BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL JURISDICTION

No. 154 of 1999.

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEWUNDER THE ADMINISTRATIVE JUSTICE ACT CAP 109B OF THE LAWS OF BARBADOS

AND IN THE MATTER OF THE TOWN LANDCOUNTRY PLANNING ACT CAP 240 OF THE LAWS OF BARBADOS

AND IN THE MATTER OF THE LAND ACQUISITION ACT CAP 228NOF THE LAWS OF BARBADOS

AND IN THE MATTER OF THE CONSTITUTION OF BARBADOS

AND IN THE MATTER OF CERTAIN ACTS AND OMISSIONS BYCERTAIN DEPARTMENTS OF THE GOVERNMENT OF BARTBADOS IN RELATION TO LANDS ATFOSTER LODGE SAINT GEORGE

BETWEEN

PARSON'S PEST CONTROL LIMITED

(Applicant)

AND

THE CHIEF TOWN PLANNER

(First Respondent)

AND

THE CHIEF SURVEYOR

(Second Respondent)

AND

THE ATTORNEY GENERAL

(Third Respondent)

AND

THE MINISTER RESPONSIBLE FOR TOWNPLANNING

(Fourth Respondent)

AND

THE MINISTER OF HOUSING LANDS

(Fifth Respondent)

Before the Honourable Mr. Carlisle Payne, Judge of the High Court.

2000: January 24 and 25

March 24 and 27

May 24, 25 and 26

November 6, 7, 8, 9 and 10

2001: March 28

Mr. John Connell, Q.C., andMr. William Chandler for the Applicant.

Miss Jennifer Edwards andMr. Wayne Clarke for the Respondents.

DECISION

The applicant owns about 17 acres ofland on which there is a dwelling house and a building from which it operates apest control servicing business at Foster Hall, St. George.

ANotice was published pursuant to S.3 of the Land Acquisition Act (Cap.228) tothe effect that it appeared to the Minister responsible for Lands that part ofthe applicant's land as described in the schedule was likely to be needed for apurpose which in the opinion of the Minister was a public purpose, namelyhousing development. The scheduledescribed about an acre of the applicant's land along Foster Lodge Road.

On30th June 1998 the applicant's Managing Director, Mr. Brian Parsonswrote to the Ministry with reference to the Notice as follows:-
"I am theowner/operator of Parson's Pest Control Limited and as such the owner of Landsat Foster Lodge, St. George. I refer tothe notice given under Section 3 of the Land Acquisition Act, Cap. 228 that "it appears to the Minister that (portions of FosterLodge) are likely to be required for Public Housing purposes."

I and the company refuse to give consent to theacquisition of the said land by the Crown for the following reasons: (a) Theland is not designated in any approved Development Plan or Proposals forAmendment of such a plan for the public purpose specified in the Notice ofAcquisition; and (b) Accordingly such acquisition would be unauthorised,contrary to law, unreasonable, irregular and improper exercise of a public officer'sdiscretion. Consequently, notice of theintended acquisition should be withdrawn, and the acquisition effectivelydeemed to have been abandoned.

Failing this, I will instruct my Attorney thatapplication be made to the High Court for relief against an administrative actby way of Judicial Review under the provisions of the Administrative JusticeAct Cap. 109B and the appropriate Judicial Review (Application) Rules 1983pertaining thereto, on the grounds that: The notice of acquisition is unauthorised andcontrary to law; fails to satisfy and observe conditions and proceduresrequired by law; is irregular, unreasonable and improper exercise ofdiscretion; is for improper purposes and irrelevant considerations; is inconflict with the Policy of an Act of Parliament (Cap 240)."

Noticepursuant to section 5 was signed by the Governor General on 17th December, 1998.

Theapplicant brought an Originating Notion of Motion in January 1999 challengingthe legality of the acquisition on inter alia the followinggrounds:-

"The omission or failure of the Chief Town Plannerto designate the aforesaid land in respect of which the Notice under Section 5of the Land Acquisition Act Cap. 228 appeared in any submission for approval of anydevelopment plan or amendment thereto as required by the Town & Country Planning ActCap. 240 to be subject to compulsory acquisition for planning purposesincluding public housing is contrary to law and in conflict with the policy of The Town &Country Planning Act.

