

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT**

The Bristol Civil and Family Justice Centre
2 Redcliff Street, Bristol BS1 6GR

02/09/2016

B e f o r e :

HIS HONOUR JUDGE JARMAN QC

Between:

**THE QUEEN (on the application of IAN
FLINT AND KAREN PINKER)** **Claimants**

- and -

SOUTH GLOUCESTERSHIRE COUNCIL **Defendant**

- and -

LADY'S WOOD 2013 LIMITED **Interested**
ERNEST RICHARD HEMMINGS **Parties**

Mr James Corbet Burcher (instructed by Keystone Law) for the claimants
Mr Alexander Greaves instructed by the defendant
The interested parties did not appear

Hearing date: 22 August 2016

HH JUDGE JARMAN QC:

1. The second claimant Mrs Pinker lives with her partner the first claimant Mr Flint at Lady's Wood, Chipping Sodbury and owns adjoining land which comprises woodland (the wood) to the north east and a field (the field) to the south east. From 1984 she ran a shooting school from the wood with her late husband until the latter's death in 2010. She continued to run the school until 2013 when she granted a lease of the land to one of the interested parties, Lady's Wood 2013 Ltd (the company) which continues to operate the school. By an application dated 9 March 2015 (the section 191 application) the company applied to the defendant as local planning authority (the authority) for a lawful development certificate under section 191 of the Town and Country Planning Act 1990 (the 1990 Act), as amended, for an existing use, described in the application as "Use of land and buildings as a shooting school." The plan attached to the application included the field as well as the wood.

2. On 11 March 2016 the authority granted such a certificate for the use of the land and buildings identified on the plan for a shooting school in breach of planning conditions limiting the hours of operation and the number of persons being instructed at any one time. The claimants now seek to challenge that decision on two main grounds: first, that the authority did not adopt the correct legal test to define what land had been used for the school over a continuous period of 10 years and that there was insufficient evidence to justify the decision that such use extended over the field as well as the wood; second; that the certificate should have identified the scale of the breach by reference to the number of persons receiving instruction at any one time and the type of cartridge used.
3. Planning permission was first granted for a shooting school by the authority's predecessor on 5 May 1982 on a temporary basis until 31 July 1984. The development permitted was described as "Establishment of shooting school within existing game farm" and was expressly in accordance with the submitted application and accompanying plans but subject to the conditions set out. The accompanying plans showed the wood with a significantly smaller defined area of the school roughly in the centre of the wood. The conditions included the restriction of hours of operation to 10am to 4pm Tuesday to Saturday, and the restriction on the maximum number of people receiving shooting instruction at any one time to two, with it being provided that "no shooting parties to be held." The reason given for these conditions was to control the scale of use in the interests of the amenities of the locality.
4. On 18 July 1984 that permission was made permanent under reference P84/1725 for the "establishment of shooting school within existing game farm," and reference was made to similar plans to those referred to in the temporary permission. Although there was reference to renewal of temporary consent, no limit was put on the duration of the permission. Similar conditions were imposed in respect of operating hours and the number of people receiving instruction at any time although on this occasion without the prohibition on shooting parties. The following month, permission was granted under reference P84/2220 for the erection of an outbuilding for uses ancillary to the existing game farm and shooting school, with similar conditions in relation to operating hours and numbers of persons receiving instruction at any one time. The third and final relevant permission was granted on 12 September 1985 for the erection of a 37 metre tower in the wood for the launching of clay pigeons.
5. In February 2015 the company made a planning application for the retrospective permission for the erection of a storage shed and this was passed to a senior planning enforcement officer at the authority, namely James Cooke. He carried out a site visit that month accompanied by a director of the company, the other interested party Ernest Hemmings. He observed that there had been erected in the wood four permanent towers for firing clays, in addition to the one for which planning permission had been granted, and indicated that permission would be needed for these also. Mrs Pinker objected to this application on the grounds of private residential amenity and landscaping, and accordingly Mr Cooke made a second site visit to deal with that objection.
6. Following that visit an application was made on behalf of the company for planning permission for the retention of the four new towers. A few days later, the section 191 application was made by planning consultants on behalf of the company and comprised a number of documents including a site location plan (the site plan), a sworn statement of Mr Hemmings and seven support letters from members and staff. The site plan was based on the Ordnance Survey Map for 2015 at a scale of 1:2500. The site boundary was shown as a solid red line. It incorporated the central and eastern parts of the wood, the outbuildings, and also the whole of the field. In the north west corner of the latter solid black lines depict the car park and overflow car park. Towards the north east of the field there appeared another set of black lines in the form of a square which depicts an enclosure of trees.

