AS TO THE ADMISSIBILITY OF

Application No. 28911/95
by William TITTERRELL
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 26 February 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 13 April 1995 by William TITTERRELL against the United Kingdom and registered on 11 October 1995 under file No. 28911/95;

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 1930 and resident in London. The facts as submitted by the applicant may be summarised as follows.

A. The particular circumstances of the case

1. Planning permission

In 1987 the applicant purchased a piece of land ("the land"), in the vicinity of Five Oaks Green village in Kent, approximately 21 miles from the edge of Greater London, on which he intended to build twelve three-bedroom bungalows. In October 1985, the applicant, as a person interested in the land, had entered into an agreement with Tunbridge Wells Borough Council ("the council"), regarding the development of the site. The applicant also obtained planning permission for twelve holiday chalets to be built on the land. The planned holiday chalets were small units with a floor area of five hundred square feet, and they were not to be permanently occupied.

In August 1987 the applicant sought to ascertain whether, under section 53 of the Town and Country Planning Act 1971 ("the 1971 Act"),

a change from holiday to permanent residential use of the chalets constituted a development requiring planning permission.

By 8 October 1987, particulars of the three-bedroom bungalows had been circulated to prospective buyers, by the applicant's estate agent, and building had commenced. During 1987 eight bungalows were built. On 8 October 1987 the council wrote to the applicant's estate agent stating that the planning permission for the land related to 12 self-catering holiday units.

On 28 October 1987, in response to the request for a determination under section 53 of the 1971 Act, the council's planning authority informed the applicant that a change of use of the chalets from holiday to residential use, would not constitute development of the land. This letter contained an "advisory note" which reminded the applicant that the initial planning permission was, despite the change of use determination, still subject to a number of conditions and that the covenants entered into by him under the agreement of October 1 1985 were not affected by the determination.

The applicant sought, by judicial review, a declaration of the standing of the determination, under section 53 of the 1971 Act ("the determination"). He sought to argue that the determination that the change of use was not a development, had the additional effect of granting planning permission for permanent residential use, free of the conditions and covenants attached to the October 1985 planning permission for the holiday chalets.

It was held by Mr. Justice Popplewell on 20 July 1989, that whilst the determination did constitute planning permission for use of the holiday chalets as residential units, the determination did not abolish the pre-existing conditions or covenants attached to the planning permission for the holiday chalets.

The applicant has been informed by the council that he will face injunction proceedings if he seeks to sell any of the bungalows already constructed.

The applicant initially appealed against this decision to the Court of Appeal, however on 15 April 1990 the appeal was withdrawn. The applicant withdrew the appeal as the council's director of planning, suggested an alternative development for the land. This new plan was entered in the Draft Local Plan in April 1991, however the plan was not accepted by the Secretary of State.

In 1995 the applicant sought legal aid, apparently to appeal against the decision of Mr. Justice Popplewell and/or to re-commence proceedings as to the effect of the determination under section 53 of the 1971 Act. Legal Aid was refused on 19 July 1995 and an appeal against this refusal was rejected on 26 September 1995, on the grounds that the applicant's case showed no reasonable prospects of success.

2. Extent of the Metropolitan Green Belt

Five Oaks Green village falls within the Metropolitan Green Belt ("MGB").

Under the Kent Development Plan of 1967 Five Oaks Green had been an excepted village. This status allowed minor redevelopment such as infilling within the confines of the village.

In 1980 the Kent County Council enforced a new Kent Structure Plan ("KSP"), superseding earlier development/structure plans. The MGB was broadly defined in the KSP, approved by the Secretary of State for the Environment in a letter dated 31 March 1980. In this letter the Secretary of State comments that the KSP was intended to give a broad indication of the area to which the MGB applied, but that precise

boundaries should be defined in local plans. Nevertheless he comments:

"a depth of 12-15 miles is usually adequate for the MGB".

No challenge was made to the KSP within the requisite 6 weeks from the date of publication of the Secretary of State's notice of approval and the KSP became operative on 21 April 1980.

The precise boundary of the MGB was fixed by the Kent Countryside Local Plan ("KCLP") drawn up by the council. The village of Five Oak Green and the applicant's property was within the MGB boundary. The KCLP was the subject of public consultation in 1981 and objections to it were considered at a public local inquiry held in 1982. No objections were made to the definition of the outer edge of the MGB. The KCLP was approved in May 1983.

Local planning authorities define the inner boundary of the Green Belt around the settlements which lie within the outer edge. Such a plan was drawn up by the applicant's council in the Tunbridge Wells Borough Local Plan ("TWBLP") in April 1992. The applicant objected to the fact the TWBLP placed his property outside the Five Oak Green village boundary. His objection was heard at a public inquiry in October 1993. The Inspector concluded that the village of Five Oak Green was within the MGB, and that the KSP overruled the former designation of Five Oak Green as an "excepted village" under the Kent Development Plan of 1967. The Inspector further upheld the TWBLP boundary, that excluded the applicant's land from the village of Five Oak Green.

The applicant lodged an application for judicial review in May 1993, apparently seeking declarations that the Kent County Council had extended the MGB beyond that approved by the Secretary of State in 1980, that his property had been unlawfully blighted by being included in the MGB and that the Lands Tribunal had failed in its duty to ensure strict compliance with the Lands Tribunal Rules. Leave was granted for judicial review by Mr. Justice Tucker on 16 June 1993. However counsel advised, in June 1994, that there was no realistic prospect of success and it appears that the action for judicial review was not continued.

The applicant subsequently sought to issue a blight notice, claiming that the inclusion of his land within the MGB characterised it as blighted land. This was rejected by the Lands Tribunal on 16 June 1995.

The applicant sought legal aid to appeal against the decision of the Lands Tribunal. Legal aid was refused on 7 September 1995 and an appeal against this refusal was likewise rejected on 26 September 1995, on the grounds that the applicant's case had no reasonable prospects of success.

B. Relevant domestic law and practice

Section 53 of the Town and Country Planning Act 1971 (as amended) provides so far as relevant as follows:

"(1) If any person who proposes to carry out any operations on land, or to make any change in the use of land -

(a) wishes to have it determined whether the carrying out of those operations, or the making of that change, would constitute or involve development of the land and,

(b) if so, whether an application for planning permission in respect of it is required under this Part ...

he may apply to the local planning authority to determine that question."

COMPLAINTS

The applicant complains that the decisions concerning the necessary planning permission for a development of his land, have meant that he has not been able to enjoy the freedom to deal with his property as desired. He claims a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 of the Convention.

With regard to the designation of the applicant's land as being within the MGB, the applicant complains that such designation was unlawful, has denied him the peaceful enjoyment of his possessions and caused him financial ruin. The applicant complains of a violation of Article 8 of the Convention and Article 1 of Protocol No. 1.

THE LAW

1. The applicant complains that he was refused planning permission. He alleges a violation of Article 1 of Protocol No. 1 (P1-1) and Article 8 (Art. 8) of the Convention.

The Commission recalls that in accordance with Article 26 (Art. 26), it may only deal with a matter within six months of the final decision.

In respect of this complaint, the final decision was the decision of Mr Justice Popplewell of 20 July 1989. The applicant's attempt to obtain legal aid in 1995 to bring further proceedings against the Tunbridge Wells Council could not alter the position as it was simply an attempt to re-litigate issues decided in July 1989 and does not constitute an effective remedy (see Eur. Court HR, Van Osterwijck v. Belgium judgment of 6 November 1980, Series A no. 40, pp. 13-14, para. 27). The final decision was that of 20 July 1989, which is more than six months before the date on which the application was introduced on 13 April 1995.

Accordingly it follows that in accordance with Article 26 (Art. 26), this part of the application must be rejected as inadmissible under Article 27 (Art. 27) of the Convention, as being submitted more than six months after the final decision.

2. The applicant complains that his land was deemed to fall within the Metropolitan Green Belt. He invokes Article 8 (Art. 8) of the Convention, and Article 1 of Protocol No. 1 (P1-1) to the Convention.

The Commission first notes that there is no indication whatever that the fact that his property is within the Green Belt interferes with his rights under Article 8 (Art. 8) of the Convention. There is no indication in the file that the applicant ever intended to make his home on the property, rather it was a commercial venture. In these circumstances, the Commission considers that the complaint under Article 8 (Art. 8) of the Convention is properly characterised as a complaint under Article 1 of Protocol No. 1 (P1-1) to the Convention.

Article 1 of Protocol No. 1 (P1-1) 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 condition 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."

With regard to the proceedings for judicial review, for which leave was given in May 1993, this was never proceeded with on the advice of counsel. The public enquiry, which considered the extent of the outer MGB boundary and the village boundary in relation to the applicant's land, was held in October 1993 and it appears that no action was taken to appeal against this decision. The applicant was refused legal aid and did not pursue an appeal against the decision of the Land Tribunal of June 1995, which rejected his claim that his land was "blighted" by being within the MGB. The Commission is prepared to assume for the purpose of these proceedings that Article 26 (Art. 26) of the Convention has been complied with.

As mentioned above, the applicant's land was in the Green Belt. There is therefore some doubt as to whether there has been any interference with the applicant's right to peaceful enjoyment of his possessions. In particular the Commission recalls that, as a general principle, the protection of property rights ensured by Article 1 of Protocol No. 1 (P1-1) cannot be used as a ground for claiming planning permission to extend permitted use of property (see. No. 20490/92, Dec. 8.3.94, D.R. 76-A, p. 108). However, assuming that the decision in April 1992, which held that the applicant's land fell outside the village boundary (the subject of a public inquiry in October 1993), affected the degree of Green Belt restrictions on the applicant's land and as such constituted an interference, this amounts to a control of the use of the applicant's property pursuant to the second paragraph of Article 1 of Protocol No. 1 (P1-1). (see No. 11185/84, Dec. 11.3.85, D.R. 42, p. 278; Eur. Court HR, Pine Valley Developments Ltd and Others v. Ireland judgment of 29 November 1991, Series A no. 222, p. 25, paras. 55-56 with further references).

The Commission must therefore consider whether any such interference was "in accordance with the general interest" for the purposes of the second paragraph of Article 1 (Art. 1-2) (see the above-mentioned Pine Valley judgment, p. 25, para. 57).

It is true that the applicant claims that the extension of the MGB to include his land was not in accordance with the law. The Commission notes that this allegation was made unsuccessfully by the applicant at the public enquiry in October 1993 and was rejected by the Planning Inspector. Accordingly, and apart from the fact that the applicant is not able to complain about this decision of the Planning Inspector by virtue of the six months rule, the Commission finds no indication that any interference with the applicant's rights was not "lawful".

The Commission must next determine whether a fair balance was struck between the general interest of the community and the protection of the individual's fundamental rights (see No. 20490/92, Dec. 8.3.94, D.R. 76-A, p. 108 with further references and No. 11723/85, Dec. 7.5.87, D.R. 52, p. 256).

The applicant's land is situated in Kent, a region which forms part of the rural band that surrounds Greater London. The Commission recognises that planning controls are necessary and desirable in order to maintain rural areas and halt the phenomenon of urban sprawl, particularly in relation to countryside surrounding a major capital city (see the above mentioned Decision, D.R. 76-A, p. 108). Further the Commission notes that the applicant was concerned in a commercial venture which, by its very nature, involved an element of risk (see Eur. Court HR, Håkansson and Sturesson v. Sweden judgment of 21 February 1990, Series A no. 171-A, pp. 17-18, paras. 53 and 55 and Fredin v. Sweden judgment of 18 February 1991, Series A no. 192, pp. 17-18, paras. 54-55). He was aware, having negotiated the original planning permission for holiday chalets, of the restrictions on development (see the above mentioned judgement of 29 November 1991, Pine Valley Developments Ltd and Others v. Ireland, Series A no. 222, para. 59).

The Commission therefore finds that a proper balance has been struck between the applicant's and the general interest. The control of the use of his property is therefore in accordance with the requirements of Article 1 of Protocol No. 1 (P1-1).

It follows 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
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber