

The Supreme Court has recently provided useful confirmation regarding the interpretation of planning conditions.

## The Law

Planning obligations are generally agreed between the local planning authority (LPA) and an owner of land under section 106 of the Town and Country Planning Act 1990 (the Act). A planning obligation differs from a planning condition, which is imposed by the LPA.

An LPA can grant planning permission either unconditionally or “subject to such conditions as they think fit” (Section 70 of the Act). However, the power to impose planning conditions is not unlimited:

- (1) The conditions imposed must be for a planning purpose and not for any ulterior one
- (2) They must fairly and reasonably relate to the permitted development
- (3) They must not be so unreasonable that no reasonable planning authority could have imposed them

Under case law, it is an established principle that a condition that requires a developer to dedicate land that they own as a public highway, without compensation, would constitute an unlawful planning condition.

## The Case – *DB Symmetry Ltd. v. Swindon Borough Council* [2022] UKSC 33

DB was granted outline planning permission for its development, and it was a condition of the planning permission that the proposed access road be constructed to ensure that each unit was served “by fully functional highways”.

The issue was whether Swindon Borough Council (SBC) could impose a planning condition requiring DB Symmetry (DB) to dedicate as public highways roads which were constructed as part of its development.

DB applied under the Act for a certificate of lawfulness that the formation and use as private access roads would be lawful. SBC refused the application.

## Judgement

The Supreme Court unanimously held that SBC could not impose a planning condition requiring DB to dedicate land as a public highway.

An LPA can achieve the dedication of the access roads as highways by means of a planning obligation, under Section 106 of the Act. However, a planning condition could not be imposed to achieve this.

As to the interpretation of the planning condition in question, it was held that the condition addressed the quality and timing of the construction of the roads and other access facilities. As such, it did not require the dedication of the access roads as a public highway.

## Takeaways

- The decision is welcome and provides certainty, for developers and LPAs, that the adoption of highways should be documented within a Section 106 Agreement
- There is a fundamental conceptual difference between unilaterally imposed planning conditions and planning obligations entered into by a voluntary act of a developer
- The Supreme Court confirmed that there is always scope for a developer to negotiate the scope of the planning obligations under a Section 106 Agreement

## Contact

### Mobeen Amin

Associate, Birmingham

T +44 121 222 3202

E [mobeen.amin@squirepb.com](mailto:mobeen.amin@squirepb.com)