



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

COURT (CHAMBER)

CASE OF BRYAN v. THE UNITED KINGDOM

(Application no. 19178/91)

JUDGMENT

STRASBOURG

22 November 1995

In the case of Bryan v. the United Kingdom ¹,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A ², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr R. BERNHARDT,

Mr F. MATSCHER,

Mr I. FOIGHEL,

Sir John FREELAND,

Mr M.A. LOPES ROCHA,

Mr J. MAKARCZYK,

Mr D. GOTCHEV,

Mr U. LOHMUS,

and also of Mr H. PETZOLD, *Registrar*,

Having deliberated in private on 26 May and 25 October 1995,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court on 9 September 1994 by the European Commission of Human Rights ("the Commission"), within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 19178/91) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) by a British citizen, Mr John Bryan, on 29 October 1991.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1) of the Convention.

¹ The case is numbered 44/1994/491/573. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

² Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 September 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr F. Matscher, Mr I. Foighel, Mr M.A. Lopes Rocha, Mr J. Makarczyk, Mr D. Gotchev and Mr U. Lohmus (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 28 February 1995 and the Government's memorial on 7 March 1995. The Secretary to the Commission later informed him that the Delegate would submit her observations at the hearing.

5. On 2 May 1995 the Commission produced to the Court the documents in the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 May 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr I. CHRISTIE, Foreign and Commonwealth Office,	<i>Agent,</i>
Mr D. PANNICK, QC,	
Mr D. ANDERSON, Barrister-at-Law,	<i>Counsel,</i>
Mr D. RUSSELL,	
Ms E. DIXON,	
Ms L.M. ASPINALL, Department of the Environment,	<i>Advisers;</i>

(b) for the Commission

Mrs J. LIDDY,	<i>Delegate;</i>
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(c) for the applicant

Mr E. OWEN, Barrister-at-Law,	<i>Counsel,</i>
Mr R.M. NAPIER,	<i>Solicitor,</i>
Mr E. SCHOFIELD,	<i>Adviser.</i>

The Court heard addresses by Mrs Liddy, Mr Owen and Mr Pannick as well as replies to its questions.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. The applicant, Mr John Bryan, is a farmer and a contractor. He was born in 1931 and resides in Warrington, Cheshire.

8. On 4 December 1989 an enforcement notice was issued and served on Mr Bryan by the Vale Royal Borough Council requiring the demolition of two brick buildings on land which the applicant had bought in 1987. The enforcement notice recited that there appeared to the Council to be a breach of planning control in that the two brick buildings had been erected without the necessary planning permission. The notice required the applicant to demolish the buildings and remove the building materials within three months. In doing so, the authorities acted in accordance with section 172 of the Town and Country Planning Act 1990, which consolidated earlier legislation ("TCPA" - see paragraph 18 below).

9. The applicant appealed to the Secretary of State for the Environment under section 174 (2) (a), (b), (g) and (h) TCPA (see paragraph 19 below).

10. In accordance with the relevant legislation (see paragraph 20 below), an inspector was appointed to conduct an inquiry and determine the appeal. He was a Principal Housing and Planning Inspector, a civil servant and a member of the salaried staff of the Department of the Environment. He had been appointed by the Secretary of State after approval of the Lord Chancellor. In his decision letter of 1 October 1990 the inspector rejected the appeal under grounds (a), (b), and (g) but allowed it under ground (h) to the extent that the compliance period should be extended from three to six months. He held, *inter alia*, as follows:

"The appeal on ground (b)

...

(12) What I need to decide in respect of this ground of appeal is whether, as a matter of fact and degree, the buildings could, from their appearance and layout, be considered to have been designed for the purposes of agriculture. I conclude, from examination of photographs taken during construction and from noting the alterations made since, that the Council were right to be concerned that the appeal buildings had the appearance of large detached houses. The size, layout, and original external appearance of the buildings and their detailing did little to change that view.

