



LEGAL BRIEFING

Nirah Holdings v British Agricultural Services Ltd and Hanson Building Products Ltd

[2009] EWHC 2282 (Comm), Beatson J

The Facts

Hanson had granted Nirah Holdings an option to purchase land (the "Option Agreement") in order that Nirah could build a major visitor attraction and science park. Nirah obtained planning permission, and one of the conditions required under the Town and Country Planning Act 1990, Section 106 related to a shuttle bus service. After some negotiations the planning authority approved the Section 106 Agreement.

Hanson needed to approve the form of the draft Section 106 Agreement. They refused.

The Issue

Was Hanson obliged to consent to the form of the draft Section 106 Agreement that had been negotiated by Nirah and the local authority?

The Decision

Hanson argued that it did not have enough information about the route of the proposed bus service to assess whether it would be detrimental to Hanson's own purposes.

The Judge held that a balance needed to be struck between the enhanced value of Hanson's land given Nirah's development and the need to accommodate Hanson's future plans. The option agreement between Nirah and Hanson required Nirah to obtain planning permission. The application that had been made satisfied the Option Agreement and the planning permission required completion of a Section 106 Agreement. The negotiated draft Section 106 Agreement was lawful and capable of approval. Hanson were unable to show that the bus route adversely impacted or interfered with its aims set out in the Option Agreement. The Section 106 Agreement contained sufficient information for Hanson to consider its position. Hanson's approval should therefore be forthcoming. Further, Hanson's counter-claim (that it was entitled to terminate the Option Agreement) failed.

Comment

It is not unusual for development agreements and option agreements to contain the requirement for further agreements to be sought by one or both parties. Often this involves one of the parties trying to reach an agreement with a third party. That usually requires considerable time and effort, before then returning to its contractual partner in order to seek agreement. This case emphasises the difficulties that a developer can face when trying to fulfil its often difficult obligations to complete agreements with third parties. Here, the Judge held that the section 106 agreement was lawful and therefore should be approved. This meant that Hanson could not terminate the Option Agreement.

Nicholas Gould
December 2009