From: Greatorex-Davies, Stephan <SGreatorex-Davies@herefordshire.gov.uk>
Sent: 04 February 2020 11:21
To: 'davidtate407@gmail.com' <davidtate407@gmail.com>
Cc: Planning Enquiries <planning_enquiries@herefordshire.gov.uk>
Subject: RE: Appeal 184082 - Green Gables, Ledbury

Dear David

I attach the Appeal decision as requested.

Kind regards

Steve Davies
Planning Enforcement Officer
Planning Department, Herefordshire Council, Council Offices
Plough Lane, Hereford, HR4 0LE
Tel | 01432 260119
E mail | sgreatorex-davies@herefordshire.gov.uk
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From: Planning Enquiries <planning_enquiries@herefordshire.gov.uk>
Sent: Tuesday, February 4, 2020 10:00 AM
To: Greatorex-Davies, Stephan <SGreatorex-Davies@herefordshire.gov.uk>
Subject: FW: Appeal 184082 - Green Gables, Ledbury

Hi Steve,

Please see the email below.

I would be grateful if you will respond to the email and copy me in on your response.

Kind Regards,

Wendy Schenke

Herefordshire.gov.uk

Wendy Schenke
Economy and Place Directorate
Technical Support Officer
Development Management
Plough Lane Offices Hereford HR4 0LE
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From: David Tate <davidtate407@gmail.com>
Sent: 03 February 2020 22:20
To: Planning Enquiries <planning_enquiries@herefordshire.gov.uk>; teame3@planninginspectorate.gov.uk
Subject: Re: Appeal 184082 - Green Gables, Ledbury

Hi Tracy.
I am grateful for the attached documents.
The delegated report refers to taking into account the appeal case of Richmond-upon-Thames London Borough v SoS (2000), and I requested a copy from you some considerable months ago. If you continue to rely on this case, please send me a copy.

Regards
David P Tate
Planning Consultant.

On Mon, Feb 3, 2020 at 4:01 PM Planning Enquiries <planning_enquiries@herefordshire.gov.uk> wrote:

Dear Mr Tate

Please find attached the Councils Appeal Questionnaire and other supporting documents regarding the above case.

This will be in place of a hard copy sent by post.

Regards,
Tracy Carroll

Technical Support Officer

Herefordshire.gov.uk

Economy and Place Directorate

Technical Support Officer

Development Management

Plough Lane Offices Hereford HR4 0LE

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forwarding, printing or copying of this e-mail is strictly prohibited. If you have received this e-mail in error please contact the sender immediately and destroy all copies of it."

Richmond upon Thames LBC v Secretary of State for the Environment, Transport and the Regions

Positive/Neutral Judicial Consideration

Court
Queen's Bench Division

2000 WL 331207

IN THE HIGH COURT OF JUSTICE CO/4083/99

QUEEN'S BENCH DIVISION

(CROWN OFFICE LIST)

Royal Courts of Justice

Strand

London WC2

Tuesday, 28th March 2000

B e f o r e:

MR CHRISTOPHER LOCKHART-MUMMERY QC

(Sitting as a Deputy High Court Judge of the Queen's Bench Division)

- - - - - - -

THE LONDON BOROUGH OF RICHMOND UPON THAMES

-and-

(1) THE SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT

AND THE REGIONS

(2) RICHMOND UPON THAMES CHURCHES HOUSING TRUST

_ _ _ _ _ _ _ _

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Official Shorthand Writers to the Court)

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MR R DRABBLE QC (instructed by RJM Mellor, Head of Legal Services, London Borough of Richmond, Twickenham TW1 3BZ) appeared on behalf of the Applicant.

MR J LITTON (instructed by the Treasury Solicitor, London SW1H 9JS) appeared on behalf of the Respondent.

THE SECOND RESPONDENT did not appear and was unrepresented.

J U D G M E N T

(As approved by the Court)

Tuesday, 28th March 2000.

