

Arlington Securities Limited v The Secretary of State For the Environment v Crawley Borough Council



Positive/Neutral Judicial Consideration

Court

Court of Appeal (Civil Division)

Judgment Date

3 October 1988

CO/635/88

In the Supreme Court of Judicature

Court of Appeal (Civil Division)

On Appeal from the High Court of Justice

Queen's Bench Division

1989 WL 651254

Lord Justice Kerr Lord Justice Nicholls and Lord Justice Staughton

Monday 3rd October 1988

Representation

MR. ROBERT CARNWATH Q.C. and MR. CHARLES MARQUAND (instructed by Messrs. Gouldens, Solicitors, London EC4Y 0JJ) appeared on behalf of the Applicant (Appellant).

MR. MICHAEL KENT (instructed by The Treasury Solicitor, London SW1H 9JS) appeared on behalf of the First Respondent (Respondent).

The Second Respondent was not present and was not represented.

JUDGMENT (Revised)

LORD JUSTICE KERR:

I have asked Lord Justice Nicholls to give the first judgment.

LORD JUSTICE NICHOLLS:

In March 1986 the appellant, Arlington Securities Limited, applied to the Local Planning Authority, Crawley Borough Council, for planning permission in respect of a substantial development. Arlington sought permission to construct office, industrial and warehouse buildings extending to some 200,000 square metres of floor space, in a so-called “business park” on about 180 acres of land at Forge Farm, Steers Lane, Crawley, Sussex. Arlington is an experienced developer of business parks.

The Local Planning Authority failed to give notice of its decision on that application within the prescribed period. In December 1986 Arlington appealed to the Secretary of State under [section 36 of the Town and Country Planning Act 1971](#). A local inquiry was held, extending over two weeks between 4th and 13th August 1987. The Inspector reported to the Minister in October. In a full and detailed report he recommended that the appeal should be dismissed. The Secretary of State accepted that recommendation. With Arlington's consent the Secretary of State considered the appeal on the basis of permission being sought for a development of reduced size, namely having a total floor space of about 104,500 square metres. His decision letter dismissing the appeal was dated 14th April 1988.

Arlington was dissatisfied and applied to the court for judicial review of the Secretary of State's decision, seeking an order quashing it. Mr. Justice Macpherson heard that application and on 28th July 1988 he dismissed it. From that decision of the judge Arlington has appealed and it is that appeal which is now before this court.

Central to the Secretary of State's decision was the interaction in this case of granting or withholding of planning permission as sought by Arlington and the process leading to the local plan. The land in question is in Sussex to the northeast of Crawley, close to the M23 motorway and Gatwick Airport. The West Sussex County Structure Plan was approved in June 1980 without any reference to a business park. Proposed alterations were published in January 1985 and an inquiry into these proposals was held in the autumn of that year. Arlington argued in favour of release of land for a business park development.

Proposed modifications were published in July 1987. This was shortly before the start of the inquiry held by the Inspector under section 36. On 14th April 1988, which was the same day he sent his decision letter now being challenged, the Secretary of State approved proposed alterations to the structure plan. In the modifications as proposed in July 1987, and also in the modifications as approved in April 1988, Policy IC4 was expressed in similar terms:

“Provision will be made in the vicinity of Crawley/Gatwick Airport and readily accessible to the railway and motorway networks, for the development of a low density, welllandscaped ‘business park’ to accommodate high techn and other firms. High standards of building design and landscaping will be required. The park should be located so as not to infringe the principle of the Crawley and Gatwick Aiport/Horley strategic gap.

The grounds upon which the Secretary of State dismissed Arlington's appeal appear from two paragraphs in his letter. In short, he considered that the application was premature. The two paragraphs are paragraphs 5 and 6 of his letter, which are as follows:

“5. The third consideration is whether housing demands associated with the development could be met consistently with policies aimed to control the impact of urban development on rural areas. On this aspect the Inspector concludes that the development would have major employment, population growth, traffic and infrastructure implications extending well beyond 1996 and that the size and importance are such that their acceptability ought desirably to be urgently weighed in forming local policies. These conclusions are accepted. It is noted that the local plan is under review in light of the altered Structure Plan and the Secretary of State considers that to grant planning permission for the proposed development in advance of the local plan process would be premature and he sees no compelling or immediate need for the development which would justify dispensing with that process.

