PLANNING NOTES | PLANNING PERMISSION

ALAMY

AN OLD CHESTNUT

Martin Edwards and John Martin issue a reminder that a limitation on a planning permission will not of itself operate as a condition

We start 2015 with an old chestnut, albeit one that can still cause embarrassment to a local planning authority ("LPA").

It is vitally important to remember the principle that where a LPA purports to impose a limitation on the grant of a planning permission, that limitation does not – of itself – operate as a condition. Accordingly, it cannot be enforced as such, for example by means of service of a breach of condition notice.

There are two reasons for this. The first derives from statute. While section 60(1) of the Town and Country Planning Act 1990 ("the 1990 Act") provides that planning permission granted by development order may be granted subject to conditions or limitations, section 70(1) of the 1990 Act – which allows a LPA to grant planning permission – sanctions the imposition of conditions only. The second derives from judge-made law. The courts have held that there is no doctrine of implied conditions in planning law. This means, in practice, that it will inevitably be essential to impose in addition an express condition in some form. Let us look at some relevant cases.

Judicial authority...

In *I'm Your Man Ltd* v *Secretary of State for the Environment* [1998] EWHC 866 (Admin); [1998] 4 PLR 107 an inspector on appeal had granted planning permission for the use of certain buildings for "sales, exhibitions and leisure activities for a temporary period of seven years". He failed, however, to impose a condition requiring that use to be discontinued at the end of that period. The court held that the planning permission was, in law, a permanent one.

(In this context, section 72(1)(b) of the 1990 Act expressly empowers a LPA to impose a condition requiring the removal of any building or works authorised by a planning permission, or the discontinuance of any use so authorised, at the end of a specified period and the carrying out of any works required for the reinstatement of the land at the end of that period. Section 72(2) then goes on to state that a planning permission granted subject to such a condition is, in the 1990 Act, referred to as "planning permission granted for a limited period". In practice, this form of planning permission can be useful where land is awaiting redevelopment, or where the LPA decides what is appropriate is a "trial run".)

KEY POINTS

- **Implied conditions are not recognised in planning law**
- **A limitation requires a supporting condition in express terms**

In *R (on the application of Altunkaynak)* v *Northamptonshire Magistrates' Court* [2012] EWHC 174 (Admin); [2012] PLSCS 30 the purported limitation was not a temporal one, but a substantive one. There, the LPA had granted planning permission to the claimant for the use of his premises at number 15b Silver Street, Kettering, as a hot food takeaway "as an extension to the present premises at number 15". The claimant subsequently lost possession of number 15, and the court had to decide whether he continued to enjoy the benefit of the planning permission. It held that he did, concluding that the words were not valid to restrict the way in which the use of number 15b could be exercised. Again, a condition should have been imposed.

...applied recently

More recently, see *Cotswold Grange Country Park LLP* v *Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin). There the claimant had the benefit of planning permission granted in 2010 to use land as a site for 54 static caravans for year-round holiday occupation. The only relevant condition imposed on the grant was – for present purposes – one prohibiting any of the 54 caravans to be occupied as a person's sole or main place of residence. The LPA later refused to grant the claimant a lawful development certificate ("LDC") for the proposed siting on the land of an additional six caravans for residential use. On appeal, an inspector upheld that refusal, concluding that this "would be in conflict with the terms of the 2010 planning permission". (That suggests that he took the view that, in some way, there had been a breach of the terms of the planning permission.)

The court allowed the claimant's application to quash the inspector's decision, holding that the condition (above) did not limit the total number of caravans that could be stationed on the site. Applying the reasoning in *I'm Your Man*, no such condition could be implied from the description of the permitted development in the 2010 planning permission. Accordingly, the inspector had erred in law. Furthermore, he should then have gone on to address the question whether an additional six caravans would amount to a material change of use. The answer to that question would govern whether or not a LDC should be granted.

To avoid embarrassment, when thinking "limitation", think "express condition" also.

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