**All England Reporter - Cases**

**Carespec Ltd v Wolverhampton City Council**

[2016] EWHC 521 (Admin)

Queen's Bench Division, Planning Court (Birmingham)

Coulson J

10 March 2016

Mr Freddy Humphreys (instructed by Ferdinand Kelly, Solicitors) for the Claimant

Mr Timothy Jones (instructed by The Solicitor to the Council) for the Defendant

Hearing date: 10 March 2016

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Approved Judgment

The Hon. Mr Justice Coulson:

1. INTRODUCTION

1. It is a not uncommon failing amongst those who practice in public law to believe that, whatever the factual background, and whatever the legal framework, an application for judicial review is a universal panacea for all perceived ills. This case demonstrates all too plainly the time and costs that can be wasted as a result of such a mistaken belief.

2. Sandon Investments Ltd (“Sandon”) own the Quality Hotel at Tettenhall Road in Wolverhampton. The hotel is operated by the claimant. On 10 November 2015, the defendant served on Sandon a Temporary Stop Notice (“TSN”) alleging a breach of planning control. The alleged breach was described as “Without planning permission, the carrying out of a material change of use from Hotel to a mixed use as a Hotel and Hostel, or to use as a Hostel.” The TSN said that it took effect on 10 November 2015 and expired 28 days later.

3. On 12 November 2015, the claimant issued an application for judicial review of the defendant’s decision to serve the TSN. Five grounds were identified: Grounds 1 and 4 related to planning matters, whilst Grounds 2, 3 and 5 ranged from alleged breaches of Article 8 to alleged breaches of national asylum policy. Importantly, the remedy claimed in the claim form was limited to an “interim injunction”, whilst the Statement of Facts and Grounds also added a reference to an order quashing the TSN.

4. On 13 November 2015, HHJ David Cooke refused the application for interim relief, and thus refused to suspend the operation of the TSN. On 8 December 2015, the same judge granted permission to the claimant to apply for judicial review, limited to Grounds 1 and 4 only (the planning grounds).

5. Despite the fact that that the only relief claimed by the claimant was an interim injunction, which had been refused by HHJ Cooke on 13 November 2015, or an order quashing the TSN, which had itself expired in early December 2015, the claimant has continued with this judicial review application. It has taken up the lion’s share of today’s court time.

2. THE RELEVANT FACTUAL BACKGROUND

6. On 22 October 2015, the defendant wrote to and emailed Sandon to say that they understood that G4S were transporting 100 or so asylum seekers from London to Wolverhampton and that those asylum seekers were to reside at the Quality Hotel whilst their asylum applications were processed. The letter went on to warn:

“If you accommodate these asylum seekers upon this basis this would potentially amount to a breach of planning permission and be unlawful. This is because there would be a change of use in respect of your establishment in that its use would change from a hotel to a hostel. It would be necessary for you to apply to the Council for such change of use prior to taking in the asylum seekers.

I must warn you now if you accommodate the asylum seekers before the Council has formally considered and granted any application for change of use, the Council has the power to serve a temporary stop notice upon you and/or an injunction prohibiting you from taking in the asylum seekers and requiring you to remove asylum seekers from your premises.”

The letter enclosed a draft undertaking to be signed and completed by Sandon to the effect that they would not permit any bedrooms in the Quality Hotel to be let to or occupied by any known asylum seeker unless they had applied for and obtained the necessary planning permission.

7. The reply of the following day, 23 October 2015, came from the claimant’s solicitors. The letter was surprisingly aggressive in tone and content. It did not deny any part of the essential allegations made by the defendant. Instead it argued that G4S was no different from any other hotel guest staying at the Quality Hotel. The claimant’s solicitors sought an undertaking from the defendant not to interfere with the claimant’s business and that if no such undertaking was received they said that they would themselves seek an injunction.

