



ASTON'S MINING LAW CASE REVIEWS™
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Jurisdiction : England, UK

Complimentary -- Example Review Case # 4

ENGLISH REINSTATING PROCESS FOR AN OLD MINING PERMISSION

The Court of Appeal of England and Wales (the Supreme Court of Judicature), on appeal from the Queen's Branch Division (Crown Office), reviewed an unusual case in *Cartwright v. North Yorkshire County Council, Ex Parte Marilyn Brown and Leslie C.* [1998] EWCA 351, in which the appellant sought revival and implementation for an old mining permission that had originally been granted for the winning and working of minerals after 21 July 1943 and before 1 July 1948, the regulatory operative period dates before the Town and Country Planning Act 1947 took effect.

Such "old" mining permissions, formerly known as Development Orders, or "IDOs", are referred to in the Planning and Compensation Act 1991 (hereafter, the 1991 Act), have been preserved by successive planning Acts as valid permissions with respect to development that had not been carried out by 1 July 1948.

Background Facts:

A tract of land of 790.7 acres (320 hectares), known as Wensley Quarries near Preston-under-Scar, was subject to an IDO made in 1947 without conditions. Plaintiffs/Appellants herein, in 1993, sought approval from the Secretary of State to revive the former granted permission under §22 of the 1991 Act. Following an Inquiry by an Inspector, the North Yorkshire County Council approved appellants' application with conditions for the "operation, restoration and after-care of that portion of the Wensley Quarries IDO owned by a Mr. JAB. Hall. The conditions differed from those applied for and permitted extraction on only a small portion of the relevant area covered by the IDO. "

Hall appealed to the Secretary of State against the limitations imposed by the Council. Hall's appeal was held over until determination of appeal at bar. This appeal of Marilyn Brown, et al, local residents, also sought to quash the imposed, added conditions. Application to quash was denied in November 1996 by a lower court.

The Court's Analysis

The issue before the Appeals Court was "whether the directive of the Council of the European Communities (EEC) on the assessment of the effects of certain public and private projects on the environment (85/337/EEC) applies to setting conditions by virtue of §22 of the 1991 Act on IDOs. " The Appeals Court recognised that the EEC directive applied to England and Wales, and that the Town and Country (Assessment of Environmental Effects) Regulations of 1988 had been enacted to give effect to the EEC directive. Thus, the Court queried "Is an environmental assessment required before conditions are determined ? "

In answering the query, the Court noted that Article 2 of the EEC directive provided : “Member states shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue *inter alia* of their nature, size or location, are made subject to an assessment with regard to their effects.”

The Court's Decision

Lord Justice Pill, writing the Opinion for the Court, stated, “I have come to the conclusion that the determination of conditions under Schedule 2 to the 1991 Act is in the present context the decision which entitles the developer to proceed with the project in terms of the directive. In English planning terms, I do see force in the submission that the grant of the old mining permission is the relevant decision in that it is at the stage when a decision in principle is taken as to land use that the environmental assessment is most useful. A modification, ... , may be said to be a new project, but it is more difficult to hold that the determination of conditions, which may be quashed on well-established grounds, is the relevant consent. However, in the present context, not only is the determination of conditions literally the decision which ‘entitles the developer to proceed’, in that he could not lawfully proceed without it, but the entire purpose of the 1991 scheme is to regularise, and make subject to modern control, permissions which had been granted over 40 years before 1991 and at a time when there was no comprehensive planning control. The fact that old mining permissions, as that in the present case, may be unconditional, an unthinkable situation in modern times, demonstrates the comprehensive exercise necessary under the 1991 procedures, and in my view, contemplated by them. §22 provides that the permission shall cease to have effect if the appropriate steps are not taken. The scheme imposes strict time limits upon an owner who wishes to implement his old mining permission. Under this particular statutory scheme, which requires registration and an application to determine the conditions to which the permission is to be subject, a consent is required which is the development consent within the meaning of Article 1 of the directive. §22 provides that the old mining permission shall have effect as from the determination of conditions as if granted on the terms required to be registered. ... The right to mine ceases, in the absence of completing the 1991 procedures, whether or not development has occurred within the two year period up to 1 May 1991. The entitlement to continue mining, pending that determination of conditions, which must necessarily take place if mining is to continue, does not affect the nature of the 1991 scheme under considerations I have found it to be.”

The Court allowed the appeal and quashed the determination of conditions.

The Court added, however, that the conclusion is specific for the case at bar only, and “is not intended to apply generally to schemes which, in the interests of orderly planning, a series of consents is required before development can proceed. The last of the decisions giving consent is not necessarily or universally the relevant decision for the purposes of Articles 1 and 2 of the directive.”
