Neutral Citation Number: [2016] EWCA Civ 562

Case No: C1/2015/2642

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
QUEEN'S BENCH DIVISION
PLANNING COURT
THE HONOURABLE MR JUSTICE CRANSTON

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Double-click

Before:

THE RIGHT HONOURABLE LORD JUSTICE LONGMORE
THE RIGHT HONOURABLE LORD JUSTICE LEWISON
and
THE RIGHT HONOURABLE LORD JUSTICE McCOMBE

- -

Between:

BROADVIEW ENERGY DEVELOPMENTS LIMITED	**Appellant**
- and -	
1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**Respondent**
2) SOUTH NORTHAMPTONSHIRE DISTRICT COUNCIL	
3) HELMDON STUCHBURY & GREATWORTH WIND FARM ACTION GROUP	

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Mr Jeremy Pike (instructed by **Eversheds LLP**) for the **Appellant**
Mr Dan Kolinsky QC (instructed by **Government Legal Department**) for the **First Respondent**
Mr Richard Honey (instructed by **Public Access**) for the **Third Respondent**
The **Second Respondent** did not appear and was not represented
Hearing dates: 19th May 2016

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Approved Judgment

Lord Justice Longmore:

Introduction

1. This appeal raises questions about the duty of fairness owed by political decision-makers in the context of an application for planning permission for a wind farm in Northamptonshire which was called in for decision (or, to use the technical term "recovered") by the Secretary of State for Communities and Local Government and, in particular, questions about how the Secretary of State (or, in this case, the Under Secretary of State) should deal with representations from the local Member of Parliament.

Background Facts

2. The claimant and appellant, Broadview Energy Developments Limited ("Broadview"), is an independent renewable energy company which develops and operates wind farms throughout the United Kingdom. As one of its projects it has sought to construct a five turbine wind farm on a site known as "Spring Farm Ridge" on land between the villages of Greatworth and Helmdon, in the area of the second defendant, the South Northamptonshire District Council ("the Council"). The Council refused permission in November 2011 and Broadview lodged an appeal with the planning inspectorate. The appeal was considered at a public inquiry in May 2012 and the appeal was allowed.

3. The third defendant, the Helmdon Stuchbury and Greatworth Wind Farm Action Group ("HSGWAG"), a local action group, brought a challenge in the High Court against the inspector's decision to allow the appeal. By a decision handed down in January 2013, His Honour Judge Mackie QC upheld the challenge, quashed the decision, and resubmitted the appeal to the planning inspectorate for redetermination. A second public inquiry was held between 8th and 24th October 2013. Broadview, HSGWAG and others made representations. During the course of the inquiry, on 11th October 2013, the Secretary of State, then Mr Eric Pickles, elected to "recover" the matter for determination by himself on the grounds that the appeal involved a renewable energy development.

4. On 14th April 2014 the second inspector recommended the grant of planning permission. He considered the matter was finely balanced but concluded that the "minor and moderate" adverse effects on buildings said to constitute heritage assets, in the form of noise and obstruction of views of the landscape, were outweighed by the benefit obtained by the generation of renewable energy.

5. There were several delays prior to the Secretary of State's decision owing to additional consultations, which included a consultation on the Court of Appeal's decision in East Northamptonshire District Council v Secretary of State for Communities and Local Government (the Barnwell Manor case) [2014] EWCA Civ 137. The Court of Appeal interpreted section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as requiring the decision-maker to give "the desirability of preserving the [relevant] building or its setting" not merely careful consideration but considerable importance and weight when balancing the advantages of the proposed development against the harm it might do.

6. By his decision letter dated 22nd December 2014, the Secretary of State, contrary to the inspector's recommendation, refused planning permission. This decision had followed a process in which the Department for Communities and Local Government had sent a minute dated 7th November 2014 to the Parliamentary Under Secretary of State, Kris Hopkins MP ("Mr Hopkins"), to whom Mr Pickles had delegated the decision, recommending that he refuse planning permission. On 11th November 2014 Mr Hopkins' private office responded by saying that he had accepted the recommendation to refuse planning permission.

