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# **TRICS CONFERENCE**

## **PLANNING AND LEGAL ISSUES**

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# Introduction and overview

- Planning remains a contentious area
- Arguments about development and its transport implications continue
- Focus on a selection of legal issues

# The Planning System

- The game has changed
- Get involved early
- Consequences of the need for sustainability appraisal – SEA
- The examination of “soundness” of Development Plan Documents

# Development Control issues

- Environmental Impact Assessment
- The Use (and misuse) of Conditions
- Planning Obligations
- Highways Agreements

# Environmental Impact Assessment

- The need for EIA – consider type of project
- The Directive and various different Regulations
- The need for screening (almost always)
- The consequences of failure in procedure
- When is the scheme safe from challenge? The cautionary tale of Mr Gavin

# Mechanisms for Development Control

- Conditions
- Planning Obligations
- Highways Agreements

# Conditions

- Statutory basis for imposition
- Policy basis – C11/95
- Policy basis – relevant development plan policies
- Some dos and don'ts
- Conditions versus Obligation
- Potential consequences of problems with conditions

# Planning Obligations

- Statutory basis – section 106 of Town and Country Planning Act 1990 (as amended)
- Policy basis – C05/05. Note sustainability objectives
- When to use
- Care about drafting
- Some practical points

# Obligations – Practical Points

- Agreement or unilateral obligation?
- What should it seek to cover? (The danger of the “over generous developer”) see **Tesco –v- SoS (1995) HL, R –v- S Holland DC (2001)**
- Who enforces?
- Consultation and other interested parties

**R v Lichfield District Council ex parte Lichfield Securities Ltd (2001) CA**

# Obligations – Practical Points

- How deliverable is the proposed package?
- Does it rely upon actions by others?
- What mechanisms are in place to secure actions?
- Green Travel Plans - avoid criticism of “aspiration”
- Tariffs and Pooled Contributions
- Maintenance payments

# Highways Agreements

- Various highways agreements for different purposes
- Focus on s278 agreements
- Statutory basis
- Policy basis C4/2001
- The reluctant highway authority

**R –v- Warks CC ex p Powergen (1997)**

# Section 278 Agreements

- Who enforces?
- Relationship with conditions and s106 Obligations
- Common requirements
- Major schemes – use of capacity by other developments

# The Planning System – Appeals and Inquiries

## Some practical observations

- Process is increasingly “frontloaded”
- Seek to agree matters in advance:
  - o Assumptions
  - o Methodology
  - o Data
  - o Computer programmes

# The Planning System – Appeals and Inquiries

- Statements of Common Ground – uses and abuses
- Validation reports and audits – tie off “loose ends”
- The use of computer simulation programmes and models
- Clarity of explanation to the tribunal

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