(13) In my opinion, as originally constructed, the buildings would have led any reasonable person to have concluded that he or she was looking at the start of a small new detached housing estate. Indeed, that appeared to be the widely held view of many local people, supported by the local Member of Parliament, who were concerned to see what was being built on the edge of the village. The more recent construction

of an, as yet, uncompleted but similar building close to the two appeal buildings serves to compound the effect.

(14) But it is the original appearance of the two appeal buildings and particularly the first assessment of the Ministry of Agriculture, Fisheries and Food which convinces me that the buildings were not requisite or reasonably necessary for the purposes of agriculture. Numerous features of the buildings were more suited to houses than barns. The original openings in building No. 1 were said to be doorways for a veal calf unit. But this building did not incorporate internal drainage considered necessary for such stock. The doorways appeared to have been more likely to have been useful as window openings, none reached ground level as built; one was almost waist high above outside ground level measured from the lower edge of the unbonded brickwork added later. Other features in both buildings include the extensive use of Georgian-style windows and other windows made for domestic use. I understand that Mr Bryan's contacts allowed him to buy these windows cheaply. But whatever their source, they contribute to an impression that the buildings look more like houses than barns. There are other features which add to that view. The use of domestic-style eaves and gable barge boarding. The residential look of the 'porch' to No. 1 building. And the [Ministry of Agriculture, Fisheries and Food's] view about the uneconomic layout of both buildings as originally built all add to the impression that these buildings were not designed for agricultural purposes, albeit they have since been modified and adapted for such a use.

(15) You said that the buildings looked like many local old barns. But it is my view that, as originally built, the appeal buildings would have looked much more like houses. They did not look as if they had been designed for the purposes of agriculture. My opinion is not altered by my finding them now being used for storing hay. The appeal on ground (b) fails.

The appeal on ground (a)

(16) The appeal buildings lie in part of the green belt ... They also lie within the Higher Whitley Conservation Area but outside the village policy area for Higher Whitley shown on the draft Vale Royal Borough Local Plan. In my opinion, the decision turns on the following main issues. Whether, if the development is inappropriate to the green belt, there are any special circumstances to justify the granting of planning permission; secondly, whether the appeal buildings enhance or preserve the character or appearance of the conservation area. I shall also consider the effect of the development on the countryside surrounding the village.

(17) ...

(18) The appeal buildings have neither enhanced nor preserved the appearance of this part of the conservation area, rather the reverse. Much of the pleasant nature of the area is derived from the grouping of the older housing around the centre and from its rural and agricultural setting. The two appeal buildings look like part of a small estate of detached houses with access roads and suitable garden areas. The third building, not subject of this appeal, exacerbates this impression.

(19) These objections amount to sound and clear-cut reasons why planning permission should be withheld. The fact that other buildings or buildings of a broadly similar nature, if considered to be designed for agricultural purposes, could be built

under the provisions of the Town and Country Planning General Development Order 1988, does not affect my decision. The appeal on ground (a) fails.

The appeal on ground (g)

(20) You said that demolition of the buildings and the removal of the materials was an excessive requirement. I do not agree. Harm to the purpose of the green belt has been caused. The appearance and character of the conservation area has not been either enhanced or preserved. Encroachment on the countryside has occurred. Making the buildings look more like those which might have been permitted development as you suggested could mitigate a little of the harm I have identified. But this is not just a matter of cosmetics. The main objections would remain. In my opinion, the proper and necessary course of action is that required by the notice. That includes removal of materials. Such a requirement would not preclude their re-use on site for any possible future permitted development. The appeal on ground (g) fails.

The appeal on ground (h)

(21) ... Mr Bryan wanted more time in order to erect a replacement or replacements before demolition. I see no need to insist on a period which would make undue difficulty for him. I will increase the period to 6 months ...

(22) I have taken account of all the other matters raised, including the possibility of your client putting up a large steel-clad building under permitted development rights, but find they do not affect my decision."

