HOUSE OF LORDS SESSION 2004–05
[2005] UKHL 17

on appeal from: [2002] EWCA Civ 582

OPINIONS

OF THE LORDS OF APPEAL

FOR JUDGMENT IN THE CAUSE

Akumah (FC) (Appellant)
v.
London Borough of Hackney (Respondents)

ON
THURSDAY 3 MARCH 2005

The Appellate Committee comprised:

Lord Hoffmann
Lord Scott of Foscote
Lord Walker of Gestingthorpe
Baroness Hale of Richmond
Lord Carswell

HOUSE OF LORDS

OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT IN THE CAUSE

Akumah (FC) (Appellant) *v.* London Borough of Hackney (Respondents)

[2005] UKHL 17

LORD HOFFMANN

My Lords,

1. I agree that this appeal should be dismissed for the reasons set out in the opinion of my noble and learned friend Lord Carswell, with which I am in complete agreement.

LORD SCOTT OF FOSCOTE

My Lords,

2. I have had the advantage of reading in draft the opinion on this appeal of my noble and learned friend Lord Carswell and am in complete agreement with the reasons he has given for dismissing this appeal. I, too, would do so.

LORD WALKER OF GESTINGTHORPE

My Lords,

3. I have had the advantage of reading in draft the opinion of my noble and learned friend Lord Carswell. I agree with it and for the reasons given by Lord Carswell I too would dismiss this appeal.

BARONESS HALE OF RICHMOND

My Lords,

4. For the reasons given in the opinion of my noble and learned friend, Lord Carswell, with which I agree, I would dismiss this appeal.

LORD CARSWELL

My Lords,

5. The difficulties faced by motorists in finding parking spaces for their vehicles are matched only by those faced by local authorities in controlling parking in places for which they are responsible. The appeal before your Lordships is concerned with the power of a local authority to operate a parking scheme in one of the housing estates in its area, of which it is the landlord.

6. Woodberry Down Estate is a large estate of council houses owned by the respondent, the London Borough of Hackney. In or about 1994 the Council of the Borough ("the Council") introduced a parking scheme for this estate, as it has done for others under its control. It was instituted by a resolution of the Council and not by the passing of byelaws. The scheme designated parking bays and prohibited parking on other parts of the estate. Under its terms a vehicle may only be parked in the places provided for parking if there is exhibited on it a permit. Vehicles not displaying a valid parking permit or parked in places other than in designated parking bays can be removed and clamped. Permits of two kinds can be purchased, residents' annual permits and visitors' permits, which may be purchased by residents for their visitors or for their own use. A visitor's permit at all times material to this appeal cost the sum of £2.50 and was valid for parking on ten occasions.

7. Tenancy agreements for houses and flats on the estate contained a provision that the tenant must not park or allow visitors to park in a no parking area and must co-operate with any parking control scheme the respondent introduced. The visitors' parking permit contained ten

spaces, entitled vouchers, for the ten permitted parking periods. On each voucher the holder of the permit was to enter the date, the time at which the vehicle was parked and its registration number. The permit contained a series of numbered instructions, of which the following are material to the present case:

> "1. When you park display the Visitor's Voucher clearly in the window WITH THE CURRENT VOUCHER COMPLETED IN INK.
>
> 2. You must fill in the date, time of parking and registration number clearly.
>
> 3. ANY ATTEMPT TO ALTER ANY OF THE DETAILS ON ANY PARKING VOUCHER WILL RENDER THE PERMIT INVALID.
>
> 4. Purchase of this permit does not guarantee a parking space on the Estate.
>
> 5. Vehicles not parked in the designated bays will be clamped or removed."

8. The appellant held the tenancy of a flat at 15 Finmere House on the Woodberry Down Estate under the terms of a tenancy agreement dated 11 December 1998. He did not have a resident's parking permit – according to the appellant the Council refused to issue one to him because he was in arrear with some rent -- and purchased visitors' permits from time to time. On three occasions when his car was parked in the estate persons described as parking officers, who were in fact employees of a clamping contractor engaged by the Council to enforce the parking scheme, issued a notice, known colloquially as a parking ticket and referred to by the Council as a penalty charge notice (a term generally applied to penalty notices for wrongful parking issued pursuant to section 66(1) of the Road Traffic Act 1991 and perhaps less appropriate for the present type of document). Each time a ticket is issued the parking officer notes in the space in the parking ticket marked "Contravention" a code number, which is intended to indicate the nature of the contravention in respect of which the ticket is issued. It is clear from the district judge's judgment in the proceedings to which I shall refer that the meaning of the codes was not made readily available to the persons charged sums of money for contraventions, which I can only

regard as highly unsatisfactory. On each occasion the appellant's car was clamped. On the first two occasions he paid under protest the £60.00 charge in order to have it released, but on the third he refused to pay it and the car was towed away and has remained on the Council's premises ever since.

9. On the first of these occasions, 26 January 2000, the parking ticket had endorsed on it "Contravention 04", which, as was eventually made known to him, meant that the car was parked on the estate without displaying the appropriate permit. It has been found in the courts below and is not in issue that this was incorrect. On the second occasion, 15 March 2000, the ticket was endorsed "Contravention 09", which meant that the vehicle was parked on a footway. The person who completed it had also written "fake visitor" in the section of the marked ticket entitled "Location". Again it has been established that the code was wrong, since the appellant was parked in a parking bay and there was no footpath in the vicinity. No reason has been put forward why the parking officers could have made such egregious errors. On the third occasion, 5 April 2000, the ticket bore the notation "Contravention 16 permit in pencil". Code 16 covers burnt-out vehicles, which is palpably inappropriate and incorrect, for the vehicle was not burnt out. If the notation has any validity, it must be that the voucher was completed in pencil, contrary to Instruction 1 on the permit. The evidence in the courts below was not clear whether the voucher was in fact completed in pencil, as the appellant denied it and there is no explicit finding in the judgments. There appears to be good reason for the requirement that the permit be completed in ink, to reduce the possibility of alteration of the entries. There is some question whether if it were written in pencil, that could invalidate the permit so as to make the holder liable to a penalty for parking contrary to the terms of the scheme, viz by displaying a permit which was not validly completed. This is not, however, in issue in the present appeal and I shall not express a definite view on it. I would only observe that the standard of accuracy on the part of those who were operating the parking control scheme at the material times was lamentably low and in urgent need of improvement.

10. The appellant appealed to the housing services manager, but each appeal was dismissed on the ground that the three parking vouchers in question had been tampered with, invalidating the permit and justifying the issue of the parking tickets and the clamping of the vehicle.

11. The appellant commenced the present proceedings in Shoreditch County Court, claiming the return of the £120.00 paid by him to have

his clamped car released and damages for wrongful detention of the car. He represented himself and made the point among his submissions that the Council did not have authority to institute the parking control scheme. The point was not argued in detail and the district judge dismissed it briefly. She held that the codes endorsed on the first two parking tickets were incorrect and that Code 16 was incorrect for the third. It is not clear whether she found that the third had been written in pencil or whether she thought that, if it was, that fact would justify the issue of a parking ticket. Her decision turned upon her finding, upon her examination of the permits, that they had been altered or tampered with and were therefore invalid. She accordingly held that the appellant had not parked on any of the three occasions with a valid voucher and that his claim must fail.

12. In a very detailed notice of appeal to the county court the appellant raised the point that the parking scheme was invalid, since it should have been done by byelaw under section 23(1) of the Housing Act 1985 and section 7(1) of the Greater London Council (General Powers) Act 1975. When the case came before the court the appellant again represented himself. His Honour Judge Cotran stated that in the face of the appellant's evidence he could not accept the findings of the district judge, based on her own examination of the vouchers. He also took the view that completion in pencil would not invalidate the vouchers or entitle the Council to clamp a vehicle. He allowed the appeal and adjourned the matter for assessment of damages. He did not deal with the question of the validity of the scheme.

13. The Council appealed, with the permission of the full court, to the Court of Appeal (Buxton LJ and Moses J), which allowed the appeal on the ground that the district judge was entitled to find that the vouchers had been altered and were therefore invalid. Mr Akumah was represented before the Court of Appeal by Mr Kadri QC and Mr Pipi, who also fully argued the issue of the council's power to operate the parking control scheme, the issue before your Lordships. The leading judgment was given by Moses J, with whom Buxton LJ agreed. He rejected the arguments advanced on behalf of Mr Akumah and held that section 21(1) of the Housing Act 1985, either on its own or in conjunction with section 111 of the Local Government Act 1972, conferred sufficient power to operate the scheme.

14. It is convenient at this point to set out the terms of these statutory provisions, on which the present appeal turns. Section 21(1) of the Housing Act 1985 provides:

> "The general management, regulation and control of a local housing authority's houses is vested in and shall be exercised by the authority and the houses shall at all times be open to inspection by the authority."