8. On the same day, 23 October 2015, the defendant emailed the claimant’s solicitors, enclosing an email that the defendant had received from Birmingham City Council which indicated that “G4S had been offered the Quality Hotel as an exclusive use for a period of one month.” Oddly, the response to that email from the claimant’s solicitors was to complain about the reliance on hearsay evidence. The letter did not deny the making of the offer. But it said:

“For the avoidance of doubt, our client has 60 bedrooms in the hotel. 22 rooms have been booked by G4S. The asylum seekers do not have exclusivity or exclusive use of the Hotel. The council’s reliance on the third party email is massively misplaced. That leaves 38 rooms available to the public to book…G4S, like any other corporate client who block book rooms, will be doing just that, booking some rooms. As mentioned in our previous email, this is a commercial arrangement and it is G4S’ prerogative if they do wish to book any other rooms. This is not in breach of our client’s planning permission.”

The threat of an injunction was repeated.

9. Later on 23 October, the defendant, having undertaken some further research, emailed again to say:

“The Council maintains its position. The Council has made enquiries and G4S maintain they have reserved exclusive use of the Quality Hotel. Even if this is not the case, on your own client’s figures more than 100 people will be occupying the 22 rooms your client cites. Given the number of people occupying each room this, the council, will maintain would be indicative of the Hotel being used as a hostel rather than a hotel.”

A further email from the claimant’s solicitors said that the number of 22 rooms meant 44 asylum seekers, and queried where the figure of 100 came from. The last email on 23 October came from the defendant which confirmed that their information “about the exclusive use and number of people came from the Lead Officer of West Midlands Strategic Migration Partnership”.

10. On 3 November 2015, there was a meeting attended by representatives of the defendant and G4S. The defendant set out its concerns about the effect of the change on the locality if large numbers of asylum seekers were to be accommodated at the Quality Hotel. The discussion was the subject of a subsequent email from Juliet Halstead, the Head of Housing at G4S. She records that Councillor Lawrence raised a number of concerns that were specific to the Quality Hotel and the area in which it was situated. Councillor Lawrence had said that there were other hostels in the area of the Quality Hotel and that the defendant did not feel that it was appropriate to put another group into the mix. It appears that the point was repeatedly made that the particular area where the Quality Hotel was located was not appropriate for asylum seekers.

11. It appears that subsequently, Charlotte Morrison, a Section Leader in the Planning Department of the defendant, met with a member of the Neighbourhood Policing Team responsible for the area in which the Quality Hotel was located. He expressed concern about the number of single males coming into the area and outlined his experience of disorder at other hostels in the immediate area. It appears that the police were very concerned about the impact which these individuals would have on the area and believed that it would exacerbate the existing problems of anti-social behaviour.

12. This evidence from Ms Morrison was contained in a witness statement served only the day before the hearing. It plainly should have been served much earlier. However, I permitted reliance upon it since it was evidence which was within the peculiar knowledge of the defendant and was therefore not information which the claimant could sensibly gainsay.

13. In the meantime, the claimant had not modified its stance in any way. Accordingly, on 10 November 2015, the defendant issued the TSN (paragraph 2 above). Under the heading ‘The Reasons for Issuing This Notice’, the TSN said this:

“The Council considers that planning permission should not be granted for the use as planning conditions cannot overcome the objections of the Council which are as follows:-

(1) The locality has an overly high concentration of Houses in Multiple Occupation and Hostel accommodation which has already led to the areas around the hostels becoming busy with people who are institutionalised and vulnerable. This has an adverse impact on the amenities of the existing hostel residents and the wider population by virtue of a lack of cohesiveness in the local community and an institutionalised and oppressive atmosphere in the local area.

(2) There is already an inherent fear of crime and anti-social behaviour in the locality. The development will elevate this fear of crime and anti-social behaviour to an unacceptable level resulting in an adverse impact on the local community.”

On the face of it, therefore, these paragraphs of the TSN reflected what Ms Morrison said she was told by the member of the Neighbourhood Policing Team.

3. THE LEGAL FRAMEWORK

3.1Planning Use

14. Under the *Town and Country Planning (Use Classes) Order,* hotels are within use-class C1. Article 3(1) of the Order provides:

“(1) Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class will not be taken to involve development of the land.”

Article 3(6) introduces the exceptions. It provides that “no class specified in the Schedule includes use … (i) as a hostel.”

15. Excluding use as a hostel from use-class C1 was the result of an express amendment introduced by the *Town and Country Planning (Use Classes)(Amendment) Order* 1994, Article 2(1). Other uses excluded by Article 3(6) include amusement arcades, scrap yards, waste disposal installations and nightclubs.

