Stringer v. Minister of Housing and Local Government and Another

QUEEN'S BENCH DIVISION

COOKE J.

April 8, 9, 10, 13 and 14 and July 3, 1970

Planning permission—Agreement by local planning authority with third party to discourage development—Whether ultra vires—Whether rendering subsequent decision void—Appeal—Minister's power to entertain where decision void—"Material considerations"—Whether restricted to matters of amenity—Whether regard to be had only to public interests—Operation of Jodrell Bank radio telescope—Whether matter of public interest—Minister—Whether entitled to have general policy with regard to matters relevant to decisions—Town and Country Planning Act 1962 (10 & 11 *Eliz.* 2, *c.* 38), *ss.* 17 (1), 23 (4), (6), 24.[1]

Those responsible for the operation of the Jodrell Bank radio telescope, a department of Manchester University, were anxious for technical reasons that development in certain surrounding areas should be restricted, and the Minister of Housing and Local Government encouraged consultation between them and the local planning authority. In March 1967, an "agreement" was executed by the local planning authority and the University headed "Undertakings given to Manchester University . . ." and containing the passage: "The county council will discourage development within the limits of their powers at . . . Brereton Heath until 1990." In 1965, the applicant, the owner of land at Brereton Heath, had been granted outline planning permission for the development of land adjoining the appeal site on the condition, *inter alia*, that the lay-out should make provision for street access to the appeal site. He acquired additional land for that purpose and made a payment to the county council under the Highways Act 1959 in the reasonable expectation that planning permission would in due course be forthcoming for development of the appeal site. In September 1966, he applied for outline planning permission for such development and his application was

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[1] Town and Country Planning Act 1962, s. 17 (1): "... where an application is made to a local planning authority for planning permission, that authority, in dealing with the application, shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations, and—(*a*) may grant planning permission, either unconditionally or subject to such conditions as they think fit, or (*b*) may refuse planning permission."

S. 23: "(4) Where an appeal is brought under this section from a decision of a local planning authority, the Minister, subject to the following provisions of this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the local planning authority . . . and may deal with the application as if it had been made to him in the first instance. . . . (6) . . . the following provisions of this Act, that is to say, [*inter alia*, section 17 (1)], shall apply, with any necessary modifications, in relation to an appeal to the Minister under this section as they apply in relation to an application for planning permission which falls to be determined by the local planning authority."

S. 24: "Where an application is made to a local planning authority for planning permission . . . then unless within such period as may be prescribed . . . or within such extended period as may . . . be agreed upon . . . the local planning authority either—(*a*) give notice to the applicant of their decision on the application, or (*b*) give notice to him that the application has been referred to the Minister . . . the provisions of [section 23] shall apply in relation to the application as if the permission . . . to which it relates had been refused by the local planning authority. . . ."

refused on the ground, *inter alia*, that the development would be likely to interfere seriously with the efficient running of the telescope. The Minister dismissed the applicant's appeal to him. The applicant applied under section 179 of the Town and Country Planning Act 1962[2] for an order quashing the Minister's decision, contending, *inter alia*, that the Minister had wrongly had regard to the interests of the telescope in reaching his decision; that he had failed to act judicially or at least had given the appearance of such failure; and that he had not in law been entitled to entertain the appeal, the decision of the local planning authority having been a nullity.

Held, dismissing the application, (1) that, whether or not the " agreement " of March 1967 had been intended to be legally enforceable, each party to it had intended to carry out its undertakings thereunder; and that its broad intentions were inconsistent with the duty of a local planning authority under section 17 (1) of the Act of 1962; and that, accordingly, it had been *ultra vires* the local planning authority.

Per Cooke J. Arrangements for consultation with the University about applications for planning permission in defined areas which did not in any way fetter the freedom of the local planning authority to have regard to all material circumstances in dealing with planning applications would in themselves have been unexceptionable.

(2) That, in view of the agreement, the local planning authority had made no proper determination on the applicant's application.

(3) That its decision on the application had been void and not merely voidable.

Observations of Lord Reid in *Anisminic Ltd.* v. *Foreign Compensation Commmission* [1969] 2 A.C. 147, 175; [1969] 2 W.L.R. 163; [1969] 1 All E.R. 208, H.L.(E.), applied.

(4) That, however, since the Minister's power under section 23 (4) of the Act of 1962 was in effect to deal with an application *de novo*, he had been entitled to deal with the applicant's appeal and to make a decision on it; alternatively, that the local authority had been in the position of having failed to deal with the application at all and the Minister had been entitled to entertain the appeal under section 24.

Pillai v. *Singapore City Council* [1968] 1 W.L.R. 1278, P.C., applied.

(5) That the " material considerations " to which the local planning authority and the Minister on appeal had to have regard under section 17 (1) of the Act of 1962 were not limited to matters of amenity; that any consideration which related to the use and development of land was capable of being a planning consideration, its materiality depending on the circumstances; and that the Minister had been entitled to ask himself whether the

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[2] Town and Country Planning Act 1962, s. 179: " (1) If any person— . . . (*b*) is aggrieved by any action on the part of the Minister to which this section applies and desires to question the validity of that action, on the grounds that the action is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to that action, he may . . . make an application to the High Court under this section. . . . (3) This section applies . . . to any such action on the part of the Minister as is mentioned in subsection (3) of [section 176 of this Act]. (4) On any application under this section the High Court— . . . (*b*) if satisfied that the . . . action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation thereto, may quash that . . . action. . . . (7) In this section " the relevant requirements," in relation to any . . . action to which this section applies, means any requirements of this Act. . . . "

S. 176 (3): " . . . (*b*) any decision of the Minister on an appeal under section 23 of this Act [*i.e.*, against a planning decision of the local planning authority]. . . . "

proposed development was compatible with the proper and desirable use of other land in the area, including the work of the telescope.

