



24th April 2013

PRESS SUMMARY

Uprichard (Appellant) v The Scottish Ministers and another (Respondents) (Scotland) [2013] UKSC 21

On appeal from [2011] CSIH 59 and [2011] CSIH 77

JUSTICES: Lord Hope (Deputy President), Lord Kerr, Lord Reed, Lord Carnwath and Lord Carloway

BACKGROUND TO THE APPEALS

The Appellant challenges the adequacy of the reasons given by the Scottish Ministers (“the Ministers”) for their decision to approve Fife Council’s policies for the future development of St Andrews. She is concerned that, if implemented, those policies will cause irreversible damage to the landscape setting of the town.

In the Scottish planning system (as at the relevant time), the overall strategy adopted by a planning authority on which development in a particular area will be based is set out in a structure plan. It is for the Ministers to approve or reject such a plan. Individuals may make objections to the planning authority prior to the plan being submitted to the Ministers, and to the Ministers themselves after submission. Prior to making a decision to approve or reject a plan, the Ministers must consider any objections properly made to them in respect of either the plan as submitted or any material modification that they, the Ministers, propose to make to it. They must also give such a statement as they consider appropriate of the reasons governing their decision to approve, reject or modify a plan. If a structure plan is approved, its strategy is progressed in more detailed, site-specific ways in local plans.

In January 2003, Fife Council publicised its intention to prepare a structure plan for Fife. It commissioned a report (‘the Grant Report’) from a landscape architect on the capacity of the landscape adjacent to St Andrews to accommodate development. The report identified approximately 25 hectares of land, 20 of which were to the west of St Andrews, on which development could be accommodated without damaging the landscape. It deemed further development inappropriate because of the potential impact on St Andrews’ landscape.

The finalised structure plan specified the fundamental strategic objective as the economic regeneration of Fife. It stated the intention to realise the potential of St Andrews as the economic driver for Fife by expanding the town, predominantly to the west, by building 1200 houses, a science park, a business park and bypass, while balancing that aim with the need to protect its landscape setting and identify a robust green belt boundary. It also stated that the local plan would determine how, where and the extent to which St Andrews should grow. The plan was submitted to the Ministers in June 2006. In December 2008, the Ministers published proposed modifications to the structure plan, which did not materially alter it as it applied to St Andrews. They also published a strategic environmental assessment (“SEA”), which concluded that expansion of the town would require careful site selection and mitigation in the relevant local plans due to the limited capacity of the landscape to accommodate development, as identified in the Grant Report.

The Appellant submitted a letter in January 2009 objecting to the absence of any modification of the strategy that St Andrews should be an economic driver for Fife. She made specific points grouped under various headings in support of that objection, one of which was “Landscape Capacity – St Andrews”. Under that heading, she referred both to a 1998 study which asserted that St Andrews was “at its landscape capacity” and to the Grant Report’s conclusion that there was limited scope for development.

In May 2009, the Ministers approved the final plan with modifications, and stated in a letter to Fife Council that they had considered all objections made to them. They published two schedules of reasons which stated

reasons for the modifications made and reasons for not making certain modifications respectively. The latter summarised the objections made, including the Appellant's, and stated responses to them. One of these was "reason 33", which addressed objections to the effect that landscape capacity assessments had indicated that St Andrews was at its landscape capacity. The reason given for not modifying the structure plan on the basis of such objections was that the Grant Report had indicated that some scope for development to the west of St Andrews existed, subject to mitigation.

The Appellant challenges the validity of the structure plan on the ground that the Ministers failed in reason 33 to give adequate reasons for rejecting the part of her objection relating to landscape capacity. She asserts that her objection was not that there was no capacity for development, but that the available capacity could not accommodate the scale of the planned development; that referring to the Grant Report therefore did not address her point; and that she was substantially prejudiced by this failure, as it was unclear whether the Ministers had grappled with that point. The Inner House of the Court of Session rejected these arguments. She also appeals in relation to the way in which the Inner House dealt with the expenses of the proceedings.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Reed gives the judgment of the Court.

REASONS FOR THE JUDGMENT

- Although the distinction is not clear cut, a structure plan is concerned with policy and general proposals, rather than with more detailed matters of the kind addressed by local plans. The duty of the Ministers is to give reasons for approving or rejecting a structure plan, not to justify the policies and proposals set out in it, that being the duty of the planning authority at an earlier stage in the process. Further, the adequacy of the reasons given by the Ministers must be considered on the basis that they are addressed to persons familiar with the background and the issues. These factors are relevant to the exercise of discretion allowed to them in giving such a statement of reasons as they consider appropriate [45-46].
- The reasons given must be proper, adequate and intelligible, and must deal with the substantive points raised by way of objection. If that test is met, short reasons may suffice, and if a point of objection is not substantive, little or no reasoning may be given [47]. Further, the Ministers' duty to give reasons must be assessed with a sense of proportion, so that an unreasonable burden is not imposed on them. Where Ministers receive a plethora of objections, it is reasonable for the Ministers to group them into broad categories according to their general tenor and to respond to them on that basis [48-49].
- The assertion that St Andrews was at landscape capacity appeared in terms in the Appellant's letter, and reason 33 addressed objections of that general tenor by citing the finding of the Grant Report that there existed some scope for development to the west of St Andrews [49]. The broader point made by the Appellant that the scale of development envisaged in the structure plan would damage the landscape setting of the town was addressed by the substance of five of the further reasons given in the schedule. For example, reason 17 explained that how the development was to be organised, having regard to landscape considerations, would be determined through the local plan process. The reasons given, read as a whole, provided an intelligible explanation to a well-informed reader such as the Appellant as to why the Ministers were not persuaded by her objections [50-51].
- Further, there was no flaw in the Ministers' reasoning by which the Appellant was prejudiced. The content of the Ministers' SEA and schedule of reasons clearly showed that the Ministers had taken account of the potential impact of the policies and proposals in the structure plan on the landscape [52]. In relation to expenses, the Inner House dealt with them in a way that is not open to further argument in the Supreme Court [56].
- The court adds some observations about the types of cases which are appropriately considered by it, and explains why this appeal did not fall into that category [58-63].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html