3.2 Hostels

16. In *Commercial and Residential Property Development Ltd v Secretary of State for the Environment* [1982] JPL 513, Glidewell J (as he then was) identified key features of a hostel as:

“But in modern English usage, it meant a building in which people either lived or stayed which provided communal facilities. The sleeping accommodation was often, although not always, in dormitories rather than single rooms and provided shared cooking, eating and recreational facilities. It was of the essence of a hostel that its accommodation was relatively basic and inexpensive, but in any sense the word was not a term of art in relation to the duration of the stay.”

17. In *Panayi v Secretary of State for the Environment and Another* [1985] 50 P&CR 109, the inspector had identified a whole series of reasons as to why the premises in questions were a hostel. These included the fact that they were being used to accommodate homeless families referred by local authorities, and that payment for their stay was being made by the local authority. The families sometimes remained for long periods but they were transient in the sense that they awaited permanent re-housing elsewhere and their stay may be terminated on 24 hours’ notice. Kennedy J considered that it was open to the inspector, on this basis, to conclude that the building was a hostel.

3.3 Temporary Stop Notices

18. Temporary Stop Notices were introduced by the *Planning and Compulsory Purchase Act 2004*. Part 4, Sections 171E and 171H are in the following terms:

“171E. Temporary stop notice

(1) This section applies if the local planning authority think–

(a) that there has been a breach of planning control in relation to any land, and

(b) that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.

(2) The authority may issue a temporary stop notice.

(3) The notice must be in writing and must–

(a) specify the activity which the authority think amounts to the breach;

(b) prohibit the carrying on of the activity (or of so much of the activity as is specified in the notice);

(c) set out the authority's reasons for issuing the notice.

(4) A temporary stop notice may be served on any of the following–

(a) the person who the authority think is carrying on the activity;

(b) a person who the authority think is an occupier of the land;

(c) a person who the authority think has an interest in the land.

(5) The authority must display on the land–

(a) a copy of the notice;

(b) a statement of the effect of the notice and of section 171G.

(6) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of subsection (5).

(7) A temporary stop notice ceases to have effect–

(a) at the end of the period of 28 days starting on the day the copy notice is so displayed,

(b) at the end of such shorter period starting on that day as is specified in the notice, or

(c) if it is withdrawn by the local planning authority.

…

171H. Temporary stop notice: compensation

(1) This section applies if and only if a temporary stop notice is issued and at least one of the following paragraphs applies–

(a) the activity which is specified in the notice is authorised by planning permission or a development order or local development order;

(b) a certificate in respect of the activity is issued under section 191 or granted under that section by virtue of section 195;

(c) the authority withdraws the notice.

(2) Subsection (1)(a) does not apply if the planning permission is granted on or after the date on which a copy of the notice is first displayed as mentioned in section 171E(6).

(3) Subsection (1)(c) does not apply if the notice is withdrawn following the grant of planning permission as mentioned in subsection (2).

(4) A person who at the time the notice is served has an interest in the land to which the notice relates is entitled to be compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition effected by the notice.

(5) Subsections (3) to (7) of section 186 apply to compensation payable under this section as they apply to compensation payable under that section; and for that purpose references in those subsections to a stop notice must be taken to be references to a temporary stop notice.”

4. THE MISCONCEIVED NATURE OF THESE PROCEEDINGS

4.1Other Remedies

19. On behalf of the defendant, Mr Jones argued that, if the claimant’s case was correct, it would have the following alternative remedies:

(a) To seek compensation as expressly provided for in Section 171H, set out above;

(b) To apply for planning permission for use as a hostel or mixed use as hostel and hotel under Section 62 of the 1990 Act; and/or

(c) To apply for a certificate of lawfulness of existing use or development under Section 191 of the 1990 Act. This would reflect the claimant’s case that housing asylum-seekers in the Quality Hotel was lawful.

Mr Jones said that, because of the existence of these alternative remedies, the judicial review proceedings were misconceived.

