Neutral Citation Number: [2023] EWHC 2026 (Admin)

Claim No: CO/3206/2022

IN THE HIGH COURT OF JUSTICE
PLANNING COURT (KBD)

Date: 4 August 2023

B e f o r e :
MR JUSTICE WAKSMAN

LAZARI PROPERTIES 2 LIMITED

Claimant

and

SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

Defendant

and

THE LONDON BOROUGH OF CAMDEN

Interested Party

Reuben Taylor KC (instructed by Herbert Smith Freehills LLP, Solicitors) for the Claimant
Sasha Blackmore (instructed by Legal Department, London Borough of Camden) for the Interested Party

The Defendant did not appear and was not represented

JUDGMENT

Hearing date: 2 May 2023

INTRODUCTION

1. This is an appeal pursuant to Section 288 of The Town And Country Planning Act 1990 ("the Act") brought against the decision of the Planning Inspector made on 27 July 2022. By that decision the Inspector refused the application made by the Claimant, Lazari Properties 2 Limited ("Lazari") to the Local Planning Authority ('LPA'), here the London Borough of Camden ('Camden'), for a Certificate of Lawful Existing Use or Development ("LDC") pursuant to s.191(1)(a) of the Act. The property in question is the Brunswick Centre, a well-known, very large and iconic Grade II listed structure in Central London. It essentially comprises residential units, but has always had retail and other uses too, including a cinema.

2. The LDC applied for was, as stated in paragraph 6 of the Inspector's Decision Letter ("the DL"), an "Application to certify that the existing use of the Brunswick Shopping Centre within Class E and without compliance with Condition 3 of Planning Permission: PSX0104561 is lawful." In the event, Camden failed to determine the application, and so the matter came before the Inspector as an appeal pursuant to s.195 of the Act. As Camden stated in its Appeal Statement dated 2 September 2021, had it determined the application, it would have refused it.

3. The planning permission which contained Condition 3 was granted on 1 September 2003. It was for the extensive refurbishment of and alterations to the Brunswick Centre, along with the creation of new units and re-landscaping ("the Permission"). The Permission included what was then A1, A2 and A3 use under the Town and Country Planning (Use Classes) Order 1987 ("the UCO"). Class A1 use was Shops, Class A2 use was Financial and Professional Services and Class A3 use was Restaurants and Café's. I should add that class B1 use was Business.

4. Condition 3 stated that:

> "Up to a maximum of 40% of the retail floorspace equating to 3386m2 (excluding the supermarket and eye-catcher) is permitted to be used within Use Classes A2 and A3 of the Town and Country Planning (Use Classes) Order, 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order."

5. The reason for Condition 3 was stated to be:

> "To safeguard the retail function and character of the Brunswick Centre in accordance with policies SHI, SH2, of the London Borough of Camden Unitary Development Plan 2000."

6. The reference in the application for the LDC to Class E was to the new Class E to be found within the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("the 2020 Regulations). One of the amendments made by the 2020 Regulations to the UCO was that Parts A and D of Schedule 2 thereto were revoked and replaced by a new, amended, Schedule 2 providing for a new Class E. This new single class, subsumed within it the previous use classes A1, A2, A3, and B1. Within the new Class E, A1 is now E (a), A2 is now E(c) and A3 is in broad terms replaced by E(b).

7. Under s.55(2)(f) of the Act, there is no "development" for the purposes of the Act

> "in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class."

8. That is mirrored in Article 3 of the UCO.

9. At the time of the original planning permission in 2003, the Town And Country Planning Act (General Permitted Development Order) 1995 ("the GPDO") permitted a change from A3 to A1 use without the need for further planning permission but not the reverse. Similarly a change of use was permitted from A3 to A2 and from A3 (If the building was on a ground floor or had a display window) to A1, but again not the reverse. See paragraphs A, C and D of Schedule 2 to the GPDO. In other words the GDPO permitted Class A to change "up" but not "down". This is known colloquially as the "ratchet". So, to this limited extent, there could be movement between classes as well as within them.

10. Regulation 7 of the 2020 Regulations provides that:

> "For the purposes of the Use Classes Order, if a building or other land is situated in England, and is being used for the purpose of one of the following classes which were specified in Part A or B of the Schedule to that Order on 31st August 2020, as—
>
> (a) Class A1 (Shops),
>
> (b) Class A2 (Financial and professional services),
>
> (c) Class A3 (Restaurants and cafes), or
>
> (d) Class B1 (Business),
>
> that building or other land is to be treated, on or after 1st September 2020, as if it is being used for a purpose specified within Class E (Commercial, business and service) in Schedule 2 to that Order."

11. The upshot of all this is that there is now the ability to move between what were Classes A1, A2, and A3 without this constituting development and without the restriction of the ratchet. This is because they are all subsumed under a single class E.

12. This was an important change, designed to make it easier to switch between different commercial uses of buildings. So far as the Brunswick Centre is concerned, it is common ground that absent Condition 3, there would in principle be no obstacle to the movement of uses between what were A1, A2 and A3. It is not in dispute that Lazari wants its commercial tenants have maximum flexibility over the use of their individual units, and in particular the ability to engage in restaurant and café activity which generally has become much more prevalent.

13. However, all of this would only be possible if the new Class E effectively superseded the restrictions imposed by Condition 3; or, to put it more accurately, if the effect of Condition 3 was not to exclude the operation of the UCO (as amended). That is the underlying issue in this case.

14. The appeal before the Inspector raised essentially two issues:

    (1) Was the description of the existing use as "Class E" ambiguous and imprecise such that the application for the LDC should be rejected in any event, as it were ("Ground 1")?

    (2) Even if the application did not fall to be rejected on Ground 1, should it be rejected on the merits because Condition 3 remained in force ("Ground 2")?

15. Following hearings on 15 March and 8 June 2022, the Inspector rejected the appeal on both grounds.

16. Lazari then sought to appeal, under s. 288 of the Act, in relation to both grounds. On paper, on 11 October 2022, Sir Ross Cranston refused permission for both. On 21 February 2023, following an oral renewal hearing, Lane J held that Ground 1 was unarguable, but Ground 2 was arguable. Because of his decision on Ground 1, however, the Inspector's ultimate decision to reject the application could not be impeached and his decision would stand. Nonetheless, Lazari was given permission to continue the appeal, even though academic as to the Inspector's actual decision. This is because the determination of Ground 2 remains of importance going forward in respect of tenancies of various units in the Brunswick Centre. But the relief is now limited to declaratory relief only. That is how and why Ground 2 now comes before me for substantive determination.

