

Unlawful Use

James Hay Pension Trustees Ltd –v- First Secretary of State [26 October 2006] Court of Appeal

The Message:

A Council document was held not to be a certificate of lawful use and, therefore, could not be used to resist a planning enforcement notice.

The Case:

This case concerned an attempt by James Hay Pension Trustees Ltd (Hay) to rely on a document in order to establish it could lawfully use a site for a particular purpose. The High Court decision was reported in the 6 January 2006 Property Week.

The site in question was part of the former Winterbourne railway booking office and station yard which was closed in 1955. The site had a complicated planning history. In 1965 planning permission was granted to Bristol Avon River Board to change the use of the site to a garage and store for the River Board, with a prohibition on the site's use for any other purpose within Class X of the 1963 Use Classes Order (wholesale warehouse or repository) unless the planning authority consented.

Hay bought the site in 2000 and the site began to be used to carry out servicing of motor vehicles and also as a builder's yard. Following complaints about the site's use, South Gloucestershire County Council (the Council) served an enforcement notice in March 2001, against which Hay appealed. Hay applied for a certificate of lawfulness for an existing use based on the 1965 planning permission. It argued that the permission was not personal to Bristol Avon River Board and, therefore, there was a valid planning consent for the site's use as a garage and storage yard within Use Class B8 (storage or distribution).

Under planning legislation, if a party wishes to ascertain whether a proposed use would be lawful, it can apply to the local planning authority. If the authority is satisfied that the use would be lawful if begun at the time of the application, it will issue a certificate to that effect. The lawfulness of any use for which there is such a certificate is 'conclusively presumed'.

In November 2001, the Council issued a document, the validity of which is at the centre of this case. Under the document described as "Permission for Development", the Council stated that the 1965 permission was not personal to Bristol Avon River Board and that the store and class X use referred to in the permission were now covered by the reference to storage in Class B8.

In May 2004, the Council issued an enforcement notice alleging a breach of planning control through the land being used for vehicle servicing and other uses. The notice required the use to cease within two months.

Hay appealed, arguing that the November 2001 document from the Council was a certificate of lawful use. Planning legislation requires the certificate to be in a particular form or substantially to the same effect. Hay's argument was rejected by the planning inspector because the certificate did not confirm that a proposed use would not require planning permission.

The Court of Appeal agreed with the inspector, overturning the earlier High Court decision. The Council's document could not be read as a certificate of the lawfulness of a proposed use. The certificate was not in the form prescribed by statute. Hay could not, therefore, use it as a basis to resist the enforcement notice.