“6. Finally, the Secretary of State has considered the effect of the modifications to the altered Structure Plan. In these published modifications the Secretary of State has accepted a recommendation that provision be made for a welllandscaped business park in the vicinity of Crawley/Gatwick Airport and readily accessible to motorway and railway. However, the establishment of such a business park in this location will have significant consequences for Crawley and its surroundings, particularly with regard to housing requirements generated by the development. In view of this, the Secretary of State considers that Crawley Borough Council should have the opportunity of using the local plan process to find the most suitable location for a business park, having due regard to the size and timing of any business park development and the resultant creation of employment and the need to house the workforce it creates in the Crawley area. It is not

considered that the need for a business park development is so urgent as to justify the immediate granting of planning permission on this particular site in advance of the local plan process.”

In those two paragraphs, as I read them, the Secretary of State stated two reasons why it would be premature to grant planning permission as sought by Arlington. First, that the housing demands associated with the development would have implication in the fields of employment, population growth, traffic and infrastructure. These implications would be major and they would extend well beyond 1996. The scale and importance of these implications were such that their acceptability ought, as a matter of urgency, to be weighed when local policies were formulated. Likewise, and this is his second reason, the consequences of the establishment of a business park in the area would be of such significance, particularly with regard to housing requirements, that the Local Planning Authority should have the opportunity of using the local plan process to find the most suitable location for a business park.

The principal thrust of Arlington's case on this appeal was that prematurity in relation to the local plan process could not in this case have afforded a ground for refusal of planning permission. It was submitted that the issue for the Secretary of State was not whether the development sought would have implications in various fields such as population growth – it was accepted by Arlington that there would be such implications-but whether those implications created unacceptable problems which needed to be resolved by the local plan process. It was said that twice already the implications of a business park development in this locality had been considered and full opportunity afforded for investigation of all the ramifications of this development, first at the examination in public leading to the modifications to the structure plan, and secondly at the inquiry held by the Inspector on Arlington's appeal under section 36 . It was said that although the local plan process under sections 11 to 14 of the 1971 Act provides scope for objections and inquiries, it is of a limited nature. The same people will be involved as were involved in formulating the modifications to the structure plan, save that the decision will be made by the Local Planning Authority and not the Secretary of State; the local plan can operate only within the structure plan; it must conform generally to the structure plan and it is confined to the same period as the structure plan. Here it also will run only until 1996. It was submitted further that the Secretary of State, obliged as he is to state his reasons clearly, did not state any sound reason for putting off a decision; he did not identify any particular points which, for their satisfactory resolution, call for the local plan process.

Before considering these points I should mention two matters. First, it was common ground before us that, as stated in paragraph 1.12 of Circular 22/84, the fact that a local plan is in the offing is not in itself a reason for refusing planning permission. Nor was there any dispute over the approach emphasised in paragraph 3 of Circular 14/85 that there is always a presumption in favour of allowing application for development having regard to all material considerations, unless that development would cause demonstrable harm to interests of acknowledged importance. Where the parties differed was on the application of those principles to the facts of this case. Since that was the substantial area of dispute, it is not necessary for me to refer to any of the authorities to which our attention was drawn.

Secondly, I should mention some of the background against which the Secretary of State's decision letter falls to be read and understood by the intelligent and informed reader.

