Neutral Citation Number: [2016] EWHC 534 (Admin)

Case No: CO/5357/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/03/2016

Before:

THE HON. MRS JUSTICE PATTERSON DBE

- -

Between:

DUNNETT INVESTMENTS LIMITED	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	
(2) EAST DORSET DISTRICT COUNCIL	**Defendants**

- -
- -

Christopher Katkowski QC (instructed by **Hewitsons LLP**) for the **Claimant**
Sasha Blackmore (instructed by **Government Legal Department**) for the **First Defendant**
No appearance or representation for the **Second Defendant**

Hearing date: 3 March 2016

- -

Approved Judgment

Mrs Justice Patterson:

Introduction

1. On 30 September 2015 an inspector appointed by the first defendant, the Secretary of State for Communities and Local Government, dismissed an appeal by the claimant against a refusal to grant a certificate of lawful use for proposed development by the second defendant, East Dorset District Council. This is a challenge under section 288 of the Town and Country Planning Act 1990 ("TCPA") to that decision.

2. Central to the decision is the proper interpretation of a planning condition which reads:

> "1. This use of this building shall be for purposes falling within Class B1 (Business) as defined in the Town and Country Planning (Use Classes) Order 1987, and for no other purpose whatsoever, without express planning consent from the Local Planning Authority first being obtained.
>
> The reason for the imposition of the condition was
>
> "In order that the Council may be satisfied about the details of proposal due to the particular character and location of this proposal."

3. It is common ground that interpretation of the condition is a matter of law for the court. Because of that it is agreed that the inspector's reasoning in his decision letter of 30 September 2015 is not material in the way that it would be in a standard challenge to an inspector's decision letter under section 288.

Factual Background

4. On 1 March 1982 planning permission was granted under reference 3/81/1657 for "New industrial and office premises at land at Cobham Road, Ferndown, Hampreston."

5. The permission was conditional. Conditions relevant for these purposes are conditions 7, 8 and 10. They read:

> "7. This permission shall enure for the benefit of the applicant for the five years from the date hereof and thereafter it shall enure for the benefit of the applicant or of a company or person engaged in the design, manufacture and marketing of precision electronic automatic test equipment only provided that in the event of the applicant being liquidated whether voluntary or otherwise, or otherwise ceasing trade within the said five years of the date hereof then this permission shall enure for the benefit of a company or person engaged in the design, manufacture and marketing of precision electronic automatic test equipment.

> 8. Notwithstanding the provision of the Town and County Planning General Development Orders 1977 to 1981 there shall be no direct means of vehicular or pedestrian access to the development hereby permitted from Brickyard Lane, other than the maintenance only access shown on the plan hereby approved provided to serve the public utilities proposed to be in the south-east corner of the development.
>
> …
>
> 10. Notwithstanding the provisions of the Town and Country Planning General Development Orders 1977 to 1981 the level of land hatched green on the approved plan shall be lowered so that the land and anything on it shall not be more than 0.600m above the level of the carriageway; and the resultant visibility splays shall be kept free of all obstructions at all times."

The reason for the imposition of condition 7 was "to enable the local planning authority to exercise proper control over the development and because the site is in an area where new industrial development would not normally be permitted." The reason for the imposition of conditions 8 and 10 was that they were in the interests of highway safety.

6. On 23 December 1994 Schlumberger Technologies Limited applied to the local planning authority under section 73 of the TCPA to vary condition 7 on consent 81/1657. That was granted in the terms set out above. An informative was placed on that planning permission which reads:

> "This permission should be read in conjunction with the planning permission dated the 1 March 1982 for the erection of the building (granted under reference 3/81/1657), including the planning conditions which remain in full force and effect with the exception of Condition No. 7 which has been varied by planning consent hereby permitted."

7. On 17 January 2014 the claimant applied to East Dorset District Council for prior approval under paragraph N(2) of the Town and Country Planning (General Permitted Development) Amendment Regulations (England) Order 2013 ("GPDO") for the change of use from Class B1(a) offices to Class C3 dwelling houses at Pear Tree Business Centre, Cobham Road, Ferndown, Dorset.

8. The letter accompanying the application said that the building was presently in lawful use as a business centre, principally used as offices (Class B1(a)) with ancillary conference rooms and a café/restaurant. 32% of the office suites were said to be vacant. The proposal was to subdivide the office building into a total of 127 studios, one bedroom and two bedroom units. The letter referred to Class J of the GPDO which required a developer to apply to the local planning authority before beginning the development for a determination as to whether prior approval would be required in respect of transport and highways impacts of the development, contamination risks on the site and flooding risks on the site. All three matters were addressed within the body of the letter which concluded:

> "We note that the Council has 56 days following the receipt of this application to notify the applicant as to whether prior approval for the change of use is required.
>
> Based on the above, i.e. that the building subject to the change of use was principally used as Class B1(a) offices on 30 May 2013 (or vacant units were principally last used as such), and that the change of use to residential would not result in any impacts in respect of transport and highways, contamination and flooding, we consider that prior approval of the change of use is not required."

9. In a letter dated 17 March 2014 the Council purported to refuse the claimant's application. The letter said that the proposal was not permitted development as the condition in force prevented permitted development rights being exercised.

10. It is agreed that the letter of 17 March 2014 purporting to refuse the application did not in fact do so. Thus, no proper response was made to the application for prior approval.

11. On 2 July 2014 the claimant applied to the Council for a lawful development certificate in the following terms:

> "The proposed change of use of Pear Tree Business Centre, Cobham Road, Ferndown from use Class B1(a) offices to use Class C3 (dwelling houses)."

12. On 28 October 2014 the Council refused that application. Having set out the condition it said:

> "This condition and reason shows a clear intention to limit the scope of the planning permission to only the use permitted (Class B1), and that this was done to satisfy the Council regarding the details of the proposal on account of its particular character and location.
>
> It is the Council's view that the use of the Peartree Business Centre remains restricted by this condition to Use Class B1 (business) of the Town and Country Planning (Use Classes) Order 1987 (as amended). It consequently prevents a change of use to the proposed C3 (dwellings) use without express planning permission.
>
> A planning application is therefore required for the proposed use, and the application for a Certificate of Lawful development/Use must fail, as any works to implement the proposal would be unlawful."

13. The claimant lodged an appeal which was heard before Inspector Hand on 2 September 2015.

14. On 30 September 2015 the inspector issued his decision letter dismissing the appeal.

The Claimant's Case: An Overview

15. Mr Katkowski QC for the claimant has three submissions. In overview they are:

    i) Whatever condition 1 precludes is only precluded until express planning consent is granted. It does not mean that only the Council can grant the permission required. Express planning permission was granted here through the operation of Class J of the GPDO as amended.

    ii) If that submission does not succeed, the first alternative submission is that "express planning consent" includes the prior approval procedure under Class N of the GDPO. The effect of the Council's failure to issue a response to the claimant's application gave the claimant the right to commence development and so was a planning consent within the terms of condition 1.

    iii) If that submission does not succeed, then the claimant's second alternative, is that condition 1 does not implicitly preclude the ability to implement a planning permission granted by the GPDO.

16. For ease I propose to deal with the grounds in the same order as they were developed before me.

Legal Framework

17. Section 192 of the TCPA provides for the provision of a certificate of lawfulness of proposed use or development. It reads:

> "(1) If any person wishes to ascertain whether—
>
> (a) any proposed use of buildings or other land; or
>
> (b) any operations proposed to be carried out in, on, over or under land,
>
> would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
>
> (2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

18. A refusal of a certificate of lawfulness may be appealed to the Secretary of State under section 195(1) of the TCPA.

19. Section 58 of the TCPA deals with the grant of planning permission. Relevant for the instant purpose is section 58(1)(a) and (b). That reads:

> "(1) Planning permission may be granted—
>
> (a) by a development order or a local development order;
>
> (b) by the local planning authority (or, in the cases provided in this Part, by the Secretary of State) on application to the authority in accordance with a development order;
>
> …"

20. Section 59 of the TCPA deals with Development Orders. Section 59(2) reads:

> "(2) A development order may either—
>
> (a) itself grant planning permission for development specified in the order or for development of any Class specified; or
>
> (b) in respect of development for which planning permission is not granted by the order itself, provide for the granting of planning permission by the local planning authority (or, in the cases provided in the following provisions, by the Secretary of State) on application to the authority in accordance with the provisions of the order."

21. Section 60 of the TCPA deals with permission granted by Development Order which may be unconditional or subject to conditions or limitation as may be specified in the Order. Section 60(2A) reads:

> "(2A) Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for development consisting of a change in the use of land in England, the order may require the approval of the local planning authority, or of the Secretary of State, to be obtained—
>
> …
>
> (b) with respect to matters that relate to the new use and are specified in the order."

