

Broadview ltd vs andrea leadsom - analysis



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Broadview Energy Developments Ltd Vs Secretary Of State for Communities and Local Government and Others

[2016] EWCA Civ 562

Court of Appeal, Civil Division

Presiding Judges: Longmore, Lewison, McCombe LJ

Between:

BROADVIEW ENERGY DEVELOPMENTS LIMITED

(Claimant & Appellant)

- and -

1)THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

2)SOUTH NORTHAMPTONSHIRE DISTRICT COUNCIL

3) HELMDON STUCHBURY & GREATWORTH WIND FARM ACTION GROUP

(Defendants and Respondents)

MATERIAL FACTS

Broadview is an independent renewable energy company which sought permission for development of wind farm for renewable energy, South Northampton shire district council refused to allow in November 2011(at 2). Broadview's appeal to planning inspectorate and was successful through public inquiry, granting it permission, in May 2012. (at2). The third

defendant, the windfarm Action group (HSGWAG), challenged the decision, thus rendering it quashed by justice Mackie Qc in the High Court; resultantly, the issue was remanded for redetermination to the planning inspectorate awaiting a new recommendation (at3).

During second public enquiry parties made representations between 8 to 24th October 2013 and on 11th oct 2013 Mr. Eric Pickles, the secretary of state decided to take the matter to his consideration on grounds that it involved a renewable energy case(at3). Second inspector recommended to grant the permission of farms on 14 Apr 2014 relying upon the balance of outnumbering benefits and minute adversities of the wind farm(at4). Delays were faced in Secretary of State's decision; a reason being consultation on court of appeals decision in a different case that could subsequently render a fresh interpretation of section 66(1) of act 1990 (at5). Contrary to planning inspector's recommendation, the planning permission was refused by the decision letter of Secretary of State, dated 22 Dec 2014(at6). Mr. pickles had delegated the task to Mr. Kris Hopkins, the parliamentary undersecretary of state. Mr. Hopkins credits Mr. pickle for the choice of refusal of planning permission as deemed fit according to where the balance of perks and adversities fall, alongside its conflict with development plan, accompanied by shortcoming on statutory requirements and numerous elements of national planning policy(at7).

MP Mrs. Andrea Leadsom's badgering and active lobbying in opposition to the wind farms became grounds for Broadview's further appeal on 28th Jan 2015, (at8&9). She even successfully campaigned for the Secretary of State

to " call in" the application (at 8). As per facts Mrs. Leadsom's tea room conversation with Mr. Hopkins in 2013 coupled with their numerous oral and written correspondences and the lobby room became basic grounds of appeal on fairness of decision and possible bias. Throughout this time, Broadview kept trying to seek a meeting and later on made a freedom of information request to get to know the status of correspondences (ibid) (at10). This was state of evidence for Broadview's application to quash Mr. Hopkins decision(ibid). The planning court rejected the claims of Broadview and hence their appeal(at11)

Q's / LAW ISSUES

- 1) duty of fairness owed by political decision-makers in the context of an application for planning permission.
- 2) how the Secretary of State should deal with representations from the local Member of parliament.

DECISION

Unanimously, lord justice Longmore(at38), Lewison(at39) and McCombe(at40); the court appraised and upheld the decision of Cranston Justice, the judge in the second planning court. Hence, dismissing Broadview's appeal.

DETAILED REASONS FOR THE DECISION

The gist of Cranston J's judgement was based on his personal experience, and stood that meeting of the MP with a minister was ' not of any length' and

' part and parcel' of her role, being a representative of a certain area(at17). Wrong to conclude anything biased or sinister (at17&18). R (Alconbury) Vs Secretary of State for Environment [2003] affirmed that a MP contacting Minister regarding a planning issue was inevitable (at18). Ministers are bound to abide by Planning Property Guidance (at18). The judgement comprises of three notions: (1) Broadview was aware of advancements by objectors (2) Letter received after close of enquiry lacked fresh material (3) Correspondences raised ' no' new issues therefore it was satisfactory to deem that response would be similar(at19&20). The judge concluded that there had been no evidence to support the contention that the decision was vitiated, provided, Broadview had failed to provide evidence to authenticate its stance of bias, unfairness or material breach of planning property standards; therefore, Broadview's allegations failed.

Lord Justice Longmore comments in the judgement starting by affirming that Mr. Hopkins did not differ from inspector on any '*question of fact material*' or take account of new evidence therefore liability to inform inspector did not arise. Moreover, giving a chance for both parties to be heard is obligatory and this liability to inform other party to comment on a representation made is defined in rules laid down in in Errington Vs Minister of Health (1935) and also in the rule enshrined in Latin phrase '*audi alteram partem*' (at25).

Minister did not entertain any privately made representations. Preventing the proceeding from being subverted by use of rule quoted above, it is a required measure to not call parties for cross-questioning on every representation, especially when they are repetitive. Moreover, a technical breach of para 4 of Guidance is likely but not a breach of rules of natural

Justice; case law of *Fox Land Vs SSCLG (2014)* shedding light on the particular angle of the issue(at26).

