

Legal Viewpoint: Steering clear of errors in planning consent process

24 May 2018 by Amy Truman

Two recent court judgments have highlighted the importance of being alive to the potential for errors in the decision-making process.

The first case concerned a planning permission granted by a Merseyside authority for three marquees for hosting events at a green belt site. The permission had been intended to be temporary, but had been issued without a condition restricting it to the five-year duration recommended in the planning committee report.

When neighbours complained that the marquees had not been removed, the developers claimed to have permanent planning permission. The High Court agreed that the permission could be considered permanent. However, after agreeing to extend the usual time allowed for a legal challenge to be brought, it went on to quash the permission.

The judge's concern was that to allow the marquees to remain would undermine the integrity of the planning process. He found it appropriate for the court to exercise its discretion to rectify the council's error, since a permanent permission would be contrary to the public interest. In reaching this view, he put significant weight on the developers acting at first as if the permission was indeed temporary, showing that they understood and accepted the intended time limit, then changing their position to argue for a permanent permission. This could be seen as trying to take unwarranted advantage of the position, he decided.

In the second case, the Court of Appeal considered a grant of planning permission amending an earlier permission for a DIY store in London. The first permission restricted the goods that could be sold. The proposed amendment intended to widen this range but retain a restriction on sale of non-food goods. But the permission as issued only expressed the change of permitted use in its description of development and failed to repeat any of the conditions imposed on the previous permission, including the one preventing food sales. The court held that the new permission had to be interpreted on face value and could not be interpreted as implying that the original restriction was retained.

These decisions make clear that it is important for councils to ensure that decision-making processes are followed correctly and appropriate conditions attached. Developers, likewise, should make sure that these processes have been correctly applied, so they can rely on permissions granted without fear of court proceedings.

Thornton Hall Hotel v Wirral Metropolitan Borough Council and Thornton Holdings; Date: 23 March 2018; Ref [2018] EWHC 560 (Admin)

London Borough of Lambeth v Secretary of State for Communities and Local Government;
Date: 20 April 2018; Ref: [2018] EWCA Civ 844

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Appeal Court upholds decision to quash council's 'accidental' planning consent

2 May 2019 by Court reporter

The Court of Appeal has upheld a High Court decision to quash a council's mistaken planning consent for the indefinite use of wedding marquees at a Grade II* listed property in the Wirral green belt and blasted the authority for 'unlawfully' attempting to conceal its 'error'.



Thornton Manor

Estate, Wirral (pic: lenaedmondson via Flickr)

Thornton Holdings Limited, which owns the Thornton Hall Estate in the Wirral, applied for planning consent from Wirral Metropolitan Borough Council to erect or retain the marquees as long ago as 2010, said Appeal Court judge Lord Justice Lindblom.

The firm said it needed the wedding venue business to fund the restoration of the registered historic gardens of grade II* listed Thornton Manor.

The council's planning committee resolved to grant planning permission, but only subject to 10 conditions, the first of which was that the consent would last for only five years.

However, when the permission was formally granted by a decision notice in December 2011, no conditions at all were attached to it, and the marquees have remained in place to this day, Lord Justice Lindblom told the court.

In 2017, Thornton Hall Hotel Limited (THHL), which owns a rival wedding venue nearby, launched a judicial review challenge to the permission.

Under court rules, such challenges must be brought "promptly and in any event within three months." However, [in March last year](#), High Court judge Mr Justice Kerr exercised his discretion to extend that time limit and overturned the planning permission.

Ruling on Thornton Holdings' appeal against that ruling, Lord Justice Lindblom, who was sitting with the Master of the Rolls, Sir Terence Etherton, and Lord Justice Irwin acknowledged that the delay in the case reaching court was "extreme".

But he added: "There can be no doubt that the circumstances of this case, viewed as a whole, are extremely unusual. We would go further; they are unique."

The judge said that Wirral Council, after the "indisputable error" was noticed, "acted unlawfully in concealing its error. It initially attempted to put matters right by generating a fictitious decision notice and manipulating the planning register."

He added: "Whether its intention was to reverse its error or to obscure it, the effect of the action it took was only to disguise what it had in fact done."

The council could have revoked the permission, or issued a discontinuance order, but had shown "no inclination" to follow either course, both of which could have given rise to a claim for compensation by Thornton Holdings.

Another "highly abnormal" aspect of the case was that the council had "actively supported" the challenge to the planning permission.

But the judge said Thornton Holdings "were well aware from the outset that the planning permission had been wrongly issued, and knew precisely what the council's error had been".

It had only sought to rely on the 2011 consent when the council began to press for the marquees' removal.

He added: "We cannot accept that Thornton Holdings have suffered any material hardship or prejudice as a result of the delay in the claim being issued. If anything, the delay worked in their favour, in the sense that it enabled them to take advantage of an unrestricted grant of planning permission that they knew the council had never resolved to grant."

Dismissing the appeal, the judge said: "This is clearly a case in which the interests of good administration, and indeed the credibility of the planning system, weighed compellingly in favour of the court having the opportunity to hear the claim and, if the claim succeeded, to deal with the council's error."

"If, as the council has readily acknowledged, the decision notice it issued was issued without lawful authority, it might fairly be described as the antithesis of good administration."

He added: "The error was not in the council's decision-making, but in the statutory notification of the decision made. Yet it vitiated the planning permission, and continues to do

so. In short, this simply was not, and is not, the conditional planning permission the council's committee resolved to grant.

There were, he ruled, "very special reasons" justifying the delay in THHL seeking judicial review and Mr Justice Kerr had been right both to extend time and to overturn a permission which had not been lawfully granted. His decision served both "to undo an injustice and to sustain the public interest."

"The decision notice misrepresents the council's decision. If the planning permission were not quashed, this manifest unlawfulness would persist," he said, adding that, had the committee's resolution been properly translated into the decision notice, the planning permission would have expired in December 2016.

Were the 2011 consent to remain extant, that would be "inimical to the public interest in a fair, efficient and transparent planning system, in which all participants in the process, including objectors, and also the public, are able to rely on the local planning authority to issue a true notice of the decision it makes."

Lord Justice Lindblom emphasised that his decision did not set a precedent and had no effect on the requirement that challenges to planning permissions must be brought promptly.

A *Planning* article examining the potential for errors in the planning decision-making process can be read [here](#).

R on the Application of Thornton Hall Hotel Limited & Anr v Thornton Holdings Limited.
Case Number: C1/2018/0793