22. The Town and Country Planning (General Permitted Development) Order 1995 ("GPDO 1995"), which, it is agreed, was in force at the relevant time reads:

> "3.—(1) Subject to the provisions of this Order and regulations 60 to 63 of the Conservation (Natural Habitats, & c.) Regulations 1994(1) (general development orders), planning permission is hereby granted for the Classes of development described as permitted development in Schedule 2.

> (2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2.
>
> …
>
> (4) Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part III of the Act otherwise than by this Order."

23. Class J of schedule 2 to the GDPO introduced in May 2013 permits development as follows:

> "Permitted Development
>
> J. Development consisting of a change of use of a building and any land within its curtilage to a use falling within Class C3 (dwelling houses of the Schedule to the Use Classes order from a use falling within Class B1(a) (offices of that Schedule."

Article J2 establishes a prior approval process. That reads:

> "Conditions
>
> J.2—(1) Class J is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
>
> (a) transport and highways impacts of the development:
>
> (b) contamination risks on the site; and
>
> (c) flooding risks on the site
>
> And the provisions of paragraph N shall apply in relation to any such application."

24. Article N of the GDPO sets out the procedures to be followed for the prior approval process. Where relevant that provides:

> "N.—(1) The following provisions apply where under this Part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required.
>
> …
>
> (8) The local planning authority shall, when determining an application—

> (a) take into account any representations made to them as a result of any consultation under paragraphs (3) or (4) and any notice given under paragraph (6);
>
> (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012 as if the application were a planning application;
>
> …
>
> (9) The development shall not be begun before the occurrence of one of the following—
>
> (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;
>
> (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or
>
> (c) the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused."

25. Both the claimant and defendant draw attention to the recent decision of **Trump International Golf Club Scotland Limited v Scottish Ministers** [2015] UKSC 74. Although a decision about a consent under the Electricity Act 1989 the challenge involved an allegation that condition 14 on that consent was void for uncertainty and, thus, involved some consideration by the Supreme Court of the applicable principles concerning conditions on consents, including planning consents. Lord Hodge said at [32]:

> "In agreement with Lord Carnwath, I am not persuaded that there is a complete bar on implying terms into the conditions in planning permissions, and I do not see the case law on planning conditions under planning legislation as directly applicable to conditions under the 1989 Act because of the different wording of the 1989 Act."

He continued at [34]:

> "34. When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions

> which cast light on the purpose of the relevant words, and common sense. …
>
> 35. … While the court will, understandably, exercise great restraint in implying terms into public documents which have criminal sanctions, I see no principled reason for excluding implication altogether."

Lord Carnwath said at [45]:

> "I do not regard the planning cases as of much assistance in relation to the issue before us, which is in a different statutory context. However, since they have been said to disclose a degree of 'tension' between competing principles of interpretation, some guidance from this court may be of value."

At [60] he said:

> "There is no reason in my view to exclude implication as a technique of interpretation, where justified in accordance with the familiar, albeit restrictive, principles applied to other legal documents. In this respect planning permissions are not in a special category."

And at [66]:

> "…I do not think it is right to regard the process of interpreting a planning permission as differing materially from that appropriate to other legal documents. As has been seen, that was not how it was regarded by Lord Denning in Fawcett Properties Ltd v Buckingham County Council [1961] AC 636, 678. Any such document of course must be interpreted in its particular legal and factual context. One aspect of that context is that a planning permission is a public document which may be relied on by parties unrelated to those originally involved. … It must also be borne in mind that planning conditions may be used to support criminal proceedings. Those are good reasons for a relatively cautious approach…"

26. It is common ground that a planning condition on a planning consent can exclude the application of the GPDO. The case of **Dunoon Developments v Secretary of State for the Environment and Poole Borough Council** [1993] 65 P&CR 101 concerned the interpretation of such a condition. The condition imposed provided that the use of premises was "limited to the display, sale and storage of new and used cars." Farquharson LJ held at [106]:

> "…what is the proper construction of the words of condition No. 1 attached to the planning consent? Of course it turns on the construction of the first condition, and the effect of the word, 'limited' in its context. In my judgment, the terms of the condition do not exclude the operation of the General

> Development Order in this case. First, one should point out that the words used in condition No. 1 are clearly less empathic than those used in the City of London case. Secondly, the appearance of the word, 'limited' in its context is not conclusive against the operation of the General Development Order. As has been submitted by Mr. Cochrane, in the skeleton argument that he submitted to us, all conditions are limited to some extent.
>
> In my judgment, in this context the word 'limited' is designed to restrict the user to what one might call the 'good neighbourly activities' in the site in question as recited in condition 1, and furthermore to exclude the activities specified in condition 2, those which might more properly be described as 'bad neighbourly activities,' in the way that is there set out. In other words, 'limited' is directed to the construction of the two conditions and not addressed to the question of whether the planning permission should be excluded from the operation of the General Development Order of 1988, or indeed of any statutory order at all. The purpose of the General Development Order is to give a general planning consent unless such a consent is specifically excluded by the words of the condition."

Sir Donald Nicholls VC said at [107]:

> "Of its nature, and by definition, a grant of planning permission for a stated use is a grant of permission only for that use. But that cannot, *per se*, be sufficient to exclude the operation of a General Development Order. A grant of permission for a particular use cannot *per se* constitute a condition inconsistent with consequential development permitted by a General Development Order. If it did, the operation of General Development Orders would be curtailed in a way which cannot have been intended. Thus, to exclude the application of a General Development Order there must be something more."

27. The earlier case of **Carpet Decor (Guilford) Limited v Secretary of State for the Environment and Another** (1981) 261 EG 56 said this:

> "I think that this case turns on the proper construction of the planning permission. As a general principle, where a local planning authority intend to exclude the operation of the Use Classes Order or the General Development Order, they should say so by the imposition of a condition in unequivocal terms, for in the absence of such a condition it must be assumed that those orders will have effect by operation of law."

Ground One: Was there any Express Planning Consent?

28. The claimant submits that planning permission may be granted in a number of ways including under the GPDO: see section 58 TCPA.

29. Class J of the GPDO which came into effect on 30 May 2013 grants express planning consent for changes of use within the terms of Class J. Here, that would mean a change of use from Class B1(a) offices to Class 3C residential was permitted. The question then is what meaning and effect is to be given to the words "without the express planning consent from the local planning authority first being obtained"? The claimant submits that the clause is not to be read literally. If it was, it would exclude the prospect of an appeal to the Secretary of State. There is no licence to read in, as the defendant would wish, the requirement to make a planning application to the local planning authority.

30. The claimant's primary submission is that the condition is to be read with its reason. When that is done it is clear that the condition envisages someone with the power to decide whether a change of use from offices to residential use is acceptable. That has been done by the Secretary of State in the GPDO.

31. The defendant does not accept that its interpretation involves reading anything into the condition.

32. The 1982 planning permission did not envisage the ability to change from office use to residential use. The 1982 planning permission was worded in a very restrictive way. It is clear from the reason for the condition 7 that the local planning authority wanted to retain control over development due to the character and location of the site.

33. The defendant does not accept that any reference to the Secretary of State or right to appeal is needed to be written in to the condition as those rights will apply to all planning permissions and do not need to be written out.

34. "Express planning consent" means a planning application resulting in a written consent. The phrase goes further than a Development Order grant as envisaged under section 58 of the TCPA.

35. There is nothing unreasonable or unclear about the defendant's interpretation which is consistent with a common sense reading.

Discussion and Conclusions

36. In construing conditions on a planning permission, although the Supreme Court were clear that the situation before them in **Trump** (supra) was dealing with a different statutory regime, the judgments of Lord Hodge and Lord Carnwath are of assistance in defining where the law on planning conditions is now. They have moved the law on in relation to implied conditions and may have reformulated some of the previously accepted principles but, otherwise, in my judgment, the situation in construing planning conditions is not dissimilar to how it was.

37. From their judgments I distil the present position to be as follows:

    i) Planning conditions need to be construed in the context of the planning permission as a whole;

ii) Planning conditions should be construed in a common sense way so that the court should give a condition a sensible meaning if at all possible;

iii) Consistent with that approach a condition should not be construed narrowly or strictly;

iv) There is no reason to exclude an implied condition but, in considering the principle of implication, it has to be remembered that a planning permission (and its conditions) is "a public document which may be relied upon by parties unrelated to those originally involved";

v) The fact that breach of a planning conditions may be used to support criminal proceedings means that "a relatively cautious approach" should be taken;

vi) A planning condition is to be construed objectively and not by what parties may or may not have intended at the time but by what a reasonable reader construing the condition in the context of the planning permission as a whole would understand;

vii) A condition should be clearly and expressly imposed;

viii) A planning condition is to be construed in conjunction with the reason for its imposition so that its purpose and meaning can be properly understood;

ix) The process of interpreting a planning condition, as for a planning permission, does not differ materially from that appropriate to other legal documents.

38. Applying those principles to the disputed condition here, in my judgment, there was no "express planning consent" within the meaning of the condition.

39. The condition in its current form resulted from an application to vary the original condition 7 on the 1982 planning permission. That was a consent for new industrial development and offices. I have set out the wording of condition 7 above. It was clearly restrictive. It gave a personal consent to the applicant for five years and, thereafter, the permission was for the benefit of the applicant or another engaged in the design, manufacture or marketing of precision electronic automatic test equipment. If the applicant went into liquidation within the first five years of the planning permission then the consent was to enure for a company as described within the condition. The reason for its imposition was to enable the local planning authority to exercise proper control over the development and because the site was in an area where new industrial development would not normally be permitted.

40. By 1995, as a result of an application under section 73, the condition was varied so as to allow B1 business use. But the condition does not end there. It continues, "and for no other purpose whatsoever, without express planning consent from the local planning authority first being obtained." The reason for the imposition of the condition makes it clear, in my judgment, that control is retained by the local planning authority so that it can be satisfied about the details of any proposal due to the particular character and location. In other words the sensitivity of the area to potentially unsympathetic uses was protected.

41. Consent can be granted by the GPDO, as the claimant submits, but that is not the case here. The wording of the condition is clear and precise, not to say emphatic, with its phrase "and for no other purpose whatsoever." The words used mean that planning permission was granted solely for B1 (business) use and nothing else without the attaining of prior express consent from the local planning authority. The words used are unequivocal – they exclude consent being granted by the operation of statutory provision under the GPDO. Were that to occur under the GPDO that would be without any reference to "the particular character or location" of the proposal which is the reason for the imposition of the condition. Class J of the GPDO, as the claimant accepts, was simply not envisaged in 1995. The prior approval scheme under J2 circumscribes what the local planning authority can consider to transport and highways impacts, contamination risks and flooding risks. It does not permit a local planning authority to have regard to the location of the development save in those three particular areas. On the claimant's approach the decision making exercise on the part of the local authority would be circumscribed in a way which was not intended when the condition was imposed.

42. Further, the condition itself restricts any change of use from Class B1 (business) until after the approval of the local planning authority has been "first…obtained" the words used in the condition are consistent with the local planning authority retaining control over any other development that may be contemplated on the site. If that were not the case the words used would be otiose. They set a clear planning purpose for the imposition of the condition.

43. Mr Katkowski QC submits that the phrase local planning authority is not to be interpreted literally: the meaning of the condition is clearly broader than the precise words used or recourse to the Secretary of State on appeal would be excluded. I reject that submission. In context, the words used, namely, "express planning consent from the local planning authority" make perfect sense. It is a common sense interpretation that recourse must first be had to the local planning authority as to whether any other planning consent should be granted. There is no need to set out the right of appeal to the Secretary of State. That is a statutory right which is not excluded by the condition. It would be highly unusual to see a recitation of that right on each planning consent. But, in any event, at the end of the decision notice of 1 March 1995 the general right of appeal to the Secretary of State is set out so that there is no need for it to be part of the condition as well.

44. An express planning consent from the local planning authority means, in my judgment, precisely that, a grant of planning permission by the local planning authority. It can only do that upon receipt of a planning application. That does not involve reading words into the planning condition, as submitted by the claimant; it is a common sense interpretation of the words used. The word "express" to qualify the term "planning consent" makes it clear also that what is envisaged is an explicit and unambiguous concept. That is consistent with a grant of planning permission with conditions that would then be entered onto the planning register for public inspection. The second limb of the condition properly construed means that express provision is required for matters which, but for the condition, would be permitted development.

45. Ground one fails. I move then to ground two.

Ground Two: Did the Claimant have Prior Approval?

46. The claimant submits that Class J2 requires a determination from a local planning authority as to whether prior approval from the local planning authority is needed for matters of highways, contamination and flooding. When a local planning authority makes that decision it has to have regard to the National Planning Policy Framework ("NPPF") as if the application were a planning application.

