Neutral Citation Number: [2018] EWHC 560 (Admin)

Case No: CO/3887/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

Judgment handed down at:
Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/03/18

Before :

MR JUSTICE KERR

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Between :

THE QUEEN on the application of THORNTON HALL HOTEL LIMITED	**Claimant**
- and –	
WIRRAL METROPOLITAN BOROUGH COUNCIL	**Defendant**
- and –	
THORNTON HOLDINGS LIMITED	**Interested Party**

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Mr Anthony Crean QC (instructed by **Weightmans LLP**) for the **Claimant**
Mr Alan Evans (instructed by **Wirral Metropolitan Borough Council**) for the **Defendant**
Mr Christopher Lockhart-Mummery QC (instructed by **Gateley plc**) for the **Interested Party**

Hearing date: 31st January 2018

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Judgment Approved

Mr Justice Kerr:

Introduction

1. This is a rolled up hearing ordered by His Honour Judge Davies on 4 October 2017. He directed a combined oral hearing of the permission application and, if permission is granted, of the substantive judicial review. The challenge is to a decision taken by the defendant as long ago as December 2011 to grant planning permission to the

interested party for the erection of three marquees at sites within the Thornton Manor Estate, at Thornton Hough in the Wirral.

2. The claimant owns and operates the nearby Thornton Hall Hotel. The claimant and the interested party are competitors for the business of hosting weddings and other functions. Thornton Manor, owned and operated by the interested party, is a Grade II* listed building in the Green Belt with historic gardens in the grounds which are, separately, also Grade II* listed. The defendant is the local planning authority (the LPA).

3. In December 2011, the LPA granted unconditional planning permission for the erection of the three marquees within the grounds of Thornton Manor, without limit of time. The applicant for planning permission was the interested party. The claimant and the LPA say that this was a mistake and that the planning permission should have been subject to a condition decided upon by the LPA, but omitted in error from the document granting planning permission.

4. The error was that the permission (issued on 20 December 2011) should have been made subject to a time limit of five years, such that the marquees would have to be taken down not later than 19 December 2016. The decision made in committee was to impose such a five year time limit, but the document formally granting the permission omitted that time limit and omitted some 9 other conditions which the committee decided to impose.

5. The LPA accepts and asserts that it made that error and, therefore, does not contest the claim, though it is brought long out of time. The interested party submits that the unconditional planning permission should stand and that the presence of the three marquees at Thornton Manor is therefore lawful and will remain so in future, without any time limit, by virtue of the unconditional planning permission.

6. The issues are therefore, these. The first is whether an extension of time should be granted. An extension of several years is needed if the claim is to proceed. The second issue is whether, if time is extended, the merits of the claim are properly arguable, such that permission to proceed with the claim should be granted. The third issue, if it arises, is whether the claim should be allowed and appropriate relief granted.

The Facts

7. In 2006, the interested party erected marquees without planning permission in the grounds of Thornton Manor, for the purpose of holding functions. The LPA issued an enforcement notice in 2007 requiring use of the marquees to cease. An appeal against the enforcement notice was dismissed, but enforcement action was not proceeded with. Outstanding planning applications were refused and the LPA awaited a further planning application in respect of use of all three marquees.

8. That application was made in April 2010. It came before the planning committee of the LPA on 7 September 2010. A detailed report was available to the planning committee. It set out the planning history, representations and a summary of objections received. In the report it was noted that the three marquees constituted "inappropriate development within the Green Belt", such that "very special

circumstances" would have to be shown, that would "outweigh any harm caused" if it were to be granted.

9. The report recommended that the application should be approved, subject to a section 106 agreement and referral to the Government Office for the North West, because the "generation of an income stream" to enable restoration of the gardens, which were in decline and at risk, constituted the "very special circumstances necessary to overcome the presumption against inappropriate development".

10. However, the report also included 10 recommended conditions. I need only mention the first in full: that the permission "shall be for a limited period of five years from the date of issue of the decision notice". The other nine recommended conditions related to noise control measures, signage, parking, lighting and a prohibition on the use of fireworks from January to July.

11. On 7 September 2010, the planning committee met to consider the application. An agent of the claimant attended. The claimant was among the objectors. As the minutes show, the committee resolved to accept the recommendations and to grant permission subject to the conditions recommended, including the time limit of five years from the date of issue of the permission notice (the five year time limit). The reason for the five year time limit was: "to enable the financial situation to be reviewed and minimise the impact on the green belt from the erection of the structures".

