Press Summary

14 December 2022

DB Symmetry Ltd and another (Respondents) v Swindon Borough Council (Appellant)

[2022] UKSC 33
On appeal from: [2020] EWCA Civ 1331

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Kitchin, Lord Sales, Lady Rose

Background to the Appeal

This appeal concerns a development site on the outskirts of Swindon, immediately south of the A420. The site is part of the proposed New Eastern Villages, which were identified in the Swindon Borough Local Plan 2026 as a strategic allocation of land to deliver sustainable economic and housing growth, providing about 8,000 homes, 40 hectares of employment land and associated retail, community, education and leisure uses.

In 2015 the previous owners of the land were granted outline planning permission by Swindon Borough Council ("**Swindon BC**") for development of the site, subject to 50 conditions. Condition 39 read as follows:

> *"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."*

In their application for planning permission, the previous owners had submitted a "landscape masterplan", which showed two roads: a "North-South access road", which ran southward from a new junction with the A420 and continued to the southern boundary of the site; and an "East-West spine road", which ran to the eastern boundary of the site from a roundabout

on the North-South access road (both roads, together, the "**Access Roads**"). The Access Roads would enable the other development sites to connect with the wider road network.

After acquiring ownership of the site, DB Symmetry Ltd ("**DBSL**") applied for a certificate under section 192 of the Town and County Planning Act 1990 (the "**1990 Act**") to confirm that the formation and use of the Access Roads as private roads would be lawful.

Swindon BC refused to issue the certificate, asserting that condition 39 imposed an obligation on the owner of the site to dedicate the Access Roads as public highways. It was agreed between the parties that it would have been reasonable and lawful for Swindon BC to require that the Access Roads be dedicated as highways through the mechanism of a "planning obligation" (as distinct from a planning condition) under section 106 of the 1990 Act. However, Swindon BC argued that it could impose a planning condition to achieve the same result. DBSL disagreed, and further contended that condition 39 simply regulated the physical attributes of the Access Roads before the site was brought into use.

The Planning Inspector allowed DBSL's appeal against Swindon BC's refusal of the certificate. The High Court allowed Swindon BC's application for a statutory review of the Planning Inspector's decision. DBSL then successfully appealed the judgment to the Court of Appeal, the decision of which Swindon BC now appeals.

Judgment

The Supreme Court unanimously dismisses the appeal. Lord Hodge gives the judgment, with which Lord Reed, Lord Kitchin, Lord Sales and Lady Rose agree.

Reasons for the Judgment

Issue 1: Is it lawful for a planning authority, in granting planning permission for a development, to impose a planning condition that the developer will dedicate land within the development site to be a public highway?

The Supreme Court holds that the statutory provisions relating to planning conditions in the 1990 Act do not exist in a vacuum, but fall to be interpreted in the context of the Act as a whole, including the provisions relating to compulsory purchase and planning obligations **[36]**.

The Supreme Court considers the judgment in *Hall & Co Ltd v Shoreham-by-Sea Urban District Council* [1964] 1 WLR 240, which considered the circumvention of the relevant compulsory purchase regime by a purported planning condition **[39-49]**. Agreeing with the Court of Appeal, the Supreme Court holds that *Hall* is authority for the fact that a planning authority may not lawfully require a landowner by means of a planning condition to dedicate land as a public highway **[44]**.

As to planning obligations, the Supreme Court notes that these are, generally, agreed between the planning authority and the owner of the land under section 106 of the 1990 Act, while a planning condition is imposed by the planning authority. It is common practice to include an obligation on the owner of the land to dedicate part of its land for public use in a section 106 agreement, though this was not done in this case **[7]**. The power to impose planning conditions is not unlimited: (1) the conditions must be imposed for a planning purpose and not solely for an ulterior one; (2) they must fairly and reasonably relate to the permitted development; and (3) they must not be so unreasonable that no reasonable

planning authority could have imposed them **[51]**. Moreover, there is an established policy position as to the scope of planning conditions, which is consistent with case-law, that they should not require the cession of land for road improvements **[52-54]**. The Supreme Court goes on to consider the limits on the use of planning obligations contained in case-law and legislation, holding that there is a fundamental conceptual difference between a unilaterally imposed planning condition and a planning obligation, to which the developer can be subjected only by its voluntary act **[55-63]**. The Supreme Court holds that the options for a planning authority, which wants to require the dedication of roads within a development site as public highways, are to negotiate an agreement with the landowner or to exercise powers of compulsory acquisition **[63]**.

Issue 2: Properly interpreted, does condition 39 have the purported effect of dedicating land within the development site to be a public highway?

Planning conditions are to be interpreted in a similar manner to other public documents: the court asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and the planning consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense **[66]**.

The Supreme Court holds that condition 39 does not purport to require the dedication of the Access Roads as public highways. Instead, it addresses the quality and timing of the Access Roads' construction **[68]**. The Supreme Court reaches this judgment for a number of reasons, including the fact that condition 39 makes no mention of any requirement to dedicate the Access Roads as public highways; the fact that condition 39 is part of a list of conditions addressing the design, method of construction, and physical characteristics of the means of access to the site; and the wider planning law context, including *Hall v Shoreham*, the well-established guidance on the imposition of planning conditions, and planning authorities' practice of securing the dedication of roads by means of a section 106 agreement **[68-74]**. Condition 39 is, therefore, a valid planning condition which does not purport to require the dedication of the Access Roads as public highways **[75]**.

References in square brackets are to paragraphs in the judgment