17. I should add that there is also a Reasons challenge which I shall deal with after considering the substantive issue.

THE SUBSTANTIVE ISSUE

18. The overall contention made by Lazari is that whatever the position before, since the introduction of the 2020 Regulations and the new Class E, it is now able to move uses as between A1, A2 and A3 in particular, untrammelled by Condition 3. In particular, it could let out units for A2 and A3 use which would in total amount to more than 40% of the total retail floor space, such that shops could be replaced to a significant extent by restaurants and cafés within the Brunswick Centre.

19. It is common ground that this result could not be obtained if the new Class E and the concomitant ability to move between different parts of it ("the Class E Permitted Use") have no application here because they are excluded by Condition 3.

20. Lazari's position is that the Class E Permitted Use does indeed operate here while Camden contends that it does not. The Inspector also found that it did not - see paragraphs 49-61 of the DL.

21. It is of course the case that the Class E Permitted Use was not in existence at the time of the original planning permission. However, that does not mean that Condition 3 could not oust its operation. It all depends on the proper construction of that condition which is at the heart of the dispute before me.

22. The overarching submission made by Lazari is that, on its proper construction, Condition 3 did not have the effect of ousting the operation of the amendments to the UCO put in place by the 2020 Regulations, in particular the new Class E. I shall refer to this as "the exclusionary effect" It is common ground that if Condition 3 did not have this effect, then the Inspector's decision was wrong and going forwards, there would be no restriction in moving uses, as it were, between Classes A1 to A3, as I shall continue to describe them.

23. Lazari has deployed various arguments to support that conclusion but they are now reduced to two.

24. The first argument is that Condition 3's purpose was only to govern the initial allocation of the relevant space into A1, A2 and A3 use; here, A2 and A3 use was limited to 40% of the relevant floorspace. However, it had no effect beyond this. Accordingly it did not have the exclusionary effect. I refer to this, as did Lazari, as "Interpretation 1"; this particular argument was not run by Lazari at the appeal before the Inspector. However, Lazari says that it was the interpretation presented by Camden in its Summary Grounds of Defence ("SGD") on the appeal before me. That suggestion is not really accurate because paragraph 36 of Camden's SGD states that the purpose of Condition 3 was to control the initial occupation of the units on the plan for A1/A2 A3 but also to exclude the unfettered operation of the UCO "on an ongoing basis". Indeed, Camden was in any event simply responding to Lazari's Statement of Facts and Grounds ("SFG"). These referred, at paragraph 73, to possible approaches which may have been taken by the Inspector being "flexibility in the initial occupation of the units" and "ongoing flexibility" and the heading reference "i) Initial Occupation" and references thereto at paragraphs 76, 78, 80 and 82, as distinct from "on an ongoing basis" in paragraph 82 (a). In any event, Interpretation 1 only emerged in Lazari's Skeleton Argument for this appeal.

25. Lazari's second argument, in the alternative, is that Condition 3 was imposed because the Permission was in truth a "flexible planning permission". I refer to this as "Interpretation 2". The expression "flexible planning permission" is not itself a defined term for the purpose of the Act, the UCO or the GPDO. However, it arises as a result of what was then paragraph E of Part 3 of Schedule 2 to the GPDO. This provision allowed a change of use from that permitted by the relevant permission "to another use which that permission would have specifically authorised when it was granted". However any such change of use had to be made within the period of 10 years after the grant of the permission. See paragraph E1 (b). It should also be noted that paragraph E1(c) provided that the development which would otherwise be permitted by paragraph E would not be so permitted if it would result in the breach of "any condition, limitation or specification contained in the planning permission…".

26. Interpretation 2 goes on to say that the unfettered operation of this paragraph E would mean that with such a flexible permission, there would be complete freedom of movement between Classes A1, A2 and A3 (perhaps even to exclude A1 use altogether). Accordingly, a condition like Condition 3 was necessary to give effect to the intended protection of retail use under A1. However, after 10 years, the paragraph E flexibility would cease to have effect and at that point, a condition like Condition 3 would no longer be required. So, while (unlike Interpretation 1) Condition 3 applied beyond the initial allocation of units for occupation, it would only last 10 years. This would mean that as from 1 September 2013 Condition 3 no longer applied, and once more, the new Class E applied instead.

27. I should add a further, different argument had also been run before the Inspector which was that the wording of the last part of Condition 3 specifically provided for the incorporation of the new Class E in place of the reference to A1, A2 and A3 in which case, again, the 40% limit would not now apply. However, the Inspector rejected this particular argument (see paragraphs 52-54 of the DL) and it has not been revived before me.

28. Camden disagrees with both Interpretation 1 and Interpretation 2.

THE LAW

The Interpretation of Planning Permissions generally

29. The relevant principles were recently summarised by the Court of Appeal in *Barton Parks v SSHCLG* [2022] EWCA Civ. 833. The lead judgment, given by Sir Keith Lindblom SPT stated as follows:

> "21. The correct approach to interpreting planning permissions is well known… But some of the basic points are worth stating again:
>
> (1) The proper interpretation of a planning permission is ultimately a matter of law for the court…It follows that the question of whether a particular use is capable of coming within the scope of a planning permission is also a matter of law for the court. But the question of whether that use is truly within the scope of the permission will be a matter of fact and judgment for the decision-maker.
>
> (2) A planning permission must be interpreted as a whole, consisting not only of the grant but also the conditions imposed and the reasons for their imposition…
>
> (3) As Lord Hodge said in *Trump International Golf Club Scotland Ltd. v Scottish Ministers* [2015] UKSC 74; [2016] 1 W.L.R. 85 (at paragraph 34) , if the court is interpreting planning conditions it "asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole". This, said Lord Hodge, is "an objective exercise", in which the court will "have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense". More recently, the Supreme Court has held that "the starting-point and usually the end-point is to find "the natural and ordinary meaning" of the words … used, viewed in their particular context (statutory or otherwise) and in the light of common sense"…The court will have in mind that under the statutory scheme a condition may be imposed "for regulating the development or use of any land under the control of the applicant … so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission …" (section 72(1)(a) of the 1990 Act , and its predecessor, section 30(1)(a) of the Town and Country Planning Act 1971). Conditions must "fairly and reasonably relate to the permitted development"…
>
> 22. Approached with those basic points in mind, the interpretation of the 1987 and 2013 planning permissions is not, I think, a difficult task. Each permission must be read in a straightforward way, together with the conditions regulating the grant. It is essential in this exercise to ascertain the real meaning and scope of the grant itself."