7. The accompanying statement of Mr Hemmings was sworn before a solicitor and comprised seven lines of typescript, in which he stated that he had been a regular client at the school for over 30 years and confirmed that it had operated “from the entire area” shown on the site plan “continuously and without interruption for at least the past 10 years.” The seven statements from members and staff were even shorter and comprised signed pro forma statements with similarly worded confirmation.
8. On 17 March Mrs Pinker wrote to Mr Cooke saying that she had received a copy of the section 191 application letter and referring to the above planning permissions. She stated that the school had operated “within its’ permitted planning ever since, strictly adhering to the restricted working hours... with shooting taking place between the hours of 9.00am to 4.30pm only and using low noise cartridges made especially for the shooting school to control the noise.”
9. By email on the 23 April Mr Cooke notified the company’s consultants of those comments and concluded as follows:

“To apply for the whole of the plot as having been operated in breach of the conditions for 10 years-(The only evidence for this so far is that submitted by the neighbour suggesting that it was operational from 9-4.30 Tuesday to Saturday but her evidence does not define the planning unit for this scale of operation. I think you would need to provide much greater evidence to substantiate a consistent breach of the conditions over the ten year period.”
10. That brought forth further sworn statements each dated 14 May 2015 and signed by Mr Hemmings and three employees who had signed letters of support which had been lodged with the section 191 application. These additional statements were each in similar form and repeated what had been said in the original statements but added a paragraph stating that over the same period the school had continuously operated beyond the permitted hours and with groups of more than two people in breach of the conditions on the relevant planning permissions. There then followed a note to the statement maker in square brackets saying that it would be very helpful if further reference to specific bookings photographs or other evidence could be made but none of the signatories added any such reference. One such statement was signed by Peter Rollings, who said that he had been an employee of the school for 20 years.
11. By letter dated 5 June 2015 Mr Flint wrote to Mr Cooke enclosing extracts of diaries from 2003 to 2013 which showed the hours of business and teaching structure. He stated that corporate days increased over the years with small parties ranging from 6 to 12 people, and on rare occasions up to 30 people. These would be divided into groups of 5 or 6 and within the group only one person would shoot at any one time. During this period one charity event a year would be held with low noise cartridges. He confirmed that on no occasion was a shot fired before 9am or after 4.30pm.
12. On 19 June 2015 solicitors acting on behalf of Mrs Pinker wrote to Mr Cooke raising a number of points, including an assertion that there had been a significant intensification of the use of the school after the company took over its running, both in terms of the amount of shooting and the area over which shooting took place. Solicitors for the company responded to those points by a long letter dated 2 July 2015, enclosing over 50 pages of further documentary evidence. That included a spreadsheet provided by the suppliers of clay pigeons to the school over the last 10 years which showed that in only one year had the company ordered more clay pigeons than ordered by the Pinkers and the increase had been modest.
13. In terms of area, a plan was attached illustrating the layout of traps (the layout plan) which showed the four new towers which were the subject of the recent planning application but also showing the position of other traps, described in the following terms:

“Not only are there traps on the Low Tower (second left path off the main path) but there are multiple traps in the field, with the first one close to the rear of the lodge itself but within the field (which is known in shooting terms as ‘Down the Line’ or ‘DTL’). It is our client’s position that the traps on the Low Tower and/or those in the fields were not within the original are of the planning permission. Further, shooting these additional traps means that shot and clays fall over the entirety of the land included in the application.”