Dictum of Widgery J. in *Fitzpatrick Developments Ltd.* v. *Minister of Housing and Local Government* (unreported; May 24, 1965) applied.

Simpson v. *Edinburgh Corporation*, 1960 S.C. 313 and dicta of Lord Denning in *Pyx Granite Co. Ltd.* v. *Minister of Housing and Local Government* [1958] 1 Q.B. 554, 572; [1958] 2 W.L.R. 371; [1958] 1 All E.R. 625; 9 P. & C.R. 204, 217; 56 L.G.R. 171, C.A.; Salmon J. in *Buxton* v. *Minister of Housing and Local Government* [1961] 1 Q.B. 278, 283–284; [1960] 3 W.L.R. 866; [1960] 3 All E.R. 408; 12 P. & C.R. 77, 80–81; 59 L.G.R. 45; and Paull J. in *Gregory* v. *Camden London Borough Council* [1966] 1 W.L.R. 899, 908; [1966] 2 All E.R. 196; 64 L.G.R. 215 considered.

(6) That a local planning authority and the Minister on appeal were not bound to have regard only to public as opposed to private interests, for the public interest might require that the interests of individual occupiers should be considered and protected notwithstanding that such individual occupiers might have no right to maintain proceedings in the courts or to appear at an inquiry; that, in any event, the operation of the telescope might properly be regarded as a public, as opposed to a private, interest.

Simpson v. *Edinburgh Corporation* (*supra*) and dicta of Salmon J. in *Buxton* v. *Minister of Housing and Local Government* (*supra*) and Paull J. in *Gregory* v. *Camden London Borough Council* (*supra*) considered.

(7) That the Minister was entitled to have a general policy with regard to matters relevant to his decisions provided that it was not intended to be pursued to the disregard of other relevant considerations and did not preclude him from judging fairly all the issues relevant to each individual case as it came up for decision; and that, on the facts of the present case, the Minister had not violated the rules of natural justice and the application failed.

MOTION.

The facts are stated by Cooke J.

D. G. Nowell for the applicant.
Gordon Slynn for the Minister.

Cur. adv. vult.

July 3. **Cooke J.** In this application under section 179 of the Town and Country Planning Act 1962, the applicant, Mr. Geoffrey Harold Stringer, seeks an order quashing a decision of the Minister of Housing and Local Government dismissing an appeal by Mr. Stringer from a refusal by the Congleton Rural District Council, acting on behalf of the Cheshire County Council, to grant him planning permission for the erection of twenty-three dwellings in the hamlet of Brereton Heath.

The site of the proposed development is an area of some four-and-three-quarter acres on the south side of Brereton Heath Lane. It is just over four miles from the Nuffield Radio Astronomy Laboratories at Jodrell Bank. These laboratories are a department of Manchester University, and they are, of course, nationally and internationally famous as being the seat of the Jodrell Bank telescope, the world's largest radio telescope. This department of the University is under the direction of Professor Sir Bernard Lovell F.R.S., who has been the moving spirit in the conception and birth of the telescope and

in the growth and development of the important scientific activities which depend upon it.

Mr. Stringer has been in business as a builder on his own account in a comparatively small way for some twenty years. He has for many years been the owner of land, including the appeal site, on the south side of Brereton Heath Lane.

In this area the local planning authority are the Cheshire County Council, and planning functions are exercised on behalf of the county council by the Congleton Rural District Council. It is clear that, in 1964, the planning authority were contemplating further residential development at Brereton Heath, and, indeed, there was in existence, and in the possession of the area planning officer, an informal plan showing the areas in which it was at that time intended to permit future residential development in the hamlet once main drainage had been provided. Those areas included the whole of Mr. Stringer's land comprised in the present appeal site. This informal plan had been prepared notwithstanding that the appeal site is within an area in which, according to the county development plan as approved by the Minister in 1958, existing land uses are for the most part intended to remain undisturbed. The nature of the informal plan was at that time common knowledge among those interested in development in the locality.

It appears that, in 1964, a planning application to develop the appeal site was refused on grounds which Mr. Stringer fully accepted after discussions with the area planning officer and the surveyor to the rural district council. There were then further discussions between Mr. Stringer and the surveyor, and, as a result of those discussions, Mr. Stringer applied, I think in February 1965, for outline planning permission for the erection of four dwellings on that part of his land on the south side of Brereton Heath Lane which was immediately adjacent to the lane itself. The appeal site is immediately to the south of, and contiguous with, the part of Mr. Stringer's land to which that application related. That application included proposals, on lines agreed between Mr. Stringer, the area planning officer and the surveyor, for providing an access road from Brereton Heath Lane to the appeal site. In order to be able to provide such an access road, Mr. Stringer had to acquire additional land at a cost of approximately £300. In connection with the application, Mr. Stringer was specifically requested to show what proposals he had in mind for the appeal site.

On that application Mr. Stringer was, on August 18, 1965, given outline planning permission for the erection of four dwellings on his land immediately adjoining Brereton Heath Lane. One of the conditions on which the application was granted was that the lay-out of the land should make provision for street access to the " back land " (that is, the appeal site) on the lines shown in the application. There were then further discussions between Mr. Stringer and the area planning officer about Mr. Stringer's detailed proposals for two of the

four dwellings for which outline planning permission had been granted. In those discussions, again, Mr. Stringer's proposals for the development of the appeal site were considered.

Those four dwellings have now been constructed. Provision has been made for an access road to the appeal site, and Mr. Stringer has been required, under section 192 of the Highways Act 1959, to deposit £1,170 with the county council in respect of the costs of constructing the access road. The access road has not, in fact, been constructed, except to the extent of providing a driveway to two of the four dwellings for which planning permission was granted in August 1965.