11. The applicant appealed against this decision under section 289 TCPA (see paragraph 24 below). In his Notice of Motion, the applicant first alleged that the inspector had "erred in law in applying the wrong test in deciding whether the buildings were permitted development under the provisions of the ... General Development Order" and "in considering that the said buildings were not requisite or reasonably necessary for the purposes of agriculture when there was no evidence upon which any reasonable inspector could so find". The subsequent grounds of appeal dealt expressly with grounds (a) and (g) of the appeal to the Secretary of State (see paragraph 9 above).

12. The appeal was dismissed by the High Court on 8 March 1991, the judge, Mr Lionel Read, QC, finding inter alia as follows:

"A principal argument on behalf of the applicant at the inquiry under [ground] (b) was that the erection of the two buildings was permitted development under the General Development Order ...

...

The applicant does not challenge the inspector's decision under ground (b). Nevertheless paragraphs 14 and 15 of the decision letter, where he is still dealing with that ground, are relevant to the court's consideration of his decision on grounds (a) and (g) ...

...

In my judgment ... it cannot be said that the inspector failed to take into account the fact that the applicant might, within his General Development Order rights, erect buildings of a broadly similar nature. He addressed that very consideration in terms at paragraph 19 of his decision letter. Because the applicant had those rights and wanted more time to erect a replacement or replacements, the inspector extended the applicant's time for complying with the enforcement notice under ground (h).

Whether the existence of these General Development Order rights provided sufficient reason for the inspector to grant planning permission for the buildings in fact erected, whether or not conditioned as suggested by the applicant, was a matter for judgment - the inspector's judgment. Whether another decision-maker would have reached the same conclusion as did this inspector is not to the point. Nor is the view of this court, which does not sit on appeal from the judgment of inspectors, relevant. I am unable to say that there was anything irrational in the inspector's decision. In particular, the question whether the alterations proposed to a building were, as he evidently thought, a 'matter of cosmetics' and would not meet the main objections was entirely a matter of planning judgment for him. It is to be remembered that, in order to stay within his General Development Order rights, the applicant must erect replacement buildings which, by their appearance and layout, could be considered as designed for the purposes of agriculture. If they are, their effect on the green belt, the countryside and the conservation area is irrelevant to the exercise of that right. That does not, however, in my judgment mean that the inspector acted irrationally in concluding that the buildings in fact erected without permission under the General Development Order were objectionable and should be demolished.

In the result, I find no error of law and I dismiss the application."

13. At the hearing held before the European Commission of Human Rights on 14 October 1993, the applicant's representatives stated that, although they had not represented the applicant before the High Court, they surmised that the challenge to the inspector's ground (b) reasoning had been raised in the Notice of Motion and then abandoned at the hearing because of the limited jurisdiction of the High Court. In confirmation of this, the applicant furnished the Court with a statement by the barrister who had represented him in the High Court.

14. Leave to appeal to the Court of Appeal was refused. The Court of Appeal, on 11 June 1991, also refused leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. Under section 57 TCPA, planning permission is required for the carrying out of any development on land. Section 58 TCPA allows for planning permission to be granted by a development order.

16. The Town and Country Planning General Development Order 1988 SI no. 1813 ("TCPGDO") sets out classes of development for which permission is automatically granted.

According to Article 3 TCPGDO, and Class A of Part 6 of Schedule 2 to the TCPGDO, planning permission is deemed granted for the following developments:

"A. The carrying out on agricultural land comprised of an agricultural unit of -

(a) works for the erection, extension or alteration of a building, or

(b) any excavation or engineering operations, reasonably necessary for the purposes of agriculture within that unit."

17. Accordingly, buildings, structures or works not designed for the purposes of agriculture require planning permission (paragraph A.1 (c) of Class A of Part 6 of Schedule 2 to the TCPGDO).

18. Where it appears to the local planning authority that there has been a breach of planning control and the authority consider that it is expedient to do so, they may issue an enforcement notice requiring the breach to be remedied (section 172 TCPA).

19. Section 174 (2) TCPA provides that an appeal against an enforcement notice may be made to the Secretary of State on any of the following grounds:

"(a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;

(b) that the matters alleged in the notice do not constitute a breach of planning control;

...