The failure of the Permanent Secretary, Chief Surveyor and Chief LegalOfficer of Ministry of Public Works and Transport, Housing and Lands toacknowledge and/or deal with the objections of the Applicant Company as ownerof the land herein of which notice was given under section 3 of the LandAcquisition Act Cap. 228 was a failure to satisfy or observe conditions andprocedures required by law. It was alsoan unreasonable, irregular and improper exercise of discretion.

The Administrative Acts and/or omissions set out in the statementtogether constitute an unreasonable and improper exercise of administrativeauthority as provided by Section 4 of the Administrative Justice Act."

When the matter first came before me on 24th January 2000Miss Edwards for the respondents took a number of points in limineincluding an application that the Attorney General bestruck from the proceedings. Thisapplication was refused, having regard to the practice recommended in Hochoy V. NUGE and others, 1964, 7W1R174. On the same basis, leave sought by Mr.Connell to join the Governor General was refused.

MissEdwards also objected to the applicant's application to join the Ministerresponsible for Housing and Lands, but I was satisfied that this would notresult in any prejudice and it was necessary for the due presentation of thecase. Further, on 27th March 2000this matter, which had also been set down for the 28th and 29th March 2000was adjourned at the request of Miss Edwards to 24th May. Leave was therefore granted to join theMinister responsible for Housing and Lands.

Theapplicant's amended documents were filed on 11th and 12th April 2000. The relief sought includes:-

"A declaratory judgement to the effect that theApplicant was deprived of its legitimate expectation that the Fourth Respondentwould follow the established statutory requirement under Section 9 (3.) of the Town and CountryPlanning Act that the Fourth Respondent would require the Consent in writing ofthe Applicant prior to the designation of the land in any development plan oramendment thereto.

A declaratory judgement to the effect that the Applicant was deprivedof its legitimate expectation that it would have been invited to lodge

itsobjection in writing to any acquisition of its property and that the FourthRespondent would by instrument in writing appoint a person to hold a publicenquiry into its said objection and that the said objection would have beenconsidered prior to the approval of the proposed amendment or amendments to thesaid plan under Section 9 (5) of the said Town and Country Planning Act.

A declaratory judgement to the effect that theApplicant was deprived of its legitimate expectation that the First and FourthRespondents would adhere to the provisions of Section 11 of the Town andCountry Planning Act.

A declatory judgement to that the statutoryrequirements of Section 9(5) of the Town and Country Planning Act are mandatoryand that the failure to comply with same is a violation of the principle ofnatural justice that the Applicant should be heard (audialteram partem) and thatsuch failure invalidates the said acquisition by the Governor General.

A declaratory judgement to the effect that the statutory requirementsof the Town and Country Planning Act and the Land Acquisition Act with respectto compulsory acquisition are preconditions to the legitimate exercise ofstatutory power under Section 3 of the Land Acquisition Act and that theaforesaid breaches of the statutory requirements invalidate the acquisition ofthe said lands under Section 5 of the Land Acquisition Act.

A declaratory judgement to the effect that the compulsory acquisition of the Applicant's landsat Foster Lodge in the

Parish of St. George in this Island is unreasonable in all thecircumstances.

An order of certiorari to quash the aforesaidcompulsory acquisition as an unreasonable and unlawful exercise ofadministrative authority on the part of the Fifth Respondent.

An award in damages in such an amount as thisHonourable Court thinks fit.

Particulars ofunreasonableness are given as follows:-

1. "The proposed acquisition effects landalong the front of the

applicant's property and:

(a) It will significantly interrupt the continuity of the landscape

to the front of the property.

(b) It will bisect the entire frontage of the said land.

(c) It will significantly interrupt the view from the residence towards thehighway leading to it and vice versa.

(d) It will cause the destruction of several mature fruit trees.

