Neutral Citation Number: [2015] EWCA Civ 175

Case No: C1/2014/1264

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
Mr. Justice Collins
[2014] EWHC 806 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 March 2015

Before :

LORD JUSTICE MOORE-BICK
Vice-President of the Court of Appeal, Civil Division
LORD JUSTICE PITCHFORD
and
LADY JUSTICE GLOSTER

- -

Between :

	GPS ESTATES LIMITED	**Respondent**
	- and -	
	SECRETARY of STATE for COMMUNITIES and LOCAL GOVERNMENT	**Appellant**

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- -

Mr. Stephen Whale (instructed by **the Treasury Solicitor**) for the **appellant**
Miss Celina Colquhoun (directly instructed) for the **respondent**

Hearing date: 11th February 2015

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Judgment **Lord Justice Moore-Bick :**

1. This is an appeal against the order of Collins J. remitting to the Secretary of State for Communities and Local Government for re-determination an appeal brought by GPS Estates Ltd ("GPS") against an enforcement notice issued against it by Luton Borough Council under the Town and Country Planning Act 1990.

2. GPS operates a "meet and greet" service at Luton Airport, under which it collects cars from passengers who have driven to the airport, takes them to an off-site car park where they remain while the passenger is away, and brings them back to the airport in time for passengers to collect them on their return. The off-site car park with which this appeal is concerned occupies an area of 0.42 hectares adjacent to Latimer Road, Luton about 2 km from the airport.

3.Between 2001 and 2011 the council developed and adopted a local plan for the development of Luton known as the Luton Local Plan ("the Plan"). The Plan recognised in paragraph 9.76 that airport-related car parking demand was directly related to growth in passenger numbers, but that an increase in on-site parking could provide additional capacity. Studies had shown that a major expansion of the airport might require additional off-site car parking, even if there were a switch in emphasis from road to rail access. However, it was essential, in the view of the planning authority, that off-site facilities be located close to the strategic road network and away from residential areas.

4.In that context Policy LLA2 of the Plan provided as follows:

> "**Airport-related car parking**
>
> The Borough Council will not grant planning permission for airport-related car parking . . . unless it can be demonstrated that:
>
> [A] there is a long-term need for the development that cannot be met on the airport; and
>
> [B] it is in accordance with the most recent Surface Access Strategy;
>
> . . . "

5.The Plan also stated in Policy KR1 that permission would be given for the redevelopment of the former Vauxhall car plant at Kimpton Road, provided that (among other things) the uses to which the site would be put included long-stay airport-related car parking which was in accordance with Policy LLA2.

6.On 24th July 2012 Luton Borough Council, in its capacity as local planning authority, served on GPS an enforcement notice under section 172 of the Town and Country Planning Act 1990 ("the Act") requiring it to cease the storage of vehicles on the site at Latimer Road. The reasons given for issuing the enforcement notice were that the use of the site contravened Policy LLA2 of the Plan. In support of that the council stated that in March 2006 it had approved an outline proposal to re-develop an area of land near the airport (the "Napier Park Scheme", which formed part of the Kimpton Road redevelopment) which would provide 5,000 off-airport parking spaces. The development was expected to provide a considerable contribution to meeting the projected airport parking needs until 2030. It was said that the current use of the Latimer Road site was therefore contrary to the provisions of Policies LLA2 and KR1.

7.GPS appealed against the enforcement notice under section 174 of the Act, seeking planning permission for the existing use of the site, and the Secretary of State appointed an inspector to determine the appeal. The council argued that there was no identifiable need for any further off-airport parking, in part because there were over 7,000 spaces on-site of which only about 25-30% were normally used. GPS said that the plan for the airport involved an increase in aircraft movements which would result in an increase in passenger numbers from about 10 million to 18 million a year, indicating a clear need for

additional parking capacity which could not be met within the airport.