On that history, I think that Mr. Stringer may fairly say that he incurred the expense of acquiring additional land in order to provide the access road and incurred the expense of making a payment to the county council under the Highways Act 1959 in the reasonable expectation, encouraged by informal discussions with officers of the planning authorities, that planning permission would in due course be forthcoming for some form of residential development on the appeal site. His expectation that such planning permission would be forthcoming was no doubt further encouraged by the inclusion, in the planning permission of August 1965, of a condition requiring that the lay-out of the land should make provision for street access to the appeal site.

In September 1966, Mr. Stringer applied to the Congleton Rural District Council for outline planning permission for the erection of twenty-three dwellings on the appeal site. The application was refused on July 18, 1967. Three reasons were given for the refusal. For the moment, I need refer to the second reason only. It was this:

> The site is in close proximity to the Jodrell Bank Authority Research Station and the development, if approved, would be likely to seriously interfere with the efficient running of the radio telescope.

From that refusal Mr. Stringer appealed to the Minister on February 3, 1968. On September 10, 1968, Mr. J. L. M. Metcalfe, an inspector appointed by the Minister, held a local inquiry into the appeal. The inspector's report is dated September 25, 1968, but, before dealing with it and with the Minister's decision which followed, it is convenient to refer as briefly as I can to the history of relations between the Jodrell Bank directorate, the Minister and the local planning authorities. A lively description of some part of this history is to be found in Chapter 28 of Sir Bernard's book *The Story of Jodrell Bank.*

Electrical sparks and other forms of disturbance from terrestrial sources in the neighbourhood of the telescope produce signals which bear a remarkable similarity to the signals which the telescope receives from outer space. Signals from terrestrial sources can thus interfere with the work of the telescope, but the danger of interference from such sources tends to diminish as their distance from the telescope increases. Planning permission for the construction of the

telescope was given in 1952. The telescope was built in the knowledge that certain towns and villages existed in the neighbourhood. For instance, there was Goostrey about a mile and a half to the south-west and Holmes Chapel about three miles to the south-west. It has always been a matter of anxiety to Sir Bernard Lovell that there should be as little further development as possible within a radius of two miles from the telescope on the north side and some six miles from the telescope on the eastern, western and southern sides. Outside, but adjacent to, a zone thus roughly delimited, certain forms of development might be a source of concern as giving rise to the kind of activities and incidents which produce interference. Interference from the south-eastern aspect of the telescope has always been a matter of particular concern.

As early as November 1952, Sir Bernard was making his anxieties about these matters known to the clerk to the Congleton Rural District Council, and in the years which followed he made them known to the Minister's predecessors, to the Department of Scientific and Industrial Research and to the Cheshire County Council.

Just over six miles to the south-east of the telescope lies the centre of the borough of Congleton. In 1955, the borough council were most desirous of increasing the size of their town and in particular were desirous of developing an area known as West Heath, which is within the boundaries of the borough but is also within a six-mile radius of the telescope. The nature of the development which they envisaged was shown on a map which had been prepared for that purpose—an informal working document of a kind which it is very necessary to produce when working out local plans which may ultimately be adopted and incorporated in the county development plan.

Sir Bernard was particularly concerned about the West Heath proposals, and he had discussions about them with officials of the Ministry of Housing and Local Government and of the Department of Scientific and Industrial Research. On July 26, 1955, the Parliamentary Secretary to the Ministry presided at a meeting which was attended by representatives of the borough council, the county council, the Department of Scientific and Industrial Research and Professor Lovell and one of his colleagues from Manchester University. As a result of that meeting, a compromise was reached. A line was drawn on a map showing the West Heath area of the borough, and it was agreed that the borough council would not seek to develop to the north and west of the line. For some reason the line became known as the " F line." It did not correspond exactly with the circumference of a circle drawn to a six-mile radius from Jodrell Bank, but all parties were for the time being satisfied.

Sir Bernard's description of these events in Chapter 28 of his book includes this sentence: " The Minister drew a line on the map which became the famous ' F line,' prohibiting development within our six-mile zone." That sentence contains inaccuracies which are pardonable and understandable in a popular book written by a busy

and eminent scientist who is not a planner or local government administrator. In fact, the Minister was not exercising any statutory power of making decisions and he did not prohibit anything. He was merely engaging in the normal processes of consultation about planning policy which form part of his functions. There is a letter of November 14, 1966, in which an officer of the Science Research Council displays a misconception similar to that contained in Sir Bernard's book about the role played by the Minister in these matters.

After the original agreement relating to the F line, and again by a compromise in which the Minister's good offices played a part, it was agreed between the Jodrell Bank directorate and the Congleton Borough Council that the Jodrell Bank directorate would raise no objection to development in a defined area to the north and west of the original F line. Thus, in effect, there was a further agreement by which the original agreement relating to the F line was modified.

The appeal site is not in Congleton borough but is some distance to the west in the Congleton rural district. As regards places outside the borough, the Minister has encouraged the Jodrell Bank directorate to make its views known to local authorities as to those areas in which development is likely to interfere with the use of the telescope, the intention being that such areas should be defined from time to time by agreement between the directorate and the local authority. The Minister has also encouraged arrangements between local authorities and the Jodrell Bank directorate whereby the directorate is to be consulted about applications for planning permission in areas so defined.

An example of such arrangements is to be found in a meeting which took place on January 23, 1959. The meeting was attended by representatives of Manchester University, including Professor Lovell, of the Cheshire County Council, of the Congleton Borough Council and of a number of district councils. The meeting had before it a map showing an area coloured pink. That area extended to a distance of six miles from the telescope on its southern, eastern and western sides, but in other directions was more restricted. Within the pink area was a shaded area extending in part to a distance of two miles and in part to a distance of four miles from the telescope. It was agreed at the meeting that the University should be consulted about all proposed development within the shaded area and about all proposed development elsewhere in the pink area except where the proposal was for an individual building for non-industrial use. It was also agreed that it should be left to the discretion of area planning officers as to whether they should consult the University about proposed development outside the pink area.