14. The enclosed documentary evidence included newsletters from 1997 and a further statement from Mr Rollings saying that he started as an instructor at the school in 1998 and that the DTL trap and another trap in the field were both present at that time. There was also a letter from Edward Kent who said that he was a former client and then an instructor at the school and that the DTL trap and 3 further traps were in situ in the field in 1989. He annotated on the layout plan arrows showing that the clay pigeons were shot from these traps over or in the direction of the field. A DVD was also enclosed containing a recording of a charity event at the school in 2002 which was said to include an image of the DTL trap and of another trap in the field and shooting over the field.

15. Mrs Pinker’s solicitors responded by letter dated 9 July 2015, in which it was said that the layout plan “..does not coincide..” with the area shown on the site plan. It was also said that the claims that shot and clays fall over the entirety of the land included in the application;

“..does not confirm the operation of a shooting school over the wider area nor does it define with any certainty, the area over which a Certificate of Lawfulness is sought. The Application fails on this fundamental point.”

16. Mr Cooke undertook another site visit at the end of July 2015 to deal with the application in respect of the four towers and the section 191 application. In relation to the latter, he prepared a report on the evidence which he circulated to members of the authority with a recommendation that the certificate be granted and that the schedule should reflect the operating hours of 9am to 4.30 pm on Tuesday to Saturday only. In the report he said that the policy context was not directly relevant as the planning merits were not under consideration and that the company need only prove on the balance of probabilities the use and the breaches of conditions have taken place for a continuous period of 10 years up to the date of the application on 9 March 2015.

17. In terms of area, he reviewed the evidence to support the application and to object to the application separately under respective sub-headings each of which contained the phrase “shooting over the entire red edged area for a continuous period of ten years.” In doing so it was recognised that the application arose from examination of the planning history which identified that “much smaller planning units were defined by the original planning applications.”

18. Having set out the evidence for and against the identification of the specific area which the certificate should relate to, the conclusion on this part read as follows:

“It appears that the act of firing guns under tuition was probably constrained to the areas identified on the [layout plan]. This is perhaps best evidenced by Mr Kent’s drawings and he evidently has significant history at the Club, which is corroborated with Newsletters. These shooting positions run right through the woodland, fire up above the woodland and fire into the field. The fallout of shot is perhaps a contentious point and one to which little weight is attributed, but evidence of a number of complaints about shot falling on the footpath and on the neighbouring garden does suggest that the fallout from this activity can be widespread. A DVD submitted by the applicant shows people firing during a Charity Event in 2002. It shows firing from two different traps right across the field. It also shows firing through and high above the woodland.

In defining the planning unit for the Certificate, there does not appear to be any significant functional or physical separation across the site, save for the functional position of towers and shooting traps and there seems to be no planning grounds to define a renewed but small area of lawfulness within what does appear to be a genuinely large but legitimate planning unit. To attempt to define such a use by the individual firing positions rather than the land would seem impractical and unreasonable given the ease of movement through the site and the scale of the shoots that have been taking place.”

19. He therefore recommended that the certificate be granted over the land identified on the site plan. He then went on to deal with the evidence in support of and in objection to the application that the school had been operated in breach of the working hours condition for a continuous period of 10 years and concluded that there was overwhelming evidence of such breach. There is no challenge to the conclusion.

20. He finally dealt with the evidence in support of and in objection to the operation in breach of the condition restricting shooting instruction to two people. He did so in some detail over six or so pages of the report. His conclusion under this head included the following passages:

“Considerable weight is attached to the 2005 diary entries which have been submitted by the land owner. These are isolated days within the year but suggest a fairly consistent breach of the condition, which in turn tallies with the submissions from the Instructors who have worked at the site throughout the previous ten years. Considerable weight is attached to the evidence of these gentlemen. Much of what they have reported is corroborated in the Newsletters available (albeit that these are from preceding years). The only evidence to challenge these submissions purports to allege a material intensification of the breach, however this point is much harder to demonstrate than the consistency of the breach itself.

The officer is satisfied that since 2005, there have been ‘continuous’ examples of more than two people receiving instruction at any one time. There have been Corporate Days on a reasonably frequent basis and Mr Kent is considered to be a reliable witness with no apparent vested interest in the application, citing these as ‘several times a week.’ There is evidence that seasonal Fun Days, annual Dog & Gun Days and annual Charity Days were successful and attracted high numbers in breach of the conditions and on a continuous basis.”

