

Planning conditions post-*Trump*

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8 November 2016

Trump



- *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 W.L.R. 85
- Consent granted to operate a wind farm under section 36 of the Electricity Act 1989.
- Condition 14: pre-commencement condition requiring a detailed design statement, but no enforcement clause.
- Condition 13: pre-commencement condition requiring a construction method statement, and an enforcement clause.
- Supreme Court:
 - Can use 13 to enforce 14 due to overlap.
 - In any event, can imply an enforcement clause into 13.

Key points



- The court “asks itself what would a reasonable reader understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise ...” [34]
- Can look at extrinsic material if: (a) incorporated; (b) ambiguity [34]
- No complete bar to implied conditions [32] - “great restraint” required since: (a) public document; (b) criminal sanction [35]
- Tailpiece conditions okay if don’t enable alteration of the nature of the development (here, variation of construction method did not alter number and location of turbines) [39]

Post-Trump



- *University of Leicester v SSCLG* [2016] J.P.L 709: in ambiguity cases, extrinsic material not limited to the planning application – can include: oral evidence of officer at inquiry; officer’s report; committee minutes; correspondence; s.106 agreement; permission implementation.
- *Menston Action Group v Bradford MDC* [2016] EWCA Civ 796: condition requiring preparation of a scheme for surface water drainage based on “sustainable drainage principles” – requiring betterment of nearby land would offend planning principles of law and policy.
- *Dunnett Investments v SSCLG* [2016] EWHC 534 (Admin): whether condition prevented PD rights – held: “express planning consent from the LPA” ≠ GPDO consent.

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Landmark
CHAMBERS

