*661 Westminster City Council Appellants v Great Portland Estates Plc. Respondents

Positive/Neutral Judicial Consideration

Court
House of Lords

Judgment Date
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House of Lords

Lord Fraser of Tullybelton , Lord Wilberforce , Lord Scarman , Lord Roskill and Lord Bridge of Harwich

1984 July 16, 17; Oct. 31

Town Planning—Development—Local authority's development plan—Protection of specific industrial activities—Office development subject to non—statutory guidelines—Whether interests of individual occupiers irrelevant to formulation of industrial policy—Whether reliance on non—statutory guidelines invalid—Inspector's recommendation following public inquiry rejected—Whether duty to give reasons— Town and Country Planning Act 1971 (c. 78), Sch. 4, para. 11 (as substituted by Town and Country Planning (Amendment) Act 1972 (c. 42), s. 4(1), Sch. 1)

[1] The City of Westminster's district plan, adopted by the city council in April 1982 embodied in paragraphs 11.22 to 11.26 the council's industrial policy which provided for the protection of specific industrial activities with important linkages with central London activities. They were specified as long established industries such as clothing, fur and leather, and paper, printing and publishing whose central London location, necessary to maintain the required services, made them vulnerable to pressure for redevelopment from other more financially profitable uses.

In relation to office development, the city council in paragraphs 10.21 to 10.23 drew a distinction between a 'central activities zone,' in which office development was to be encouraged, and the rest of the city, where planning permission for office development would not be granted save in exceptional or special circumstances not outlined in the plan but expressed to be the subject of 'non-statutory guidance ... prepared after consultation following adoption of the plan.' Objection was taken to the city council's office policy and a public inquiry was held. The inspector's report recommended that a policy of office development outside the central activities zone should be incorporated into the plan and not left to guidance outside it. The city council did not accept the inspector's report.

The applicants, a property company, applied under section 244(1) of the Town and Country Planning Act 1971 to quash paragraphs 11.22 to 11.26 on the ground that the provisions were not within the powers of Schedule 4, paragraph 11(2) of the Act of 1971, in that they were concerned with particular users of land rather than the development and use of land; and that the city council, in formulating the industrial policies, had had regard to an irrelevant consideration, the interests of individual occupiers of industrial premises within the city. The applicants applied to quash paragraphs 10.21 to 10.23 on the grounds

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that the city council's comment upon the inspector's report was not an adequate statement of their reasons for rejecting it, and that by relying upon non-statutory guidelines to *662 indicate what would constitute the exceptional circumstances for office development outside the central activities zone, the city council had failed to comply with the requirement in Schedule 4 that the plan must contain their proposals for the development and use of land.

Woolf J. dismissed the application but the Court of Appeal held that paragraphs 10.21 to 10.23 and 11.22 to 11.26 of the plan should be quashed.

On appeal by the city council:-

Held, allowing the appeal in part,

(1) that the test of what was a material consideration in the preparation of local plans or in the control of development was, as in the grant or refusal of planning permission, whether it served a planning purpose which related to the character of the use of the land; that on their true construction, the industrial policies of the plan were concerned not with the protection of existing occupiers but with a genuine planning purpose, the continuation of industrial use important to the character and functioning of the city and, accordingly, paragraphs 11.22 to 11.26 of the plan should stand (post, pp. 670C-D, 671C-D).

East Barnet Urban District Council v. British Transport Commission [1962] 2 Q.B. 484 , D.C. and *Newbury District Council v. Secretary of State for the Environment [1981] A.C. 578* , H.L.(E.) applied.

(2) That notwithstanding the duty on a public body to give reasons, when so required by statute, that were proper, adequate and intelligible, those reasons could be briefly stated; and the city council's reasoning with respect to the office policies had been adequately explained in paragraphs 10.21 to 10.23 and by its comment on the inspector's report (post, p. 673D-G).

In re Poyser and Mills' Arbitration [1964] 2 Q.B. 467 and *Edwin H. Bradley and Sons Ltd. v. Secretary of State for the Environment (1982) 264 E.G. 926* approved.

But (3) that the adoption by a local planning authority of non-statutory guidelines for the development and use of land in its area constituted a failure to comply with Schedule 4, paragraph 11 of the Act of 1971 and accordingly the order that paragraphs 10.21 to 10.23 of the plan should be quashed would be upheld (post, p. 674D-G).

