



## Planning Conditions Need to be Clear to be Enforceable

13 March 2013

Payne Hicks Beach have recently acted for the successful party in a planning appeal in the High Court in the case of *Telford and Wrekin Council -v- SoS & Growing Enterprises Limited*.

---

### Summary

If a local authority wishes to restrict the types of use for a property in a planning consent, then such condition must be properly and carefully worded. In the absence of such a clearly worded condition, then use may not be restricted. In this case a consent for retail use with an obligation to agree with the local authority types of goods to be sold did not amount to a restriction to confine the retail use to that of a garden centre as the local authority argued was intended.

### The Facts

A planning condition relating to a property used predominantly as a garden centre stated as a condition that a list of goods to be sold was to be approved in writing by the local authority. In 2002 the owner sent a list of proposed goods to be sold to the local authority, but there was no response. The condition was not worded in such a way to prohibit a use or to specify a result if the local authority did not approve the list of goods.

The owner sought confirmation by way of a Certificate of Lawful Use that the garden centre site could be used for general retail purposes with a view to its development as a possible supermarket. The Certificate of Lawful Use was granted by the inspector but opposed on appeal by the local authority. The case concerned the wording of a planning condition and whether these could be interpreted loosely to allow the local authority to exclude other retail uses including the possible use as a supermarket.

### The Result

The Court decided that planning conditions such as these have to be worded correctly and clearly to be relied on by the local authority. The local authority's loose interpretation of the condition to suit its purposes was not upheld. The Court was not prepared to imply any further meaning into the condition concerning the requirement for the list of goods to be sold to be approved. The Court decided that the existing wording was unambiguous and that the planning inspector had not erred in his conclusions to this effect.

There was clear guidance from central government concerning ways a local authority could implement

such a condition and the local authority had failed to follow established drafting in relation to the planning condition. The Court found that the local authority was aware of general planning guidance because the other conditions within the same planning consent were worded in the correct way.

### **Comment**

In order to exclude permitted development rights, including changes within one type of use such as retail, within the Use Classes Order any planning condition will require clear wording to that effect.

Clients should carefully check any planning consents especially in cases where use restrictions are a concern.

In cases where local authorities may not have properly excluded permitted development rights arguments might be made enabling valuable alternative use or development.

**June 2013**

---

For further information, please contact Richard Manyon on 020 7465 4456 or [rmanyon@phb.co.uk](mailto:rmanyon@phb.co.uk).

---

### **10 New Square, Lincoln's Inn, London WC2A 3QG**

DX 40 London/Chancery Lane  
Tel: 020 7465 4300 Fax: 020 7465 4400 [www.phb.co.uk](http://www.phb.co.uk)

This publication is not intended to provide a comprehensive statement of the law and does not constitute legal advice and should not be considered as such. It is intended to highlight some issues current at the date of its preparation. Specific advice should always be taken in order to take account of individual circumstances and no person reading this article is regarded as a client of this firm in respect of any of its contents.

The firm is authorised and regulated by the Solicitors Regulation Authority: SRA Number 00059098

© 2013 Payne Hicks Beach