JUDGMENT OF THE COURT (Second Chamber)

4 May 2006 *

In Case C-98/04,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 26 February 2004,

Commission of the European Communities, represented by F. Simonetti and M. Shotter, acting as Agents, with an address for service in Luxembourg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented initially by K. Manji, and subsequently by M. Bethell, acting as Agents, and by P. Sales and J. Maurici, barristers, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk (Rapporteur) and R. Schintgen, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 30 June 2005,

after hearing the Opinion of the Advocate General at the sitting on 14 July 2005,

gives the following

Judgment

1 By its application, the Commission of the European Communities seeks a declaration from the Court that by failing to comply with Articles 2(1) and 4 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), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) ('Directive 85/337'), the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive.

Legal context

Community law

2 Article 1(2) of Directive 85/337 provides:

'For the purposes of this Directive:

"project" means:

— the execution of construction works or of other installations or schemes,

— other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

"developer" means:

the applicant for authorisation for a private project or the public authority which initiates a project;

"development consent" means:

the decision of the competent authority or authorities which entitles the developer to proceed with the project.'

3 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 a requirement for development consent and an assessment with regard to their effects.

These projects are defined in Article 4.'

4 Article 4 of the directive provides:

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

2. Subject to Article 2(3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

(b) thresholds or criteria set by the Member State

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.'

National legislation

5 Section 171A(1) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991 ('the TCPA'), provides:

'For the purposes of this Act —

(a) carrying out development without the required planning permission; or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted,

constitutes a breach of planning control.'

6 Section 171B of the TCPA provides:

'(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

...'

7 Section 172(1) of the TCPA authorises local planning authorities to issue an enforcement notice where it appears to them:

'(a) that there has been a breach of planning control; and

(b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations'.

8 Pursuant to section 174 of the TCPA, a person having an interest in the land or an occupier may appeal against the notice on the grounds listed in that section.

9 Section 174(2) states inter alia the following ground:

'(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters'.

10 Section 191 of the TCPA states as follows:

'(1) If any person wishes to ascertain whether —

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if —

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if —

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall —

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

...'

Pre-litigation procedure

11 The Commission received a complaint concerning the practice in the United Kingdom, pursuant to section 191 of the TCPA, for issue of Lawful Development Certificates ('LDCs'), in relation to a scrap yard which had been operating without planning permission or a waste licence and for which a number of LDCs were issued, in 1993 and again in 1998 in respect of a larger site.

12 By letter of 8 February 2001, the Commission sent the United Kingdom Government a request for information on the LDC system in force at that time, with regard to the requirements of Directive 85/337.

13 In the light of the replies given by the United Kingdom in a letter dated 31 August 2001, the Commission took the view that the issue of LDCs could be considered a means of by-passing the consent and environmental impact assessment procedures laid down by Directive 85/337 and on 23 October 2001 it sent a letter of formal notice to that Member State.

14 Subsequently, by reasoned opinion of 19 December 2002, the Commission called on the United Kingdom to take the measures necessary to comply with its obligations under Directive 85/337 within two months of receipt of the opinion.

15 Since the Commission considered the position adopted by the United Kingdom Government in its letter of 3 April 2003 to be unsatisfactory, it brought the present action.

Admissibility of the action

16 It is appropriate at the outset to note that the Court may of its own motion examine the question whether the conditions laid down in Article 226 EC for the bringing of an action for failure to fulfil obligations are satisfied (see, inter alia, Case C-362/90 *Commission* v *Italy* [1992] ECR I-2353, paragraph 8, and Case C-525/03 *Commission* v *Italy* [2005] ECR I-9405, paragraph 8).

17 The reasoned opinion, provided for in Article 226 EC, must contain a coherent and detailed exposition of the reasons which led the Commission to the conclusion that the Member State concerned had failed to fulfil one of its obligations under the Treaty (see, inter alia, Case C-279/94 *Commission* v *Italy* [1997] ECR I-4743, paragraphs 15 and 19).

18 The reasoned opinion and therefore the action, which, according to settled case-law, illustrated inter alia by the judgment in Case C-234/91 *Commission* v *Denmark* [1993] ECR I-6273, paragraph 16, may not be based on pleas and grounds other than

those put forward in that opinion, must therefore set out the complaints coherently and precisely in order that the Member State and the Court may appreciate exactly the scope of the infringement of Community law complained of, a condition which is necessary in order to enable the Member State to avail itself of its right to defend itself and the Court to determine whether there is a breach of obligations as alleged.

19 During both the pre-litigation stage of the present procedure and the litigation itself, the Commission concentrated its criticisms on the issue of LDCs in so far as it allows by-passing of the procedures governing application for consent and environmental impact assessment required by Directive 85/337 for projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location.

20 The Commission has not put forward any complaints concerning the actual existence of time-limits for the taking of enforcement action against development which does not comply with the applicable rules, although the introduction of LDCs is by its very nature inseparable from the provisions laying down such rules of limitation. Pursuant to section 191 of the TCPA, an LDC is issued, in particular, when no enforcement action may then be taken against the uses or operations concerned, whether because they did not involve development or require planning permission or because the time for enforcement action has expired.

21 Consequently, the present action for failure to fulfil obligations, since it puts before the Court only one aspect of a legal mechanism composed of two inseparable parts, does not satisfy the requirements of coherence and precision referred to above.

22 That conclusion is all the more necessary because the arguments put forward by the United Kingdom Government to contest the failure to fulfil obligations are based, in essence, on the system of time-limits which the Commission failed to include in the subject-matter of the dispute and which, accordingly, could not form the basis of detailed discussion between the parties.

23 It follows from the foregoing that the action must be dismissed as inadmissible.

Costs

24 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the United Kingdom has applied for the Commission to pay the costs and the Commission's action is inadmissible, it must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) hereby:

1. Dismisses the action as inadmissible;

2. Orders the Commission of the European Communities to pay the costs.

[Signatures]