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HOUSE OF LORDS

OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT IN THE CAUSE

BOLTON METROPOLITAN DISTRICT COUNCIL AND OTHERS (RESPONDENTS)

v.

SECRETARY OF STATE FOR THE ENVIRONMENT AND OTHERS (APPELLANTS)

ON 24TH MAY 1995

Lord Goff of Chieveley
Lord Mustill
Lord Slynn of Hadley
Lord Lloyd of Berwick
Lord Steyn

LORD GOFF OF CHIEVELEY

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Lloyd of Berwick. For the reasons he gives I, too, would allow the appeal and restore the order of Schiemann J.

LORD MUSTILL

My Lords,

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LORD SLYNN OF HADLEY

My Lords,

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LORD LLOYD OF BERWICK

My Lords,

This case concerns a planning application for a new shopping centre at Trafford Park, Manchester. The application was made as long ago as 21 July 1986. There have since been two public inquiries. The first lasted from 22 September 1987 to 26 February 1988, and the second from 9 June to 17 July 1992. The decision letter is dated 4 March 1993.

During this lengthy period of over six years, there have been major changes in Government policy and in economic conditions. This has resulted in extensive post-inquiry representations being placed before the Secretary of State, which he was, of course, obliged to take into account when reaching his decision. At one stage the Secretary of State was being pressed to reopen the inquiry for a third time, but he resisted this suggestion. Instead, the opponents of the planning consent brought proceedings under section 288 of the Town and Country Planning Act 1990 claiming that the Secretary of State has failed to take certain material considerations into account, and asserting that in certain respects his decision is perverse. In addition, it is contended that he has failed to give proper reasons for his decision, or that his reasons are so obscure as to be unintelligible.

Schiemann J. rejected all these allegations (1993) 67 P.&C.R.333. But there was an appeal to the Court of Appeal, who allowed the appeal, and quashed the Secretary of State's decision (1994) 69 P.&C.R. 324. There is now an appeal to this House.

No doubt it is important in these hotly contested planning disputes that those who are affected should have a full opportunity to state their case, and that the decision, when taken, should be taken in the light of all material circumstances known at that date. But if the process becomes overburdened, there is a price to pay. When circumstances are changing all the time, and new material is placed before the Secretary of State in a never-ending stream (a representation on which the appellants rely strongly was dated 22 February 1993, only ten days before the date of the decision letter), there is, as Schiemann J. rightly pointed out, a tension between the proper examination of all relevant material, and the need to come to <u>some</u> decision, sooner rather than later. The Secretary of State might be forgiven for thinking that in this case he has been shooting at a moving target; and that, in turn, may explain why, if the Court of Appeal be correct, he missed.

The contentions of the parties to the appeal are explored in the comprehensive judgments of Schiemann J. and Glidewell L.J., two of the most experienced judges in the planning field. For present purposes it is sufficient to sketch in the background. The first application was submitted on

behalf of the Manchester Ship Canal Co. (to whom I shall refer to as "the appellants") for the development of a sub-regional shopping centre on land at Trafford Park, adjoining the M63 motorway. Two subsequent applications related to the same development, and included with it a proposed regional sports complex on a total area of 123 hectares. The land is part of a larger area designated as an urban development area under section 134 of the Local Government Planning and Land Act 1980. The Trafford Park Development Corporation, whose function it is to support regeneration within its area, has been separately represented in the course of these proceedings, and has supported the appellants throughout.

The opponents of the proposed development are a consortium of eight local authorities in Greater Manchester, who are the respondents to the appeal, together with a number of property companies and other commercial organisations with interests in rival shopping centres in the City centre and elsewhere in the Manchester area, including M.E.P.C. Investments Ltd., Land Securities Properties Ltd., P. & O. Shopping Centres Ltd., and so on.

There were other applications before the inspector, including two other proposals for sub-regional shopping centres, together with other more modest shopping developments. Having conducted an exhaustive inquiry into the effect of the various proposals on existing town centres, the inspector concluded that there was room for one new shopping centre, but not more than one. At para. 21.13.1 he says:

> "In considering the various issues explored at the inquiry I have concluded that the building of one major shopping centre in the western sector of Greater Manchester would not cause unacceptable harm to the regeneration of the conurbation; nor would one such centre damage the vitality and viability of any existing town centre. I do consider that the development of more than one major centre would cause unacceptable damage to existing town centres and prejudice the strategic role of the motorways. . . ."

He then made a detailed comparison between the three major proposals, and came down in favour of the appellants. Accordingly, he recommended that the appellants' applications be granted, and the others refused.