30. In *UBB v Essex County Council* [2019] EWHC, Lieven J also stated:

> "53. In my view references to common sense are really pointing to the planning purpose of the permission or condition. If the interpretation advanced flies in the face of the purpose of the condition, and the policies underlying it, then common sense may well indicate that that interpretation is not correct. So, in *Lambeth* it was plainly contrary to that purpose for the permission not to limit the sale of food items, such an interpretation was contrary to common sense once one understood the planning background…
>
> 55. … the correct approach is to take an overview of the documents, to try to understand the nature of the development and the planning purpose that was sought to be achieved by the condition in question. The reasonable reader would be trying to understand the nature of the development and any conditions imposed upon it. It is not appropriate to focus on one particular sentence without seeing its context, unless that sentence is so unequivocal as give a clear-cut answer"

The Interpretation of Planning Conditions

31. The general approach just described applies here. A useful example of the application of this approach is the decision of Patterson J in *Royal London Mutual Insurance Society v SSCLG* [2013] EWHC 3597 (Admin). Here, the relevant condition read as follows:

> "The retail consent shall be for non-food sales only in bulky trades normally found on retail parks which are furniture, carpets, DIY, electrical goods, car accessories, garden items and such other trades as the council may permit in writing."

32. The question there, as here, was whether this condition excluded the operation of the UCO. Patterson J held that it did. She agreed in paragraph 34 of her judgement that it was logically inconsistent to construe the condition as carefully limiting A1 use on the one hand but then to say that A1 use is unrestricted and permitted on the other. The condition only made sense if there was an implied exclusion of the UCO and Class A1 rights. That was achieved by the words used in the condition.

33. She went on to say at paragraph 36:

> "In any event, the condition makes it clear, per adventure, that the planning authority addressed its mind to those A1 uses which were permissible as evidenced by the list in Condition (3). The condition draws a clear distinction between acceptable and unacceptable A1 uses. That is what the reasonable reader would understand was permitted by the condition. That reading is reinforced for [by] the reason for imposing the condition, which would be a nonsense if the Claimant's submission were correct. If an unrestricted A1 use was granted through Condition (3) there would be a direct threat to the health of Catford town centre. The out-of-centre site would be in direct competition with the town centre. As it is, though, the words of the condition, even excluding the tailpiece, have no other sensibly discernible purpose than to prevent some other use that might otherwise be permitted without planning permission."

34. That decision was approved by the Court of Appeal in the leading case of *Dunnett Investments Ltd v SSCLG* [2017] EWCA Civ 192. Here, the condition read:

> "This use of this building shall be for purposes falling within Class B1 (Business) as defined in the Town and Country Planning (Use Classes) Order 1987, and for no other purpose whatsoever, without express planning consent from the Local Planning Authority first being obtained."

35. The issue as to the interpretation of the condition arose because the claimant sought to take advantage of the new GPDO rights to convert offices to residential use.

36. In the lead judgment given by Hickinbottom LJ, he said the following:

> "37. In relation to the interpretation of, specifically, a planning condition which is said to exclude the operation of the GPDO, other authorities are of some assistance. From them, the following themes can be discerned.
>
> i) It is rightly common ground that a planning condition on a planning consent can exclude the application of the GPDO…
>
> ii) Exclusion may be express or implied. However, because a grant of planning permission for a stated use is a grant of permission for only that use, a grant for a particular use cannot in itself exclude the application of the GPDO. To do that, something more is required…
>
> iii) In *Carpet Décor (Guilford) Limited v Secretary of State for the Environment* (1981) 261 EG 56, Sir Douglas Frank QC…said that, because in the absence of such a condition the GPDO has effect by operation of law, the condition should be in "unequivocal terms". Although "unequivocal" was used by Mr Katkowski in his written argument, during the course of debate he accepted that that term was now less appropriate, given the modern trend away from myopic focus upon the words without proper reference to their full context. However, he submitted (and I accept) that, to exclude the application of the GPDO, the words used in the relevant condition, taken in their full context, must clearly evince an intention on the part of the local planning authority to make such an exclusion.
>
> <u>The Meaning of the Condition: Discussion and Conclusion on Ground 3</u>
>
> 38. … on its proper construction, the condition does exclude the operation of the GPDO. In coming to that conclusion, I have particularly taken into account the following.
>
> i) Mr Katkowski relied heavily upon the intention – ultimately that of Parliament, or at least the Secretary of State who is democratically accountable – as exhibited in the GPDO that, generally, a change of use from office to residential should be permitted. However, as article 3(4) (quoted at paragraph 20 above) makes clear, that general intention is made expressly subject to the ability of planning authorities to exclude that right by imposing an appropriate condition. This amounts to no more than a submission that that general intention will only

be replaced by a clearly worded condition that sufficiently evinces an intention to override it.

ii) Looking first at the words used, I do not consider the construction of the condition either difficult or unclear. Read straightforwardly and as a whole, as Patterson J found (notably at [43]-[44]), the natural and ordinary meaning of the words used is that the condition allows planning permission for other uses but restricted to that obtained upon application from the Council as local planning authority, and excludes planning permission granted by the Secretary of State by means of the GPDO. In particular, …in my view, "express planning consent from the Local Planning Authority" cannot sensibly include planning permission granted by the Secretary of State through the GPDO. It means what it says, i.e. planning permission granted by the local planning authority.

iii) …

iv) Indeed, in my view, the interpretation I favour does not require the reading in, or reading out, of any words…On the other hand, the construction pressed by Mr Katkowski sensibly takes away all substance from the condition, leaving it entirely empty; the first part ("*This use of this building shall be for purposes falling within Class B1 (Business) as defined in the Town and Country Planning (Use Classes) Order 1987…")* merely reiterating the scope of the grant, no more than emphasised by the second part *("…and for no other purpose whatsoever*…"), whilst the third part or tail *("… without express planning consent from the Local Planning Authority first being obtained*") being empty because it includes all means of granting planning permission whether by the planning authority or the Secretary of State. The condition thus has no discernible purpose. It is a tenet of construction, falling within the umbrella of "sensible" interpretation as championed in *Trump International*, that it must have been the intention that a condition has some content and purpose. In context, this condition could not sensibly have been merely emphatic, which it would be if Mr Katkowski's submission were correct.

v) In reply, Mr Katkowski submitted that, on his interpretation, the condition would not be entirely empty, because it does require planning permission to be obtained from the someone authorised to grant it, whether the local planning authority or the Secretary of State by one means or another; and would therefore exclude reliance upon the UCO, which enables change of use within a single UCO class without permission, for the reasons given above (see paragraph 27). That submission has some force in so far as it seeks to find some substance in an otherwise empty condition. However, if the purpose was merely to exclude rights under the UCO, leaving those under the GPDO, the condition could more easily have said so; and it fails to overcome the problems Mr Katkowski's interpretation strikes in the reference to "express planning consent from the Local Planning Authority". In my view, the substance Mr Katkowski submits he found, late, in the condition is illusory or, at best, artificial.

vi) Both Mr Katkowski and Miss Blackmore, rightly, accepted that the condition should be read and construed as a whole, in its full context. However, each, to an extent, sought to interpret it by means of deconstructing it into constituent parts. Insofar as such exegesis is necessary and appropriate, in my judgment it supports the construction which I favour.

vii) The first part of the condition sets out the scope of the permission. I respectfully agree with Patterson J (at [60]), the second part ("…and for no other purpose whatsoever…") is not, as Mr Katkowski would have it, merely emphatic of the scope of the planning permission, but is rather a clear and specific exclusion of GPDO rights. Whilst, as I have described, each case depends upon its own facts, it is noteworthy that, *in Dunoon Developments (*at pages 105-6), in finding that the words "*limited to*" a particular purpose did not exclude GPDO rights, Farquharson LJ compared that phrase with "… *and for no other purpose…"* as considered in the earlier case of *The City of London Corporation v Secretary of State for the Environmen*t (1971) 23 P&CR 169, which he considered was far more emphatic and (he suggested) possibly sufficient to exclude the operation of the GPDO. In this case, we have a more emphatic phrase still, namely *"… and for no other purpose whatsoever…".* Further, although we are concerned with rights under the GPDO and not the UCO, the interpretation of that phrase to exclude the operation of the GPDO is at least consistent with…*Royal London…*in which Patterson J held that a condition which restricted use to "only" particular uses within Use Class A1 excluded the right to use the land for other Class A1 uses, because it effectively evinced an intention to identify acceptable uses within the class whilst prohibiting other unacceptable uses within that class unless and until the merits of such use had been tested by the planning authority upon an application for planning permission…The third part of the condition before this court makes it the more abundantly

> clear that automatic or direct GPDO rights are excluded, by requiring a planning application if such uses are to be pursued.
> viii) Mr Katkowski submitted that, when the condition was imposed in 1995, it would not have occurred to anyone that the GPDO would later permit change of use from light industrial to residential use which, since 2013, it has. However, I do not consider that supports his case on this issue: in my view, the intent of the condition, clearly, was and is to proscribe all changes of use under the GPDO…
> ix) Furthermore, the context in which the condition must be construed includes the planning history of the Site – which, importantly, shows that the Council was anxious to maintain close control over the planning use to which the Site was put – and, more importantly still, the reason for the condition as set out in its own paragraph 2. That confirms that it was imposed to enable the Council to maintain control over the use of the Site, by considering the merits of any proposal, in the light of its "particular character and location". In other words, as Patterson J put it (at [40]), "the sensitivity of the area to potentially unsympathetic uses was protected". That is inconsistent with reliance by an applicant upon rights under either the GPDO or the UCO. Again, I do not see any force in the submission that that clear reason is undermined by the reason expressed in the 1982 permission for the use then permitted, namely "to enable the [Council] to exercise proper control over the development and because the site is in an area where new industrial development would not normally be permitted" (emphasis added). The 1982 use was highly restricted, and the reason explained why a very narrow industrial use was being permitted. In my view, it does not undermine the clear words of the reason given for the more relaxed, but nevertheless considerably restricted, use permitted in 1995."

37. I appreciate that this is a lengthy quotation, but it will be apparent from it that *Dunnett* has a particular resonance for the case before me. It emphasises that recourse can be had to the planning history of the relevant site and the reason for making the condition. It also stressed that the modern trend rejects a "myopic focus" on the words used without proper regard to their full context. It also rejects a claimed purpose advanced for the condition (which would not involve the exclusionary effect) which was merely illusory or artificial. The ultimate question, which is sensitive to the facts of each case, is whether the words used in the relevant condition, taken in their full context, clearly evince an intention on the part of the local planning authority to exclude the GDPO.

38. I would make two further points about *Dunnett*:

(1) First, the "something more" required (see paragraph 37 (ii)) means something more than the mere fact that permission had been granted for a particular use in the first place;

(2) Second, at paragraph 38 (viii), the Court rejected the argument that no-one could have foreseen a particular change effected by the UCO or GPDO only some years later; if the intent was to proscribe all changes of use that might later be so permitted, this argument was irrelevant; indeed, Lazari does not now run this argument. Even if it had, I would be bound by *Dunnett* on this point.

Circular 11/95

39. Finally, although it is not "law" as such, I turn to certain parts of Circular 11/95 headed "Use of conditions in planning permission" which is relied on by Lazari. I refer first to paragraphs 14-17 which deal with the imposition of conditions generally, and in part state the effect of well-known decisions like that of the Court of Appeal in *Newbury District Council v SSE* [1978] 1 WLR 1241, as follows:

"**Six tests for conditions**
14. On a number of occasions the courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the court's criteria for validity, the Secretaries of State take the view that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they satisfy all of the tests described in paragraphs 14-42. In brief, these explain that conditions should be

i. necessary;
ii. relevant to planning;
iii. relevant to the development to be permitted;
iv. enforceable;
v. precise; and
vi. reasonable in all other respects.

Need for a Condition
15. In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. The argument that a condition will do no harm is no justification for its imposition: as a matter of policy, a condition ought not to be imposed unless there is a definite need for it. The same principles, of course, must be applied in dealing with applications for the removal of a condition under section 73 or section 73A: a condition should not be retained unless there are sound and clear-cut reasons for doing so.

16. In some cases a condition is clearly unnecessary, such as where it would repeat provisions in another condition imposed on the same permission. In other cases the lack of need may be less obvious, and it may help to ask whether it would be considered expedient to enforce against a breach-if not, then the condition may well be unnecessary.

17. Conditions should be tailored to tackle specific problems, rather than impose unjustified controls. In so far as a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of need. Where an extension to a dwellinghouse in a particular direction would be unacceptable, for example, a condition on the permission for its erection should specify that, and not simply remove all rights to extend the building. Permissions should not be overloaded with conditions, however: it might be appropriate for example, to impose on a permission in a conservation or other sensitive area a requirement that all external details and materials should be in complete accordance with the approved plans and specifications, rather than recite a long list of architectural details one by one."

