

THRINGS

SOLICITORS

Legal submission in support the Transport and Highways Response to the planning application submitted on 18 September 2018 APP/18/00943 (“the Application”) for material change of use of Land as a wedding and events venue at Tournerbury Woods Estate Tournerbury Lane Hayling Island

Tournerbury Woods Estate Tournerbury Lane Hayling Island

(the “Property”)

Date: 11 June 2021

NOTE ON KANE V NEW FOREST IN RESPECT OF THE APPLICATION ON TRANSPORT AND HIGHWAYS GROUNDS:

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1. THE BACKGROUND

- 1.1. The defendant local planning authority ('LPA') failed to act upon the design flaws; despite being warned on multiple occasions of potential risks.
- 1.2. The LPA proceeded to authorise the construction of a foot path as part of a development project.
- 1.3. The claimant suffered serious injuries and the action was summarily dismissed at the trial; however, on appeal the action was given permission by the Court to proceed.

2. LEGAL FRAMEWORK

- 2.1. The fundamental lesson to all LPA's in Kane is that if the LPA have evidence that granting Planning Permission would result in an inherently dangerous development; then in those circumstances *any person* using the development who may suffer injury will result in the LPA to being held liable in full or in part.
 - 2.1.1. Applying Kane to the Application clearly illustrates the LPA's potential vulnerability to potential future claims.
- 2.2. In the Kane context, the following factors are of particular relevance:
 - 2.2.1. The LPA had been warned on multiple occasions of the risk(s),
 - 2.2.2. The Court of Appeal distinguished the facts of the matter from the Stovin v Wise Case (applied incorrectly in the lower court hence Appeal granted).
 - 2.2.3. It is not clear that a local planning authority would be immune from liability if they permitted the use or construction of a foreseeably dangerous route if they failed when granting the planning permission to impose a condition forbidding the use of the route by the public until it was considered safe.
- 2.3. The case is a clear warning shot to all LPA's and the line between the failure to act and a careless act can sometimes be very fine.
- 2.4. Considering the facts presented to the LPA in respect of Transport and Highways for APP/18/00943 there is a clear position that the LPA would be negligible to grant permission considering Kane.
- 2.5. Additionally, we note the fine legal distinction between omission and positive acts which would naturally put the LPA in a very vulnerable position if they were minded to grant permission.
- 2.6. The courts have repeatedly stated that the 'setting in motion' is a prime instance of causation and we would suggest that any future claimant would have ample merit on grounds against the LPA.
- 2.7. The logical and reasonable conclusion at law is that no rational distinction could be drawn between the LPA's casual status of acts and omissions.
- 2.8. Considering the Transport and Highways Assessment and Kane, we respectfully suggest that the LPA should act with considerable caution and the only plausible decision for the LPA is to refuse permission.

2.9. Extract from the Kane Judgment

- 2.10. *“this seems to me to be a solid basis in law for the claimant’s case that his accident was caused by the respondent ‘breach of the duty of care which, in my judgment they assumed” [34]*

3. CONCLUSION

- 3.1. In our submission we note the dangers that the LPA would be vulnerable to; if a decision to allow the proposed connection to the public highway was approved.
- 3.2. As noted above; the Kane case goes to the heart of the EVOKE Highway Objection Transport Note.
- 3.3. The Council would be acting in breach of their duties if they were to support the Application.
- 3.4. Kane is authority for the proposition that in specific circumstances a decision to grant planning permission, that results in an unsafe access may result in the LPA being liable for any/all injuries in respect of that particular development.

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