(g) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in section 173 (4);

(h) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed."

20. Section 175 (3) TCPA provides that if an appellant or the local authority desires, the Secretary of State shall give each of them the opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose. Where such a person has determined an appeal, his decision shall be treated as that of the Secretary of State. Pursuant to the applicable regulations, appeals against enforcement notices are heard and determined by an inspector.

21. According to the Planning Inspectorate Executive Agency Framework Document (1992), "staff of the Inspectorate act on behalf of the [Secretary] of State for the Environment ... This work includes that of inspectors who, exercising their own independent judgment, decide cases or make recommendations to the ... Secretary of State ..." (paragraph 2.2). The process of decision-making on appeals has a "quasi-judicial character" (paragraph 2.4). The Inspectorate, which "upholds the principles of openness, fairness and impartiality" (paragraph 2.6), is "subject to the

scrutiny of the Courts, the Parliamentary Commission for Administration and the Council on Tribunals ..." (paragraph 2.6). Among the objectives of the Inspectorate is that of maintaining "the integrity of each inspector as an independent tribunal, not subject to any improper influence" (paragraph 2.7 (ii)).

Annex B to the Framework Document adds:

"Each inspector must exercise independent judgment and must not be subject to any improper influence, nor must it appear that the inspector may be subject to any such influence."

The basic principles set out in this document had long been applied in practice.

22. In determining planning appeals, inspectors are required to have regard, *inter alia*, to the policies promulgated by the Secretary of State on matters of planning as a "material consideration" (section 70 TCPA) and to comply with the various procedural rules for the conduct of enforcement appeals (the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981, and the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981). Like any other person exercising statutory powers, the inspector must also act in a procedurally fair manner.

23. Decisions by inspectors are not seen by the Department of the Environment in draft before they are promulgated. However, up until the time when the decision letter is issued, the Secretary of State may revoke the power of an inspector to decide an appeal (Schedule 6 to the TCPA).

24. Section 289 TCPA provides for appeals against a decision of the Secretary of State under section 174. An appeal may be made to the High Court on a point of law, or the Secretary of State may be required to state a case for the opinion of the High Court (section 289 (1) TCPA).

25. It is common ground that an appeal "on a point of law" may be brought on grounds identical to an application for judicial review. It therefore includes a review as to whether a decision or inference based on a finding of fact is perverse or irrational (*R. v. Secretary of State for the Home Department, ex parte Brind* [1991] Appeal Cases 696, pp. 764 H-765 D). The High Court will also grant a remedy if the inspector's decision was such that there was no evidence to support a particular finding of fact; or the decision was made by reference to irrelevant factors or without regard to relevant factors; or made for an improper purpose, in a procedurally unfair manner or in a manner which breached any governing legislation or statutory instrument. However, the court of review cannot substitute its own decision on the merits of the case for that of the decision-making authority (see paragraph 12 above).

26. As an appeal to the High Court under section 289 (1) is on a point of law, the High Court has no power to receive further evidence on primary facts (*Green v. Minister of Housing and Local Government* [1963] 1 All

England Law Reports 578, p. 616). Halsbury's Statutes of England and Wales, 4th edition, vol. 46 (1990 reissue) describes many of the cases on the question of whether a point is one of fact or of law as "irreconcilable" (p. 836). Halsbury's Laws of England states that "if there is no evidence for a particular finding or if the tribunal does not take into account at all a relevant consideration, there could well be grounds of appeal raising a question of law. The contention that a tribunal has failed to give adequate weight to evidence or sufficient consideration to a particular circumstance does not afford such grounds; and the weight which a tribunal gives to a particular piece of evidence or a particular consideration is a matter for that tribunal" (Halsbury's Laws of England, 4th edition, vol. 46 (1992 reissue), p. 698).