40. I then turn to those paragraphs which deal specifically with conditions which seek to restrict later permitted development rights under the GPDO or UCO.

"**Regulation after Development**
85. Conditions which will remain in force after the development has been carried out always need particular care. They can place onerous and permanent restrictions on what can be done with the premises affected, and they should therefore not be imposed without scrupulous weighing of the balance of advantage. The following paragraphs give more detailed guidance.

Conditions Restricting Permitted Development or Otherwise Restricting Use Restrictions on use or permitted development
86. It is possible, exceptionally, to impose conditions to restrict further development which would normally be permitted by a development order, or to restrict changes of use which would not be regarded as development (whether because the change is not a "material" change within the terms of section 55(1) of the Act, or by reason of section 55(2) and the provisions of the Town and Country Planning (Use Classes) Order 1987) (SI 1987/764). Changes of use can be restricted either by prohibiting any change from the use permitted or by precluding specific alternative uses (see model conditions 48—49). It should be noted, however, that a condition restricting changes of use will not restrict ancillary or incidental activities unless it so specifies (see paragraph 91 below). Similarly, a general condition which restricts the use of land does not remove permitted development rights for that use unless the condition specifically removes those rights as well.

Presumption against such restrictions

87. Both development orders and the Use Classes Order, however, are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases. Save in exceptional circumstances, conditions should not be imposed which restrict either permitted development rights granted by development orders or future changes of use which the Use Classes Order would otherwise allow. The Secretaries of State would regard such conditions as unreasonable unless there were clear evidence that the uses excluded would have serious adverse effects on amenity or the environment, that there were no other forms of control, and that the condition would serve a clear planning purpose."

41. The reason why Lazari invokes 11/95 is not because it now seeks unrealistically to challenge the validity of Condition 3. Rather it is because if the exclusionary effect contended for by Camden would have been in breach of 11/95, the putative reasonable reader of Condition 3 would interpret it in a way which would not involve such a breach but prefer instead Interpretation 1 or 2.

42. This reliance on 11/95 was not raised before the Inspector. Rather it emerged in Lazari's Grounds for a Rehearing dated 18 October 2022 following the refusal on paper of permission by Sir Ross Cranston. It did not feature in the original opinion of Mr Tucker KC or that of Mr Taylor KC, although Camden had referred to 11/95 in its Appeal Hearing Statement of 2 September 2022 though not as an aid to interpretation.

43. It has to be remembered that 11/95 is guidance only. It is not something which was referred to in *Dunnett*, for example. Nonetheless, I will deal in context below with the arguments based on 11/95 raised by Lazari.

SOME BACKGROUND MATTERS

44. The Officer's Report prepared for the Planning Committee shortly before the grant of the Permission ("the Report") recommended approval with conditions, one of which was Condition 3. Some parts of it are relevant.

45. Paragraph 1.1 describes the Brunswick Centre as follows:

> "The Brunswick Centre lies at the heart of Bloomsbury and is a major landmark within the area. Completed in 1972 it represents an important architectural example of a monumental 'mega-structure'."

46. In Section 6, headed Assessment, the Report stated as follows:

> "**Mix of retail uses**
>
> 6.6 The applicant proposes a total of 12565m^2 of retail (Class A1/A2/A3) floorspace (including storage areas and the floorspace within the eye-catcher), of which 3440m2 comprises the proposed class Al supermarket. The existing centre comprises 7807m^2 of retail floorspace.
>
> 6.7 The development applies for Class A1/A2/A3 floorspace. It is important to ensure that the primary retail function of the Brunswick is protected and maintained to ensure that the neighbourhood shopping centre fulfils its primary role of offering shops and services within the locality. Class A2 and Class A3 uses are appropriate within the centre, and help to provide a mix of uses, however the level of these uses must be restricted to ensure the retail viability of the centre. Officers consider that no more than 40% of the total floorspace (excluding the identified supermarket) shall be permitted for A3 /A2 uses.
>
> 6.8 Conditions are proposed to this effect; and will also be explicit about the larger supermarket area, being exclusively for Class Al retailing purposes and for no other use. Officers also recommend the imposition of a condition requiring details of the precise internal layouts of proposed retail units size

to be submitted to and approved by the Council. This is important to ensure that the size of shops throughout the centre is controlled to ensure an acceptable mix of units given the designation of the Brunswick as a neighbourhood shopping centre. The control of the retail uses is necessary in accordance with policies SH2, SH13, and SHI 8."

47. Policy SH1 of Camden's March 2000 Unitary Development Plan emphasised the need to consolidate and improve local shopping centres and the protection of the shopping function of existing centres. Policy SH2 encouraged the improvement of the quality of the general shopping environment and facilities. Policy SH18 noted that when considering planning permission for A3 use, the number and distribution of A3 uses and their relationship with other uses would be taken into account. Camden would seek to avoid a cumulatively harmful effect on the loss of retail outlets among other things. In this context, paragraph 8.56 recognised the high level of demand for uses within A3 and that such uses can contribute towards leisure and employment provision and the attractiveness of shopping centres. However it had become increasingly concerned about a proliferation of restaurants and café is and would seek to ensure that they did not predominate to the detriment of the shopping function of centres or cause any significant loss of amenity.

48. It should be stressed that the application for the Permission was on the basis of treating the Brunswick Centre as a whole, and this is mirrored in the Report. It is also reflected in Lazari's LDC application.

49. It is also worth referring to some other parts of the Permission. First, other conditions illustrate the very particular control over retail use which was imposed; see Conditions 6-8. This is also shown in Informative 6 and Informative 13 which itself refers back to Condition 3:

> "With regard to condition no.3 and for the avoidance of doubt this figure is derived from assessing 40% of the total retail floorspace (11905sqm) excluding the supermarket floorspace (3440sq m), and also excluding any retail floorspace within the eye-catcher unit."

THE DL

50. The Inspector dealt with the substantive issue, as argued before him, in the DL as follows:

> "**The Effect of Condition 3 of the 2003 Planning Permission**
>
> 49. This area of consideration in this appeal requires me to interpret the 2003 planning permission, specifically Condition 3. To carry out this task, as is stated in **Lambeth,** the starting-point - and usually the end-point - is to find "the natural and ordinary meaning" of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense.
>
> 50. Consistent with **Trump,** I must consider what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which I must have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense.
>
> 51. The purpose of Condition 3 is clear from its stated reason. It is to safeguard the retail function and character of the Brunswick Centre. It does this by stating a maximum amount of floorspace that is permitted to be used for A2 and A3 purposes.
>
> 52. The appellant states that, given the changes to the Use Classes Order, Condition 3 no longer provides an enforceable control given its specific wording, and that therefore, the existing use of the Brunswick Shopping Centre within Class E and without compliance with Condition 3 is lawful.