In his interim decision letter dated 23 August 1989, the Secretary of State accepted the inspector's recommendation, but subject to a concern about traffic congestion at junction 3 on the M63 motorway, in the light of comments which he had received from the Department of Transport. So he asked for written representations on this specific issue. Two years later the Department of Transport changed its mind. It no longer required an additional lane running south between junctions 3 and 4. Instead, it required an additional lane running north between junctions 2 and 3. So the Secretary of State for the Environment asked for further written representations in light of the changed requirement. On 4 November 1991 he announced that he

would reopen the inquiry, limited to the specific issue which he had raised. The second inquiry was held, as I have said, from 9 June to 17 July 1992. Once again, the inspector recommended that planning permission be granted, on condition that certain rather limited road works be carried out at junction 3. He did not regard an additional north-bound lane as necessary. There followed the Secretary of State's second and final decision letter dated 4 March 1993, in which he again accepted the inspector's recommendation.

The principal attack on the Secretary of State's final decision letter of 4 March 1993 relates to the way in which he dealt with the traffic issue. This occupies the first 13 paragraphs of the decision letter. It was the reason why the Secretary of State reopened the inquiry in 1992. It was the subject of grounds 1-3 in the respondent's notice of motion under section 288 of the Act. It was the first of the matters dealt with, at some length, by Schiemann J. under the heading "The Congestion Point". Schiemann J. found in favour of the Secretary of State on this point, and the Court of Appeal agreed with Schiemann J., although their agreement was somewhat half-hearted. "If this were the sole matter in issue", said Glidewell L.J., 69 P.&C.R. 324, 355, "I should consider [the Secretary of State's] exposition of his reasoning adequate, though certainly not better than adequate." The traffic issue has not been raised again before your Lordships and I say no more about it.

The Secretary of State then turned to "other issues", about which he had received representations before, during and since the 1992 inquiry. These are covered in the remaining paragraphs of his decision letter, and give rise to the remaining grounds set out in the application under section 288. These grounds disclose two broad areas of challenge. First, it is said that the Secretary of State has not dealt properly with the question of urban regeneration, and, in particular, with the effect of the proposed development on existing shopping centres in Greater Manchester. Secondly, it is said that he has not dealt properly with the suggestion that the site at Trafford Park should be reserved for industrial development, and in particular development associated with high technology.

<u>The correct approach</u>

Before dealing with each of these challenges, I should first make some preliminary observations on the correct approach to decision letters in planning appeals, with which alone we are concerned in this case. This can be done very briefly, since the question was fully covered in the recent speech of Lord Bridge of Harwich in *Save Britain's Heritage v. No. 1 Poultry Ltd.* [1991] 1 W.L.R. 153.

Under section 70(2) of the Act of 1990, read with section 77(4), it was the duty of the Secretary of State to have regard "to the provisions of the development plan . . . and to any other material considerations." Under rule 17(1) of the Town and Country Planning (Inquiries Procedure) Rules 1988 (S.I. 1988 No. 944), it was the duty of the Secretary of State to "notify his

decision . . . and his reasons for it in writing to all persons entitled to appear at the inquiry who did appear . . ." So the Secretary of State had to have regard to all material considerations before reaching a decision, and then state the reasons for his decision to grant or withhold planning consent. There is nothing in the statutory language which requires him, in stating his reasons, to deal specifically with every material consideration. Otherwise his task would never be done. The decision letter would be as long as the inspector's report. He has to have regard to every material consideration; but he need not mention them all.

What then must be mentioned? The classic exposition was given by Megaw J. in *In re Poyser and Mills' Arbitration* [1964] 2 Q.B. 467 at p. 478, approved by this House in *Westminster City Council v. Great Portland Estates Plc.* [1985] A.C. 661 at p. 673.

> "Parliament provided that reasons shall be given, and in my view that must be read as meaning that proper, adequate reasons must be given. The reasons that are set out must be reasons which will not only be intelligible, but which deal with the substantial points that have been raised."

Ten years later, in *Hope v. Secretary of State for the Environment* (1975) 31 P. & C.R. 120 at p. 123, Phillips J. said:

> "It seems to me that the decision must be such that it enables the appellant to understand on what grounds the appeal has been decided and be in sufficient detail to enable him to know what conclusions the inspector has reached on the principal important controversial issues."

Lord Bridge in *Save Britain's Heritage v. Number 1 Poultry Ltd.* [1991] 1 W.L.R. 153, 165C, described this statement as being "particularly well expressed".

Coming to the present case, Glidewell L.J. put the matter as follows, 69 P.&C.R. 324, 357:

> "In relation to two of these issues, Schiemann J. in the passages I have quoted said that it is 'fanciful to postulate' that the Secretary of State did not take these matters into account, nor give them appropriate weight. With all respect to a judge with great experience in this field, I do not think this is a proper approach. A decision letter must, in order to give proper and adequate reasons, refer to each material consideration, and explain why because or despite it the eventual decision is reached. At the least, if there is no express reference to some matter, it must be possible for the reader to infer that the words used implied such a reference."