1. MR CHRISTOPHER LOCKHART-MUMMERY QC: This application under section 288 of the Town and Country Planning Act 1990 raises two important questions of general interests in planning law relating to changes of use of premises within the overall category of residential use. The matter concerns the use of 11 Denbigh Gardens, Richmond. This property was originally built and used as a single family dwelling-house. It was converted to seven flats with the benefit of planning permission granted in June 1970 and was thereafter used as such. Denbigh Gardens is, as described by the Inspector:

"... an attractive residential road containing semi-detached and detached properties of a variety of designs and ages. ..."

2. In August 1998 the second defendant, the Richmond-Upon-Thames Churches Housing Trust, applied under section 192 of the Act for a certificate that the use of the property as a single family dwelling-house would be lawful.

3. On 23rd October 1998 the Local Planning Authority, the claimant in the present case, refused that application upon the stated ground that:

”The proposal CONSTITUTES DEVELOPMENT within the meaning of Section 55 of the Town and Country Planning Act 1990, and an APPLICATION IS REQUIRED.”

4. By way of informative:

”The applicant is advised that the conversion of this property from 7 self contained flats to a single family dwelling house constitutes a material change of use requiring planning permission.”

5. An appeal was made against this decision under section 195 of the Act. That appeal was, as I understand it, conducted by way of written representations and a site visit.

6. In the representations of the Trust it was contended that the proposed change would not, as a matter of fact and degree, amount to a material change of use. It was secondly contended that, even if it were to amount to a material change of use, it would be a change for which planning permission is granted [as it was put] by virtue of section 55(2)(f) of the 1990 Act and Article 3 of the Use Classes Order. In those representations the nature and layout of the property were described. It is a two-storey, with attic, semi-detached building comprising 7 self-contained one bedroom and studio units, all accessed off the communal hall and central staircase. The nature of the facilities provided in each of the flats and in the building as a whole was described.

7. Those representations included reference to a previous decision in the same Local Planning Authority area of the Secretary of State on appeal in which, in not wholly dissimilar circumstances, the Secretary of State had held that no material change of use was involved and that, in any event, any such change had the benefit of the Use Classes Order. The representations went on to contend on several grounds that as a matter of fact and degree there would be no material change of use.

8. The Local Planning Authority contended that a reduction in the number of residential units, in the same way as an increase, is likely to have a direct impact on the physical use of the property and its impact on neighbouring properties. They contended that the Secretary of State’s previous decision in relation to the Use Classes Order was wrong.

9. Those representations led to the decision of the Inspector in the present case, given by his letter dated 7th September 1999. In paragraph 10, he states:

”In reaching in my conclusions, I have paid particular attention to the Secretary of State’s 1995 decision in the Sandycombe Road appeal, which is a relatively recent examination of the law in cases of this type. In particular whilst he noted that section 55(3)(a) of the 1990 Act makes a change from one dwellinghouse to two or more a material change of use in every circumstance, a change in the opposite direction will not always be a material one. Accordingly he concluded that the test was one of fact and degree.”

10. The Inspector’s reasoning is set out in full in paragraphs 11 to 15 of his letter as follows:

”11.Dealing firstly with the facts, it is apparent that the building was originally designed and constructed as a single dwellinghouse and I deduce that it was used as such until it was converted into 7 flats, following the permission in 1970. The proposal involves no external works, all alterations being internal and hence not in themselves development, under the provisions of section 55(2)(a). Accordingly the change of use would take place entirely within the walls and under the roof of the existing building. In structural terms, the building would appear no different to similar dwellings in the road, including its semi-detached neighbour, which is one of a handed pair. The only external manifestation of its current multiple occupation are the several bell pushes at the front door, which would presumably be removed. The alteration would be virtually imperceptible in my view. No changes are proposed to the front parking area or the rear garden, which currently have a similar appearance to other dwellings in the road. Accordingly, there would be no change in the physical appearance of the property, in my opinion.

