

**IN THE MATTER OF GREAT BRIGHAMS MEAD, VASTERN ROAD, READING,
RG1 8DG**

AND IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990

**AND IN THE MATTER OF THE TOWN AND COUNTRY PLANNING (GENERAL
PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015 (SI 2015/596)**

OPINION

Introduction and Background

1. In this matter, I have been asked to review a response by the Local Planning Authority (“LPA”) relating to an application to vary the time-limiting condition on an application for office-residential conversion (Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”).
2. The applicant has made an application pursuant to s73 of the Town and Country Planning Act 1990 (“the 1990 Act”) to vary the condition to allow the development to be completed within six years rather than three years.

Response

3. First, my initial legal opinion dated 14 July 2024 considered the case of *Pressland*. Paragraph O.2 of Schedule 2 Part 3 is headed “Conditions” and is clearly entirely concerned with applying conditions to grants of prior approvals (and the conditions at Paragraph O.2 are applied automatically by operation of that paragraph). There is, per *Pressland*, no bar to an applicant using s73 TCPA to vary conditions imposed by the GPDO.
4. Second, in *Pressland*, the Court considered that to suggest that the condition cannot be varied by s73 is to, ‘read in’ a limitation on a power granted by primary legislation (the 1990 Act). In effect, it would constrain the power in s.73 without any basis. In my view, that is the approach that the LPA are contemplating taking in this case.
5. Third, the fact that the condition (requiring completion within three years) was initially imposed automatically by the Secretary of State in the GPDO, does not fetter the

discretion of the LPA to vary the condition at this stage. To suggest that the discretion is fettered in that way would be unlawful in my view, for the reasons given in §3 and 4 above. Again, I consider that such a finding would be contrary to the *ratio* in *Pressland*.

6. Furthermore, the suggestion that the development is still required to meet the Class O conditional requirement (and therefore it is suggested that it cannot be changed) is to frustrate the exact purpose of s.73, which enables applicants to apply to the LPA, to not comply with the conditions which were previously attached. Any suggestion that it is not possible to change the condition because the Secretary of State granted it through the GPDO would directly conflict with what is said in *Pressland*.
7. This can be contrasted with the position for development not permitted which is controlled by O.1. Those are limitations on the grant of the planning permission, which operate differently to conditions, which can be varied.
8. Fourth, as explained in my initial opinion, this can be contrasted with the position in respect of the commencement of development. s.73(5) of the 1990 Act clearly cannot be used to vary the time for commencement. That is addressed in full in my initial opinion at §§11-12. However, that is not what the applicant in this case is seeking to do.
9. Finally, the above has been found to be acceptable in other cases that I have worked on. One example is a case in Enfield. The legal advisors and officers of the Council plainly agreed that the approach taken to extend the time for completion of the works of permitted development was lawful and were content to agree to the variation through s.73 application on that basis. In my view, no good reason has been put forward by the LPA to depart from that approach found to be acceptable and lawful elsewhere.
10. If the LPA continue to adopt the position articulated in written correspondence, I would urge those instructing to either appeal and seek a full award of costs on the basis that the behaviour is unreasonable in acting contrary to established High Court authority on the point or to apply to the High Court for a declaration, and again seek to recover their costs for taking such action.
11. Should those instructing require any further assistance, please do not hesitate to contact me.

SIONED DAVIES

No5 Chambers

London – Birmingham – Bristol

22 November 2024.