
RTPI

Case Law Update

1 October 2019

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PART 1 – Certainty in planning, where are we now?

- Lambeth (permission descriptions, implying/imposing conditions)
- Thornton Holdings (5 years elapsed before bringing a JR)



Content

PART 2 – General Updates

- R (oao Warren Farm (Wokingham Ltd)) v Wokingham Borough Council
 - R (oao Squire) v Shropshire Council
 - R (oao Gare) v Babergh District Council
 - Cases to watch out for in 2019
-

Case law – A Quick Canter Through Drafting For Certainty

Drafting should be clear and unambiguous

Four corners of the planning permission

Incorporation by reference

Cannot limit through description

Tailpiece clauses voidable

No such thing as an 'implied condition'

Extrinsic material should be limited

Case law – Creating certainty

- Holistic - natural and ordinary meaning of the words, its purpose, other conditions and employ 'common sense'
- Interpretation is the precursor to implication

There is (or was?) clear tension between the two approaches and the scope of implication



Trump (2015) – interpretation

Lambeth v SoS (Supreme Court)

Facts

- PP granted in 1985 and use **limited by condition** - sale of DIY goods and other specified categories only **NOT including food**.
- x2 subsequent s.73 variations, most recent in 2014



Main Issues



“The retail unit hereby permitted shall be used for the sale and display of non-food goods only and... for no other goods.”

Main Issues II

- When the 2014 consent was issued, no restriction was included as a planning condition (but it was included in the description of the planning permission).
 - Two planning conditions from the varied consent were also missing – N.B. majority of conditions were included ...
 - The 2014 s.73 consent included a 3-year time limit
-

Main Issues III

CLOPUD to determine if lawful use of the store extended to sales of unlimited categories of goods (including food).

Council **refused** to issue certificate on the basis of the 2014 s.73 consent.