PROCEEDINGS BEFORE THE COMMISSION

27. Mr Bryan applied to the Commission on 29 October 1991. He relied on Article 1 of Protocol No. 1 (P1-1) to the Convention, arguing that the Vale Royal Borough Council's enforcement notice of 4 December 1989 (see paragraph 8 above) constituted a violation of his right to the peaceful enjoyment of his possessions. He further submitted that the review undertaken by the High Court was of insufficient scope to comply with Article 6 para. 1 (art. 6-1) of the Convention.

28. On 14 October 1993 the Commission declared the application (no. 19178/91) admissible only as regards the complaint raised under Article 6 para. 1 (art. 6-1). In its report of 28 June 1994 (made under Article 31) (art. 31), it concluded, by eleven votes to five, that there had been no violation of that provision (art. 6-1).

The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS MADE TO THE COURT

29. At the hearing, the applicant invited the Court "to hold that there has been a violation of Article 6 (art. 6) and to make an award of just satisfaction". The Government, for their part, submitted that, "looking at the procedure as a whole, Mr Bryan was not the victim of any breach of Article 6 para. 1" (art. 6-1).

³ Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 335-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

30. Mr Bryan contended that the proceedings which he had been able to bring under English law, firstly before a Planning Inspector and then before the High Court, to challenge a planning enforcement notice served on him did not comply with Article 6 para. 1 (art. 6-1) of the Convention, which, in so far as relevant, provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ..."

A. Applicability

31. Before the Court the Government did not contest, as they had before the Commission, that the impugned planning proceedings involved a determination of the applicant's "civil rights".

On the basis of its established case-law, the Court sees no reason to decide otherwise (see, as a recent authority, the *Zander v. Sweden* judgment of 25 November 1993, Series A no. 279-B, p. 40, para. 27). Article 6 para. 1 (art. 6-1) is accordingly applicable to the facts of the present case.

B. Compliance

1. Review by the inspector

32. The applicant first appealed to the Secretary of State against the Borough Council's enforcement notice requiring him to demolish two buildings on his property (see paragraphs 8 and 9 above). The inspector appointed to hear the appeal conducted an inquiry and decided to dismiss the appeal in its essentials (see paragraph 10 above).

33. In the applicant's submission the inspector, in carrying out his review, did not fulfil the requirement of independence stated in Article 6 para. 1 (art. 6-1) of the Convention: the inspector, a member of the salaried staff of the Department of the Environment, exercised delegated authority from the Secretary of State who had the power to withdraw a case from an inspector at any time (see paragraphs 10, 20 and 23 above). In these circumstances, the appeal to the Secretary of State remained an appeal to the Executive, and more particularly an appeal from local to central government.

The applicant further contended that although both High Court judges and inspectors are obliged to have regard to the Secretary of State's planning policy as a material consideration when deciding cases (see paragraph 22 above), only inspectors exercise discretionary planning judgment. A High Court judge does not do so and his role of deciding points of law on appeal has been described as one "of supervision, not of review" (*R. v. Secretary of State for the Home Department, ex parte Brind*, cited above at paragraph 25).

34. The Government submitted that the inspector was an independent and impartial tribunal whose quasi-judicial function and independence of judgment are generally recognised. The power of the Secretary of State to withdraw a case from the inspector was in fact only used in a very small proportion of exceptional cases, involving very significant housing developments or complex issues of law. The Secretary of State, when in disagreement with the merits of the approach adopted by an inspector, could not legally deprive him of jurisdiction or institute disciplinary action against him since such a conduct would very likely be unlawful as an improper interference with the independence of the Inspectorate.

In the Government's submission, the fact that inspectors must have regard to rules, guidance and directions published by the Secretary of State as a material consideration when making decisions in a planning context (see paragraph 22 above) provides no basis for challenging the independence or impartiality of the inspector. This is the case in many other areas of the law and even the judges of the High Court and the Court of Appeal are under a similar duty.

The Government further argued that the applicant had not suggested, nor could he, that the procedure followed by the inspector in the present case was unfair in any respect. On the contrary, as is apparent from the text of the decision, the inspector decided the matter objectively to the best of his ability on the planning merits of the case. In these circumstances, the applicant's complaint amounted to asking the Court to adjudicate in the abstract on the compatibility of legislation with the Convention, a function which is not the Court's.