12. Turning to the character of the proposed use itself, the building is currently in residential use and the new use would also be residential in nature. The present arrangement of the accommodation allows it to be occupied by 7 small households, probably comprising mostly single people or couples. The proposal would amalgamate this accommodation, such that it could be occupied by a single, but potentially much larger household, such as an extended family with one or more elderly

parents, as well as live-in staff, such as an au pair.

13. Comparing the two sets of circumstances in the context of the size of the building and the nature of its surroundings, I consider that there would be very little detectable change between the two modes of occupation. Given that one household would be occupying the same floor space as 7 smaller ones, it is probable that activity in the form of comings and goings, visitors, on and off street parking and deliveries would be somewhat less than might have been generated by the existing use. To that extent the proposed use would have a less significant effect on its surroundings than the existing use, in my opinion. That factor, coupled with the apparent absence of other properties containing flats in the vicinity, and the lack of any marked change in the physical appearance of the building, leads me to the firm conclusion that, as a matter of fact and degree, no material change of use would result from this particular proposal.

14. I understand the point made by the Council about the loss of small units of accommodation which would arise from the proposal. However, that seems to me to be more a question of planning merit than of law. I also appreciate that permitted development rights may arise from a favourable decision in this case. However, such rights will have been available prior to the conversion of the original dwellinghouse to flats, and are presumably available in the case of most other houses in the street. I can find no compelling reason why either of these considerations should alter my earlier conclusion, which has been based on matters of fact and degree.

15. I have also noted the comments of both parties about section 55(2)(f) and the Town and Country Planning (Use Classes) Order 1987 (UCO), Class C3. In this regard, the Secretary of State concluded in the 1995 decision that, even if the conversion of two flats to one dwelling was a material change of use, it was not development because of the provisions of section 55(2)(f) and Article 3 of the UCO. In my view that conclusion would apply with equal force to the current appeal, notwithstanding that the change is from 7 units to one."

11. As a result of those conclusions, he issued the certificate that is attached to his letter. The land, the subject of the certificate, is the property, the subject of the appeal. The certified used was "Use of the property as a single family dwelling-house", and it was certified that such use would be lawful as not amounting to development within the meaning of the relevant provisions.

Statutory background

12. Section 55(1) of the Act provides that:

"Subject to the following provisions of this section, in this Act, except where the context otherwise requires, `development' means the carrying out of building ... operations, in, on, over or under land, or the making of any material change of use of any buildings or other land."

13. Section 55(2)(f) provides that:

"The following operations or uses of land shall not be taken for the purposes of this Act to involve development of land ...

In the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class."

14. Section 55(3)(a) provides:

"For the avoidance of doubt it is hereby declared that for the purposes of this section ... the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used."

15. Section 336 of the Act provides:

"'building' includes any structure or erection, and any part of a building as so defined ..."

16. Article 3(1) of the Town and Country Planning (Use Classes) Order 1987 provides:

"Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any purpose of the same class shall not be taken to involve development of the land."

17. Article 4 provides:

"In the case of a building used for a purpose within Class C3 (dwellinghouses) in the Schedule, the use as a separate dwelling-house of any part of the building ... for the same purposes as the

building is not, by virtue of this Order, to be taken as not amounting to development."

18. Part C3 to the Schedule to the Use Classes Order provides:

"Use as a dwellinghouse (whether or not as a sole or main residence) -

(a) by a single person or by people living together as a family, or

(b) by not more than six residents living together as a single household (including a household where care is provided for residents)."

19. The decision of this court in *Winton v Secretary of State for the Environment [1984] JPL 188* decided that under the then statutory provisions, the Use Classes Order only applied to exempt changes of use from development where the change took place within the same planning unit. Therefore, if sub-division of such a unit took place, albeit that the uses before and after were the same in nature, there could still be material change of use.