The next event to which I need refer occurred in March 1967, that is to say, after Mr. Stringer had applied for planning permission to develop the appeal site but before the Congleton Rural District Council had given their decision on the application. In March 1967,

a document was executed on behalf of the county council by their assistant clerk and on behalf of the University of Manchester by Mr. Lascelles, Sir Bernard's special assistant. The document was also signed by the clerk to the Congleton Rural District Council, who are described as an interested party. The document is headed " Cheshire County Council." The sub-heading is:

> Undertakings given to Manchester University in relation to future development in that part of the consultation (hatched) zone within the Congleton Rural District for the protection of the radio telescope at Jodrell Bank.

There is then a section headed " Goostrey village zone "; and I need not read this section. The next section is headed " Remainder of hatched zone," and I quote paragraph (a):

> The county council will discourage development within the limits of their powers at Blackfirs Lane, Somerford, and at Brereton Heath until 1990. This undertaking not to affect in-filling plots or land which already enjoys planning permission.

This document has been referred to as an agreement, and I will adopt this description of it.

Sir Bernard Lovell gave evidence at the local inquiry held on September 10, 1968, into Mr. Stringer's appeal to the Minister. According to the inspector's report, Sir Bernard's evidence as to the effect of the agreement was this—and I quote paragraph 45 of the report:

> That agreement accepted the relaxation of the university authorities' opposition to development in Goostrey on the condition that development outside the agreed area—and this specially includes Brereton Heath—was to be resisted.

In paragraph 61 of the report, which appears under the general heading of " Case for the local planning authority," I find this statement about the agreement of March 1967:

> The rural district council were a party to this agreement and it is this agreement which has resulted in the second reason for refusal.

Paragraph 76 of the report appears among a fasciculus of paragraphs which summarise the submissions of the solicitor who appeared at the inquiry on behalf of the local planning authority. It reads as follows:

> It is accepted that the local planning authority are in a position to override the Jodrell Bank objections but since the agreement was signed they do not do so.

The general duties of a local planning authority in dealing with an application for planning permission are prescribed by section 17 (1) of the Town and Country Planning Act 1962. The subsection requires the authority to have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.

It seems to me that the broad intentions of this unhappy agreement are inconsistent with the performance of that duty as regards applications for planning permission at Brereton Heath and elsewhere. It is true that the county council's undertaking to discourage development at Brereton Heath is qualified by the words " within the limits of their powers." Sir Bernard Lovell, however, bluntly interprets the agreement as meaning that development at Brereton Heath and at other places was to be resisted. The planning authority admit that, since the agreement was signed, they do not override the Jodrell Bank objections to development in the areas in question. It is, however, the duty of a planning authority to deal with the individual planning application before them and to have regard to all considerations which are relevant to that application. Plainly, on an application for planning permission to build houses in a particular place, one consideration which must always be material is the need for houses in that place, and no doubt there are other considerations, totally unrelated to the requirements of the telescope, which may be material to the application. It seems to me that the intention of this agreement was to bind the authority to disregard considerations to which, under the terms of the section, they are required to have regard.

I think that the agreement was *ultra vires* the authority for those reasons. This is a sufficient ground for treating it as without legal effect. It may well be that in any event the parties to the agreement did not intend it to give rise to obligations which would be enforceable in law. I have, however, no doubt that each party intended to carry out the undertakings which it in fact gave.

Coming now to Mr. Stringer's application for planning permission to develop the appeal site, it seems to me that the local planning authority made no proper determination on that application. It appears that, after the application was received but before the agreement was made, the University of Manchester were consulted on the application and objected to the proposed development on the grounds that it might lead to a significant development in the sensitive southern section of the telescope. The county surveyor, who was also consulted, considered the proposed development premature until sewer facilities had been provided. In November 1966, the county council recommended to the rural district council that the application be refused, but evidently the rural district council were not happy about that recommendation and there ensued correspondence between their clerk and officers of the county council. The application was finally considered by the rural district council on July 14, 1967, some four months after the agreement had been made, and notice of refusal was sent on July 18.

It is true that the first and third reasons given for the refusal had no connection with the telescope. The first reason was that the proposal did not accord with the county development plan in that the appeal site was within an area where existing land uses were intended for the most part to remain undisturbed. The third reason related

to the absence of mains drainage. Although, however, the inclusion of those reasons might suggest that the local planning authority had looked at all the material considerations, the fact is that they had given an undertaking to the University which, whether legally binding or not, they intended to honour. The honouring of that undertaking would necessarily lead to the refusal of the application and, in those circumstances, it is difficult to believe that the examination of other considerations can have been anything more than perfunctory or that there was any true compliance with the statutory duties of the authority under section 17 of the Act of 1962. In my view, there was no such compliance.

I now turn to the position of the Minister. According to the inspector's summary of the evidence given by Sir Bernard Lovell at the inquiry, Sir Bernard said that the Minister had advised the University and the local planning authority to seek local agreements, and that the agreement of March 1967 was a local agreement entered into in pursuance of that advice. I have already referred to one occasion on which Sir Bernard failed to appreciate the nature of the Minister's role. I think that this is another. There is no evidence that the Minister specifically advised the agreement of March 1967, and, indeed, such evidence as there is, is to the effect that the Minister was not consulted about it. It is true, as I have already indicated, that, as regards areas outside the borough of Congleton, the Minister has encouraged arrangements between the University and local authorities for consultation about applications for planning permission in defined areas. There is no evidence that the Minister has advised or encouraged anything more than such arrangements for consultation. It appears to me that such arrangements are in themselves unexceptionable, for they do not in any way fetter the freedom of the authorities to have regard to all material considerations in dealing with planning applications. Such arrangements are wholly different from the undertakings embodied in the agreement of March 1967. In the result, I cannot accept that it has been shown that the agreement stems from any advice or encouragement, whether general or particular, emanating from the Minister.

Reference was made at the inquiry to an application by a Mr. Hughes for planning permission to develop another site at Brereton Heath. This other site is quite close to the appeal site and is at the junction of Brereton Heath Lane and Holmes Chapel Road. The application was refused by the local planning authority, and Mr. Hughes appealed to the Minister. The Minister's decision dismissing the appeal was given on December 27, 1967. In paragraph 4 of his decision letter, the Minister said:

> The precise grounds for the appeal are noted and your arguments about the proposed septic tank drainage and the location of the site in relation to the Jodrell Bank telescope have been considered. The local planning authority wish to discourage further expansion at Brereton Heath and have also undertaken to

> restrict development there in the interests of the efficient working of the Jodrell Bank telescope. The Minister considers that the proposed development would be contrary to the policy for the area round Jodrell Bank and would be development in a rural area which would not be in accordance with the provisions of the approved development plan. For these reasons the Minister accordingly dismisses the appeal.

At the local inquiry into Mr. Stringer's appeal, it was said on behalf of the local planning authority that the Minister's decision in the appeal of Mr. Hughes had been given in the light of the agreement of March 1967 between the local planning authority and the University. In his conclusions, the inspector quotes the Minister's decision in the case of Mr. Hughes as evidence that the Minister has supported the 1967 agreement. If this short passage in the inspector's admirable and most illuminating report means that the Minister has expressed approval of the agreement and an intention to abide by its provisions, I regret that I am unable to agree with it. The structure of paragraph 4 of the decision letter in the case of Mr. Hughes seems to me to be plain. The first sentence is referring briefly to the submissions of the appellant. The second sentence is referring briefly to the representations of the local planning authority. It is not until the third sentence that the Minister is dealing with his own view of the matter. I do not read this sentence as expressing approval of the 1967 agreement or as expressing an intention to abide by its provisions. What the Minister is referring to as one of the reasons for his decision is not the agreement but the policy for the area around Jodrell Bank. Whether the Minister is entitled to have such a policy and to have regard to it in determining an appeal is another question to which I shall refer later. I cannot, however, accept the submission that the decision in the appeal of Mr. Hughes shows that the Minister has committed himself to upholding the provisions of the agreement.

Sir Bernard's evidence at the inquiry, in addition to demonstrating his impatience with terrestrial interference in any form whatsoever, dealt in the most cogent and authoritative manner with the anticipated effect of the proposed development on the work of the telescope. He said that, if Mr. Stringer's appeal were allowed, a very serious danger would arise to the continued operation of the telescope. That evidence was uncontradicted.

After making his findings of fact, the inspector set out his conclusions in paragraph 79 of his report. His first conclusion was that

> . . . the first and third reasons for refusal are not sufficiently strong in dismissing this appeal although they do support any other reasons which may exist.

His second conclusion was expressed as follows:

> The validity of the second reason for refusal is no doubt a matter on which legal opinion will be taken, but the strength of the arguments made at the inquiry in support of this reason for refusal are overwhelming. On the evidence I must accept that the

> erection of twenty-three dwellings on the appeal site, no matter how phased, would constitute a serious danger to the continued satisfactory operation of the Jodrell Bank telescope.

He then recommended that the appeal be dismissed.

The Minister issued his decision letter on January 13, 1969. Paragraph 5 of the letter reads as follows:

> The Minister agrees with the inspector's conclusions and accepts his recommendation. He is satisfied on the evidence put forward, and in particular having regard to the inspector's conclusions quoted above, that the development proposed might interfere to a serious extent with the working of the Jodrell Bank telescope, that this possibility constitutes a material consideration within the meaning of section 17 of the Act of 1962, and that as a result planning permission should not be granted.

Now, it is true that, in their submissions at the inquiry, the local planning authority urged the Minister to have regard to the 1967 agreement. It is true that, in his second conclusion, the inspector refers to the strength of the arguments made at the inquiry in support of the second reason for refusal. It is true that the Minister, in announcing his decision, said that he agreed with the inspector's conclusions and spoke of those conclusions as a factor in his decision. Relying on these matters the applicant says that the Minister must have been basing his decision, either wholly or in part, on the 1967 agreement. While this submission has a certain air of logic about it, it seems to me that it is out of touch with reality. The real argument made at the inquiry in support of the second reason for refusal was that the proposed development would be a serious danger to the operation of the telescope. That argument was firmly grounded in Sir Bernard's evidence. It was the argument to which the inspector was referring when he said that, on the evidence, he must accept that the erection of twenty-three dwellings on the appeal site would constitute a serious danger to the continued satisfactory operation of the telescope, and it is reasonable to infer that that was what was really in the inspector's mind when he spoke of the strength of the arguments made at the inquiry. So far as the Minister's decision is concerned, it seems to be absurdly far-fetched to say that it is in any degree based on the agreement. The Minister gives, as his reason for his decision, that he is satisfied on the evidence put forward that the development proposed might interfere to a serious extent with the working of the telescope. It cannot have been the existence of the agreement which satisfied him of that. Obviously, what satisfied him of it was the evidence of Sir Bernard Lovell. In my view, there is no justification for saying that the Minister's decision was in any degree based on or influenced by the existence of the agreement.

The arguments before me in support of the application to quash the Minister's decision may be classified under three heads. First, there were arguments based on the general nature and effect of the planning legislation. Those arguments were designed to show that

the Minister was not entitled to have regard to the interests of the telescope in reaching his decision on the appeal. Secondly, there were arguments designed to show that the Minister had failed to act fairly and judicially in determining the appeal, or at least had given the appearance of such failure. Thirdly, there was a technical argument to the effect that there was no basis on which the Minister could entertain an appeal from the decision of the local planning authority because that decision was itself a nullity.

It is convenient to deal with the technical argument first. Bearing in mind the observations of Lord Reid in *Anisminic Ltd.* v. *Foreign Compensation Commission,*[3] I think that the right view is that the decision of the local planning authority on Mr. Stringer's application was void and not merely voidable. That was the consequence of their failure to comply with the requirements of section 17 of the Act of 1962. However, this is not enough to dispose of this point in favour of the applicant in this case. The provisions for appeal to the Minister are contained in section 23 of the Act. Subsection (4) of this section provides that, on an appeal to him, the Minister may deal with the application as if it had been made to him in the first instance. Since the Minister's power is in effect to deal with the matter *de novo*, it seems to me that he is entitled to deal with the application and to make a decision on it even though the decision appealed from is a nullity. I think that support for such a view is to be found in the decision of the Privy Council in *Pillai* v. *Singapore City Council.*[4]

Moreover, I think that the same result can, if necessary, be arrived at in a different way. If the decision of the local planning authority on Mr. Stringer's application was void, then the authority were, in effect, in the position of having failed to deal with the application at all. They never notified Mr. Stringer of an effective decision on his application, because they never made such a decision. Section 24 of the Act of 1962 provides that, if the local planning authority do not give notice of their decision on a planning application within the prescribed period from the making of the application, the appeal provisions of section 23 shall apply as if permission had been refused on the application. By the time when Mr. Stringer appealed to the Minister the prescribed period had elapsed, and it seems to me that, if there was no other basis on which the Minister was entitled to entertain the appeal, he was entitled to entertain it under the provisions of section 24.

I would, accordingly, hold that the Minister was properly seised of Mr. Stringer's appeal. The question is whether the Minister's decision on the appeal can successfully be impeached on either of the two grounds specified in section 179 (1) (*b*) of the Act of 1962.

As to this, I turn first to those arguments of the applicant which are based on the general nature and effect of the planning legislation.

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[3] [1969] 2 A.C. 147, 175; [1969] 2 W.L.R. 163; [1969] 1 All E.R. 208, H.L.(E.).
[4] [1968] 1 W.L.R. 1278, P.C.; see esp. 1286.

By way of preface, I observe that, by virtue of section 23 (6) of the Act, the provisions of section 17 (1) of the Act apply to the determination of an appeal by the Minister in the same way as they apply to the making of a decision by a local planning authority on a planning application, so that the Minister is specifically required to have regard to the provisions of the development plan, so far as material to the appeal, and to any other material considerations.

The first point taken on behalf of the applicant is that the likelihood that the development would interfere with the work of the telescope is not a material consideration in determining whether permission for the development should be given. The interests of the telescope, it is said, are interests of a private character. It is said that the purpose of the planning legislation is to protect only the public interest, and, indeed, only the public interest in a particular sphere, namely, the sphere of amenity. Therefore, it is said, in this case the Minister has exercised his powers for a purpose not authorised by the Planning Acts, and reliance is placed on the judgment of Lord Denning in *Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government,*[5] where he said[6]:

> Although the planning authorities are given very wide powers to impose " such conditions as they think fit," nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest.

In further support of these submissions the applicant relies on the judgment of Salmon J. in *Buxton* v. *Minister of Housing and Local Government.*[7] That was a case in which a company were refused planning permission to dig for chalk on land which they owned. The company appealed to the Minister against that decision of the local planning authority and the Minister, rejecting his inspector's recommendation, granted permission. Along with others, Mr. Buxton, a neighbouring landowner, instituted proceedings under section 31 of the Town and Country Planning Act 1959 (the predecessor of section 179 of the Act of 1962), to quash the Minister's decision. The question was whether Mr. Buxton was a " person aggrieved " within the meaning of the section, and Salmon J. held that he was not. He said[8]:

> Before the Town and Country Planning legislation any landowner was free to develop his land as he liked, provided he did not infringe the common law. . . . The scheme of the Town and Country planning legislation, in my judgment, is to restrict

[5] [1958] 1 Q.B. 554; [1958] 2 W.L.R. 371; [1958] 1 All E.R. 625; 9 P. & C.R. 204; 56 L.G.R. 171, C.A.
[6] [1958] 1 Q.B. 554, 572; 9 P & C.R. 204, 217.
[7] [1961] 1 Q.B. 278; [1960] 3 W.L.R. 866; [1960] 3 All E.R. 408; 12 P. & C.R. 77; 59 L.G.R. 45.
[8] [1961] 1 Q.B. 278, 283–284; 12 P. & C.R. 77, 80–81.

> development for the benefit of the public at large and not to confer new rights on any individual members of the public, whether they live close to or far from the proposed development. . . . I doubt whether the present applicants had any legal right to appear at the inquiry.

Reference was also made on behalf of the applicant to the decision of Lord Guest in *Simpson* v. *Edinburgh Corporation*,[9] a case in which Edinburgh University had obtained planning permission to carry out certain development not in accordance with the city development plan. The pursuer, a neighbouring landowner, was held to have no title to sue for an interdict to prevent the development.

The applicant also relied on the decision of Paull J. in *Gregory* v. *Camden London Borough Council*.[10] In that case, certain trustees had obtained planning permission from the defendants to carry out a certain development. The plaintiffs, owners of adjacent land, feeling that their land would be affected by the proposed development, sought a declaration that the grant of planning permission by the defendants was *ultra vires* for non-compliance with certain requirements imposed under statutory authority. It was held that the plaintiffs had no sufficient interest to support such an action. Paull J. said[11]:

> . . . if a statute is passed to protect a class of persons, then anyone in that class who is affected by a breach of the statute may bring an action for damages in respect thereof. But the Town Planning Acts have not been passed to give any such rights. They have been passed to give rights to the public generally, and not to any particular class of the public.