53. According to the appellant, the wording of Condition 3 includes specific provision to incorporate the new Class E into the Condition (ie the references to Classes A2 and A3 are automatically replaced with Class E). But in light of **Parkview,** I do not accept this argument. This is because the scope of the 2003 permission should be interpreted in light of the version of the Use Classes Order in force at the date of the grant.

54. In other words, "A2" and "A3", referred to in Condition 3, mean the land uses "Financial and professional services" and "Food and drink", respectively. In my view, this is the natural and ordinary meaning of the words and a matter of common sense. In the context of the 2003 permission, A2 and A3 cannot now mean any land use within Class E. If that were the case, Condition 3 would be meaningless and have no purpose. For the purposes of the 2003 permission, the "equivalent" classes now, following the changes to the Use Classes Order brought about by the 2020 Regulations, are Class E(c) and, in broad terms, Class E(b), respectively.

55. Having regard to **UBB Waste,** the interpretation advanced by the appellant flies in the face of the purpose of the condition and the policies underlying it and so common sense indicates that the appellant's interpretation is not correct and Condition 3 continues to restrict how the land may be used.

56. The appellant states that Condition 3 contains no wording to the effect that the usual operation of the Use Classes Order is removed in relation to the site so as to prevent changes of use within any given use class. But Condition 3 states a specific maximum figure that is permitted for A2 and A3 uses, ie more than that figure is not acceptable.

57. So having regard to **Dunnett,** Condition 3 clearly evinces an intention on the part of the local planning authority to exclude the operation of the Use Classes j Order. Consistent with **Royal London,** Condition 3 only makes sense if there is | an implied exclusion of the Use Classes Order or else it has no purpose. The purpose of Condition 3 is clear and it remains enforceable since the uses that are restricted are known, those being the uses set out as falling within Class A2 and A3 when planning permission was granted.

58. During the Hearing, the appellant advanced an argument that the reasonable reader would interpret Condition 3 as being imposed to seek to control matters relating to the use of units during 'the 10 year period' but not beyond. That 10 year period being from the date of grant of the 2003 permission, pursuant to a permitted development right under Schedule 2, Part 3, Class E, paragraph E.l (b) of The Town and Country Planning (General Permitted Development) Order 1995 (the GPDO).

59. But Condition 3 does not say this. Moreover, there is nothing in the planning permission, the officer's report or the planning application documents to support the appellant's case in this regard either, bearing in mind the development applied for was principally for extensions and alterations.

60. Whilst the 2003 permission clearly provided some flexibility over where A2 and A3 uses could go, on the cases put to me, I am not satisfied that the 2003 permission was a 'flexible' permission for the purposes of Schedule 2, Part 3, Class E of the GPDO.

61. I conclude that Condition 3 continues to restrict how the site may be used. There is no suggestion that the condition had not been complied with for a continuous period of 10 years or more. So, bearing in mind the description I have been asked to proceed with, this LDC application does not satisfy section 191(2) of the 1990 Act."

ANALYSIS

Generally

51. I turn first to the language of Condition 3 itself. It does not expressly exclude the operation of the UCO but as the case-law makes clear, this is not necessary. On the other hand there is a very precise limitation by reference to a particular percentage of a defined floorspace area, which is in fact further explained by Informative 13. This acts as a clear qualification to that part of the Permission which allows for A1 to A3 use.

52. I accept that Condition 3 is perhaps not as emphatic as the condition in *Dunnett* which stated that the express consent of the Council was required for any change of use. On the other hand, this is not a simple restriction to particular uses; rather it is a restriction on the extent of such uses, so the language was bound to be different. Here one notes the use of the phrase "up to a maximum" which is emphatic, in my view as to the applicable limit. The expression "is permitted" has to be read in that context which is part of the same sentence. Taken in that context, this is more than simply a permission for a particular use without more (cf paragraph 38(1) above). In truth, this was a clear negative condition.

53. Next, the reference at the end of Condition 3 to "equivalent provisions" does in my judgement stress the particular use concerned i.e. A2 and A3 as then described or the same use as described in any later provision. In other words, one can simply "translate" A2 and A3 use into "financial and professional services", and "restaurants and cafés". It is upon these activities that the 40% limit is imposed. Once one does that exercise, the import of Condition 3 becomes even clearer and in my view, by itself, points to an exclusionary effect.

54. However, one should go further and consider the full context. The most immediate contextual matter is the stated reason for having Condition 3, set out at paragraph 5 above. In my view, that is a very significant pointer towards an exclusionary effect. The only way to "safeguard" the retail function and character of the Brunswick Centre was to have a condition that was of permanent, and not merely temporary effect. Otherwise the intended "safeguarding" is meaningless. When one puts that in the context of the historic significance of the Brunswick Centre and its character, since it was designated and built with a strong neighbourhood retail element, the force of the stated purpose becomes yet stronger.

55. In my judgment, there are clear parallels here with the approach taken by Patterson J in *Royal London.*

56. In this context, Camden pointed also to those parts of the Report which I have quoted at paragraphs 45 and 46 above, and which reinforced the importance of the reason for having Condition 3. However, Mr Taylor KC submits that this is "extrinsic evidence" and cannot be resorted to, unless the permission in question is ambiguous. He refers here to the decision of Keene J in *Ashford v Shepway* [1999] PCLR 12, cited by Lieven J at paragraph 26 of her judgment in *UBB*. The external material in question there was the planning application.

57. I am not sure that this approach would entirely rule out references to an officer's report, certainly where they explain or emphasise particular features or characteristics of the

building in question which may be highly pertinent (as here) to the reason why a condition was necessary. Here, I think that the relevant passages in the Report which I have quoted do serve that function. However, this point is not determinative and my decision would be the same even without recourse to the Report. Moreover, if there was anything in the points made by Lazari as to alternative meanings, it would be legitimate to look at the Report anyway on the basis that Condition 3 was ambiguous. In the event, I do not think that it is.

58. The restriction imposed by Condition 3 is not, of course, absolute. Its partial or complete removal could be effected by an appropriate express planning permission if that had been sought (Lazari has not done so to date). I accept that the very existence of Condition 3 could be used as an argument against the grant of a permission which has the effect of restricting or removing it. Nonetheless, it is but one factor which would be considered in any future application for planning permission.