7. In the course of his decision letter dated 22nd December 2014 Mr Hopkins said:-

> "29. [T]he Secretary of State agrees with the Inspector … that the benefits and disadvantages of the proposal are finely balanced. However, he disagrees with the Inspector as to where the balance falls. The proposal would not accord with the [development plan]. Although there are some material considerations which weigh in favour of the proposal including the [renewable energy] benefits, the Secretary of State finds that those benefits are not sufficient to outweigh the likely adverse impacts, in particular the identified harm to the [heritage assets] as well as the character and visual amenity of the area.
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> 30. The Secretary of State disagrees with the Inspector's judgment … and considers that the likely harm from the proposed development would not be outweighed by the [renewable energy] benefits. He agrees that the proposal conflicts with the development plan and there are elements of the [National Planning Policy] Framework which do not support the scheme. He considers that there would be harm to a range of heritage assets which, while not being substantial, merits considerable importance and weight in the planning balance in line with section 66 of the [Planning (Listed Buildings and Conservation Areas) Act 1990].
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> 31. Having weighed up all relevant considerations, the Secretary of State concludes that the factors which weigh in favour of the proposed development do not outweigh its shortcomings and the conflicts identified with the development plan, statutory requirements and national policy."

8. On 28th January 2015 Broadview applied to quash the decision, relying chiefly on the alleged lobbying activities of the local Member of Parliament, Mrs Andrea Leadsom MP ("Mrs Leadsom"), on various dates throughout the initial and subsequent planning inquiries. Mrs Leadsom had been elected as MP for the South Northamptonshire constituency in 2010. Throughout her career she has been active in campaigning against onshore wind farms. The proposed development in her constituency therefore became a matter of particular concern to her. She had continually objected to the proposal and had successfully campaigned for the Secretary of State to "call in" the application.

9. In the court below, Broadview relied on both oral and written communications passing between Mrs Leadsom, Mr Pickles and Mr Hopkins. They included, inter alia:-

   i) 29th October 2013: A letter to the Secretary of State thanking him for "calling in" the planning application;

   ii) 4th November 2013: A letter to the Secretary of State enclosing correspondence from HSGWAG and informing him of their firm views against the proposal;

   iii) 2nd December 2013: A letter to Mr Hopkins which referred to a recent conversation in the House of Commons tea room regarding the application and setting out several points in opposition to the proposal. She ended the letter by saying that she appreciated that Mr Hopkins could not comment on individual applications;

   iv) 9th January 2014: A letter to the Secretary of State expressing concern regarding the additional consultation being undertaken by the planning inspector;

   v) 31st March 2014: A letter to the Secretary of State reiterating staunch local opposition to the application;

   vi) 2nd July 2014: An email to Mr Hopkins attaching an email from a constituency resident raising concerns over the impact of the wind farm on village traffic and listed buildings;

   vii) 21st July 2014: A reply from Mr Hopkins to the above, explaining that no decision had been made due to the delay caused by consultation on the effect of Barnwell Manor;

   viii) 28th July 2014: A letter to the Secretary of State attaching representations from constituents regarding the impact of the wind farm on listed buildings;

   ix) 5th August 2014: A letter to the Secretary of State attaching representations from a constituent regarding the impact of the wind farm on the Sulgrave Manor, the home of George Washington's ancestors;

   x) 8th October 2014: An email to Mr Hopkins chasing a decision on the application and stressing the depth of local opposition; and

   xi) 5th December 2014: An email to Mr Hopkins referring to numerous previous correspondences and "badgering you in the lobby" yet no decision having been taken. The minister's private office responded that, given his quasi-judicial role in determining planning applications, Mr Hopkins could not comment on individual cases but the planning department was working hard to issue a decision.

10. Broadview had itself during the above period made attempts to speak with various members of the planning department at the Ministry. On 21st October 2013 it had written to the Chief Planner seeking a meeting to discuss the timing and process of the three appeals which it currently had before the Secretary of State. A reply of 21st

November 2013 refused a meeting on the grounds that it would be contrary to planning propriety guidance. On 12th March 2014 a further request was made by Broadview for a meeting, requesting a discussion on the process, rather than substance, of the planning appeal and referring to the lobbying of Mrs Leadson. That meeting took place on 24th April 2014 when the Chief Planner made it clear orally that he would not discuss the merits of the impending decision. Broadview then made a freedom of information request and, by late July 2014, had obtained copies of the correspondence to that date between Mrs Leadsom, Mr Pickles and Mr Hopkins.