The proposed modifications to the structure plan published by the Secretary of State in July 1987, contained the following comments on Arlington's efforts to promote a business park development in the vicinity of Gatwick Airport:

“6.8 In the context of the amount and location of industrial and office development, the Secretary of State has considered representations concerning the possible location of a business park to accommodate high technology and other firms in the vicinity of Gatwick Airport. Arlington Securities Ltd argued that a location close to a major international airport was ideal and that all the necessary road, rail and air transport advantages existed in the Crawley/Gatwick area. They considered a business park could bring regional and national benefits, creating perhaps 7,000 jobs, with no major additional housing requirement, and without significantly breaching the strategic gap between Crawley and Gatwick. The County Council and Crawley Borough Council were concerned that the principle of a strategic gap between Crawley and Gatwick Airport should not be undermined; the County Council also argued that such a development would seriously jeopardise

housing provision proposals. The County Council did, however, put forward a draft of a new policy for inclusion in the Alteration in the event that the proposal was accepted by the Secretary of State. The Panel invited and considered written views on the draft policy after the EIP had closed; all written views received were circulated to all the participants in the discussion at the EIP of the business park issue.

“6.9 The Panel considered the proposal for a business park in the general context of the Crawley/Gatwick area, and regarded it as meriting support (PR Chapter 3 para. 61). It considered the housing consequences likely to be acceptable and that there was scope for a business park to be accommodated in the general area while respecting the principle of an adequate strategic gap (PR Chapter 3 para.61). It recommended inclusion of an additional policy providing for such development in the area (PR Chapter 3 para.64).

“6.10 The Secretary of State notes that the Panel had regard, in making its recommendation, to its earlier recommendation for additional housing provision in Crawley Borough. The Secretary of State does not propose to take up this earlier recommendation (para. 5.5 above) but he considers it unlikely that a business park would have significant housing consequences before 1996, although there may be some after that date. The Secretary of State accepts the Panel's recommendation for a business park and proposes to modify the submitted Alteration by the insertion of a new policy to be numbered 104), making provision for a low density, well landscaped business park in the vicinity of Crawley/Gatwick Airport.”

The Local Planning Authority commented on this at the section 36 inquiry. Paragraph 76 of the Inspector's Report records these observations as follows:

“However the Secretary of State proposes to provide expressly for a business park of unspecified size in the Crawley/Gatwick area (document 7gg). There is no reference to the area north-east of Crawley, to Forge Farm, or to the minimum desirable width for the gap. These are draft modifications only, and the local planning authorities have as yet had no opportunity to form a view about them. It is clear they do not amount to an endorsement of the appellants' proposal; the Secretary of State says nothing to jeopardise the hoped-for reduction in house-building rates and seems expressly to rule out development which would – as the proposal would – have significant housing consequences before 1996. If the new land requirement is eventually included in the plan it would be reasonable, as well as consistent with the emergence of the draft modification, if time were allowed for the local plan-making authority to come to terms with it and to make its own decision as to the appropriate size and location.”

The Inspector concluded that no objection on highway or traffic grounds sufficient to justify the refusal of planning permission had been made out. Further, he found no support for the view that the development need prove irreconcilable with the protection of the required break between Crawley and Gatwick/Horley. On housing, he found that the development would increase housing demand throughout a considerable area. The estimated 7,000 additional jobs to be generated by the development, might give rise directly to an eventual requirement for 3,600 dwellings. A “first stage” development generating 4,000 jobs might call for about 2,060 dwellings, which might require about 1,500 dwellings to be built and occupied by 1996. He referred to the view expressed in the draft modification statement that a business park at Crawley need not greatly affect housing requirements before 1996, and commented on the efforts broadly to balance employment and population growth. He then said at paragraph 126 of his report:

“... it would be misleading to draw, from a fortuitous short-term surplus of available housing land, a conclusion that the proposal involves no material conflict with objectives which have informed and, as far as one can foresee, will continue to inform planning policies in this part of the south-east.”

The Inspector expressed his overall conclusion, and made his recommendation, in paragraph 127, as follows:

“The development would have major employment, population growth, traffic and infrastructure implications extending well beyond 1996. Its size and importance are such that their acceptability ought desirably to be urgently weighed in formulating local policies. On the planning evidence, particularly as to the availability of land, premises and other potential development sites, there is no compelling reason to dispense with that process in order to grasp benefits which could only be obtained by immediately commencing to develop the appeal land. On that ground the appeal should fail and I recommend accordingly...”

