

MAIN v. SECRETARY OF STATE FOR THE ENVIRONMENT AND SOUTH OXFORDSHIRE DISTRICT COUNCIL

QUEEN'S BENCH DIVISION (Mr Malcolm Spence, Q.C. sitting as a Deputy
High Court Judge): May 22, 1998

Town and country planning—Site used as scrap yard and for other purposes, including haulage and skip hire—Application for certificate of lawfulness of existing use—Certificate granted for use as scrap yard involving dealing, storage and processing of scrap metal—Whether other uses ancillary or primary—Whether certificate sufficiently precise

The applicant used a site of some 10.5 hectares for a variety of purposes, including use as a scrap yard and for the breaking of motor vehicles for the selling of recovered parts. He also operated his own lorries and trailers and the hire of skips from the site. These were used for purposes connected with the operation of the scrap yard but also to transport materials whose source or destination was not the appeal site. He applied for a certificate of lawfulness of existing use or development under section 191(1) of the Town and Country Planning Act 1990. A certificate was granted by the second respondent council for "the dealing, storage and processing of scrap metal". The applicant was dissatisfied with the terms of the certificate and, on appeal to the Secretary of State, there was substituted a new certificate for "the use of land as a scrap yard, involving the dealing and processing of scrap metal". It was concluded however, that the other uses to which the site was put were either ancillary to the primary use as a scrap yard or carried out on such a small scale or infrequent or irregular basis that they were *de minimis*. The applicant remained dissatisfied, in particular that use of the site had been identified as being one overall use, *i.e.* use as a scrap yard, which embraced a number of ancillary or incidental uses. He considered that the uses on the site should be identified in the certificate as separate and distinct primary uses. In any case, even if the uses were ancillary, the certificate did not describe them with sufficient particularity as required by Circular 10/97. On an application to quash the certificate:

Held, allowing the application, that the haulage and skip hire activities which were not mainly connected with the operation of the scrap yard could not properly be said to be ancillary to the scrap yard in the sense meant in this branch of the law. The Inspector appeared to have put these activities on one side merely because they were relatively small. In so doing, the Inspector had erred in his use of the word "ancillary" and thus misdirected himself in law. Upon proper reconsideration, these uses might well be held to be independent primary uses forming part of the composite use of the site and in that event they should be mentioned expressly in the certificate of lawfulness of existing use or development. Further, the certificate actually issued in this case was not precise and was, in fact, inaccurate in that, as found by the Inspector, there were included within the ancillary uses not merely "dealing, storage and processing of scrap metal" but a number of other ancillary uses. It was erroneous and wrong in law for a certificate of this kind, if it was going to comply with what is called in Circular 10/97 "further qualification", to include some of the required particularity but not all of it.

Cases referred to:

- (1) *Allen v. Secretary of State for the Environment and Reigate and Banstead Borough Council* [1990] 1 P.L.R. 25; [1990] J.P.L. 340.
- (2) *Brazil (Concrete) v. Amersham Rural District Council* (1967) 18 P. & C.R. 396; (1967) 111 S.J. 497; 65 L.G.R. 365; 202 E.G. 413, CA.



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(3) *Broxbourne Borough Council v. Secretary of State for the Environment* [1980] Q.B. 1; [1979] 2 W.L.R. 846; [1979] 2 All E.R. 13; (1978) 38 P. & C.R. 381; (1978) 249 E.G. 959; [1979] J.P.L. 308; (1978) 77 L.G.R. 381, DC.

(4) *Burdle v. Secretary of State for the Environment* [1972] 1 W.L.R. 1207; [1972] 3 All E.R. 240; (1972) 24 P. & C.R. 174; 116 S.J. 507; 70 L.G.R. 511, DC.

(5) *Emma Hotels v. Secretary of State for the Environment and Southend-on-Sea Borough Council* (1981) 41 P. & C.R. 255; [1981] J.P.L. 283; 258 E.G. 64; [1981] E.G.D. 1037, DC.

(6) *Trentham (G. Percy) Ltd v. Gloucestershire Council Council* [1966] 1 All E.R. 701; 18 P. & C.R. 225; 130 J.P.L. 179; 110 S.J. 52; 64 L.G.R. 134, CA.