21. He went on to observe that there was little or no evidence to challenge these claims and that it was considered on the balance of probability that there had been a consistent breach of this condition.
22. On 11 March 2016 the authority issued a certificate reciting that in all three respects evidence had been submitted which demonstrated on the balance of probability that for a continuous period of 10 years (it says immediately prior to 9 March 2005 rather than 2015 but no point is taken on this) the use of land and building for the purposes of a shooting school had taken place as identified on the site plan and in breach of the two relevant conditions. The certificate also recited that on 9 March 2015 the development described in the first schedule was lawful within the meaning of section 191 of the 1990 Act as amended. That schedule reads:

“The existing use of land and buildings as a shooting school in breach of condition 2 (operating hours 10am-4pm) and condition 3 (2 people at a time) on planning permissions P84/1725 and P84/2220. The Shooting School has been operating between the hours of 09:00-16:30 on Tuesday-Saturday only.”

23. Subsection 1 of section 191 of the 1990 Act provides as follows:

“If any person wishes to ascertain whether-

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.”

24. Subsections (2) and (3) provide so far as material that for the purposes of the Act use and operations, or failure to comply with a condition, are lawful if at any time the time limit for enforcement action in respect of the use, operations or failure, has expired. It is common ground that the relevant time limit is 10 years, as provided by section 171B of the 1990 Act.

25. Subsection (4) provides:

“If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”

26. And finally, it is provided in subsection (5) that:

“A certificate under this section shall-

- (a) Specify the land to which it relates;
- (b) Describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
- (c) Give the reasons for determining the use, operations or other matter to be lawful; and
- (d) Specify the date of the application for the use for the certificate.”

27. It is common ground that use as a shooting school does not fall within one of the classes so specified and is what is known as *sui generis* use. That is important to bear in mind when considering Planning Practice Guidance (PPG) issued by the Department for Communities and Local Government as to the issue of such certificates and in particular the content of them at ID 17c-010 as follows:

“Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. It is important to note that:

- a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a “use class”, a certificate must also specify the relevant “class”. In all cases, the description needs to be more than simply a title or a label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any “use class” (i.e. “*sui generis*” use); and

- where a certificate is granted for one use on a “planning unit” which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certified use.”
28. There is no longer a suggestion of a mixed or composite use in the present case, but there is an issue as to whether the land edged red on the site plan should properly be seen as a single planning unit or not. The applicable principles are not contentious and are summarised by the Divisional Court in *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207, to which I was referred by Mr Greaves for the authority. Two principles are particularly relevant here. Where there is a single main purpose of the occupier’s use of land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. Where, however, within a single unit of occupation there are two or more physically separate and distinct areas occupied for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit. It is a question of fact and degree.
 29. The importance of precision in defining in the certificate the use found to be lawful has been emphasised by the courts on a number of occasions. Both counsel referred me to the leading authorities. In *Broxbourne Borough Council v Secretary of State for the Environment* [1980] QB 1, the Divisional Court stated that otherwise the authority may be precluded from preventing a use for which planning permission would not have been granted because the certificate had been issued in terms wider than were necessary. It was also observed that precision is of assistance to a prospective purchaser. Where it is wider than necessary, it will be quashed, as it was in *R v Sheffield City Council ex p Russell* (1994) 68 P&CR 331. There the certificate relating to clay pigeon shooting was quashed because there was no evidence that the shooting took place on an exclusive daily basis which was otherwise than for recreational purposes of those using the land.
 30. It is not a requirement of law, however, that in all cases a certain degree of particularisation is required. What is an appropriate level of detail will vary from cases to case and is a matter of judgement for the decision maker based on the evidence (see *R v Thanet District Council ex p Tapp* [2001] EWCA Civ 559, *Hillingdon v Secretary of State for Communities and Local Government* [2008] EWHC 198 (Admin) and *R (North Wiltshire) v Cotswold District Council* [2009] EWHC 3702 (Admin)). However, it is wrong in law to include in the certificate some of the particularity but not all of it (see *Main v Secretary of State for Communities and Local Government* (1998) 77 P&CR 300).
 31. Applying those principles, Mr Corbet Burcher for the claimants makes a number of submissions in respect of ground 1 as refined in his skeleton argument. These are directed primarily to the report of Mr Cooke. That, together with a draft schedule was circulated to be considered by members of the authority, who had the power to call the application in for decision by the relevant committee. That step was not taken.
 32. The essence of these submissions is that the report in dealing with the specific area of the school and the proper planning unit wrongly focused on the present situation on the ground instead of at the start of the 10 year period in 2005, and accordingly had regard to development which occurred much later, namely the four new towers and the fall of shot witnessed by the current occupants. By having regard to what was shown on the 2002 DVD in terms of use over a wider area, the report failed to identify that such event was exceptional. This meant that the issues of expansion and intensification over a wider area were not properly dealt with. Moreover, there was no reference in the report to the PPG. Had the correct approach been taken, then regard should have been had to the layout plan, and the specific area of the school in the certificate should have been limited to the use shown on that plan and not extended to include the field.