Section 12(1), which the appellant submitted was the proper source of any power to operate a parking control scheme, apart from passing byelaws, provides:

> "A local housing authority may, with the consent of the Secretary of State, provide and maintain in connection with housing accommodation provided by them under this Part –
>
> *(a)* buildings adapted for use as shops,
>
> *(b)* recreation grounds, and
>
> *(c)* other buildings or land which, in the opinion of the Secretary of State, will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided."

Section 111(1) of the Local Government Act 1972 provides for some general amplification of a local authority's powers:

> "Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions."

15. Moses J stated, at para 28, of his judgment:

> "It seems to me in this modern day and age when most residents will have cars which they wish to park near their

> homes, that it is inherent in and certainly conducive and incidental to a council's duty to manage, regulate and control their housing, that they should regulate and control the parking of cars on their housing estate. For my part, I regard such regulation and control as inherent in the function which it is the duty of the council to perform under section 21(1). But even if that were wrong, the council has subsidiary power to do anything which is conducive or incidental to the discharge of their functions. This power is contained in section 111 of the Local Government Act 1972."

16. Moses J went on to discuss the relevance of section 23(1) of the Housing Act 1985 and section 7(1) of the Greater London Council (General Powers) Act 1975, which in Mr Kadri's submission pointed to a narrower meaning of section 21(1), and the need to resort to the power to pass byelaws in order to operate a valid parking control scheme. Section 23(1) provides:

> "A local housing authority may make byelaws for the management, use and regulation of their houses."

That power was extended by section 7(1) of the 1975 Act, which was a private Act. It reads, as amended:

> "The powers of the Council, a borough council and the Common Council of the City of London under section 23(1) of the Housing Act 1985 to make byelaws for the management, use and regulation of houses provided by them shall extend so as to enable them to make byelaws prohibiting or regulating the parking or use of vehicles on any land held by them for the purposes of Part II of that Act, not being a highway."

Moses J dealt with the arguments based on the wording of these provisions which were presented by counsel for Mr Akumah in paras 30 and 31 of his judgment:

> "30. Mr Kadri QC argued that the function under section 21(1) does not include the regulation of parking, nor is

> regulation of parking incidental or conducive to the function in section 21(1): it is a wholly separate and distinct function. If, he submits, regulating parking was inherent or subsidiary to that housing function under section 21(1), so too it would have been subsidiary or inherent in the management, use and regulation of councils' homes under section 23(1). In that event there was no need for Parliament to extend the power to make byelaws by means of section 7 of the Greater London Council (General Powers) Act 1975.
>
> 31. I do not agree. Section 23 of the Housing Act 1985 and section 7 of the 1975 Act are concerned with the power of the local authority to make byelaws which carry with them the right to prosecute and impose criminal sanctions. Particular care is therefore required to identify the source of such powers. Moreover, section 7 widens the power to make byelaws beyond the management, regulation and use of houses to any land, not being a highway, held for the purposes of housing and provides the power to acquire information where there is reasonable cause to believe an offence contrary to the byelaws has been committed."

17. Buxton LJ, in a short concurring judgment, expressed the same conclusion at para 38, speaking of the relationship between section 7(1) of the 1975 Act and section 23(1) of the 1985 Act:

> "Mr Kadri argued that the contrast between those two sections demonstrated that the powers under section 23(1) were limited as he said them to be. It is however clear, in my judgment, as my Lord has already said, that section 7(1) extends the powers of a housing authority beyond those in section 23(1), or at least avoids any unclarity in the important area of making byelaws. In particular, section 7(1) of the 1975 Act extends to the regulation of parking on any land held for the purposes of Part II of the Housing Act 1985. It is clear from that Part, and not least from section 17(4) of it, that there may be circumstances where a housing authority holds land for the purposes of Part II of the 1985 Act, but where there is no housing yet in place. That is quite clear from the terms of the statute. The making of or power to make byelaws in respect of land that is not currently being used for housing purposes, and which may indeed be well away from the area of the

> local authority, does seem to me to be an extension of the power in section 23(1), and one that therefore shows that those who drafted the Act of 1975 cannot be assumed to have taken the view of the reach of section 23(1) that Mr Kadri urges."