Per curiam. Rights relating to the use and development of land, including those of landlords and others interested in land, take effect subject to the controls imposed by planning law (post, p. 671E).

Decision of the Court of Appeal (1983) 82 L.G.R. 44 varied.

The following cases are referred to in the opinion of Lord Scarman:

Bradley (Edwin H.) and Sons Ltd. v. Secretary of State for the Environment (1982) 264 E.G. 926
East Barnet Urban District Council v. British Transport Commission [1962] 2 Q.B. 484; [1962] 2 W.L.R. 134; [1961] 3 All E.R. 878, D.C.
Newbury District Council v. Secretary of State for the Environment [1981] A.C. 578; [1980] 2 W.L.R. 379; [1980] 1 All E.R. 731, H.L.(E.)
Poyser and Mills' Arbitration, In re [1964] 2 Q.B. 467; [1963] 2 W.L.R. 1309; [1963] 1 All E.R. 612
Westminster City Council v. British Waterways Board (1983) 82 L.G.R. 44 , C.A.; *[1985] A.C. 676; [1984] 3 W.L.R. 1047; [1984] 3 All E.R. 737, H.L.(E.)* ****663***

No additional cases were cited in argument.

APPEAL from the Court of Appeal.

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This was an appeal by the appellants, Westminster City Council, by leave of the Court of Appeal (Lawton, Dillon and Purchas L.JJ.) on 6 December 1983 reversing the decision of Woolf J. on 25 February 1983 whereby he dismissed an application by the respondents, Great Portland Estates Plc., for an order that the City of Westminster district plan be quashed in so far as it related to office development outside the central activities zone and to the protection of specific industrial activities. The Court of Appeal ordered that paragraphs 10.21 to 10.23 and 11.22 to 11.26 of the plan be quashed.

The facts are stated in the opinion of Lord Scarman.

Michael Barnes Q.C., Christopher Lockhart-Mummery and Anne Williams for the appellants. The duty of a local planning authority to decide applications for planning permission is derived from section 29(1) of the Town and Country Planning Act 1971 , which provides that in dealing with the application the authority shall have regard to the development plan, so far as material to the application, and to any other material considerations. There is nothing express in the legislation to cut down the generality of the phrase 'other material considerations.' When a local planning authority consider an application it will be obvious that if permission is granted and then implemented the likely result is that an existing occupier of the premises (usually a tenant) will be displaced and the premises will not thereafter be available for occupation by that or any other potential occupier in their existing state. The premises will cease to be available for occupation by the class or category of persons who desire to occupy premises of their particular age, type and location. The loss of such premises which, if they remained, would fulfil or cater for the needs of a particular category of occupier, can be a material consideration. It was to considerations of that kind that paragraphs 11.22 to 11.26 of the district plan were directed.

The desirability of keeping premises in their existing state is a proper planning consideration, as is the question of the hardship that may be caused to an existing occupier. The approach of the courts below to the question of the validity of those paragraphs should have been to ask (1) whether the policies contained in them were proposals for the development or use of land and (2) if so, did they require the local planning authority to take into account considerations that were not lawful. Here, the policies were plainly proposals for the development or use of land and the desirability of keeping premises in their existing physical state, to meet a need for premises in such a state, is a lawful consideration. It is accepted that that affords to some occupiers a protection they would not have if the policy did not exist, but that is not a vitiating factor.

The Court of Appeal relied on *Westminster City Council v. British Waterways Board [1985] A.C. 676* . That case was wrongly decided in so far as it was held that it was not a material consideration in refusing planning permission that the implementation of that permission would extinguish the use of the land as a street cleansing depot or that the ***664*** occupiers of the land for that purpose would be displaced and would not be able to find alternative premises. If it were the law that the particular needs and circumstances of actual or potential occupiers of land were not relevant serious consequences would flow, for example (1) the need to preserve an existing use of land so as to keep it available for potential occupiers would not be a good reason for refusing permission to change the use, and (2) the hardship which would be caused to an occupier of neighbouring land with special needs could not be a material consideration. The law as it stands allows a very wide category of cases to be taken into account, including preserving an existing use, the effect on occupiers of adjoining properties, the 'precedent effect' if planning permission is granted, the financial viability of the development, the availability of alternative sites, the question whether, in cases where a planning permission is applied for and there is already in existence a previous planning permission, that previous permission can be used, and the personal circumstances of the applicant.

In relation to paragraphs 10.21 to 10.23 of the plan, relating to office development, the main defect alleged is the use of non-statutory guidelines. The question to be asked is whether any reasonable council would have done so. Applying that test, the council, in deciding not to put such detail in the plan, had not acted unreasonably. On the contrary, it would have been unreasonable to put into the plan all the details for every area; the plan would have been too big. Further, the appellants in their comment upon the inspector's report where they rejected his views and recommendations, had not failed to comply with the requirement to give reasons imposed by regulation 17 of the Town and Country Planning (Local Plans for Greater London) Regulations 1974 . Their comment is an adequate statement of their reasons for rejecting the views.

David Woolley Q.C. and *William Hicks* for the respondents. The appellants state that the 'industrial' policy in paragraphs 11.22 to 11.26 of the district plan is to preserve certain buildings in the physical state in which they are in today so that their presence in the areas where they are located is assured. The purpose and consequences are one and the same - to protect the occupation of existing occupiers. If the purpose of the policy is to preserve the buildings in their physical state, there is no reference to that in the plan It would have been easy for the council to limit the occupations that could be used in the premises on redevelopment. But it is only to the trade and not to the individual that the council can offer protection. To go beyond that would invalidate

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the industrial policies. Small traders are essential to the quality of local life but it does not follow that because a small trader says he is satisfied with the 150 year old premises that the owners wish to redevelop, that he is right. It is not accepted that redevelopment automatically prices the small trader out of the market.

The council's objectives can be achieved by the imposition of conditions on the planning permission, and if the physical character of a building is important, it is open to the Secretary of State for the Environment to list the building; or there are other means, such as the creation of conservation areas.

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Dealing with the 'office policy' in paragraphs 10.21 to 10.23 of the plan, we are not told why the non-statutory guidelines are necessary. Provisions as large as these precluding office development cannot be precluded from inquiry by means of non-statutory guidelines. Any policy dealing with half the City of Westminster must be included in the plan. Further, regulation 17 of the Town and Country Planning (Local Plans for Greater London) Regulations 1974 required the appellants to give reasons for its decision to reject the independent inspector's recommendations as to their plan. The reasons must be clear and intelligible and deal with the substantial points that have been raised: *In re Poyser and Mills' Arbitration [1964] 2 Q.B. 467* , 478 *per* Megaw J. The council did not attempt to grapple with the reasoning of the inspector.

Barnes Q.C. in reply. The aim of the industrial policies is to state that there are certain types of uses within central London which need to be there. In relation to the office policies, a construction of paragraph 11 of Schedule 4 to the Act of 1971 which would result in everything, whatever the level of particular detail, having to go into the plan, cannot be accepted. The planning authority should not have to deal with every detail at the outset.

Their Lordships took time for consideration.

31 October. LORD FRASER OF TULLYBELTON.

My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Scarman, and I agree with it. For the reasons given by him I would vary the order of the Court of Appeal as he suggests

LORD WILBERFORCE.

My Lords, I concur.

LORD SCARMAN.

My Lords, in these proceedings Great Portland Estates Plc. challenge certain parts of the City of Westminster district plan. They made their challenge by application to the High Court pursuant to section 244 of the Town and Country Planning Act 1971 . Woolf J. dismissed the application, but on appeal the Court of Appeal upheld the challenge and quashed part of the policies for industrial and office development embodied in the plan. The City of Westminster, who are the local planning authority responsible for the plan, appeal with the leave of the Court of Appeal to your Lordships' House.

Section 244(1) of the Act of 1971 enables a person aggrieved to question the validity of a structure plan or a local plan on two grounds: either that it is not within the powers conferred by Part II of the Act of 1971 or that any requirement of Part II or of any regulations made thereunder have not been complied with in relation to the approval or adoption of the plan. The respondent company's case, which prevailed in the Court of Appeal, consists of two quite separate challenges. The first is that one aspect of the industrial policies embodied in the plan is not within the powers conferred by Part II of the Act of 1971. The second, which relates to the plan's policy for office development, is that in adopting the plan the City of Westminster failed to comply with ****666*** certain requirements of the Act of 1971 and of the regulations made under it.

Section 244(2) of the Act of 1971 sets out the powers of the High Court. The court may grant interim relief by suspending the operation of the plan. The respondent company did seek such relief, but no question of an interim order now arises for consideration. Upon final determination of an application the court, if satisfied either that the plan is wholly or to any extent ultra vires or that the applicant's interests have been substantially prejudiced by failure to comply with a statutory requirement, may wholly or in part quash the plan. The subsection, therefore, confers upon the court a power to be exercised at its discretion. It would be surprising if a court were to refuse to quash if satisfied that the plan or part of it was ultra vires; but clearly discretion

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may bulk large in deciding whether or not to quash upon the second ground. In the instant case the appellant authority accepts that if any part of the plan is ultra vires it must be quashed. If, however, the House should hold that in respect of the office development policy there had been a failure to comply with a requirement in relation to the adoption of the plan, the appellant submits that the discretion should be exercised against making an order to quash the part of the plan affected by that failure.

Part II of the Act of 1971 makes provision for the preparation, adoption, and approval of development plans. Section 19 provides that in relation to Greater London Part II shall have effect subject to the provisions of Schedule 4 to the Act of 1971. The Schedule provides for a structure plan for Greater London. London borough councils may prepare local plans: the appellants, being a local planning authority, prepared and in April 1982 adopted a local plan for their area, namely the City of Westminster district plan. The general provisions set out in paragraph 11 of the Schedule (as substituted by the Town and Country Planning (Amendment) Act 1972, section 4(1) and Schedule 1) apply to the plan. So far as material to this appeal, the paragraph provides:

> '(2) The plan shall consist of a map and a written statement and shall - (a) formulate in such detail as the council think appropriate their proposals for the development and other use of land in the area ... or for any description of development and other use of such land ... (4) In formulating their proposals in the plan the council shall - (a) secure that the proposals conform generally to the Greater London development plan ... and (b) have regard to any information and any other considerations which appear to them to be relevant ...'

The Greater London structure plan lays down the general strategy for the development and use of land in London. A local plan applies and may adjust this strategy to meet the planning needs of its area. A local plan's proposals, though they must conform generally to the structure plan, can deviate from it; and, if they do, the provisions of the local plan prevail for all purposes: section 14(8) of the Act of 1971.

When a London council proposes to prepare a local plan, it must secure adequate publicity so as to ensure that adequate opportunity is ***667*** given for making representations (including, of course, objections) and the council 'shall consider any representations made to them within the prescribed period': paragraph 12(1) of Schedule 4 . and before the council adopts the plan it must make copies available for public inspection, and send copies to the Greater London Council and the Secretary of State. The Secretary of State has extensive powers (which include the giving of directions and the suspension of operation) in respect of local plans which it is not necessary to consider because none were exercised. The Greater London Council have a right to be consulted before a local plan is prepared.

Section 13 of the Act of 1971 makes provision for inquiries in respect of draft local plans. In the case of objections put forward in accordance with regulations made under Part II of the Act the council must cause a local inquiry to be held by a person appointed by the Secretary of State: section 13(1) of the Act of 1971. Section 14 (as amended by section 3(2) of the Town and Country Planning (Amendment) Act 1972) empowers the local planning authority after considering objections so made to adopt the plan entire as originally prepared or as modified so as to take account of objections or other material considerations.

Unless, therefore, the Secretary of State intervenes (which in this case he has not), the council as local planning authority has the power of decision. But the power is subject to a requirement which is to be found in regulation 17(1) of the Town and Country Planning (Local Plans for Greater London) Regulations 1974 (S.I. 1974 No. 1481) . Where a local inquiry to consider objections has been held, the local planning authority shall:

> 'consider the report of the person appointed to hold the inquiry ... and decide whether or not to take any action as respects the plan in the light of the report and each recommendation, if any, contained therein; and that authority shall prepare a statement of their decisions, giving their reasons therefor.'

Within the statutory frame which I have outlined it is now necessary to consider the two challenges made by the respondents to the district plan. I will deal first with the challenge to the industrial policies embodied in the plan: and secondly with the challenge to the plan's policy for office development.

The 'industrial' challenge

The industrial policy under challenge is in paragraphs 11.21 to 11.26 of the plan. The general policy is that applications for planning permission for new industrial floor-space and the creation of new industrial employment will, subject to other policies, be encouraged. The plan, however, goes on to protect 'specific industrial activities.' The council explains what it means by these words in paragraph 11.22, which, because of its importance, I quote:

> ' *Purpose.* The city council considers that those industrial activities with important linkages with central London activities, particularly in the central activities zone, should be maintained.'

668 The critical words are 'important linkages with central London activities,' since they define the planning purpose of the policy of protection. Paragraph 11.23 gives the reasons for the policy:

> 'In 1971 about half the industrial floorspace in Westminster was located in the central activities zone. The greater proportion of this floorspace was occupied by firms which had been long established in the area, such as clothing, fur and leather, and paper, printing and publishing. Many of these industries need a central location in order to maintain the services required, but this central location also makes them vulnerable to pressure from other more financially profitable uses. The city council feels that the loss of these supporting industrial activities may threaten the viability of other important central London activities.'

The reason, therefore, for the policy of protection is that, in the opinion of the council as local planning authority, the loss of the specified industrial activities may threaten the viability of other important central London activities.

In paragraph 11.24 the council makes the comment that while it cannot influence 'internal changes in the operation of a firm' (which I take to be a reference to such matters as a business's financial viability, its market success or failure, and its management) it can influence 'external pressures' which could interfere with 'established linkages.' The point is clear, though the jargon may strike some as unattractive: by the exercise of its planning powers the council can protect the specified industrial activities from disappearance in the face of the competitive pressure to redevelop their sites for other more profitable uses which, however, do not assist the viability of other important central London activities.

Paragraph 11.25 offers the explanation which I have just summarised of the term 'external pressures.' In a critical passage the paragraph then reveals the approach which the council proposes to take towards applications for the grant of planning permission for redevelopment in such cases. The passage is in the following terms:

> 'This source of conflict is particularly severe in the central activities zone. Here, many of the longer established industrial firms are often located in premises which are old and subject to historic rents or nearing the end of leases, and as a result are particularly susceptible to change and consequent displacement. Notwithstanding the need for modern industrial premises already identified in para. 11.19, where the existing occupants of premises in, or including, industrial use are satisfied with that accommodation and in the city council's view no apparent case can be made for development or major

> rehabilitation, then it would be against the aim of retaining such industry readily to grant permission for redevelopment, or in some cases, major rehabilitation.'

In the paragraphs 11.21 to 11.25, therefore, the council explains the planning problem, states its planning purposes and the reasons for it, and indicates what will be its approach to applications for planning ***669*** permission to redevelop the sites where there are presently carried on the industrial activities which in its judgment are so important to the life of central London. In paragraph 11.26 the council formulates its policy to meet the problem:

> '11.26 In order to ensure so far as possible, the continuation of those industrial uses considered important to the diverse character, vitality and functioning of Westminster, the city council has the following policies in addition to those set out above in para. 11.21: (i) Planning permission for major rehabilitation or the redevelopment of industrial premises containing industrial use will not normally be granted where it is considered that such development could be to the disadvantage of existing or potential industrial activities. In implementing this policy the city council will have regard to the need to seek improvement in the environment, and the impact on other occupiers of the premises.'

Clearly the policy in 11.26 conflicts with the general policy in 11.21 for industrial development. Paragraph 11.12 takes care of the conflict by providing that the 11.26 policy to protect the specified existing industrial activities will normally be accorded precedence over the policy set out in 11.21.

The respondents challenge the 11.26 policy as being outside the powers conferred by Part II of the Act of 1971. The essence of the argument is that the 11.26 policy of protecting certain specified industrial activities is concerned not with the development and use of land but with the protection of particular users of land. The plan, it is submitted, has regard to an irrelevant factor, namely the interests of individual occupiers. The respondents seek to support this case by reference to the Landlord and Tenant Act 1954 . One of the grounds on which a landlord may oppose a tenant's application for a new tenancy is that on termination of the current tenancy he intends to demolish or reconstruct the premises: section 30(1)(f) . If there be a planning policy protecting the occupation of the tenant, its effect will be to deny the landlord the opportunity of invoking section 30(1)(f) in opposition to a tenant's application for a new tenancy since he will be unable to show that he will be likely to obtain planning permission for redevelopment.

My Lords, the principle of the law is now well settled. It was stated by Lord Parker C.J. in one sentence in *East Barnet Urban District Council v. British Transport Commission [1962] 2 Q.B. 484* . The issue in that case was whether the use of a parcel of land constituted development for which planning permission was required. The justices found that it did not and the Divisional Court, holding that the question of change of use was one of fact and degree, refused to intervene. In the course of his judgment, with which the other members of the court agreed, Lord Parker C.J. said, at p. 491, that when considering whether there has been a change of use 'what is really to be considered is the character of the use of the land, not the particular purpose of a particular occupier.' These words have rightly been recognised as extending beyond the issue of change of use: they are accepted as a statement of general principle ***670*** in the planning law. They apply to development plans as well as to planning control.

Development plans formulate policies and proposals for the development and other use of land: sections 7(3) and 11(3) of the Act of 1971. When adopted or approved they constitute an authoritative general guide to the approach which will be followed by local planning authorities when dealing with applications for planning permission. Plans are concerned with the use of land and more particularly with its 'development,' a term of art in the planning legislation which includes now, and has always included, the making of a material change in the use of land: section 22 of the Act of 1971.

It is a logical process to extend the ambit of Lord Parker C.J.'s statement so that it applies not only to the grant or refusal of planning permission and to the imposition of conditions but also to the formulation of planning policies and proposals. The test, therefore, of what is a material 'consideration' in the preparation of plans or in the control of development (see section 29(1) of the Act of 1971 in respect of planning permission: section 11(9), and Schedule 4 paragraph 11(4) in respect of local plans), is

whether it serves a planning purpose: see *Newbury District Council v. Secretary of State for the Environment [1981] A.C. 578* , 599 *per* Viscount Dilhorne. and a planning purpose is one which relates to the character of the use of land. Finally, this principle has now the authority of the House. It has been considered and, as I understand the position, accepted by your Lordships not only in this appeal but also in *Westminster City Council v. British Waterways Board [1985] A.C. 676* in which argument was heard by your Lordships immediately following argument in this appeal.

However, like all generalisations Lord Parker C.J.'s statement has its own limitations. Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control.

Accordingly, I agree with Dillon L.J., who delivered the first judgment in the Court of Appeal that the respondents' challenge to the industrial policies of the plan is a question of the construction to be put upon paragraph 11.26 of the district plan. Of course, the paragraph cannot be considered in isolation from its context. One must look also at ***671*** the other paragraphs to which I have referred. At first instance, Woolf J., adopting this approach, concluded that

> 'the plan does not fall foul of the statement made by Lord Parker C.J. in *East Barnet Urban District Council v. British Transport Commission [1962] 2 Q.B. 484* , 491. It contains provisions designed to assist the position of a particular class of user of property which it is the policy of the City of Westminster, for planning reasons, to encourage to remain in the city.'

and he went on to comment that the plan was formulated so as to afford room, nevertheless, for any specific proposal of industrial development to be considered on its merits. The Court of Appeal disagreed. In their view, as expressed by Dillon L.J., 'the council's real concern is with the protection of existing occupiers.'

I have no hesitation in accepting the view of Woolf J. A fair interpretation of this part of the plan is that the council was concerned to maintain, as far as possible, the continuation of those industrial uses 'considered important to the diverse character, vitality and functioning of Westminster.' Here was, in paragraph 11.26 of the plan, a genuine planning purpose. It could be promoted and perhaps secured by protecting from redevelopment the sites of certain classes of industrial use. Inevitably this would mean that certain existing occupiers would be protected: but this was not the planning purpose of the plan, though it would be one of its consequences. In my view, the council makes a strong planning case for its proposal: the 'linkage' argument stated in paragraphs 11.23 and 11.24 is a powerful piece of positive thinking within a planning context.

There remains the point on the Landlord and Tenant Act 1954. It is, in my judgment, based upon a misconception of the relationship between the planning legislation and private law. Rights to the use and development of land are now subject to the control imposed by the planning law. The rights of landlords, as of others interested in land, take effect subject to planning control.

For these reasons, therefore, I think that the appellant council succeeds against the challenge to the industrial policies embodied in the plan.

The challenge to the 'office policies'

The challenge is to paragraphs 10.21 to 10.23 of the plan. The plan divides the City of Westminster into two zones: the central activities zone which includes the West End and Whitehall and the rest of the city where in the council's view there is an overriding need that land use and development should be compatible with residential use. Paragraph 10.21 indicates that the

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policy of the plan is 'to guide office development to locations within the central activities zone.' I set out in full paragraphs 10.22 and 10.23 as being critical for the consideration of the respondents' challenge:

> '10.22 Outside the central activities zone office development will not normally be appropriate since the overriding need will be for the activities in residential areas to be wholly compatible with, and ***672** to serve the needs of, those areas. The exceptional circumstances in which such office development may be permitted are best dealt with by non-statutory guidance for different locations in the city; these will be prepared after consultation following adoption of the plan.
>
> '10.23 Bearing in mind the need in central London to guide new offices to areas where such development will be most advantageous and the protection of residential uses throughout the city, the city council's general policies on the location of offices are set out below. In implementing these policies the city council will not accept that proximity to significant facilities for passenger interchange is, in itself, a reason for granting permission for office use. (i) Office development may, in accordance with the Greater London Development Plan ... be acceptable on individual sites within the central activities zone ... (ii) Outside the central activities zone planning permission for office development will not be granted except in special circumstances.'

This policy of prohibition of office development outside the central activities zone save in 'exceptional' (paragraph 10.22) or 'special' (paragraph 10.23) circumstances drew objections from many including the respondents who, as is well known, are substantial landowners in the City of Westminster. An independent public inquiry was held pursuant to sections 13 and 14 of the Act of 1971 to consider the objections. The inspector reported adversely to the plan's proposal in respect of office development outside the central activities zone. He reported that in his view the policy of 'virtual proscription' of office development outside the zone was wrong. He noted that it did not conform with the Greater London structure plan. He argued that there must be occasions (his word) in the environment of a capital city when offices can be developed beyond the innermost core without harm to the structure of the city or the people who live there. He praised the council's proposals for protecting the central activities zone while allowing in it office and some industrial development and saw no reason why such protection should not be effective if extended to the rest of the city. He concluded that 'offices should be an accepted use in the areas beyond the boundary of the central activities zone.' His recommendation was:

> 'That consideration be given to modifying those parts of the plan concerned with office development beyond the boundaries of the central activities zone. This consideration should extend to the incorporation in the plan of policy statements indicating the opportunities for office development for central London activities to take place in areas outside the central activities zone.'

In the Court of Appeal, Dillon L.J., who gave the leading judgment, summarised the objections of the inspector to the plan. They were two: (1) that the policy of virtual proscription of offices was wrong, particularly in the areas of Paddington and Marylebone stations; and (2) that a policy of office development outside the central activities zone should be incorporated in policy statements to be included in the plan and not left to guidance outside the plan.

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The council considered the inspector's report and recommendation. Its comment was brief and, as Dillon L.J. said, terse:

> 'Not accepted. It is considered that the opportunities for office development to take place outside the central activities zone can be appropriately indicated in the non-statutory guidelines to be prepared in accordance with the plan, para. 10.22.'

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The respondents submit that the council's comment upon the inspector's report is not an adequate statement of their reasons for rejecting the views expressed in the report or the recommendation, and so fails to comply with the requirement to give reasons imposed by regulation 17 of the Town and Country Planning (Local Plans for Greater London) Regulations 1974 which were made under Part II of the Act of 1971. They further submit that by relying upon non-statutory guidelines to indicate what would constitute the exceptional or special circumstances in which it would permit office development outside the central.activities zone the council failed to comply with the requirement of Schedule 4, paragraph 11 of the Act of 1971 that the plan must contain the council's proposals for the development and use of land.

(i) *Failure to give reasons.* When a statute requires a public body to give reasons for a decision, the reasons given must be proper, adequate, and intelligible. In *In re Poyser and Mills' Arbitration [1964] 2 Q.B. 467* , Megaw J. had to consider section 12 of the Tribunals and Inquiries Act 1958 which imposes a duty upon a tribunal to which the Act applies or any minister who makes a decision after the holding of a statutory inquiry to give reasons for their decision, if requested. Megaw J. commented, at p. 478:

> 'Parliament provided that reasons shall be given, and in my view that must be read as meaning that proper, adequate reasons must be given. The reasons that are set out must be reasons which will not only be intelligible, but which deal with the substantial points that have been raised.'

He added that there must be something 'substantially wrong or inadequate' in the reasons given. In *Edwin H. Bradley and Sons Ltd. v. Secretary of State for the Environment (1982) 264 E.G. 926* , 931 Glidewell J. added a rider to what Megaw J. had said: namely, that reasons can be briefly stated. I accept gladly the guidance given in these two cases. However, I also agree with Woolf J. that in this case the council's reasoning in support of its view is made perfectly clear in paragraphs 10.21 to 10.23 of the plan and by its refusal to accept the inspector's report and recommendation. Accordingly, I reject this submission. This challenge to the plan, therefore, fails.

(ii) *The non-statutory guidelines.* Woolf J. rejected this challenge to the validity of the plan, holding that there was nothing in the Act which requires a local plan to elaborate what will be regarded as exceptional or special circumstances: 'the range' he said 'of such circumstances can be regarded almost as never-ending.'

The Court of Appeal took a different view. Dillon L.J. examined the non-statutory guidelines promulgated by the council and found that they ***674** represented an endeavour to meet the point of principle expressed in the inspector's report that the policy of total proscription of office development outside the central activities zone was wrong and not in conformity with the Greater London structure plan. It is unnecessary for me to say more of the guidelines than that the council uses them to set out certain 'non-statutory policies': paragraph 3.2 of the guidelines. In paragraphs 3.3 and 3.4 of the guidelines the council states what those policies are. In the view of the Court of Appeal the exclusion of those policies from the plan constituted a failure to comply with the requirements of Schedule 4, paragraph 11 of the Act of 1971.

My Lords, I find the point one of some difficulty. Development plans are no inflexible blueprint establishing a rigid pattern for future planning control. Though very important, they do not preclude a local planning authority in its administration of planning control from considering other material considerations: section 29(1) of the Act of 1971. Further, it is accepted that exceptional hardship to individuals or other special circumstances may be treated in some cases as a material consideration. A reference, therefore, to exceptional or special circumstances in a plan is not improper, though, strictly, it is never necessary. But what is the position if it can be shown, as in this case, that the reference to exceptional or special circumstances is a cover for policies excluded from the plan?

The statute requires that a local plan shall formulate in such detail as the council thinks appropriate their proposals for the development and use of land: section 11 and Schedule 4, paragraph 11(2) of the Act of 1971. If a local planning authority has proposals of policy for the development and use of land in its area which it chooses to exclude from the plan, it is, in my judgment, failing in its statutory duty. An attempt was made to suggest that the non-statutory guidance in this case went only to

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detail, as to which the council is given a discretion. But the council provides the answer to this point: it speaks in its guidelines of its non-statutory policies. In the Court of Appeal, Dillon L.J. demonstrated by his quotations from paragraphs 3.2, 3.3 and 3.4 of the non-statutory guidelines that they do indeed, as the council itself says, contain matters of policy relating to the control of office development outside the central activities zone.

It was the duty of the council under Schedule 4 of the Act of 1971 to formulate in the plan its development and land use proposals. It deliberately omitted some. There was therefore a failure on the part of the council to meet the requirement of the Schedule. By excluding from the plan its proposals in respect of office development outside the central activities zone the council deprived persons such as the respondents from raising objections and securing a public inquiry into such objections.

The council submits finally, that, if there was such a failure, the discretion of the court, which undoubtedly exists, to refuse an order to quash should be exercised in its favour. In the present case the discretion fell to be exercised by the Court of Appeal. The court made the order to quash because, in its view, it was wholly unreasonable and improper to put into extra-statutory guidelines matters which ought to have been ***675*** in the plan so that all interested persons might know what the policy of the council would be in granting permission for office development outside the central activities zone. I agree: but, even if I did not, I would not interfere: for this was a matter for the Court of Appeal, and I know of nothing which would justify the House in interfering with the exercise of their discretion in the present case.

In my judgment, therefore, the appeal is only partly successful. I would vary the order of the Court of Appeal so as to delete paragraphs 11.22 to 11.26 from the order quashing parts of the plan. The order to quash paragraphs 10.21 to 10.23 of the plan stands. I propose that there be no order for costs either in your Lordships' House or below.

LORD ROSKILL.

My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Scarman. I agree with it and for the reasons he gives I, too, would vary the order of the Court of Appeal as he proposes. I would make no order for costs in your Lordships' House or in the courts below.

LORD BRIDGE OF HARWICH.

My Lords, for the reasons given in the speech of my noble and learned friend Lord Scarman with which I agree, I would vary the order of the Court of Appeal as he proposes.

Representation

Solicitors: Solicitor, Westminster City Council ; Nabarro Nathanson .

Appeal allowed in part. Order of Court of Appeal varied. No order as to costs. (C. T. B.)

Footnotes

1 Town and Country Planning Act 1971, Sch. 4, para. 11 (as substituted): see post, p. 666F-G.

(c) Incorporated Council of Law Reporting for England & Wales