AS TO THE ADMISSIBILITY OF

Application No. 31219/96
by Henry WOOLHEAD
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 21 May 1997, the following members being present:

Mrs. J. LIDDY, President
MM. E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 16 February 1996 by Henry WOOLHEAD against the United Kingdom and registered on 29 April 1996 under file No. 31219/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1944 and resident in North Weald, Essex. He is represented before the Commission by Messrs. Biebuyck, solicitors practising in Chelmsford, Essex.

The facts as submitted by the applicant may be summarised as follows.

A. Particular circumstances of the case

The applicant is a Romany gypsy by birth. From the age of seven he travelled with his family in search of seasonal, agricultural work within the Home Counties and East Anglia. Following his marriage in 1962, the applicant occupied a caravan and subsequently a bungalow at Dobbs Weir, Essex from where he worked with his father trading in scrap metal and landscape gardening. In the summer months he would travel further afield to look for work, principally fruit and hop picking. Whilst the applicant concedes that he has in course of time travelled less, in part due to a decline in demand for migrant farm labour, he nevertheless maintains that travelling has remained an integral part of his way of life.

In 1984 the applicant purchased a site at Carisbrook Farm, North Weald, Essex comprising 2.5 acres of land and including various nissen huts and corrugated blockwork and wooden sheds, being some ten in number, dating from the war.

The site is situated in land designated as part of the local green belt. Prior to the applicant's ownership of the site, it had been used for motor vehicle repairs. Epping District Council, as the local planning authority, had at various times taken enforcement action to prevent its use as such. Following the applicant's occupancy of the site in 1988, the District Council issued an enforcement notice against the use of the site for storing and sorting of electrical components. In the same year planning permission was refused for a mobile home and change of use to the storing and sorting of metal. In February 1989 the District Council issued an enforcement notice against the placing of a mobile home for human habitation on the site. In January 1990 an appeal against the enforcement notice was dismissed, and in May 1991 an application to retain the mobile home in connection with the establishment of an agricultural business was refused.

On 28 May 1991 the applicant made a fresh application for planning permission for a caravan site for one gypsy family comprising a mobile home, which presently houses the applicant and his wife, a caravan, which currently houses the applicant's daughter, and parking facilities for the applicant's touring caravan.

On 5 November 1991 planning permission was refused by the District Council on grounds that:

> "The site is within the Metropolitan Green Belt. The proposed development is therefore at odds with Government guidance, as expressed in Planning Policy Guidance Note 2, together with the stated policies of the adopted Local Plan and the Approved Essex Structure Plan. The latter states that within the Green Belt permission will not be given, except in very special circumstances, for the construction of new buildings or for the change of use or extension of existing buildings (other than reasonable extensions to existing buildings), or for purposes other than agriculture, mineral extraction or forestry, small-scale facilities for outdoor participatory sport and recreation, institutions requiring large grounds, cemeteries or similar uses which are open in character. In the view of the Local Planning Authority insufficient reasons have been advanced to justify a departure from the policy."

The applicant appealed against the decision of the District Council to the Secretary of State for the Environment. An Inspector was appointed by the Secretary of State to hold a local inquiry and report on the merits of the appeal.

Following the inquiry, in his report issued in July 1992, the Inspector found that the applicant's life style following his occupation of the Carisbrook Farm site in 1988 was not sufficiently nomadic that he could be said to enjoy the status of a gypsy within the meaning of the Caravans Sites Act 1968 but considered that :

> "should this appeal fail <the applicant> would have to abandon his present home and is likely to take up a nomadic existence again, thus qualifying as a person to whom the authority would owe a duty under the 1968 Act. ... <S>uch an outcome would be unlikely to assist the District Council in its efforts to achieve designation. ... I conclude <therefore> that ... there are special circumstances in this case which, in the light of the advice given in Circular 28/77, could justify permitting this form of development in the Green Belt."

The Inspector further considered that "no significant harm to the character and appearance of the country side results from the presence of the caravan" and concluded by recommending that the appeal be allowed.