8.In a decision dated 2nd May 2013 the inspector upheld the enforcement notice, but extended time for compliance. He accepted that there was a clear risk that the approval of provision for ad hoc off-airport parking would undermine the aim of the Surface Access Strategy to encourage the use of public transport. The claim by GPS that parking capacity at the airport was exhausted appeared to him to be at odds with the evidence that the level of occupancy of the car parks at the airport was only about 25-30%. He was clearly aware that outline planning permission for the Napier Park development had lapsed, but even so, he concluded that there was no persuasive evidence to demonstrate a need for long-term parking at Latimer Road within the meaning of criterion [A] of Policy LLA2, or that the use of the site for off-airport parking accorded with criterion [B]. He therefore concluded that the use of the site for airport-related parking constituted an inappropriate form of development which was contrary to the overall aims of Policy LLA2. He did not consider that other factors which militated in favour of the continued use of the Latimer Road site outweighed the strong planning policy objections. He therefore dismissed the appeal.

9.Having lost its appeal, GPS appealed to the High Court under section 289 of the Act. The judge was persuaded that the inspector had made a number of errors in reaching his conclusion. The first, which he identified in paragraphs 32-33 of his judgment, was that, when considering the existing provision of on-airport parking, the inspector had muddled capacity with occupancy. He regarded that as a serious misdirection. Next, in paragraph 36 he found that the inspector had failed to grasp or deal with the point that the outline permission for the Napier Park development must have complied with Policy LLA2 and that the council must therefore have been satisfied in 2006 that additional parking spaces were needed. The judge rejected a submission from Mr. Whale that Policy LLA2 was directed to the particular development under consideration. He was of the opinion that it was directed simply to the existence of a need for additional parking to which the development under consideration would contribute. He therefore held that the inspector had misapplied criterion [A] of Policy LLA2. As to criterion [B], the judge concluded that, applied rigorously, it would preclude any additional off-site parking. If the inspector had correctly applied criterion [A], and as a result had been satisfied that it had been met, that might have affected his decision in relation to criterion [B]. He therefore allowed the appeal and remitted the matter to the Secretary of State for reconsideration.

10.Mr. Whale submitted that criterion [A] of Policy LLA2 was directed to the question whether the development under consideration met a long-term need for car parking spaces that could not be met on the airport site. He argued that the Latimer Road site did not, because the parking capacity at the airport exceeded both the existing demand and any foreseeable increase in demand resulting from the projected growth in the number of passengers using the airport. Judging by current usage, even if the number doubled, the existing car park would be no more than two thirds full. The inspector did not confuse capacity with usage; usage provides a useful indication of demand against which one can judge the adequacy of capacity. Nor did he fail to take into account the lapse of the Napier Park development. Whatever view may have been taken in 2006, when permission for that development had been given, it was now clear that additional capacity off-site was not needed. Moreover, even if there were a need for additional off-

airport parking, it would not be met by provision for 200 cars at the Latimer Road site. Moreover, use of the Latimer Road site for off-airport parking would not accord with the Surface Access Strategy. Contrary to the judge's view, it was not relevant whether a rigorous application of criterion [A] or [B] would preclude any further provision of off-airport parking. That was entirely a matter for the planning authority.

11. The main emphasis of Miss Colquhoun's argument was related to the grant of outline permission for the Napier Park development in 2006, with its provision for 5,000 additional spaces. She submitted that criterion [A] was directed to the broader question whether there was a long-term need for development of the kind being proposed and the fact that the council had granted permission for the Napier Park development back in 2006 demonstrated that there was. Moreover it also demonstrated that the provision of additional capacity was consistent with, or perhaps outweighed, the requirement of criterion [B]. The inspector had failed to take proper account of the fact that, following the lapse of permission for that development, the projected additional capacity would not become available. Had he done so, he might have concluded that the Latimer Road car park could properly provide some of the additional capacity, notwithstanding the need to satisfy criterion [B].