(e) It will juxtapose several properties of much less value next to theApplicant's property which is of significant historical and

architectural interest therebysubstantially devaluing it

(f) It will greatly destroy the amenity which the Applicant has

Expended much time, care and money in creating

2. The respondents as public officialsneglected and or refused to

choose:

(a) A possible area of the Applicants' land which would have

Caused less disturbance and injurious affection tothe remainder

of the land by theApplicant. This area of land is coloured green and is delineated by Mr.LeonardSt. Hill BSc, MCD,FRTPI in alocation plan of the lands of Parson's Pest Control Limited situate at FosterLodge and prepared by G.V. Cheong & Franklyn andFranklyn on October 28th, 1977 and exhibited in the Affidavit ofBrian Douglas Parsons dated the 12th day of April 2000 as BDP 1.

The choice of this alternative location would haveobviated the circumstances set out in particulars of loss and damage in clausesa, b, c, c, e, and f of paragraph 19 of the Statement herein and the blockageof the first one hundred feet of the carriageway leading to and from theApplicant's business.

The result of the said acquisition has been to causethe Applicant through its Managing Director to abandon

Supreme Court Suit No. 1903 of 1997 in which itsought to exercise its constitutional right to have determined whether

or not a tenant who stillresides on part of the said land which has been compulsory acquired is aqualified tenant under the

Tenantries FreeholdPurchase Act (as amended) or not."

The Town and Country PlanningAct, (Cap. 240) entitled as follows:-

"An Act to make provision for the orderly andprogressive

development of land in both urban and rural areasand to preserve and improve amenities thereof, for the grant of permission todevelop land and for other powers of control over the use of land, to conferadditional powers in respect of the acquisition and development of land forplanning, and for purposes connected with the matters aforesaid."

Sections 3 to 12 are as follows:

PART II

Administration

3. "The Minister shall secure consistency and continuity in the framing andexecution of a comprehensive policy for the use and development of al l land inthe Island in accordance with Part III, and in particular ……. inserted by 1998-39.

4. (1) There is hereby established a body tobe known as

the Town and CountryPlanning Advisory Committee.

(2) The constitution, procedure andpowers of the Committee shall be in accordance with the First Schedule.

(3) The Committee shall, with a view to theproper carrying out of the provisions and objects of this Act, advise theMinister on any matter on which the Minister may seek its advice, on thepreparation of development plans and generally as o the planning of developmentin the Island.

PART III

Development Plans

5. (1) As soon as may bepracticable after the 8th July, 1968,the Chef Town Planner shall carry out a survey of the whole Island.

(2) Not later t6han four years after the appointed day or within suchextended period as the Minister may allow, the Chief Town Planner shall submitfor the approval of the Minister a development plan consisting of a report ofthe survey together with a plan showing the manner in which he proposes thatthe land in the Island may be used (whether by the carrying out thereon ofdevelopment or otherwise) and the stages by which any such development may becarried out.

6. (1) Adevelopment plan shall include such maps and such descriptive matter as may be necessary to illustrate the proposalsmade therein by the Chief Town Planner with such degree of particularity as maybe appropriate to different parts of the Island; and a development plan may in particular –

(a) define the sites of proposed roads, publicand other buildings and works, air-fields,, parks, pleasure grounds, naturereserves and other open spaces;

(b) allocate areas o landfor use for agricultural, residential, industrial, commercial or other purposesof any class specified in the plan,

(c) designate as landsubject to compulsory acquisition by the Crown –

(i) any land allocatedby the plan for the purposes of any of their functions (including any lad whichthe Crown is or could be authorised to acquirecompulsorily under any enactment other than this Act);

(ii) any land contained in an area defined by the plan as an area ofcomprehensive development (including any land therein that is allocated by theplan for any purpose mentioned in sub-paragraph (I) or any land adjoining anysuch area);

(iii) any other land that, in the opinion of the Chief Town Planner, ought tobe subject to compulsory acquisition for securing its use in the mannerproposed by the plan.