(7) *Trio Thames Ltd v. Secretary of State for the Environment and Reading Borough Council* [1984] J.P.L. 183.

(8) *Wipperfman v. Barking London Borough Council* (1965) 17 P. & C.R. 225; 64 L.G.R. 97, DC.

Legislation referred to:

Town and Country Planning Act 1990, s.191.

Application by Raymond John Main to quash a certificate of lawfulness of existing use or development in the terms granted by the first and second respondents, the Secretary of State for the Environment and South Oxfordshire District Council respectively, in respect of a site at Ewelme in South Oxfordshire.

Harry Wolton, Q.C. for the applicant.

Timothy Mould for the first respondent.

MR MALCOLM SPENCE, Q.C. For more than 40 years there has been a site of about 10.5 hectares near Ewelme in South Oxfordshire used for what I shall, for the moment, simply call scrap-yard purposes. There are also three houses on the site. There have been a series of planning permissions granted over the years. At the time when the inquiry concerning this site took place in May 1997 the Inspector described it as follows:

"6. Materials and items of one sort or another have been deposited on almost all of the land in what appeared to me to be a haphazard manner. The stockpiling of scrap metal was more intensive on the central part of the site, to the south of Castle Main, closest to the machinery. In this area vehicles and other scrap were piled to a height of some 9 or 10 metres. Elsewhere, although materials were not stacked to this height, the site's surface was covered with an extensive variety of vehicles, materials and items. On many parts of the site, particularly towards the southern boundary, trees, bushes other vegetation was growing between deposited items and, together with the extent of corrosion present, suggested to me that they had lain there for many years.

7. Walking around the tracks within the site I was able to gain an impression as to the type of material present on the site. I noted a large number and wide range of vehicle parts and vehicles of one kind or another, including cars, motor cycles, lorries, buses, contractor's plant, fire engines, tractors and caravans and other trailers. In addition I saw an extensive assortment of other items, ranging from massive metal tanks, silos and industrial machinery to small domestic articles. Also on the site were a number of skips, some of which were filled with what appeared to be scrap metal, others were empty.

8. There were several buildings on the central part of the site, some in a



dilapidated condition, others open sided and used for storage or scrap sorting. This building described as the workshop is constructed in brick and blocks with an asbestos sheeting roof. Inside I saw tools and equipment, including two ramps and welders. There were old Ford and Humber cars, one on the ramps and the other undergoing bodywork repairs. In addition there were several ex-WD jeep type vehicles. A weighbridge stands on the main roadway into the site, with an adjacent office building housing the scales. Towards the site's north-western boundary are two further weighbridges, only one having scales."

The applicant wished to obtain a certificate of lawfulness of existing use or development in respect of what I have just set out, and so his agent made an application under section 191(1) of the Town and Country Planning Act 1990.

The certificate which the second respondent council granted was as follows: "the dealing, storage and processing of scrap metal plus three dwelling houses." The applicant was dissatisfied with that certificate and appealed to the Secretary of State for the Environment. An inquiry was held. On the Inspector's recommendation the appeal was dismissed but there was substituted a new certificate as follows:

"The use of land as a scrap-yard, involving the dealing, storage and processing of scrap metal and the residential use of three dwelling-houses."

The applicant is dissatisfied with this new certificate and applies to this court to quash it. There are a variety of points set out in the Notice of Motion settled by Mr Wolton, who appears for him, but in essence two points arise, the first being; "Are the different uses on this site separate and distinct primary uses or is there one overall primary use (ignoring the three houses) which embrace a number of ancillary or incidental uses?" It is worth mentioning that the 10 year rule does not play a part in the case because all these uses are old.

The Inspector made some useful findings of fact, which I shall not read, and he made a series of detailed conclusions about all these uses and they were accepted by the Secretary of State. I shall read paragraph 5 of the Secretary of State's decision letter:

"5. The Inspector's conclusions have been carefully considered and are accepted for the reasons he gives. It is agreed with him that for a certificate to be issued in the terms of the application it would be necessary for your client to show that the range of uses he has specified were being carried on on the site as separate and distinct uses from the operation of the scrap yard which has, although not using that term, been certified as lawful by the council. The Inspector's analysis of the way in which the various aspects of the business are carried on has been carefully considered and it is agreed with him that none of those uses have been shown on the evidence available and on the balance of probability, to form separate uses of the site in their own right, and that it is appropriate to describe the use of the appeal site as a scrap yard involving the dealing, storage and processing of scrap metal, together with three dwellinghouses in residential use. The Inspector recommends that the certificate issued by the council be amended to take in the term 'scrap yard', but as the Secretary of State has no power to vary the terms

of a certificate in these circumstances, a fresh certificate will be issued in the terms recommended by the Inspector."

