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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

Friday, 23 January 2004

B E F O R E:

MR JUSTICE SULLIVAN

BARRY FIELD

(CLAIMANT)

-v-

(1) FIRST SECRETARY OF STATE

(2) CRAWLEY BOROUGH COUNCIL

(DEFENDANTS)

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MR JAMES PEREIRA (instructed by TWM Solicitors LLP, 16-18 Quarry Street, Guildford, Surrey GU1 3UF) appeared on behalf of the CLAIMANT
MISS SARAH-JANE DAVIES (instructed by DEFRA, 3-8 Whitehall Place, London SW1A 2HH) appeared on behalf of the FIRST DEFENDANT

J U D G M E N T

1. MR JUSTICE SULLIVAN:

Introduction

This is an application under section 288 of the Town and Country Planning 1990 ("the Act") to quash a decision by an Inspector appointed by the first defendant dismissing an appeal made by the claimant under section 195 of the Act against the second defendant's refusal to grant a lawful development certificate under section 192 of the Act for the erection of two detached bungalows, each with a garage, on land at Donkey Lane, Fernhill, Crawley, West Sussex. ("the site"). The Inspector's decision is contained in a decision letter dated 17th July 2003.

Factual Background

In 1967 the site contained 1-4 Forders Cottages. On 18th July 1967 outline planning permission was granted for the:

"... demolition of numbers 1-4 Forders Cottages and erection of a pair semi-detached or detached bungalows each with garage... ." (the "1967 permission")

2. The 1967 permission was subject to a condition that detailed plans and drawings of the buildings to be constructed had to be "submitted to and approved by the local planning authority in due course." Detailed plans and drawings were submitted and were approved by the Local Planning Authority on 25th September 1967.
3. The application for the certificate under section 192 was based upon the proposition that the erection of two detached bungalows, each with a garage, would be authorised by the 1967 permission. As granted, the 1967 permission did not contain any time limit within which the development authorised by the permission had to be begun. In that respect, the 1967 permission was not in the least unusual. At that time the practice of local planning authorities varied: some local planning authorities imposed conditions requiring details to be submitted for approval and/or development to be commenced within various time limits, others did not.

The 1968 Act

Generally applicable statutory time limits upon the duration of all planning permissions were introduced by the Town and Country Planning Act 1968 ("the 1968 Act"). Section 65 dealt with detailed planning permissions and section 66 with outline planning permissions. All planning permissions granted after the commencement of those two sections (on 1st April 1969) had to include conditions limiting the time within which development had to be commenced, and in the case of outline planning permissions the time within which details had to be submitted for approval. If the local planning authority failed to impose such conditions they were deemed to have been imposed: see subsections 65(2) and (3) and 66(4) and (5).

4. Those planning permissions granted before 1st April 1969 which contained no time limits were dealt with by subsections 65(1) and 66(2). Section 65(1) (which did not apply to outline planning permissions: see subsection 4(a)) was as follows:

"Subject to the provisions of this section, every planning permission granted or deemed to have been granted before the commencement of this section [on 1st April 1969] shall, if the development to which it relates has not been begun before the beginning of 1968, be deemed to have been granted subject to a condition that the development must be begun not later than the expiration of five years beginning with the said commencement."

Section 66(2) was as follows:

"Subject to the provisions of this section, where before the commencement of this section [on 1st April 1969] outline planning permission has been granted for development consisting in or including the carrying out of building or other operations, and the development has not been begun before the beginning of 1968, that planning permission shall be deemed to have been granted subject to conditions to the following effect:-

- (a) that, in the case of any reserved matter, application for approval must be made not later than the expiration of three years beginning with the date of commencement of this section; and
- (b) that the development to which the permission relates must be begun not later than whichever is the later of the following dates-
 - (i) the expiration of five years from the date of the commencement of this section; or
 - (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Section 67(1) provided that:

"For the purposes of sections 65 and 66 above, development shall be taken to be begun on the earliest date on which any specified operation (as defined in section 64(3) of the Land Commission Act 1967) comprised in the development begins to be carried out."

Section 64(3) of the Land Commission Act 1967 (the 1967 Act) defined "specified operations" as follows:

"In this Part of this Act 'specified operations' means any of the following, that is to say-

- (a) any work of construction in the course of the erection of a building;
- (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in the last preceding paragraph;
- (d) any operation in the course of laying out or constructing a road or part of a road;
- (e) any change in the use of any land, where that change constitutes material development."