(2) For the purposes of this section, a development plan may define as an area of comprehensivedevelopment any area that in the opinion of the Chief Town Planner should bedeveloped or re-developed as a whole for any of the following purposes, namely–

(a) dealingsatisfactorily with conditions of bad lay- outs or obsolete developments; or

(b) providing for the relocation of population orindustry or the replacement of open space in the course of the development orre-development o any other area; or

(c) any other purposespecified in the plan;

and land may be included in anyarea so defined and designated as subject to compulsory acquisition inaccordance with subsection (1) whether

or not he plan provides for thedevelopment or re-development of that particular land.

(3) Without prejudice to subsections (1) and(2), a development plan may provide for any of the matters mentioned in theSecond Schedule.

7. Atany time before a development plan for the whole of the island has been submittedto and approved by the Minister, the Chief Town Planner may prepare and submitto the Minister for approval a development plan relating to any part of theisland; andsections 5 and 6 shall apply to such a plan as they apply to a plan relating tothe whole of the Island.

8. The Chief Town Planner may, during the preparation of a development planrelating to any land or during the preparation of any proposals for alterationsor additions to any such plan, consult such persons or bodies as he thinks fit.

9. (1)Subject to this section, the Minister may approve any development plansubmitted to him under section 5, either without modification or subject tosuch modifications as he considers expedient.

(2) The Minister shall not approve a development plan which designates anyland as subject to compulsory acquisition if it appears to the Minister thatthe acquisition is not likely to take place within five years from the date onwhich the plan is approved.

(3) The Minister shall not approve a development plan with a modificationdesignating as subject to compulsory acquisition any land not so designated inthe plan as submitted to him, unless he has received in writing the consent ofall persons having an interest in that land.

(4) Before approving any developmentplan or proposals for the amendment of any such plan, the Minister shall causeto be published in three issues of the OfficialGazette and of at least one newspaper published in the Island a notice –

(a) stating that adevelopment plan, or proposals for theamendment of such a plan, have been prepared by the Chief Town Planner;

(b) naming the place or places where copies ofthe plan or proposals may be inspected and purchased by the public; and

(c) stating the time(being not less than twenty-eight days from the last publication of such noticein the Official Gazette within whichobjections or representations may be made to the Minister with respect to theplan or proposals.

(5) Where any objection or representation with respect to any plan orproposals for the amendment thereof is made in writing to the Minister withinthe tine specified in the notice published under subsection (4), the Ministershall by instrument in writing appoint a person to hold on his behalf a publicenquiry into the objection or representation and shall, before approving theplan or proposals, consider the objection or representation together with thereport thereon of the person holding the public enquiry.

(6) A person appointed to hold a public enquiry under subsection (5) shallhave the same powers as regards the regulation of the proceedings of the enquiry and thesummoning and examination of witnesses an shall enjoy the same privilege fromsuit as a Commissioner appointed under the Commissions of Enquiry Act, and thatAct shall, mutatis mutandis, apply inrelation to an enquiry under this section and to any person summoned to give orgiving evidence at any such enquiry.

(7) The name of every person appointed to hold a public enquiry undersubsection (5) shall be published in the Offiial Gazette.

(8) Where, as a result of nay objectionor representation considered or public enquiry held with respect to anydevelopment plan or proposals for the amendment of such plan, the Minister isof the opinion that any authority or person ought to be consulted before hedecides to approve the plan either with or without modifications or to amendthe plan, as the case may be, the Minister shall consult that authority orperson, but he is not obliged to consult any other authority or person or toafford any opportunity for further objections or representations or to causeany further public enquiry to be held.

10. (1) Notice shall be published in threeissues of the Official Gazette and ofat lest one newspaper published in the Island of the approval by the Ministerof a development plan or of proposals for amendment of such a plan, and copiesof any such plan or proposals as approved by the Minister shall be availablefor inspection and purchase by the public.

(2) Every development plan oramendment of a development plan shall, after approval by the Minister, besubmitted for the approval of both Houses an if approved by resolution o bothHouses shall come into operation on such date after its approval by Parliamentas the Minister may appoint by notice published in the Official Gazette.

