

Planning law spotlight – Conflict of statutory regimes

Alan Cartledge v Scottish Ministers [2010] CSOH 46.

In 1972, Mr Cartledge was given permission to develop an 8.75 acre site into a holiday caravan park. A plan attached to the permission and to which explicit mention was made showed the site divided up into four areas with boxes marked on areas 1 to 3 depicting a total of 64 caravan stances. Area 4 showed no such stances and the legend for it indicated that the area was for “mixed trees and undergrowth.” On the same day as the grant of planning permission, a licence was issued under the Caravan Sites and Control of Development Act 1960 which permitted the stationing of not more than 30 static holiday caravans and 30 towing caravans on the site. Similar licences were issued to subsequent owners of the site except that by the year 2000, when the appellant operated it, the licence stipulated a maximum of 64 caravans to be stationed on the site at any one time. The appellant then approached the local authority in order to obtain a new site licence to cover an increase in the number of units on the site. He was told by the local authority that he had no planning permission to do so and that therefore a fresh planning permission was required. Rather than go down that route, he applied for a Certificate of Lawful Use or Development which was duly issued by the planning authority but which also contained a restriction limiting the number of units on the site to 64, even although that number had not been stated in terms in the body of the planning permission itself. Mr Cartledge appealed against the Certificate and the matter was considered by a planning reporter who upheld its validity, finding that there was no indication that area 4 would be used for the siting of caravans, whereas there was clear information on the plan that areas 1 to 3 would be so used. The appellant further appealed to the Court of Session where it was argued by the Scottish Ministers that where a planning permission expressly incorporates a plan, the plan becomes part of the permission and it is necessary to have regard to it when construing the permission. It was a matter of agreement that a planning permission could validly contain a restriction on the number of vans which could be situated on the site. It was equally agreed that if the planning permission contained a restriction to a particular number of caravans, then a licence could not be granted for a number in excess of that. However, it would be competent to include a restriction to a number below the number in the planning permission within the licence granted subsequent to that. So, to that extent, the

conflict between the planning regime and the licensing regime was easily resolved. What the Court determined however, was that in the absence of a specific limitation being contained within the planning permission itself, the precise numbers of vans to be permitted on site fell to be governed by the site licence and not by the planning permission. The Court found that if there are to be conditions limiting the grant of planning permission, they should be clearly stated and precise and should not be left effectively to be determined by implication. Had the planning permission been explicit regarding the maximum number of caravans to be permitted on the site, then that would have been the end of the matter. However, the appellant was in the event left with an open ended permission in respect of the entire 8.75 acres of the site. At first glance, this might appear to be a case restricted in scope to the operation of caravan sites. Nonetheless it contains an important point of principle regarding the requirements for the valid limitation of planning permissions by way of condition. Further, it highlights the difficulties which may arise when a particular development is governed by more than one statutory regime – as frequently happens.