JUDGMENT OF THE COURT (First Chamber)

4 May 2006 *

In Case C-290/03,

REFERENCE for a preliminary ruling under Article 234 EC from the House of Lords (United Kingdom), made by order of 30 June 2003, received at the Court on 3 July 2003, in the proceedings

The Queen, on the application of:

Diane Barker,

v

London Borough of Bromley,

intervener:

First Secretary of State,

* Language of the case: English.

THE COURT (First Chamber),

composed of P. Jann (Rapporteur), President of the Chamber, K. Schiemann, N. Colneric, E. Juhász and E. Levits, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 June 2005,

after considering the observations submitted on behalf of:

— Ms Barker, by R. McCracken QC and G. Jones and J. Pereira, Barristers, instructed by R.M. Buxton, Solicitor,

— the London Borough of Bromley, by T. Straker QC and J. Strachan, Barrister, instructed by Sharpe Pritchard, Solicitors,

— the United Kingdom Government, by K. Manji, acting as Agent, D. Elvin QC and J. Maurici, Barrister,

— the French Government, by G. de Bergues and D. Petrausch, acting as Agents,

— the Commission of the European Communities, by F. Simonetti and X. Lewis, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 1(2), 2(1) and 4(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

2 The reference was made in the course of proceedings between Ms Barker and the London Borough of Bromley ('Bromley LBC'), the competent planning authority, concerning the grant of planning permission to develop a leisure complex in Crystal Palace Park, London, without an environmental impact assessment having been carried out.

Legal context

Community legislation

3 According to the fifth recital in the preamble thereto, Directive 85/337 is intended to establish general principles for the assessment of environmental effects with a view to supplementing and coordinating development consent procedures governing public and private projects which are likely to have an effect on the environment.

4 For this purpose, Article 1(2) of Directive 85/337 defines 'development consent' as 'the decision of the competent authority or authorities which entitles the developer to proceed with the project'.

5 Article 2(1) of the directive states:

'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.

These projects are defined in Article 4.'

6 Article 4 of the directive provides:

'1. Subject to Article 2(3), projects of the classes listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Projects of the classes listed in Annex II shall be made subject to an assessment, in accordance with Articles 5 to 10, where Member States consider that their characteristics so require.

To this end Member States may inter alia specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment in accordance with Articles 5 to 10.'

7 Point 10(b) of Annex II to the directive refers to 'urban development projects'.

8 Directive 85/337, in particular the rules relating to projects falling within Annex II, was substantially amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5), which had to be transposed in the United Kingdom by 14 March 1999 at the latest. Since the application seeking consent for the project at issue in the main proceedings was submitted to the competent authority before the latter date, those amendments are not relevant to the project, as is clear from Article 3(2) of Directive 97/11.

National legislation

9 In England, the principal legal instrument relating to land planning is the Town and Country Planning Act 1990 ('the Town and Country Planning Act'), which lays down general rules concerning both the grant of planning permission and the modification or revocation of such permission. This Act is amplified by the Town and Country Planning (General Development Procedure) Order 1995 ('the General Development Procedure Order') and the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 ('the Assessment of Environmental Effects Regulations').

10 The Assessment of Environmental Effects Regulations were replaced by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. However, since these new regulations apply only to applications lodged on or after 14 March 1999, they are not relevant to the project at issue in the main proceedings.

— The Town and Country Planning Act and the General Development Procedure Order

11 Under section 57(1) of the Town and Country Planning Act, planning permission is required for any 'development' within the meaning of section 55, a term which includes 'the carrying out of building ... or other operations in, on, over or under land ...'.

12 Planning permission may be granted in several forms, one of which is outline permission with a requirement of subsequent approval of the reserved matters.

13 Section 92(1) of the Town and Country Planning Act provides that 'outline planning permission' is permission 'granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority or the Secretary of State of matters not particularised in the application ("reserved matters")'.

14 Article 1(2) of the General Development Procedure Order defines such 'reserved matters' as 'any of the following matters in respect of which details have not been given in the application, namely (a) siting, (b) design, (c) external appearance, (d) means of access, (e) the landscaping of the site'.

15 Section 92(2) of the Town and Country Planning Act implicitly provides that consent is deemed to be finally given for a reserved matter by the decision granting subsequent approval.

16 It is apparent from section 73 of the Town and Country Planning Act that an application for an amendment to an existing permission constitutes an application for a new planning permission.

— The Assessment of Environmental Effects Regulations

17 By virtue of the Assessment of Environmental Effects Regulations, certain projects must be subject to an environmental impact assessment before consent is granted.

18 Schedule 2 to the regulations sets out the classes of project which are listed in Annex II to Directive 85/337, including 'urban development project[s]'.

19 Under regulation 2(1) of the Assessment of Environmental Effects Regulations, 'Schedule 2 application' means 'an application for planning permission ... for the carrying out of development of any description mentioned in Schedule 2, which is not exempt development and which would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location', this being a matter to be assessed by the competent authority on a case-by-case basis.