35. The Commission, while subscribing in essence to the applicant's arguments, added that "the fact that the Secretary of State's policies can be at issue in appeals means that the inspector cannot have the independence necessary for Article 6 (art. 6) of the Convention".

36. The Court sees no reason to depart from the Government's view, which is shared by the Commission and uncontested by the applicant, that the proceedings before the inspector in the present case ensured the applicant a "fair hearing" for the purposes of Article 6 para. 1 (art. 6-1). It remains, however, to be ascertained whether, in relation to Mr Bryan's appeal, the inspector constituted an "independent and impartial tribunal".

37. In order to establish whether a body can be considered "independent", regard must be had, inter alia, to the manner of appointment of its members and to their term of office, to the existence of guarantees against outside pressures and to the question whether the body presents an appearance of independence (see, inter alia, the *Langborger v. Sweden* judgment of 22 June 1989, Series A no. 155, p. 16, para. 32).

38. It is true that the inspector was required to decide the applicant's planning appeal in a quasi-judicial, independent and impartial, as well as fair, manner (see paragraphs 21 and 22 above). However, as pointed out by the Commission in its report, the Secretary of State can at any time, even during the course of proceedings which are in progress, issue a direction to revoke the power of an inspector to decide an appeal (see paragraph 23 above). In the context of planning appeals the very existence of this power available to the Executive, whose own policies may be in issue, is enough to deprive the inspector of the requisite appearance of independence, notwithstanding the limited exercise of the power in practice as described by the Government and irrespective of whether its exercise was or could have been in issue in the present case.

For this reason alone, the review by the inspector does not of itself satisfy the requirements of Article 6 (art. 6) of the Convention, despite the existence of various safeguards customarily associated with an "independent and impartial tribunal".

2. Review by the High Court

39. Following the inspector's decision, Mr Bryan appealed to the High Court. The notice of appeal included a challenge to the inspector's findings of fact (under ground (b) of section 174 (2) of the 1990 Act - see paragraphs 10 and 19 above), but this ground was not pursued at the hearing in the High Court (see paragraphs 11 to 13 above).

40. As was explained in the Court's *Albert and Le Compte v. Belgium* judgment (10 February 1983, Series A no. 58, p. 16, para. 29), even where an adjudicatory body determining disputes over "civil rights and obligations" does not comply with Article 6 para. 1 (art. 6-1) in some respect, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 para. 1" (art. 6-1).

The issue in the present case is whether the High Court satisfied the requirements of Article 6 para. 1 (art. 6-1) as far as the scope of its jurisdiction was concerned.

41. According to the applicant, the High Court had no power to disturb the findings of fact made by the inspector "unless there was a defect which was so great as to go to jurisdiction". Otherwise, an appeal lay to the High Court only on points of law and its scope was narrower than that of the

appeal considered by the Court in the cases of *Zumtobel v. Austria* (judgment of 21 September 1993, Series A no. 268-A, pp. 13-14, paras. 31-32) and *Obermeier v. Austria* (judgment of 28 June 1990, Series A no. 179, pp. 22-23, paras. 69-70). This explained why the ground (b) challenge was not pursued in the High Court: it was the professional judgment of counsel experienced in planning law that an invitation to the High Court to substitute its own findings of fact for those of the inspector would have been doomed to failure (see paragraphs 11 to 13 above).

42. The Government pointed out that the High Court could quash the inspector's decision if it was procedurally unfair - for example because of lack of independence - or if it was unreasonable or otherwise contained any error of law (see paragraph 25 above). Having particular regard to the fact that there was no challenge to the factual findings made by the inspector, the Government concluded that the High Court had sufficient power to review the conclusions reached by the inspector in this case. In this respect the present case resembled that of *Zumtobel* (cited above), where an administrative body, competent to take decisions "on grounds of expediency", was subject to judicial review similarly limited to the legality and procedural fairness of the decision.

