SIR DAVID KEENE:

Introduction

1. This appeal raises a novel point of law about the status and effect of conditions attached to a planning permission granted for a limited period, once that limited period has expired. Of course, a failure to remove the permitted building or to cease the permitted use after that specified period will normally be vulnerable to enforcement action under Part VII of the Town and Country Planning Act 1990, but what is the position if the planning authority does not take such action during the years in which it could, so that the permitted development becomes immune from enforcement action by virtue of section 171 B of that Act ("the 1990 Act")? Can other restrictive conditions on the planning permission, such as an occupancy condition, still be enforced?

2. It must be borne in mind that planning pe

2009 it was agreed between the appellant and the local planning authority that the

Only that breach of condition had acquired immunity from enforcement action. The judge noted that the 1990 Act did not use the word "expire" and that there was no exception in section 75 in respect of a planning permission granted for a limited period. (That is the provision which states in sub-section (1) that a grant of planning permission

> "shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.")

10. Looking at the wording of these particular permissions, the judge noted that the occupancy conditions (as he termed the seasonal use conditions) did not refer to the period referred to in the time limit conditions and so he concluded that the seasonal restrictions were intended to apply after the end of that period. He contrasted the wording of those conditions with the wording used in the maintenance conditions. For all those reasons he found that the seasonal use conditions were still effective and that the inspector had been right on this issue.

11. The judge also dealt with whether the applicant was entitled to a certificate of lawful use which went beyond the use which had actually taken place "in accordance with the seasonal occupancy conditions". On this, he concluded that there was no such entitlement, relying on a passage in Circular 10/97, Annex 8, dealing with such certificates. Paragraph 8.17 therein, to the extent cited by the judge, reads:

> "In all cases the description must be more than simply a title or label, if future interpretational problems are to be avoided. The LDC should therefore state the characteristics of the matter so as to define it unambiguously. This is particularly important for uses which do not fall within any "use class" (that is, a "sui generis" use). So for example a LDC for a caravan site might typically include the number and type or size of caravan *found to be lawful at the application date* and, where the use is seasonal, the calendar dates on which the use then took place"(original emphasis).

The Statutory Context

12. Certificates of lawfulness of an existing use or a proposed use of land are dealt with by sections 191 and 192 respectively of the 1990 Act. It is unnecessary to set out those provisions in full. It is sufficient to note that "lawful", as applied to uses, operations or failures to comply with a condition on a planning permission, is so defined as to mean that it applies if the time for taking enforcement action has expired: section 191(2) and (3). So the issue of enforceability (or lack of it) is at th3(It)9g

“70(1) Where an application is made to a local planning authority for

The Submissions.

18.

have acquired such immunity. A local planning authority, it is argued, can properly refrain from enforcing the time limit on the permitted use but may still enforce other conditions restricting that use.

22. Both respondents argue that one is concerned primarily with the construction of these permissions and their conditions. In some cases, it may well be that a condition no longer binds the land once the time limit condition can no longer be enforced. That was so in *Adur* but that is not inevitable. Mr Moffett contends that these planning permissions do not expire until the site has actually been restored to its former use, even if that post dates the date specified in the first condition (the "time limit" condition).

23. All parties agree that, if the appeal succeeds, the matter should be remitted to the inspector to re-consider the issue of the certificates and their terms, in the light of this court's decision.

Discussion

24. There is some common ground between the parties. All regard the construction of these particular permissions as being of prime importance. They differ on the issue of

such storage. In the leading judgment, Pill L.J. said in terms that the question whether it would be possible to have a permanent restrictive condition on a temporary planning permission did not fall for decision on the facts of the case: page 7. Nonetheless, it is to be observed that he went on to add:

> "Similarly, a limitation imposed in condition 2 applies only while rights are being exercised under the 1991 permission. When reliance is no longer placed on the express grant, the condition does not have the effect of excluding development rights under the GPDO.": page 8.

27. That last point reflects a long-standing approach in planning law, running from *Mounsdon v Weymouth Borough Council* [1960] 1 QB 645 to cases like *Essex Construction Co. v East Ham Borough Council* [1965] 16 P and C.R. 220 and *Handoll v Warner Goodman* [1995] JPL 930, whereby a condition in a permission cannot be enforced if the landowner does not have to rely on the permission to authorise his development. Those cases, however, do not (unlike the *Adur* case) expressly deal with the situation where the landowner did need the permission originally to sanction his development and where the permission has been implemented.

28. Having said that, it is very difficult to conceive of a condition on a temporary permission under section 72 which could sensibly relate to a development, once that development has ceased to be authorised by the permission. The time limit and restoration condition itself does not provide an example which goes beyond its own scope, since that condition is expressly and precisely provided for by section 72 (1) (b). One cannot derive a general approval from that for conditions which bind the land once the development itself has ceased to be authorised and has become immune from enforcement action. Such enduring conditions would, to be lawful, still have to relate fairly and reasonably to the permitted development, which was and is to be seen as a temporary development. So although I would not wish to be categoric as to the impossibility of such enduring conditions, I do regard it as very unlikely that the statutory scheme allows for what can be described as a permanent condition on a temporary permission, other than the time limit condition itself. The latter is a very different animal: as Mr Warren put it, such a condition circumscribes the entire authorisation of the use. It is quite unlike a condition limiting in a certain respect a use which has become an unauthorised use.

29. It is also significant that Parliament has found it necessary to make special express provision for the situation where conditions are often required to apply after the authorisation of the permitted development has expired, namely in the case of mineral extraction. Aftercare conditions have had to be given explicit sanction by the statute in such cases: see paragraph 17 (ante).

30. Within that statutory context, I turn to the permissions and conditions which call for interpretation in this appeal. It is of course correct that the seasonal use condition in each permission has no express time limit on it and that it does not contain the phrase "throughout this period" as does the maintenance of the bungalows condition. The judge attached some significance to the apparent contrast between the wording of the maintenance condition and the seasonal use condition's wording in this respect, but I regard that significance as unjustified. The maintenance condition was imposing a

positive obligation on the landowner to maintain the bungalows and it was necessary to word the condition in such a way as to make it clear that this was a continuing obligation throughout the period to which the temporary permission related. No such

Lord Justice Rix: I also agree