12. According to a later report to the planning committee in July 2017 reporting on the error the LPA had made (referred to at the hearing, and herein, as the "*mea culpa*" report), a draft decision notice was prepared in May 2011 to be appended to the proposed section 106 agreement (paragraph 2.5 of the *mea culpa* report). It is likely that it included the relevant conditions intended to be attached to the planning permission. In September 2011, a further draft notice was prepared and published on the LPA's website (*ibid.*, paragraph 2.6).

13. On 11 November 2011, the agreement made under section 106 of the Town and Country Planning Act 1990 (the 1990 Act) was concluded. The parties included the LPA and the interested party. The "Planning Permission" was defined as "the full planning permission subject to conditions to be granted … pursuant to an Application a draft of which is set out in Schedule 2". Schedule 2 was a draft notice of grant of planning permission, which included the 10 conditions (and reasons for them) starting with the five year time limit.

14. The agreement was, in the usual way, conditional on the grant of "the Planning Permission" (clause 4). By clause 6, the LPA covenanted with the interested party "as set out in Schedule 4". Schedule 4 included provision that if the agreed works programme is completed "prior to the end of the five year term of the Planning Permission", the obligations in the agreement would cease. Clause 7.7 provided that the agreement would cease to have effect "if the Planning Permission shall be quashed, revoked or otherwise withdrawn…"

15. On 20 December 2011, the LPA issued its notice of grant of planning permission. The claimant and the LPA referred to this document as "the error permission" because it omitted any conditions. The operative words were these:

> "[The LPA] hereby grants Planning Permission for the development specified in the application and accompanying plans submitted by you subject to the following conditions:-"

However, no conditions were then set out in the document (the decision notice). It went on to deal with rights of appeal. It was signed by the LPA's then acting director of the department of regeneration, housing and planning.

16. In that unusual form, the decision notice was sent to an agent of the interested party, a Mr Landor, and was received at his office on 22 December 2011. He noticed that it did not include any mention of planning conditions. He checked the LPA's publicly available website to see if the decision notice was on the public record, and found that it was. The claimant's agent, Mr Gilbert, who had attended the meeting in September 2010, did not receive a copy of the decision notice and did not check the LPA's website.

17. On or about 17 May 2012 (see paragraph 2.8 of the *mea culpa* report), various versions of a decision notice were found to be on the LPA's website and were taken down from the website and replaced by a new notice dated 11 November 2011, which was the date on which the section 106 agreement had been entered into. There must have been an element of backdating since the new notice was signed by the signatory in the capacity of "director", a post he had not held in November 2011, when he was acting director.

18. On 13 March 2013, a different agent of the interested party, a Mr Doughty, applied to discharge the conditions relating to noise, signage, road widening, car parking, lighting and landscaping basing himself on the position as he understood it to be as at 11 November 2011, the date of the section 106 agreement and the date attributed to the notice then on the LPA's website. There was no attempt to remove any five year time limit, which was not mentioned in Mr Doughty's written application. The LPA and the interested party then cooperated in achieving discharge of those non-temporal conditions.

19. In July 2013 and December 2014, the interested party made further applications, to extend two of the marquees. In April 2016, the interested party made a further planning application, to convert a store and glasshouse into dining facilities. There was correspondence about this, which included mention of the temporary nature of the permission for the marquees to be present at Thornton Manor.

20. As is clear from paragraphs 2.9, 3.1 and 3.2 of the *mea culpa* report, the LPA at least (if not the interested party) proceeded on the understanding that the planning permission was due to expire on 11 November 2016 (though the appropriate date would in fact be 19 December 2016, five years from the issued decision notice). Indeed, after 11 November 2016, the LPA told the interested party that a fresh application would be required to continue use of the marquees.

21. The five year period in fact expired on 19 December 2016. That day came and went. The marquees remained in place. They are still there now. If the interested party did not share the LPA's view and considered (whether on the strength of Mr Landor's researches or otherwise) that the planning permission was without limit of time, it did

nothing during the five year period to disabuse the LPA of its understanding that the planning permission was subject to a five year time limit.