20. In the Housing and Planning Act 1986 Parliament intervened to reverse the effect of that decision. In what was then section 22(2)(f) the words "the use thereof" were substituted by "the use of the buildings or other land or, subject to the provisions of the order, of any part thereof". Account then had to be taken of the effect of section 55(3)(a) of the Act in the light of the new Class C3 of the Use Classes Order. The effect by virtue of Article 4 of the Order was that section 55(3)(a) was to prevail, notwithstanding Class C3 and the amendment to what is now section 55(2)(f).

21. Against that background two issues arise in these proceedings: (i) did the Inspector correctly approach the question as to whether the change of use was a material change of use for the purposes of section 55(1) of the Act? (ii) if he did not do so, was he correct in concluding that what might otherwise amount to development was excluded from development by virtue of the use class provisions?

Issue 1

22. It seemed to me that a short and simple way of disposing of issue 1 in the Claimant's favour lay in the fact that the Inspector has considered the materiality of the change of use by reference only to its external manifestations and not by reference to the nature of the uses, before and after, within the internal envelope of the building irrespective of the external impact.

23. Paragraph 11 of the decision letter relates to external effect only. Paragraph 13 reaches the conclusion:

"... To that extent the proposed use would have a less significant effect on its surroundings than the existing use, in my opinion."

24. It is "That factor" which led the Inspector to the conclusion that no material change of use would result from the proposal. It seems to me that no consideration had been given to the actual character of each use, irrespective of external manifestation.

25. Mr Drabble QC, appearing for the Claimant, did not dissent from that suggestion, but has argued the case on a much wider or more significant ground, that is to say by reference to the first two sentences of paragraph 14 of the decision letter. I am content to consider the case on the basis advanced by Mr Drabble, reaching no definitive conclusion on what might have been a shorter way of disposing of this matter.

26. The question as to whether there can be a material change of use of the premises which retain their broadly residential character has involved the courts for nearly 40 years.

27. The locus classicus is the decision of the Divisional Court given by Lord Parker CJ in *Birmingham Corporation v Habib Ullah [1964] 1 QB 178* . The court found that a change of use from a single dwelling-house to a house let in lodgings was capable of amounting to a material change of use. Lord Parker in his judgment rejected the submissions of the Minister that planning control was in no way concerned with the questions of how many people are occupying the house, how many families, what facilities should be provided for them and matters of that sort. He stated:

"... Because Parliament intended that certain considerations should apply to the whole genus of dwelling-house, it does not follow that one cannot, as it were, divide up the genus into various species when considering whether there has been a change of use. I feel that it would be very odd if one could not go further than merely determine that because it is residential that is an end of the matter." (p.188)

28. in the later decision of *Blackpool Borough Council v Secretary of State for the Environment* [1980] 40 P&CR 104, where a dwelling-house was being used as a holiday home, Ackner LJ said:

" ... the question for determination in the context of this appeal is whether the character of the use of this dwelling-house as a private residence has been changed so substantially as to amount to a material change of use. It is a question of fact and degree."

29. Those authorities and others were considered by Kennedy J (as he then was) in this court in *Panayi v Secretary of State for the Environment* [1980] 50 P&CR 109. That was a case in which property which had been converted into four flats was used to accommodate homeless families. In the course of, and, in my judgment, as part of the central reasoning of his judgment, the learned judge said at page 117:

" ... the question in the present case - whether the character of the use of the premises as four self-contained units of accommodation had been changed so substantially as to amount to a material change of use - was, as Ackner LJ said in the *Blackpool Borough Council* case, a question of fact and degree. It was certainly open to the inspector to decide that, if a building that contained four self-contained flats, even without structural alterations, became a hostel for homeless persons, that could amount to a material change of use. The change could give rise to important planning considerations and could affect, for example, the residential character of the area, strain the welfare services, reduce the stock of private accommodation available for renting and so forth. The fact that in the broadest sense, the property continued to be used for residential purposes does not mean that there could not have been a material change of use (see *Birmingham Corporation v Habib Ullah*, to which I have referred, and *Hammersmith London Borough Council v Secretary of State for the Environment*)."