It may be that in this passage, Glidewell L.J. was saying only that he disagreed with Schiemann J.'s conclusion. But in so far as he was saying that a decision letter must refer to "each material consideration" I must respectfully disagree. This seems to go well beyond Phillips J.'s formulation in *Hope v. Secretary of State for the Environment,* 31 P.&C.R. 120, 123. What the Secretary of State must do is to state his reasons in sufficient detail to enable the reader to know what conclusion he has reached on the "principal important controversial issues." To require him to refer to every material consideration, however insignificant, and to deal with every argument, however peripheral, would be to impose an unjustifiable burden.

For the same reason, I have doubts about another passage in Glidewell L.J.'s judgment where he quotes from the speech of Lord Keith of Kinkel in *Reg. v. Secretary of State for Trade and Industry, Ex parte Lonrho Plc.* [1989] 1 W.L.R. 525, 540:

> "The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of the different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision."

Glidewell L.J. adds, 69 P.&C.R. 324, 355:

> "I add that in my judgment the same principle applies to a failure to refer in a decision to a material consideration, or to an indication that it is not material - the inference may be that the decision-maker has not fully understood the materiality of the matter to the decision."

Since there is no obligation to refer to every material consideration, but only the main issues in dispute, the scope for drawing any inference will necessarily be limited to the main issues, and then only, as Lord Keith pointed out, when "all other known facts and circumstances appear to point overwhelmingly" to a different decision.

Urban regeneration

I now return to the first of the "other issues", namely, urban regeneration. Glidewell L.J. rightly regarded this as the most important point made by Mr. Purchas on behalf of the respondents. It is said that the Secretary of State failed to have regard to changes in Government policy since the inspector's first report in 1989, and further that he failed to have regard to changes on the ground, so to speak, which had falsified many of the assumptions on which the inspector based his recommendation. Alternatively, it is said that if the Secretary of State did have regard to these matters, then his conclusion was irrational and perverse.

As to changes in Government policy, these are well described in paragraphs 4.1 to 4.13 of the report of Messrs. Gerald Eve, sent to the Secretary of State under a covering letter from Land Securities Plc. dated 9 July 1992. The report draws attention to the new section 54A of the Act of 1990, inserted by section 26 of the Planning and Compensation Act 1991, which came into force on 25 September 1991, the new version of *Planning Policy Guidance* (PPG 1 March 1992), and the revised draft of PPG6, circulated in October 1992. Paragraph 37 of the revised PPG6 reads:

> "Major new developments
>
> "37. Experience has shown that regional out-of-town shopping centres (more than 50,000 square meters of floor space) can have a substantial impact over a wide area. They should normally be allowed only where they would fulfil an important retail need, taking full account of all the likely impacts. . ."

Although the language in paragraph 46 of the final revision published in July 1993 is toned down, there can be no doubt - indeed, it was not disputed - that Government policy has indeed shifted significantly against large sub-regional shopping centres since the inspector's first report in 1988.

Has it been demonstrated that the Secretary of State disregarded this change of policy? In paragraph 4 of his decision letter, he says:

> "Appropriate weight must be given to any relevant national policy, development plan policy and informal planning guidance. In particular, as set out in section 54A of the 1990 Act, applications and appeals should be determined in accordance with any relevant development plan unless material considerations indicate otherwise."

In paragraph 5 he refers to the draft revised PPG6, and in paragraph 18, he says:

> "The additional representations argue that the Trafford Centre should not be permitted because it does not accord with emerging Government policy on shopping development as set out in the draft revision of Planning Policy Guidance Note PPG6 . . ."

In the light of these references to section 54A and the revised PPG6, it cannot fairly be said that the Secretary of State did not have regard to Government policy current at the date of his decision, and to any changes which had taken place since 1988.

I turn next to changes "on the ground". These were helpfully summarised under four main heads.

Decline in retail activity

In paragraphs 21.3.1 to 21.3.16 the inspector made an attempt to forecast the likely increase in future spending, based on various assumptions. Such a forecast could not in the nature of things be more than "informed guesswork": see Messrs. Gerald Eve's report, paragraph 2.6. The inspector was fully aware of the fragility of any conclusion based on his forecast. Indeed, he was tempted to disregard the exercise altogether: see paragraph 21.3.5. However, he stated his conclusion in paragraph 21.3.16 as follows:

> "The estimates set out above should not be interpreted as demonstrating a need for a new sub-regional shopping centre or for any particular increase in shopping floor space. It is however more significant to note that they do not suggest that the introduction of a new centre on the scale now proposed would attract trade on such a scale as to absorb more than 20 per cent. of the likely growth in available spending. On this broad scale, I am therefore satisfied that there are no grounds on which to justify a refusal of planning permission in terms of comparison goods trade."

