

PRESS SUMMARY

Dulgheriu (and another) (Appellants) v London Borough of Ealing (Respondent) [2019] EWCA Civ 1490

On appeal from: [2018] EWHC 1667 (Admin)

JUDGES: Sir Terence Etherton MR, Lady Justice King, Lady Justice Nicola Davies.

BACKGROUND TO THE APPEAL

This appeal concerns two main issues: (1) whether a local authority has power to make a Public Spaces Protection Order (“PSPO”) where the activity to be regulated impacts only or primarily on the quality of life of occasional visitors to the locality rather than on those who reside or work in the locality or visit it regularly; and (2) whether the judge had correctly carried out the necessary proportionality and balancing exercise as between the parties’ competing rights when deciding if the restrictions in the PSPO made by the London Borough of Ealing (“Ealing”) aimed at protecting the Article 8 right to respect for the private life of the users of the Marie Stopes UK West London Centre (the Centre), were compatible with **the rights of pro-life protesters under** Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly and association of the European Convention on Human Rights (“ECHR”)),

The Appellants are members of the Good Counsel Network (“GCN”), a Christian organisation that has, for a number of years, congregated immediately outside the Marie Stopes UK West London Centre (“the Centre”) usually on a daily basis. The Centre is a provider of family planning services, including abortion services. The GCN’s activities aim at dissuading women from having abortions by, among other things, attempting to engage users of the Centre in dialogue as they enter and leave, handing out leaflets and displaying posters depicting foetuses at various stages of gestation. They have also held group vigils and entered into either vocal or silent prayer.

In 2015 a pro-choice group began to hold counter-protests, also immediately outside the Centre. This generated an atmosphere of tension. After failed attempts by Ealing to find a compromise between the two groups, it consulted on whether to make a PSPO banning protests in the area. Extensive consultation led to a recommendation that a PSPO be made. Ealing accepted that recommendation and made a PSPO banning any form of protest relating to abortion within a defined “Safe Zone” around the Centre, save (subject to restrictions) within a small “Designated Area” roughly 100m from the entrance to the Centre in which protest was permitted.

Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 empowers local authorities to make a PSPO if, among other things, the activities targeted by the PSPO have “a detrimental effect on the quality of life on those in the locality” and the activities are unreasonable so that the making of a PSPO is justified. Section 67 makes it a criminal offence to violate the restrictions imposed by a PSPO.

The appellants challenged the PSPO under section 66 of the Act on two bases: first, that the expression “those in the locality” did not include merely occasional visitors to the locality, and so did not include visitors to the Centre; second, that the terms of the PSPO were a violation of their rights under Articles 9-11 of the ECHR.

JUDGMENT

The Court unanimously dismisses the appeal.

REASONS FOR THE JUDGMENT

Power to make PSPOs

It is clear from the wording of the Act that the expression “those in the locality” is not limited to those in the local community, and so it is not the case that the interests of occasional visitors to the area are irrelevant when considering whether to impose a PSPO. The natural meaning of those words included occasional visitors and there was no reason, based either on the nature of the offence created or the wording of section 66 (which gives standing to challenge a PSPO only to those living or regularly visiting or working in the area affected), to restrict their meaning [40]-[49].

Violation of Articles 9, 10 and 11

The Article 8 rights of Centre users were engaged by the activities of the appellants. The very attendance of the service users visiting the Centre was a *statement about highly personal and intimate matters*. [58] The unappealed findings of fact revealed that some of the women who attended the Centre had been left with significant emotional and psychological damage by the conduct of GNC and others protesting outside the Centre and that the activities of the protesters had had a detrimental effect on the quality of life of those visiting the Centre which was, or was likely to be, of a persistent or continuing nature.

Ealing conceded that the Article 9 rights of GNC members were engaged to the extent that their acts of prayer and vigils outside the Centre fell within Article 9 but not otherwise. It was unnecessary for the court itself to decide whether and, if so, to what extent the Article 9 rights of GNC members were in fact engaged as, in the court’s view, engagement of the Article 9 rights of protesters could not have tipped the balance against the making of the PSPO if Ealing was otherwise justified in making it [81]

When considering whether there is justification for interference with Article 10 and Article 11 rights, part of the proportionality review requires the limitation of the ECHR rights to be the least restrictive as possible. Further there is the overlapping question of whether the measure is necessary in a democratic society, which is essentially a question of whether a fair balance has been struck between the competing rights and interests of the parties [82]. Providing the judge has properly carried out this proportionality and balancing exercise, the appeal court cannot interfere with the conclusion of the judge as that conclusion will not have been “wrong” within the meaning of CPR 52.21(3).

In the present case, the protests went far beyond simply causing irritation, annoyance, shock or disturbance to the service users, responses which can properly still fall within the protection of Articles 10 and 11. Given the established persisting impact upon the quality of life on those visiting the centre as a consequence of the activities of the protest groups, a PSPO was necessary to strike a fair balance between protecting the rights of the service users on the one hand and the protesters on the other. The judge was entitled so to conclude and further to have determined that the creation of a Safe Zone, within which the protesters could not enter, and the provision of a Designated Area some way off, in which limited protest could take place, was a proportionate response.

The criticisms of the terms of the PSPO as being too vague were also overstated. Each of the particular prohibitions in the PSPO had to be viewed as aspects of the prohibition on protesting against abortion in the Safe Zone. Viewed in that way, they were not impermissibly vague [96]-[101].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court of Appeal's decision. It does not form part of the reasons for the decision. The full judgment of the Court of Appeal is the only authoritative document. The full judgment of the Court of Appeal and a copy of this media summary are available at www.judiciary.uk