30. Mr Drabble submits that this conclusion is plainly right and that, if so, that would dispose of issue 1 in his favour; in other words, if a change of use gives rise to planning considerations such as the loss of a particular type of residential accommodation, that factor is a relevant factor to be taken into account in considering whether a change of use, in any case, is a material change of use. (It is, of course, common ground that if planning permission is required for such a material change of use, such factor - the loss of a particular type of accommodation - is a material consideration within the meaning of section 70(2) of the Act: see *Clyde & Co v Secretary of State for the Environment [1977] 1 WLR 926* and *Mitchell v Secretary of State for the Environment [1994] 2 PLR 23*).

31. If the conclusions which I have cited from *Panayi* are right, then this decision letter is clearly in error. It is plain that the Inspector has expressly disregarded the effects of the extinguishment of seven units of residential accommodation from his mind. Indeed, upon the basis of the submissions made by Mr Litton for the Secretary of State, it is contended that he was

right to do so. Mr Litton submits in terms:

"... that the Inspector was right to exclude from his consideration of whether the proposed use was a material change of use the effect of the loss of 7 units of small accommodation as this was not relevant to his assessment of the character of the existing and proposed use ...."

32. He submitted that the Inspector was under a duty to examine the character of the use before and after. He submitted that the Inspector did so at paragraphs 12 and 13 of his decision. Indeed, in addressing the authorities prayed in aid against him, Mr Litton went so far as to submit that, since there would at all times be self-contained residential use, there could not be a material change of use.

33. I pause to observe the implications of these submissions advanced on behalf of the Secretary of State. In an age where, for social and economic reasons, there is more and more need for relatively low cost units of small accommodation it is not surprising that many planning policies in development plans and other policy documents up and down the land seek to prevent the amalgamation of such units into larger units of residential accommodation. If Mr Litton is right, it would have profound implications for the practical application of such policies.

34. Mr Drabble submits that Kennedy J's (as he then was) approach is correct both in principle and upon the basis of high authority. He refers initially to *Westminster City Council v Great Portland Estates Plc [1985] 1 AC 661* , a case whose factual background is too well-known to require repetition here. At page 669 Lord Scarman said:

"My Lords, the principle of the law is now well settled. It was stated by Lord Parker CJ in one sentence in *East Barnet Urban District Council v British Transport Commission [1962] 2 QB 484* . The issue in that case was whether the use of a parcel of land constituted development for which planning permission was required. The justices found that it did not and the Divisional Court, holding that the question of change of use was one of fact and degree, refused to intervene. In the course of his judgment, with which the other members of the court agreed, Lord Parker CJ said, at p 491, that when considering whether there has been a change of use `what is really to be considered is the character of the use of the land, not the particular purpose of a particular occupier'. These words have rightly been recognised as extending beyond the issue of change of use: they are accepted as a statement of general principle in the planning law. They apply to development plans as well as to planning control."

35. At page 670 Lord Scarman continued:

"It is a logical process to extend the ambit of Lord Parker CJ's statement so that it applies not only to the grant or refusal of planning permission and to the imposition of conditions but also to the formulation of planning policies and proposals. The test, therefore, of what is a material `consideration' in the preparation of plans or in the control of development ... is whether it serves a planning purpose: see *Newbury District Council v Secretary of State for the Environment [1981] AC 578* , 599 per Viscount Dilhorne. And a planning purpose is one which relates to the character of the use of land. ..."

36. Against that well-known statement Mr Drabble formulated a proposition relevant to the present case in the following terms:

"The extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether a change from that use is a material change of use."

