

# Planning obligations – the relationship between ss. 73 and 106 TCPA 1990



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# Topics

- 1) Building blocks:
  - a) s. 73 TCPA 1990
  - b) s. 106 TCPA 1990
- 2) Putting it together – relationship between ss. 73 and 106 TCPA 1990
- 3) Example – ***Norfolk Homes Limited v North Norfolk District Council*** [2020] EWHC 2256

## (1)(a) Building blocks – s. 73 TCPA 1990

- Key characteristics:
  - Commonly referred to as applications to “amend” or “vary” – technically inaccurate
  - Result of s. 73 application is a new independent and freestanding permission – original permission is intact and unaltered – see *Pye v SSETR* [1999] PLC 28 at 44 (but NB *Lambeth v SSHCLG* [2019] UK33)
  - Therefore the applicant has a choice of permissions (but careful if one implemented, unless development is identical e.g. *R. (Robert Hitchins Limited v Worcestershire County Council* [2015] EWCA Civ 1060 at [37]).
  - May only consider the question of conditions – s. 73(2) and should be as at the time of the s. 73 determination.

## (1)(b) Building blocks – s. 106 TCPA 1990

- Key characteristics:
  - Runs with the land.
  - Need not be linked to a planning permission – freestanding legal instrument – no part of the planning permission.
  - May be conditional – s. 106(2)(a) – e.g. on grant of permission, on commencement of development – triggers.

## (2) Putting together - relationship

- Two freestanding instruments -
  - Relationship turns on drafting of obligation - essentially matter of interpretation.
  - Obligation may be revisited on determination of s. 73 application – NB s. 73(2) does not restrict.
  - Options for LPA: (1) broad wording of original obligation; or (2) new obligation.
  
- Common example – two planning permissions but only one s. 106 agreement – essential questions:
  - Which permission is being relied on?
  - Was obligation triggered by development under first permission?
  - If not triggered, does obligation/trigger encompass development under second permission?

### (3) Norfolk Homes

- Background: 2012 permission (s. 70); obligation in 2012; 2013 permission (s. 73); 2015 permission (s. 73).
- Issue: obligation only applied to 2012 permission – two arguments (1) interpretation; (2) implication.
- Interpretation – rejected LPA’s argument that interpretation of planning obligation was unique; rather, consistent application of usual principles.
- Implication – rejected LPA’s argument that term should be applied to attach obligation to any subsequent obligation – no technical trap.

Thank you for listening

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