

**Case Name:** *DB Symmetry Ltd & Anor v Swindon Borough Council* [2022] UKSC 33 (14 December 2022)

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

**Commentary:** This Supreme Court case concerned whether it is lawful for a planning condition to require the dedication of land for public highway. Upholding the Court of Appeal decision and applying *Hall v Shoreham*, the Supreme Court confirmed that such a condition would not be lawful. They also interpreted the condition in question as not requiring dedication (so that it was still valid).

The case concerned a development site forming part of a strategic allocation within the emerging Swindon Borough Local Plan 2026. It was envisaged that the development site would include an access road connecting it and broader parts of the allocation to the A420. In 2015, Swindon Borough Council (SBC) granted planning permission. Condition 39 of this permission stated the following:

*Roads*

*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.*

*Reason: to ensure that the development is served by an adequate means of access to the public highway in the interests of highway safety.*

The associated s106 agreement included an obligation to dedicate land between the A420 and access road, but there was no corresponding obligation for the access road land itself.

DB sought a certified of lawfulness of proposed use or development to confirm that the formation and use of private access roads (i.e. with no dedication as public highway) would be lawful. SBC refused to grant in August 2017, and DB appealed the decision. The Inspector acting on behalf of the SS agreed with DB, holding the obligation only required the construction of the roads and not their public use, and issued the certificate.

In the High Court, the judge read the reference to “highway” and accordingly set aside the certificate. The Court of Appeal allowed DB’s appeal and upheld the certificate. The judges held that a condition requiring dedication without compensation would be unlawful. They further held that the Inspector’s interpretation was realistic, and applied the validation principle – that the court will prefer an interpretation that renders a document valid rather than void (applying *Egon Zehnder Ltd v Tillman* [2019] UKSC 32). On further appeal to the Supreme Court, the judges the principle from *Hall & Co Ltd v Shoreham-by-Sea Urban District Council* [1964] 1 WLR 240 that a planning condition purporting to require a landowner to dedicate roads on its development site as public highways would be unlawful.

Regarding the interpretation of Condition 39, the court applied *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74 and *Lambeth London Borough*

Council v Secretary of State for Housing, Communities and Local Government [2019] UKSC 33: planning conditions should be interpreted in a similar manner to other public documents, by asking what a reasonable reader would understand the words to mean when reading the condition in context. The reasonable reader is treated as being equipped with some knowledge of planning law and practice.

It was held that, on a natural reading, condition 39 does not require the dedication of the access roads as public highway, for the following reasons (amongst others):

- it merely addresses the quality and timing of the construction of the roads;
- the reference to “highway” was read as resting on the assumption that dedication would be dealt with via s106 obligation;
- the condition gives no guidance as to the extent of land to be dedicated (as a s106 obligation would);
- the condition appears amongst a list of other conditions addressing the design, method of construction and physical characteristics of the means of access;
- Hall v Shoreham and subsequent government guidance strongly suggests that SBC did not seek dedication of the access road via condition.

The Supreme Court consequently concluded that the condition is a valid condition that does not purport to require the dedication of the access roads as public highway.

*Case summary prepared by Jed Holloway*