Furthermore, if for some reason it were considered that the inspector had shown some lack of independence of judgment or had otherwise not acted fairly or had been subject to improper pressure, then this would have furnished grounds for appeal to the High Court (see paragraph 26 above).

43. The Commission observed that the decision by the inspector was carefully reasoned. Although the appeal to the High Court was limited to points of law, all the applicant's submissions as argued before that court were dealt with point by point. In the absence of a ground (b) challenge and, consequently, of dispute as to the primary facts, the Commission found that "there [was] nothing to indicate that the limited review available was inadequate in the particular circumstances of [the] case".

44. The Court notes that the appeal to the High Court, being on "points of law", was not capable of embracing all aspects of the inspector's decision concerning the enforcement notice served on Mr Bryan. In particular, as is not infrequently the case in relation to administrative-law appeals in the Council of Europe member States, there was no rehearing as such of the original complaints submitted to the inspector; the High Court could not substitute its own decision on the merits for that of the inspector; and its jurisdiction over the facts was limited (see paragraphs 25 and 26 above). However, apart from the classic grounds of unlawfulness under English law (going to such issues as fairness, procedural propriety, independence and impartiality), the inspector's decision could have been quashed by the High Court if it had been made by reference to irrelevant factors or without regard to relevant factors; or if the evidence relied on by the inspector was not capable of supporting a finding of fact; or if the decision was based on

an inference from facts which was perverse or irrational in the sense that no inspector properly directing himself would have drawn such an inference (*ibid.*).

45. Furthermore, in assessing the sufficiency of the review available to Mr Bryan on appeal to the High Court, it is necessary to have regard to matters such as the subject-matter of the decision appealed against, the manner in which that decision was arrived at, and the content of the dispute, including the desired and actual grounds of appeal.

46. In this connection the Court would once more refer to the uncontested safeguards attending the procedure before the inspector: the quasi-judicial character of the decision-making process; the duty incumbent on each inspector to exercise independent judgment; the requirement that inspectors must not be subject to any improper influence; the stated mission of the Inspectorate to uphold the principles of openness, fairness and impartiality (see paragraph 21 above). Further, any alleged shortcoming in relation to these safeguards could have been subject to review by the High Court.

47. In the present case there was no dispute as to the primary facts. Nor was any challenge made at the hearing in the High Court to the factual inferences drawn by the inspector, following the abandonment by the applicant of his objection to the inspector's reasoning under ground (b) (see paragraphs 11 to 13 above). The High Court had jurisdiction to entertain the remaining grounds of the applicant's appeal, and his submissions were adequately dealt with point by point (see paragraph 12 above). These submissions, as the Commission noted, went essentially to questions involving "a panoply of policy matters such as development plans, and the fact that the property was situated in a green belt and a conservation area".

Furthermore, even if the applicant had sought to pursue his appeal under ground (b), the Court notes that, while the High Court could not have substituted its own findings of fact for those of the inspector, it would have had the power to satisfy itself that the inspector's findings of fact or the inferences based on them were neither perverse nor irrational (see paragraph 25 above).

Such an approach by an appeal tribunal on questions of fact can reasonably be expected in specialised areas of the law such as the one at issue, particularly where the facts have already been established in the course of a quasi-judicial procedure governed by many of the safeguards required by Article 6 para. 1 (art. 6-1). It is also frequently a feature in the systems of judicial control of administrative decisions found throughout the Council of Europe member States. Indeed, in the instant case, the subject-matter of the contested decision by the inspector was a typical example of the exercise of discretionary judgment in the regulation of citizens' conduct in the sphere of town and country planning.

The scope of review of the High Court was therefore sufficient to comply with Article 6 para. 1 (art. 6-1).

3. Conclusion

48. Having regard to the foregoing considerations, the Court concludes that the remedies available to the applicant in relation to his complaints satisfied the requirements of Article 6 para. 1 (art. 6-1) of the Convention. There has accordingly been no violation of that provision (art. 6-1) in the present case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 para. 1 (art. 6-1) of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 November 1995.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar