6 December 2017

PRESS SUMMARY

Dover District Council (Appellant) v CPRE Kent (Respondent)
CPRE Kent (Respondent) v China Gateway International Limited (Appellant) [2017] UKSC 79
On appeal from [2016] EWCA Civ 936

JUSTICES: Lady Hale (President), Lord Wilson, Lord Carnwath, Lady Black, Lord Lloyd-Jones

BACKGROUND TO THE APPEAL

On 13 May 2012 China Gateway International Limited ("CGI") submitted an application for planning permission to the local planning authority, Dover District Council ("DDC"). It sought permission for a large residential development within an area of outstanding natural beauty ("AONB"). The proposal was controversial. A planning officers' report was circulated to the Planning Committee on 7 June 2013. It recommended the grant of permission with amendments to CGI's proposal, including a reduction in the number of planned houses at one site from 521 to 365. They also recommended ensuring, through an agreement with CGI ("the Section 106 Agreement"), various economic benefits including a planned hotel and conference centre. The planning officers' report had regarded the level of harm to the AONB as "significant" but concluded that the suggested amendments created a "finely balanced" public interest.

The Planning Committee met on 13 June 2013. Three members of the Committee expressly stated that harm to the AONB could be "minimised" by "effective screening". The planning officers' report had nonetheless expected that screening would be "largely ineffective." After discussion, the Committee carried a motion approving the planning officers' recommendation, but without the proposed reduction in the number of houses. On 18 December 2013 the application for planning permission returned to the Planning Committee with an updated planning officers' report. The updated report confirmed that, contrary to the officers' earlier recommendation, the Section 106 Agreement did not require CGI to provide the hotel but instead served "to create an opportunity" for a hotel. The Section 106 Agreement was executed on 1 April 2015. Planning permission was granted on the same day.

Campaign to Protect Rural England Kent ("CPRE Kent") sought a judicial review of that decision. Although it was unsuccessful at first instance, the Court of Appeal allowed the subsequent appeal and quashed the decision to grant permission. In this appeal to the Supreme Court it was not in dispute that the DDC was in breach of a specific requirement under the Town and County Planning (Environmental Impact Assessment) Regulations 2011 ("the EIA Regulations") to provide a statement of "the main reasons and considerations" on which the decision was based. The issue is whether the Court of Appeal was right to quash the decision on that basis.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Carnwath gives the judgment, with which Lady Hale, Lord Wilson, Lady Black and Lord Lloyd-Jones agree.

REASONS FOR THE JUDGMENT

The Court reviewed various statutory rules relating to the provision of reasons for planning decisions, observing that these rules are to be found in subordinate legislation and that it is hard to detect a coherent approach to their development. The three main categories of planning decision are: (i) decisions of Secretaries of State and inspectors, (ii) decisions by local planning authorities in

connection with planning permission, and (iii) decisions, at any level, on applications for EIA development **[21-23]**.

Special duties arise under the EIA Regulations where an application (as in this case) involves a development which is "likely to have significant effects on the environment by virtue of factors such as its nature, size or location" (an "EIA development"). Regulation 3(4) provides that decision-makers shall not grant planning permission, where the application involves an EIA development, without first taking the environmental information into consideration, and that they must state in their decision that they have done so. Article 6.9 of the Aarhus Convention (Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), to which the United Kingdom is a party, also requires each party to make accessible to the public the text of certain decisions involving an EIA, along with reasons and the considerations on which it is based **[31-34]**.

Where there is a legal requirement to give reasons, what is needed is an adequate explanation of the ultimate decision. The content of that duty should not in principle turn on differences in the procedures by which the decision is arrived at. The essence of the duty, and the central issue, is whether the information so provided by the authority leaves room for genuine doubt as to what it has decided and why **[35-42]**.

The Court rejects DDC's argument that a breach of the EIA duty alone should be remedied by a mere declaration of the breach. DDC relied on *R (Richardson) v North Yorkshire County Council* [2004] 1 WLR 1920 in which the Court of Appeal remedied a failure to provide a statement of reasons without quashing the decision, by ordering only that the statement be provided. However, in that case it was possible to take the planning committee as adopting the reasoning in the officer's report which had recommended granting permission **[46-49]**.

In view of the specific duty to give reasons under the EIA regulations, it is unnecessary to address the common law position. However, the particular circumstances of this case would, if necessary, have justified the imposition of a common law duty to provide reasons for the grant of permission. Planning law is a creature of statute, but the proper interpretation of the statute is underpinned by general common law principles, including fairness and transparency. It is appropriate for the common law to fill the gaps in the present system of rules, but its intervention should be limited to circumstances where legal policy reasons for it are strong **[50-60]**.

The meeting on 13 June 2013 occurred only days after receipt of the planning officers' detailed report, which proposed new and controversial amendments. A decision-maker must not only ask himself the right question, but must take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly. Even if there was pressure to reach a decision in this case, it seems unfortunate that the committee members did not apparently consider deferring detailed discussion of the proposed amendments **[62-63]**.

A mere declaration of the breach of the EIA duty is not an appropriate or sufficient remedy. In the three years since the permission was issued, no attempt has been made to formulate the reasons so as to make good the admitted breach, perhaps underlining the difficulty of reconstructing the reasons of the committee on the basis of its minutes alone. The recorded views of those members who supported the proposal do not indicate whether those views were shared by the majority, nor why the members felt able to reject the view of their own advisers without further investigation. Their omission of any legal mechanism to secure the proposed economic benefits, in particular the hotel and conference centre, required explanation. Furthermore, it was critical to understand the basis of the members' belief that the harm to the AONB could be "minimised", which conflicted with the planning officers' view that screening would be largely ineffective. The quashing order of the Court of Appeal is consequently affirmed and the appeal is dismissed **[61-69]**.

References in square brackets are to paragraphs in the judgment

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:
http://supremecourt.uk/decided-cases/index.html