5. These provisions as to time limits were subsequently incorporated into the Town and Country Planning Act 1971 ("the 1971 Act"), a consolidating Act which came into force on 1st April 1972: see sections 41 to 43. Section 43(2) reproduced the list of specified operations which had been contained in section 46(3) of the 1967 Act. The 1971 Act dealt separately in Schedule 24 with planning permissions that had been granted before 1st April 1969: see paragraph 18 of

Schedule 24. Paragraphs 19 and 20 of the Schedule, in effect, re-enacted sections 65(1) and 66(2) of the 1968 Act. Paragraph 21 applied, inter alia, section 43 for the purposes of paragraphs 19 and 20.

6. For convenience, I set out the relevant parts of section 43:

"(1) For the purposes of [paragraphs 19 and 20 of Schedule 24 to] this Act development shall be taken to be begun on the earliest date on which any specified operation comprised in the development begins to be carried out.

(2) In subsection (1) of this section 'specified operation' means any of the following, that is to say-

(a) Any work of construction in the course of the erection of a building;

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in the last preceding paragraph;

(d) any operation in the course of laying out or constructing a road or part of a road;

(e) any change in the use of any land, where that change constitutes material development."

7. Although the 1971 Act was repealed by the Planning (Consequential Provisions) Act 1990, the provisions of Schedule 24 relating to planning permissions granted before 1st April 1969 were given continuing effect by paragraph 3 of Schedule 3 to that Act.

8. In the present case, outline planning permission had been granted for development including the carrying out of building operations before 1st April 1969. The development had not been begun before the beginning of 1968. Application for approval of reserved matters had been made and approved in 1967, well before 31st March 1972. The only remaining question, therefore, was whether the condition, deemed to have been imposed by virtue of section 66(2)(b) and now contained in paragraph 21(b) of Schedule 24 to the 1971 Act, that development must be begun by not later than 31st March 1974, had been complied with.

The Inspector's Conclusions

On this issue the Inspector's factual conclusions were as follows. Numbers 1-4 Forders Cottages were demolished at some time between January 1969 and November 1970, when the previous owner died (paragraph 7 of the decision letter). Apart from the demolition of the cottages, no other works had taken place at the site (paragraph 2). At the inquiry, the second defendant made it clear that it was not contending that the demolition of the cottages was "in itself" too minimal a degree of work to constitute the commencement of the development (paragraph 3). It was also agreed that it would have been necessary to demolish at least part of an end cottage in order to construct a cesspool to serve one of the bungalows (paragraph 4). Accordingly, in paragraph 4 of his decision letter, the Inspector concluded as follows:

"I consider that having regard to the siting of cottages and cesspools it would have been normal building practice to demolish the cottages at the outset. I have concluded that in the terms suggested by the Marks and Spencer case, demolition

of the cottages would have been a part of the totality of works necessary on the site for completion of the new bungalows."

9. In the first part of paragraph 13 of his decision letter, the Inspector said:

"As to whether demolition of the Cottages was development at the time it took place, it was suggested that having regard to the then relevant 1962 Act s12(1) and s221(1) one consideration was whether demolition works of this particular type or scale were operations normally undertaken by a person carrying on the business of a builder. The demolition of a terrace of four cottages is in my assessment most unlikely to have required a specialist, non-builder involvement. There was evidence that the previous owner was a member of a long established family involved in building/construction. There was evidence that he had been sufficiently closely associated with the site to have been 'often' met by a neighbour and for it to be said that ... 'he placed the rubble.... at the end of our Lane and said I could use it ...' I have concluded on the balance of probability that demolition of the cottages was carried out by a builder and was a type of operation normally carried out by a person carrying on the business of a builder. I therefore consider that the demolition of the Cottages could have been development if considered in terms of the 1962 Act alone."

10. In the second part of paragraph 13 the Inspector continued:

"At the relevant time, however, case law also applied to this matter. As indicated in the Iddenden decision demolition of buildings in itself was not considered to be development. The Coleshill case dealt with what was determined to be an alteration to a building, and I do not consider that the references therein to demolition would have been construed as concluding that it was necessarily development. This is confirmed by the later Cambridge decision, which indicates that it had been understood that development involved some constructive element. I have concluded that as the law was at the time, demolition of the cottages was not development."

11. In paragraph 14 the Inspector said:

"However even if I am wrong in this regard, and it is assumed that the demolition of the Cottages was then development, this does not establish that the demolition was a commencement of the approved bungalow scheme. This is because for the reasons already stated, the demolition could have been, as a matter of fact, a discrete and separate action and the evidence is not sufficient to establish that the Appellant's scenario is the more probable."

