

Law Report

Demolition a project requiring consent

Court of Appeal
Published April 19, 2011

Regina (Save Britain's Heritage) v Secretary of State for Communities and Local Government and Another

Before Sir Andrew Morritt, Chancellor, Lord Justice Toulson and Lord Justice Sullivan
Judgment March 25, 2011

Demolition of buildings was capable of constituting a project affecting the environment. By excluding demolition works from its scope, paragraph 2(1)(a to d) of the Town and Country Planning (Demolition - Description of Buildings) Direction 1995 was unlawful.

The Court of Appeal so held when allowing an appeal by the claimant, Save Britain's Heritage, from the dismissal by Judge Pelling, QC, on May 7, 2010, of its judicial review claim for an order quashing the decision of the second defendant, Lancaster City Council, that prior approval for the demolition of a brewery was not required since the proposed works did not amount to development within article 1(2) of EU Directive 85/337 (OJ July 5, 1985 No L175/40) and so did not require planning permission.

Article 1 of Directive 85/337 provides: "(2) For the purposes of the Directive 'project' means: the execution of construction works or of other installations or schemes, other interventions in the natural surroundings and landscape . . ."

Mr Richard Harwood and Mr Andrew Deakin for Save Britain's

Heritage; **Mr James Maurici** for the Secretary of State for Communities and Local Government.

LORD JUSTICE SULLIVAN said that the claimant submitted that in *Commission v Ireland* (C-50/09) (unreported; March 3, 2011) the Court of Justice of the European Union had declared that by excluding demolition works from the scope of its legislation transposing Directive 85/337, Ireland had failed to fulfil its obligations, and that disposed of the principal issue.

His Lordship said that *R (Edwards) v Environment Agency* (*The Times* May 6, 2008; [2008] 1 WLR 1587; [2008] Env LR 34) was not authority for the proposition that a project, for the purposes of the first limb in article 1(2), had to involve the construction of something new.

Schemes other than the execution of construction works were within the first limb, and there was no reason why demolition works should be excluded from those schemes.

The act of demolition, when coupled with the restoration of a site, was capable of creating something new, for example, an open and hard surfaced or grassed area where there was once a building. In ordinary language demolition works which left a site on completion in a condition which protected the public and preserved public amenity were capable of being a "scheme" under article 1(2).

The Chancellor and Lord Justice Toulson agreed.

Solicitors: **Richard Buxton Solicitors, Cambridge; Treasury Solicitor.**