

A  
B  
C  
D  
E  
F  
G  
H

IN THE SUPREME COURT OF JUDICATURE  
IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE HIGH COURT OF JUSTICE  
(MR JMG ROBERTS QC)  
(Sitting as a Deputy High Court Judge)

QBENF 95/1184/C  
QBENF 95/1486/C

Royal Courts of Justice  
Strand  
London WC2

Tuesday, 10 June 1997

Before:

LORD JUSTICE BELDAM  
LORD JUSTICE MILLETT  
LORD JUSTICE OTTON

-----  
CRAWLEY BOROUGH COUNCIL

PLAINTIFF/APPELLANT

- v -

HICKMET LIMITED  
NEVVAR HICKMET  
MARK SMITH (trading as CTS HOLDINGS)

DEFENDANTS/RESPONDENTS

-----  
(Computer Aided Transcript of the Palantype Notes of  
Smith Bernal Reporting Limited, 180 Fleet Street,  
London EC4A 2HD  
Tel: 0171 831 3183

Official Shorthand Writers to the Court)

-----  
MISS A ROBINSON (Instructed by Borough Secretary's Department, Crawley Borough Council,  
Crawley) appeared on behalf of the Appellant

MR R MANDELL (Instructed by Messrs Paul Davidson Taylor, Horsham) appeared on behalf  
of the Respondents

-----  
**J U D G M E N T**  
(As approved by the Court)

-----  
©Crown Copyright

A

IN THE SUPREME COURT OF JUDICATURE  
IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE HIGH COURT OF JUSTICE  
(MR JMG ROBERTS QC)  
(Sitting as a Deputy High Court Judge)

QBENF 95/1184/C  
QBENF 95/1486/C

B

Royal Courts of Justice  
Strand  
London WC2

Tuesday, 10 June 1997

B e f o r e:

C

LORD JUSTICE BELDAM  
LORD JUSTICE MILLETT  
LORD JUSTICE OTTON

-----

D

CRAWLEY BOROUGH COUNCIL  
PLAINTIFF/APPELLANT

- v -

E

HICKMET LIMITED  
NEVVAR HICKMET  
MARK SMITH (trading as CTS HOLDINGS)  
DEFENDANTS/RESPONDENTS

-----

(Computer Aided Transcript of the Palantype Notes of  
Smith Bernal Reporting Limited, 180 Fleet Street,  
London EC4A 2HD  
Tel: 0171 831 3183  
Official Shorthand Writers to the Court)

F

MISS A ROBINSON (Instructed by Borough Secretary's Department, Crawley Borough Council,  
Crawley) appeared on behalf of the Appellant

MR R MANDELL (Instructed by Messrs Paul Davidson Taylor, Horsham) appeared on behalf  
of the Respondents

G

-----  
**J U D G M E N T**  
**(As approved by the Court)**  
-----

©Crown Copyright

H

A

Tuesday, 10 June 1997

**J U D G M E N T**

B

**LORD JUSTICE OTTON:** This is an appeal by Crawley Borough Council against the decisions of Mr Jeremy Roberts QC, a Deputy High Court Judge, who refused to grant an injunction to restrain the defendants from using land at Crawley for the parking of vehicles in connection with Gatwick Airport. There are two appeals, because after the Judge completed the hearing on 30 June, the plaintiffs asked him to reconsider the matter. He did so, and on 6 July he again refused the relief sought.

C

D

The land in question is at Southways, London Road, Crawley, West Sussex. It is shown coloured both red and green on the plan annexed to the originating summons. The green land has the benefit of an established use certificate dated 1 October for "commercial storage class ten". Class ten is merely a reference to the Use Classes Order and is not relevant. The plaintiffs applied for injunctive relief in respect of the land edged both red and green. At the hearing on 30 June, the defendants accepted the plaintiffs' claim in relation to the land edged red and gave suitable undertakings. This Court is only concerned with the land coloured green ("the site").

E

F

G

The site was and is used for car parking for business and holiday passengers flying out of Gatwick Airport. These are charged at a daily or weekly rate. Cars are marshalled in a set order to maximise the use of the land. The owner hands over the keys to employees

H

A

on the site to enable the cars to be made available on the date of the owner's return. The sole issue is whether the use of the site for this activity, amounts to commercial storage for planning purposes. If it does, the plaintiffs are not entitled to an injunction. If it does not, the plaintiffs are prima facie entitled to an injunction because there would be a material change of use.

B

C

The Judge concluded that the activity constituted commercial storage; that there was no breach of planning controls and refused the relief.