On 28 October 1992, the Secretary of State dismissed the appeal. He gave as his reasons for dismissing the appeal the following :

> "... No evidence was produced to show that <the applicant in the event that the appeal should fail> would have no option other than to resort to a nomadic way of life, or that, if he were to do so, there were no alternative sites for his caravan which were unconstrained by restrictive planning policies. The fact that there may be insufficient official local sites is not considered to be relevant in this case because <the applicant> is understood to find such sites unacceptable. Furthermore, the District Council dispute that their refusal to permit your client to retain his caravan at Carisbrook Farm threatened their application for designation. The Secretary of State therefore does not consider <these> arguments are of such weight as to constitute very special circumstances justifying inappropriate development of the Green Belt, and in this respect is unable to accept the Inspector's conclusion.
>
> "... The Secretary of State accepts that the visual impact of the caravan on this particular site would be minimal but does not consider that this, in itself, is sufficient to justify permitting inappropriate development in the Green belt."

The applicant appealed to the High Court against the Secretary of State's decision. On 8 October 1993 the Secretary of State's decision was quashed by consent.

Following this, the applicant and the District Council, at the invitation of the Secretary of State, requested that the inquiry be re-opened. The Secretary of State appointed a second Inspector to conduct a local inquiry and report on the merits. At the inquiry, which was held over a three day period, the Inspector heard evidence and representations from the applicant, the District Council, Essex County Council and various interested parties. In his report, issued on 24 October 1994, the Inspector found, inter alia, that :

> "... the main consideration in this case is whether there are any very special circumstances to justify an exception to the strong planning policies designed to resist inappropriate development in the Green Belt. ...
>
> <The applicant's> lifestyle was a long way short of nomadic even before he moved to the site in 1988. Consequently, although <the applicant> is a Romany gypsy, I do not believe that he is, or was at that time, a gypsy as defined by the Caravan Sites Act 1968. ...
>
> ... I do not <therefore> believe that the <applicant's> lifestyle demands any special site provision or other special treatment, because neither he nor his immediate family are nomadic. His long term occupation of bungalow-type accommodation at Dobbs Weir and at the appeal site suggests to me that he does not share the aversion to permanent accommodation said to be experienced by some gypsies ... <and> I very much doubt that he would return to a truly nomadic life if he had to leave the site.
>
> As for the difficulty of finding other accommodation and

the possibility of having to go on to the side of the road, there is virtually no evidence that <the applicant> has made any sustained effort to find another place to live, other than at the time of enforcement action, and there are very few details of his search at that time. The fact the Council's gypsy site is full does not, in my view, demonstrate that he would be unable to find alternative accommodation ... His natural preference for staying in his local area is, I think, shared by much of the population but is not an appropriate reason for overriding Green belt policies. ...

The elected County and District Councils after lengthy analysis both consider gypsy site provision in the District to be adequate ... <but> even if the count of unauthorised gypsy sites did demonstrate a need for 10 to 12 more pitches in the District ... that does not seem to me to indicate a pressing need sufficient to justify the permission for this site in the Green Belt, particularly as the appeal site would do little to diminish that total.

... <Whilst> the site satisfies some of the County's criteria for gypsy sites, being relatively well enclosed, a reasonable distance from residential properties, and within reach of social and educational facilities ... the mobile home and caravans do have the effect of consolidating the existing range of structures. ... The overall impact of the development would in my view be harmful rather than beneficial to the character of the Green belt."

The Inspector concluded by recommending that the appeal be dismissed.

The Secretary of State dismissed the applicant's appeal on 12 January 1995, giving as his reasons the following :

"<The Secretary of State> takes the view that the determining issue in this appeal is whether your client has demonstrated that very special circumstances exist which are sufficient to override the strong presumption against development which would be inappropriate in the Green Belt.

<The applicant> puts forward three reasons for special treatment : his gypsy status, the shortage of suitable gypsy sites in the area, and the suitability of the appeal site for gypsy use.

With regard to <the applicant's> status, the Secretary of State is mindful that Circular 1/94 withdraws the previous guidance indicating that it may be necessary to accept gypsy sites in protected areas, including Green Belts. Consequently he takes the view that a gypsy has no more cause than a non-gypsy to expect permission for inappropriate development in the Green Belt. Therefore, whilst seeing no reason to disagree with the second inspector's arguments for concluding that your client is not a "gypsy" as defined by section 16 of the Caravan Sites Act 1968 ... the Secretary of State does not consider that your client's status is a determining issue.

