conditions, there is no express power to impose limitations on the grant of planning permission on an application.

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Section 57(2) provides:

"Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted".

Section 72(2) provides:

"A planning permission granted subject to such a condition as mentioned in sub-section (1)(b) is in this Act referred to as "Planning permission granted for a limited period"."

Section 72(1)(b) (to which I have referred above) provides for the imposition of a condition requiring the removal of buildings or works for the discontinuance of use of land at the end of a specified period. The definition does not, therefore, include the imposition of a time limit by limitation. In contrast, Section 57(3) provides:

"Where by a Development Order planning permission to develop land has been granted subject to limitations, planning permission is not required for the use of that land which (apart from its use in accordance with that permission) is its normal use."

That provision was first introduced by amendment to Section 18 of the 1947 Act by Section 58 of and the Seventh Schedule to the Town and Country Planning Act 1959. I deal with the context of those amendments later in this judgment.

Section 91(1) of the 1990 Act provides for the imposition of a condition requiring commencement of a permission within a specified period. By Section 91(4) "Nothing in this section applies (a) to any planning permission granted by a Development Order ... (c) to any planning permission granted for a limited period ...". Thus the section does not apply to permissions granted by a Development Order, whether subject to a limitation or not, but, by virtue of the definition in Section 72(2) (see above), planning permission granted on an application is excluded if limited to a specific period by condition but not otherwise.

Part VII of the 1990 Act deals with enforcement. Section 171(1) provides, so far as relevant:

"For the purposes of this Act (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control".

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I should briefly deal with the statutory pedigree of this provision. Section 23(1) of the 1947 Act did not refer to the failure to comply with a limitation. In Cater v Essex County Council (1960) 1 QB 424 the Divisional Court held that continuation of a temporary use beyond the 28 day period permitted under what was then Class IV of the General Development Order 1950 did not constitute a breach of planning control under that section. Following that decision, Parliament enacted Section 38 of the Town and Country Planning Act 1959, which provided, so far as relevant:

> "(1) Where by Development Order (whether made before or after the commencement of this Act) permission is granted for any development subject to limitations specified in the Order, Sections 23 and 24 of the Act of 1947 (which relate to the enforcement of planning control) shall, subject to the provisions of this Section, have effect in relation to any non-compliance with those limitations as they have effect in relation to non-compliance with any condition subject to which permission is granted for any development.
>
> (2) For the purposes of this Section and of the Act of 1947, any provision of a Development Order (whether made before or after the commencement of this Act) whereby permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of references to limitations in this Section or in that Act) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that permission on more than that number of days in that period."

Section 58 of and Schedule 7 to the 1959 Act made amendments to the 1947 Act (described in the side note as "minor and consequential amendments and repeals"). The amendments included the addition of sub-section 6 to Section 18 of the 1947 Act, to which I have referred above, and the addition of "or limitation (s)" after the references to "condition(s)", where appropriate, in Sections 23 and 24 of the 1947 Act.

The Town and Country Planning Act 1962 consolidated the earlier planning enactments. Section 45 provided, so far as relevant:

> "(1) Where it appears to the Local Planning Authority (a) that any development of land has been carried out without the grant of planning permission required in that behalf in accordance with Part III of this Act, or (b) that any conditions or limitations subject to which planning permission was granted have not been complied with, then ... the Local Planning Authority .... may ... serve a notice under this Section (in this Act referred to as an "Enforcement Notice")."

That provision was in substantially the same form as Section 23(1) of the 1947 Act as amended by Section 58 of and the Seventh Schedule to the 1959 Act. The relevant part is now found in Section 171A(1) of the 1990 Act, to which

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I have referred above. Section 38 of the 1959 Act was not re-enacted.

Section 177(1) of the 1990 Act deals with the powers of the Secretary of State on appeal from an Enforcement Notice, which include: "(b) The discharge of any condition or limitation subject to which planning permission was granted". That provision derived from the more detailed provisions for enforcement introduced in the Town and Country Planning Act 1968 (see 1968 Section 16(5)). Section 187A of the 1990 Act (introduced by the Planning and Compensation Act 1991) provides for breach of condition notices. By Section 187A(13)(a) condition is defined to include limitation. Provision is made for certificates of lawful use under Section 191 (as amended pursuant to the 1991 Act), which refers to breach of limitations as well as conditions. In its unamended form, Section 191 provided for established use certificates also by reference to limitations as well as conditions. That provision itself derived from the 1968 Act.

Thus, taken as a whole, the enforcement related provisions, now found in Part VII of the 1990 Act refer to the breach of both conditions and limitations, but they have only done so since the 1959 Act. Whilst Section 38 of the 1959 Act was not re-enacted, the amendments then made to Sections 18 and 23 of the 1947 Act have been carried through and re-enacted in subsequent legislation.

Submissions

Mr Brown submits that the 1990 Act does not provide for the grant of planning permission subject to limitations otherwise than by a Development Order. He draws attention to Sections 70(2) and 72(1), which make express provision for conditions limiting the period of a permission but do not refer to the imposition of limitations. That is consistent, he says, with Section 57(2) of the Act, which only applies to a permission defined in Section 72(2), that is subject to a condition. Those provisions are in contrast to Section 60 of the Act, which expressly provides for planning permission to be granted by a Development Order subject to conditions or limitations. They are all themselves consistent with Section 91 of the Act, which excludes permission granted by Development Order (whether or not subject to limitation) and by a "planning permission granted for a limited period", as defined in Section 72(2). Thus, he submits, there is nothing in Part III of the 1990 Act to suggest that a limitation can be imposed on the grant of planning permission on an application otherwise than by condition. The definition of breach of planning control in Section 171A(1) of the Act is itself consistent with those provisions. That provision should be considered in the light of its statutory history as set out earlier in this judgment. The reference to

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limitation, he submits, was clearly intended to ensure that limitations imposed by Development Order could be the subject of enforcement under the Act. There is no ground for any further inference as to a more general power. He further submits that development for the purposes of the Act, so far as relevant, consists of a change of use, that is the change from one use or non-use to another use. Thus, once the change has taken place, development as defined would not be involved in the continuance of the same use. Accordingly, in the absence of a condition requiring discontinuance of the use, continuation of the use would not constitute development or a breach of planning control for the purposes of the Act.

Mr Rubinder Singh, who appears for the First Respondent, submits that it is plain that the 1995 planning permission was for a limited period. The Inspector could only grant planning permission for what had been applied for, that was in the present case a temporary permission. Thus, he submits, the change of use permitted was to a use for that limited period. Use beyond seven years was not permitted. Limitation should not be given any technical meaning in this context. Section 45 of the 1962 Act was deliberately cast in wider terms in that Section 38 of the 1959 Act was not re-enacted. There is no definition of limitation in the Act and, accordingly, no ground for restricting its meaning so as to exclude a limitation placed on the development permitted, as in the present case. Limitation was well able to be enforced under Part VII of the 1990 Act, having regard to the definition of breach of development control in Section 171A.

Decision

There are two fundamental questions to be addressed in determining the effect of the permission in the present case, namely:

(1) Should a power be implied to impose limitations on permission granted otherwise than by a Development Order; and

(2) What is the effect of a use permitted on an application expressed to be for a limited period.

I will deal with these in turn.

Implied Power?

Planning control, including the grant of planning permission and enforcement, is a creature of statute. The powers of planning authorities and the Secretary of State on appeal are limited to those granted by statute, including those

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by necessary implication. The 1990 Act does not expressly provide a power for the imposition of limitations on the grant of planning permission pursuant to an application. The argument for necessary implication of that power relies upon the reference to breach of condition or limitation in the context of the enforcement related provisions, supported by the absence of any re-enactment of Section 38 of the 1959 Act. In my judgment, the references in the enforcement related provisions to breach of limitation as well as condition is equally consistent with a reference to limitations expressly authorised as part of the power to grant permission by Development Order. That does not to my mind necessarily imply that the Planning Authority or the Secretary of State has a statutory power to impose limitations on permissions granted on an application that would be amenable to enforcement under the Act. In enacting the 1959 Act, Parliament considered it appropriate to make express provision in Section 38 in respect of limitations imposed pursuant to a Development Order in addition to making amendments to the relevant sections of the 1947 Act. Section 38(1) and (2) of the 1959 Act provided that limitations imposed by a Development Order and specifically the limitation on the number of days for temporary use could be enforced under the 1947 Act. It is apparent that the amendments in the Seventh Schedule to Sections 18, 23 and 24 of the 1947 Act were intended to carry through that statutory objective. In my judgment, there was nothing in the 1959 Act that justified an implication that the Planning Authority or the Secretary of State had power to impose limitations on the grant of permission pursuant to an application that would be enforceable in a similar manner to limitations imposed under a Development Order. The amendments were re-enacted in the 1962 Act, albeit without re-enactment of Section 38 of the 1959 Act. The 1962 Act is described as a consolidating Act. The omission of Section 38 of the 1959 Act does not in my judgment provide ground for inferring that the definition of breach of planning control, which was introduced by the 1959 Act by way of amendment to the 1947 Act to include limitations on permission granted by a Development Order, should be construed as conferring a more general power to impose limitations on planning permission granted pursuant to applications under the Act. The framework of what is now the 1990 Act, including the provisions which I have set out above, strongly indicates to the contrary. That would include (1) the provisions expressly dealing with the imposition of conditions (ss 70(1) and 72(1)), (2) the absence of any express right to appeal against a limitation imposed pursuant to an application for permission (s 78(1)(a)), (3) the provisions for the resumption of normal use (s 57(2)(3)) and (4) exceptions to the requirement for commencement conditions (s 91(4)). I accordingly reject Mr Singh's submission that there is an implied power for the Planning Authority or the Secretary of State to impose on a permission granted pursuant to an application limitations capable of enforcement under the Act. In my judgment, the reference to limitations in Part VII of the Act is a reference to limitations imposed under a Development Order, for which provision is expressly made under the Act.

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Use for a Limited Period

Mr Singh's alternative submission is that the use permitted by this permission was not simply use for sales, exhibitions and leisure activities but was use for "sales, exhibitions and leisure activities for a temporary period of seven years". In other words, the use itself should be seen as a use limited for that period. I have doubt whether the character of a use for the purpose of Section 55(1) of the 1990 Act can properly include without more whether the use was temporary or permanent. Change of use is from one use or non-use to another use and should be considered in terms of the character of the use of the land. Materiality for the purposes of Section 55(1) should be judged as a matter of degree on a comparison between the use before and after the change. I do not consider that generally the character of a use would alter whether it was to last for one year or seven years or was permanent. In most cases the use of the land on each basis would be for planning purposes identical. That seems to me consistent with the Divisional Court decision in Cater v. Essex County Council (supra), where a similar argument was rejected by Lord Parker CJ at pages 437/438. That conclusion is reinforced in my mind by considering the position as to enforcement at the end of the seven year period. I remain unpersuaded by the submission made by Mr Singh that the continuance of the use beyond seven years would in itself constitute a material change of use. It is at least partly for that reason that the Act provides under Section 72(1)(b) for a condition requiring the discontinuance of use at the end of the period.

In the present case, the relevant application was for a temporary period, thus effectively volunteering a condition in accordance with what is now paragraph 110 of the annex to Circular 11/95. The imposition of a temporary condition was plainly open to the 1995 Inspector. His failure to impose such a condition might well have been open to criticism. His decision, however, became immune from challenge after six weeks by virtue of Section 284 of the 1990 Act. That does not provide grounds for implying a condition to that effect in what is a public document, conferring rights in connection with the use of land. In my judgment, accordingly, the permission as granted became effectively a permanent permission.

Thus, on the main issue in this application I accept Mr Brown's submission that the 1995 permission permitted change of use of the appeal buildings to sales, exhibition and leisure activities and did not impose any limit on the period for that use would be subject to enforcement under Part VII of the 1990 Act. Accordingly, the issue as to the effect of the permission raised in the representations on the subsequent appeal should, if it was material to the

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Inspector's decision, have been resolved in the Applicant's favour.

Materiality

Mr Singh submits that, properly understood, this Inspector found it unnecessary to decide whether the 1995 permission was temporary or permanent. The Inspector concluded, he submits, that on either basis Government policy in PPG6 as to the sequential approach was paramount and the appeal should be dismissed. In particular he relies upon paragraph 40 of the decision letter, where the Inspector stated:

> "I have carefully considered the weight which should be attached to the planning history of this site, particularly in relation to the planning permissions which have been granted. I agree with you that some significant weight should be applied to these considerations, but, even allowing for that, I believe that the importance of implementing contemporary Government policy in relation to development of this type and the sequential approach, notwithstanding the other considerations, to be paramount in this case. For these reasons this appeal must fail."

In that paragraph, Mr Singh submits, the Inspector agreed in terms with the Applicant that "some significant weight" should be attached to the planning permission that had been granted in 1995. However, the Inspector went on to conclude that the sequential policy approach was "notwithstanding the other considerations" paramount. The weight to be attached to those considerations was entirely for the Inspector. He plainly concluded, Mr Singh submits, that, whether the permission was permanent or temporary, the appeal should be dismissed.

That submission by Mr Singh must be seen in the context of the decision letter as a whole. At paragraph 21, as I have set out above, the Inspector stated that "It is not for me to reach a conclusion as a matter of law as to whether or not the (1995) consent is of a temporary or permanent nature." As Mr Brown submits, the nature of the permission was in issue between the parties. It was plainly of potential relevance to a decision on the appeal and accordingly an issue to be determined by the Inspector in so far as it became material to his decision, even if it was to an extent a matter of law.