59. For those reasons, and having regard to the language of Condition 3 and the reason for it, without more, in my view it clearly has the exclusionary effect. It evinced an intention to have that effect and would be futile without it. The Inspector correctly summarised the law and came to the same conclusion for largely the same reasons in paragraphs 49-57 of the DL.

60. Having said that, the analysis cannot end here. This is because Lazari contends that Interpretation 1 or 2 (they are mutually exclusive) show that all that was really necessary was something less whereby, certainly after 2013, Condition 3 no longer needed an exclusionary effect.

Interpretation 1

61. As already noted this (new) argument is said to arise because part of the purpose of Condition 3, according to Camden, was to control initial allocation of units. Lazari then raises from this the proposition that there was no need for any further restraint in order to serve the purpose of preserving 60% of the space for A1 use.

62. As developed in oral argument, Lazari's core point was this: it was only necessary to apply Condition 3 to the initial occupation of units because thereafter, any change of use short of one obtained by an express planning consent would be governed by the GPDO current at the time. But that GPDO only permitted a change of use on a ratchet basis - i.e. the amount of A1 space could be increased but not decreased. See paragraph 9 above. So in fact, it was not possible anyway to increase the amount of A2 and A3 space following an initial allocation of 40%. Therefore, the only need for Condition 3 was at the outset and not beyond. Moreover a condition which was in fact unnecessary should not have been made at all and would infringe 11/95. The reasonable reader, being aware of this, would prefer an interpretation which had this much more limited effect. I refer to this as "the ratchet point".

63. I do not accept Interpretation 1.

64. First, there is nothing in Condition 3 itself, or in any other part of the Permission including the reasons and informatives, which indicate that it would apply only at initial allocation. Nor does this appear anywhere else in the planning materials. I do not accept the suggestion

made by Lazari that paragraph 6.7 of the Report (see paragraph 46 above) could be read as referring to initial allocation only. There is no basis for reading it that way.

65. Second, the ratchet point involves the objective reader of the Permission assuming that the UCO or GPDO current at the time would remain static and never change. That is unrealistic. This point also runs against paragraph 38 (viii) of *Dunnett* referred to at paragraph 38(2) above.

66. Finally, on Interpretation 1, Lazari argued that Condition 3 could not endure beyond the initial allocation of units because thereafter, the Permission itself was "spent". Here, Lazari relies on the decision of the Court of Appeal in *Cynon Valley BC v Secretary of State for Wales and Oi Lam* (1986) 53 P&CR 68. In that case, the original planning permission was for the use of the premises as a fish and chip shop. They were not in fact so used at the outset due to the ill-health of the proprietor who let them temporarily for use as an antique shop. She later recovered possession and sought planning permission for use as a Chinese takeaway. While the LPA refused permission, the Inspector held that permission was not required anyway. This was for two reasons. The Court of Appeal agreed with one of his reasons, and so the appeal from the Inspector was dismissed. However, most of the judgment was concerned with the other reason. This was to the effect that permission was not needed because the premises had simply returned to their original permitted use.

67. The Court of Appeal disagreed and said that the original permission had become "spent" once the proprietor changed the use of the premises to that of an antique shop. That change was itself a material change of use which would have required planning permission, except that it was covered by the then GPDO. And the change back to the sale of hot food was a material change of use, but which did not fall to be permitted by the GPDO.

68. I follow all of that but I fail to see how it applies here. There was no subsequent change of use after the initial allocation pursuant to the Permission at the Brunswick Centre. Its use under Class AI, A2 and A3 continued as before up to the present. This is not a case about reverting to some previously permitted use. So this point does not take Lazari any further.

69. In my judgment, Interpretation 1 is simply an artificial construct and should be rejected.

Interpretation 2

70. In the event, Lazari placed more emphasis on this interpretation. Its necessary starting point is that the Permission was a flexible one, i.e. one which fell within paragraph E of the GPDO. See paragraph 25 above. If that starting point is incorrect, then Interpretation 2 can go no further.

71. The argument that the Permission was a flexible permission was not in Lazari's original Appeal Statement of 2 September 2021. However, it emerged in some form in the course of the first hearing on 15 March 2022. It prompted the Inspector to email Lazari on 21 March 2022 to require it to set out fully the "new line of argument" which he had detected. Prior to the resumed hearing on 8 June, the point was then addressed in writing by both sides.

72. In my judgment, the Permission was not a flexible permission. First, there was nothing in its language to suggest that it was. While the Permission obviously encompassed a variety of uses and while Condition 3 permitted a degree of flexibility in respect of A2 and A3 use up to the 40% maximum, this did not, without more, entail a flexible permission. Indeed, I was provided with 6 examples of permissions granted by Camden which were flexible. In each case they contained the specific expression "flexible use" to describe the permission. Further, they contained informatives which made reference to the flexible use being for 10 years, after which the lawful use would revert to whatever use was in place at the time. Nothing of that kind is in the Permission.

73. A point made by Lazari here relies on an officer's report made on 14 September 2017, in respect of a further planning application relating to the Brunswick Centre ("the 2017 Report"). At paragraphs 6.2-6.4, the officer says that the Permission had granted flexible permissions in respect of the use of ground floor commercial units and it referred to Condition 3. He then said that this flexible permission ceased to have effect after 10 years. Since then (i.e. 2013) any change of use required express planning consent unless permitted by the GPDO.

74. However, the expression of that view is hardly determinative of what the Permission objectively meant when granted in 2003. The officer concerned may simply have got it wrong. Indeed, in 2010, another officer's report in respect of a different planning application affecting Brunswick Centre quoted Condition 3 but made no mention of any flexible permission. The application here was for a change of use from A1 to A3 which would have been within the 10 year period had it been a flexible permission. In fact, the application was refused on grounds concerning the over-use of A3 activities. Further, there was a report from 2018 by the same officer who wrote the 2017 report. Again this was in respect of an application for change of use from A1 to A3. On this occasion there was no reference to a flexible permission or a 10 year period. The application was refused and that decision was upheld on appeal.

75. So I do not think that anything can be drawn from what one officer said in the 2017 Report as to the proper interpretation of Condition 3.

76. The ratchet point (see paragraph 62 above) was also raised by Lazari in the context of Interpretation 2. Here it was submitted that since the flexible element of the permission came to an end after 10 years, during which Condition 3 was necessary, the ratchet would operate once more. Since the ratchet did not permit any reduction in A1 use, Condition 3 was no longer necessary. And the reasonable reader would understand this at the date of the Permission.