11. This was the state of the evidence when Broadview's application to quash Mr Hopkins' decision came before Cranston J in the Planning Court on 9th June 2015.

Legal Framework

12. Broadview's application is made pursuant to section 288 of the Town and Country Planning Act 1990 ("the TCPA"):-

> "288(1) If any person-
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> (a) is aggrieved by any order to which this section applies and wishes to question the validity of that order on the grounds –
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> (i) that the order is not within the powers of this Act, or
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> (ii) that any of the relevant requirements have not been complied with in relation to that order; or
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> (b) is aggrieved by any action on the part of the Secretary of State to which this section applies and wishes to question the validity of that action on the grounds –
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> (i) that the action is not within the powers of this Act, or
>
> (ii) that any of the relevant requirements have not been complied with in relation to that action,
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> he may make an application to the High Court under this section."

13. The power to "recover" an appeal is found in Schedule 6 paragraph 3(1) of the TCPA:-

> "3(1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person shall instead be determined by the Secretary of State."

It is this provision which makes the Secretary of State the primary decision maker rather than a reviewer of the planning inspector's decision.

14. There are statutory rules which specifically address the extent to which the Secretary of State (both as primary decision maker and reviewer) must consult on new matters and/or matters upon which he intends to differ from the view of the planning inspector. Rule 17 of the Town and Country Planning (Inquiries Procedure) Rules 2000, SI 2000 No. 1624 ("the Rules") addresses the procedure post-inquiry. Rule 17(4) provides:-

> "17(4) When making his decision the Secretary of State may disregard any written representations, evidence or any other document received after the close of the inquiry."

15. Rule 17(5) provides:-

> "17(5) If, after the close of an inquiry, the Secretary of State –
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> (a) differs from the inspector on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by the inspector; or
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> (b) takes into consideration any new evidence or new matter of fact (not being a matter of government policy),
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> and is for that reason disposed to disagree with a recommendation made by the inspector, he shall not come to a decision which is at variance with that recommendation without first notifying in writing the persons entitled to appear at the inquiry who appeared at it of his disagreement and the reasons for it; and affording them an opportunity of making written representations to him or (if the Secretary of State has taken into consideration any new evidence or new matter of fact, not being a matter of government policy) of asking for the reopening of the inquiry."

16. The Department for Communities and Local Government issued its own Guidance on Planning Propriety Issues in February 2012. Paragraph 4 of that guidance, under the heading "General Principles", places a duty on ministers to act and be seen to act fairly and even-handedly in the decision making process, while paragraphs 11 and 12 of that Guidance deal with representations made by MPs and interested parties:-

> "4. Planning ministers are under a duty to behave fairly ("quasi-judicially") in the decision-making procedure. They should therefore act and be seen to act fairly and even-handedly. For example, to demonstrate even-handedness all evidence which is material to any decision which has been the subject of a planning inquiry, and which the decision-maker ultimately takes into account, must be made available to all parties with an interest in the decision. Privately made representations should not be entertained unless other parties have been given the chance to consider them and comment. This part of the requirement to act fairly is also reflected in the statutory rules for inquiries, which require the Secretary of State to give the parties a further opportunity to make

> representations if, after the close of an inquiry, the Secretary of State differs from the inspector about any relevant matter of fact or proposes to take into account any new evidence or new matter of fact. A challenge will succeed if a court is satisfied that Planning Ministers have acted procedurally unfairly – for example by giving a developer an opportunity to put forward his case which has not been granted to other interested parties.
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> …
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> **Representations on call-in decisions and appeals**
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> 11. Although planning cases decided directly by the Secretary of State are a tiny proportion of the number of planning applications and appeals handled each year, they are naturally high profile and interested parties, including MPs and pressure groups, will want to make representations. Those seeking to make representations to Planning Ministers in relation to whether an application should be called-in should be directed to the relevant planning casework official in the Planning Directorate of DCLG. Ministers' decisions should have regard to the published call-in policy. Those seeking to make representations in relation to the actual determination of called-in applications and recovered appeals should be advised to write to:
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> - the Planning Inspector, if the inquiry has not been completed; or
> - where relevant official in the Planning Casework Division if the inquiry has concluded.
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> 12. Where representations are made by whatever means, including letters, telephone and email, whether direct to a Planning Minister or to the relevant official, it should be made clear that they can only be taken into account if they can also be made available to all interested parties for comment."