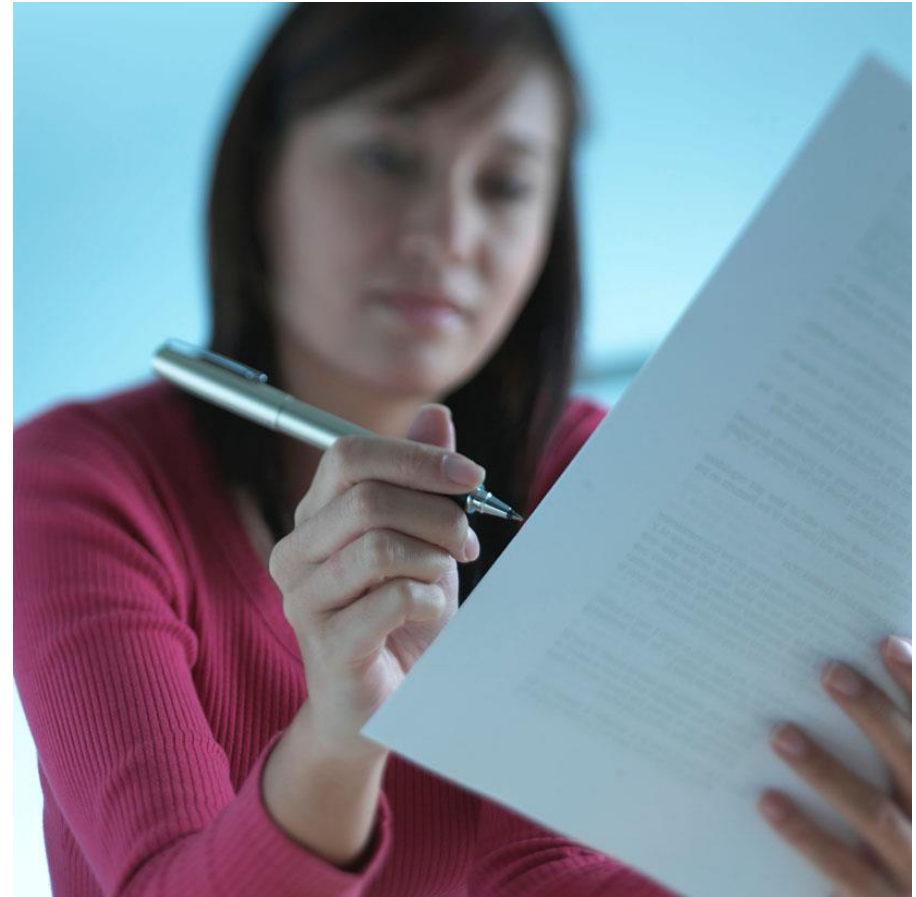


Main Issues III

- This refusal was successfully appealed on basis that no condition imposed on 2014 PP to restrict nature of the retail use to specific uses.
 - Decision upheld in lower courts.
 - Council appealed to the Supreme Court.
-

Departure from CoA Ruling

- The document was “clear and unambiguous”
- “hereby” approved
- The Council was approving what was applied for
- There was clearly no intention to discharge the restrictive condition



Supreme Court Decision

- SC unanimously allowed the appeal, reversing the CoA's earlier decision N.B. -
 - the inclusion of the amended condition in the description meant it applied (c.f. *I'm Your Man*)
 - the two omitted conclusions could be included
 - the validity of re-imposed 3 year time limit on a s.73



The Two Missing Conditions and 3 year limit

The Court was happy to re-impose the two missing **conditions**:

“... they would remain valid and binding – not because they were incorporated by implication in the new permission, but because there was nothing in the new permission to affect their continued operation.”

The **3 year limit** was held to be invalid where the consent has already been implemented

Take away points from *Lambeth*

Clear and unambiguous **drafting** is imperative ...

A **less prescriptive** approach should be taken when interpreting a planning permission

A **restriction** can be saved (depending on the facts) if a description limits the consent

There may be difficulty knowing what **conditions** from previous s.73 consents are still relevant

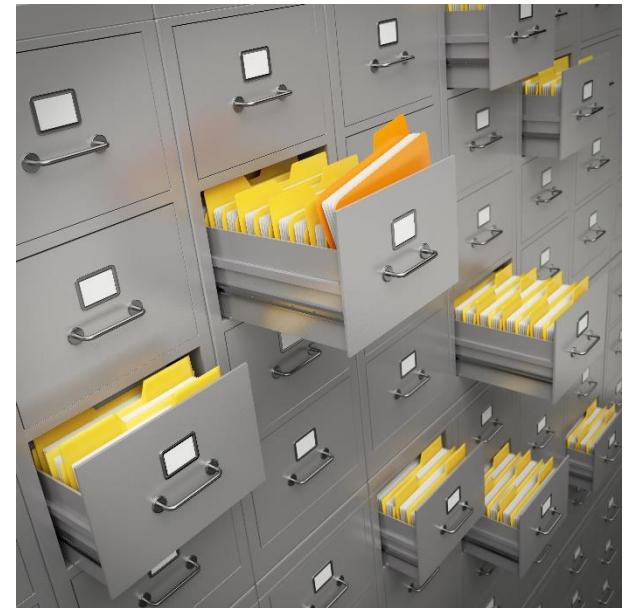
Take away points from *Lambeth II*

Further confusion as **s.73 consents** are new consents, not variations like NMAs

Forensic examination of the previous **consents** to understand what is still relevant, including “what did the LPA mean to do”?

Paper-chase and **enforcement**

Need to be careful of minor revisions or **alterations**



Thornton Hall Hotel Ltd v Thornton Holdings Ltd



Thornton Hall

Facts

- Consideration of the application by the Council
 - s.106
 - Consent(s) issued – initial consent granted without any conditions
 - Claim issued and succeeded in the High Court, despite the challenge being 5 years late
-