His Lordship states that it is easier to ascertain the written representations, and the content of those written correspondences make it clear that the oral ones were merely the same as they were being referred to in the subsequent letters. His Lordship further contended that he did not concur about Cranston J's belief of talk between MP and Minister to be merely a 'part and parcel'. He argued that MP doesn't hold a different position than of any parties involved(at29). His lordship considers the possibility of Mr. Hopkins abiding by '*audi alteram partem*' principle and then justifies how the chronology of events render it improper to conclude that Mr. Hopkins would have had any effect of indulging in the tea room conversation and thus a mere technical breach subsequently could not make any difference to ultimate decision(at30). The court will not enquire into likelihood of prejudice in case decision-maker receives are representation in privacy - established in *R Vs Sussex Justices ex parte McCarthy (1924)*. Case law from *Kanda Vs Government of the Federation of Malaya (1962)* further cemented the stance with the example of police constable not awarded a chance to comment on allegations on him (at31).

His lordship furthers his stance by saying that usually in such cases, court readily opts to assess the representations made, although the courts have discretion, but in my view, it should not have been exercised in current scenario(at32). By end of July 2014 Broadview had their freedom of information request granted, however, it was highly unlikely that Broadview would had been successful in invoking court to take matter out of hands of
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the Parliament entrusted decision-makers: Mr. Hopkins and Mr. Pickles (at33). 'Lobby Badgering' had no effect on the decision as the matter was already decided. Moreover, miss Leadsom's attempt was to merely know the decision rather diverting it in certain direction(at34). Thus, Longmore concluded the events not such to justify quashing of decision (at35). He further clarifies that it was Ministerial responsibility that the respected decision-makers abided by in deciding the finely balanced matter (at36). He also signifies the need of Ministers to avoid Lobbying and concludes that any blatantly ignorant accusations of bias would be clarified under light of Magill Vs Porter (at37). For these reasons, he dismissed the appeal (at38).

Lord Justice Lewison said that he agrees with Longmore LJ's Judgement and also with additional observations of McCombe LJ, hence agrees for dismissal of appeal.

Lord Justice McCombe agrees with Longmore on dismissal of this appeal, however, shows disagreement on certain areas(at40). According to him there was undoubtedly a breach of paragraph 4 of the Guidance by what appears to have occurred in the "tea room conversation". If the chronology of events would have been otherwise, the lawfulness of this decision would have been in peril (at41). He also explains the significant breach of ordinary principals of fairness in English Law to support his stance (at42).

He continues how one party should not have any advantage in manner not afforded to other interested party (at43). He argued over comment of 'part and parcel' and defined fine lines between talks upon ordinary consistency matters and lobbying. In his final comments, concluding to the dismissal of

appeal, he also emboldened the need of Ministers to adhere to ordinary laws of fairness and natural justice.

RATIO DECIDENDI

With respect to the allegation of bias made by Broadview, a fair-minded and informed observer would conclude that there had been no real possibility of ministerial bias in the present case. Further, there was simply no evidence to support the contention that the decision was vitiated by actual bias.

Accordingly, Broadview had failed to establish that the ministerial decision against planning permission for its proposed wind farm had been unlawful through unfairness, bias or material breach of planning propriety standards (para21, Cranston J).

“ I would therefore conclude that while the tea room conversation (and even the lobby badgering) should not have occurred and should have been cut off by Mr Hopkins more firmly than he may have done, those events are not such as to justify quashing the Secretary of State’s decision”. (para 35, Lord Justice Longmore).

“ I have had the advantage of reading in draft the judgments of Longmore and McCombe LJ. I agree that the appeal should be dismissed for the reasons given by Longmore LJ. I also agree with the additional observations of McCombe LJ (at39 Lord Justice Lewison).

“ On the facts of this case (in particular in the light of the chronology and the factors set out in paragraph 30 of my Lord’s judgment), however, this breach was not of sufficient moment to call for the quashing of the Secretary of

State's decision on the grounds of a breach of the principles of natural justice. Had the chronology been otherwise, and if the conversation had been more closely proximate in time to the decision taken, then it seems to me that the lawfulness of the decision might well have been in peril" (para 41, McCombe).

" Representations which are essentially repetitive of submissions already made are rather different. In such case a court will more readily assess whether such repetitions really made a material contribution to the decision under challenge. If it concludes that they did not, the quashing of the ensuing decision should not follow. A court always has discretion as to remedy in public law and should, in my view, not exercise that discretion in the present case." (at Para 32)

" If a party to an inquiry or an objector seeks to bombard a minister with post-inquiry representations which are merely repetitive of the representations made at the inquiry itself and every time that happened the Minister was obliged to circulate the representatives for comment, the decision-making process could easily be subverted." (Longmore LJ at 26).

When a Minister is involved in a quasi-judicial decision it is ' incumbent' on him ' to make clear to any person who tries to make oral representations to him that he cannot listen to them' (Longmore LJ at 28).