

## A fresh Vue on s.73 applications to vary planning conditions

Section 73 of the Town and Country Planning Act 1990 enables an applicant to apply to develop land without compliance with conditions attached to an extant previous planning permission. Under this section a local planning authority may amend or remove conditions but may not amend any other part of the permission. A successful s.73 application results in the grant of a new planning permission and therefore the original permission remains intact. A developer may then elect between them.

When determining a s.73 application, the LPA may impose conditions beyond those proposed in the application. However, the conditions imposed should only be ones which could have been imposed on the original grant. It has previously been held that the amendments permitted should not amount to a “*fundamental alteration*” of the proposal put forward in the original application.<sup>1</sup>

In R (Vue Entertainment Limited) v City of York Council [2017] EWHC 588 (Admin) the Claimant (“Vue”) sought to an order quashing a planning permission granted pursuant to an application under s.73 of the TCPA 1990.

The claim concerned a planning permission for the redevelopment of Huntington Stadium outside York. The permission was originally granted in May 2015 and included permission for the erection of a “*multi-screen cinema*”. The permission was conditioned so that it was to be built in accordance with plans which showed, so far as the cinema element of the proposal was concerned, 12 screens and a capacity of 2,000. The permission also provided for the erection of an 8,000 seat stadium, leisure centre, retail units, outdoor football pitches and other community facilities.

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<sup>1</sup> Arrowcraft [2001] PLCR 7 per Sullivan J at paragraph 33.

Vue operate a cinema in York city centre and were concerned that the proposed development would have an adverse impact on its clientele and on the city centre.

The application under s.73 sought to amend the condition to increase the size of the cinema to 13 screens and a capacity of 2,400. This was said by Vue to be a fundamental change as the floorspace of the cinema would increase by 80%<sup>2</sup> and there would also be a 20% increase in the number of seats - and thus impermissible under s.73.

Collins J held that the amendment sought did not vary the terms of the permission. It was held that there was nothing in the permission itself which limited either the size or amount of floorspace or the number of screens and thus the capacity of the multi-screen cinema. It was not a fundamental change to the permission and when considering whether there was such a fundamental change the permission had to be looked at as a whole. One had to consider whether any specific part of the permission, as granted, was sought to be varied by the change of condition.

The High Court distinguished the case of Arrowcraft which was said only to have observed that it was not open to an LPA to vary a condition pursuant to s.73, if the variation meant that the terms of the permission were changed by it. The change to the condition sought here did not require a change to the terms of the permission which referred only to a "*multi-screen cinema*". One therefore had to look at the precise terms of the grant which were not varied by the amended condition. The court contrasted the permitted change to conditions under consideration here with an application which might have sought to increase the stated capacity of the stadium and thus vary the description of the development.

Though the amendment sought was likely to affect Vue as a would-be-objector, there was proper notification, consultation and an ability to make representations. It was

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<sup>2</sup> This is the figure given in the judgment at paragraph 6.

held that there was therefore no prejudice to the Claimants in the use of s.73. They had been notified of the application and were able to make representations on it.

Though the court did not go as far as deciding whether there could be a changed condition pursuant to s.73 that was so big that it fundamentally affected the permission, this decision gives clear support for use of s.73 in respect of changes to condition which go beyond “minor” amendments. It places a clear emphasis on preserving the precise terms of the grant. If an amendment to a condition can be made which keeps the description of the development intact it may well be appropriate to make such an application under s.73, even if the effect of the change will be significant.

**Ben Du Feu**

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