33. Mr Corbet Burcher realistically accepts that the report must be read as a whole. The reference to the “entire red edge area” in the two sub-headings can only sensibly be taken in my judgement to refer to the land edged red on the site plan. The phrase immediately following, namely “for a continuous period of ten years,” suggests that at the outset, the officer had well in mind that the evidence of shooting over the entire area of the site plan must be considered over the 10 year period.
34. In my judgement, the officer’s analysis of that evidence under these two subheadings and his conclusions show that he kept in mind the need to consider the whole period in carrying out that exercise. He expressly concluded that the act of firing guns was probably constrained to the areas identified on the layout plan, but concluded, as he was entitled to on the evidence in particular of Mr Kent, that from some of the shooting positions the fire was directed over the field. He recognised that the fall out of shot was contentious and attributed little weight to the evidence relating to that. He referred to the DVD which showed an event prior to the start of the 10 year period, and his analysis to newsletters, some of which also predated this period. However, he considered this together with the evidence of Mr Kent and Mr Rollings, and concluded that the traps shown on the layout plan had been in position for well over 10 years. That was a conclusion he was entitled to come to. He also had in mind that four of the towers were recent, because the report refers to the pending application for retrospective planning permission.
35. His conclusion that there did not appear to be any significant functional or physical separation across the site came after a number of site visits which he had made. He considered whether there were grounds to define a renewed but small area of lawfulness within what appeared to be a genuinely large but legitimate planning unit, but came to the conclusion that there were none. That was a matter of fact and degree which involved planning judgement. There is nothing before me to show that such a conclusion was irrational.
36. I agree with Mr Corbet Burcher’s submission that issues of impracticality and unreasonableness in defining the use by individual firing positions rather than the land are not material to the consideration of the appropriate planning unit as a matter of fact or degree. The officer’s observations in this respect however, come after his conclusion that there appeared to be no significant functional or physical separation across the site, and that there appeared to be a genuinely large but legitimate planning unit. In my judgement on the evidence he was entitled to come to that conclusion, which is not vitiated by his additional observations.
37. It is true that no reference to the PPG was made in the report. In my judgement, that omission does not assist the claimant under this ground. The certificate specifically and precisely identified the area to which it related by reference to the site plan. In so doing, the statutory duty under section 191(5) to specify the land to which it relates was complied with. It has not been demonstrated that the decision in this regard was irrational.
38. Ground 2 has also been refined in Mr Corbet Burcher’s skeleton argument and he makes a number of submissions in relation to it. In essence these are that on the facts of this case it was essential to particularise in the certificate the maximum number of visitors, shooting instruction and actual shooting days, charity and corporate shooting days, and the use of low noise cartridges. The failure to identify the maximum number of persons taking part in these activities at any one time or to identify the scale amounts to an error of law and means that intensification will have to be assessed on a free standing basis. This failure is to be contrasted with how the evidence with regard to operating hours was dealt with, when scale was considered and limited. Again, the failure to refer to the PPG is relied upon.
39. Mr Greaves accepts that such detail could have been included in the certificate, but relying upon *Hillington* and *North Wiltshire* submits that it was not a requirement of law that it was and the failure to do so can only be challenged on the basis of irrationality which is a high hurdle to

