

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

Case ID: 2020/0202

Case summary

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?

(2) Properly interpreted, does the planning condition in issue have that effect?

Facts

This appeal concerns the meaning of a condition that was attached to the grant of planning permission for a development site in the outskirts of Swindon. The proposed development included 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. Swindon Borough Council's planning committee granted outline planning permission for the site subject to a number of conditions, one of which provided 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. 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 developer subsequently applied for a certificate under section 192 of the Town and County Planning Act 1990 to confirm that the formation and use of private access roads within the development would be lawful. Swindon refused to issue the certificate. The Secretary of State's Planning Inspector allowed the developer's appeal against Swindon's refusal of the certificate. The High Court allowed Swindon's application for a statutory review of the Inspector's decision. The developer then successfully appealed the judgment to the Court of Appeal. Swindon now seeks permission to appeal to the Supreme Court.

Judgment appealed

[\[2020\] EWCA Civ 1331](#)

Parties

Appellant(s)

Swindon Borough Council

Respondent(s)

DB Symmetry Ltd and another

Appeal

Justices

Lord Reed, Lord Hodge, Lord Kitchin, Lord Sales, Lady Rose

Hearing start date

12 July 2022

Hearing finish date

12 July 2022

Watch hearing

12 July 2022 [Morning session](#) [Afternoon session](#)