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

FIRST SECTION

DECISION

Application no. 1955/14
Patrick Joseph CUSACK
against the United Kingdom

The European Court of Human Rights (First Section), sitting on 3 May 2016 as a Chamber composed of:
Mirjana Lazarova Trajkovska, *President,*
Ledi Bianku,
Linos-Alexandre Sicilianos,
Paul Mahoney,
Aleš Pejchal,
Robert Spano,
Pauliine Koskelo, *judges,*
and Abel Campos, *Section Registrar,*
Having regard to the above application lodged on 10 December 2013,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Patrick Joseph Cusack, is a British national, who was born in 1938 and lives in Harrow.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The background facts

3. In December 1969 the applicant's parents purchased a property, including a building and a forecourt, in Harrow. Around the same time the applicant began to practise as a solicitor from that property. He, and those

visiting his office, have used the forecourt for parking their cars ever since. In order to park a car there, it is necessary to cross the pavement situated between the property and the adjacent road.

4. In the late 1990s or early 2000s the local authority constructed an uncontrolled pedestrian crossing outside the property. Such a crossing consists of a raised pedestrian refuge in the middle of the road and lowered pavements, with studded surfaces, on both sides of the road. The applicant, and other individuals visiting his office, continued to park vehicles on the forecourt.

5. In April 2008 a local authority employee, accompanied by a police constable, visited the property to request the applicant to remove the cars on the forecourt. Correspondence between the applicant and the local authority ensued, in the course of which the local authority indicated that it was considering erecting bollards to prevent vehicles accessing the forecourt.

2. Domestic proceedings

(a) The County Court

6. If the bollards were erected, the applicant and his clients would no longer be able to use the forecourt as a car park. On 17 March 2009 the applicant therefore lodged a claim for injunctive relief in the County Court seeking to prevent the local authority from erecting bollards. On 13 August 2009 the local authority informed him that it proposed to rely on section 80 of the Highways Act 1980 ("the Act" – see paragraph 29 below) which provides in relevant part that a highway authority, in the present case a function performed by the local authority, may erect fences or posts to prevent access to highways which it maintains (see paragraphs 28 to 30 below, for information about what comprises a highway). It does not require the payment of compensation to anyone who suffers damage in the exercise of the relevant powers.

7. On 9 September 2009 the local authority lodged its defence to the claim, which confirmed its reliance on section 80 of the Act. In the alternative it relied on section 66 of the Act (see paragraph 28 below), which provides that a highway authority may provide such "highway furniture" as it thinks necessary to safeguard individuals using the highway. Section 66 requires the payment of compensation to anyone who suffers damage in the exercise of the relevant powers.

8. On 4 March 2010 the County Court refused the applicant's claim. It decided that he had been exercising a frontager's right in order to park on his forecourt. Frontagers' rights included a right for the owner of a property adjacent to the highway to access that highway from any part of his property. It found that the local authority was able to interfere with that right under section 80 of the Act. The court decided that it did not have jurisdiction either to "read-down" legislation so as to ensure its

compatibility with the Convention, under the Human Rights Act 1998, or to make a declaration of incompatibility (see paragraph 31 below) and therefore it did not consider the applicant's human rights arguments.

(b) The High Court

9. The applicant appealed to the High Court. On 7 March 2011 the High Court rejected the applicant's appeal. It found that section 80 of the Act applied to his case, none of the exceptions in that section were relevant and there were no other reasons to prevent the local authority from relying on it.

10. The court accepted that the local authority could also have acted under section 66 of the Act. However, it decided, applying *Ching Garage Ltd v. Chingford Corporation* (see paragraph 33 below), that the local authority owed a duty to its taxpayers to select a provision not requiring compensation if one was available. The local authority could therefore not be criticised for selecting section 80 of the Act. The court rejected the applicant's argument that section 80 of the Act should be interpreted under section 3 of the Human Rights Act 1998 (see paragraph 31 below) either to exclude its application to private rights of access generally, or frontagers' rights in particular, or to include a right to compensation. It was Parliament's clear intention that private rights of access, including frontagers' rights, were to be included and it was a necessary inference that it had intended to exclude compensation.