Almost every one of the Inspector's conclusions is relevant to this case, however, I shall do no more than cite some of them:

"38. I now look in turn to each of the uses which the appellant claims are separate and distinct in terms of their character and which, it is maintained, have been carried on over the relevant 10 year period. I accept Mr Young's argument that there is a distinction between a scrap yard use and the breaking of motor vehicles in order to sell recovered parts. The appellant has submitted some 40 invoices for the sale of vehicle parts in the period from 1 February 1985 and 2 June 1995, and several of the interested persons who gave evidence stated that they had purchased parts for cars, lorries and military vehicles.

39. In my opinion and experience it is by no means uncommon to find this type of sales taking place at scrap yards, especially those as extensive as Woodside. I consider that, in order to represent a distinct and separate use, car breaking would have had to have taken place on an organised and systematic basis. This is not the case at the appeal site. There is no systematic dismantling of vehicles and no organised stocking of spare parts ready for sale. Essentially, potential customers visit the site seeking parts which may be of use to them. Generally parts are removed from vehicles by the customers themselves. This seems to me to be an indiscriminate, low key activity which is part and parcel of the operation of the scrap yard. Consequently, I consider that, as a matter of fact and degree, any car breaking activity which has taken place on the appeal site can be regarded as ancillary to the scrap yard use, and does not constitute a use in its own right.

40. In considering the claimed use as a general dealer in motorcars and other types of mechanically propelled vehicles it is apparent to me that Mr Main conducts his business in a somewhat idiosyncratic manner. Rather than process all vehicles and other items when they are brought to the site, he often retains them on for long periods. I heard evidence that certain vehicles have been left for 40 or 50 years, and my observations at the site were that many vehicles were engulfed by vegetation and heavily corroded. Mr Main's attitude appears to be that he stores items until he decides they should be scrapped and in the interim they are available for sale or as a source of spare parts. There does not seem to be any systematic method of deciding which vehicles are to be scrapped and which retained. The fact that many people who rebuild, restore and run all types of older vehicles such as military vehicles and vintage cars consider Woodside to be a valuable source of vehicle shells and spares is testimony to the length of time many items remain on the site.

41. The impression I gained during my visits to the site was that the vast majority of vehicles there had reached the end of their operational life. Consequently, I would consider them best described as scrap. There is evidence of the sale of vehicles from the site, but it seems to me that this relates predominantly to scrap vehicles. The submitted invoices (Doc 5

RJM14) include several references to ex-WD vehicles, old lorries, lorry bodies and trailers. I consider that to other than an enthusiast or restorer most of the vehicles sold from the site would be perceived as scrap. The sale of such vehicles from a scrap yard is not surprising and, bearing in mind the vast number present at Woodside, I do not consider the sale of 1, 2 or 3 per week to be out of the ordinary. Indeed, it would be unusual if a certain level of sales did not take place from a site of this size and nature. Therefore I conclude that the vehicle sales which have taken place fall within the general operation of the scrap yard and consequently comprise an activity which is ancillary to that primary use.

45. The Council did not dispute that the appellant, trading as Mains Motors, operates his own lorries, trailers and skips. Also there was no dispute that he holds a HGV operator's licence to operate 8 lorries and 3 trailers from Woodside, or that a licence has been held since August 1970. In my view the possession of an operator's licence does not necessarily mean that an independent haulage business has been carried on that the site has been used as a haulage depot, a term which implies general haulage activities. A scrap yard of the scale of Woodside would undoubtedly generate a significant demand for the transportation of materials to and from the site. It seems to me that Mains Motors was established primarily to provide and operate vehicles to serve this purpose.

