



3 July 2019

PRESS SUMMARY

London Borough of Lambeth (Appellant) v Secretary of State for Housing, Communities and Local Government and others (Respondents)

[2019] UKSC 33

On appeal from: [2018] EWCA Civ 844

JUSTICES: Lord Reed (Deputy President), Lord Carnwath, Lady Black, Lord Lloyd-Jones, Lord Briggs

BACKGROUND TO THE APPEAL

This appeal concerns the permitted uses of a retail store in Streatham in the London Borough of Lambeth. Planning permission was granted by the Secretary of State in 1985, but the use was limited by condition to sale of DIY goods and other specified categories, not including food.

The permitted categories were extended by later consents (under section 73 of the Town and Country Planning Act 1990 ('the 1990 Act')). The most recent was in 2014, which is in issue in this case.

In that permission, the proposed new wording for the permission included:

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

The conditions in the 2014 permission did not refer to the restriction on the sale of food goods, or to conditions in the previous permission from 2010.

The second respondent (Aberdeen Asset Management) sought a certificate from the appellant Council determining that the lawful use of the store extended to sales of unlimited categories of goods including food. A certificate to that effect was refused by the Council, but granted by a planning inspector on appeal, on the basis that no condition was imposed on the 2014 permission to restrict the nature of the retail use to specific uses. This was upheld by the lower courts. The Council, as the local planning authority, appeals to this court.

JUDGMENT

The Supreme Court unanimously allows the appeal. The certificate should be amended to exclude uses within the scope of the "Proposed wording" in the decision notice. Lord Carnwath gives the lead judgment.

REASONS FOR THE JUDGMENT

Section 73 of the 1990 Act envisages two situations: either (a) the grant of a new permission unconditionally or subject to revised conditions, or (b) refusal of permission, leaving the existing permission in place with its conditions unchanged. It does not say what is to happen if the authority wishes to change some conditions but leave others in place. Government guidance indicating that "to assist with clarity" planning decisions under section 73 "should also repeat the relevant conditions

from the original planning permission” was given as advice, rather than as a statement about the legal position [13].

Whatever the legal character of the document in question, the starting point for interpretation is to find “the natural and ordinary meaning” of the words there used, viewed in their particular context and in the light of common sense [19].

The 2014 permission needs to be seen through the eyes of a reasonable reader, who is assumed to start by taking the document at face value [28]. The wording of the operative part of the grant are clear and unambiguous. The Council approves an application for “the variation of condition as set out below”, which is followed by precise and accurate descriptions of the relevant development, of the condition to be varied, and of the permission under which it was imposed. That is followed by statements of the “Original wording”, then of the “Proposed wording”, the latter stating in terms that the store is to be used for the sale of non-food goods only. The obvious and only natural interpretation of those parts of the document is that the Council was approving what was applied for: the variation of one condition from the original wording to the proposed wording, in effect substituting one for the other. There is nothing to indicate an intention to discharge the condition altogether, or to remove the restriction on the sale of food goods [29].

If section 73 gave no power to grant a permission in the form described, the logical consequence would be that there was no valid grant at all, not that there was a valid grant free from the proposed condition. There is no issue now as to the validity of the grant as such, and all parties agree there was a valid permission for something. That being the common position, the document must be taken as it is [32]. It has been normal and accepted usage to describe section 73 as conferring power to “vary” or “amend” a condition, so the reasonable reader would not see any difficulty in giving effect to the 2014 permission in the manner authorised by the section – i.e. as the grant of a new permission subject to the condition as varied. The absence of a reason for the condition does not affect its validity [33].

There are some internal inconsistencies in the second part of the notice, but reading the document as a whole, the second part can be given a sensible meaning without undue distortion. It is explanatory of and supplementary to the first part. The permitted development incorporating the amended condition is acceptable but only subject to the other conditions set out. In other words, they are additional conditions [34-35].

This appeal is not concerned with the status of the conditions in the 2010 permission, but the court’s provisional view is that the 2010 conditions were not incorporated into the new permission, but continued to have effect under the 2010 permission, so far as they are consistent with anything in the new grant. The conditions remain valid and binding because there was nothing in the new permission to affect their continued operation [37-38].

Nothing in the present judgment is intended to detract from the advice, contained in the decision by Sullivan J in *R (Reid) v Secretary of State for Transport* [2002] EWHC 2174 (Admin), at paragraph 59, that “it is highly desirable that all the conditions to which the new planning permission will be subject should be restated in the new permission and not left to a process of cross-referencing” [42].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>