Application of the law to the situation

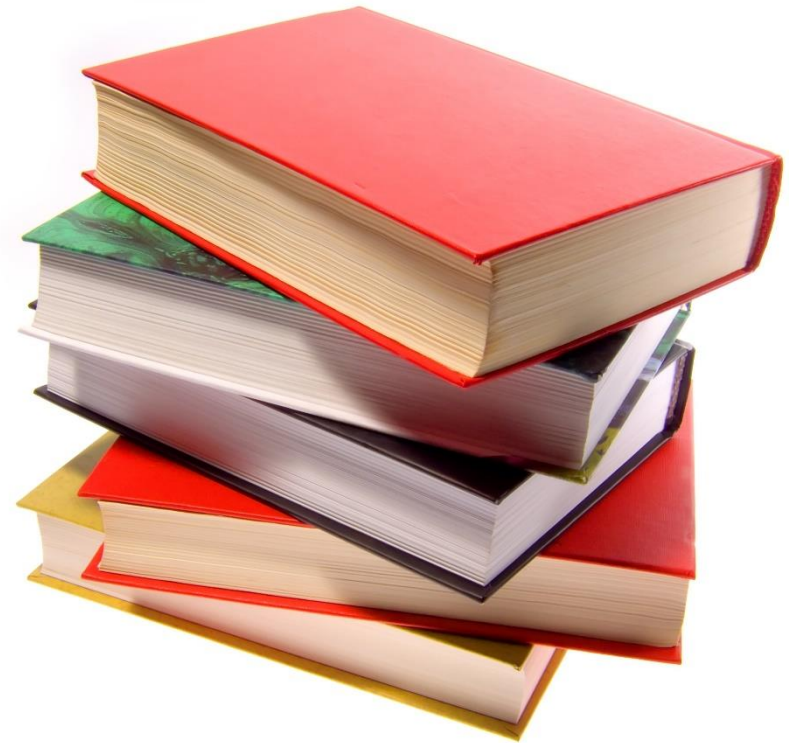
General position

JR claims must be issued **promptly** and in any event not less than **3 months** after their grounds first arose. In a case of a **planning decision** the claim must be filed not later than **6 weeks** after the grounds to make a claim first arose (**CPR r.54.5(1)**).

Application of the law to the situation II

Statute

s31(6) and (7) of the Senior Act
1981 – these provisions restrict
bring forward a claim where there
has been an undue delay – give
the Court discretion



Planning Court Decision on Application of Law

- Thornton Holdings had **concealed the truth** and there was **public interest** in remedying the Council's error.
 - Justice Kerr - the **public interest** in allowing the extension **outweighed** Thornton Holdings' **commercial interests**.
 - In the interest of **good administration** the error had to be rectified and Thornton Holdings would not suffer **hardship** (indeed they had profited substantially)
-

Take away points from Thornton Hall

- Extension of more than 5 years was “**extreme**”, but added there **was special reasons** to justify the extension sought. Added that this was an **exceptional case**
 - PP rarely issued without conditions
 - Planning Committee resolution not translated into DN – there was misrepresentation (?!)
 - Thornton Holdings knew PP wrongly issued and they had ‘concealed’ the truth
 - Public interests outweighed private commercial interests
-

Health Warning

- Court stressed that **no precedent** was set by this case. Lengthy delays in bringing forward challenges not permitted **unless exceptional circumstances can be shown**. The Court said in this instance the circumstances were **extraordinary**.



; or

Warren Farm

Article 7 of the GPDO states:

“Prior approval applications: time periods for decision

Where, in relation to development permitted by any Class in Schedule 2 which is expressed to be subject to prior approval, an application has been made to a local planning authority for such approval or a determination as to whether such approval is required, the decision in relation to the application must be made by the authority -

(a) within the period specified in the relevant provision of Schedule 2;

(b) where no period is specified, within a period of 8 weeks beginning with the day immediately following that on which the application is received by the authority; or

(c) within such longer period as may be agreed by the applicant and the authority in writing.”

Warren Farm

Facts

The question for the Court - whether paragraph (c) is an alternative to both paragraphs (a) and (b); or only to paragraph (b).



