

**Case Name:** *DB Symmetry Ltd v Swindon Borough Council & Anor* [2020] EWCA Civ 1331 (16 October 2020)

**Full case:** [Click Here](#)

**Commentary:** The Court of Appeal has allowed the appeal of a developer, DB Symmetry, against a decision of the High Court that a planning condition lawfully required the dedication of roads as highways. Importantly, the case considers the correct approach to the interpretation of planning conditions and the lawfulness of conditions requiring the dedication of roads as highways as part of a proposed development.

The developer had applied for planning permission for commercial development as part of the New Eastern Villages strategic allocation to the east of Swindon. Planning permission was granted with condition 39 specifying that: "The proposed access roads, including turning spaces and all other areas that serve a necessary highway purpose, shall be constructed in such a manner as to ensure that each unit is served by fully functional highway, the hard surfaces of which are constructed to at least basecourse level prior to occupation and bringing into use."

Subsequently, the developer contended that this condition did not require the public to be given a right of passage over those roads enabling them to demand licence fees before allowing public access. In a lawful development certificate appeal, the Planning Inspector agreed with the developer's interpretation of the condition. That appeal decision was quashed at the High Court.

The Court of Appeal overturned the High Court's decision. The Court of Appeal considered that the decision in *Hall & Co Ltd v Shoreham by Sea Urban DC* [1964] 1 WLR 240 ('Hall'), which prohibited a condition that requires a developer to dedicate land which he owns as a public highway without compensation, was binding on it. Applying Hall and the validity/validation principle of interpretation (i.e. that a Court will prefer an interpretation which results in the clause or contract being valid as opposed to void), the Court of Appeal considered the while the interpretation of the planning condition adopted by the High Court was the most natural conclusion it would lead to an unlawful condition because Hall precludes dedication of land as a public highway without compensation as a condition of the grant of planning permission. On the other hand, the Court of Appeal considered the Inspector's interpretation of the planning condition, which left the roads private was a realistic and lawful interpretation, and so should therefore be preferred.

The judgment is an important restatement of the Hall principle and the approach to take when interpreting planning conditions applying the Lambeth and Trump Supreme Court cases.

The practical lesson following this case is for such dedication and land transfer requirements to be secured via highways agreements (e.g. section 38 agreement) and planning obligations in section 106 agreements rather than via planning conditions.

For further discussion of the case and its implications, please see Simon's blog  
<https://simonicity.com/>

*Case summary prepared by Paul Arnett*