

Case Name: *Norfolk Homes Ltd v North Norfolk District Council & Anor* [2020] EWHC 2265 (QB) (20 August 2020)

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Commentary:

This was a successful challenge to North Norfolk District Council's refusal to issue a certificate of lawfulness for the implementation of a section 73 permission on the basis that it would trigger section 106 obligations under an agreement attached to the original permission.

In 2012 the Council granted outline permission for up to 85 homes subject to a s106 agreement requiring provision of 45% affordable housing and other financial contributions. Subsequently in 2013 and 2015 it granted new permissions which varied the 2012 permission under s73 of the Town and Country Planning Act 1990.

In its submissions the Council cited the 2019 Supreme Court case of *LB Lambeth v SoS for Housing, Communities and Local Government* in which it was held that a condition against selling food included in an original permission remained valid even though a variation to the permission failed to include the restriction. The Council contended that the 2012 agreement should therefore be interpreted as also covering development under the new 2015 permission.

However, the court decided that the original s106 agreement had not been explicitly linked to the later permissions since the grant of these permissions was not made contingent upon the prior execution of a further s106 obligation, whether imposing the same requirements as those contained in the 2012 agreement or not.

The court held that parties to a s106 agreement may choose to agree explicitly that the obligations apply not only to the permission then being granted but also to any subsequent s73 permissions, but the Council had not demonstrated why these parties who had entered into an agreement without such explicit language should nevertheless be treated as having tied their hands in the same way in relation to unknown future s73 applications.

As a result, the court declared that the 2012 agreement had ceased to have effect according to its terms and that development pursuant to the 2015 permission was not subject to any of the obligations contained therein.

Case summary prepared by Safiyah Islam