



12 May 2010

PRESS SUMMARY

R (on the application of Sainsbury's Supermarkets Ltd) (Appellant) v Wolverhampton City Council and another (Respondents) [2010] UKSC 20

On appeal from the Court of Appeal Civil Division [2009] EWCA Civ 835

JUSTICES: Lord Phillips (President), Lord Hope (Deputy President), Lord Walker, Lady Hale, Lord Brown, Lord Mance, Lord Collins

BACKGROUND TO THE APPEAL

The Town and Country Planning Act 1990 gives a power to local authorities to acquire compulsorily any land in their area if the authority thinks that the acquisition will facilitate the carrying out of development on the land and if it thinks that the development is likely to contribute to the well-being of the overall area for which it is responsible. This appeal concerned the proper approach to the exercise of that power in relation to land known as the Raglan Street site which lies immediately to the west of, and just outside, the Wolverhampton Ring Road.

Sainsbury's Supermarkets Ltd (Sainsbury's) owns or controls 86% of this site. Tesco Stores Ltd (Tesco) controls most of the remainder. Sainsbury's and Tesco each wished to develop on the land and it was decided to grant outline planning permission to each of them for that purpose. It was clear that, unless the local authority used its compulsory purchase powers in respect of the site, neither of the proposed developments could take place. So Sainsbury's and Tesco each sought to persuade the local authority that the power should be exercised in its favour.

Tesco controls a site in Wolverhampton City Centre called the Royal Hospital site (RHS). The RHS is in poor condition, and for many years it has been an objective of the local authority to secure the regeneration of the site. Tesco considered that it was not financially viable for it to develop the RHS without subsidy from elsewhere. But in seeking to persuade the local authority that it should exercise the compulsory purchase power in its favour in respect of the Raglan Street site, Tesco promised the local authority (by means of a contractual "planning obligation") that it would regenerate the RHS. Tesco explained that promise on the basis that its development at Raglan Street would represent a subsidy at least equal to the loss it would sustain in carrying out the RHS development.

The local authority decided that it would make a compulsory purchase order in respect of the part of the Raglan Street site owned by Sainsbury's in order to facilitate Tesco's proposal. In so doing, it took into account - and indeed regarded as decisive in Tesco's favour - that Tesco had promised to regenerate the RHS. The issue in this appeal was whether it was lawful for the local authority to have done so.

JUDGMENT

The Supreme Court held, by a majority of 4 to 3, that, on the facts of this case, it was unlawful for the local authority to take into account Tesco's commitment to regenerate the RHS in resolving to make the compulsory purchase order in respect of the Raglan Street site.

REASONS FOR THE JUDGMENT

The majority judgments: (Lord Walker, Lady Hale, Lord Mance and Lord Collins)

Lord Collins (giving the leading judgment on behalf of the majority):

- Principles derived from cases concerning the matters which may lawfully be taken into account in determining planning applications apply equally to compulsory acquisition for development purposes provided it is recognised that, because of the serious invasion of property rights involved in compulsory acquisition, a strict approach to the application of those principles is required. One of these principles is that it is legitimate for a local authority to take into account "off-site" benefits of a proposed development provided that such benefits are related to or connected with the development itself. In compulsory acquisition, as in planning cases, there must be a "real rather than fanciful or remote" connection between the "off-site" benefits and the development for which the compulsory acquisition is made (**see paragraphs [70]-[71]**).
- In the present case, there was only a "connection" between the proposed development on the Raglan Street site and the benefits from the development of the RHS in the sense that the Council was being tempted to facilitate one development because it wanted another development, or that Tesco was being tempted to undertake one un-commercial development in order to obtain the development it wanted (**para [72]**). The claimed financial connection between the two sites was not such as to amount to a relevant matter, notwithstanding the fact that Tesco was prepared to commit to undertake the regeneration of the RHS by agreement with the local authority (**para [75]**).

Lord Walker (agreeing with Lord Collins, Lady Hale and Lord Mance):

- A local authority should not be exercising its powers of compulsory purchase in order to make a commercial profit; the dominant aim must be betterment in planning terms (**para [82]**). In a case such as this where a private interest in land is purchased in favour of another private (i.e. Tesco's) interest, the local authority has a direct financial interest in the matter, and a strict approach is called for (**para [84]**). The reason why, in a case where there is little to choose in planning terms between two rival developers of a site, the local authority must not look to some extraneous benefit which one contender offers, is simply that it is not the right way for a local authority to make a decision as to the exercise of its powers

of compulsory purchase, any more than it could choose a new chief executive from a short list of apparently equally well qualified candidates by holding a closed auction for the office (**para [87]**).

Lady Hale (agreeing with Lord Collins, Lord Walker and Lord Mance):

- Acquiring the whole of the Raglan Street site would facilitate the development of *that* site. But persuading Tesco to carry out a wholly unrelated development upon another site elsewhere in the city, desirable though that may be for the City and people of Wolverhampton, does nothing to facilitate the development of the Raglan Street site. Rather, it is the other way round (**para [93]**).

Lord Mance (agreeing with Lord Collins, Lord Walker and Lady Hale):

- A planning authority, when considering a planning application, is only entitled to take into account a planning obligation which the applicant offers if that obligation has some connection with the relevant development, apart from the fact of its offer. There is a useful analogy between the grant of planning permission and the exercise of a power of compulsory purchase under the Town and Country Planning Act 1990, and the considerations admissible in relation to the latter power are no wider than those admissible in relation to the former (**para [98]**).

The minority judgments: (Lord Phillips, Lord Hope, Lord Brown)

Lord Phillips:

- Agreed with Lord Collins and Lord Brown that it was appropriate in this case to draw an analogy with certain decisions relating to the grant of planning permission (**para [120]**). The effects of those decisions was this: when considering the merits of an application for planning permission for a development it is material for the planning authority to consider the impact on the community and the environment of every aspect of the development and of any benefits that have some relevance. An offer of benefits that have no relation to or connection with the development is not material (**para [137]**).
- These principles could properly be applied, by analogy, to a simple case where a local authority is considering whether the public interest justifies the compulsory purchase of land for the purpose of facilitating a development. The development itself must be justified in the public interest and it would be wrong in principle for the local authority to be influenced by the offer by the chosen developer to provide some collateral benefit that has no connection of any kind with the development in question (**para [138]**).
- But that analysis did not apply to the present case, in which Sainsbury's and Tesco were in competition for the development of the Raglan Street site. The local authority had two decisions to make. The first was whether it should exercise its compulsory purchase powers at all. In taking that first decision the local authority was not entitled to take into account any benefit unconnected to the development proposed. The second was to decide to which of the rivals to sell the land (under a different power in the same Act). In that second decision

the local authority was entitled – and perhaps bound – to have regard to any unconnected benefit offered by the developer (**paras [140] and [142]**).

- In this case, the local authority was not, in fact, influenced by the RHS benefit when deciding in principle to use its power of compulsory purchase. The RHS benefit was, however, very material to the decision as to which developer to select, and this in turn determined whose land was to be compulsorily acquired. In these circumstances the RHS benefit was a consideration that was material to the decision that determined simultaneously the developer and the land to be purchased. It therefore could not be said that the decision compulsorily to purchase Sainsbury's land was influenced by a consideration that was not material (**paras [143]-[145]**).

Lord Hope (agreeing with Lord Phillips):

- It is plain that the local authority was proceeding on the assumption that, having acquired the land, it would then dispose of it to the preferred developer. The authority was concerned as much with the exercise of the power to dispose of the land as with the exercise of the power to acquire it (**para [154]**). In this case, the choice as to whose land to acquire was inevitably linked to the choice of the developer to whom the land was to be disposed of when it was acquired. The local authority took those decisions together and was entitled to do so. To hold otherwise would unduly inhibit the exercise of the power of compulsory acquisition in a case such as this, where a site that is in need of development is in divided ownership, the owners are in competition with each other for its development, and there are sound planning reasons for regarding the proposal of one developer as preferable to that of the other (**para [158]**).

Lord Brown:

- Had an offer such as that made by Tesco to the local authority been made in the planning context it would have been a material consideration in the determination of a planning application because it would have had a "sufficient connection" with the proposed development which was "not *de minimis*" or so minimal as to be immaterial. This was the effect of the planning cases (**para [174]**). But even if, contrary to that view, the RHS benefit would not have been material in the determination of a planning application, it was nonetheless material in the context of the decisions which the local authority had to take here (**para [178] and [180]**). The authority's power of compulsory purchase could not be exercised until the authority had also decided the second question before them: which of the two developers to choose. In reaching that second decision the authority was entitled to take into account the off-site benefit, even if it was not connected with the development proposed. It was a material consideration for the purposes of deciding which of the rival developers to prefer and whose land, therefore, should be the subject of compulsory purchase (**para [182]**).

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html