18. The appellant has appealed to your Lordships' House, with the leave of the Appeal Committee, the issue argued being that of the construction of section 21(1) of the Housing Act 1985 and section 111 of the Local Government Act 1972. The factual matters decided by the courts below concerning the effect of the indorsement of the incorrect codes and the alteration of the vouchers have not been in issue on the appeal. It was accepted by the appellant's counsel that the appeal would succeed or fail on the issue of the authority of the Council to operate its parking control scheme. It may be seen therefore that the issue which came before the House was very narrow, being confined to the general question whether a local housing authority has power to operate a scheme of the type of that operated by the respondent in Woodberry Down estate. It did not extend to the question whether that particular scheme was valid if the Council had power to operate a scheme adopted without the passing of byelaws. Neither the Court of Appeal nor the House had evidence available to it of the content of the scheme in question or of the wording of any notices relating to parking exhibited in the estate. Your Lordships were therefore not in a position to determine the validity of the Council's particular scheme. Questions were raised in the course of argument about the basis and extent of the Council's authority to clamp vehicles and impose penalty charges in various circumstances, but the House is unable to express an opinion on these matters. Nor did it have any argument addressed to it on the power of an owner of land to clamp cars placed there without authority, which was dealt with by the Court of Appeal in *Arthur v Anker* [1997] QB 564 and *Vine v Waltham Forest London Borough Council* [2000] 1 WLR 2383.

19. Mr Kadri marshalled his argument on behalf of the appellant under three main heads:

(a) The meaning of the word "houses" in section 21(1) of the Housing Act 1985 was restricted to the dwelling houses themselves and did not extend to the areas in the estate designated for parking, which could have been provided and maintained under the powers contained in section 12(1).

(b) The regulation of parking was not calculated to facilitate, and was not conducive or incidental to, the discharge of the Council's function of management, regulation and control of the houses.

(c) If the Council's contention were correct, the function of regulating parking would be subsidiary to or inherent in the management, regulation and control of houses under section 23(1), which would have meant that there was no need for the enactment of section 7 of the Greater London Council (General Powers) Act 1975. This led to the conclusion that section 21(1) of the Housing Act 1985 should be construed in the limited meaning advocated by the appellant.

20. In relation to the first argument, the respondent in its printed case pointed to the definition of the word "house" contained in section 56 of the Housing Act 1985:

> "'house' includes any yard, garden, outhouses and appurtenances belonging to the house or usually enjoyed with it".

It was provided in another definition in the same section that the term included flats. The wording of the definition, as Lord Wilberforce observed of its predecessor provision in *Sovmots Investments Ltd v Secretary of State for the Environment* [1979] AC 144, is a clear echo of the first rule in *Wheeldon v Burrows* (1879) 12 Ch D 31. It reflects the secondary meaning of the word "appurtenances", something usually held or enjoyed with the land: see *Emmet & Farrand on Title,* 19th ed (looseleaf), para 17.069 and the authorities cited there. I find some difficulty in applying the definition to the present case. The tenants occupying the houses might be said to have some parking rights conferred by their tenancy agreements and so appurtenant to their tenancies. Section 21(1) refers, however, to the management of the local authority's houses and one would naturally construe the appurtenances as being the rights of the local housing authority which are usually held or enjoyed therewith. It would be more difficult to regard the power to control parking as such a right held or enjoyed by the Council. I therefore feel some doubt about this point, but in view of my conclusions on the other arguments presented I do not find it necessary to express a conclusion upon it.

21. If counsel for the appellant is correct in the meaning which he ascribes to the word "houses", it is still necessary to consider the breadth of the phrase "management, regulation and control" and whether it extends beyond the handling of the matters relating strictly to the dwelling houses themselves or whether upon its proper construction it covers the control of parking on the estate. The Court of Appeal accepted that it was inherent in a council's duty to manage, regulate and control its houses that it should regulate and control the parking of cars on housing estates. At its narrowest, that duty must cover the agreement of the terms of tenancies and the fulfilment of the obligations contained therein. In the present case the Council's standard form tenancy agreement contained a provision requiring the tenant to co-operate with any parking control scheme the Council might introduce. It is not necessary, however, to construe section 21(1) so narrowly or to look for terms in tenancy agreements to provide a foundation for the power to operate parking control schemes. In my opinion the concept of management of a housing estate has to be construed rather more widely. There is a steady current of authority in this direction in cases in the Court of Appeal, which I consider correct. In *R v London Borough of Ealing, Ex parte Lewis* (1992) 24 HLR 484 the issue was the extent of a local housing authority's power under the Local Government and Housing Act 1989 to expend money on "the repair, maintenance, supervision and management of houses and other property". Lloyd LJ said, at p 486, that the phrase should be given "a wide construction" and Woolf LJ, at p 495, that it should receive "a generous interpretation". Both judges referred with approval to the statement by Lord Greene MR in *Shelley v London County Council* [1948] 1 KB 274, 286 that, taking into account the scope and policy of the Housing Acts, local authorities' powers of management of housing accommodation should be construed "in the widest possible sense."