He then referred to the decision of Salmon J. in *Buxton* v. *Minister of Housing and Local Government*.[12]

It may be conceded at once that the material considerations to which the Minister is entitled and bound to have regard in deciding an appeal must be considerations of a planning nature. I find it impossible, however, to accept the view that such considerations are limited to matters relating to amenity. So far as I am aware, there is no authority for such a proposition, and it seems to me to be wrong in principle. In principle, it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within this broad class is material in any given case will depend on the circumstances. However, it seems to me that, in considering an appeal, the Minister is entitled to ask himself whether the proposed development is compatible with the proper and desirable use of other land in the area. For example, if permission is sought to erect an explosives factory adjacent to a school, the Minister must surely be

[9] 1960 S.C. 313.
[10] [1966] 1 W.L.R. 899; [1966] 2 All E.R. 196.
[11] [1966] 1 W.L.R. 899, 908.
[12] [1961] 1 Q.B. 278; 12 P. & C.R. 77.

entitled and bound to consider the question of safety. This plainly is not an amenity consideration. The broad nature of the duty of a planning authority in dealing with an application is indicated in the judgment of Widgery J. in *Fitzpatrick Developments Ltd.* v. *Minister of Housing and Local Government.*[13] Widgery J. said:

> It is the duty of the local planning authority in the first instance, and the Minister if the matter comes to him by way of appeal, to plan the area concerned, and an essential feature of planning must be the separation of different uses or activities which are incompatible the one with the other.

The general statutory duty of the Minister is laid down in section 1 of the Minister of Town and Country Planning Act 1943 in these terms:

> . . . securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales. . . .

It seems to me that all considerations relating to the use and development of land are considerations which may, in a proper case, be regarded as planning considerations. In this case, it seems to me that the likelihood of interference with the work of the telescope is both a planning consideration and a material consideration within the meaning of section 17.

I find it equally difficult to accept that the local planning authority and the Minister on appeal must have regard only to the public interest as opposed to private interests. It is, of course, true, as Salmon J. pointed out in the *Buxton* case,[14] that the scheme of the legislation is to restrict development for the benefit of the public at large, but it seems to me that it would be impossible for the Minister and local planning authorities to carry out their duties as custodians of the public interest if they were precluded from considering the effect of a proposed development on a particular use of land by a particular occupier in the neighbourhood. The public interest, as I see it, may require that the interests of individual occupiers should be considered. The protection of the interests of individual occupiers is one aspect, and an important one, of the public interest as a whole. The distinction between public and private interests appears to me to be a false distinction in this context. In any event, if it were possible or necessary to draw such a distinction I should feel considerable hesitation in holding that the operation of the telescope was not a public, as opposed to a private, interest.

On this aspect of the case I do not think that I am assisted by the distinction between public and private rights which was drawn by Salmon J. in the *Buxton* case or by the decision of Lord Guest in *Simpson* v. *Edinburgh Corporation*[15] or that of Paull J. in *Gregory* v.

[13] Unreported; May 24, 1965.
[14] [1961] 1 Q.B. 278, 283; 12 P. & C.R. 77, 80–81.
[15] 1960 S.C. 313.

Camden London Borough Council.[16] All those cases were concerned with the right of an individual to maintain proceedings in the courts. An individual may well have no such rights and yet be a person whose interests may very properly be considered at an anterior stage when the question whether or not to grant planning permission is being dealt with.

It is true that Salmon J. expressed a doubt as to whether the applicants before him had any legal right to appear at the inquiry. That doubt was expressed in the light of the legislation as it then stood, but since then the position has been altered. Under rule 9 (2) of the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1968, the inspector has a discretion to allow any person to appear at the inquiry, and when the inquiry into Mr. Stringer's appeal was held there was a similar rule in force. The rules thus provide a means whereby, on an inquiry as to whether planning permission for a proposed development should be granted, the representations of an owner of adjacent land may be heard. It is worth noting, however, that at the inquiry with which I am concerned Sir Bernard did not appear as a representative of Manchester University but as a witness called by the local planning authority.

Next it is said that, if the interests of the telescope are interests which can properly be taken into account, the result will be to affect adversely the value of Mr. Stringer's land and the land of many others in a similar situation. There is no provision for compensation, and it is said that the planning legislation should not be construed so as to inflict loss without compensation unless the intention to do so is clear.

An argument of this character was recently considered by the House of Lords in *Westminster Bank Ltd.* v. *Beverley Borough Council.*[17] Lord Reid said[18]:

> . . . it is quite clear that when planning permission is refused the general rule is that the unsuccessful applicant does not receive any compensation. There are certain exceptions but they have no special connection with street widening. If planning permission is refused on the ground that the proposed development conflicts with a scheme for street widening, the unsuccessful applicant is in exactly the same position as other applicants whose applications are refused on other grounds. None of them gets any compensation. So absence of any right to compensation is no ground for arguing that it is not within the power of planning authorities to refuse planning permission for this reason.

It seems to me that those words, *mutatis mutandis*, are precisely applicable to the present case. The absence of a right to compensation

[16] [1966] 1 W.L.R. 899.
[17] [1970] 2 W.L.R. 645; [1970] 1 All E.R. 734; 21 P. & C.R. 379, H.L.(E.).
[18] [1970] 2 W.L.R. 645, 651–652; 21 P. & C.R. 379, 389–391.

when planning permission is refused for reasons relating to the telescope is no ground for arguing that it is not within the power of the planning authority to refuse planning permission for such reasons.

It is said that it would have been fairer to persons in Mr. Stringer's position if the restrictions required in the interests of the telescope had been imposed by a private Act of Parliament incorporating provisions for compensation. This raises issues of policy which go beyond what I have to consider. I observe, however, that in the *Westminster Bank* case[19] there was actually in existence a code of legislation under which the local authority might have achieved the desired result, but subject to the payment of compensation. The authority were nevertheless held to have been entitled to achieve their objective by the alternative methods of the Town and Country Planning Acts, notwithstanding that the effect of their choosing those methods was that no compensation was payable.

