GREGORY AND OTHERS v. SECRETARY OF STATE FOR THE ENVIRONMENT AND REIGATE AND BANSTEAD BOROUGH COUNCIL

RAWLINS AND OTHERS v. SECRETARY OF STATE FOR THE ENVIRONMENT AND TANDRIDGE DISTRICT COUNCIL

COURT OF APPEAL (Neill, Butler-Sloss and McCowan LL.J.): November 21, 1989

Mobile homes—Enforcement notices—Planning unit—Land divided into small plots occupied by caravans—Whether notice to be served on whole plot of land or on individual occupiers of each plot

Both appeals were by groups of travelling showmen and their families who had placed their caravans and equipment upon former agricultural sites in the Surrey green belt. Enforcement notices were served by both local planning authorities alleging breaches of planning control by the development of the whole of each site without planning permission. Appeals were made to the Secretary of State for the Environment on the ground that an enforcement notice issued in respect of a piece of land which was divided into small plots for occupation by caravans was not a valid notice under section 87 of the Town and Country Planning Act 1971. It was argued that the section required a separate notice for the owner and occupier of each plot. Both inspectors appointed to determine the appeals considered that it was the whole of each site which had undergone a fundamental change of character as a result of the change of use and the notices were therefore directed at the correct planning units. The appeals were dismissed. The appellants further appealed unsuccessfully to the High Court.

Held, dismissing the appeal, that none of the previous decisions related to an aggrieved appellant claiming that too large a planning unit had been chosen. The point at issue had not therefore previously arisen for decision. The approach adopted by the inspectors was impeccable. The question of what was the proper planning unit was not a matter of pure construction, but was essentially a matter of fact and degree. The decision of the Secretary of State could only be upset if he disregarded something he ought to have regarded or regarded something he ought to have disregarded or otherwise reached an unreasonable conclusion. The unusual facts and circumstances in both cases entitled the inspectors to treat each whole site as one planning unit.

Per Butler-Sloss L.J.: Both appeals had unusual if not exceptional features which justified the less usual procedure adopted, but which did not appear to have arisen before and were therefore unlikely to arise frequently. No doubt the possibility of causing injustice by issuing one enforcement notice where a site is divided into different ownerships would be in the minds of the planning authorities when exercising their powers under section 87. If the recipient of a notice was in the opinion of an inspector likely to be prejudiced, the inspector would have the power to vary the notice, split up the notice or, indeed, to exclude the land of that occupier from the enforcement notice altogether.

Cases cited:

(1) *Burdle* v. *Secretary of State for the Environment* [1972] 1 W.L.R. 1207; [1972] 3 All E.R. 240; 24 P. & C.R. 174, D.C.

(2) *Johnston* v. *Secretary of State for the Environment* (1974) 28 P. & C.R. 424, D.C.

(3) *Pioneer Aggregates (UK) Ltd.* v. *Secretary of State for the Environment and the Peak Park Joint Planning Board* [1985] A.C. 132; [1984] 3 W.L.R. 32; [1984] 2 All E.R. 358; 48 P. & C.R. 95, H.L.

Legislation construed:

Town and Country Planning Act 1971 (c. 78), s.87(5). This provision is set out at pages 415–416 *post*.

Two appeals by Patrick William Gregory and others and George Rawlins and others from the decisions of Sir Graham Eyre, Q.C., sitting as a deputy judge of the High Court on January 21, 1988, to dismiss appeals from decisions of two inspectors appointed by the Secretary of State for the Environment who had dismissed both of the appellants' appeals each against four enforcement notices. The deputy judge heard the two appeals together and the Court of Appeal dealt with the appeals together. Both appeals raised the same issue:

> Whether one enforcement notice issued in respect of a piece of land which was divided into small plots for occupation by caravans was a valid notice under section 87 of the Town and Country Planning Act 1971? Or whether the section required a separate notice for the owner and occupier of each plot of land?

Barry Payton for the appellants.
Peter M. Village for the first respondent in both cases.
Neither of the second respondents were present nor were they represented.

BUTLER-SLOSS L.J. These two appeals raise the same issue and were heard together by the deputy High Court judge, Sir Graham Eyre, Q.C., on January 21, 1988. In each case the appellants are travelling showmen and their families who have placed their caravans, fairground rides and equipment, machinery and vehicles upon sites formerly agricultural in use and found by the inspector to be in green belt areas of Surrey. In each case, four enforcement notices were issued under section 87(1) of the Town and Country Planning Act 1971 by the local planning authority on the basis that there had been a breach of planning control by the development of each site without planning permission. On appeal by the appellants to the Secretary of State, different inspectors came to the same conclusion and dismissed each appeal. The deputy High Court judge dismissed both appeals from the inspectors.

Before this court one issue arises. Is one enforcement notice issued in respect of a piece of land which is divided into small plots for occupation by caravans a valid notice under section 87? Or does the section require a separate notice for the owner and occupier of each plot of land?

In the first appeal, which I shall call the "Rawlins" case, there was a 17-acre field situated in mainly agricultural and woodland countryside. The inspector found that the site had been developed as a whole as a base mainly in the winter months for travelling showmen and their families, some of whom remained there while the others went to fairgrounds during the summer months. Each enforcement notice related to the whole site and the breaches alleged included the use of the land as a caravan site, the con-

struction of a road, the construction of hardstandings on the land, the use of the land for the parking, storage, maintenance and repair of motor vehicles, fairground rides, plant, equipment and machinery. Each enforcement notice required removal and that the land be left in a condition fit for agricultural/forestry purposes. In the decision letter at paragraph 12, set out by the judge in his judgment, the inspector considered the point at issue, that the enforcement notices were not directed at the correct planning units:

> It is accepted that normally it is not appropriate to go beyond one ownership, but this is not a normal case in that:
> (i) The site was in common ownership until individual plots were sold during 1986.
> (ii) The common parts of the site—certainly the roadway and probably the bunding—remain in that single ownership of Mrs. Reid. The whole set up on site would be unusable without the roadway.
> (iii) The whole development has plainly been thought out and carried through as a concerted whole with a single common purpose.
> (iv) The area was not in fact physically subdivided until November 1986. Even now many parts of the site remain undivided.

The judge pointed out the significance of November 1986 as being the date of issue and service of the last enforcement notice. The inspector visited the site and was able to see the way in which the subdivision occurred. We were told that there were individual plots owned by separate individuals or families, registered in the land registry and separately rated.

The second appeal, which I shall call the "Gregory" case, concerned a separate piece of land in a different part of Surrey but the appellants are also travelling showmen in mobile homes and the facts are very similar. Four enforcement notices were issued, each relating to the entire site as one unit. According to the inspector on his site visit the limits of every plot were not clearly defined on the ground. The same issue therefore arises.

Mr. Payton's submission is that the issue is a matter of the proper interpretation of section 87(1) and (5). Part V relates to the enforcement of planning control under the 1971 Act. Section 87(1) deals with the power to issue an enforcement notice:

> Where it appears to the local planning authority that there has been a breach of planning control after the end of 1963, then, subject to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may issue a notice requiring the breach to be remedied and serve copies of the notice in accordance with subsection (5) of this section.

By subsection (3) there is a breach of planning control if development has been carried out without the grant of the appropriate planning permission. Subsection (5) sets out who is to be served:

> A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

(a) on the owner and the occupier of the land to which it relates; and
(b) on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.

Mr. Payton argues first that as a matter of strict interpretation the words "owner and occupier of the land" refer to the piece of land of which each appellant is owner and occupier and cannot refer to the large area occupied by the group of appellants, other than in a sham arrangement. He prays in aid the words "in that land" in (5)(*b*) as showing it must be the individual piece of land and not "those lands." He accepts, however, that the owner and occupier does include, for instance, joint owners and joint occupiers. He also accepts that any other person having an interest in that land includes licensees.

In support of his argument that this is a matter of strict interpretation and that the answer is to be found in section 87 of the Act, Mr. Payton drew our attention to the speech of Lord Scarman in *Pioneer Aggregates (UK) Ltd.* v. *Secretary of State for the Environment*[1] where he sets out that planning control is a creature of statute and provides a comprehensive code into which judges must not introduce principles or rules derived from private law, unless the code does not cover the situation. But the problem of what is a planning unit is not covered in the code. Lord Widgery C.J. in *Johnston* v. *Secretary of State for the Environment* said[2] that the first step in deciding whether the change of use is or is not a material change is to look at the planning unit concerned:

> . . . one must begin by deciding what is the planning unit.
> This is something in which one gets no assistance from the statute because the learning, such as it is, on the identification of the planning unit is entirely judge-made law and, as is to be expected, the rules which have been laid down for guidance are generally not rigid rules but guidelines or pointers.

Mr. Payton urged on us that the expression "planning unit" is a convenient way of identifying the relevant land which could properly be included in one allegation of a breach of planning control but not appropriate to extend the relevant land beyond that authorised by the Act. He said that no one had suggested that a single enforcement notice could properly be issued and served on all purchasers of, for instance, a development of a residential estate which would be contrary to the rationale in the few decisions on what is a planning unit. Bridge J. in *Burdle* v. *Secretary of State for the Environment* set out some broad categories for the identification of a planning unit and concluded[3]:

> It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount to a separate use both physically and functionally.

None of the previous decisions related to an aggrieved appellant claim-

[1] [1985] A.C. 132 at pp. 140–141; 48 P. & C.R. 95 at p. 101.
[2] (1974) 28 P. & C.R. 424 at p. 426.
[3] [1972] 1 W.L.R. 1207 at p. 1213; 24 P. & C.R. 174 at p. 180.

ing that too large a unit had been chosen. The point at issue has not, therefore, previously arisen for decision.