Class Q

Q2 - applicants require prior approval in accordance with para. W

Development must not begin before the occurrence of one of the following:

- (a) the applicant receiving the authority's determination that prior approval was not required;
 - (b) the applicant receiving the authority's prior approval; or
 - (c) **the expiry of 56 days** following the date on which the authority received the application without the authority notifying the applicant as to whether prior approval was given or refused.
-

Arguments (I)

- Article 7 should be afforded its ordinary meaning; (c) should be seen as alternative to (a) or (b).
- If para (c) to restricted to (b) only it would have been included in it or as part of it
- Para W(11) can be given literal meaning (i.e. dev cannot begin before expiry of 56 days)

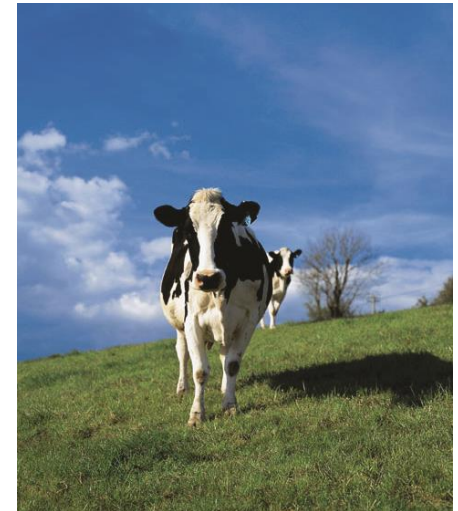


Arguments (II)

- Literal interpretation of paragraphs
 - Words should be incorporated into GPDO so it mirrors other planning legislation; allowing time limits to be extended by agreement.
 - Para W(11) could be read as implying a deemed receipt date for the application where there has been an agreement to extend time.
 - Court's view?
-

Take away points from Warren Farm

- Governing provision is Article 7(a) – determination to be made **within 56 days**
- No ability to extend 56 day period



R(Squire) v Shropshire Council



R(Squire) v Shropshire Council

Facts

- The EPR Regime
- Considerations of the High Court
- Considerations of the Court of Appeal



Take away points from Squire

- Need to carefully consider the interaction of the planning system with other permitting regimes
 - Assumptions can lead to erroneous outcomes
 - The Precautionary principle should be followed (in everyone's interests)
-

R (on the application of Gare) v Babergh DC

Committee taking contrary view to
its officers

Lack of reasons for the decision

fax 01962 849101
e-mail planning@winchester.gov.uk
website www.winchester.gov.uk

Planning Application

Town and Country Planning Act (1990) as amended

NOTICE IS HEREBY GIVEN that application(s) for planning permission has/have been received in respect of the following:

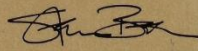
Case No: 03/00915/FUL
W No: W00644/03

Proposal: Removal of prefab concrete garage and erection of a summerhouse
Location: Pedlars Cottage 113 Duke Street Micheldever Winchester Hampshire SO21 3DF

LISTED BUILDING GRADE :II

The application(s) and plan(s) are available for inspection at the Planning Department, Avalon House, Chesil Street, Winchester, during the following hours Monday to Thursday 0845 am - 1700 pm and Friday 0845 - 1630 pm.

Any person who wishes to make representations to the Council about the application(s) should send them to me not later than 20 May 2003 and should state the grounds on which they are made.


Director of Development Services

29 April 2003

This Site Notice may be removed after 20 May 2003

To view details of this application please contact Avalon House Chesil Street Winchester

Planning Enquiries (01962) 848177/848293 Fax (01962) 849101
Avalon House, Chesil Street, Winchester, Hants SO23 0HU

 INVESTOR IN PEOPLE

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Steven Bee BA(Hons) MRTPI, MTS Director of Development Services

R (oao Gare) v Babergh

- Facts
 - First challenge May 2018 – failure to supply adequate reasons
 - Redetermination of application in December 2018
 - BDC's planning officers recommended refusal
 - committee (again) went against officer advice
 - **Only indication** of Council's reasons were from **minutes** of planning committee meeting – no reasons contained on the consent
-

Failure to give reasons for decision to grant PP

- Common ground amongst parties that there was no statutory obligation on the Council to give reasons for its decision
 - Fairness and good administration might require reasons to be given – the need for public explanation
 - Council said their reasons could be inferred from the planning committee minutes – a question of planning judgement
-

Failure to give reasons for decision to grant PP II

- Court disagreed with the Council
- Court ruled with Claimant, said Council had duty to provide clear reasoning
- Take away points

Policy CS2 had changed continuously

Council's disagreement with officers key feature: Oakley case

Redetermination following quashing of PP important

No formulated statement of reasons

Cases to look out for

Wright

Dill

Both heard by the Supreme Court, decisions due imminently





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