46. The vehicles, trailers and skips owned by Mains Motors may well be used on occasions to transport materials whose source or destination is not the appeal site. I was told that the company collected malt waste and also transported waste paper. However, on the balance of probability, I consider that materials transported by the lorries, trailers and containers based at the site are primarily those associated with the operation of the scrap yard. Some of the many skips and containers I saw on the site were empty but most appeared to contain the type of materials normally found in a scrap yard. I therefore conclude that the haulage activities carried out on the site are mainly connected with the operation of the scrap yard and consequently ancillary to the main scrap yard use.

47. Earlier in the section of my report (para. 40) I describe my impressions of the operation of the appellant's business activities at Woodside. It is clear that Mr Main may decide not to process certain vehicles for scrap as soon as they arrive at the site and may choose to keep them for periods of up to 40 or 50 years before they are either sold or scrapped. I noted that within this extensive site there is an enormous number of vehicles of every type, under the shelters and within buildings, or in the open. My view is that in the vast majority of cases they were brought onto the site either by Mr Main or others as scrap and stored there in connection with the operation of this scrap yard, rather than awaiting sale or re-use for any other purpose. The number of vehicles sold from the site is very small compared with both the number brought in each week and the very high number present. My earlier conclusion was that such sales were ancillary to the scrap yard operations. Consequently, I consider that vehicles are stored at

Woodside primarily as part and parcel of the scrap yard use and therefore such storage is ancillary to that principal use.

50. Many of the items on the site at the time of my visits, heavy machinery and equipment, could be described as contractor's plant. I noted in particular the presence of the road rollers, trailers, fuel tanks, caravans and portable buildings. However, I saw nothing which either looked out of place within a scrap yard, or was obviously being stored awaiting sale rather than scrapping. As with the storage and the sale of motor vehicles, there is some evidence that items of contractor's plant have been sold from the site (Doc. 5). But it seems to me that such sales are infrequent and at a level commensurate with the operation of a substantial scrap yard business. The principal reason for contractor's plant being present on the site is therefore associated with the scrap yard, use and the storage of such items does not represent a separate use in its own right.

52. The appellant said in evidence that he had some 160 skips and containers which were used for storage of materials on the site and to collect material which is either returned to the site or delivered elsewhere. I noted the presence on the site of a significant number of skips and containers, both empty and holding materials. Documentary evidence was submitted (Doc 5 RJM16) that skips are hired out. Part of the skip hire operation concerns the collection for disposal of materials unrelated to the scrap yard, for instance malt waste and paper. However, bearing in mind the number of skips and containers owned by Mr Main, this represents only a very small proportion of an activity which I consider to be directly associated with the scrap yard use. The skips and containers which were on the site appeared to me to contain the type of materials normally associated with scrap yards. I would have expected to find a large number of skips and containers within a scrap yard as extensive as Woodside, and I consider that the collection of scrap and other material in skips and containers, its return to the site and storage prior to sale or sorting, is an integral part of the overall scrap yard operation. Accordingly, the storage of waste containers is an activity which is part and parcel of the main scrap yard use.

53. The Certificate as issued by the Council effectively relates to a mixed or composite use of the land, which comprises a single planning unit, for a scrap yard and residential purposes. The description 'scrap yard' is not used on the issued Certificate, but there is no doubt in my mind that the operations which have been carried on principally comprise the dealing, storage and processing of scrap metal, and constitute a primary use as a scrap yard. Therefore, in the interests of precision, I consider that the wording of the Certificate should be amended along the lines of the first part of the schedule accompanying the application to read: 'Use as a scrap yard, involving the dealing, storage and processing of scrap metal'. The appellant maintained that the other 8 uses included on the schedule were each separate and distinct uses in their own right. After considering each one individually my conclusions are that they were either activities carried out as part and parcel of the operation of the scrap yard and therefore ancillary to that main use, or carried out on a

small scale or infrequent, irregular basis such that they were *de minimis*."

Mr Wolton submits that a Lawful Development Certificate is an important document which should be precise and he refers to section 191(2)(a).

"For the purposes of this act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) ..."

