IN THE HIGH COURT OF JUSTICE **CO/3499/2021**
QUEENS BENCH DIVISION
ADMINISTRATIVE COURT (PLANNING COURT)
BETWEEN

R (PIERS ALASTAIR CARLOS MONCKTON and SOMERFORD HOME FARM PARTNERSHIP)

Claimant

and
STAFFORDSHIRE COUNTY COUNCIL

Defendant

and
MARTIN REAY

Interested Party

CLAIMANTS' DRAFT SUPPLEMENTARY SKELETON ARGUMENT

for hearing on 1-3 November 2022

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1. This supplementary skeleton argument addresses the implications of section 16(1)(b)-(c) of the Interpretation Act 1978 (**"the IA 1978**") for the arguments raised at paragraphs 7.3 to 7.6 of the Council's skeleton argument.

2. The Claimants' contention under Ground F1 is that the declaration of non-existence of public rights[1] made[2] by the Quarter Sessions on 5/11/1965 was conclusive and was not subject either to the review provisions of section 33(2)(e) of the 1949 Act or section 53(3)(c)(i) of the 1981 Act. In response, the Council submits[3] in terms that:

[1] As at the relevant date (24/05/1954) over, inter alia the section of the claimed path between points **C** and **P1**.
[2] It is common ground between the parties that there must have been a negative declaration as alleged by the Claimants: **SCG** paragraph 15.
[3] At paragraphs 7.11-7.13, the Council's skeleton also addresses an argument not made by the Claimants and argues against the idea that the doctrine of issue estoppel prevents the Council from reconsidering issues addressed bv the proceedings leading to the declaration. To be clear, the Claimants place no reliance on that doctrine. The Claimants case is put squarely on the basis of a true construction of the effect of the 1949 Act and of subsection 31(8) in particular.

(1) On a true construction of the 1949 Act, the "conclusive" effect of a declaration under subsection 31(3) was subject to the power/obligation to modify the DMS upon review under section 33: Council's skeleton argument at paragraph 7.3[4] and 7.5[5]; and

(2) Even if subsection 31(8) of the 1949 Act had that effect, it has been repealed, and it follows from the scheme of the 1981 Act that it is a comprehensive self-contained code and "*in the case of applications to modify the DMS made after 28/02/1983*[6]*, declarations made under s.31(8)* (sic) *of the 1949 Act do not operate to override the strict application of the provisions of the 1981 Act"*: Council's skeleton argument at 7.6 and last sentence of 7.5.

3. The Claimants address the true construction of Part IV of the 1949 Act at paragraphs 66 to 75 of their skeleton argument. In accordance with normal principles of statutory interpretation, that is the primary context within which the meaning of subsection 31(8) falls to be determined. That context not only reveals that a truly "conclusive" effect for declarations by the court of Quarter Sessions did no violence to the wider scheme of the 1949 Act but was consistent with it and the evident policy behind the express provision in that subsection[7].

4. The Claimants also addressed the implications of the 1981 Act, albeit briefly, submitting it did not materially change the previous system of review and did nothing to interfere with the continuing conclusive effect of declarations of non-existence made under section 31(3) of the 1949 Act (see paragraphs 65 and 66).

5. This point is now put at issue by the second limb of the Council's argument as set out above. The Council appears to be saying either that the enactment of the 1981 Act (i) resulted in an amendment impliedly providing that any declaration under section 31(3) of the 1949 Act was no longer "conclusive" in the sense it had been previously or (ii) resulted in the repeal

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[4] Paragraph 7.3 "*…contention… is incompatible with the review provisions (and the power to make corrections to the DMS) contained in s.33 of the 1949 Act…"*

[5] Paragraph 7.5 "*There is no suggestion under either Act that where a negative declaration had been made by the court at Quarter Sessions on an application under s.31 of the 1949 Act (now repealed) any new evidence relied upon to justify a subsequent application to modify the DMS would be required… to post-date the making of such declaration…*"

[6] The date on which the repeal of the relevant provisions of the 1949 Act was effective.

[7] Note that the 1949 Act was amended by section 31 and Part II of Schedule 3 to the Countryside Act 1968 to introduce a simplified review procedure. Paragraph 1 of Part II of Schedule 3 to the 1968 Act provided as follows:

"Any review or further review begun under section 33 of the Act of 1949 after the coming into force of this Act shall be carried out in accordance with this Part of this Schedule, and subsections (1) and (2) of section 34 of the Act of 1949 shall not apply to it."

The 1968 Act left untouched declarations of non-existence previously obtained under section 31 of the 1949 Act.

or voiding of any declarations to accompany the repeal of their parent legislative provision, viz Part IV of the 1949 Act.

6. In this respect the Claimants rely upon subsections 16(1)(b)-(c) of the Interpretation Act 1978 which provide:

> "1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears,—
>
> …
>
> (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;
>
> …"

7. There is nothing in the 1981 Act which either expressly or impliedly evinces a statutory intention that the review provisions introduced in the new section 53 were effective to override duly-made declarations under section 31(3) of the 1949 Act. As the Claimants have shown[8], the 1981 Act replaced the review provisions in the 1949 Act with comparable, if slightly wider, provisions. It did not replace section 31 with an equivalent right for landowners to apply to courts for declarations but was silent as to their continuing effect. It therefore evinces no "*contrary intention*" sufficient to rebut the presumption introduced by the language of subsection 16(1)(b) of the IA 1978 that duly made declarations should continue to have effect. This is not surprising, nor contrary to any other statutory object evinced by the 1981 Act: the policy that a landowner who has gone to the trouble of obtaining a declaration from a court of competent jurisdiction should be entitled to rely upon it survives just as strongly notwithstanding the repeal of the statutory avenue by which that declaration was obtained. It is submitted that it would have needed clear words to deprive landowners of the benefit of the declarations they had obtained – these are absent from the 1981 Act.

8. Further, the preservation of the declaration as something "duly done" under the 1949 Act preserves the continuing right of landowners to rely upon them. That right was real and continuing and had therefore accrued for the purposes of subsection 16(1)(c): see ***Aitken v***

[8] See Claimants' skeleton paragraph 66, subsection 53(c)(iii) of the 1981 Act.

South Hams [1995] 1 AC 262 at 271C-D and 271G-272A and ***Chief Adjudication Officer v Maguire*** [19991] 1 WLR 1778 at 1787F-H[9].

George Laurence KC

Matthew Dale-Harris

10 October 2022

[9] These cases are referred to in *Bennion on Statutory Interpretation* (8th Ed) at section 8.13 (the Example) and footnote 8. See generally also section 8.7 Repeals: introduction; and section 8.11 Savings: introduction and, under the heading Comment: "*Savings modify the common law rule that the repeal of an Act or abrogation of a common law rule makes it as if it had never been, except for matters past and closed.[1] They preserve the operation of the repealed legislation, for example by preserving its operation for the future (usually in particular cases) or preserving rights and liabilities acquired or incurred under it.*"