I turn now to consider Mr. Carnwath's submissions. First, I am not persuaded that to those versed in the art there is any impenetrable obscurity in the decision letter. Nor, secondly, am I persuaded that there is necessarily an inconsistency between (1) the reference to housing demands and housing requirements in paragraphs 5 and 6 of the decision letter and (2) the view expressed by the Secretary of State at paragraph 6.10 in the draft modification statement and repeated in paragraph 7.10 of the notice of approval dated 14th April 1988, that it was unlikely that a business park would have significant housing consequences before 1996. As I understand the position, in the latter passages the Secretary of State was negating the need for additional housing provision in Crawley Borough if a business park were constructed. Paragraphs 126 and 127 of the Inspector's report and paragraph 5 of the decision letter, on the other hand, were concerned with the wider implications which the housing demands generated by this one substantial development in one place would have. Thus the Inspector referred to the possibility of material conflict between Arlington's proposals and objectives underlying planning policies in this part of the southeast of England. Likewise, in paragraph 5 of his letter, the Secretary of State was considering whether the housing demands associated with Arlington's proposals “could be met consistently with policies aimed to control the impact of urban development on rural areas”.

Thirdly, I can see nothing unreasonable in the view of the Secretary of State which is implicit, if not explicit, in paragraphs 5 and 6 of his decision letter, that this development is of such a size and importance, covering, as I have said, 180 acres and generating eventually some 7,000 jobs, that in the public interest its implications ought to be investigated and considered by the local plan process, and that in this case the risk of prejudice and error which could arise if a decision were made regarding this development without that process having been undertaken, outweighed the prejudice resulting from Arlington's having to wait for that process to unwind. This was so because of the major implications mentioned in paragraph 5. It was also so because of the need to find the most suitable site in Crawley Borough for such a major development as mentioned in paragraph 6. I consider that it was open to the Secretary of State to form the view that in this way and having regard to the size and importance of the development and the significance of the implications arising from the creation of thousands of new jobs, to permit the development at this stage would in this case cause demonstrable harm to interests of acknowledged importance.

Fourthly, I do not accept that the examination in public leading to the introduction of Policy 1C4, and the section 36 inquiry, provided adequate opportunity for these matters to be investigated and considered properly in this case. The need for further investigation to find the most suitable site was indeed mentioned by the Secretary of State in the Notice of Approval at paragraph 7.13, part of which reads:

“He” (the Secretary of State) “considers that matters such as the location, size and timing of development of a business park are too detailed for the Structure Plan and he accepts the view of Crawley Borough Council and the County Council that a comparative assessment of possible sites should be allowed to be made within the process of preparing a Local Plan for the Borough. He considers that Policy IC4, as he has approved it, gives adequate scope for choice of the most suitable location in the Crawley/Gatwick area.”

The business park development would be a very major one in this locality and plainly the section 36 inquiry was not the appropriate forum, and hence it would not have been a satisfactory forum, for investigating the important question of which site, or sites, within the Borough would be most suitable.

Mr. Carnwath complained that though his client had embarked on the expense of a two-week section 36 inquiry, the matter was no further forward. The Secretary of State has not said, for example, whether Arlington's proposed development was too big or not, or whether it would be in the wrong place. The debate is no further forward. On this I have some sympathy with Arlington. But I do not think that it can have come as a surprise to the company, an experienced developer, to find that the Secretary of State considered that the size, the timing and the location of the business park development mentioned in Policy IC4 in the modified structure plan ought to be subjected to the local plan process in view of its major implications, and a decision made thereon by the local planning authority.

For these reasons, for my part I would dismiss this appeal.

LORD JUSTICE STAUGHTON:

I agree that this appeal should be dismissed.

There are authorities which show that the absence of a local plan is not necessarily and by itself a sufficient reason for refusing planning permission; see, for example, *Arlington Securities Limited v. Secretary of State for the Environment and Bromley London Borough Council* (1985) *Journal of Planning Law* 550 .