He referred me to certain other subsections, which I shall not read, all of which demonstrate that a certificate of this kind carries considerable importance. He also drew my attention to the circular in force at the time of the Inspector's report and the circular in force at the time of the decision, the latter circular being produced some three months before the decision, namely Circular 10/97:

"8.16 Subsection (5) of section 191 provides for certain matters a LDC must contain. The LDC is particularly valuable because its effect is similar to a grant of planning permission. It is therefore vital that the certificate indicates precisely the area of land to which it relates (normally by means of an attached, sealed site-plan); precise details of what use, operations or failure to comply with a condition are found to be lawful, why and when. For example, if a certificate is for a use of land—unless the use falls within one of the 'use classes' specified in the UCO current at the time, or the certificate is granted on the basis that a specific grant of planning permission confers lawfulness on the use—it is important for it to state the limits of the use at a particular date. These details will not legally be equivalent to a planning condition or limitation. They will be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a 'material' change of use takes place, the LPA may then take enforcement action against that subsequent breach of planning control (which a less precise certificate might well preclude). A LDC must therefore be precisely drafted in all respects. (See also 8.11 about the need for applications to be specific.)

8.21 It is generally accepted that any '*sui generis*' use which is not in a 'use class' in the UCO, such as a builder's yard or many haulage depots, can be 'materially' different in planning terms from another use which nevertheless falls within the same general description. In other words, there can be a 'material' change of use requiring planning permission between, for example, one builder's yard use, or a particular use as a haulage depot, and another. A change of ownership or occupation of land does not, in itself, constitute a material change of use. However, where a builder's yard has only in the past been used by a small jobbing builder for his office, and as a base for one or two vehicles and storing building materials, unless that detail and level of use are specified in the certificate (or by condition or limitation in a permission on which the LDC is based), the LPA will lack effective control in future over any

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significant intensification of the use (perhaps by a building contract who introduces the storage of heavy plant and machinery, mixing of concrete and the manufacture of joinery items on to the land). Such an intensification, though arguably constituting a 'material' change of use from the former use, could not be controlled if the site benefited from a LDC which stated that it was lawfully 'a builder's yard' without further qualification.

8.22 Where a LDC 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 if it extends to the whole of the land comprising the planning unit, to the exclusion of the other uses formerly taking place on some of the land (see *Wipperman v. Barking LBC* (1965) 17 P. & C.R. 225)."

Mr Wolton also drew my attention to the case of *Broxbourne Borough Council v. Secretary of State for the Environment* (1979) 38 P. & C.R. 381, particularly pages 390 and 391. Robert Goff J. said:

"The case has, however, a moral. It demonstrates that planning authorities should exercise great care concerning the terms of established use certificates that they issue. If a certificate is not drawn with care, and expressly limited to the precise use in question, then its issue can lead to the consequence that the authority may, through its own act, find itself thereafter precluded from preventing a use for which planning permission would not have been granted simply because the certificate has been issued in terms wider than were necessary.

Kilner Brown J. said: I agree, and would merely wish to add a word or two with reference to what Robert Goff J. has described as 'the moral' to be drawn from this case.

In my judgment, it does underline the duty of a planning authority to consider with care whether or not the proposed terms of the certificate sufficiently particularise the existing use. The object of the exercise contemplated by section 94 is not only to avoid an examination of the history and existing fact, but also to identify both the nature and the extent of the use. This demonstrates that it is clearly important to be careful not only in order to avoid the conclusive effect of a loosely and widely phrased certificate, but also, as all counsel have agreed and as Robert Goff J. has just pointed out, for the assistance of a prospective purchaser."

Before coming to the heart of Mr Wolton's submissions, I wish to refer to the case of *Brazil (Concrete) v. Amersham Rural District Council* (1967) 18 P. & C.R. where at page 399 Lord Denning gave a most helpful example of what is meant in this branch of the law by ancillary uses:

"Take for instance Harrod's store, the unit is the whole building. The greater part is used for selling goods: but some parts are used for ancillary purposes such as for offices and for packing articles for dispatch. The character of the whole is determined by its primary use as a shop. It is within Class I of the Use Classes Order. The ancillary use of part as an office does not bring it within Class II: and the ancillary use of

part for packing does not make it a light industrial building within Class III."

That makes it extremely clear what is meant by the word "ancillary" in this branch of the law. Further illumination is shed on this aspect by the judgment of Bridge J. in *Burdle v. Secretary of State for the Environment* [1972] 3 All E.R. 240 where at page 244b he said:

"Without presuming to propound exhaustive tests apt to cover every situation, it may be helpful to sketch out some broad categories of distinction.

