

Tree felling licence conditions are not overridden by subsequent planning permission



Background

The Court of Appeal handed down judgment in *Arnold White Estates Ltd v Forestry Commission* on 6 October 2022.

Outline planning permission for mixed use development on land near Newton Abbot in Devon was granted in June 2016. Arnold White Estates were granted a felling licence in October 2018 for the woodland which formed part of the site. The trees were felled with a view to selling cleared plots, for which submissions of reserved matters would later be made by the purchasers.

The Forestry Commission issued a notice in July 2020 under section 24 of the Forestry Act 1967 (FoA 1967) to enforce compliance with restocking conditions of the felling licence.

In September 2020, the council granted a further planning permission for access to the site. The construction of this access would make it impossible to comply with the restocking conditions. Arnold White Estates contacted the Forestry Commission seeking confirmation of their view that the conditions of the felling licence had been superseded by the further planning consent and was no longer enforceable.

The Forestry Commission continued to enforce the notice on the basis that planning permission does not remove the duties contained within a felling licence or notice.

Court of Appeal decision

The High Court refused to grant permission to apply for judicial review of the Forestry Commission's decision. The Court of Appeal dismissed the appeal by Arnold White Estates.

The Court of Appeal held that the claim had been issued out of time as this was 11 months after the section 24 notice had been issued and 4 months after the planning permission had been granted.

Further, it found that Parliament had not provided, either in FoA 1967 or planning legislation, that the statutory provisions for the felling licence would be disapplied, or the conditions of that licence and the notice annulled, automatically and retrospectively by a later grant of planning permission.

Practical points

Of practical use will be the guidance from the Court on the interaction between the planning regime and the FoA 1967, where a development requires the felling of trees (paragraphs 64-89). In summary:

- Section 9(4)(2) of the FoA 1967 says that a felling licence is not required where tree felling is "immediately required for the purpose of carrying out development authorised by planning permission..."

What counts as "immediate"?

- Felling will be "immediately required" where it is required for a development to proceed under a full planning permission or an outline planning permission where the necessary reserved matters have been approved.

The key takeaway

Where trees have been felled pursuant to a felling licence, a subsequent grant of full planning permission or reserved matters approvals does not remove the need to comply with the conditions of the felling licence. This is so, even if the development would be made impossible by compliance with these licence conditions (which in this case required the replanting of trees on site).

If you are going to develop land with trees that need to be felled, wait for the grant of a qualifying planning permission under section 9(4)(2), rather than obtaining and felling pursuant to a felling licence.

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