<The Secretary of State agrees with the conclusion of the second Inspector> that the need for more gypsy sites in the area is not so pressing as to justify a permission for inappropriate development, particularly since the appeal site would do little to reduce any shortfall in the number of pitches ... and disagrees with the first Inspector's

view that <the applicant's> situation, should he be forced to abandon the appeal site, would in itself represent special circumstances which would justify permitting this form of development in the Green Belt.

As far as the suitability of the appeal site for gypsy occupation is concerned, the Secretary of State agrees with the second Inspector ... that the overall impact of the development would be more harmful than beneficial to the character of the Green Belt ... <and> whilst any harmful visual impact may be no more than minimal ... neither Inspector found that the development would be positively beneficial. He therefore agrees with the second Inspector that the site characteristics themselves cannot be regarded as special circumstances in favour of the development. ...

In considering the weight of harm in this case, the Secretary of State has had regard to the purpose of Green Belts as set out in Planning Policy Guidance Note 2, the fundamental consideration being the preservation of their openness. Whilst acknowledging that the scale and adverse visual impact of the appeal development are limited, he takes the view that the circumstances adduced in favour of the development do not outweigh the harm that it would cause to the purposes and character of the Green Belt. He therefore concludes that the very special circumstances necessary to justify inappropriate development in the Green Belt have not been demonstrated."

The applicant appealed to the High Court against the Secretary of State's decision. The appeal was dismissed on 21 September 1995. Pending the outcome of the present proceedings before the Commission, the District Council has agreed to suspend taking enforcement action.

B. Relevant domestic law and practice

The following statements of planning policy issued at central and local government level are material to the present application.

Planning Policy Guidance Note 2, issued by the Department of the Environment, outlines general policy for local planning authorities with regard to development within areas of green belt. Insofar as material, Planning Policy Guidance Note 2 provides:

"... inside a Green Belt approval should not be given except in very special circumstances for the construction of a new building or for the change of use of existing buildings for purposes other than agricultural, forestry, outdoor sport, cemeteries, institutions standing in extensive grounds or other use as appropriate to a rural area."

Circular 28/77, issued by the Department of the Environment on 25 March 1977, was intended to provide local planning authorities with guidance on site provision for gypsies. Insofar as material, Circular 28/77 provided :

"<T>here are areas of open land (including Green Belts ...) where the land use policies which apply are severely restrictive to development. It may be necessary, however, to accept the establishment of Gypsy sites in such areas ... otherwise ... it may be difficult to prevent unauthorised camping in far less suitable locations. ... <T>here will <however> clearly be a special obligation to ensure that arguments in favour of a departure from the development plan are convincing."

Circular 28/77 was superseded by Circular 1/94 which was issued by the Department of the Environment on 23 November 1994. Insofar as material, Circular 1/94 provides :

> "As a rule it will not be appropriate to make provision for Gypsy sites in areas of open land where development is severely restricted .... Gypsy sites are not regarded as among those uses of land that are normally appropriate in Green Belts. Green Belt should not be allocated for Gypsy sites in development plans."

Policy H12, sets out Epping District Council's policy with regard to the provision of gypsy sites within the local development plan. So far as relevant, Policy H12 states that "planning permission will not be granted for a Gypsy caravan site within the local area."

COMPLAINTS

1. The applicant complains that he is prohibited from living in a caravan on his own land and as such is prevented from following the traditional lifestyle of a gypsy. The applicant points to the shortfall of gypsy accommodation within the local area and submits that in the event that he is prevented from remaining in his caravan he will be unable to accommodate himself legally elsewhere within the area. The applicant complains that inadequate regard was given to his identity and status as a gypsy. The applicant points to the fact that the relevant planning legislation did not require that particular consideration be given to the provision of residential sites for gypsies within the green belt. The applicant complains that the refusal to grant planning permission amounted, in these circumstances, to an interference with his right to respect for his home, and his private and family life under Article 8 para. 1 of the Convention which is not justified under the terms of para. 2 thereof.

2. The Applicant claims that he has been subject to discrimination on the ground of his status as a gypsy, contrary to Article 14 of the Convention taken together with Article 8 thereof. The applicant complains that the Epping District Council Local Policy H12 and the Department of the Environment Circular 1/94 directly stigmatise and discriminate against the provision of housing for gypsy communities within the green belt. The applicant complains generally that he has been treated differently from the house dwelling community who are afforded a better opportunity to provide for their housing needs in that they are catered for by the provision of new houses in the green belt area.