37. That proposition is seen explicitly applied by the Court of Appeal in the context of residential use in *Mitchell* above. Again, the ground is too well known to practitioners in this field to require repetition here. At page 26, we find the following in the judgment of Saville LJ:

"It is common ground between the parties, as I understand it, that material considerations are those which serve a planning purpose and that a planning purpose is one that relates to the character of the use of land: see in particular the speech of Lord Scarman in *Westminster City Council v Great Portland Estates Plc [1985] 1 AC 661 at p670* .

As will be seen from the immediately preceding paragraphs of that speech, the same considerations apply to the question

whether there would be a material change in the use of any buildings so as to make any such change a development within the meaning of section 55, thus requiring planning permission under section 57. In other words, a change in the use of a building which did not relate to the character of the use of the land would not require planning permission, unless, of course, it also involved other factors which amounted to development under section 55.

It is accepted on behalf of Mr Mitchell that the proposed change from multi-occupation to self-contained flats amounts to a material change in the use of the building in question, that is to say that such a change is a change in the character of the use of the land."

38. A little further on Saville LJ continued:

"It is undoubtedly the law that material considerations are not confined to strict questions of amenity or environmental impact and that the need for housing in a particular area is a material consideration within the meaning of what is now section 70(2) of the 1990 Act: see *Clyde & Co v Secretary of State for the Environment [1977] 1 WLR 926* , approved by the House of Lords in *Westminster City Council v British Waterways Board [1985] AC 676* ."

39. In my judgment, the approach of Kennedy J (as he then was) is entirely in keeping with more recent and higher authority. Again, in my judgment, Mr Drabble's formulation of the principle emerging from the cases, which I have set out above, is therefore plainly correct. It follows inexorably that the approach of the Inspector was incorrect as a matter of law.

40. For these reasons, Mr Drabble succeeds on the first issue.

Issue 2

41. If the proposed change of use in this case was or was capable of being a material change of use, would it be exempted nonetheless from development by the Use Classes Order? I have set out the relevant statutory provisions above.

42. Mr Litton draws attention to the definition of a "building" as including part of a building by virtue of section 336(1) of the Act. He submits that, applying section 55(2)(f) and Article 3(1) to the present situation, each of the seven units forms part of the building which comprises the premises, the subject of the application. He submits that it is clear from the Inspector's findings of fact (in particular, in paragraphs 1 and 13 of the decision) that he concluded that each of the seven units was a dwelling-house and therefore that the use of each unit was one falling within Class C3. He accordingly submitted that since the proposed building or use would be use as a dwelling-house within Class C3, accordingly the Use Classes Order exempted the change from amounting to development. Put more shortly, it was submitted that where individual units that are each in C3 use are amalgamated and the new use is also a C3 use, such a change is permitted by Article 3(1).

43. This question is one of pure construction of the relevant provisions relating to use classes. It is vital to examine clearly the provisions of section 55(2)(f) and Class C3. I set out again the relevant provisions of section 55(2(f):

"The following ... uses ... shall not be taken ... to involve development ...

In the case of buildings ... which are used for a purpose of any class ... the use of the buildings ... or ... of any part of the buildings ... for any other purpose of the same class."

44. It is quite clear that the phrase "which are used for a purpose of any class" relate to what I shall describe as the "before" situation. It is equally clear that the phrase "the use of the buildings ... or ... of any part of the buildings" etc relates to the "after" position. It is important to appreciate that the 1986 Act amendment was only intended to affect, and only does affect, the "after" position as is clear from the terminology used. (Indeed, it is clear that the necessary amendment to the Use Classes Order in Article 4 is dealing only with the "after" position. There was no need for a similar provision dealing with the "before" position, since the "before" position was not affected by the 1986 amendment to the Act.)

45. Accordingly, unless one can say that the "before" use of the land fell, in the present case, within C3, the Use Classes Order does not operate. Class C3 relates to the "use as a dwelling-house by a single person" etc. Quite simply that does not apply to the present case.

