



20 November 2019

PRESS SUMMARY

R (on the application of Wright) (Respondent) v Resilient Energy Severndale Ltd and Forest of Dean District Council (Appellants)

[2019] UKSC 53

On appeal from [2017] EWCA Civ 2102

JUSTICES: Lady Hale (President), Lord Reed (Deputy President), Lord Lloyd-Jones, Lord Sales, Lord Thomas

BACKGROUND TO THE APPEAL

The case concerns a challenge by way of judicial review by the respondent, Mr Wright, to the grant of planning permission by the second appellant (the “Council”) to the first appellant (“Resilient”) for the change of use of land at a farm in Gloucestershire from agriculture to the erection of a wind turbine.

In its application for planning permission, Resilient proposed that the turbine would be built and run by a community benefit society and that an annual donation would be made to a local community fund. The Council took this donation into account in granting planning permission and made the permission conditional on the development being undertaken by the community benefit society and the provision of the donation. In doing so, the Council had regard to government policy to encourage community-led wind turbine developments.

Mr Wright challenged the grant of permission on the grounds that the donation was not a material planning consideration and the Council had acted unlawfully by taking it into account. He succeeded at first instance and in the Court of Appeal. Resilient and the Council now appeal to this court. The Secretary of State for Housing, Communities and Local Government was given permission to intervene and made submissions in support of the appeal.

The issue on the appeal is whether the promise to provide a community fund donation qualifies as a “material consideration” for the purposes of section 70(2) of the Town and Country Planning Act 1990 as amended (the “1990 Act”) and section 38(6) of the Planning and Compulsory Purchase Act 2004 (the “2004 Act”).

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Sales gives the judgment, with which all members of the Court agree.

REASONS FOR THE JUDGMENT

Planning permission is required for development of land, which includes the making of any material change in use (sections 57(1) and 55(1) of the 1990 Act). The planning authority must have regard to the development plan and any other considerations material to the proposed change of use (section 70(2) of the 1990 Act and section 38(6) of the 2004 Act) [31].

A three-fold test for “material considerations” is found in *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 (“*Newbury*”). This requires that the conditions imposed: (1) be for a planning purpose and not for any ulterior purpose; (2) fairly and reasonably relate to the development; and (3) must not be so unreasonable that no reasonable planning authority could have imposed them [32-33]. It is logical to equate the ambit of “material considerations” with the scope of the power to impose planning conditions, because if the planning authority has the power to impose a condition it follows that it could treat the imposition of that condition as a material factor in favour of granting permission. The relevance of the *Newbury* criteria to determine the ambit of “material considerations” in the 1990 and 2004 Acts is well established and is not in contention on this appeal [34].

It is a fundamental principle of the planning system that planning permission cannot be bought or sold. A principled approach to identifying material considerations in line with the *Newbury* criteria is important to protect landowners and the public interest, since it prevents a planning authority from extracting money or other benefits unrelated to the proposed use of the land as a condition for granting permission and from deciding whether to grant permission by reference to such matters rather than by reference to the planning merits of the proposed development in issue [39]. This protection has been established by Parliament through statute, as interpreted by the courts, and cannot be overridden by general policies laid down by central government [42].

In the present case, the community benefits promised by Resilient did not satisfy the *Newbury* criteria and therefore did not qualify as a material consideration under either the 1990 or the 2004 Act. The benefits were not proposed to pursue a proper planning purpose, but rather for the ulterior purpose of providing general benefits to the community. They did not fairly and reasonably relate to the development for which permission was sought; the community benefits did not affect the use of the land but were instead proffered as a general inducement to the Council to grant planning permission, in breach of the principle that planning permission cannot be bought or sold [44].

The statutory concept of a “material consideration” as interpreted by the courts does not vary according to government guidance and policy statements [45-49]. On the other hand, a change in national policy can affect the issue of whether a decision satisfies the third limb of the *Newbury* test, by making it clear that a reasonable local planning authority can properly consider that a particular condition is justified in terms of planning policy [53].

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>