Law Report

Environmental impact assessment required

House of Lords
Published December 7, 2006

Regina (Barker) v Bromley London Borough Council, Secretary of State for Communities and Local Government intervening

Before Lord Bingham of Cornhill, Lord Hope of Craighead, Baroness Hale of Richmond, Lord Carswell and Lord Brown of Eaton-under-Heywood
Speeches November 6, 2006

A local planning authority which had not carried out an environmental impact assessment before granting outline planning permission for an urban development project misdirected itself when, during the subsequent application to approve the reserved matters, it decided that it had no power to require an impact assessment at that stage.

The House of Lords so held in allowing an appeal by the applicant, Diane Barker, from the order of the Court of Appeal (Lord Justice Brooke, Lord Justice Latham and Mr Justice Burton) ([2002] Env LR 631) upholding the dismissal by Mr Justice Jackson of her claim for judicial review of the decision of Bromley London Borough Council to approve a scheme of reserved matters in respect of outline planning permission to redevelop Crystal Palace Park.

The House's decision followed a ruling it had sought from the Court of Justice of the European Communities (see *R (Barker) v Bromley London Borough Council, First Secretary of State intervening* (Case C-290/03)(*The Times* May 10, 2006; [2006] QB 764)) on articles 2(1) and 4(2) of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175/40).

The European Court had ruled that the articles were to be interpreted as requiring an environmental impact assessment: if, in the case of grant of consent comprising more than one stage, it became apparent, in the course of the second stage, that the project was likely to have significant effects on the environment.

Mr Robert McCracken, QC and **Mr James Pereira** for Ms Barker; **Mr Timothy Straker, QC** and **Mr James Strachan** for Bromley; **Mr David Elvin, QC** and **Mr James Maurici** for the intervener.

LORD HOPE said that the application had been for an urban development project within Schedule 2 of the Town and Country Planning (Assessment of Environmental Effects) Regulations (SI 1988 No 1199).

The effect of those regulations was that, where outline planning permission was being sought, an environmental impact assessment could only be required when the application for the outline permission was being considered. Consideration of the need for an assessment was precluded at reserved matters stage.

The regulations overlooked the fact that the relevant development consent might be a multi-stage process. It did not follow, however, that consideration had to be given to the need for an assessment at each stage in the multi-consent process.

In the case of a Schedule 2 development the authority had to decide at the outset whether an assessment was needed. If sufficient information was given at the outset it ought to be possible for the authority to determine whether an assessment which was to be obtained at that stage would take account of all the potential environmental effects that were likely to follow as consideration of the application proceeded through the multi-stage process.

Where it did not become apparent until a later stage that the project was likely to have significant effects on the environment, an assessment would have to be carried out at the reserved matters stage before consent was given for the development.

In the present case it was no longer possible to challenge the grant of outline permission on the ground that an assessment had been required and the House lacked the information that would have been needed for finding as a fact that one had been required at the reserved matters stage. Those issues had in any event been rendered academic by the lapse of planning permission for the development.

But the applicant was entitled to a declaration that by precluding any consideration for the need for an assessment at the reserved matters stage the regulations failed fully and properly to implement the Directive and that the council misdirected itself in law when it decided that it had no power to require an assessment to be carried out in accordance with the requirements of the Directive at that stage.

Lord Bingham, Lady Hale, Lord Carswell and Lord Brown agreed.
Solicitors: **Richard Buxton**, Cambridge; **Sharpe Pritchard**; **Treasury Solicitor**.