surmount. The general description of the use in the certificate as a shooting school is no more general than the description of general aviation purposes, which was upheld in the latter case. The position in *Sheffield*, where the certificate was quashed was very different. There, the certificate failed to specify which days the use had taken place when there was a gap in the evidence that such use had taken place daily, and failed to specify whether the use was commercial or recreational. Here, the certificate specifies the days and hours upon which it had found the use had taken place in breach of the planning conditions and it was clear from the description of a shooting school that the use was more than just recreational for those using the land.

40. In terms of intensification, Mr Greaves submits that the certificate confirms the nature of the use which had been found on site for the 10 year period and does not preclude the authority from taking enforcement action if the nature of that use subsequently changes. He relies, in support for that proposition, upon a passage in the judgment of Pill LJ in *Thanet*, who said at paragraph 53:

“The certificates permit the continuation of the existing use. They do not relate to the question whether an intensification might involve a change of use. That point could be taken whether or not the certificate has been issued.”

41. In my judgement, there was clearly evidence upon which it could be concluded that the planning condition limiting the maximum number of people receiving shooting instruction at any one time to two, had been breached over a continuous period of 10 years. That breach was the matter under consideration in respect of numbers of participants rather than the question of description of use. The description of the use in the certificate remained substantially that identified in the existing planning permissions, namely that of a shooting school. It was not a shooting range, or a shooting club, but a shooting school.
42. The officer placed considerable weight on the 2005 diaries and upon the weight of the instructors with corroboration from the newsletters. He recognised that the diaries showed isolated days and that some of the newsletters predated the 10 year period, but was entitled to conclude that a fairly consistent breach of the condition was made out and that Mr Kent’s evidence showed that corporate events took place several times a week. He had regard to the allegation of material intensification in this regard, but concluded that such was much harder to demonstrate than the consistency of the breach itself. Mr Corbet Burcher submits that the spreadsheet showing the consistency of clay purchases over the period is very thin evidence, but in my judgement the officer was entitled to take that evidence into account and to conclude on all of the evidence that it was much harder to demonstrate that intensification had taken place.
43. The officer made no recommendation as to maximum numbers of participants or cartridge type, and that is to be contrasted with his recommendation as to operating hours. However, he gave cogent reasons for the latter recommendation, namely that there was no evidence of any continuous working on Sundays or Mondays, or on any day before 9am or after 4.30pm. He continued:
- “Owing to the noise implications and the clear definitions of these times...further working outside of these hours could be deemed to amount to a material change of use through intensification.”
44. Although Mr Corbet Burcher attempted to demonstrate that the evidence as to the maximum, or maximum average as he put it in the alternative, number of persons engaged in any particular activity was also clear or clear enough, unsurprisingly it fell significantly short of the clarity of that relating to the operating hours. Moreover, the evidence relating to operating hours on the one hand and as to numbers of participants on the other differed significantly in terms of

whether a lack of restriction might lead or amount to intensification. It does not follow in my judgement that because a restriction in respect of the former is expressed in the certificate, a restriction in respect of the latter must also be expressed. There was, on the evidence before the officer, a logical basis for making the recommendation in the one case but not in the other.

45. In my judgement the submissions on behalf of the authority as to whether it was irrational for no restriction on numbers of participants or cartridge type to be included in the certificate are to be preferred to those on behalf of the claimants. That decision was a matter of planning judgement and the decision made was a rational one. The failure to refer expressly to the PPG does not assist the claimants under this ground either, in my judgement. The officer plainly had regard to the need to give characteristics where appropriate, namely in respect of operating hours.
46. Accordingly, the claim is dismissed. Counsel helpfully indicated that any consequential matters which could not be agreed could be determined on the basis of written submissions. Such submissions and/or a draft minute of order should be filed by noon on 19 September 2016.