12. The starting point, in my view, must be Policy LLA2. It is now well settled that planning policies of this kind are to be interpreted objectively in accordance with the language used, read in its proper context: see *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13, [2012] PTSR 983, per Lord Reed at paragraph 18. The central point dividing the parties is whether, as GPS contended (and the judge accepted), criterion [A] is directed to whether there is a need for the provision of additional car parking capacity in general or whether it is directed to a need for the particular development under consideration, as Mr. Whale submitted.

13. In support of his argument Mr. Whale laid some emphasis on the use of the definite article in the expression "the development". In many cases that might provide a slender basis for a submission of this kind, but in the present case it has to be read in the context of the rest of the policy. Criteria [B] to [E] all begin with the word "it", which in each case clearly refers back to the development referred to in criterion [A], and each is drafted in terms that are appropriate to relate to a particular development. I think it is reasonably clear, therefore, that all the criteria, including criterion [A], are concerned with the characteristics of the particular development for which permission is being sought. In my view, therefore, the judge's interpretation of criterion [A] was incorrect. The consequence that permission could not be given for any additional off-airport parking places while the level of use of the existing on-airport parking places remains low (to which the judge referred in paragraph 38 of his judgment) is nothing to the point.

14. Although at the time it served the enforcement notice the council appears to have overlooked the fact that the outline permission for the Napier Park development had already lapsed, it is clear that by the time the matter came before the inspector both sides were well aware of the true position. Indeed, GPS relied on it in support of its argument that the demand that had been identified in 2006 would not now be satisfied by that development. It is true that in his report the inspector did not deal head on with the lapse of permission for that development, but he did refer in paragraph 10 of his report to that

submission, which had clearly not escaped his mind.

15. In reaching his conclusion the inspector appears to have been heavily influenced by the evidence relating to the capacity and occupancy level of the on-airport car park. That is hardly surprising, since, in the absence of any reason to think that there was likely to be a significant increase in the proportion of passengers choosing to arrive by car, it provided a useful indicator of the likely future demand for parking spaces. The judge thought that the inspector had muddled capacity and occupancy, but with all due respect, I do not think that is so. The current low occupancy level suggests that the existing capacity (about three times the level of demand) is far greater than is required and projections of passenger numbers suggest that it will continue to be adequate well into the future.

16. In my view, therefore, the inspector correctly interpreted criterion [A] and was entitled to find that there was no persuasive evidence to demonstrate that it was satisfied in relation to the Latimer Road development. The grant of outline permission for the Napier Park development in 2006 is some evidence that at that time additional parking capacity was thought to be needed, but the evidence of capacity and occupancy levels in 2011 or thereabouts was strong evidence to the contrary which the inspector was entitled to, and clearly did, take into account.

17. Criterion [B] does not give rise to similar difficulties of interpretation. It is clear, as the inspector found, that the provision of additional airport-related off-airport parking would tend to undermine the Surface Access Strategy, which was to encourage passengers to use public transport. The judge brushed this objection aside. He said in paragraph 42 that the inspector's approach was not correct because no off-airport development providing additional parking could accord with the Strategy and that therefore none could be granted planning permission. I do not think that criterion [B] can be dismissed so easily. As Mr. Whale submitted, the formulation of policy is for the local planning authority. It is entitled, subject to the usual public law constraints, to adopt policies that are highly restrictive. If circumstances develop in ways that render the policy obstructive or unworkable, that may itself provide good reasons from departing from it. The inspector was not persuaded that the use of the site at Latimer Road accorded with the Surface Access Strategy and dismissed the appeal on that ground also. In my view he was right to do so.

18. In my view the inspector applied Policy LLA2 correctly. Insofar as he erred in failing to deal in sufficiently explicit terms with GPS's argument based on the loss of the Napier Park development, the error was immaterial, because he identified the right questions and reached conclusions that were open to him on the material before him.

19. For these reasons I would allow the appeal.

Lord Justice Pitchford :

20. I agree.

Lady Justice Gloster :

21.I also agree.