12. The Inspector's reasons for reaching this further conclusion are set out in paragraphs 8 to 11 of the decision letter, which are as follows:

"8. The making of a building regulations application in August 1967 contemporarily with the reserved matters application could have implied an intention to commence work directly, given the evidence that building regulations permissions had a limited life. This interpretation does not, however, sit easily with the ensuing 16 to 38 month period before the Cottages were demolished. I have concluded that I can give little weight to the building regulations application in that regard, even if it were proper to give weight to assumptions about intention."

9. The illness of the then owner, claimed as leading to his death in November 1970, could provide an explanation of why, if development had indeed been commenced by demolition of the cottages, it had not continued until the bungalows were completed. Similarly the loss of knowledge of the reserved matters approval that was revealed by the terms of a 1987 planning application, and an on-going family dispute, could provide an explanation for the matter not having been conclusively resolved at an earlier date. The dispute was also put forward as explaining why no further or more direct evidence had been available.

10. On the other hand, and as put forward for the Council, the demolition of the cottages could have been undertaken as an act factually distinct from implementation of the planning permission. A decision to demolish could have been motivated by concerns about danger to trespassers or passers-by, perhaps associated with evidence of souvenir hunting by children following the January 1969 air crash [the site is near Gatwick airport and an airliner had crashed close to the cottages in 1969]. Other possibilities include pre-empting squatters, to protect an adjoining building in other ownership from damage, or to provide a 'clean' site for sale. The fact that the Cottages had been 'condemned' does not, however, suggest that there was any public health requirement to demolish them.

11. It is therefore my conclusion that the facts available can support either the Appellant's case that demolition of the Cottages marked a commencement of the bungalow development, or the Council's view that it could as well have been an independent event. There is nothing in the factual evidence to indicate whether one reasonable interpretation rather than the other is the more probable. I have concluded that in this regard the Appellant has not provided clear and unambiguous evidence such as is needed to support the issuing of a certificate, or discharged the requisite onus of proof."

Submissions

On behalf of the claimant, Mr Pereira submitted that in the light of the Inspector's findings that the demolition of the cottages during the period January 1969 to November 1970: (a) would have been a part of the totality of the works necessary on site for the completion of the new bungalows, and (b) was carried out by a builder, and was a type of operation normally carried out by a builder; the only reasonable conclusion open to him on the authorities was that the development to which the 1967 permission related had been begun before 31st March 1974.

13. The authorities referred to by the Inspector in paragraph 13 of the decision letter were analysed by Glidewell LJ (with whom Beldam and Nolan LJJs agreed) in Cambridge City Council v Secretary of State for the Environment (1992) 3 PLR page 4. At page 16D Glidewell LJ said:

"In my view, the decisions in London County Council v Marks & Spencer; Coleshill v Minister of Housing and Local Government and Iddenden v Secretary of State for the Environment establish the following propositions:

- (a) Works for the demolition of a building may, but do not necessarily or inevitably, constitute 'development' within the meaning of section 55 of the 1990 Act.
- (b) Such works constitute 'development' if, but only if, they are properly to be regarded as either (i) 'building operations' as defined in section 336(1) of the Act; or (ii) 'engineering operations'; or (iii) 'other operations ... on ... land'.

- (c) Demolition works may be building operations if they are a part of 'structural alterations of ... buildings', as in Coleshill. In such a case the demolition will inevitably be partial only, since if it were total there would be no building left to be altered.
- (d) Demolition works of a particular type or scale may be 'operations normally undertaken by a person carrying on business as a builder.'
- (e) Demolition works of particular structures, eg the embankments in Coleshill, may be 'engineering operations'.
- (f) Whether works of demolition are within any of these categories of development is a question of fact for the decision maker - the Secretary of State or, as in the present case, the inspector to whom he has delegated the decision.
- (g) The definition of development does not comprehend every operation on land. This is made clear by the words in section 64(1) of the 1990 Act:

'64(1) If any person who proposes to carry out any operations on land-

(a) wishes to have it determined whether the carrying out of those operations ... would constitute or involve development of land ...

Thus 'other operations ... on ... land' in the definition of section 55(1) does not mean *all* other operations (per Lord Morris in Coleshill at p 755H).
- (h) 'Other operations' in that definition are operations which, while not of one genus comprising also building and engineering operations, nevertheless 'must at least be of a constructive character, leading to an identifiable and positive result', or be 'similar to building operations or to engineering operations', (per Lord Wilberforce at p 764H and Lord Pearson at p 771E in Coleshill).
- (i) Whether particular works of demolition constitute development within the statutory definition must be decided in relation to those works, and not to other projected works to which the demolition is a preliminary. 'In planning law they are different operations': (per Lord Denning MR in Iddenden at p 1439D. The Marks & Spencer decision does not controvert this proposition. In that case the works of demolition were held to be 'works for the erection or alteration of a building' which, as Jenkins LJ made clear, is a phrase with a wider meaning than 'building operations', and apt to include preliminary works of demolition."