In paragraph 23 the Inspector continued:

> "I will take full account of the planning history of the appeal site, including the terms of the relevant appeal decisions and the reasons for them. I will not, however, look behind the status of the 1995 decision other than to note the terms of the planning permission granted. The appeal before me is for the permanent use of the site in the manner proposed and I shall consider that development on its merits, having regard to the matters I have identified above."

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The sense of the comment "I will not ... look behind the status of the 1995 decision other than to note the terms of the planning permission granted" is obscure, but it is, in my judgment, at least consistent with a conclusion by the Inspector that he would take account of the 1995 decision "in the terms" in which it was granted, i.e. as a permission for seven years, in contrast to the permanent use sought in the appeal before him. That approach would be in conflict with what I have concluded earlier in this judgment to be the true position in law, namely that the planning permission as granted was not subject to an enforceable limitation restricting it to seven years but was in effect permanent.

At paragraph 36 the Inspector continued:

> "I am very conscious of the fact that planning permission has been granted on the appeal site for the development you wish to implement. I have already stated that I do not regard it as part of my function now to express an opinion as to the validity of that consent in terms of its temporary/permanent nature and that matter is not before me."

That passage again seems to me to demonstrate that this Inspector had concluded that it was no part of his statutory function to resolve the issue as to the status of the permission before him. I have already indicated earlier in this judgment that the status of the permission was potentially relevant and thus, potentially, a matter for the Inspector to resolve.

He continued in the same paragraph:

> "Whatever the terms of that permission, it was granted before the publication of PPG6 (revised) and the development proposed was not assessed in relation to the sequential approach."

The earlier grant of planning permission may be material to a subsequent decision having regard to the desirability of consistency in decisions made in respect of the same development and on similar facts (North Wiltshire District Council v. The Secretary of State for the Environment (1993) 65 PCR 137). That is a different consideration from what is known as the fall-back position, i.e. the use to which land may be put even if permission is refused on the instant application (Spackman v. The Secretary of State for the Environment (1977) 1 All ER 257; Brentwood Borough Council v. The Secretary of State for the Environment (1996) 72 PCR 561). In my judgment, on a fair reading of this part of the decision letter, the Inspector was there considering the earlier appeal decision on the former basis, that is having regard to the desirability that his decision was consistent with the earlier decisions. He

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does not appear, at least in this paragraph, to have considered the fall-back position or its implication if the 1995 permission was in effect permanent. That is consistent with paragraph 38 of the decision letter, where the Inspector stated:

> "Despite what you say on this issue I consider that the publication of PPG6 (revised) is a material consideration in this appeal which distinguishes it (in policy terms) from those decided previously in 1994 and 1995."

In paragraph 39 the Inspector concluded that the proposed development would be in breach of the sequential approach in PPG 6 and that the appeal must fail unless other material considerations outweighed that finding.

The Inspector then went on in paragraph 40 (set out above) to agree that "some significant weight" should be attached to the planning permissions that had been granted, but to conclude that the importance of implementing the sequential approach was paramount. In the context of the decision letter as a whole, it is at that point far from clear on what basis the Inspector was approaching the earlier planning permissions and in particular the 1995 permission. As I have said, he declined to determine the status of the 1995 permission. If it was in effect a permanent permission, the appeal would only have been seeking what would have amounted to a change in the description of the relevant development. That would have been potentially of considerable materiality to the decision and one would expect it to have been specifically addressed in the decision letter. There was, however, no reference to that consideration as part of the Inspector's conclusions. Given the absence of specific mention of that key factor together with the other passages in the decision letter to which I have referred, I am unpersuaded that the Inspector took into account that the effect of the 1995 permission was or even may have been permanent or that he concluded that the sequential approach in PPG 6 should prevail, even if the existing permission was in effect permanent. It seems to me that this Inspector failed to have regard to the position that I have held to be correct as a matter of law, that is that the 1995 permission was in effect a permanent permission for the use of the land for the purposes that were the subject of the subsequent appeal.

Paragraph 43 of the decision of the letter is consistent, in my judgment, with that conclusion, where the Inspector states "I have fully considered all the other matters raised. In particular, I have taken into account the conclusions and decisions of the Inspectors in relation to the previous appeals and, in so far as I have concluded differently to them on the merits of this case, this is due to the substantially revised policy background against which I am considering this matter." I conclude, accordingly, that the Inspector failed to have regard to a material consideration,

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namely that the 1995 permission was in effect permanent, and in so doing erred in law.

Discretion

In my judgment, on the findings I have made, there is no ground for exercising my discretion to refuse the relief claimed.

This application accordingly succeeds and the decision will be quashed.