22. Indeed, it was not until 17 March 2017 in an email, and subsequently on 5 May 2017 at a meeting, that the interested party produced the decision notice dated 20 December 2011 which, though it made reference to the existence of "the following conditions", omitted any statement of what they were. It must then have begun to dawn on the LPA that something had gone wrong. Investigations were carried out, leading to the *mea culpa* report prepared for a meeting of the planning committee on 20 July 2017.

23. I am satisfied that the decision notice did not faithfully reproduce the decision made by the planning committee and that the cause of the error is likely to have been, at least, human failing. No one in this case contends otherwise. The decision notice, signed on behalf of the LPA, does not make sense on its face. It is clear that the LPA intended it to include the conditions the committee had decided upon, taken from the original report. The decision notice itself referred to conditions but then failed to include them.

24. On 23 August 2017, a little over a month after the meeting for which the *mea culpa* report was produced, this claim was brought. It is accepted by the claimant and the LPA that the grounds of the claim first arose on 20 December 2011, when the defective decision notice was issued. It is common ground that, at that time, a judicial review of this kind had to be brought promptly and in any event not more than three months from the date when grounds first arose.

25. The claimant and the LPA therefore accept that the claim has been brought between five and six years late. An extension of time is therefore sought. The LPA filed an acknowledgment of service saying it did not intend to contest the claim. The interested party opposes the claim on the ground that it is out of time and in addition that its merits are unarguable or, if arguable, bad.

26. The functions at the marquees are run by a Ms Tanya Steel on behalf of the interested party. She took over that role in May 2017. She gives written evidence of expenditure by the interested party on septic tanks, drainage and toilet facilities at Thornton Manor, and certain other expenditure, for the purposes of its commercial operations.

27. Ms Steel also says that the interested party has accepted over 180 bookings for dates up to and within the year 2020, and that the bookings are "increasing month by month" and affect about 51,000 people. I do not have any evidence of when those bookings were taken but it is reasonable to infer from Ms Steel's statement that the present proceedings have not inhibited the acceptance of further bookings.

The Law

28. As is well known, the grant or refusal of planning permission for development is provided for in the 1990 Act. Permission may be granted subject to conditions or unconditionally (section 70(1)). A register containing prescribed information about planning applications must be kept (section 69(1)). And by section 75(1):

> "Without prejudice to the provisions of this Part as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except insofar as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it."

29. The grant of planning permission takes effect on written notification of the decision. The planning authority is under an obligation to give written notice and the contents of a decision notice are prescribed by statutory instrument. This is also common ground.

30. There is no power to withdraw a planning permission once granted, on the basis of an administrative error in the decision making process *(Gleeson Developments Ltd. v. Secretary of State for Communities and Local Government* [2014] EWCA Civ 1118 per Sullivan LJ at [22]).

31. Nor can an effective planning permission, once issued in error, be altered by issuing an amended notice of planning permission (*Holder v. Gedling Borough Council* [2013] EWHC 1611 (Admin), per Parker J at [54] (reversed on other grounds but not on this point, [2014] EWCA Civ 599).

32. On the other hand, a planning permission issued in error and without proper authority is invalid and may be declared so or quashed: *Cooperative Retail Services Ltd v. Taff-Ely Borough Council* (1980) 39 P&CR 223, CA, per Lord Denning MR at 238 (upheld in the House of Lords, (1981) 42 P&CR 1); *Norfolk County Council v. Secretary of State for the Environment* [1973] 1 WLR 1400, per Lord Widgery CJ at 1404; and *Carroll v. South Somerset District Council* [2008] EWHC 104, per Collins J at [20]:

> "it is, as the law has recognised, always possible for a court to be asked to intervene and to quash a decision if it is apparent that that decision was one which was made without proper authority and therefore it was not within the powers of the decision maker to make it."

That passage was cited with approval in *Archid v. Dundee City Council* [2014] SLT 81, per Lord Glennie at [53].

33. I was referred by Mr Christopher Lockhart-Mummery QC, for the interested party, to section 31(6) and (7) of the Senior Courts Act 1981, stating that, without prejudice to rules setting time limits for the bringing of claims, leave to make the application or any relief sought in it may be refused if the court considers that the granting of the relief will be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

34. I was also referred by Mr Lockhart-Mummery to a number of cases concerning the time honoured but elusive distinction between public law decisions that are void and those that are merely voidable; and the effect of that distinction in cases where a party

fails to bring a claim promptly. I shall return to that issue when dealing with the arguments of the parties and my reasoning and conclusions.

