

Handoll and Suddick v Warner Goodman and Streat (a firm) and Others: CA 9 Dec 1994

The purchasers of land on which a bungalow had been erected wanted to discover, by way of a preliminary issue in an action against the vendor, whether a condition attached to planning permission would enforceable against them. A planning permission had been granted subject to a condition of agricultural occupancy. However, the bungalow had been erected a short distance outside the area for which planning permission had been granted, and was thus in breach of planning control.

Held: Where a development does not comply in a material respect, or to a material extent, with the permission granted, a condition attached to that permission cannot apply to the unauthorised development. The Council had argued that its inability to enforce the planning control because of the passage of time could not affect the occupancy and the condition attached to it, looking for support to the decision in *Kerrier*. Overruling *Kerrier*, the court decided that A planning authority cannot succeed in an action for breach of condition unless the development to which it was attached by the planning permission has actually been carried out. The reasoning of the Court of Appeal was that if a development has been carried out other than in accordance with the planning permission granted, it is unauthorised and unlawful, and therefore the conditions attached to the permission can have no effect upon it. It would be open to the planning authority to serve an enforcement notice to prevent any use of the unauthorised development (not just a use which breached the condition). However once the time for enforcement had passed, the planning authority would be unable to enforce either the original permission or any conditions attached to it.

McGowan, Peter Gibson LJJ, Sir John May
(1995) 70 PandCR 627, [1994] EWCA Civ 42, [1995] 1 EGLR 173, [1994]