First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. That proposition emerges clearly from the case of *G. Percy Trentham Ltd v. Gloucestershire County Council* ..."

Bridge J. went on to cite an extract from the judgment of Diplock L.J. and continued:

"But secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land."

He then goes on to the third category and then says:

"To decide which of these three categories apply to the circumstances of any particular case at any given time may be difficult. Like the question of material change of use, it must be a question of fact and degree."

Mr Wolton's submission is that plainly the Inspector has erred in his use of the word "ancillary" and thus misdirected himself in law. He gave six examples falling within the Inspector's conclusions I have just read, but his point is stronger in the cases of two of them than in the others.

As to the haulage business, I would stress these words in paragraph 46:

"The vehicles, trailers and skips owned by Mains Motors may well be used on occasions to transport materials whose source or destination is not the appeal site. I was told that the company collected malt waste and also transported waste paper ..."

Then he went on to say that he considered that:

"materials transported by the lorries, trailers and containers based at the site are primarily those associated with the operation of the scrap yard."

He concluded:

"I therefore conclude that the haulage activities carried out on the site are mainly connected with the operation of the scrap yard and consequently ancillary to the main scrap yard use."

As to the skips I stress these words:

"Documentary evidence ... was submitted that skips are hired out. Part

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of the skip hire operation concerns the collection and disposal of materials unrelated to the scrap yard, for instance malt waste and paper. However, bearing in mind the number of skips and containers owned by Mr Main, this represents only a very small proportion of an activity which I consider to be directly associated with scrap yard use."

He concluded:

"Accordingly, the storage of waste containers is an activity which is part and parcel of the main scrap yard use."

The haulage activities which are not mainly connected with the operation of the scrap yard, in my judgment, cannot properly be said to be ancillary to the scrap yard in the sense meant by Lord Denning or, indeed, at all in this branch of the law. The Inspector appears to have put that part of the haulage business on one side merely because it is relatively small; likewise in respect of the skips. Part of the skip hire operation is unrelated to the scrap yard, therefore it cannot possibly be part and parcel of the main scrap yard use. Again he appears to have put it on one side merely because it is relatively small.

As in Bridge J.'s second category it is not possible to say that these parts of the haulage and skip businesses are ancillary to the scrap yard. Whether this is truly so or not is a matter of fact and degree as Bridge J. reminds us in his judgment. However, it is plain on the face of the decision letter that if these uses are in part not ancillary to the scrap yard use, but merely relatively small (and in my judgment the Inspector must have been misunderstanding and misapplying the word "ancillary" in treating it as meaning relatively small) in doing so he has erred in law.

Mr Mould, who appears on behalf of the Secretary of State, cited to me the case of *Emma Hotels v. Secretary of State for the Environment and Southend-on-Sea Borough Council* [1981] J.P.L. 283. That was a case concerning a hotel at Westcliff-on-Sea and the bar for the hotel came to be used in a manner akin to a public house visited by many people who were not residents at the hotel. The Secretary of State for the Environment held that the introduction of that use for non-residents, being something which was not an incident of the hotel but a separate use, involved a material change of use of the planning unit. The appellants appealed against that decision and Donaldson L.J. said this:

"The fact that it was a free house might well attract customers in larger numbers than would be the case if it were a tied house, but it did not follow from that that it ceased to be an hotel or that the attracting of non-residents involved a separate composite use within the same planning unit as something in the nature of a public house."

That may well be the case on the facts of that case and in particular, in view of Donaldson's L.J. view of the facts, together with those of Hodgson J. who agreed. No authorities were cited by Donaldson L.J. and one does not know whether or not the basic principles about ancillary uses were taken into account, but I cannot treat Donaldson's L.J. view of the facts in that case, particularly the paragraph that I have read, as meaning that in the present case there was anything other than a mistake by this Inspector as to his use of the word "ancillary".

Mr Mould also cited to me two other cases: *Allen v. Secretary of State for the Environment* [1990] 1 P.L.R. 25, being a decision of Mr Roy Vander-

meer, O.C., sitting as a Deputy Judge of this Division, but I gain little assistance from that judgment which is concerned principally with the submission that the element of use complained about was *de minimis*.