11. The High Court decided that Article 1 of Protocol No. 1 could not have assisted the applicant in any event. It observed that the applicant would not lose his property. He would lose only one aspect of his right of access to that property, namely vehicular access. His case fell under the second paragraph of Article 1 of Protocol No. 1, that is the control of property. It found, pursuant to *Baner v. Sweden,* no. 11763/85, Commission decision of 9 March 1989, Decisions and Reports 60-A, p. 128, that a property owner was not guaranteed compensation in such circumstances and observed that the Commission had decided that a measure affecting and re-defining rights of property owners would not normally be considered an expropriation even if some aspects of the right were interfered with or even taken away. The court found that a wide margin of appreciation was accorded to Parliament as regards the second paragraph of Article 1 of Protocol No. 1.

12. The High Court found that Parliament had "plainly" decided that section 80 of the Act was necessary in the general interest. It would not be possible to predict the wide variety of factual situations with which a highway authority might be confronted and in which it might think it necessary to take action in the public interest. There was nothing wrong in granting highway authorities a wide power to obstruct access to highways should the need arise. Parliament would have known that actions taken by a highway authority would be amenable to judicial review if they were

"*Wednesbury* unreasonable", that is to say if the decision to take them was so unreasonable that no reasonable authority could ever have come to it.

13. It found that sections of the pavement where the kerb had been lowered so as to be at the level of the highway, and for which planning permission had been granted, were specifically excluded from the operation of section 80 of the Act. A proposal to interfere with such a crossing under section 80 would almost certainly be found to be unreasonable.

14. The High Court then considered the applicant's circumstances, stating in relevant part:

> "53 ... Public safety considerations do in my view warrant the course that [the local authority] proposes to take. I have taken into account the points made by Mr Cusack in this regard, including that there have not yet been any accidents; but in my view there is a significant risk of an accident in future if access to the front of No. 66 remains as it is. Station Road is a very busy single carriageway road. In my view it would require skilled experienced driving to mount and drive over the kerb onto the forecourt, or reverse back over the pavement down the kerb and back onto the road surface while avoiding the nearby island. I am happy to accept that Mr Cusack has acquired the necessary skills, but there is no guarantee that all of his staff and clients using the forecourt will have done so. In my view there is a danger of road traffic accidents involving vehicles if things remain as they are. There is also the obvious risk of damage to the pavement, creating tripping hazards. Moreover, given the character of the road and the proximity of the pedestrian road crossing, it is reasonable to suppose that the pavement in the immediate vicinity of No. 66 is quite widely used by pedestrians, and in my view the present arrangements present a potential danger to them as well. The fact that a dropped kerb constructed specifically to allow pedestrians to walk onto and from the road crossing is being used by cars as a means of easier access to the forecourt of No.66 serves to emphasise the point. ...
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> 55 ... In my view there is no substance in the assertion that [the local authority] had not referred to road safety issues before proceedings were commenced or that they are acting in bad faith by doing so now.
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> 56 I turn to the argument that there is no evidence to support [the local authority's] road safety arguments. In my view there is in fact some evidence ..., but this is principally a matter for my judgment based on the evidence which is available of the layout and traffic conditions of Station Road itself, the forecourt to no. 66, and the pedestrian crossing and dropped kerb associated with it ..."

(c) The Court of Appeal

15. The applicant appealed to the Court of Appeal. On 7 December 2011 the Court of Appeal overturned the High Court's judgment. Lord Justice Lewison, with whom the other judges agreed, applied the maxim *generalia specialibus non derogant*, which he interpreted to mean that where there is a general provision and a more specific provision, and a course of action could potentially fall within both, the court will usually interpret the general provision as not covering matters covered by the specific provision. Lord Justice Lewison decided that the local authority should have relied on section 66 of the Act because the power under that section was the one whose object was most closely aligned to the circumstances of the case.

Therefore, whilst the applicant was not entitled to injunctive relief, if the local authority chose to proceed it would have to pay compensation.

16. As regards the applicant's argument that the local authority could have imposed conditions on the exercise of his right of access, Lord Justice Lewison decided that the imposition of conditions would not have resulted in a satisfactory solution because the local authority had formed the view that all vehicle movements into and out of the applicant's forecourt posed a risk to pedestrians. Furthermore, the applicant had not raised the argument in the courts below.

17. In case he was wrong about section 66 of the Act, Lord Justice Lewison also considered the applicant's Article 1 of Protocol No. 1 submissions. He decided that the case should be considered as a control of use. He noted that this Court afforded national legislatures a wide margin of appreciation when a case involved a control of use and would respect their decision unless it was manifestly arbitrary or unreasonable. He observed that, pursuant to *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, ECHR 2007-III, no presumption existed that compensation had to be paid and its absence did not mean that a decision was disproportionate. The transfer of a title to land from one individual to another in that case was far more draconian than the applicant being prevented from accessing his property by vehicle. He concluded that section 80 was compatible with Article 1 of Protocol No. 1. If that was the case, the local authority's reliance on that section had also been compatible with Article 1 of Protocol No. 1.

(d) The Supreme Court

18. The local authority appealed the decision of the Court of Appeal to the Supreme Court. On 19 June 2013 the Supreme Court overturned the Court of Appeal's decision.

19. Lord Carnwath, with whom the other justices of the Supreme Court agreed, decided that the maxim *generalia specialibus non derogant* did not apply because neither section 80 nor section 66 of the Act could be regarded as more specific or less general than the other. Whilst section 66 of the Act was directed towards a specific purpose, that is "safeguarding persons using the highway", the powers available under it were defined in relatively wide terms. Although section 80 of the Act did not explicitly mention safety as a purpose, it was implicit that the section must be used for purposes related to those of the Act, one of which was safety of the highway. The powers in that section were expressed in narrower terms and related specifically to the prevention of access to an existing or future highway.

20. Lord Carnwath found that various other provisions illustrated the wide array of overlapping powers available under the Act but otherwise were not relevant. He also noted that in *Ching Garage Ltd* (see paragraph 33 below) the local authority had, as in the applicant's case, been confused as

to the appropriate statutory source of its power to act but that the House of Lords had not been concerned by the overlap of statutory provisions.

21. Lord Carnwath analysed the legislative history of both section 66 and section 80 of the Act. He acknowledged that the Act was a consolidating statute, that is to say it brought under one Act of Parliament existing provisions whose origins lay in various other Acts of Parliament. In relation to section 80, he traced its history back to a provision enacted in 1935 and noted that that provision had been amended in 1947 to prohibit its use where it would obstruct any means of access for which planning permission had been granted. Accordingly, section 80 continued to provide specific protection for means of access formed since 1947 if authorised by planning permission. He also considered the relevance of planning immunity, that is to say when breaches of domestic planning controls become immune from enforcement by the domestic authorities. Whilst doing so, he noted that the applicant's use of his property as an office and the laying out of a means of access to that property had both been breaches of planning controls but that both breaches had long since become immune from enforcement. However, Parliament had subsequently approved legislative proposals that did not give breaches which had become immune from enforcement the same status as developments for which planning permission had been granted. The protection provided in section 80 of the Act to means of access authorised by planning permission did not extend to use of accesses which had been created in violation of the planning laws but which had become immune. As regards the applicant's concern that the powers provided under section 80 might be abused, for example to avoid protections under section 66 of the Act, an individual could bring a judicial review claim. Lord Carnwath concluded that the local authority had been entitled to rely on section 80 of the Act.

22. He then proceeded to consider the implications of Article 1 of Protocol No. 1. He rejected the applicant's argument that removal of vehicular access would amount to a deprivation of a possession. He found that it was clearly a control of property. He set out the necessary steps in the assessment of compliance with Article 1 of Protocol No. 1, namely:

> "(i) whether there was an interference with the peaceful enjoyment of 'possessions';
>
> (ii) whether the interference was 'in the general interest';
>
> (iii) whether the interference was 'provided for by law'; and
>
> (iv) proportionality of the interference."

23. He found that Article 1 of Protocol No. 1 did not impose any general requirement of compensation in cases falling within the second paragraph of that Article. He noted that in *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom*, cited above, § 83, the Court had decided that absence of compensation might nevertheless be relevant to the issue of proportionality.

24. He decided that proportionality required a broad judgment as to what was a fair balance and was not confined to irrationality or "*Wednesbury* unreasonableness". The issue was not whether the council's action was an abuse of its powers but whether a fair balance had been struck between the competing general and individual interests. The applicant had not challenged the compatibility of section 80 with Article 1 of Protocol No. 1 as such. As a result, the mere fact that another statutory route with compensation was available did not lead to a conclusion that relying on section 80 of the Act was disproportionate.

25. Lord Carnwath continued:

> "49. The question must however be answered principally by reference to the balance drawn by section 80 itself, allowing for the wide margin of appreciation allowed to the national authorities. It is in my view significant that the legislature did not adopt my recommendation that all immune uses and operations should be treated generally as though subject to planning permission, apart from the three cases specified in the section. There may be room for argument as to where the line in section 80 should have been drawn, but the compatibility of the section is not the issue. Given the availability of the power as a legitimate means of controlling use of a private access in the public interest, its use in the present circumstances was in my view neither an abuse of the council's powers nor outside the boundaries of the discretion allowed by the Convention."

26. Lord Neuberger agreed with Lord Carnwath in a brief opinion. He took the view that, subject to the effect of Article 1 of Protocol No. 1, if both provisions applied to the circumstances of the case, the local authority would be permitted to choose which provision on which to rely. After noting Lord Radcliffe's statement in *Ching Garage Ltd* (see paragraph 33 below) that if a local authority could do what they wanted to do without paying compensation they should take that approach, Lord Neuberger decided that where two separate statutory provisions applied the local authority could rely on either provision provided that it was reasonable to do so in all the circumstances.

27. In relation to Article 1 of Protocol No. 1, Lord Neuberger agreed that there had been no deprivation of property. Because the disadvantage suffered by the applicant fell within control of possessions, he could not see how the local authority's reliance on section 80 could violate Article 1 of Protocol No. 1. He noted that there was no general right to compensation where control of possessions was in issue but accepted that that was not decisive for proportionality. It was also necessary to consider whether the exceptions to section 80, and the fact that the applicant's case did not fall within them, were arbitrary. He decided that the distinction between cases subject to planning permission and those immune from enforcement was narrow but because it definitely existed, and had long done so, was not arbitrary. Article 1 of Protocol No. 1 did not require that where the State sought to control property and was able to do so under two different

provisions it should choose the one which provided for compensation, except if special facts existed which require it.

B. Relevant domestic law and practice

1. Legislation

(a) Maintenance of and access to highways and footpaths

28. Section 66 of the Highways Act 1980, which falls under the cross-heading "Safety Provisions", sets out the duties of the highway authority in relation to the provision of footways and the powers available to it to maintain in a footway such "furniture" as they consider necessary to safeguard pedestrians. In relevant part it states:

> "(2) A highway authority may provide and maintain in a highway maintainable at the public expense by them which consists of or comprises a carriageway, such raised paving, pillars, walls, rails or fences as they think necessary for the purpose of safeguarding persons using the highway.
>
> ...
>
> (8) A highway authority or council shall pay compensation to any person who sustains damage by reason of the execution by them of works under subsection (2) or (3) above."

29. Section 80, which falls under cross-heading, "Fences and Boundaries", provides that a highway authority may erect fences or posts to prevent access to a highway. In relevant part it reads:

> "(1) Subject to the provisions of this section, a highway authority may erect and maintain fences or posts for the purpose of preventing access to—
>
> (a) a highway maintainable at the public expense by them,
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> ...
>
> (3) The powers conferred by this section shall not be exercised so as to—
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> (a) interfere with a fence or gate required for the purpose of agriculture; or
>
> (b) obstruct a public right of way; or
>
> (c) obstruct any means of access for the construction, formation or laying out of which planning permission has been granted under Part III of the Town and Country Planning Act 1990 ... or
>
> (d) obstruct any means of access which was constructed, formed or laid out before 1st July 1948 ..."

(b) Interpretation of terms in the Act

30. Section 329 of the Act provides *inter alia* that "carriageway" means a way constituting or comprised in a highway over which the public has a right of way for the passage of vehicles and that "footway" means a way

comprised in a highway which also comprises a carriageway and over which the public have a right of way on foot only.

(c) The Human Rights Act 1998

31. Section 3 of the Human Rights Act 1998 ("the Human Rights Act") provides:

> "(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights ..."

Section 4 of the Human Rights Act provides:

> "(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.
>
> (2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility."

32. Section 6(1) of the Human Rights Act provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right.

2. Relevant case-law

33. In *Ching Garage Ltd v Chingford Corporation* [1961] 1 All E.R. 671, the House of Lords was asked whether a highway authority had the power to obstruct a means of access from a privately owned garage to a road junction. Lord Radcliffe stated that:

> "If they can do what they want to without having to pay compensation, they have no business to use public funds in paying over money to an objector who is not entitled to it."

COMPLAINT

34. Relying on *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, 25 October 2012, the applicant argued that the relevant domestic law lacked accessibility, precision and foreseeability. First, the local authority had been able to rely on two alternative statutory provisions. Secondly, section 80 of the Act itself lacked precision and foreseeability because it contained no procedural requirements to be followed or grounds to be satisfied before the power it provided might be exercised; it was not clear when the exceptions provided in subsection 80(3) would apply; it was not subject to any guidance; and it provided powers which were exercised by junior civil servants in respect of whom there existed no system of accountability. He also argued that the local authority had failed to document its decision to block his right of access or support it with evidence.

35. He also claimed that the interference with his right of access to his property had been disproportionate. The domestic courts had accepted the local authority's decision, when faced with a choice of statutory provisions under which it could act, to rely on the one which did not require payment of compensation. The decision by the local authority had been wholly undocumented and lacking in evidence. It was not consistent with its decisions to grant other residents in the same street planning permission for crossings over the footway. The applicant also argued that the local authority had not acted in good time or in an appropriate and consistent manner as required by this Court in *Hutten-Czapska v. Poland* [GC], no. 35014/97, ECHR 2006-VIII. This was evidenced by the local authority's failure to rely on section 80 of the Highways Act 1980 until after it had taken its decision.

THE LAW

36. In the applicant's submission the local authority's decision to prevent vehicular access to his property's forecourt, and the domestic courts' decisions to uphold it, did not comply with the principle of lawfulness and amounted to a disproportionate control of the use of his property. He contended that the domestic authorities' actions violated his rights under Article 1 of Protocol No. 1, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

37. On the basis of the material which the applicant has submitted, including the judgments of the domestic courts (summarised in paragraphs 6 to 27 above), the Court is satisfied that the applicant had a "possession" within the meaning of that term under the Convention (see, for example, *Depalle v. France* [GC], no. 34044/02, § 62, ECHR 2010).

38. Although the applicant argued before the domestic courts that the local authority's proposed actions amounted to a deprivation of property under the second rule, as stated in the first paragraph of Article 1 of Protocol No. 1, he has only argued before this Court that the local authority's decision to block vehicular access to his property amounted to a control of the use of property in accordance with the general interest under the third rule, as stated in the second paragraph of Article 1 of

Protocol No. 1 (for information on the three rules see, among other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98; and *Depalle*, cited above, § 77). The Court sees no reason to dispute the findings of the domestic courts, now accepted by the applicant, that the limitation of his rights amounted to a control of use of his possessions in the general interest under the third rule set out in Article 1 of Protocol No. 1.

39. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful, this being a requirement that applies to all three rules (see, for example, *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V). The principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see *Beyeler v. Italy* [GC], no. 33202/96, §§ 109-10, ECHR 2000-I).

40. Taking into account its limited power to review compliance with domestic law (see *Håkansson and Sturesson v. Sweden*, 21 February 1990, § 47, Series A no. 171-A, and more recently *Beyeler*, cited above, § 108), in the present case the Court notes that the national courts – in the last resort the Supreme Court, the highest court in the land – held that the interference in question had a basis in domestic law, in that the local authority's actions were permitted by section 80 of the Highways Act 1980. Furthermore, there is nothing in the material before the Court which suggests either that the decisions of the national authorities, notably the courts, were contrary to domestic law (see *Tre Traktörer AB v. Sweden*, 7 July 1989, § 58, Series A no. 159) or from which it can conclude that those authorities applied the relevant domestic law manifestly erroneously or so as to reach arbitrary conclusions (see *Beyeler*, cited above, § 108).

41. Turning to the accessibility, precision and foreseeability of the applicable provisions of domestic law (see, *mutatis mutandis*, *Silver and Others v. the United Kingdom*, 25 March 1983, §§ 85-90, Series A no. 61), the Court first finds that the relevant statutory provisions were adequately accessible because the powers on which the local authority proposed to rely, namely those provided in section 80 – or, in the alternative, in section 66 – of the Highways Act 1980, were set out in clear terms and published. The applicant had an indication that was adequate, in the circumstances, of the legal rules potentially applicable to his case (see *Silver and Others*, cited above, § 87).

42. There is not automatically a failure to satisfy the precision and foreseeability requirements merely because there are two overlapping statutory provisions and a local authority has to make a choice about which provision to use. The fact that one power was more adverse to the applicant than the other is not relevant to this question. It is sufficient to note that it

should have been clear to the applicant that the local authority could choose to act under either. That there was some guidance as to how that discretion was to be exercised merely enhanced the clarity. Thus, in its decision, the Supreme Court referred to, and upheld, domestic case-law on the duty of local authorities to minimise the financial burden on taxpayers (see paragraph 33 above). Individuals affected by local authorities' actions under either of the above-mentioned sections could therefore reasonably conclude that, unless their circumstances were such that they fell within one of the exceptions set out in section 80(3) of the Act (see paragraph 29 above), a local authority would choose to use section 80 of the Act because it did not require payment of compensation and was therefore less of a burden on taxpayers.

43. As regards the applicant's submission that there was a lack of precision and foreseeability as to the use of section 80 of the Act, the Court notes the High Court's finding that it would not be possible to predict the wide variety of factual situations with which a highway authority might be confronted and in which it might think it necessary to take action in the public interest (see paragraphs 9-14 above, in particular paragraph 12). It agrees with the High Court that there is nothing wrong in granting highway authorities a wide power to obstruct access to highways in the public interest should the need arise since the proportionality of any such interference can be the subject of review by the courts.

44. Furthermore, the Supreme Court set out the relevant approach, derived from this Court's case-law, to be applied in cases where Article 1 of Protocol No. 1 is in issue. It pointed out that there were exceptions to the use of section 80 of the Act, thus circumscribing its scope. In particular, the local authority's powers under section 80 could not be exercised so as to obstruct any means of access to a property for which planning permission had been granted (see paragraph 29 above). This exception did not apply to the applicant, since, as was pointed out by the Supreme Court (see paragraph 21 above), the applicant's use of his property as an office and the laying out of a means of access had been breaches of planning controls, although those breaches had become immune from enforcement with time. The Supreme Court also pointed to the availability of judicial review of a local authority's exercise of its powers under section 80.

45. The applicant also argued that the local authority had failed to document its decision to block his right of access or support it with evidence and that it had failed to rely on section 80 of the Highways Act 1980 until after it had taken its decision. The Court considers that this amounts to an argument that the local authority did not pursue a legitimate aim when deciding to restrict his right of access to the highway. The Court recalls the principles set out by the Grand Chamber in *Vistiņš and Perepjolkins*, cited above, § 106. It is noteworthy that, in its defence to the applicant's claim in the County Court (see paragraph 7 above), the local authority relied on

section 80 of the Act. Furthermore, the High Court specifically found "no substance in the assertion that [the local authority] had not referred to road safety issues before proceedings were commenced or that they [were] acting in bad faith by doing so" in the proceedings before the High Court itself (see paragraph 14 above). Accordingly, the Court is satisfied that the local authority's interference with the applicant's property rights pursued the legitimate general interest of protecting the safety of users of the highway (see, *mutatis mutandis*, *Beard v. the United Kingdom* [GC], no. 24882/94, § 93, 18 January 2001).

46. As regards the proportionality of the local authority's actions, the Court first recalls the general principles set out by the Grand Chamber in *Depalle*, cited above, §§ 83-84 and in particular, the broad margin of appreciation to be afforded to the national authorities in "control-of-use" cases. Although as a result of this margin of appreciation the Court cannot substitute its own assessment for that of the national authorities, it is bound to review the contested measures under Article 1 of Protocol No. 1 (see, for example, *James and Others*, cited above, § 46). However, it is not the role of the Court to act as a further instance of appeal: rather its role is to review the decisions of the national authorities for compatibility with the Convention (see, for example, *mutatis mutandis, Chapman v. the United Kingdom* [GC], no. 27238/95, § 90, ECHR 2001-I, and *Vistiņš and Perepjolkins*, cited above, § 109).

47. The Court has previously recognised that the national authorities enjoy a wide margin of appreciation in determining not only the necessity of the measure of control concerned but also the types of loss resulting from the measure for which compensation will be made; the legislature's judgment in this connection will in principle be respected unless it is manifestly arbitrary or unreasonable (see *Alatulkkila and Others v. Finland*, no. 33538/96, § 67, 28 July 2005). It is also established case-law that where a measure controlling the use of property is in issue, a lack of compensation is a factor to be taken into consideration in determining whether a fair balance has been achieved but is not of itself sufficient to constitute a violation of Article 1 of Protocol No. 1 (see *Depalle*, cited above, § 91).

48. The Court observes that the national courts' Convention scrutiny in the present case was, in the first place, by reference to the content of the impugned legislation (see, for example, paragraph 49 of Lord Carnwath's judgment quoted at paragraph 25 above). The Court further observes that the legislation which the national courts considered afforded broad, discretionary powers to the local authority. It is noteworthy that the applicant did not challenge the compatibility of the relevant legislation itself with Article 1 of Protocol No. 1 (see paragraph 24 above). The question for the Court is accordingly whether the exercise by the local authority of its powers under section 80 of the Act for the purpose of erecting bollards can be regarded as proportionate in the applicant's case.

49. The national courts considered the applicant's individual circumstances and weighed them against the general interest in maintaining the safety of highway users. Thus, on the factual evidence before it, the High Court found that there was "significant risk of road traffic accidents involving vehicles if things remained as they were" (see paragraph 14 above). On the other hand, the national courts took into account all the matters the applicant raised, including the nature of his right of access, namely that it was only one aspect of his vehicular right of access to his property that was affected; that he would not receive compensation because the nature of his right was not such as to require compensation under the scheme set out in the legislation; and that he personally had safely exercised his right of access in order to park his car for a significant length of time. Finally, the Court also notes that the national courts considered section 80(3) of the Act and took into account that none of the exceptions provided for by that provision applied.

50. As has already been pointed out (see paragraphs 46 to 47 above), the national authorities have a broad margin of appreciation under the third rule of Article 1 of Protocol No. 1. Accordingly, the intensity of the review which both this Court and the national courts are called on to give to a particular case is more limited. The Court notes that the Supreme Court specifically recognised that the national courts were required to look beyond the domestic-law test whether the local authority had abused its powers or acted in a "*Wednesbury* unreasonable" manner (see paragraph 12 above) and had, on the basis of the Convention standards regarding the right of property as protected by Article 1 of Protocol No. 1, to assess whether a fair balance had been struck between the competing general and individual interests (see paragraph 24 above). The Court is satisfied that the approach which the Supreme Court enunciated and applied in the present case reflects the requirements which must be met in relation to the third rule set out in Article 1 of Protocol No. 1. It is also noteworthy that the Court's case-law does not provide any support for the argument that, in relation to the control of use of property, Article 1 of Protocol No. 1 imposes a positive obligation, where two powers exist, to exercise the one that provides compensation.

51. In light of the above considerations, the applicant has not shown that he would have to bear an individual and excessive burden in the event that the local authority were to erect bollards preventing access to his property by car without paying compensation. The national authorities, notably the courts, cannot be held to have exceeded their margin of appreciation in the circumstances of the present case. They were thus entitled to conclude that the contested measure would not upset the balance between the interests of the community and those of the applicant.

52. Consequently, the applicant's complaint under Article 1 of Protocol No. 1 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 May 2016.

Abel Campos
Registrar

Mirjana Lazarova Trajkovska
President