The deputy judge did not accept the proposition that the matter should be resolved by the construction simply of section 87 in its context in Part V of the Act. He adopted the words of Lord Widgery C.J. in *Johnston*[4]:

> In any event, one must remind oneself that an appeal to this Court is on a point of law only. The question of what is the proper planning unit is essentially a matter of fact and degree. The decision of the Secretary of State on it is not a decision which we can upset here unless it is quite clear that he has disregarded something which he ought to have regarded or regarded some factor which he ought to have disregarded, or has otherwise reached a conclusion which no reasonable person in his position could have reached.

The deputy judge went on to say:

> That is the test which I must apply to this particular decision. [*Rawlins* case]. . . . In my judgment, his [the inspector's] test of the approach adopted by the planning authority when it issued the notices was quite impeccable.

I, for my part, cannot fault the deputy judge in his approach to these appeals, and agree with him that it is not a matter of pure construction but, as Lord Widgery said: "It is essentially a matter of fact and degree."

Mr. Payton advanced two arguments as to the interpretation of section 87. The first one, which I have already referred to, dealt with strict construction. The second point to which I now turn relates to the necessity of giving proper effect to the intention of Parliament. He argues that the consequences of issuing enforcement notices covering multiple ownerships and occupation in this way are likely to cause injustice to individual owners and occupiers whose special circumstances may be overlooked in the general considerations. Since injustice may be caused by this approach, he argued that Parliament would not have intended notices to be issued in this way. He does not, however, assert nor did the inspectors find any actual injustice to any appellant or other occupier from the procedure adopted by the planning authorities in either of the present appeals. Nor in these appeals is he concerned about the possibility of a prosecution under section 89.

The judge considered the appropriateness of taking a large unit when there were individual plots in separate ownerships, and concluded that a planning authority took the larger site at its peril and that it would generally be easier to establish a material change of use on a smaller site. He accepted the views of the inspectors that in these two cases it was the whole site which had undergone a fundamental change of character as a result of the change of use. Further, as I have already mentioned, he considered that the inspection of the site might well be an important feature of the exercise.

Despite Mr. Payton's concern that to allow one enforcement notice to be issued and served will deprive individual owners of plots of an adequate remedy in future planning disputes, I do not see these appeals as setting aside the existing long-established practice of issuing and serving enforce-

[4] (1974) 28 P. & C.R. 424 at p. 427.

ment notices on a planning unit which is, as Lord Widgery said in *Johnston*[5]:

> . . . the area occupied as a single holding by a single occupier [using single occupiers in the collective sense so that it would include two or more joint occupiers].

These two cases have unusual if not exceptional features and characteristics in common which justify the less usual procedure adopted, but which do not appear to have arisen before and are therefore unlikely to arise frequently. No doubt the possibility of causing injustice by issuing one enforcement notice where the site is divided into different ownerships would be in the minds of the planning authorities when exercising their powers under section 87. If a recipient of a notice was in the opinion of the inspector likely to be prejudiced, the inspector would have the power to vary the notice, split up the notice or, indeed, to exclude the land of that occupier from the enforcement notice altogether.

In my view, on the facts and in the circumstances of these two appeals the inspectors were entitled to accept the enforcement notices. Consequently, neither the deputy judge nor this court has any ground upon which to set aside these decisions. I would dismiss these appeals.

McCOWAN L.J. Mr. Payton asked this court to say that an enforcement notice cannot relate to an area greater than an individual ownership or occupation. At the same time, he placed great reliance on the decision in the Divisional Court in *Johnston and Another* v. *Secretary of State for the Environment and Another*. If, however, his proposition were a sound one, the Divisional Court could have decided the case on that simple ground. In fact, far from so deciding, the court held that, in the words of Lord Widgery C.J.: "The question of what is the proper planning unit is essentially a matter of fact and degree."

Mr. Payton's proposition was, he said, based on the words of section 87(5) of the Town and Country Planning Act 1971. This reads, in so far as it is relevant:

> A copy of an enforcement notice shall be served . . .
> (a) on the owner and on the occupier of the land to which it relates; and
> (b) on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.

Mr. Payton conceded that if (a) stood on its own it would be permissible to read it as "on the owners and on the occupiers of the land to which it relates," the land there referred to being the entire site in question and not just a part in individual ownership or occupation. However, he argued that when one goes on to consider (b), "in that land" cannot be read as "in those lands." Hence, he submitted, the effect of (b) is to restrict (a) to "the owner and . . . the occupier of the land." Assuming that he is right that "in that land" cannot be read as "in those lands," which I doubt, I see no problem in reading (b) as "any other person having an interest in that land or any part thereof." Mr. Payton was driven to concede that that was a poss-

[5] *Ibid.* at p. 427.

ible interpretation. Accordingly I see no force in the point of interpretation which was the foundation of his argument.

I agree that the appeals should be dismissed.

NEILL L.J. I also agree.

Appeals dismissed.

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