11. (1) At Least once in every five yearsafter the date on which a development plan for the whole of the Island comesinto operation, the Chief Town Planner shall carry out a fresh survey of theIsland and submit to the Minister a report of the survey together withproposals for any alterations or additions to the plan that appear to him to berequired.

(2) Notwithstanding subsection (1), the Chief Town Planner may at any timesubmit to the Minister proposals for such alterations or additions to anydevelopment plan as appear to him to be expedient.

(3) Subject to subsection (4), whereproposals for alterations or additions to a development plan are submitted tothe Minister under this section, the Minister may amend that plan to suchextent as he considers expedient having regard to those proposals and to anyother material considerations; and anysuch amendment may in particular provide for securing that any land previouslydesignated by the plan as subject to compulsory acquisition shall cease to beso designated or that any land not previously so designated shall be so designated.

(4) Subsections (2) and (3) of section 9 shall apply in relation to theamendment of a development plan as they apply in relation to the approach ofsuch a plan, with the substitution –

(a) insubsection (2) of that section, of a reference to the date on which the amendment is effected for the reference to thedate oh which the plan is approved; and

(b) insubsection (3) of that section, of a reference to the proposals submitted tothe Minister under this section for the reference to the plan as submitted tohim.

(5) Where under section 7 a development plan has been prepared for part ofthe island and has been approved by the Minister, then, without prejudice tosubsection (2), the periods of five years mentioned in subsection (1) shall runfrom the date on which development plans for the whole of the Island have been approved by theMinister.

12.(1) Where any land is designated by a development as subject to compulsoryacquisition, then, if at the end of six years after the date on which the plan,or the amendment of the plan, by which the land was first so designated cameinto operation, any of the land has not been acquired by the Crown, any ownerof the land may serve on the Minister a notice requiring his interest in theland to be so acquired.

(2) Every notice under subsection (1) shall be in writing specifying the interest to beacquired and shall be served on the Minister by sending it by pre-paidregistered post addressed to the Permanent Secretary to the Minister.

(3) Where a notice has been servedunder subsection (1), then, unless within the period of six months after theservice of the notice the interest o the owner in the land has been soacquired, the development plan shall have effect, after the end of that period,as if the land were not designated as subject to compulsory acquisition.

(4) Where any land is designated by a development plan as subject tocompulsory acquisition (not being land comprised in an area defined by the planas an area of comprehensive development) then, if planning permission isgranted for any development o the land so designated, or any part thereof, andthat development is carried out in accordance with the permission so granted,the development plan shall have effect as if the land to which the permissionrelates were not designated as subject to compulsory acquisition, but in thecase of planning permission granted for a limited period, this subsection shall cease to have effect at the end ofthe period for which the permission was granted."

Section 50 is as follows:

50. (1) "Where any land is designated by a development plan as subject to compulsoryacquisition by the Crown, the land may be acquired in a\

accordance with the Land AcquisitionAct as being land needed for publicpurposes within the meaning of the Act.

(2) Nothingin this section shall be deemed to prevent the acquisition by

Agreement of any land designated as mentioned insubsection (1).

Finally, Section 81 isas follows:

" For the avoidance of doubt, itis hereby declared that this Act and any restrictions or powers thereby imposedor conferred in relation to land apply and may be exercised in relation to anyland notwithstanding that provision is made by any Act, statutory instrument orother enactment or law in force on the 8th July, 1968, for authorising or regulating and development of the land."

Mr.Connell contends that designation in the Development Plan under the Town andCountry Planning Act is an essential pre-requisite to compulsory acquisitionunder the Land Acquisition Act.

TheTown and Country Planning Act was passed in 1965, some16 years after the Land Acquisition Act. Under it, land may be designated in the Development Plan as subject tocompulsory acquisition by the Crown. Ido not however see such provision s in the Town and Country Planning Act aswould limit or confine the powers conferred under the Land Acquisition Act toland which was designated for compulsory acquisition under the Town and CountryPlanning Act. It is observed that one ofthe purposes of the Town and Country Planning Act is "to confer additionalpowers in rspect of the organisationand development of land for planning."