The Judgment

17. Cranston J, no doubt drawing on his own considerable experience as a former Member of Parliament and, indeed, a former Solicitor General, said that important aspects of the United Kingdoms political system had to be understood. First, MPs represented individual constituencies and, second, ministers were members of Parliament. As elected representatives of individual constituencies, one of the functions of the modern MP was to take up constituency issues. Usually, the MP's first step with a constituency issue would be to write to the relevant minister or the relevant official at local or national level. In some cases, the MP would pursue constituency issues by meeting the relevant decision-maker. That lobbying of ministers by MPs was part and parcel of the representative role of a constituency MP (para 35). It would be wrong for a court to conclude that there had been anything

improper with it as a matter of law. In any event, "the meeting in the busy tea room is unlikely to have been any length" (para 39).

18. A further aspect of the political arrangement was that Parliament had created a system where planning decisions were made by politicians, at the local level, by elected councillors on local authority planning committees and, at national level, by ministers. There was nothing unusual or sinister in that, see R (Alconbury) v Secretary of State for the Environment [2003] 2 A.C. 295 para 47 per Lord Slynn. The upshot was that MPs might contact ministers about constituency planning matters being considered by them. It was unavoidable that ministers should receive written representations on behalf of constituents. Ministers were bound by the Ministerial Code, which required them to behave in a way which upheld high standards of propriety. Planning ministers were briefed about the planning propriety guidance, its importance and the need to discourage conversations about particular planning cases. Absent any material breach of those provisions, any claim could not get off the ground.

19. The judge said that Mrs Leadsom had been acting perfectly properly, as a diligent constituency MP although, in the circumstances, it happened that her political judgment had aligned with her constituents' interest. There was nothing in Broadview's challenge based on breach of natural justice and common law fairness, and it failed on general principles. Broadview had known the case being advanced by the objectors to the development, including Mrs Leadsom, and the issues they had relied upon. In the circumstances, there could be no procedural unfairness. In any event, none of the letters received after the close of the inquiry had contained new material which needed to be put to Broadview either as a matter of fairness or pursuant to the provision in rule 17(5) of the Rules so as to require further consultation. This was largely because Mrs Leadsom's representations were that there was widespread opposition to the wind farm and substantial weight should be given to that opposition, a proposition which ran through the inquiry.

20. In paras 38 and 43 the judge also recorded Broadview's concession that none of the correspondence raised any new issues and that it would not have said anything in response, which it had not already said in its submissions to the inquiry.

21. With respect to the allegation of bias made by Broadview, a fair-minded and informed observer would conclude that there had been no real possibility of ministerial bias in the present case. Further, there was simply no evidence to support the contention that the decision was vitiated by actual bias. Accordingly, Broadview had failed to establish that the ministerial decision against planning permission for its proposed wind farm had been unlawful through unfairness, bias or material breach of planning propriety standards.

Grounds of Appeal

22. Broadview has advanced three grounds of appeal:-

    i) the learned Judge was wrong to conclude that the conduct of the respondent was not in breach of his duty of abide by the rules of natural justice and common law fairness;

ii) the learned Judge was wrong to conclude that the conduct of the respondent was not vitiated by actual or apparent bias; and

iii) the learned Judge was wrong to conclude that the conduct of the respondent did not fail to have regard to, and was not in breach of, the respondent's own guidance on propriety in planning decision-making.

23. It is convenient to consider grounds (i) and (iii) together.

The Submissions

24. Mr Pike on behalf of Broadview submitted:-

i) the judge was wrong to accept that lobbying of Ministers by MPs was normal and acceptable when quasi-judicial planning decisions were being made and there was no basis for the judge's conclusion that the tea room conversation was not of any length or importance;

ii) it was the fact that Mrs Leadsom made representations to Mr Hopkins in person rather than the content of those representations that mattered. Broadview was refused direct access to the Minister while Mrs Leadsom was able to meet him in the tea room and the lobby of the House of Commons and remind him of her views and those of her constituents who objected to Broadview's application, as well as writing to him in person on several occasions. Although those representations may have been largely repetitive of matters aired in the inquiry and although Broadview knew, as a result of a freedom of information request responded to in July 2014, that representations up to that time had been made, it was unfair of Mr Hopkins to have dealt with and to continue to deal directly with Mrs Leadsom while not affording the same facility to Broadview; and

iii) there was in any event a breach of para 12 of the Planning Propriety Guidance because it was not made clear to Mrs Leadsom that her communications could not be taken into account without making them available to Broadview for comment nor were they in fact made available as that Guidance (by implication) and, in any event, the common law required.

The Rules and the Planning Guidance and their relation to the rules of natural justice at common law

25. There was in this case no breach of the Rules. Mr Hopkins did not differ from the inspector on any question of fact material to the inspector's conclusion nor did he take into account any new evidence or new matter of fact. The obligation imposed by Rule 17(5) to notify any such difference or new evidence and permit fresh representations did not therefore arise. To the extent that para 4 of the Planning Propriety Guidance reflects, the requirement of Rule 17(5), it was not contravened either. Para 4 does, however, also say that privately made representations should not be entertained unless other parties have been given the chance to consider them and comment on them. This is a fundamental principle of the common law which requires a decision-maker to listen to and take into account both sides of an argument, encapsulated in the Latin phrase "audi alteram partem". One famous example is Errington v Minister of Health

[1935] 1 KB 249 in which a slum clearance order was confirmed by the Minister after he had privately consulted the officials of the relevant Town Council about its perceived need to demolish the buildings rather than reach an agreement with the owner of the property about repairing them. The explanation given by the officials was that the buildings had defective foundations and were thus effectively unrepairable. This explanation satisfied the Minister but the owner never had any opportunity to make any representation about the officials' explanation and the order was therefore quashed.

26. To a 21st century public lawyer this is a stark and obvious application of the principle that a decision-maker must not entertain representations from one party without finding out what other parties have to say on the matter. Nevertheless the principle has to be applied sensibly. If a party to an inquiry or an objector seeks to bombard a minister with post-inquiry representations which are merely repetitive of the representations made at the inquiry itself and every time that happened the Minister was obliged to circulate the representations for comment, the decision-making process could easily be subverted. That is effectively what has happened in this case so far as the written correspondence and representations are concerned. In these circumstances the Minister has not "entertained" privately made representations; he has merely made his decision in the light of all the evidence given and representations made to the inspector which were known to all parties. Although it could be said that there was a technical breach of para 4 of the Guidance, there was no breach of the rules of natural justice, see Fox Land v SSCLG [2014] EWHC 15 (Admin) paras 22-5 per Blake J. No doubt that is the reason why Mr Pike concentrated on the fact that Mrs Leadsom had the advantage of face to face meetings with Mr Hopkins in the House of Commons tea room and the lobby. It is those occasions which are said to be unfair since Broadview had no comparable advantage.

27. Para 4 of the Guidance draws no distinction between private representations made in writing and those made face to face and the same principle should therefore apply; if oral representations are merely repetitive of matters already ventilated at the inquiry, there should be no obligation to inform other parties of the contents of such representations and invite comments. But one has to pause, because any judge is acutely aware of the difference oral advocacy can make particularly if it occurs in the absence of the other side. Moreover in the case of written representations it is easy enough to assess whether they are merely repetitive of earlier representations whereas with oral representations one cannot be so sure. That is particularly so in cases like the present in which there is no evidence from the Minister himself but merely hearsay statements from two of his civil servants that Mr Hopkins told them he had no recollection of any meetings with Mrs Leadsom. In these circumstances it was not open to the Secretary of State to rely on rule 17(4) of the Rules and say that he disregarded Mrs Leadsom's representations and Mr Kolinsky QC on behalf of the Secretary of State did not seek to do so.

28. In these circumstances it is, in my judgment, incumbent on a Minister taking a planning decision to make clear to any person who tries to make oral representations to him that he cannot listen to them. He can add (if the inquiry has concluded) that anything such persons want to say can be put in writing and sent to the Planning Casework Division. Although such refusal to listen is not in terms mandated in the Guidance it is effectively the thinking behind paras 11 and 12 of that Guidance when

those paragraphs say that those seeking to make representations should be advised to write to the relevant official in the Planning Casework Division if the inquiry has concluded and that it must be made clear that any representations "made by whatever means" can only be taken into account if they are also made available to interested parties for comment.