D

E

The law can be briefly stated. Planning permission is required for the development of land, and the word "development" includes "the making of any material change in the use of any buildings or other land", (see: sections 55(1) and 57(1) of the Town and Country Planning Act 1990). For the purposes of that Act the carrying out of development without the required planning permission constitutes a breach of planning controls (see: section 171A(1)). Accordingly, a local planning authority has a number of enforcement options, one of which is to apply for an injunction pursuant to their powers contained in section 187B.

F

G

On behalf of the appellants the principal ground advanced is that the learned judge was wrong to hold that the parking of vehicles in connection with Gatwick Airport amounted to commercial storage. It is submitted that he failed to draw a proper distinction between the activities of storage and parking. For the purpose of determining the use of land in

H

A

planning terms, commercial storage and car parking are distinct activities. Thus, the judge fell into error in reaching the conclusion that he did.

B

On behalf of the respondents, it is contended that the judge was correct in the conclusion that he reached, the finding that the parking of motor vehicles in connection with Gatwick Airport amounts to commercial storage. This constitutes a finding of fact. It is not appropriate to define the term "commercial storage" as a matter of law. The finding was one which was open to the judge on the evidence before him. It is not *Wednesbury* unreasonable or procedurally flawed. Moreover, the Oxford English Dictionary defines the verb "store" as inter alia:

C

D

"To keep in store for future use ... to deposit (goods, furniture, etc) in a store or warehouse for temporary preservation or safe-keeping."

E

Thus Mr Mandell contends that in the context of motor vehicles the noun "store" used in this definition can be construed to include a car pound in the open air. He urges us not to adopt a too restrictive interpretation of the word "storage". He also points out directly that the officers of Crawley Borough Council use the word "storage" in their own planning documents to mean car parking. Their present argument, he contends, is inconsistent with their own established use of language.

F

G

I have come to the conclusion that the issue before the learned judge was primarily one of law and not exclusively one of fact. As a matter of planning law, it was necessary to

H

A

determine the use of the land. For this purpose, the activities of "commercial storage" and "car parking in connection with Gatwick Airport" are conceptually separate and distinct. The land was originally used for storage of ornamental statuary in connection with a horticultural business on the site. This was clearly within the permitted user. The storage was incidental to the use of the land.

B

C

That activity ceased and was replaced by a different activity. Over a three week period, up to 100 cars (and on occasions numbers in excess) were observed at any one time on the site, both red and green land. There was a constant turnover of the cars; there was evidence to suggest that a local hotel arranged for the cars of their customers to be parked there. In the evidence on affidavit of Mr James Morrissey at paragraph 12, on the occasion of one of his visits he said:

D

E

"I also noticed 25 sets of car keys on a desk to which were attached names of the car owners and dates of their holidays. There were also two plastic buckets in the office. One contained about 50 car keys the other was empty. I also observed two heavy duty starter cables and car battery chargers in the office ... Looking outside of the office I noted a minibus ... [which] was typical of the type regularly used to transport customers to and from the airport from an off airport car parking site."

F

G

All this activity is, to my mind, consistent with the use of land for car parking in connection with Gatwick airport.

H

A

However, was this activity within the permitted use of commercial storage? In my view it was not. It is not appropriate to determine this issue solely by analysing the purpose of the user or the provider of the land. It is necessary to examine the activity on the land and to assess the primary purpose to which the land was being put, and to decide whether it can be fairly called "storage". The activity described, in my judgment, clearly indicated a primary use of the land for car parking and not storage. The fact that some customers left their car there for two to three weeks at a time when on holiday, that they left their keys and the practice of block parking are not sufficient to constitute storage. I think Miss Robinson is correct when she says that storage really takes place where something is put away for a period of time because it is not needed. I would add, "or its use is not contemplated in the short term." The notion of parking is that it is a temporary cessation from when the vehicle is in motion. A car is still in use when it is parked. It is probably not in use if it is put into store. A disqualified driver who puts his car in a repository for the period of his disqualification because he cannot use the car for that period, can properly be described as storing his vehicle.

B

C

D

E

F

The judge equated temporary parking with long term storage of new vehicles in a compound. At page 9 of the judgment he said:

G

"If Mr Hickmet, who is the owner of the site, had made an arrangement with a motor vehicle manufacturer or a motor vehicle distributor that vehicles might be placed on this particular site after their manufacture and before they go to garages to be displayed on sale to the public, those vehicles would be on the site no doubt parked (my emphasis) in exactly the same way as the vehicles belonging to travellers from Gatwick Airport and

H

A

that, as I understand it, is accepted would be commercial storage; and yet it is suggested that the presence of vehicles in precisely the same way on the site is not commercial storage is they are being looked after for members of the public who are away, having travelled from Gatwick Airport, and who therefore do not need their vehicles during that time."

