

WEDNESDAY 23RD JULY 2008

IN THE COURT OF APPEAL

Order no. 8152

ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO24492007

BEFORE LORD JUSTICE RIX

B E T W E E N

MICHAEL WILLIAM HULME

APPELLANT

- and -

(1) THE SECRETARY OF STATE FOR COMMUNITIES & LOCAL
GOVERNMENT
(2) WEST DEVON BOROUGH COUNCIL
(3) RES DEVELOPMENTS LIMITED

RESPONDENTS

ON READING the Consent Order dated 22nd July 2008 signed by the Solicitors
for the Appellant and signed by the Solicitors for the Respondent

AND UPON READING the Appellant's Notice, the Appellant's Skeleton
Argument, the Respondent's Notice, the Skeleton Argument filed on behalf of
the Third Respondent, and the evidence filed by the parties.

AND UPON the First and Third Respondents (the Second Respondent having
taken no part in the appeal) indicating that they do not contest the appeal

AND UPON the Appellant and the First and Third Respondents agreeing that the
appeal should be allowed on the terms set out below for the reasons set out in the
Schedule hereto

AND UPON the Court being satisfied that the facts and matters set out in the
Schedule hereto constitute good and sufficient reasons for allowing the appeal

AND UPON none of the parties being a child or protected party, and the appeal
not being from a decision of the Court of Protection



Her Majesty's
Court of Appeal
04 AUG 2008

IN PRIVATE
Appeal No.

C1/2008/0793
C1/2008/0793B
C1/2008/0793C



BY CONSENT

IT IS ORDERED that

- 1) the order of Mr Justice Mitting dated 19th March 2008 be set aside;
- 2) the decision of the First Respondent's Inspector dated 22nd March 2007 be quashed;
- 3) the First and Third Respondents do pay to the Appellant his costs of the proceedings in this court and in the High Court, to be subject to detailed assessment on the standard basis if not agreed; and
- 4) the hearing of the appeal, fixed for 25th July 2008, be vacated



By the Court

SCHEDULE

1. The Third Respondent ("the developer") applied to the Second Respondent ("the Council") for planning permission to construct and operate a wind farm, consisting of nine turbines and associated development, at a site known as Den Brook in Devon. The Council refused planning permission and the developer appealed to the Secretary of State who appointed an inspector to determine the appeal ("the Inspector"). A public local inquiry was held from 22 to 24 and 27 to 30 November 2006. On 22 March 2007, the Inspector issued his decision, by which he allowed the appeal and granted planning permission for the wind farm subject to conditions. This is the decision under challenge by the Appellant, who lives in the vicinity of the proposed wind farm.
2. One of the main issues on the appeal was whether the proposed wind farm could operate without creating levels of noise harmful to the amenity of the Appellant and others living in the vicinity.
3. Before the Inspector, the Appellant gave evidence that in conversations with the developer's noise expert, the latter had accepted that there were errors in the background noise measurements on which the developer's noise evidence was predicated. ~~The Appellant considered himself unable directly to take issue with the developer's noise evidence in this respect because the developer had declined to disclose the raw data upon which it was based.~~
4. In paragraph 47 of his decision, the Inspector accepted that accurate background noise measurements were important not just for the Appellant but also for the wider application of the proposed planning condition relating to noise. The Inspector referred to the dispute between the Appellant and the developer as to background noise measurement, but concluded that he was content that background noise measurements had been properly taken in accordance with the relevant methodology.
5. However, the Inspector, like the Appellant, was not provided with the raw data upon which the developer's noise evidence was based and he too was thereby precluded from determining whether or not there actually were any errors in the background



22-JUL-2008 17:10

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noise measurements. Despite this, the Inspector did not state the reasons why he resolved the dispute between the Appellant and the developer in the manner that he did. As the Inspector himself accepted, the dispute related to an important matter which was relevant not just to his decision that planning permission should be granted but also to his consequent decision as to the terms of the condition intended to control the level of noise generated by the windfarm. Accordingly, the Inspector's failure to give reasons for his conclusion in this respect amounted to an error of law.

6. The Appellant has been substantially prejudiced by the absence of reasons in this respect. The developer has, since the decision of Mitting J, met a request by the Appellant to provide the raw data upon which its noise evidence was based. Both the Appellant and the developer have now adduced evidence, which was not before the Inspector or Mitting J, to the effect that an analysis of the raw data reveals that there were errors in relation to the background noise measurements upon which the developer's noise evidence was predicated. Whilst there is disagreement between the Appellant and the developer as to the significance of those errors, this Court is not in a position to resolve that disagreement. Accordingly, absent the Inspector's reasons for deciding as he did, it cannot safely be concluded that, had the Inspector had the benefit of having the relevant errors drawn to his attention and hearing the parties' contentions on them, his decision would inevitably have been the same.



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MICHAEL WILLIAM HULME

- and -

- (1) THE SECRETARY OF STATE FOR
COMMUNITIES & LOCAL GOVERNMENT
- (2) WEST DEVON BOROUGH COUNCIL
- (3) RES DEVELOPMENTS LIMITED

ORDER

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* This order was drawn by Mr S Tai (Court Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to Mr S Tai, Civil Appeals Office, Room E328, Royal Courts of Justice Strand London WC2A 2LL (DX44450 Strand) and quote the Court of Appeal reference number. The Associates telephone number is 0207 947 6646.