29. Mrs Leadsom's letter following the tea room conversation asserts that she made several points to Mr Hopkins and finishes by saying that she appreciates he cannot comment on individual applications. There is no evidence, however, that Mr Hopkins said he could not listen to what she was saying. For the reasons I have given he ought to have so said and, for my part, I would not endorse that part of the judge's judgment in which he said that lobbying of Ministers by MPs was part and parcel of the representative role of a constituency MP with its implication that such lobbying was permissible even when the Minister is making a quasi-judicial decision in relation to a controversial planning application. MPs should not, with respect, be in any different position from other interested parties. Whether the failure of the Minister to say (politely) that he could not listen to what Mrs Leadsom had to say constitutes, on the facts of this case, a material breach of the rule of natural justice or gives rise to the appearance of bias is, of course, a somewhat different matter.

Applications of these principles to the facts

30. Once it is clear that the written representations added nothing to what had already been ventilated at the inquiry and there was nothing new that Broadview could say in response, Broadview is left with relying on the tea room and the lobby conversations. The question is whether the fact that Mr Hopkins did not state at the beginning of the conversation that it should not continue amounts to a material breach of the "audi alteram partem" principle. Here the chronology is important. The second (and relevant) inquiry took place between 8th and 24th October 2013; on 11th October 2013 during the inquiry the Secretary of State called in the application for determination by himself. The tea room conversation with Mr Hopkins took place shortly before 2nd December 2013 at a time when it was unlikely to have been decided whether it would be Mr Pickles or Mr Hopkins was to take the necessary decision and, in any event, well before the inspector made his report on 14th April 2014. There were then the additional consultations referred to above and it was not until 7th November 2014 that the Planning Casework Division in the Department (which, of course, had had no tea room, or other, conversation with Mrs Leadsom) sent its memorandum to Mr Hopkins recommending refusal of permission. It was thus at this stage (November 2014) that Mr Hopkins had to make up his mind on the application (as he did on 11th November 2014) nearly a year after the tea room conversation had taken place. In these circumstances I find it impossible to conclude that the tea room conversation played any part in his decision making process. The breach of natural justice in failing to cut off the conversation and letting the conversation continue in circumstances in which both parties knew that the Minister could not comment on individual applications is, at the most, a technical breach which cannot have made any difference to the ultimate decision.

31. We were naturally reminded of the important principle that justice must not only be done but must manifestly and undoubtedly be seen to be done R v Sussex Justices ex parte McCarthy [1924] 1 KB 256, 259 per Lord Hewart C.J. and the principle that once it is established that a decision-maker has received representations from one side

behind the back of the other, the court will not enquire into the likelihood of prejudice, Kanda v Government of the Federation of Malaya [1962] A.C. 322, 337 per Lord Denning. These are, of course, salutary principles when the decision-maker receives evidence or arguments raising matters unknown to the complainant. Kanda is itself a good example. A police constable was dismissed without being shown a board of inquiry report into his conduct (available to the dismissing body) which decided (page 336) that he had fabricated evidence at a criminal trial and that he had suborned witnesses to commit perjury. These were allegations which he had no opportunity to contradict or comment on. It is not surprising that the Privy Council was not prepared to inquire whether the police constable was actually prejudiced, and said that it was sufficient that he might have been.

32. Representations which are essentially repetitive of submissions already made are rather different. In such case a court will more readily assess whether such repetitions really made a material contribution to the decision under challenge. If it concludes that they did not, the quashing of the ensuing decision should not follow. A court always has discretion as to remedy in public law and should, in my view, not exercise that discretion in the present case.

33. In this context it is material to note that, by the end of July 2014, Broadview had, as a result of their freedom of information request, uncovered all the correspondence up to that date between Mrs Leadsom and Mr Hopkins and Mr Pickles including the letter referring to the tea room conversation. If one asks oneself whether Broadview could have obtained an order from the Administrative Court, at any time between July and November 2014, preventing Mr Pickles or Mr Hopkins from taking the relevant decision, the answer must be almost certainly not. It is most unlikely that the court would prevent the persons to whom Parliament had entrusted the decision from actually taking that decision. If that is correct Broadview can hardly be in any better position once they discover that the decision had gone against them.