14. Mr Pereira submits that the facts found by the Inspector fall squarely within Glidewell LJ's propositions (b) and (d). Glidewell LJ referred to the provisions of the 1990 Act. Until Parliament added section 1A to section 55 of the 1990 Act by section 13 of the Planning and Compensation Act 1991 (as from 27th July 1992) the definition of "development" had remained relatively unchanged since the Town and Country Planning Act 1947. In the Town and Country Planning Act 1962, the principal Act in force in 1967, and until the enactment of the Town and Country Planning Act 1971 (see section 104(1) and (3) of the 1968 Act) "development" was defined by section 12(1) as follows:

"In this Act, except where the context otherwise requires, 'development', subject

to the following provisions of this section, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

By virtue of section 13(1) planning permission was required for the carrying out of any development so defined.

15. "Building operations" and "engineering operations" were defined in section 221(1) as follows:

"'building operations' includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder ."

'engineering operations' includes the formulation or laying out of means of access to highways."

16. Mr Pereira submits that the Inspector correctly concluded, in the first part of paragraph 13 of the decision letter, that the demolition of the cottages was development, building operations, as defined by the 1962 Act, but then erred in his understanding and/or application of the case law referred to in the remainder of paragraph 13. Iddenden v Secretary of State for the Environment (1972) 1 WLR 1433 was concerned with the ability of a planning authority to "under enforce". Lord Denning's conclusion at page 1439C to D, that demolition was not a breach of planning control, was obiter, was confined to the "demolition of buildings such as these" (nissen huts and a lean to) and was, in any event, the kind of factual conclusion that was properly for the Secretary of State or his inspector to decide (see proposition (f) in the Cambridge case (above)). Contrary to the Inspector's understanding of the Cambridge case, development need not involve some constructive element. Demolition may constitute development (proposition (a)) if, and only if, it can properly be regarded as a building, engineering or other operation (proposition (b)). Demolition can amount to a building or an engineering operation. Other operations must be either of a "constructive character" or "similar to building operations or engineering operations" (see proposition (h)).
17. Turning to the Inspector's fallback position in paragraph 14 of the decision letter, Mr Pereira submitted that once the error in the latter part of paragraph 13 was corrected, and it was concluded that demolition of the cottages was development for the purposes of the 1962 Act, for which planning permission was required, then that development had been authorised by the 1967 permission and it had taken place between January 1969 and November 1970. Those conclusions should have resolved the matter in the claimant's favour.
18. The Inspector was not entitled to go on to speculate as to the reason why the former owner had demolished the cottages. For this submission he relied upon Riordan Communications Ltd v South Buckinghamshire District Council [2001] 81 P&CR 85 (David Vaughan QC sitting as a Deputy High Court judge). In that case planning permission had been granted to demolish a gatehouse and replace it with a new bungalow. Work had to be commenced not later than five years from the date of the planning permission, which had been granted on 4th July 1988. Work began on 30th June 1993. The gatehouse was demolished and trenches were dug. Thereafter, work stopped and did not resume until 1997. The local planning authority contended that the 1988 planning permission had lapsed, and the claimant sought a declaration that the necessary work had begun before 4th July 1993. The local planning authority accepted that the work had been done but contended that it had not been done with the intention of completing the development. It was submitted that it was not sufficient to do the operations merely in order to preserve the planning permission (paragraph 13).

19. Having reviewed the authorities in considerable detail, the Deputy Judge rejected the Council's submission that there had to be a subjective intention on the part of the developer to complete the development when carrying out the works. In paragraph 28, the judge said:

"In *East Dunbartonshire* [[1999] 1 PLR 54] the Inner House rejected the subjective intention test and ruled that the test was an objective test and that the objective test is satisfied by the court first considering whether the work had been done in accordance with the relevant planning permission and secondly, whether it is material, in the sense of not being *de minimis*. In so ruling the court found that it would be in each case a question of fact and degree. It therefore follows, as the Inner House ruled, that there can be no justification in the terms or the structure of the legislation for the imposition of an ill-defined requirement that some operation should be carried out with some particular intention. To imply such an intention would not only provide extreme difficulties over the definition of the intent, but also how it is to be established in particular when the land is subsequently sold or passed on after the initial work has been done (as in the *Thayer* case). With respect I entirely agree with that conclusion. Accordingly applying that ruling to the facts of the present case, there can be no doubt that the works that were carried out in June/July 1993 at Slough Lodge were done in accordance with the relevant planning permission and were works comprised in the development. Nobody has suggested that the works that were done were *de minimis*, and they certainly were not."