Counselreferred to the corresponding provisions of the Town and Country Planning Actof the U.K. where landis generally designated in the Development Plan as subject to compulsoryacquisition. This however does notpreclude the powers of compulsory acquisition for certain purposes like housingcontained in specific statutes. Further,it would seem that designation is sometimes done in the U.K. foradministrative or planning purposes.

Daviesin the 3rd Edition of his Law of Compulsory Purchase andCompensation at page 241 said:-

"It is important to note thatcompulsory purchase of land for

planning was notlawful without prior designation of the area

containing that landfor comprehensive development. It was

oftenadministratively convenient, in the sense of furnishing

planning authorities with acoherent, comprehensive picture of future public development of every kind, to 'designate' generally, despite thefact that this was not necessary in cases of compulsory purchase for

purposes other than planning: inother words for council houses, schools, roads, reservoirs and so on."

In any event, it does notappear that there are corresponding provisions in the U.K.to those contained in our Land Acquisition Act.

For these reasons,it seems to me that the powers of compulsory

Acquisition contained in the Land Acquisition Act are notlimited or confined to land which has been designated for the purpose concernedunder the Town & Country Planning Act.

I find therefore that theacquisition of the applicant's land is not invalid because of the absence ofmeasures taken under the Town & Country Planning Act.

I must now turn to thequestion of unreasonableness. Mr.Connell contends that the decision to acquire the particular land acquired wasso unreasonable that no reasonable authority could come to it.

Statutory powers ofcompulsory acquisition can only be lawfully exercised taking into accountmaterial considerations and disregarding improper or irrelevant considerations.

I consider the impact on thecharacter and amenities of the remaining property of the owner a matter to betaken into account. Likewisethe availability of a suitable alternative site which would involve lessdisturbance and loss of amenities.

The Applicant's Property

The residence is consideredby the applicant to be of historical

andarchitectural interest. It has been thehome for several years of Mr. Brian Parsons, the Managing Director of theapplicant. It is a substantial building,on several acres of well landscaped grounds, with several fruit trees. It stands virtually apart. There is an access road to the building wherethe business is carried on, towards the south eastern corner of the property.

About 200 yards from the residence towards theeast the level drops into a former quarry.

The property including the former quarry is about17 acres. It is bordered to the west by Foster Lodge Road. To the south is the village of Parish Land.

The Land Acquired

The land acquired is a small strip about 400 feetby 100 feet along the front. Thus it isabout one acre, and according to the Permanent Secretary, Ministry of Housingis for sub-division into about eight (8) house lots. This would start from about 300 feet from theresidence, running south along the main road, and the front of the well landscapedgrounds. It would

Span both sides of the accessroad to the business.

Withinthis strip of land acquired is the chattel house of a tenant who had been givenNotice to quit by the applicant. Sometime in 1997 the applicant brought anaction to have this Court determine whether or not the tenant was a qualifiedtenant under the Tenantries Freehold Purchase Act, asamended. The Ministry responsible forHousing and Lands had treated the tenant as a qualified tenant, and was awareof the Court proceedings taken by the applicant. The land was acquired while the matter wasstill pending thus putting an end to the case.

Mr.Connell submits that the reasonable inference to be drawn is that the decisionto acquire this particular piece of land was influenced by the Court case.

Mr.Jones the Permanent Secretary said in evidence that the decision to acquirethis land was not influenced by the case. He was asked by Mr. Connell:-

Question:
What spiralfeatures are there about this land that are not

availablein other lands in St. George?

Answer:
There areno spiral features, we are currently acquiring

Land in St. George and otherparishes, but the location of this land on to the road makes it easier and cheaper for us to develop.

Itseems to me that the timing of the acquisition was at least unfortunate, inthat the law was not allowed to take its course.
The immediate surroundings

Directlyacross the road from the applicant's property are a few scattered buildings oneto five acres apart. About400 yards to the south from the applicant's property one comes to Rowans Park, anup-market residential development on the right side of the road. On the left side are agricultural holdingswith lots of approximately 4 acres each.