34. Mr Pike also relied on the email of 5th December 2014 which referred to Mrs Leadsom's "badgering" Mr Hopkins in the lobby of the House because no decision had yet been forthcoming. This lobby badgering is still less causative than the tea room conversation because, unknown to Mrs Leadsom, the decision had already been made by Mr Hopkins on 11th November 2014 even though the actual decision letter was not signed off until 22nd December 2014. It is therefore clear that the lobby badgering had no effect on the decision. It seems in any event to have been aimed at getting a decision rather than making representations about what the decision ought to be.

35. I would therefore conclude that while the tea room conversation (and even the lobby badgering) should not have occurred and should have been cut off by Mr Hopkins more firmly than he may have done, those events are not such as to justify quashing the Secretary of State's decision.

Bias

36. Nor do I think it arguable that a well informed observed would consider that there was a real possibility of bias on the part of Mr Hopkins. The well-informed observer would know that it was the responsibility of the relevant Minister to make difficult decisions about controversial projects such as on-shore wind farms. He would also

know that sometimes such decisions are, as this one was, finely balanced. He would not think that a Minister's decision in favour of a vocal body of local objectors supported by their local MP showed any bias against the promoter of the wind farm project. He would accept that the Minister had to make a decision one way or the other and think that the parties should accept the outcome.

37. Nevertheless the accusation of bias made in this case shows how important the principle is that Ministers making planning decisions should not allow themselves to be lobbied by parties to the planning process or by local MPs. If they do allow it, accusations of bias are all too easily made however unjustified they may be once the proper principles exemplified by Magill v Porter [2002] 2 A.C. 357 are applied.

Conclusion

38. For these reasons, which are somewhat different from those of the judge, I would dismiss this appeal.

Lord Justice Lewison:

39. I have had the advantage of reading in draft the judgments of Longmore and McCombe LJJ. I agree that the appeal should be dismissed for the reasons given by Longmore LJ. I also agree with the additional observations of McCombe LJ.

Lord Justice McCombe:

40. I agree with Longmore LJ that this appeal should be dismissed, essentially for the reasons given by him. However, I add a few words of my own because of my respectful disagreement with certain parts of the overall approach of the judge to the decision of the present case.

41. It seems to me that there was undoubtedly a breach of paragraph 4 of the Guidance by what appears to have occurred in the "tea room conversation" between Mr Hopkins and Ms Leadsom. On the facts of this case (in particular in the light of the chronology and the factors set out in paragraph 30 of my Lord's judgment), however, this breach was not of sufficient moment to call for the quashing of the Secretary of State's decision on the grounds of a breach of the principles of natural justice. Had the chronology been otherwise, and if the conversation had been more closely proximate in time to the decision taken, then it seems to me that the lawfulness of the decision might well have been in peril.

42. I agree with what my Lord says in paragraph 28 as to the need for Ministers to eschew conversations such as the one in issue in this case when they are seised of quasi-judicial decisions of the present nature. For my part, I would hold that such conversations are clearly a contravention of the clear purpose of paragraph 4 of the Guidance, which needs to be construed broadly as opposed to rigidly, and a breach of ordinary principles of fairness in our law. If a Minister gives an opportunity to a developer to put to him a case in way that is not afforded to objectors and this can lead to a successful challenge to a subsequent decision (as envisaged in paragraph 4), such an opportunity given to an objector (including an MP) can equally lead to such a challenge.

43. I would not wish to leave this case without stating my emphatic disagreement with the approach adopted by the judge in paragraphs 33 to 35 of his judgment. Constituency matters are one thing, but quasi-judicial decisions to be made by Ministers are another. Once a planning issue falls to be decided by a Minister, as part of the statutory planning appeal process, then representations by anyone (including an MP for the relevant constituency) can only take place lawfully in compliance with proper standards of fairness. One party should not be permitted to have access to the decision-maker in order to make representations in a manner not afforded to his opponent.

44. I disagree, *in the present context*, with the judge's statement in the final sentences of paragraph 35 when he says that lobbying of Ministers is part and parcel of the representative role of a constituency MP and that it would be wrong for a court to conclude that there was anything improper with it as a matter of law. The statements would be clearly correct in respect of "ordinary" constituency matters but, for my part, I consider that they are incorrect if applied to "lobbying" of a Minister when he is charged with making an appeal decision of the present character. Indeed, the Guidance issued by the Minister's own Department, envisages correctly the risk of successful legal challenges to decisions if Ministers do not adhere to the ordinary principles of fairness and natural justice in the context of decision-making functions in planning cases.