This view of the law is shared by the Minister as appears from Circular 22/84, paragraph 1.12; “the absence of a local plan or relevant proposals for a local plan, or the fact that a local plan was in the offing, or that there are proposals for alteration or appeal or replacement of a structure plan or a local plan, is not in itself a reason for refusing planning permission.”

There may well be cases in which it is perverse of the Secretary of State to put off a decision, in which case this court will interfere. That happened in *Niarchos (London) Ltd. v. Secretary of State for the Environment and Westminster City Council* (No.2), (1981) *Journal of Planning Law* 118 .

However, as Lord Justice Nicholls has shown, there are matters which legitimately could influence the Secretary of State in holding that the application in this case was premature, and I do not for one moment consider that his decision could be held to have been perverse in this instance.

Accordingly I agree that the appeal should be dismissed.

LORD JUSTICE KERR:

I agree with both judgments.

In view of the relative importance of this case I merely refer, without discussion, to the authorities which were cited to us to show that we have taken them into account.

The appellant cited *Stephenson v. Secretary of State for the Environment and Another*, (1985) 1 Estates Gazette Law Reports 178 ; *Thornville Properties Limited v. Secretary of State for the Environment and Stafford Borough Council*, (1981) Journal of Planning Law 116 ; *Arlington Securities Limited v. Secretary of State for the Environment and Bromley London Borough Council*, (1985) Journal of Planning Law 550 , which has already been mentioned; *R. v. Bickenhill Parish Council, ex parte Secretary of State for the Environment and Solihull Metropolitan Borough Council*, (1987) Journal of Planning Law 773 ; the second of the *Niarchos* cases, which has already been referred to by Lord Justice Staughton, *Niarchos (London) Ltd. v. Secretary of State for the Environment and Westminster City Council (No.2)* , a decision of this court in (1981) Journal of Planning Law 118; *Rockhold Limited v. Secretary of State for the Environment and South Oxfordshire District Council*, (1986) Journal of Planning Law 130 ; and finally *Trusthouse Forte Hotels Limited v. Secretary of State for the Environment and Another*, (1986) Planning and Compensation Reports 293 , a decision of Mr. Justice Simon Brown.

On behalf of the respondent the only case cited to us was *Link Homes Limited v. Secretary of State for the Environment*, (1976) Journal of Planning Law 430 .

At the end of the day this case turns on its own facts, but these authorities were rightly referred to.

I agree that this appeal should be dismissed.

(Order: Appeal dismissed with costs; application for leave to appeal to House of Lords refused).

MR. KENT: Then I ask your Lordships to dismiss the appeal, and I ask for an order that the costs of the first respondent be paid by the council.

MR. MARQUAND: May it please your Lordships; I am instructed to ask your Lordships for leave to appeal-----

LORD JUSTICE KERR: Let us deal first with the costs; have you anything to say with regard to costs?

MR. MARQUAND: No, my Lord.

LORD JUSTICE KERR: Then the appeal will be dismissed with costs.

MR. MARQUAND: If your Lordship pleases.

We would, however, ask for leave to appeal to the House of Lords. I make that application for these reasons: first, this is a very large and involved scheme. It involves matters in which time is of the essence; it is essential, therefore, that the reasons given by the Secretary of State and the Inspector should be clear and sufficient. The appellants say that the reasons given were not in fact clear and sufficient; in particular, the way in which the matter of housing was dealt was unclear and there were conflicting statements. On the one hand it was said that housing would not be a problem until 1996, but on the other hand the effect of the local plan would not extend beyond 1996. The appellants would therefore like a statement from the House of Lords as to how clear the reasons given by the Secretary of State need actually be. No reason was given; there was no statement as to whether the scheme was too large and no reason was given as to whether the site was suitable or not.

For those reasons I respectfully ask your Lordships to give us leave to appeal.

LORD JUSTICE KERR: Thank you, Mr. Marquand.

Without needing to confer further, I can say that we are all of the view that we cannot give leave to appeal. If you wish to pursue the matter rather than deal with it in the way suggested by Lord Justice Nicholls, you will have to go to their Lordships' House.

The appeal is dismissed with costs; leave to appeal to the House of Lords is refused.

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