B

The learned judge then rejected that "suggestion" advanced by Miss Robinson. In my view he was wrong to do so. The new cars are not yet even in use. In reaching the conclusion that he did he fell into error.

C

D

In Barnet London Borough Council v. London Transport Property [1995] RA 235, the council made a complaint before the magistrate that the respondent was liable to pay the non-domestic rate for unoccupied property in respect of a hereditament, namely the Muswell Hill Bus Garage. The magistrate held that the overnight accommodation of buses could properly be described as storage, and the other uses of the hereditament were ancillary to that use. When the matter came before Harrison J, he took the opposite view.

E

At page 241 he said:

F

"... I do not find anything in the context of the regulations which would require me to give the nature of the activity involved in this case anything other than its ordinary and natural meaning.

G

The nature of the activity involved in this case is the overnight accommodation or parking of buses in use at the depot. If the buses were being kept at premises prior to being commissioned into use, or if they were being kept at premises awaiting disposal having been decommissioned, I could see the force of the argument that they were being stored on those premises. But I have great difficulty in accepting the use of the word 'storage' in respect of buses which are simply parked overnight as a normal incident of their everyday use. In my judgment, the word 'storage' in the

H



A

regulation does not include the parking of buses when that is an integral part of their normal daily operation. The buses are in active use and it is a necessary incident of that use that they have to be parked overnight. I do not consider that such parking of the buses can be said to constitute storage of the buses."

B

C

D

E

F

G

H

Although that is a decision in the field of rating law, I would respectfully adopt the same reasoning. When a businessman drives his motor car from his home or office to the airport and leaves it there during a business trip so that it is there on his return, this in my judgment is a normal incident of everyday use of his car. Similarly, the family man who drives his family in the family car to Gatwick before departing on the family holiday, is in the same category. The car is left there for the convenience of the outward and return journey in preference to public transport or taxi or hire car. This again is a normal incident of the everyday use of the family car. Everyday does not mean daily. Thus the word "storage" does not include the parking of the car when it is an integral part of its everyday use. Accordingly, I am satisfied that when the words "parking" and "storage" are given their ordinary and natural meaning, the activity here was car parking in connection with Gatwick Airport and not commercial storage.

In so concluding I consider that this is not an unduly restrictive use of the word "storage". I would allow the appeal, but I have yet to be persuaded whether an injunction is appropriate or if it is needed.

A

**LORD JUSTICE MILLETT:** I agree. In my opinion parking a car means leaving it while it is in current use but is either between journeys or in the course of a broken journey. A car is parked when it is left in a convenient place for the resumption of the interrupted journey or for the start of the next journey. Parking may be short term, overnight or long term. The car may be parked by the owner or may be block-parked by staff employed by the car park. It may be in the open or under cover. Parking is, in my opinion, a distinct activity from the storage of a car, which connotes taking a car off the road while it is not in current use. Duration of stay is indicative but cannot be determinative. The difference is not, I think, one of degree. The two concepts of parking and storage are distinct and mutually exclusive. The difference lies in the circumstances in which the car is left. A housewife who drives to the supermarket and leaves her car in the supermarket car park while she visits the store is parking it and not storing it. She does not take her car to the supermarket because she wants to leave the car in the car park; she leaves it in the car park because it is close to the supermarket and she has chosen to use her car to drive there and back.

B

C

D

E

F

The same applies to the suburban dweller who drives into town to work and leaves his car in the office car park during the day, collecting it for the return journey home in the evening; and to the commuter who drives to the station in the morning to take a train to town leaving his car in the station car park to await his return in the evening. It also, in my opinion, applies to the air passenger who chooses to make use of his car for the journey to the airport and home again. It does not matter whether he is intending to fly

G

H

A

to Paris on business for a day or to Ibiza on holiday for a fortnight. In either case he does not take the car to the airport because he wishes to leave the car there while he is away; he takes it to the airport because that is where he wishes to go and he leaves the car in a car park conveniently close to the airport to await his return.

B

C

The respondents traded on the proximity of the car park to the airport. They advertised the services which they provided as "secure, convenient car parking for Gatwick Airport, holiday and business passengers". In my judgment, that was an accurate description. While the question which arises for decision in the present case depends upon the character of use of the land, the use to which the land was put by the respondents was to provide a place conveniently close to the airport where air travellers might leave their cars in circumstances which constituted parking and not storage. It follows that the use of the land was for car parking in connection with Gatwick Airport and not for the storage of cars. I agree that the appeal should be allowed.

D

E

**LORD JUSTICE BELDAM:** I agree with both judgments. I also would allow the appeal.

F

**ORDER:** Appeal allowed with costs to be paid by the third defendant to the plaintiff; all defendants to pay the costs of the plaintiff below, save for the costs of and occasioned by 30 June.

G

H