In paragraph 25 the judge had said:

"For my part I do not consider that the use of the expression 'colourable', with all its uncertainties, adds anything to the law. Either the works are done or they are not done (subject only to *de minimis* considerations)."

He, therefore, concluded that the developer's intention in carrying out the works was irrelevant.

20. At the inquiry on 28th May 2003, the Inspector handed the parties a copy of his draft of the matters that he believed were not in dispute between them. Paragraph 5 of that draft stated that it was agreed that having regard to case law and to the circumstances of the case, the question of intention and/or of colourability did not arise. Mr Pereira accepts that this approach appears to be reflected in the final sentence at paragraph 8 of the decision letter (see above), but submits that in paragraph 10 the Inspector then speculated about what might have motivated the former owner to demolish the cottages. That was, in substance, reintroducing an enquiry into what the subjective intentions of the deceased former owner might have been when he was carrying out the demolition more than 30 years previously.
21. The difficulties of establishing his motives or intentions many years later were a graphic illustration of the problem mentioned in paragraph 28 of *Riordan* (see above). It made no difference whether one referred to the former owner's motives or to his intentions. One was still asking the inadmissible question: why did he demolish the cottages all those years ago? Pausing there, it will be seen that the Inspector did not deal, because the parties did not ask him to deal, with the implications of section 67 of the 1968 Act and section 44(3) of the 1967 Act, which were in force during the period in which the cottages were demolished, and which were then re-enacted in Schedule 24 to the 1974 Act which continues in force.
22. On behalf of the Secretary of State, Miss Davies' principal submission was that the question -- whether the development to which the 1967 permission related had been begun by the demolition of the cottages -- had to be answered by applying the terms of section 43(2).

Development was begun for the purposes of paragraphs 19 and 20 in Schedule 24 (or sections 65 and 66 of the 1968 Act) only where a specified operation, as now defined in subsection 43(2), had been carried out.

23. In the present case, the only possible "specified operation" was that contained in paragraph (a): "any work of construction in the course of the erection of a building." Demolishing the cottages could not be described as a work of construction even if the demolition was a prelude to the erection of the new bungalows. In Ceredigion County Council v National Assembly for Wales and Mr ED Harrison [2001] EWHC (Admin) 694 (21st September 2001), Richards J had to consider a challenge to an Inspector's decision to vary an enforcement notice so as to allow an extended period of two years for compliance. The Inspector extended the period for compliance to give Mr Harrison time to implement a planning permission for alterations and an extension to a dwelling house, which had been granted in 1973. Although the issue was not formally before him for determination, the Inspector had concluded that the 1973 planning permission had been begun by demolition work which had been carried out in 1974. The Inspector concluded that the development had been begun because the demolition in 1974 fell within paragraph (a) of subsection 43(2). Although a new access had been formed, it would appear that the Inspector was not asked to consider paragraph (d) in subsection 43(2).
24. Richards J quashed the Inspector's decision, saying that to fall within paragraph (a) in subsection 43(2) the work had to be a work of construction. It was not enough that it was done in the course of the erection of a building (paragraph 16). "Construction" should be given its ordinary English meaning (paragraph 19); demolition could not be described as construction, it was the antithesis of construction (paragraph 20).
25. Miss Davies submitted that although the Inspector had not considered whether the work of demolition in the present case of a specified operation, as defined by section 43(2), the omission was of no consequence because there could have been only one possible answer to that question in the light of the judgment of Richards J. She accepted that in the second part of paragraph 13 of the decision letter, the Inspector appeared to have misunderstood the effect of the authorities mentioned, but again the error was of no consequence given the terms of section 43 and the decision in the Ceredigion.
26. The Inspector's reasoning in paragraph 14 of the decision letter did not conflict with the Riordan approach, which the Secretary of State accepted was correct: intention was not relevant. However, the Inspector was distinguishing between works carried out pursuant to the 1967 permission and works carried out wholly separately from that permission: "an act factually distinct from implementation of the planning permission" (see paragraph 10 of the decision letter).
27. It was proper to draw such a distinction, otherwise a planning permission might be implemented by "accident" if works were carried out, for example by a third party who was unaware of the existence of any planning permission, but which happened to coincide with the description of development contained in the permission. Even if the Inspector had erred in considering what might have been the motivation for the former owner's decision to demolish, that error would have been of no consequence since demolition could not be a specified operation within section 43(2) in any event.
28. Mr Pereira took issue with the proposition that the only way in which a development could be begun for the purposes of the condition deemed to have been imposed by section 66(2) of the 1968 Act was by the carrying out of a specified operation. Section 67 of the 1968 Act (now section 43(1) of the 1971 Act) did not provide that development is begun for the purposes of sections 65 and 66 only if a specified operation begins to be carried out. If that was the case,

certain kinds of development, such as the demolition involved in the Coleshill case ((1969) 20 P&CR 679) could not be begun for the purposes of (now) paragraphs 19 and 20 of Schedule 24 to the 1971 Act.

