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Winter 2024



Richard Wald KC



Jake Thorold

Asylum Accommodation and Planning



39 Essex Chambers
#39Events



Hotels

- Gov began using at scale in summer 2022
- A number of local planning authorities sought planning injunctions under section 187B Town and Country Planning Act 1990
- Argument was that use of hotels for asylum seeker accommodation constituted material change of use requiring planning permission
- Councils initially successful on ex parte urgent interim injunction applications
- Typically unsuccessful at return hearings – SSHD argued that acute need for asylum seeker accommodation outweighed planning concerns in *American Cyanamid* balance



BUT... *Great Yarmouth v Al-Abdin & Ors*

- Great Yarmouth Borough Council successful in obtaining final injunction
- SSHD attempting to use hotel in seafront area specifically protected for tourism use in Local Plan
- Able to produce good evidence re: importance of tourism to local economy
- Also existing enforcement notice in place for the hotel in question
- Mr Justice Holgate persuaded that in these particular circumstances a final injunction was appropriate – covering the entirety of the seafront area protected in Local Plan



RAF Airbases

- SSHD announced plans to use two ex-RAF bases as so-called Pathfinder Sites for asylum seeker accommodation
- Local planning authority sought judicial review in respect of RAF Scampton – WWII history and £300m redevelopment plans
- SSHD sought to rely on emergency planning powers permitting 12 months' use
- LPA argued: (1) not an “emergency”; (2) inadequate environmental assessment (3) failure to comply with Public Sector Equality Duty
- Mrs Justice Thornton dismissed the claim but granted with permission to appeal on all grounds
- Special Development Order to achieve permission beyond 12 months expected imminently



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Bibby Stockholm

- SSHD announced intention to accommodate asylum seekers on a floating barge
- LPA considered potential grounds of challenge and took the view that the barge fell outside of its planning jurisdiction since it related to the “sea” as distinct to “land” and planning controls ends at the ‘mean low water mark’
- LPA now being judicially reviewed by local resident on basis that harbours and bays do come within planning jurisdiction
- Awaiting permission judgment after 2.5 day hearing before Holgate J last week



What's next?



Conclusions

- Good example of 'law as toolbox' – motivations behind action are plainly not only planning (i.e. RAF Scampton concern about loss of £300m redevelopment), but planning has proved an effective way to challenge SSHD's plans
- Striking assertiveness of local councils – big thing to challenge central gov, especially for Conservative-led Councils. But definite sense of strength in numbers and united sense of frustration at SSHD's approach
- JR(s) can be a long game. In the course of these, there have been numerous changes in political circumstances which bear upon the SSHD's proposed solutions to the asylum seeker accommodation and opposition to them.

richard.wald@39essex.com

jake.thorold@39essex.com

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