20 As provided in regulation 4(1) and (2) of the Assessment of Environmental Effects Regulations, the competent authority cannot grant planning permission in respect of, inter alia, a Schedule 2 application unless it has first taken the environmental information into consideration and states in its decision that it has done so.

21 When faced with an application for planning permission in respect of a project envisaged in Schedule 2 to the regulations, the competent authority must therefore, on a case-by-case basis, determine prior to any grant of planning permission whether the characteristics of the project require an assessment of its environmental

impact, that is to say whether the project is likely to have significant effects on the environment, and refuse permission if it does not have sufficient information to come to a decision on this point.

22 Under national law, outline planning permission constitutes 'planning permission' for the purposes of regulation 4 of the Assessment of Environmental Effects Regulations, whereas the decision approving reserved matters does not. For this reason, an environmental impact assessment can, under national law, be carried out in respect of a project only at the initial outline planning permission stage, and not at the later stage of approval of the reserved matters.

Implementing measures

23 Circular 15/88, issued by the Department of the Environment, provides non-statutory guidance to help the competent authorities to identify projects as referred to in Schedule 2 to the Assessment of Environmental Effects Regulations which must be the subject of an environmental impact assessment.

24 After stating, in paragraph 18, that the basic question to be asked is whether a project is likely to give rise to significant environmental effects, Circular 15/88 then explains, in paragraph 20, that in general terms an assessment is needed (i) for projects which are of more than local importance, (ii) for projects proposed in sensitive locations and (iii) for projects with unusually complex and potentially adverse effects.

25 Paragraphs 30 and 31 of Circular 15/88 state that, for certain categories of project, criteria and thresholds are listed in Appendix A to the circular that are intended to give a broad indication of the types of cases in which, in the Secretary of State's view, an environmental assessment may be required under the Assessment of Environmental Effects Regulations or, conversely, is not likely to be required. The circular adds, however, that those criteria and thresholds are purely indicative and the fundamental test to be applied in each case is whether the project is likely to have significant environmental effects.

26 With regard, more particularly, to urban development projects, the circular states, in paragraph 15 of Appendix A, that redevelopment of previously developed land is unlikely to require an assessment, unless the proposed development is one of certain specific types or is on a very much greater scale than the previous development.

27 The circular states, in paragraph 16 of Appendix A, with regard to projects on sites which have not previously been intensively developed that 'the need for [an assessment] should be considered in the light of the sensitivity of the particular location'. Thus, 'such schemes ... may require [an assessment] where:

(i) the site area of the scheme is more than five hectares in an urbanised area; or

(ii) there are significant numbers of dwellings in close proximity to the site of the proposed development, e.g. more than 700 dwellings within 200 metres of the site boundaries; or

(iii) the development would provide a total of more than 10 000 square metres (gross) of shops, offices or other commercial uses'.

28 In addition, paragraph 42 of the circular states that the preparation of an environmental statement is bound to require the developer to work out his proposals in some detail. Otherwise any thorough appraisal of likely effects will be impossible. It will be for the planning authority to judge how much information is required in the particular case. The information given in the environmental statement will have an important bearing on whether matters may be reserved in an outline planning permission. Where the information states or implies a particular treatment of any matter, it will not be appropriate to reserve that matter in the planning permission.

The main proceedings and the questions referred for a preliminary ruling

29 Ms Barker lives in the vicinity of Crystal Palace Park.

30 On 4 April 1997 London & Regional Properties Ltd ('L&R') applied to Bromley LBC for outline planning permission to develop a leisure complex in Crystal Palace Park ('the Crystal Palace development project'), a project falling within Annex II to Directive 85/337.

31 After consideration which took into account a number of reports and additional information, Bromley LBC concluded that an environmental impact assessment was not required for the project.

32 On 24 March 1998 Bromley LBC granted outline planning permission, reserving certain matters for subsequent approval before any development was commenced.

33 On 25 January 1999 L&R applied to Bromley LBC for final determination of certain reserved matters. The details of the Crystal Palace development project then showed: (i) on the ground floor, 18 cinemas, a leisure area and an exhibition area; (ii) at the gallery level, restaurants and cafes, two leisure areas and public toilets; (iii) at roof level, a roof-top car park with a maximum of 950 spaces, four viewing areas and areas enclosing plant and equipment; (iv) the addition of a mezzanine floor of 800 square metres; and (v) changes to the construction of the external walls.

34 At the meeting where a decision was to be taken on approval of the reserved matters, some Bromley LBC councillors expressed the wish that an environmental impact assessment should be carried out. However, after legal advice had been sought, they were informed that as a matter of domestic law an assessment could be carried out only at the initial outline planning permission stage.

35 Bromley LBC issued the notice of approval on 10 May 1999.

36 Ms Barker's action challenging that approval and the legal advice on which it was based was dismissed at first instance and by the Court of Appeal.

37 Since the House of Lords, before which Ms Barker brought an appeal, had doubts as to the compatibility with Community law of the national rules according to which an

environmental impact assessment can be carried out only at the outline planning permission stage and not when the reserved matters are subsequently approved ('the rules at issue in the main proceedings'), it decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Is identification of "the decision of the competent authority or authorities which entitles the developer to proceed with the project" (Article 1(2) of Directive 85/337/EEC ("the Directive")) exclusively a matter for the national court applying national law?

