

Case Name: *Howell, R (On the Application Of) v Stamford Renewable Power Ltd & Ors* [2018] EWHC 3388 (Admin) (07 December 2018)

Full case: [Click Here](#)

Commentary: This case concerns judicial review proceedings to challenge the decision of Waveney District Council to approve details under certain conditions imposed on a planning permission for a wind turbine.

The Claimant, the owner of the nearest dwelling to the proposed wind turbine, argued that the Council wrongly discharged conditions which had been breached and therefore the planning permission had expired. The Claimant also argued that the Council had failed to comply with publicity and consultation requirements relating to environmental matters.

With regards to the planning conditions, it was stated that the Court should ask itself what a reasonable reader would understand the words of a planning condition to mean in the context of the other conditions and of the planning consent as a whole. If operations contravene the conditions to a planning permission, what has been termed the Whitley principle means that they cannot be properly described as commencing the development authorised by the permission. However, the Hart Aggregates case held that a condition could be a "condition precedent" in the sense that it required something to be done before extracting was commenced, but not a "condition precedent" in the sense that it went to the heart of the planning permission. Further, the case of Norris was highlighted in that it stated that "a breach of condition will not be treated as unlawful for this purpose if it would be irrational or otherwise legally objectionable, to enforce against it".

The court acknowledged that there was a breach of condition but that it was acceptable for development to commence notwithstanding that the details were late, as in reality the tall structures, to which the condition related, were yet to be constructed. In these circumstances this was not a condition precedent going to the heart of the permission and failure to comply with it did not mean that the entire development was to be regarded as unlawful. Further it would be irrational and an abuse of power for the Council to enforce against the developer for the late submission of the details.

Further the court doubted that there was a breach of the EIA Regulations, but even if there was, it was held that this is a case where relief should be refused as a matter of discretion or under section 31(2A) of the Senior Courts Act 1981.

The application for judicial review was dismissed.