

Case Name: *Friends of the West Oxfordshire Cotswolds, R (On the Application Of) v West Oxfordshire District Council* [2024] EWHC 2291 (Admin)

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Commentary: This was a successful judicial review by the campaign group Friends of the West Oxfordshire Cotswolds (“the Claimant”) of the decision of West Oxfordshire District Council (“the Council”) to grant planning permission under section 73 of the Town and Country Planning Act 1990 for a 25-home residential development in Charlbury, Oxfordshire.

Planning permission for the scheme was originally granted in in January 2020. On 10 August 2022, the Council approved details submitted pursuant to pre-commencement conditions relating to a buffer zone between the development and an adjacent area of ancient woodland. However, the buffer zone presented in the details was smaller than that required in the conditions. This enabled the Claimant, in a previous action, to successfully challenge the Council’s approval of those details, which was quashed by the High Court in May 2023.

The Claimant launched its challenge to the condition approval on 20 September 2022; the developer commenced development under the original planning permission three days later on 23 September 2022, hoping to preserve it before its expiry in January 2023.

Then in November 2022 the developer applied for the section 73 permission (the subject of this present case) which varied a number of conditions on the original 2020 permission. The Council granted the permission in March 2023 – before the conclusion of the challenge to the 2022 condition approval, but in full knowledge that challenge was in course.

The Claimant challenged the section 73 permission on a number of grounds, including that the 2020 permission had expired before it could be lawfully commenced – the quashing of the 2022 condition approval meant that the works carried out by the developer prior to the expiry deadline were unlawful and could not lawfully commence the original permission as they were in breach of pre-commencement conditions which were true conditions precedent and, given the approval review decision, had never in fact been discharged. The original permission had therefore expired in January 2023 and so the Council had no power in March 2023 to grant a section 73 consent varying that permission.

Mr Justice Morris agreed, holding that the quashing of the 2022 condition approval effectively had retrospective effect, invalidating the commencement works carried out in reliance on the approval. The principle of retrospective effect could be applied as the works were carried out with knowledge that the approval was under review.

The Claimant also succeeded in arguing that the Council's decision was unlawful as it had considered the original planning permission as a "fall back position", this being a material consideration the Council had to have regard to in deciding the section 73 application. However, the original planning permission was incapable of completion so could not be such a material consideration. This error was sufficient to render the decision unlawful.

These grounds having succeeded, the decision to grant the section 73 permission was quashed.

Case summary prepared by Dougal Ainsley