22. I therefore agree with the opinion expressed by Moses J in the Court of Appeal that it is inherent in the management of houses in a housing estate that parking on the estate should be regulated. Unregulated parking could in many housing estates lead to congestion of the roads and the unavailability of places for residents to park their cars if other persons can park there at will. It is also important to ensure access for service and emergency vehicles to the houses on the estate. Those factors are clearly capable of affecting the amenity of life for the residents and their access to and enjoyment of their houses and flats on the estate. I find no difficulty in accepting that safeguarding and improving that amenity and facilitating that access and enjoyment are proper functions of a council managing a housing estate.

23. The matter is in my opinion put beyond doubt by the terms of section 111 of the Local Government Act 1972. By that section a local authority is given power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. Even without the benefit of previous expressions of judicial opinion, I should have no hesitation in holding that the regulation and control of the parking of vehicles in a housing estate facilitates and/or is conducive or incidental to the Council's discharge of its function of the management of houses in the estate. My grounds for so holding are those which I have expressed in para 22 of this opinion, which, put shortly, are the running of an important part of the day-to-day life of the estate, the facility for tenants and their visitors to park vehicles in an orderly manner and the prevention of unauthorised persons from parking on the estate.

24. In deciding this issue one has to determine what are the relevant functions of the Council. In *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1, 29 your Lordships approved the statement of Sir Stephen Brown P in that case in the Court of Appeal, reported at [1990] 2 QB 697, when he said, at p 785:

> "We agree with the Divisional Court that in [section 111(1)] the word 'functions', which is accompanied by no statutory definition, is used in a broad sense, and is apt to embrace all the duties and powers of a local authority: the sum total of the activities Parliament has entrusted to it. Those activities are its functions. Section 111(1) confirms that, subject always to any contrary statutory provision, a local authority has power to do all the ancillary things requisite for carrying out those activities properly. This construction accords with the codifying purpose for which the subsection was enacted."

Lord Templeman, with whose speech the other members of the House agreed, also stated in the immediately preceding passage that section 111(1) embodies the principles relating to the powers of a company set out in *Attorney General v Great Eastern Railway Co* (1880) 5 App Cas 473. Lord Selborne LC said in that case, at p 478, that the doctrine of ultra vires:

> "ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as

> incidental to, or consequential upon, those things which the Legislature has authorized, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires."

Lord Blackburn said, at p 481:

> "where there is an Act of Parliament creating a corporation for a particular purpose, and giving it powers for that particular purpose, what it does not expressly or impliedly authorize is to be taken to be prohibited … those things which are incident to, and may reasonably and properly be done under the main purpose, though they may not be literally within it, would not be prohibited."

25. Applying these principles, I consider that the functions of a local housing authority can properly be said to include the activities of regulating and controlling the parking of vehicles on housing estates, in order to safeguard and improve the amenity of life for its tenants and to facilitate their access to and enjoyment of their houses and flats. I do not think that it is necessary to resort to section 12 of the Housing Act 1985 to find power to operate a parking control scheme. I would only observe that if the appellant's argument were correct, the provision of any and every feature or amenity in a housing estate apart from the houses themselves would require the consent of the Secretary of State. I find it difficult to suppose that Parliament intended such a result. I do not propose, however, to attempt on the present occasion to define the limits of the powers conferred by section 12.

26. There remains for consideration only the third contention advanced by Mr Kadri, based on the pointer to the interpretation of section 21(1) of the Housing Act 1985 which he submits can be found in the relationship between section 23(1) of that Act and section 7(1) of the Greater London Council (General Powers) Act 1975. On this issue I agree with the opinion expressed by both Moses J and Buxton LJ in the Court of Appeal concerning the extension by section 7(1) of the 1975 Act of the powers conferred upon a local housing authority by section 23(1) of the Housing Act 1985. The conclusion which Mr Kadri seeks to draw from the enactment of section 7(1) of the 1975 Act is not valid, and it does not throw any light upon the construction of section 21(1) of the Housing Act 1985.

27. I accordingly consider that none of the appellant's contentions has been made out and that the Council had authority to institute and operate the parking control scheme in the Woodberry Down housing estate. That being the only point in the appellant's case, it must fail. I would dismiss the appeal.