3. The applicant complains that the refusal of planning permission amounts to an interference with the applicant's right to the peaceful enjoyment of his property which is not justified by any legitimate public interest in breach of Article 1 of Protocol 1.

4. The applicant complains that in the determination of his right to live in a caravan on his land he has been deprived of a hearing before an independent and impartial tribunal in breach of Article 6 para. 1 of the Convention. The applicant points to the fact it is the Secretary of State who adjudicates on the planning appeal. The applicant submits that the Secretary of State, as a member of the executive, is not an independent and impartial tribunal within the meaning of Article 6 para. 1 of the Convention.

THE LAW

1. The applicant complains that he is prevented from living in a caravan on his own land and following the traditional lifestyle of a gypsy. The applicant complains that there is a shortfall of gypsy

accommodation within the local area and, therefore, that in the event he is prevented from remaining in his caravan he will be unable to accommodate himself legally elsewhere within the area. The applicant complains that in the determination of his right to live in a caravan on his land inadequate regard was given to his identity and status as a gypsy. The applicant complains of an interference with the right to respect for his home, and his private and family life under Article 8 para. 1 (Art. 8-1) of the Convention which is not justified under the terms of para. 2 thereof. Article 8 (Art. 8) of the Convention, insofar as material, provides :

> "1. Everyone has the right to respect for his private and family life, his home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and necessary in a democratic society for the protection of the rights and freedoms of others."

The Commission recalls that the applicant was refused planning permission which would have enabled him to live with his family in his caravans on his land. Whilst no enforcement action has yet been taken by the District Council to remove the caravans, the Commission accepts that in the absence of any undertaking by the District Council to the contrary this will be the inevitable consequence of the refusal of planning permission. Accordingly, the Commission finds that in the circumstances of the present case there has been an interference by a public authority with the applicant's right to respect for his home (see Eur. Court HR, Gillow v. the United Kingdom judgement of 24 November 1986, Series A no. 109, p. 19, para. 47 and Buckley v. the United Kingdom judgement of 25 September 1996, to be reported in Reports 1996, paras. 52-55).

The Commission has, therefore, to consider whether the interference with the applicant's right to respect for his home is justified under Article 8 para. 2 (Art. 8-2) as being in accordance with law and necessary in a democratic society in the interests of one or more of the legitimate aims identified in Article 8 para. 2 (Art. 8-2). The Commission does not, however, consider it necessary, in light of its finding that the refusal of planning permission amounts to an interference with the applicant's right to respect for his home, to decide whether the present case also raises any issue concerning interference with the applicant's right to respect for his private and family life (cf Eur. Court HR, Buckley v. the United Kingdom, loc. cit., para. 55).

In determining whether the interference was necessary in a democratic society, the Commission recalls that as a general rule it is first for national authorities to assess the necessity for any interference both in respect of the legislative framework and the measure of implementation (see, mutatis mutandis, Eur. Court HR, Leander v. Sweden judgement of 26 March 1987, Series A no. 116, p. 25, para. 59). The Commission further recalls the margin of appreciation accorded to national authorities in the sphere of planning control in the exercise of discretionary judgement inherent in the implementation of policies adopted in the interests of the community as a whole (see, mutatis mutandis, Eur. Court HR, Klass and Others v. Germany judgement of 6 September 1978, Series A no. 28, p. 23, para. 49 and Buckley v. the United Kingdom, loc. cit., para. 75).

Nonetheless, whilst it is not the Commission's task to sit in appeal on the merits of the decision, any decision which has the effect of interfering with a right protected under the Convention remains subject to review for conformity with the Convention. Although the applicant's right to respect for his home has to be balanced against the wider interests of the local community in effective planning

controls aimed at protecting the environment and public amenity, the consequences for the individual in the event that he is prevented from living on his land are of particular importance in defining where the permissible boundaries of the margin of appreciation lie (see Eur. Court HR, Buckley v. the United Kingdom, loc. cit., paras. 74 and 76). In circumstances where the applicant's lifestyle is essentially nomadic, the Commission considers that if the relevant planning authorities have made no finding that there is available to the applicant an alternative site to which he can reasonably be expected to move, there must exist particularly compelling reasons to justify the resulting level of interference with the applicant's right to respect for his home if the State is to remain within its margin of appreciation.

Furthermore, where a discretion capable of interfering with the enjoyment of a Convention right is conferred on national authorities, the Commission recalls that the procedural safeguards available to the individual will be especially material in determining whether a State has remained within its margin of appreciation. In particular, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (Art. 8) (see Eur. Court HR, McMichael v. the United Kingdom judgement of 24 February 1995, Series A no. 307-B, p. 55, para. 87 and Buckley v. the United Kingdom, loc. cit., para. 76).

In the present case, the Commission recalls that in dismissing the applicant's appeal against the refusal of planning permission, the Secretary of State, who considered the findings made by the two Inspectors, made no finding that there were any alternative sites available to the applicant. Whilst noting the shortfall in the provision of gypsy caravan sites within the local area, the Secretary of State considered that the "<applicant's> position, should he be forced to abandon the appeal site, would <not> in itself represent special circumstances which could justify permitting this form of development in the green belt".

The Commission recalls, however, that the first Inspector did not consider the applicant currently to enjoy the status of a gypsy; and that the second Inspector, who considered the applicant's lifestyle was a long way short of nomadic even before he moved to the site in 1988, and that his occupation of bungalow type accommodation at Dobbs Weir and the present site did not suggest that he shared an aversion to permanent accommodation said to be experienced by some gypsies, found that the applicant's lifestyle was not such as to require any special site provision or treatment.

The Commission also recalls that the applicant's site is on land forming part of the local green belt and that its use is therefore subject to particular control under the relevant planning legislation and policy. Whilst the applicant's use of the site was considered to have minimal visual impact on the surrounding countryside and, before the applicant had purchased it, the site had been subject to a degree of development in that various nissen huts and corrugated blockwork and wooden sheds had been put up on the land, the Commission acknowledges that the relevant planning authorities had to balance the applicant's right to respect for his home against the interests of the local community in effective planning controls aimed at maintaining the openness of the countryside and protecting it from further encroachment.

The Commission further recalls the finding of the second Inspector that there was virtually no evidence that the applicant, during his occupancy of the site, had made any sustained effort to find alternative accommodation. In this regard, the Commission notes that the relevant planning authorities had consistently resisted the applicant's use of the land as a site for his mobile home and that at

no stage during his occupancy of the site could the applicant be said to have laboured under the assumption that he would be allowed to use the land for that purpose.

The Commission does not consider that 1) the fact that the site was within the green belt, having regard to the fact that the site was considered to have minimal visual impact on the surrounding countryside and had in any event already been subject to a degree of development, and 2) the finding of the second inspector that there was little evidence that the applicant had himself made any sustained effort to find an alternative site, having regard to the fact that the local authority was unable to provide or even identify a suitable, alternative site, would have amounted to sufficient reasons had the applicant been found to be following an essentially nomadic lifestyle. However, in light of the first Inspector's finding that the applicant was not currently of nomadic habit and, more particularly, the finding of the second Inspector that the applicant's lifestyle was a long way short of nomadic even before he moved to the site in 1988 and was not such as to require any special site provision or treatment, the Commission considers that the reasons given were, in the circumstances of the present case, sufficient to justify the resulting interference with the applicant's right to respect for his home such that the respondent State remained within its margin of appreciation.

Recalling the decision of the Court in Buckley v. the United Kingdom (loc. cit., para. 79), the Commission notes that the decision-making process enabled the applicant to appeal to the Secretary of State, and that the appeal procedure involved an assessment by two qualified, independent experts, to whom the applicant was entitled to make representations. The Commission notes that a subsequent appeal to the High Court was also available to the applicant which enabled him to challenge the legality, propriety and fairness of the decision making procedure. The Commission is therefore satisfied that the procedural safeguards were also such as to afford due respect to the applicant's interests under Article 8 (Art. 8).

Accordingly, the Commission considers that in the circumstances of the present case the national authorities did not exceed the margin of appreciation accorded to them. In conclusion, there has been no violation of Article 8 (Art. 8).

