



11 July 2012

## PRESS SUMMARY

**G Hamilton (Tullochgribban Mains) Limited (Appellant) v The Highland Council and another (Respondents) [2012] UKSC 31**

*On appeal from [2011] CSIH 1*

**JUSTICES:** Lord Walker, Lady Hale, Lord Clarke, Lord Dyson and Lord Reed.

### **BACKGROUND TO THE APPEALS**

This appeal is concerned with the process by which planning authorities review what are commonly referred to as “old” planning permissions for mineral working, under the Environment Act 1995 and the Town and Country Planning (Scotland) Act 1997. The review is necessary because the conditions attached to old permissions often fail to meet modern environmental needs.

The legislation distinguishes between three categories of mineral sites, “Phase I active”, “Phase II active” and “dormant”, and lays down how the process of review is to affect each category. Dormant sites are those on which no substantial minerals development was carried out in the period from 22 February 1982 and 6 June 1995. On classification as dormant, all further mineral working is frozen until new conditions have been applied for and approved. The procedure for classification of sites is in two stages. Stage 1 involves the preparation of two lists. The first list enables Phase I active sites to be given priority. The second list relates to Phase II active sites. Stage 2 enables a person who owns the land or has an interest in minerals to apply to the planning authority to determine the conditions to which the relevant planning permission is to be subject with a right of appeal to Scottish Ministers, and provisions for compensation for some active sites.

The mineral site in question is in a sparsely populated area on the edge of Strathspey. The Appellant company (“Tullochgribban Mains”) is the heritable proprietor of tenanted farmland in the vicinity. The First Respondent, the Highland Council (“the Council”) is the planning authority for the area and the Second Respondent, Breedon Aggregates Scotland Ltd (“Breedon”) is the proprietor of the minerals on the site and has the right to work them. Tullochgribban Mains and Breedon derive title from Lord Reidhaven, who by a disposition registered on 6 July 1967 disposed to Breedon’s predecessor in title all the deposits of sand and gravel and associated substances (except coal) in, on or under the land delineated in red on an annexed plan (“the red land”) The property included a number of rights and privileges including “full right and power...to search for work...and carry away” the minerals.

The original planning permission was granted on 12 February 1965 and was expressed in general terms as permission for the working of minerals on land at Tullochgorum, Carrbridge, in accordance with the plan(s) submitted and docquetted. It set out 11 conditions stated to be in the interests of health, safety and amenity. The original plan has been lost. The site was worked for some years, but no work has taken place for a least 20 years. The worked area (“the green land”) was quite small, about one sixth or seventh of the red land.

In March 1997, the Council issued its first list of mineral sites. The Tullochgribban site was not included and in May 1997 an application was made for it to be included as a Phase I active site. The

Council decided to register it as dormant as there was inadequate evidence of working since 1982. This was communicated by the Council by letter dated 15 July 1997 which included with it a plan which identified the green land, a roughly kidney-shaped area forming an island within the southern part of the red land.

In 2007, by which time Breedon had acquired the mineral rights, Breedon made its application for approval of a schedule of conditions. After the application was advertised in May 2007, Tullochgribban Mains contended that it would be outside the power of the Council to approve conditions in relation to the red land, contending that when the Council revised the first list so as to include Tullochgribban Quarry, it definitively determined its extent as being limited to the green land.

By an interlocutor of 10 March 2009 the Lord Ordinary (Lady Clark of Calton) dismissed Tullochgribban Mains' petition. On 7 January 2011, the Inner House of the Court of Session (Lord Justice Clerk, Lord Carloway and Lady Smith) refused Tullochgribban Mains' appeal against that decision. Tullochgribban Mains seeks to appeal that decision to the Supreme Court.

## **JUDGMENT**

The Supreme Court unanimously dismisses Tullochgribban Mains' appeal. The Stage 1 procedure is administrative and preliminary in nature. In any event, the correspondence as a whole gives no indication that the Council was purporting to exercise a power to cut down an existing planning permission.

The Court notes that, as a Scottish civil case, permission was not required to bring an appeal to the Supreme Court. Had it been required, permission would not have been given by this Court. It does not raise any point of law of general importance and the judgments below set out the position clearly and correctly.

Lord Walker gives the leading judgment with which Lords Hope, Kerr, Clarke and Dyson agree.

## **REASONS FOR THE JUDGMENT**

The stage 1 procedure is administrative and preliminary in nature. It involves the identification of sites and the setting of an order of priority for Stage 2. By contrast Stage 2 requires planning judgment. It is possible to imagine circumstances, such as overlapping applications, in which a planning authority might at Stage 1 find it necessary to form a provisional view as to the boundaries of a site. But such cases would be unusual and a provisional determination at Stage 1 could not have the effect of cutting down a valid existing planning permission. The correspondence as a whole, considered objectively, gives no indication that the Council was purporting to exercise a power to cut down an existing planning permission.

*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](http://www.supremecourt.gov.uk/decided-cases/index.html)