20. In response, Mr Humphreys noted the compensation procedure in 171H, but argued that this did not provide any means by which the claimant could actually challenge the decision to issue the TSN in the first place. He maintained that, because Stop Notices have been the subject of judicial review (see *R v Elmbridge Borough Council ex parte Wendy Fair Markets Ltd* [1989] EGCS 159) there should be no different rule for Temporary Stop Notices. He also argued that, although enforcement notices are the subject of a detailed appeals process in the 1990 Act, they are also amenable to judicial review (see for example *R (Gazelle Properties Ltd) v Bath and North East Somerset Council* [2011] JPL 702).

21. I note that no authority was provided by Mr Humphreys to support the proposition that the Temporary Stop Notice procedure was itself susceptible to judicial review1. I consider that there is considerable force in the argument that the temporary nature of the process was designed for urgent situations only, and was therefore not designed to be susceptible to judicial review proceedings. However, for present purposes, I am prepared to accept that there may be circumstances in which judicial review of Temporary Stop Notices could be appropriate. The question then becomes: was it appropriate here? The answer is plainly No.

22. In my view, these judicial review proceedings were misconceived because all three of the alternative remedies noted in paragraph 19 above were plainly available to the claimant. One or more of them was of much greater practical value to the claimant than these proceedings. Further and in any event, I consider that judicial review is wholly inappropriate in a case, such as this, where the TSN has itself expired. I deal with that point in greater detail in Section 4.2 below.

4.2The Expiry of the TSN

23. Let us assume that the temporary stop notice procedure is susceptible to judicial review. If it were, it would be axiomatic that, for the judicial review to have any applicability whatsoever, the TSN in question must still be in force. It may be possible to think of circumstances in which some form of interim relief by way of a judicial review application may be appropriate, but only if there was an urgent need to strike down the TSN well within the 28 days.

24. But that is not this case. The application for an interim remedy was refused by Judge Cooke. The TSN has now expired. The remedies outlined at paragraph 19 above may be available, but judicial review plainly is not. On that basis too, I consider that these proceedings are now misconceived.

25. Mr Humphreys appeared to recognise these difficulties because, at the hearing in front of Judge Cooke, he said that unless interim relief was granted, the challenge to the TSN “becomes meaningless”. That point finds an echo in paragraph 21 of his skeleton argument for this hearing, in which he says that the quashing of the TSN was no longer of any utility because it had already expired. In consequence, he said that the claimant now sought “a declaration that the defendant acted unlawfully in issuing the TSN”.

26. In my view, this amounts to a last-minute application fundamentally to amend the judicial review claim, to seek relief/remedy which formed no part of the original application. Although Mr Humphreys denied it, this all appears to be driven solely by the question of costs. I decline to grant the necessary permission because the application is so late and the proceedings have no utility anyway. On that basis too, these proceedings must be dismissed. However, in case I am wrong not to grant permission to amend, or wrong about the alternative remedies, I go on to consider the lawfulness of the TSN in the present case.

5. THE LAWFULNESS OF THE TSN

27. The attack on the TSN in the present case is a rationality attack on straightforward *Wednesbury* grounds. It is the claimant’s case that, in all the circumstances, the defendant acted irrationally in concluding that there had been or was going to be a breach of planning control. For the reasons set out below, I reject that submission. The circumstances in this case come nowhere near the sort of situation required to demonstrate irrationality.

28. The use of a building as a hostel, either in whole or in part, requires express planning permission: paragraphs 14 and 15 above. This is because of the perceived damage that the use of a building as a hostel might do to the locality. That is why it is equated with, amongst other things, scrapyards and amusement arcades. The defendant, as the relevant local council, was obliged to ensure that this aspect of planning control was properly adhered to. If there was any risk that it would not be, then in my view the defendant was entitled to consider the use of the Temporary Stop Notice procedure.

29. As to the TSN in the present case, much has been made by the claimant of the particular numbers of asylum seekers who might have used the Quality Hotel. It does not seem to me that the test as to whether a building was or was not being used as a hostel should turn on precise numbers. It would be wrong in law to say that, for example, 10 asylum seekers did not make the building a hostel, in whole or in part, but 30 asylum seekers did make it a hostel.