It follows, therefore, that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant claims to be a victim of discrimination on the ground of his status as a gypsy contrary to Article 14 of the Convention taken together with Article 8 (Art. 14+8). The applicant complains that the Epping District Council Local Policy H12 and the Department of the Environment Circular 1/94 directly stigmatise and discriminate against the provision of housing for Gypsy communities within the green belt. The applicant complains generally that he has been treated differently from the house dwelling community who are catered for by the provision of new houses in green belt areas. Article 14 (Art. 14) of the Convention provides :

> "The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that the District Council's stated planning policy under Policy H12 was that "planning permission will not be granted for a gypsy caravan site within the local area".

In the event that this policy had been determinative of the applicant's appeal against the refusal of planning permission, the Commission considers that this may have raised an issue under Article 14 (Art. 14) of the Convention. The Commission recalls, however, that it is not its role to review national legislation in the abstract, but to consider the specific issues raised in the case before it (see Eur. Court HR, Bellet v. France judgment of 4 December 1995, Series A no. 333-B, p. 42, para. 34).

The Commission recalls that before the relevant planning authorities the decisive issue was whether, consistent with Planning Policy Guidance Note 2, there were very special circumstance to justify inappropriate development within the green belt. The Commission finds no evidence that Policy H12 was a determining issue in the refusal of planning permission and, therefore, that the applicant can in the result be said to have been directly affected by the measure in question.

Under Circular 1/94, which was current at the time of the re-opened inquiry, the Commission recalls that local planning authorities were advised that gypsy sites were not to be regarded as among those uses of land normally appropriate within a green belt. The Commission recalls that under Planning Policy Guidance Note 2, which is of universal application and, as noted above, was applied in the present case, the uses of land identified as being appropriate in a green belt were use for the purpose of "agriculture, forestry, outdoor sport, cemeteries, institutions standing in extensive grounds or other use as appropriate to a rural area". Having regard to the uses of land identified as appropriate to the green belt, the Commission does not, therefore, find that the house dwelling community were conferred any material advantage, or that the applicant was at a material disadvantage by reason of his status as a gypsy under the terms of the relevant planning policy in seeking to live within the green belt.

Furthermore the Commission finds no evidence in the present case to substantiate the applicant's general complaint that the house dwelling community receive more favourable treatment in the provision of new housing within the green belt.

Accordingly, the Commission finds that the applicant in seeking to establish his home within the green belt was not subject to discrimination by reason of his status as a gypsy contrary to Article 14 (Art. 14) of the Convention.

It follows, therefore, that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains that the refusal of planning permission amounts to an interference with the his right to the peaceful enjoyment of his property which is not justified by any legitimate public interest. Article 1 of Protocol 1 (P1-1) provides, insofar as relevant, that:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. ...
>
> The proceeding provisions shall not in any way impair the right of the State to enforce such laws as it seems necessary to control the use of property in accordance with the general interest ..."

The Commission recalls its findings with respect to the applicant's complaint under Article 8 (Art. 8) of the Convention. The Commission does not consider that in the circumstances of the present case any separate issue arises under Article 1 of Protocol 1 (P1-1) and therefore the Commission, having regard to its reasoning, finds no

violation of this provision.

It follows, therefore, that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant complains of a violation of Article 6 para. 1 (Art. 6-1) of the Convention in that in the determination of his right to live in a caravan on his land he has been deprived of a fair hearing by an independent and impartial tribunal. The applicant points to the fact that the planning appeal is determined by the Secretary of State who, as a member of the executive, does not have the characteristics of an independent and impartial tribunal. Article 6 para. 1 (Art. 6-1) of the Convention, in so far as relevant, provides :

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

Recalling the decision of the Court in Bryan v. the United Kingdom (judgement of 22 November 1995, Series A no. 335, pp. 13-18, paras. 30-47) where the same point was raised, the Commission considers that the scope of the review of the planning decision available to the applicant on appeal to the High Court, which enabled the applicant, inter alia, to challenge any decision or finding of the Secretary of State as being perverse or irrational; or any decision or finding of the Inspector as having no basis in evidence or as having been made by reference to irrelevant factors or without regard to relevant factors, was sufficient to comply with Article 6 para. 1 (Art. 6-1).

It follows, therefore, that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber