UKELA Moot Problem 2015

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM
THE COURT OF APPEAL OF ENGLAND & WALES
AND
ON APPEAL FROM
THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

R (on the application of Black Acre WasteWatchers)

v

Secretary of State for Communities and Local Government

On 21 July 2012 a waste disposal company, Grand National, applied for planning permission to fill parts of a landfill site known as Elis with low level radioactive waste. The application was refused by the local planning authority (Black Acre County Council), but granted by an Inspector appointed on behalf of the Secretary of State on 24 May 2013 after a public inquiry. The appellant is a local resident, and a member of a group called Black Acre WasteWatchers.

Grand National decided that they would seek further planning permission by 2015 for a major extension of the landfill site at Elis to accommodate one million cubic metres of medium level radioactive waste by 2031. It made this plan known to Black Acre County Council by letter but did not submit a planning application for the second proposals, stating that this would have to wait for the next round of capital allocation planning within the company. This letter was sent to Black Acre County Council before it had made its decision on the on the first application. There is no dispute that the first application was for EIA development, so that an Environmental Statement was required. An Environmental Statement was accordingly prepared, but it addressed the environmental effects of the first application in isolation. Black Acre County Council then refused the first application, saying that it was in reality only part of the more substantial development under the proposed second application and therefore could

not be determined without an assessment of the cumulative effects of the totality of the project. The Secretary of State disagreed with this interpretation of the law and allowed Grand National's appeal against Black Acre County Council's refusal on the basis that the first application was to be determined as a stand-alone project irrespective of the future proposed use of the site, although the Secretary of State accepted that grant of permission in respect of the July 2012 application would have some precedent effect for the future use of the site.

The Supreme Court has granted permission to appeal on the following grounds:

1. That the Court of Appeal erred in law when it held that the Secretary of State was not bound to treat the first application as involving the "indirect, secondary or cumulative effects" of the intended second proposals under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (which transpose the requirements of Council Directive 2011/92/EC).

2. That the Court of Appeal erred in law when applying the conventional *Wednesbury* standard of review (*Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 QB 223) as a test of the legality of the Secretary of State's view as to the proper scope of the required EIA (being limited to solely the first application) because the law of the European Union requires a more intensive judicial scrutiny.