46. Accordingly, Mr Drabble succeeds on the second issue.

47. I reach this conclusion on the construction of the Use Classes Order by reference to the specific facts of this case. I am comforted by the belief that this conclusion is consistent with what I have taken to have been the intention of Parliament and with underlying policy objectives in this area.

48. For those reasons, this application succeeds.

49. MR DRABBLE QC: My Lord, I ask for costs. We have served on the other side a Schedule of Costs in the total sum of £6,215, and I wonder if that is agreed.

50. MR CHRISTOPHER LOCKHART-MUMMERY QC: I have not seen it. I had meant to have my normal whinge about not having seen the Schedule of Costs.

51. MR LITTON: To be fair, it was only faxed through to us at 17.23 last night.

52. MR CHRISTOPHER LOCKHART-MUMMERY QC: I have not read it. Perhaps I had better see a copy of that. Whilst that is coming, Mr Drabble, the form of relief, I suspect, is to quash the certificate?

53. MR DRABBLE QC: My Lord, it is simply to quash the certificate. I would not thought that you need anymore than that.

54. MR CHRISTOPHER LOCKHART-MUMMERY QC: It is not like a planning appeal quashing the decision letter, although, of course, the certificate is part of it. Perhaps, you would consider this, would you?

55. MR DRABBLE QC: My Lord, I will. (Pause).

56. MR CHRISTOPHER LOCKHART-MUMMERY QC: I think one is quashing the action referred to in section 288(4)(g), namely, "any decision on an appeal under section 195", which does not actually take us any further.

57. MR DRABBLE QC: My Lord, it does not seem to be the order or the certificate. It does seem to be the decision. That is right, so one quashes the decision and the consequential certificate.

58. MR CHRISTOPHER LOCKHART-MUMMERY QC: Mr Litton, I cannot think that there is a problem about the order being to quash the decision letter dated 7th September 1999 and accompanying certificate.

59. MR LITTON: No, my Lord.

60. MR CHRISTOPHER LOCKHART-MUMMERY QC: The order will be, therefore, that the decision letter dated 7th September 1999 and accompanying certificate be quashed. Mr Litton, do I understand that there are no observations by the Secretary of State on this Schedule?

61. MR LITTON: My Lord, there are not, as there were yesterday, 40 or so letters. There is no quibble taken as to the Council's explanation for the preparation etc.

RULING AS REGARDS COSTS

62. MR CHRISTOPHER LOCKHART-MUMMERY QC: Accordingly, the Applicant's costs will be paid by the first defendant, the Secretary of State, in the sum of £6,215.

63. MR LITTON: My Lord, I do have instructions to ask for leave to appeal, because if necessary and if this application is to be pursued I must ask you first. In relation to that, clearly it is an issue of some considerable importance as you rightly identified. Although your Lordship has come, certainly in relation to the second issue, to a decision which is on a construction of the legislation, nonetheless, in my submission, there is an alternative construction which is one which, given

the importance of this to planning generally and it being the first decision, it is it were, really does need to be found by higher authority if the decision is taken to appeal. My Lord, on that basis I would ask that this is an appropriate case where permission should be given to appeal at this stage rather than having to make an application to the Court of Appeal for that.

64. MR CHRISTOPHER LOCKHART-MUMMERY QC: Mr Drabble?

65. MR DRABBLE QC: I am plainly in your Lordship's hands. Even though it is of importance, your Lordship has come to a fairly clear conclusion on that.

RULING AS REGARDS PERMISSION TO APPEAL

66. MR CHRISTOPHER LOCKHART-MUMMERY QC: I think that this is a proper case for leave to appeal. I have come to clear conclusions on both issues, but it is quite, and equally, clear that this matter is of wide-spread importance and there is a public interest point involved, so I grant permission.

(Pause)

67. I put as my reason for granting permission as this: In the light of the general public interest and importance of this case in planning law, and in the absence of any previous decision on the points.

SMITH BERNAL