Submissions of the Parties

35. Mr Anthony Crean QC, for the claimant, submits that the case is a simple one. A plain error was made and it should be rectified by quashing the planning permission granted in December 2011. It was not the claimant's responsibility to keep an eye on the LPA's website. Having (through its agent) attended the meeting on 7 September 2010 as an interested spectator, the claimant had no reason to suppose that the planning permission eventually granted would be out of line with what the committee decided at the meeting.

36. Mr Crean cautioned against excessive legalism of the kind deprecated by the Court of Appeal when looking at decisions of local planning authorities. He submitted that the interested party had received a windfall benefit to which it was not entitled. The authorities showed that administrative error cannot "supplant executive authority", as he put it. There should be a strong presumption in favour of relief being granted, despite the long delay.

37. Mr Alan Evans, for the LPA, agreed. He submitted that the "error permission" was clearly the result of an irregularity. It is invalid and should be quashed. It is immaterial that the LPA intended to grant a planning permission of some kind, given the mismatch between the unconditional grant of permission and the committee's decision to grant permission subject to conditions.

38. As for the long delay before the claim was brought, the LPA supported the application for the necessary extension of time. The LPA had acted throughout the five year period on the assumption that the permission it had granted was subject to the 10 conditions that should have been included in the decision notice.

39. Mr Evans reasoned that the interested party, though surely aware of the error, did not inform the LPA of it; yet it had sought to vary or discharge the conditions that were missing from the error permission. It would be wrong in those circumstances for the interested party to sidestep the justice of the case and subvert the public interest in the integrity of the planning process, by refusing the necessary extension of time.

40. For the interested party, Mr Lockhart-Mummery QC stressed the importance of parties acting promptly when bringing judicial review claims, especially in planning cases. He cited cases where relief was denied due to delay: *Finn-Kelcey v. Milton Keynes Borough Council* [2009] Env LR 17, CA, per Keene LJ at [22]; *R (Gerber) v. Wiltshire Council* [2016] 1 WLR 2593, CA, per Sales LJ at [48]; and *Connors v. Secretary of State for Communities and Local Government* [2017] EWCA Civ 1850, per Lindblom LJ at [87]).

41. He also relied on well known authority for the proposition that a public law decision that is flawed in some way, is not thereby void *ab initio* and without legal effect so that it can be ignored (*Smith v. East Elloe Rural District Council* [1956] AC 736, per Lord Radcliffe at 769; and *R (Noble) v. Thanet District Council* (2006) 1 P&CR 13, per Auld LJ at [42-3]).

42. In such cases, the decision in question, Mr Lockhart-Mummery argued, remains effective in law unless and until the court decides, in the exercise of its discretion, to grant relief to quash it or declare it invalid. Such relief should not, he argued, be granted in this case because the claim was many years out of time and substantial hardship to the interested party would be caused if the claim were allowed to proceed and the decision notice were quashed.

43. Mr Lockhart-Mummery sought to distinguish cases such as *Norfolk County Council v. Secretary of State for the Environment* and *Carroll v. South Somerset District Council* on the basis that in those cases, there had been no authority to issue a planning permission at all; whereas, here, the LPA had always intended to grant permission, albeit subject to the omitted conditions; and authority to issue the decision notice had been delegated to officer level.

44. He submitted that mistakes of this kind are commonplace and do not vitiate the planning permission issued by the planning authority. He submitted that the claimant's delay was not excusable; the claimant had run a high risk by failing to check the LPA's website. Both the claimant and the LPA were to blame for the delay. Cases such as *Gerber* show that interested parties such as neighbouring landowners must be vigilant to mount a timely challenge.

45. The detriment to good administration arising under section 31(6), he contended, arose because the interested party had reasonably accepted bookings for weddings and other functions up to the year 2020, on the strength of the planning permission being, on its face, unlimited in time. It would cause substantial hardship to the interested party if those transactions were placed in jeopardy.

Reasoning and Conclusions

46. The three issues in the case are, on examination, linked to each other. If the justice of the case and the public interest requires that the court accept the invitation to correct the mistake, it can only do so by first granting the extension of time sought. Conversely, if the claim is unarguable or bad on its merits, an extension of time would be futile and serve no purpose.

47. In the present case, I am satisfied that the extension of time should be granted. I do not consider that the merits of the claim are obviously bad. I accept that the delay has been long and that it is unusual, particularly in the planning context, to allow a claim to be brought so late. However, as I shall discuss further below, I think the interested party bears considerable responsibility for the lateness of the claim because it knew of the error and chose to remain silent about it.

48. Furthermore, the extreme lateness of the challenge is not as prejudicial to the planning process as lateness usually is, such as in the cases cited by Mr Lockhart-Mummery. In this case, the presence of the marquees was not contrary to the intended scope of the planning permission and contrary to the LPA's decision until December 2016. Their presence only became malign, if at all, in late 2016, not in 2011.

49. I accept that the error was discovered late, that the LPA bears responsibility for the error and that it would have been far better if the claim could have been adjudicated before expiry of the five year time limit. If that had happened, there would have been

negligible prejudice to the interested party or the public. If the former had not substantially contributed to the lateness of the discovery, I might well have refused to grant the extension of time sought.

50. But on the facts as they appear before me, I think justice requires that the extension of time be granted so that the interest of the public in the integrity of the planning process is not excluded from consideration by this court. The public interest lies in the court having power to rectify the error. That public interest is represented by the statutory planning powers of the LPA. On judicial review of the exercise of those powers where a mistake has led to illegality, its guardian is the Administrative Court.

51. I therefore grant the extension of time sought. I also grant permission for the claim to proceed. I am easily satisfied that it is properly arguable. I am in full agreement with His Honour Judge Davies, who observed in the reasons for his order directing the rolled up hearing, that there are arguable issues as to whether or not the error permission is a "nullity" and whether or not the court should grant relief and, if so, what form of relief.

52. I therefore turn to the substance of the judicial review claim. The first point is that I accept the submission of Mr Lockhart-Mummery that planning permission was granted by issue of the decision notice and that any legal flaw arising from the omission of the intended conditions, including the five year time limit, did not prevent the planning permission from having legal effect, unless and until quashed by this court.

53. The cases cited by Mr Lockhart-Mummery establish that a decision which is defective by reason of a legal flaw cannot normally be treated as a complete nullity, such that it is wholly void, *ab initio,* and can safely be ignored. The orthodox position is now settled: such a decision is capable of having legal effect, unless and until it is quashed.

54. Next, I accept also that there are cases where a legal flaw is present in a decision, but the decision then effectively acquires legitimacy, despite the flaw, either because no challenge is brought to have the decision quashed; or because any challenge comes too late and the court is unwilling to extend time; or because the court is for some other reason unwilling to grant relief; for example, because the claimant lacks standing to bring the claim.

55. Applying that learning to the facts of this case, it must follow that the presence of the three marquees did not, and subject to this judgment does not, offend against the law, either as respects their presence at Thornton Manor before 19 December 2016 when the five year time limit expired or would have expired; or as respects their presence after that date, down to the present. However, the question remains whether the court should now grant relief which would alter that position for the future.

56. The cases cited by Mr Lockhart-Mummery do not establish that the court is powerless to rectify the error by quashing the defective planning permission. I do not accept the interested party's submission that because the LPA intended to grant planning permission of some kind and delegated to officer level the actual issue of the permission, the error is cured or is not significant. I do not think the authorities cited support that proposition.

57. There is no principle in play here akin to what in private law would be called estoppel by representation. Nor did the officer who issued the decision notice have any ostensible authority, as an agent might have done in a private law context, to issue an unconditional planning permission. The correct analysis is that the permission, while not wholly void, was flawed by the erroneous absence of the conditions the committee had decided upon and, subject to a valid challenge by a qualified challenger, susceptible to quashing.

58. In my judgment, the court should now exercise its power to rectify the error by quashing the permission. I have reached this conclusion for the following reasons, which are closely interlinked.

59. The first and most obvious reason is that the error was made. The planning permission that was issued is not as it should be. The authority delegated to officer level to issue the permission, plainly was not intended to include authority to undo the committee's decision that the permission should be conditional. That would fly in the face of the committee's decision to accept the recommendations in the report to the committee.

60. The second reason is that unconditional and permanent planning permission to erect the three marquees and keep them there would not have been granted and would not have been considered as being in the public interest. The permanent presence of the three marquees was inappropriate development in the Green Belt; their presence was only regarded as acceptable because of the difficult financial position, the threat to the condition of the gardens which were in decline, and by reason of the limited duration of the permission, which preserved the power of the LPA to review the position from time to time.

61. The third reason is that if I do not grant the relief sought, the marquees need not be removed, ever. Unless the LPA decides otherwise, they should be removed. Their presence at Thornton Manor ought to have ceased in December 2016 unless a fresh permission had been granted, application for which was deliberately not made. If the marquees are now allowed to stay permanently, the proper operation of the planning process will have been subverted.

62. Fourth, that would be contrary to the public interest. I asked Mr Lockhart-Mummery QC at the hearing whether he wanted to make any observation about the public interest in this case. His answer was to the effect that it must give way and that it was inevitable in cases of this kind that this must be so. I respectfully disagree. I think it is more important than the commercial interests of the interested party, at least on the facts of this case.

63. Fifth, among my reasons for taking that view is that the interested party was aware of the error. If it had not been, it would have said so in its evidence. Mr Landor with commendable candour admitted that as long ago as 22 December 2011 he was aware of the inconsistency between the permission as issued and the permission as envisaged by the planning committee. It is safe to infer that he raised the issue with his client, the interested party, and that the latter chose to remain silent about the inconsistency.

64. Sixth, it follows that the interested party ran its commercial operation at Thornton Manor from 22 December 2011 knowing that the presence of the marquees after 19 December 2016 would be, at the very least, a matter of possible controversy and possible legal challenge. It was not, in my judgment, realistic to rely on expiry of the three month limitation period without also bringing the issue into the open, which the interested party decided not to do.

65. Given the failure of the interested party to draw the LPA's attention to the apparent error, it is unattractive then to assert that the claimant and the LPA bear responsibility for the delay in the matter coming to light. I accept Mr Crean's submission that the claimant had no reason to suppose that the LPA would issue an unconditional planning permission, having decided to issue a conditional one.

66. Seventh, it follows that I am not impressed by the argument that the interested party would be prejudiced by the grant of relief, because it accepted bookings in good faith, up to the year 2020, on the strength of the unconditional planning permission of which it had the benefit. It was only able to enjoy that benefit by keeping silent about the obvious error that had been made. Its decision to accept bookings at a time when the presence of the marquees would be legally precarious, was one made at its own risk and peril.

67. I asked Mr Lockhart-Mummery QC whether there was evidence as to when those bookings were accepted and whether acceptance of bookings continued after the error became known to the LPA (in March 2017) or after the claim was brought in August 2017. The evidence is silent on this point save that Ms Steel's statement that bookings are "increasing month by month" suggests the interested party is undaunted by the claim and continues to accept bookings.

68. Eighth, it is said by the interested party that it would be detrimental to good administration if the marquees have to be removed. Normally, detriment to good administration in public law cases relates to the undesirability of interfering with the provision of public services rather than commercial interests. I see no detriment to good administration in rectifying the error. I think it is detrimental to good administration that the marquees are still there. Good administration includes correct implementation of planning decisions.

69. I do have great sympathy with any persons who have made bookings with the interested party for a wedding or other function, whose function may be placed in jeopardy as a result of this judgment. They may have reason to complain about the interested party's conduct if they were not warned about possible legal difficulty, but that is not a matter for me. I do not think the existence of these bookings, about which I do not have detailed evidence, should override the public interest in the integrity of the planning process.

70. Ninth, the interested party signed the section 106 agreement embodying the omitted conditions including the five year time limit. Yet, it proceeds in this litigation as if it were not bound by the terms of that agreement. That seems to me only to compound the unconscionability of its position. It undertook in private law the same obligations as it denies in public law.

71. All in all, my difficulty with accepting the case for the interested party is that it entails the proposition that the marquees should be allowed to remain in situ forever, when in my judgment they should not be there unless permitted to remain under a fresh and lawfully granted planning permission, and in accordance with the terms of that planning permission.

72. For those reasons, the claim succeeds, though neither the LPA nor the interested party emerges with much credit. I will extend time, grant permission and quash the planning permission in the decision notice dated 20 December 2011.