(2) Does the Directive require an EIA [environmental impact assessment] to be carried out if, following the grant of outline planning permission subject to conditions that reserved matters be approved, without an EIA being carried out, it appears when approval of reserved matters is sought that the project may have significant effects on the environment by virtue inter alia of its nature, size or location (Article 2(1) of the Directive)?

(3) In circumstances where:

(a) national planning law provides for the grant of outline planning permission at an initial stage of the planning process and requires consideration by the competent authority at that stage as to whether an EIA is required for purposes of the Directive; and

(b) the competent authority then determines that it is unnecessary to carry out an EIA and grants outline planning permission subject to conditions reserving specified matters for later approval; and

(c) that decision can then be challenged in the national courts;

may national law, consistently with the Directive, preclude a competent authority from requiring that an EIA be carried out at a later stage of the planning process?'

Consideration of the questions

Question 1

38 By its first question, the national court essentially asks whether classification of a decision as a 'development consent' within the meaning of Article 1(2) of Directive 85/337 depends exclusively on national law.

39 Article 1(2) of Directive 85/337 defines 'development consent' for the purposes of the directive as the decision of the competent authority or authorities which entitles the developer to proceed with the project.

40 Thus, while this term is modelled on certain elements of national law, it remains a Community concept which, contrary to the submissions of Bromley LBC and the United Kingdom Government, falls exclusively within Community law. According to settled case-law, the terms used in a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope are normally to be given throughout the Community an autonomous and uniform interpretation which must take into account the context of the provision and the purpose of the legislation in question (see, to this effect, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 43; and Case C-201/02 *Wells* [2004] ECR I-723, paragraph 37).

41 The answer to the first question must therefore be that classification of a decision as a 'development consent' within the meaning of Article 1(2) of Directive 85/337 must be carried out pursuant to national law in a manner consistent with Community law.

Questions 2 and 3

42 By its second and third questions, which it is appropriate to consider together, the national court essentially asks whether Articles 2(1) and 4(2) of Directive 85/337 are to be interpreted as requiring an environmental impact assessment to be carried out if, following the grant of outline planning permission, it appears at the time of approval of the reserved matters that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location.

43 First, according to Article 2(1) of Directive 85/337, projects likely to have significant effects on the environment, as referred to in Article 4 of the directive read in conjunction with Annexes I and II thereto, must be made subject to an assessment with regard to their effects before development consent is given (*Wells*, paragraph 42).

44 As has been noted in paragraph 39 of the present judgment, Article 1(2) of Directive 85/337 defines 'development consent' for the purposes of the directive as the decision of the competent authority or authorities which entitles the developer to proceed with the project.

45 It is apparent from the scheme and the objectives of Directive 85/337 that this provision refers to the decision (involving one or more stages) which allows the developer to commence the works for carrying out his project.

46 Having regard to those points, it is therefore the task of the national court to verify whether the outline planning permission and decision approving reserved matters which are at issue in the main proceedings constitute, as a whole, a 'development consent' for the purposes of Directive 85/337 (see, in this connection, the judgment delivered today in Case C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, paragraphs 101 and 102).

47 Second, as the Court explained in *Wells*, at paragraph 52, where national law provides for a consent procedure comprising more than one stage, one involving a principal decision and the other involving an implementing decision which cannot extend beyond the parameters set by the principal decision, the effects which a project may have on the environment must be identified and assessed at the time of

the procedure relating to the principal decision. It is only if those effects are not identifiable until the time of the procedure relating to the implementing decision that the assessment should be carried out in the course of that procedure.

48 If the national court therefore concludes that the procedure laid down by the rules at issue in the main proceedings is a consent procedure comprising more than one stage, one involving a principal decision and the other involving an implementing decision which cannot extend beyond the parameters set by the principal decision, it follows that the competent authority is, in some circumstances, obliged to carry out an environmental impact assessment in respect of a project even after the grant of outline planning permission, when the reserved matters are subsequently approved (see, in this regard, *Commission* v *United Kingdom*, paragraphs 103 to 106). This assessment must be of a comprehensive nature, so as to relate to all the aspects of the project which have not yet been assessed or which require a fresh assessment.

49 In the light of all of the foregoing, the answer to the second and third questions must be that Articles 2(1) and 4(2) of Directive 85/337 are to be interpreted as requiring an environmental impact assessment to be carried out if, in the case of grant of consent comprising more than one stage, it becomes apparent, in the course of the second stage, that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Classification of a decision as a 'development consent' within the meaning of Article 1(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment must be carried out pursuant to national law in a manner consistent with Community law.**

2. **Articles 2(1) and 4(2) of Directive 85/337 are to be interpreted as requiring an environmental impact assessment to be carried out if, in the case of grant of consent comprising more than one stage, it becomes apparent, in the course of the second stage, that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location.**

[Signatures]