Adjoining the applicant'sproperty to the south, and some 700 feet from the residence,is the village of Parish Land.
An Alternate Site

It iscontended on behalf of the applicant that other lands of the applicant, namelythe most southern strip which borders Parish Land east to west, would be assuitable if not more so for the housing development intended, while involvingless disturbance and loss of amenities to the owner, and less damage to thecharacter of the remainder of his property.

Mr. Leonard St. Hill, a Charactered Town Planner and Civil Engineer of 42 yearsexperience, gave evidence for the applicant. He gave a comparison of the two sites. The Court also had the advantage of a visit to the site. The alternative site is to the southern endof the applicant's property and is adjacent to Parish Land, which isa housing development or village with houses of more similar characteristicsand amenities to the housing development which is intended for the landacquired.

Further, any disturbance orloss of amenities to the owner, or any damage to the character of the remainingproperty of the owner from use of the alternative site would be minimal.

As to comparative costs, Mr.St. Hill did not agree that development of the site acquired would necessarilysave costs. He said that Governmentwould have to compensate the owner for the services existing there, and thatthis would offset the cost of developing the alternative site.

From the evidence given onbehalf of the respondents it does not appear that for present purposes anydistinction was made by them between one dwelling house and another, or betweenone residential area and another. Noconsideration was given to the character and amenities pf the remainingproperty of the owner in the decision to acquire a one acre strip along thefront of this property for subdivision into 8 house lots.

The saving of costs ofdevelopment was the determining factor given by the respondents for the spot selected. But costs are not the whole story. Other factors need to be placed in thebalance.

As I see it, any saving incosts would be insignificant as compared with the major intrusion into asubstantial and attractive property, with consequential damage to the characterof the area and great loss of amenities to the owner.

In R v Tendering DistrictCouncil, 76 P & CR 567, the question arose whether sufficient assessmenthad been given to possible alternative sites. Lord Denring, MR said:-

"To what extent is theSecretary of State entitled to use

compulsory powers toacquire the land of a private individual?

It is clear that no Minister or publicauthority can acquire

any landcompulsorily except the power to do so be given by

Parliament: and Parliamentonly grants it, or should only grant it,

when it is necessary in thepublic interest. In any case, therefore,

where the scales are evenlybalanced—for or against compulsory acquisition—the decision—by whomsoever it ismade—should come down

against compulsoryacquisition. I regard it as a principleof our

constitutional law that no citizen is tobe deprived of his land by any

public authority against his will,unless it is expressly authorised by Parliament andthe public interest decisively so demands: and then only

on the condition that propercompensation is paid, see Attorney General v

DeKeyser's Royal Hotel Ltd. If there isany reasonable doubt on the matter , the balance mustbe resolved in favour of the citizen. This principle was well applied by Mr.Justice Forbes in Brown v. Secretary of State for the Environment, where therewere alternative sites available to the local authority, including one owned bythem. He said (1978) P & CR 285,291:

"Itseems to me that there is a very long and respectable tradition

for the view that anauthority that seeks to dispossess a citizen of his

land must do so byshowing that it is necessary…If, in fact, the

acquiring authorityis itself in possession of other suitable land – other land that is wholly suitable for thatpurpose -- then it seems to me that

no reasobableSecretary of State faced with that fact could come to the

conclusion that it was necessary forthe authority to acquire other land compulsorily for precisely the same purpose."

In this case I am satisfiedthat the relevant authorities failed to take into account matters which oughtto have been taken into account; firstly the availability of at least onesuitable alternative site. Secondly the damage to the character an amenities of the rest ofthe property of the owner. Therewas clearly a failure to place in the balance the damage to the character andamenities of the remaining property of the owner relative to any saving in thecost of development.

Forthese reasons I find that the decision to acquire the particular parcelacquired was so unreasonable in all the circumstancesas to be in excess of the powers conferred under the Land Acquisition Act.

Therewill therefore be an order of certiorrai to quash theacquisition.

Theapplication for damages is deferred and there will be liberty to apply.

Theapplicant will have its costs for two Counsel to beagreed or taxed.

Judge of the High Court