30. In my view, what matters is whether there was or was likely to be significant or substantial usage of the Quality Hotel as a hostel. The defendant clearly had information from one source that all the rooms were going to be used by asylum seekers. Even on the claimant’s alternative numbers, something like 40% of the rooms were going to be used for asylum seekers with 44 present at any one time. I find that that was a significant and substantial usage.

31. There was also some debate about the structure of the building and the fact that there were not large dormitories of the type envisaged in *Commercial and Residential Property*. But it seems to me that that is a complete red herring. This was a hotel with a large number of single or double rooms. It would never have been expected that the claimant would have made structural alterations to the building simply to accommodate the relevant number of asylum seekers.

32. Applying the guidance in the two authorities referred to in Section 3.2 above, I consider that the following factors provided reasonable grounds for the defendant to conclude that the Quality Hotel was being used, in whole or in significant part, as a hostel:

(a) There was going to be a significant and substantial usage by asylum seekers, who are conventionally housed in hostels;

(b) They would be sleeping two to a room, despite the fact that they were strangers, something that would not be countenanced in a hotel;

(c) They would reside there permanently, unlike people staying in a hotel;

(d) The Quality Hotel would be their home, because they would have no other home to go to. That is entirely different to guests at hotels;

(e) The charges were modest (£35 per day for bed, breakfast, lunch and an evening meal) which again was consistent with a hostel, not a hotel;

(f) Payments were made by G4S as agents of a public body, an express indication of a hostel noted in *Panayi*;

(g) Those accommodated at the Quality Hotel were transient, in that they were placed there until other accommodation became available or their asylum application was resolved against them. Again that is not consistent with the use of the building as a hotel.

(h) They had no connection or link with the area at all.

33. On that basis, I conclude that the defendant was entitled to think that the proposed use of the Quality Hotel to house a significant number of asylum seekers in this way did involve a change of use, at least in part, from a hotel to a hostel. That proposed change of use required planning permission. In those circumstances, the TSN itself cannot be described as invalid or unlawful. There can be no rationality challenge.

6. THE NEED FOR IMMEDIATE ACTION

34. Mr Humphreys’ second point was that, even if the TSN itself was lawful, the defendant had not demonstrated that there was an immediate need for urgent action; that it was expedient to issue the TSN. Accordingly, he said that, on this basis too, the decision to issue the TSN was irrational.

35. This is obviously an even more difficult argument than the one dealt with in Section 5 above. If the TSN was not itself irrational in principle, then it is difficult to see in what circumstances it might be said that it was irrational to conclude that the situation was urgent and required immediate action.

36. Mr Humphreys’ particular point was that there did not seem to have been any assessment by the defendant as to the potential problems caused by the housing of asylum seekers. He said that, in essence, the defendant was saying no more than that it was expedient to issue the order because those potentially to be housed at the Quality Hotel were asylum seekers. He said it was irrational to conclude that, just because they were asylum seekers, they would cause crime.

37. In my view, that is not a fair summary of the defendant’s position. I have dealt above with the meeting that Ms Morrison had. I have also set out Councillor Lawrence’s concerns at the meeting with G4S on 3 November 2015. It is plain that these were genuine concerns about the number of other hostels in the locality of the Quality Hotel, and the potential problems that might arise if significant numbers of asylum seekers were housed there too. In my view those matters could reasonably be regarded as requiring urgent action.

38. What is more, as noted in paragraph 13 above, those matters were set out in the Temporary Stop Notice. There can therefore have been no doubt about them. I reject Mr Humphreys’ submission that, in some way, further particulars or details were required.

39. There is one final point. Even if the information available to the defendant could be regarded as more nuanced than I have summarised at paragraph 32 above, or even if the need to act was not so clear-cut, the benefit of the doubt must rest with the defendant. That is not only for standard public law reasons. Section 171E, set out at paragraph 18 above, makes plain that the Temporary Stop Notice procedure is activated if the local planning authority “think…that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.”

40. In my judgment, Mr Jones was right to say that this gives a planning authority in the position of the defendant a relatively wide latitude. Provided there was sufficient information to justify the thought that, in all the circumstances, it was expedient to use the Temporary Stop Notice process, then that is sufficient to justify the decision. Later information which was not reasonably available to the defendant cannot be relevant to any consideration of rationality.

41. Accordingly, for these reasons, the separate argument as to expediency must also fail.