

Enforcement of planning obligations



Nick Grant

Nature of an s. 106

- Nature of an s. 106 agreement: ***Newham LBC v Ali*** [2014] 1 WLR 2743 [16]
- Against whom enforceable (s. 106(3),(4)).
- Interpretation: ***R (Robert Hitchens Ltd) v Worcestershire CC*** [2016] J.P.L 373, [29]

Enforcement

- Only by the LPA (s. 106(3)), ***Milebush Properties Ltd v Tameside MBC, Hillingdon*** [2011] P.T.S.R. 1654
- Statutory methods
 - Injunctions (s. 106(5))
 - Entry on land (s. 106(6))
 - Charging orders (s. 106(12), but regulations not made)
- Contractual: ***Avon CC v Millard*** (1985) 50 P&CR 275, 279
- Do not have to exhaust planning enforcement remedies: ***Avon CC***

Injunctions

- ***Newham LBC v Ali:***
 - Interim injunction governed by ***American Cyanamid***
 - Damages rarely adequate, [17]
 - Injunction ought ordinarily to be granted, [20]
 - Matters to take into account, [20]-[23]
 - Ability to suspend (use sparingly!) [35]-[42]

- ***Waltham Forest v Oakmesh Ltd*** [2010] JPL 249
 - Obligations to build? [66]
 - What if planning permission denied? [67]-[68]
 - Obligation more expensive? [70]

Money Claims

- Damages?
- Debt? ***R (Renaissance Habitat Ltd) v West Berks DC*** [2011] J.P.L 1209
 - JR of decision by WB to commence debt claim against R
 - Argued that obligations in s. 106 unlawful as SPG varied
 - JR dismissed

- Expert determination – key points
 - Contractual process based on consent: ***Campbell v Edwards*** [1976] 1 WLR 403
 - Court often won't decide matters to go to ED: ***Milebush Properties Ltd v Tameside MBC, LB Hillingdon*** [2010] EWHC 1022 (Ch), [2011] PTSR 1654 (EWCA)
 - Sometimes final and binding: ***Jones v Murrell*** [2016] EWHC 3036 (QB)
 - Court's jurisdiction to review decision cannot be *totally* ousted: ***Barclays Bank plc v Nylon Capital LLP*** [2011] EWCA Civ 826 [21]-[35]
- Arbitration – Arbitration Act 1996

Thank you for listening

ngrant@landmarkchambers.co.uk

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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