

Legal issues in conditions and planning obligations



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Overview of Topics

- Interpreting Planning Conditions
- Conditions and New Permissions
- Obligations and New Permissions
- Amending Planning Obligations
- Unilateral Obligations to Fix Mistakes?
- Interpreting Planning Obligations

Interpreting Planning Conditions

- Start with Supreme Court in Trump & Lambeth
- More recently: UBB Waste Essex Ltd v Essex County Council [2019] EWHC 1924 (Admin):
 - 1) Permissions should be interpreted as by a **reasonable reader** with some knowledge of planning law and the matter in question
 - 2) Common sense
 - 3) Legitimate to consider the **planning “purpose” or intention** of the permission, where this is reflected in the reasons for the conditions and/or the documents incorporated
 - 4) Where there are documents incorporated into the conditions by reference, **a holistic view** has to be taken, having regard to the relevant parts of those documents
 - 5) Documents incorporated into the conditions → must be taken into account
Where the documents sought to be relied upon are “extrinsic” → only if ambiguous
 - 6) Court should be extremely **slow to consider the intention alleged to be behind the condition from documents which are not incorporated** and particularly if they are not in the public domain.

Conditions and New Permissions

- *London Borough of Lambeth v Secretary of State for Housing, Communities and Local Government and others* [2019] UKSC 33
 - Supreme Court were faced with interpreting a planning permission granted under [s.73 of the TCPA 1990](#).
 - In 1985: Lambeth had granted planning permission for a DIY store and garden centre with a condition that prevented the sale of food.
 - 2010: First s.73 application made --> no sale of food
 - 2014: Second s.73 permission granted --> no restriction on sale of food
- SC held: *“the conditions remain valid and binding because there was nothing in the new permission to affect their continued operation”*
- **Practice Point: Provides a greater scope for LPAs to argue that pre-existing conditions could continue to affect a relevant site.**

Obligations and New Permissions

- Section 73 permissions will not be bound by section 106 Agreements unless expressly drafted: Norfolk Homes Ltd v North Norfolk DC [2020] EWHC 2265 (QB) *per* Holgate J
- **Practice Point: Development undertaken pursuant to a s73 permission needs to be explicitly bound either by the original s106 agreement or by a new s106 agreement**

Amending Planning Obligations

- A planning obligation entered into after 25 October 1991 may be modified or discharged:
 - By agreement (at any time) between the appropriate authority and the person or persons against whom it is enforceable: section 106A(1)(a)
 - In accordance with TCPA 1990:
 - section 106A: Modifications and discharge of planning obligations
 - **Practice Point: Appropriate authorities cannot behave unreasonably in refusing requests made within the five year period: R. (on the application of Batchelor Enterprises Limited) v North Dorset DC [2004] J.P.L. 1222.**
 - **Practice Point: Application to modify an obligation was an “all or nothing” decision. If an LPA found some of the proposed modifications unacceptable, it may invite the application to submit a fresh or amended application but it must deal with the present application in its entirety: R (Garden and Leisure Group Limited) v North Somerset Council [2004] 1 P. & C.R. 39**
 - section 106B: Appeals in relation to applications under section 106A

Unilateral Obligations to Fix Mistakes?

- *Ikram v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 2
 - Unilateral obligations issued subsequently do not correct errors introduced earlier in the decision-making process.
 - The Court of Appeal held that an undertaking to control the operation of a mosque in north London was an inadequate attempt to correct faulty conditions drafted by an inspector who had allowed the use on appeal.
- **Practice Point: Local authorities should act with caution before accepting unilateral obligations to correct errors introduced earlier in the decision-making process.**

Interpreting Planning Obligations

- *Aspire Luxury Homes (Eversley) Ltd v Hart DC* [2020] EWHC 3529 (QB) per Bourne J
 - It was not an abuse of process to bring an ordinary civil claim in relation to the construction of a s.106 agreement.
 - The validity of a s.106 agreement was highly likely to be a question of public law, suitable only for judicial review, whereas construing of a s.106 agreement was no different in principle from construing any contract.
 - There was no strong reason of principle why an issue over the meaning of a s.106 agreement should not be dealt with in the same way as an issue over the meaning of any other contract.
- **Practice Point: Risk that those seeking to avoid obligations consider this another potential line of attack.**

Thank you for listening

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