29. He submitted that section 43(2) listed a number of circumstances in which development was taken to have been begun even though the works on the ground might appear to be relatively modest: see, for example, Malvern Hills District Council v Secretary of State for the Environment (1982) 46 P&CR 58 per Eveleigh LJ page 70. Without such a "deeming provision" opinions might legitimately differ in such cases as to whether or not a development had or had not been begun, resulting in undesirable uncertainty. He referred to the enforcement provisions in Part IV of the 1962 Act, which enabled a local planning authority to serve an enforcement notice where it appeared that any development had been carried out without planning permission. In the Coleshill case an enforcement notice had been served because, inter alia, engineering operations, the removal of the embankments, had been carried out. On the Secretary of State's approach, if planning permission had been granted for the removal of those embankments, their removal could have been lawfully carried out, but the development permitted by the planning permission would not have been begun for the purposes of the condition limiting the duration of the planning permission, because demolition is not a specified operation within section 43.
30. Miss Davies accepted that there might be certain types of development (engineering operations such as the excavation of a lake, the raising of an embankment or bund, the driving of a tunnel, or demolition, or "other operations", such as tipping for the purpose of land raising, if insufficiently planned in advance to amount to an engineering operation) which could be carried out without any specified operation necessarily being involved. She submitted that such development would have been carried out for the purpose of serving an enforcement notice and could lawfully be carried out if planning permission was granted for it, but would not have been begun for the purposes of the five-year time limit. If the works remained unfinished, after the expiration of the five-year period, they could not lawfully be completed in accordance with the permission because the permission would not have been begun.

Conclusions

It is convenient to begin with the Inspector's approach as set out in the decision letter and then to consider the implications of section 43 of the 1971 Act.

31. Miss Davies rightly conceded that the Inspector fell into error in the second part of paragraph 13 of the decision letter. Since he had concluded that the demolition of the cottages between January 1969 and November 1970 would have been a part of the totality of the works necessary on the site for the completion of the new bungalows, that the work was carried out by a builder and that it was a type of operation normally carried out by a person carrying on the business of a builder, the only conclusion reasonably open to him, in the light of the Cambridge decision (propositions (b) and (d)), was that the demolition of these cottages did (not merely could) amount to development for the purposes of section 12 of the 1962 Act. The 1962 permission granted permission for that development: "Demolition of numbers 1-4 Forders Cottages and the erection of a pair of semi-detached or detached bungalows ..." Thus the development to which the 1968 permission related had been begun prior to 31st March 1974.
32. It is clear from the terms of paragraph 13 that the Inspector concluded on the balance of probability that the cottages had been demolished by the previous owner of the site, who was a member of a long-established family involved in building/construction. The Inspector's speculation as to what motivated the former owner to demolish the cottages was an investigation into his intentions in 1969/1970 by any other name. As the judge said in paragraph 25 of Riordan, either the former owner did the works (demolishing the cottages)

which were permitted by the 1967 permission, or he did not. The second defendant did not contend that the work done was de minimis.

