



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

Application no. 39580/98  
by Horticultural and Garden Products Sales (Humberside) Ltd  
and Golden Plains Peat Co.  
against the United Kingdom

The European Court of Human Rights (Third Section), sitting on 3 April 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,  
Mr L. LOUCAIDES,  
Mr P. KÜRIS,  
Sir Nicolas BRATZA,  
Mrs H.S. GREVE,  
Mr K. TRAJA,  
Mr M. UGREKHELIDZE, *judges*,  
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 26 January 1998 and registered on 30 January 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the letter in reply submitted by the applicants,

Having deliberated, decides as follows:

## THE FACTS

The applicants are a company and associated family partnership carrying out a peat extraction and bagging business in South Yorkshire. They are represented before the Court by Mr R.G. Elliott, a lawyer practising in Newcastle upon Tyne.

The facts of the case, as submitted by the parties may be summarised as follows.

Since 1981 the applicants have extracted peat from a site at Hatfield Moor, pursuant to planning permission granted in 1951. The site consists of a northern section and a southern section. Until 1 April 1994 both sections fell within the administrative boundaries of Doncaster Metropolitan Borough Council, and Doncaster was the relevant mineral planning authority (“MPA”). As a result of a boundary change on 1 April 1994, the southern section of the applicants’ site came to fall within the administrative boundaries of Humberside MBC, and Humberside became the relevant MPA for that part of the site. On 1 April 1996 North Lincoln Council was created and took over from Humberside.

Until August 1996 neither the applicants nor Doncaster or Humberside/North Lincoln Councils were aware of the boundary change in respect of the southern section of the site. In consequence, Humberside omitted the southern section from the list it drew up under the Environment Act 1995 of authorised sites for mineral extraction, and the applicants did not pay any attention to that list. The applicants did, however, ensure that both sections of the site were included in Doncaster’s list of mineral extraction sites.

The statutory three-month period during which the applicants could have applied to have the southern section included in Humberside’s list expired on 25 April 1996. In August 1996 Doncaster became aware of the boundary change as it affected the applicants’ property. On 8 October 1996 the applicants were informed that the boundary had changed and that the failure to include the southern section on Humberside’s list had resulted in the loss of planning permission for the extraction of peat from that part of the site. On 31 July 1997 the High Court dismissed the applicants’ application for judicial review of the extinction of planning permission on the grounds that the Environment Act 1995 provided no discretionary power to the MPA to extend the prescribed three month deadline for inclusion on its list or to renew planning permission in respect of a site omitted from the list.

During these proceedings, North Lincoln Council offered the first applicant an undertaking that the Council's officers would recommend that any new application for planning permission should be granted by the competent planning committee, and that the application would be determined within 16 weeks. Moreover, the Council assured the first applicant that any conditions attached to the planning permission would be identical to those which would have been imposed had the site in question been included in Humberside's list.

The applicants did not pursue this option.

The applicants continued to extract peat from the southern section of the site for a short time, despite having no planning permission to do so. However, no peat has been extracted from that section of the site since 1997 due to bad weather conditions, which have left the land too wet to dig. The applicants have since that time continued to use the site for the processing of peat which has been brought in from elsewhere. On 16 October 2000, North Lincoln Council issued a planning contravention notice to the applicants, although it has not followed this up with enforcement proceedings to date.

The applicants believe that any new application for planning permission is beyond their limited financial resources, will be opposed by the environmental lobby and will almost certainly fail.

## COMPLAINT

The applicants originally complained that they had been unjustly deprived of planning permission to extract minerals from land in breach of Article 1 of Protocol No. 1 to the Convention.

## THE LAW

By a letter dated 12 February 2001, the applicants' representatives informed the Court of their view that, in order to exhaust domestic remedies for the purposes of Article 35 § 1 of the Convention, they would need to apply for fresh planning permission from North Lincoln Council. However, due to the applicants' "extremely poor financial situation", they were not in a position to do this and could not, therefore, maintain the application before the Court, which was consequently withdrawn.

In accordance with Article 37 § 1 *in fine* of the Convention, the Court finds no special circumstances regarding respect for human rights as defined in the Convention which require the continuation of the examination of the application.

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For these reasons, the Court, unanimously,

*Decides* to strike the application out of its list of cases.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President