

Case Name: *Thornton Hall Hotel Ltd, R (On the Application Of) & Anor v Thornton Holdings Ltd* [2019] EWCA Civ 737 (30 April 2019)

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Commentary: The Court of Appeal dismissed Thornton Holdings' appeal, upholding a High Court decision to extend time for Thornton Hall Hotel's challenge to be brought by a claim for judicial review against a planning permission granted more than five and a half years before the claim was issued in August 2017.

In 2011, following Thornton Holdings' application for planning permission to erect three marquees for commercial use at Thornton Manor in Wirral Metropolitan Borough Council's area, the Council decided to issue the permission subject to 10 conditions including a 5-year limit on the permission. However, the Council issued the decision notice in error without any conditions, so that the permission was not time-limited.

The Council realised the error and in May 2012 sought to conceal it by generating a fictitious and back-dated decision notice with the conditions that had been decided on. The Council also manipulated its planning register by removing the real decision notice and replacing it with the fictitious decision notice. Thornton Hall Hotel, as a business neighbouring Thornton Manor and a commercial rival of Thornton Holdings, only discovered the Council's error in July 2017. In August 2017 Thornton Hall Hotel filed a claim for judicial review of the Council's decision to issue the real permission as a mistake and unlawful for not including the conditions that the Council had decided to issue.

The High Court used its discretion to allow Thornton Hall Hotel to file its claim five and a half years late by extending the normal time for filing such a claim (being not later than six weeks after the grounds to make the claim first arose). In doing so, the High Court ruled that the circumstances of the case amounted to an exceptional case for extending time to allow the challenge to be brought before the court. The Court of Appeal agreed with the High Court on account of the case's extremely unusual or unique circumstances, including: the issue of the real planning permission without the conditions that had been decided on; Thornton Hall Hotel' delay in bringing its claim and the quashing of the real decision notice not causing Thornton Holdings any material hardship or prejudice because Thornton Holdings enjoyed the benefit of the real notice for the entire 5-year period that the planning permission was intended to be in effect; Thornton Hall Hotel's celerity in bringing its claim once it had realised the Council's error; and the interests of good administration in the court having the opportunity to hear the claim.

In upholding the High Court's decision, the Court of Appeal concluded that "No precedent is being set here. [The] court will not lightly grant a lengthy extension of time for a challenge to a planning decision by a claim for judicial review, nor will it lightly grant relief after a long delay. It will insist on promptness in bringing such challenges in all but the most exceptional circumstances. Here the circumstances are most exceptional. They are wholly extraordinary. This is a case where it can truly be said that the exception proves the rule."

Case summary prepared by Town Legal LLP