The other case which Mr Mould cited is *Trio Thames Ltd v. Secretary of State for the Environment and Reading Borough Council* [1984] J.P.L. 183, which was a case that was concerned with the question as to whether or not a change of use from "restaurant with dine and dance facilities" to use as a restaurant and nightclub involved a material change of use. I gain no assistance from it on the question of the proper approach as to the ancillary uses in the present case, save that in the judgment of Forbes J. in the right-hand column of page 183 there is a useful recital of the basic principles about ancillary uses all in line with Lord Denning's judgment in *Brazil Concrete*, though he does not cite that case.

I should add that I am particularly concerned that if the certificate were to remain in its present form then subsequently if Mr Main were to continue, or especially if he were to increase maybe slightly the use of his haulage and skip business for these purposes, that is to say purposes outside the site, the unrelated part of the business, he would be carrying out a use which is not mentioned in the certificate and thus be vulnerable to service upon him of an Enforcement Notice. That, in my view, cannot be right. These uses, upon proper reconsideration, may well be held to be independent primary uses forming part of the composite use of the site and in that event they should be mentioned expressly in the lawful development certificate.

I say nothing about the breaking of motor vehicles dealt with by the Inspector in his paragraphs 38 and 39, nor the vehicle sales dealt with in paragraphs 41 and 47, nor the contractor's plant dealt with in paragraph 50. There is no need to because Mr Wolton, having been successful upon the points with which I have just been dealing, does not need those points to be dealt with. The Inspector may well have been misapplying the word "ancillary" in those cases as well. It is not clear and I express no opinion about it.

The second matter, with which I need to deal, is the degree of precision or particularity to which a certificate of this kind should condescend. As Mr Mould has rightly pointed out, the section is in broad terms and requires, in the most relevant part, only this, at section 191(5) after specifying the land, (b) "describe the use ...". That is all that is required. Guidance is given and I have already read it, and I have already read the judgments in the *Broxbourne* case. Both the guidance and the judgments are to the effect that the certificate should be precise. After paragraph 8.16, in which that is said, various examples are given in the guidance; in particular, there is in paragraph 8.22, by way of example; consideration given to a builder's yard because the expression may encompass builder's yards of entirely different descriptions and sizes; and 8.22 is concerned with sites which are in "mixed or composite use". Sites of that kind are difficult to describe. Indeed, most uses, other than those in the Use Classes Order, are difficult to describe. What is put forward as guidance is that in such cases there may need to be further qualification, or, with respect to the composite use, description which is carefully reflected in the certificate.

The certificate actually issued in this case, to repeat, is scrap yard involving the "dealing, storage and processing of scrap material." I omit the words about the dwelling-houses. That description is not precise and is in fact, inaccurate in that the fact is, as found by the Inspector on the largely

undisputed evidence, that there are also included within the ancillary uses not merely "dealing storage and processing of scrap metal", but a number of other ancillary uses, including, in particular, because it is the one which Mr Wolton has particularly latched on to, haulage depot, that is the keeping of vehicles and skips for the purposes largely of the scrap yard and, to a lesser extent, for vehicles carrying waste and paper between sites other than the appeal site.

In my judgment it is erroneous and wrong in law for a certificate of this kind, if it is going to condescend to what is called, in the guidance, further qualification, or one could say further particularity, to include some of that particularity, but not all of it.

The effect of what has been done in this case has been not only to defeat the case which was put forward to the effect that all the other uses which are dealt with in the Inspector's report, including the haulage, are to be treated as ancillary rather than primary uses, but further then to omit all reference to them from the certificate even in an ancillary nature. That is apart from the ones which were always accepted; that is to say the dealing, storage and processing.

For that reason also, in my judgment, the application should be allowed. The decision will accordingly be quashed and the matter can now be reconsidered paying full and proper regard to the meaning of the word "ancillary" in this field of the law and also full and proper regard to the guidance given, with respect to the drafting of such a certificate so as to produce a result which is fair to the applicant.

Appeal allowed with costs.

Solicitors—Kingsley Smith and Company, Kent; Treasury Solicitor.

Reporter—David Stott.