I now turn to the arguments relating to the question whether the Minister has, in determining the appeal, discharged his duty to act fairly and judicially. Two main points were taken in this connection. First, it was said that the Minister's decision was based on or influenced by the 1967 agreement. The provisions of that agreement, it was said, were inconsistent with a fair consideration of Mr. Stringer's appeal on its merits. I would agree that the provisions of the agreement were so inconsistent. The Minister was, however, not a party to the agreement, and, for the reasons which I have already given, I have held that the Minister's decision was not based on the agreement or in any degree influenced by it. If the applicant is to succeed on the ground that the Minister has failed to comply with the requirements of natural justice, he must put his case in some other way.

It was said that the Minister had tied his hands and precluded himself from considering the appeal with fairness and impartiality, or at least from appearing so to do, by encouraging the parties to the agreement to enter into it, or at least to enter into agreements of that character. As to this, I have held that it has not been shown that the agreement results from any advice or encouragement given by the Minister.

The question, therefore, comes to this. Is there some other ground on which it can be said that the Minister has prejudged the issues on the appeal, or tied his hands, or precluded himself from acting with fairness and impartiality both in appearance and in fact?

The Minister's anxiety that proper provision should be made for protecting the interests of the telescope is clear from many years of history. He has encouraged the definition by agreement of areas in which development is likely to interfere with the work of the telescope. He has encouraged arrangements for consultation between local authorities and the Jodrell Bank directorate about applications for planning permission in those areas. All this appears to me to be

[19] [1970] 2 W.L.R. 645; 21 P. & C.R. 379.

perfectly proper and in no way inconsistent with the proper performance of the Minister's *quasi*-judicial duties when occasion arises for their performance.

The matter, however, may be said to go further than this, because it appears that the Minister has a policy for the area around Jodrell Bank, and, indeed, the existence of such a policy is referred to in paragraph 4 of the Minister's decision letter on the appeal of Mr. Hughes. The policy is not defined in the letter, but, on the evidence before me, it may be said to be a policy of discouraging development which will interfere with the efficient working of the telescope. It is not, however, as it seems to me, a policy which is intended to be pursued to the disregard of other relevant considerations. The question is whether the existence of such a policy disables the Minister from acting fairly on the consideration of an appeal.

There are obviously many matters in the field of planning legislation on which the Minister is entitled, and, indeed, bound, to have a policy. The relationship between a Minister's functions in formulating and giving effect to a policy and his functions in making a decision of a *quasi*-judicial nature have been considered in many cases.

In *B. Johnson & Co. (Builders) Ltd.* v. *Minister of Health,*[20] Lord Greene M.R. said[21]:

> The duty placed on the Minister with regard to objections is to consider them before confirming the order. He is also to consider the report of the person who held the inquiry. Having done that, his functions are laid down by the last words of the paragraph, viz., " and may then confirm the order with or without modification." Those words are important, because they make it clear that it is to the Minister that Parliament has committed the decision whether he will or will not confirm the order after he has done all that the statute requires him to do. There is nothing in that paragraph, or anywhere else in the Act, which imposes on the Minister any obligation with regard to the objections, save the obligation to consider them. He is not bound to base his decision on any conclusion that he comes to with regard to the objections, and that must be so when one gives a moment's thought to the situation. The decision whether to confirm or not must be made in relation to questions of policy, and the Minister, in deciding whether to confirm or not, will, like every Minister entrusted with administrative duties, weigh up the considerations which are to affect his mind, the preponderating factor in many, if not all, cases being that of public policy, having regard to all the facts of the case.

In *R.* v. *Port of London Authority, ex p. Kynoch Ltd.,*[22] Bankes L.J. said[23]:

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[20] [1947] 2 All E.R. 395; 45 L.G.R. 617, C.A.
[21] *Ibid.*, 397.
[22] [1919] 1 K.B. 176; 16 L.G.R. 937, C.A.
[23] *Ibid.*, 184.

> There are on the one hand cases where a tribunal in the honest exercise of its discretion has adopted a policy, and, without refusing to hear an applicant, intimates to him what its policy is, and that after hearing him it will in accordance with its policy decide against him, unless there is something exceptional in his case. . . . On the other hand there are cases where a tribunal has passed a rule, or come to a determination, not to hear any application of a particular character by whomsoever made.

It seems to me that the general effect of the many relevant authorities is that a Minister charged with the duty of making individual administrative decisions in a fair and impartial manner may nevertheless have a general policy with regard to matters which are relevant to those decisions, provided that the existence of that general policy does not preclude him from fairly judging all the issues which are relevant to each individual case as it comes up for decision.

I think that, in this case, the Minister was entitled to have a policy with regard to Jodrell Bank, and I think that his policy was not such as to preclude him from fairly considering a planning appeal on its merits. I do not think that it precluded him from fairly considering Mr. Stringer's appeal. I do not think that the Minister has prejudged the case, or tied his own hands, or abdicated any of his functions. The contention that the rules of natural justice have not been complied with in this case cannot, in my view, be sustained.

In the result, the application fails and must be dismissed. I feel bound to add that this is not a result which gives me much satisfaction. I have considerable sympathy for Mr. Stringer, who has spent money in the reasonable anticipation of being allowed to develop the appeal site and who feels with some justification that the forces ranged against him are too powerful for an ordinary man to cope with. Mr. Stringer's application could not, however, succeed unless he could establish a failure on the part of the Minister in the proper performance of his functions, and this, in my judgment, he has failed to do.

Application dismissed with costs.

Solicitors—H. P. & H. C. Rigby, Sandbach; Solicitor, Ministry of Housing & Local Government.

[*Reported by Michael Gardner, Barrister-at-Law.*]