18 July 2012

PRESS SUMMARY

The Health and Safety Executive (Appellant) v Wolverhampton City Council (Respondent) [2012] UKSC 34
On appeal from [2010] EWCA Civ 892

JUSTICES: Lord Hope (Deputy President); Lord Walker; Lord Dyson; Lord Sumption; Lord Carnwath

BACKGROUND TO THE APPEAL

Wolverhampton City Council ("the Council"), in its capacity as the local planning authority, granted planning permission for four blocks of student accommodation in proximity to a site used for storage of liquefied petroleum gas ("LPG"). Three of the four blocks of student accommodation had been completed, but work on the fourth had not commenced. Concerned that the LPG storage facility in the vicinity constituted a danger to human life, the Health and Safety Executive ("the HSE"), a statutory, non-departmental public body, applied for an order to revoke or modify the planning permission under section 97 of the Town and Country Planning Act 1990 ("the Act"). In refusing the application, the Council took into account its liability to pay compensation under section 107 of the Act were it to revoke planning permission in respect of all four blocks, but it did not consider whether the application should be granted only in respect of the fourth block.

The HSE brought judicial review proceedings challenging, among other things, the Council's decision not to revoke or modify the planning permission. The High Court refused that part of the claim. The Court of Appeal allowed the HSE's appeal, holding that it was irrational for the Council to fail to consider whether to exercise its powers under section 97 so as to prevent the construction of the fourth block alone. The Council's decision was therefore unlawful and it was ordered to reconsider the matter. However, the Court of Appeal held by a majority (Pill LJ dissenting) that a decision under section 97 of the Act was to be taken not in isolation but within the statutory framework of the Act which imposed a liability to pay compensation if an order was made under the section. Accordingly, the Council, when reconsidering the matter, would be entitled to take into account its liability to pay compensation under section 107 of the Act. The HSE appealed to the Supreme Court against this part of the decision of the Court of Appeal: the issue being whether it is always open to a local planning authority, in considering under section 97 of the Act whether it appears to be expedient to revoke or modify a permission to develop land, to have regard to the compensation that it would or might have to pay under section 107.

JUDGMENT

The Supreme Court unanimously dismisses the HSE's appeal. Lord Carnwath gives the leading judgment of the Court with which all other Justices agree.

REASONS FOR THE JUDGMENT

In simple terms, the question is whether a public authority, when deciding whether to exercise a discretionary power to achieve a public objective, is entitled to take into account the cost to the public of so doing. As custodian of public funds, the authority not only may, but generally must, have regard to the cost to the public of its actions, at least to the extent of considering in any case whether the cost is proportionate to the aim to be achieved, and taking account of any more economic ways of achieving the same objective **[24]-[25]**.

Section 97 of the Act requires no different approach. The section requires the authority to satisfy itself that revocation is "expedient", and in so doing to have regard to the development plan and other "material considerations". The development plan throws no light on the issue in this case. The word "expedient" implies no more than that the action should be appropriate in all the circumstances. Where one of those circumstances is a potential liability for compensation, it is hard to see why it should be excluded. "Material" in ordinary language is the same as "relevant". Where the exercise of the power, in the manner envisaged by the statute, will have both planning and financial consequences, there is no obvious reason to treat either as irrelevant **[26]**.

Under section 97, a planning authority has a discretion whether to act, and, if so, how. If it does decide to act, it must bear the financial consequences. Section 97 creates a specific statutory power to buy back a permission previously granted. Cost, or value for money, is naturally relevant to the purchaser's consideration **[51]**.

Sufficient consistency is given to the expression "material considerations" if it is treated as it is elsewhere in administrative law: that is, as meaning considerations material (or relevant) to the exercise of the particular power, in its statutory context and for the purposes for which it was granted. So read, there is no inconsistency between section 97 and other sections such as section 70 **[49]-[50]**. Furthermore, in exercising its choice not to act under section 97, or in choosing between that and other means of achieving its planning objective, the authority is to be guided by what is "expedient". No principle of consistency requires that process to be confined to planning considerations, or to exclude cost **[52].** The contrary view of Richards J in *Alnwick DC v Secretary of State* (2000) 79 P & CR 130 was wrong, although the actual decision may be supportable on its own facts **[54]**.

Possible difficulty in assessing precisely the likely level of compensation is no reason for not conducting the exercise, still less for leaving cost considerations out of account altogether **[55]-[56]**.

Accordingly, for reasons which essentially follow those of the majority of the Court of Appeal, the HSE's appeal is dismissed **[57]**.

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:
www.supremecourt.gov.uk/decided-cases/index.html