47. Under article N(9)(c) if, at the end of 56 days after the submission of the application to the local planning authority, it has not notified the applicant as to whether prior approval is given or refused development is able to commence.

48. It is common ground that the letter from the local planning authority in response to the application did not notify the claimant whether its application had been approved or not. Therefore, it is submitted that prior approval has been obtained as the 56 day period allowed by statute has expired and development can commence.

49. The defendant submits that the part N procedure is not an express planning consent. The operative grant of planning permission is by the Development Order and not by any other means.

50. The reference in article N(8)(b) to the NPPF does not mean that the requirements of the principal Act are overridden.

51. In any event this argument is misconceived by reason of article 3(4) of the GPDO.

Discussion and Conclusions

52. Article 3(4) of the GPDO provides that "Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part III of the Act otherwise than by this Order." As a result an approval under the GPDO cannot be an "express planning consent" if it is contrary to a condition which has been imposed on any planning permission. That comes back to what I regard as the central question, what is the proper interpretation of the condition?

53. In reality, this ground is a further argument as to the meaning of "express planning consent" within the condition. I have rejected the claimant's contention that a grant under the GPDO is an express planning consent already. The same applies in relation to the Class N procedure. That, too, is set out under the GPDO and the same points apply to this ground as they did to the earlier one.

54. Accordingly this ground fails.

Ground Three: Does the Condition Exclude the GPDO?

55. The claimant submits that, applying the ratio in **Dunoon** and **Carpet Décor,** there needs to be something explicit in the condition itself to exclude GPDO rights. Not only that, the wording used in a condition has to be unequivocal, specific and bear in mind the prospect of criminal sanctions if the condition is not complied with.

56. When read in context with conditions 8 and 10 of the 1982 consent it is clear that the wording used is inadequate to exclude the GPDO. The approach to construction here needs to be cautious as it will result in the exclusion of statutory rights that would otherwise accrue to the claimant.

57. The defendant submits that the condition is explicit and emphatic. The words used, first, "for no other purpose", second "whatsoever", and third "without express planning consent from the local planning authority" are clear and precise.

58. The cases of **Dunoon** and **Carpet Decor** do not operate against that interpretation. Statutory rights are excluded deliberately and that is why clear words are necessary to do so.

Discussion and Conclusions

59. In considering the condition the first phrase deals with the use of the building and circumscribes that to Class B1 (business).

60. The second part of the condition ("and for no other purpose whatsoever without express planning consent from the local planning authority first being obtained"), in my judgment, is designed to, and does, prevent the operation of the GPDO. I say that for the following reasons. First, the second part of the condition serves no other purpose. Without that meaning the second part is irrelevant to that condition. Second, "for no other purpose" is a clear prohibition on use for any other purpose. That means that any other purpose otherwise permitted under the GPDO would be contrary to the condition. Third, the word "whatsoever" is emphatic and, in context, refers to any other use, howsoever arising or under any other power. Read together, and considering the plain and ordinary meaning of the words used, in my judgment, it is clear that the GPDO is excluded. Fourth, the last clause requires express permission for what would otherwise not require planning permission because of the GPDO. It can only be given a sensible meaning if the condition in fact removes GPDO rights. The words used are sufficiently specific and unequivocal. It is similar to the tailpiece to the condition considered in **R (Royal London Mutual Insurance Society) v Secretary of State for Communities and Local Government** [2014] JPL 458 at [35]. Fifth, the reason for the condition confirms that any other use would need to be the subject of an express application due to the particular character and location of the site.

61. That approach is entirely consistent with the cases of **Dunoon** and **Carpet Decor** relied upon by the claimant.

62. Whilst conditions 8 and 10 on the 1982 planning permission refer expressly to the provisions of the then extant General Development Orders in the context of the interests of highway safety, in my judgment, little can be drawn from them. They are part of the permission in which the condition imposed in 1995 is a part but they were dealing with permitted highways development rights that were apposite in 1982. It would not have occurred to anyone at that time, or in 1995, that the GPDO would permit a change of use from industrial to residential use. Nothing adverse can, therefore, be drawn from the absence of a similar wording in relation to matters other than permitted highways development rights in the revised condition 7 imposed in 1995.

63. It follows that in, context, the wording of the condition read together with the reason for its imposition is sufficient to exclude the operation of the GPDO.

64. This ground fails.

65. I have taken into account all the other matters raised during the hearing but they do not advance matters on the central issue.

66. Accordingly, this claim fails.