77. It is correct that the Inspector did not deal with this point expressly in the DL. However, he did not need to because he rejected the argument that this was a flexible permission anyway for the reasons he gave at paragraphs 58-60 of the DL. He obviously did not deal with the ratchet point in relation to Interpretation 1 since this had not been raised before him.

78. In any event, the ratchet point is wrong - see paragraph 64 above.

79. For the reasons given above, I reject Interpretation 2.

11/95

80. On that basis, it does not seem to me to be necessary to address the points made by Lazari deriving from 11/95, set out at paragraphs 39 and 40 above. However, for the sake of completeness, I do so briefly as follows.

81. First, it seems to me that if Condition 3 had the exclusionary effect, it would satisfy all the tests referred to in paragraph 14 of 11/95. It was both necessary and tailored to a particular concern associated with this particular building. It was not unreasonable in form or substance. And it is plain from the report that the Permission would not have been granted without its imposition.

82. As for paragraph 87, the reference to "exceptional circumstances" must now be read in the light of the case-law and in particular, *Dunnett*. While a number of hurdles must be overcome before a condition can be interpreted as having the exclusionary effect, it would not be right, in my view, to focus on one sentence of paragraph 87. If one looks at the third sentence, there was here clear evidence (dealt with in the Report) that effectively unrestricted A2 and A3 use would have serious effects on amenity and on the environment (with reference to the Brunswick Centre's historic features and character and local retail needs). Condition 3 would serve a clear planning purpose. Moreover, notwithstanding the GPDO as it was in 2013, there were no other forms of control which could fulfil this need to restrict A2 and A3 use into the future. The obvious choice was a condition.

83. For all of those reasons, even if the reasonable reader of Condition 3 could have had any doubts about its meaning, resort to how it would have fared under 11/95 would only serve to favour the exclusionary effect, not run counter to it.

84. Accordingly, Lazari's reliance on 11/95 does not assist it.

Single Planning Unit

85. Finally, I should address a point that arose, somewhat tangentially, about whether the Brunswick Centre is to be treated as a single planning unit for all purposes.

86. This was not something dealt with in the Skeleton Arguments as such but arose out of the statement made by Lazari in paragraph 32 of its skeleton argument as follows:

> "…it is agreed between the Parties that, if the planning permission is not a flexible planning permission, as at 1st September 2003 there was no lawful ability to increase the non-retail proportion of floorspace within the Centre without express planning permission."

87. I think that what Lazari was here focusing on was the "ratchet" restriction which was operative as at 1 September 2003. Certainly, as far as that is concerned, I did not understand Camden to disagree about its existence. Rather it said that this restriction of movement between Classes A1, A2 and A3 was not a factor militating against the exclusionary effect of Condition 3.

88. However, in its Skeleton Argument at paragraph 48, Camden said that paragraph 32 of Lazari's Skeleton Argument was not correct. Having regard to what paragraph 48 actually said, I think that the parties may have been at cross-purposes as to what was agreed or not agreed. Camden's key point in paragraph 48 was that Condition 3's necessary purpose was to control the proportion of A2 and A3 use into the future. There was some flexibility

within the 40% limit but the Inspector was not asked to address the particular boundaries of that.

89. Camden did also make the point at paragraph 48 (3) that whether a particular change of an area of floorspace over such a large area was material was a question of planning judgment, taking into account the appropriate planning unit. Lazari read this as Camden saying that actually, planning permission would not be required for every change of use because it would not necessarily be material. So one of the purposes of Condition 3 would be to restrict that change of use even if it otherwise would have been permitted. That then led to a debate about whether, for such purposes, the relevant planning unit was the Brunswick Centre as a whole, as Camden maintained, or rather the individual unit in question, as Lazari maintained. For the latter proposition, Lazari relied on a decision of R. Gray QC, sitting as a Deputy High Court Judge in *Church Commissioners for England v SSE* (1995) 71 P&CR 73. Here, the Judge held that in relation to the large-scale Metro Centre in Gateshead with over 300 units and other facilities, an application for an LDC in respect of one particular unit, the relevant planning unit was that unit, not the Metro Centre as a whole. Equally, and as the Inspector there had held, a block of flats is not to be treated as the relevant planning unit when it came to a change of use of an individual flat.

90. Lazari then contended that insofar as Camden was saying that the Brunswick Centre as a whole was a single planning unit which would somehow support Camden's argument that Condition 3 was necessary, it was wrong. In fact, it was not clear to me that Camden was making that argument. But in any event, I do not consider it necessary to resolve this particular debate. Camden's main point was clearly that this was all about an area restriction which was intended to endure into the future, and for good reason. That being so, precisely what may or may not have been otherwise permitted by reference to the planning regime at the date of the Permission was not conclusive. I agree with that proposition.

Conclusion

91. Accordingly, and for the reasons given above, I think it is plain that Condition 3 had the exclusionary effect contended for by Camden.

THE REASONS CHALLENGE

92. I can deal with this shortly. Lazari submitted that the Inspector did not provide any adequate or intelligible reasons for explaining why Condition 3 was lawfully imposed, evinced an intention to exclude the UCO and the GPDO and would only make sense if it had the exclusionary effect. As a result of those failures, Lazari says that it has been substantially prejudiced because it cannot understand how and why reached his conclusion.

93. There is nothing in this point. As can be seen from the relevant part of the DL, set out at paragraph 50 above, reasons were given which were clear and concise. They were also intelligible. Here, of course, one needs to bear in mind that some points made to the Inspector were not repeated before me, and other points (like the reliance by Lazari on 11/95 and Interpretation 1), while made before me were not made before him.

94. In the DL, the Inspector correctly identified the relevant law at paragraphs 49 and 50. He then set out the arguments made by Lazari at paragraphs 52, 53, 56 and 58. Paragraphs 51,

53-57 and 59-61 then set out his analysis leading to his conclusion. He correctly identified the purpose of Condition 3 and explained how A2 and A3 were to be read, namely as their underlying uses. He explained why the absence of any express exclusionary wording did not matter and that, in accordance with *Dunnett* this was also a case where the condition clearly evinced an intention to create the exclusionary effect. He then gave particular reasons for rejecting Interpretation 2.

95. Accordingly, there was no insufficiency of reasons. Even if there had been, and the Inspector was asked to provide more, the result would inevitably have been the same. The Reasons challenge therefore fails.

CONCLUSION ON THE APPEAL

96. It follows that I must dismiss Lazari's appeal. I am grateful to Counsel for their assistance and submissions.