33. I do not rule out the possibility that there might be exceptional cases where works are carried out, for example by third parties, which just happen to coincide with the description of works permitted in a planning permission. In such cases it might be argued that the planning permission could not have been implemented in such an "accidental" way. It is unnecessary to consider that possibility in any further detail, because it is a very long way from the facts of this case as found by the Inspector, where the former owner, who was a builder and who had obtained a planning permission in September 1967 to demolish the cottages, had then proceeded to demolish them within 16 to 38 months after the planning permission had been granted and after having obtained detailed approval. Paragraph 10 of the decision letter speculates as to why the former owner might have demolished the cottages in those circumstances. More than 30 years later, it is impossible to say what were his motives or intentions, as the Inspector in effect concluded in paragraph 11 of the decision letter.
34. As explained in Riordan, a planning permission is a valuable property right which runs with the land. Subsequent owners should be able to rely, so far as possible, upon the public entries in the planning register and evidence as to what was physically done on the site. They should not be required to speculate as to what might have been the motives or intentions of those (long deceased) who carried out the works on the site many years earlier.
35. It follows that, subject to the section 43 point raised by the Secretary of State, the Inspector's decision was legally flawed and must be quashed.
36. Turning to section 43, I do not accept the submission advanced on behalf of the Secretary of State that development can be begun for the purposes of (what is now) paragraph 21(b) of Schedule 24 to the 1971 Act, only by the carrying out of a specified operation as defined in subsection 43(2).
37. The 1968 Act introduced time limits upon the duration of all planning permissions. At that time, as now, planning permission was required for the carrying out of any development, and development meant: "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land" (see sections 12 and 13 of 1962 Act).
38. Section 67 of the 1968 Act applied the definition of "specified operation" in the 1967 Act for the purposes of both section 65 and section 66. Section 66 dealt with outline planning permissions. Since an application for an outline planning permission could be made only for the erection of a building, paragraphs (a) to (c) in the list of specified operations might well have been capable of providing a complete answer as to when such development had been begun. However, the remaining specified operations in paragraphs (d) and (e) did not deal comprehensively with the very wide range of development that might have been the subject of a detailed planning permission falling within section 65 of the 1968 Act. Paragraph (e) dealt comprehensively with material changes of use, and paragraph (d) provided the answer to when one of the most common forms of engineering operation, the construction of a road, begins to be carried out. Planning permissions for mining operations have always been dealt with in separate regulations. But this left many engineering and "other" operations which required planning permission, and which would be subject to the condition as to duration required to be, or deemed to have been, imposed by section 65. If carrying out a specified operation was the only way in which a planning permission could be begun for the purposes of section 65, such developments would not have been "begun" for the purposes of time limits, even though they had been substantially carried out or even completed. Take the Coleshill case as an example:

removal of the embankments was an engineering operation. It therefore required planning permission. Because planning permission was not obtained, an enforcement notice could be and was served because development had been "carried out". If planning permission had been granted for removing the embankments, that engineering operation could have been completed without any specified operation having been carried out. In addition to demolition, other engineering operations, or "other operations", which could be carried out without necessarily carrying out any specified operation, would include the excavation of a lake or cutting, the raising of an embankment, the driving of a tunnel or land raising (see the examples of engineering and other operations given in paragraphs p.55.91 and p.55.26 of the Encyclopaedia of Planning Law). This suggests that Parliament did not intend that carrying out a specified operation should be the only way in which development could be begun for the purposes of the time limit conditions which were required, or deemed to have been imposed, by sections 65 and 66.

39. By setting a relatively low threshold, by reference to the list of specified operations in the 1967 Act, section 67 of the 1968 Act ensured that for the generality of cases, the scope for argument as to whether a development had or had not been begun was very much reduced. Even though the works done on the ground might appear unimpressive, if a specified operation had begun to be carried out then the development was "taken to have begun".
40. The 1968 Act did not simply declare that all planning permissions were limited in time, instead the local planning authority was required to impose the appropriate condition, and if it failed to do so the planning permission was deemed to have included such a condition. Planning permissions granted before 1st April 1969 were deemed to have been granted subject to a condition as set out in subsections 65(1) or 66(2). Thus the conditions relating to time limits are to be construed in the same way as any other condition in a planning permission. It is well established that it would be unreasonable to impose a condition which could not be complied with. Absent any indication that a development must be begun in a particular manner, it is simply a question of fact for the decision-taker whether the condition has been complied with.
41. Section 67 of the 1968 Act did not provide (and section 43(1) of the 1971 Act does not provide) that development is begun for the purposes of section 65 and 66 (or paragraphs 19 and 20 of Schedule 24) only when a specified operation begins to be carried out. To say that development "shall be taken to be begun" in certain defined circumstances does not, as a matter of ordinary language, exclude the possibility that the development may in fact be begun in other circumstances. The Secretary of State seeks to place a restrictive gloss upon the plain wording of section 43(1). The gloss is unnecessary since section 43 provides a relatively low threshold (see Malvern Hills) for beginning the most common types of development: the erection of buildings, the construction of roads and the making of material changes of use. It is also undesirable since it leaves certain types of development for which a (time limited) planning permission is required in limbo: if no planning permission has been obtained, the development will have been carried out for the purposes of enforcement action, but if planning permission has been obtained it will not have been begun for the purposes of a time-limit condition.
42. As Mr Pereira pointed out in reply, Miss Davies' solution to this dilemma effectively converts a condition which requires a development to be begun within five years into a condition which requires it to be completed (since by definition it can never have been begun) within five years.
43. I respectfully agree with Richards J's conclusions in Ceredigion that to fall within paragraph (a) in section 43(2), the work that has been done must be a work of construction in the course of the erection of a building and that demolition is the antithesis of construction. The sole issue before Richards J was whether the Inspector in that case was entitled to conclude that the demolition that had been carried out in 1974 fell within section 43(2)(a). The answer to that question was,

"No", for the reasons given by Richards J. He was not asked to consider the question that has arisen in the present case: where planning permission is granted for demolition and demolition takes place, has the development to which the permission relates been begun even though no specified operation has taken place? For the reasons set out above, my answer to that question is "Yes".

44. Miss Davies submitted that if section 43 did not provide the only answer to the question of when was development begun, that would present practical difficulties for the decision-taker who would be left with the uncertainty of a "blank page". I do not accept that this would be the case. As mentioned above, section 43 will continue to play a valuable role in substantially reducing the scope for argument in the great majority of cases, those involving the erection of buildings, the construction of roads and the making of material changes of use. In such cases the threshold set by section 43 is so low that it is difficult to conceive of any circumstances in which such development could be said to have been begun without a specified operation having begun to be carried out. That leaves a minority of cases, of which this case is an example, where development is undoubtedly carried out even though it does not involve any specified operation. Whether such development has been begun will be a question of fact for the decision-taker: the local planning authority and/or Secretary of State or his appointed Inspectors. As a question of fact, it should be no more taxing than the many questions of fact that have to be resolved in enforcement or lawful development certificate proceedings under the Act.
45. My approach to section 43 merely recognises the reality: not all development requiring planning permission will necessarily involve the carrying out of a specified operation. It must be possible to begin such development for the purposes of complying with conditions imposing time limits, otherwise the imposition of such conditions would be unreasonable, and therefore unlawful.
46. For these reasons, it was not necessary for the Inspector to consider section 43. His decision must be quashed for the reasons set out above.
47. MR PEREIRA: My Lord, the matter of costs. I will hand you a costs schedule. It is in the sum of £4,841.50; they are agreed.
48. MR JUSTICE SULLIVAN: Sorry, tell me the figure again?
49. MR PEREIRA: £4,841.50
50. MR JUSTICE SULLIVAN: Does that include VAT.
51. MR PEREIRA: It does not include VAT. I understand that VAT is not being asked for. That is the agreed figure that has been reached.
52. MR JUSTICE SULLIVAN: Right, that is an agreed figure. Is that agreed, Miss Davies?
53. MISS DAVIES: It is, my Lord, yes.
54. MR JUSTICE SULLIVAN: The application is to be allowed. The decision is quashed. The first defendant is to pay the claimant's costs in the agreed sum of £4,841.50. Do you have any application, Miss Davies?
55. MISS DAVIES: I do, my Lord, yes. Obviously those instructing me will consider carefully what your Lordship has said today, but I do at this stage ask for permission to appeal?

56. MR JUSTICE SULLIVAN: Yes, may I rather rudely cut you short. Mr Pereira, I would be minded to grant Miss Davies permission to appeal, not on the first limb but on the second limb; that is to say, it does seem to me that this arguably raises an important point of principle which is of wider application, section 43. Do you have any submissions to make contrary to that?
57. MR PEREIRA: Other than the fact that I say your Lordship's judgment is obviously right. But on the point of principle, your Lordship recognises there are some wider implications. I think your Lordship's judgment is right. So it is a matter for you.
58. MR JUSTICE SULLIVAN: Miss Davies, it may appear immodest, but I do not think you have a real prospect of success on appeal, but I do think that there is another compelling reason, that is to say that the ambit of section 43 is a matter of general importance. I quite understand that the Secretary of State might wish to seek the Court of Appeal's views on that.
59. MISS DAVIES: I am grateful to your Lordship.
60. MR JUSTICE SULLIVAN: So I do grant you permission to appeal.
61. MISS DAVIES: May I crave your Lordship's indulgence just a stage further, in terms of the appellant's notice, the time for lodging that. It is, I confess an entirely personal matter, I will in fact be away not next week but the week after, which is the second week of the 14-day time limit and I wonder if I might persuade your Lordship to allow me an extra week?
62. MR JUSTICE SULLIVAN: Yes, I will give you 21 days rather than 14 days. Mr Pereira, have you any objections?
63. MR PEREIRA: No, my Lord.
64. MR JUSTICE SULLIVAN: Yes, I will extend the time for appealing from 14 to 21 days.
65. MISS DAVIES: I am very grateful, my Lord.