It seems clear enough that some at least of the assumptions underlying the inspector's conclusion have proved to be incorrect. The expected increase in retail expenditure has not occurred. Thus, taking the United Kingdom as a whole, the growth of expenditure on comparison goods in 1988 was 8.1 per cent. By 1989 it had dropped to 2.7 per cent. and by 1990 it was negative. The inspector took an average growth of 3.38 per cent. compound over the ten years period from 1986-1996, producing a figure for additional available expenditure of £620 million by 1996. The respondents say that the correct estimate should be £368 million.

Another important assumption was the amount of the available increase in retail expenditure which would be taken up by existing permissions for retail development, or "hard commitments". Again, the assumption has proved to be inaccurate. 4.5 million square feet of new retail floor space has been created since the 1988 inquiry, and is currently trading; and permission has been given for a further 6 million square feet. In paragraph 5.4 of the submission, the respondents comment:

> "Even if one were to assume that none of the 6 million sq. ft. of approved floor space were to be built, the £4.5 million actually trading must account for some £400 million of annual expenditure which the inspector was not able to take into account in his calculations."

How then does the Secretary of State deal with this issue? Since, as I have said, it lies at the heart of the respondents' challenge, I shall quote the relevant paragraphs of the decision letter verbatim:

"16. With regard to the likely effects of the Trafford Centre on urban regeneration, it is considered that this issue was fully debated at the 1988 inquiry, following which the Inspector concluded, for the reasons set out in his report, that he could find no evidence that the proposals would have an unacceptable impact on the regeneration of Greater Manchester. The view is taken that the additional representations do not provide any reasons to doubt that the Inspector's conclusions on this issue remain valid.

"17. In the additional representations it has been argued that the decline since the 1988 inquiry in retail activity and the permissions granted since then for retail development in existing centres or other appropriate urban sites should be taken into account. In considering those issues the Secretary of State has had regard to the approach adopted by the 1988 inquiry Inspector in assessing the economic effects of the proposed Trafford Centre as set out at section 21.3 of his report. In particular, he notes the comments made by the Inspector at paragraphs 21.3.4 to 21.3.15 about the difficulties in quantifying spending, turnover and floor space assessments, and the limited weight which he concluded should be attached to those considerations. It is accepted that since 1988 retail spending has not risen at the average rate envisaged by the Inspector, and that the Inspector gave some weight to this element of the forecasting. However, it is considered that the assessment provided in support of the additional representations, which is based on information forthcoming since the 1988 inquiry, does not provide sufficient reason to show that the Inspector's detailed and careful assessment of the wide range of information about the likely economic effects of the Trafford Centre debated at the 1988 inquiry is no longer valid or to believe that re-opening the inquiry or refusing permission for the Trafford Centre is justified."

Two points can be made at the outset. First, whatever else may be in dispute, it is clear that the Secretary of State had regard to the additional representations. It is quite impossible to infer that he did not read them, or that he put them on one side.

Secondly, the paragraphs are, in certain respects, poorly expressed. Thus the Secretary of State says:

"the assessment provided in support of the additional representations . . . does not provide sufficient reason to show that the Inspector's . . . assessment of the wide range of information about the likely economic effects of the Trafford Centre . . . is no longer valid . . ."

Mr. Purchas argues that this cannot be right. The inspector's <u>assessment</u> of the information available has undoubtedly been affected by the subsequent information provided by the respondents. So the Secretary of State cannot

have meant that the assessment remains valid. What he must have meant was that the inspector's conclusion remains valid.

I agree with Mr. Purchas that the drafting could have been a great deal clearer. The same is true of the last sentence of paragraph 18, which is tacked on uneasily at the end of a paragraph dealing with levels of carbon-dioxide. But I do not think it can be said that the reasoning is so obscure as to be unintelligible. Nor are the reasons inadequate. The Secretary of State pointed out that the inspector himself attached limited weight to his projection of retail spending. This was the Secretary of State's reason for not changing his view. I agree that the reason is expressed very briefly, when compared with the mass of material which the respondents placed before him. There is no attempt to analyse that material. But this was not necessary. The reason is there, and that is all that rule 17(1) of the 1988 Rules requires.

The truth is, as my noble and learned friend Lord Mustill pointed out in the course of the argument, that the real attack on this part of the decision letter lies rather on the ground of perversity. Having regard to the considerable changes that have taken place since 1988, both in Government policy, and in the economic climate, the decision was, quite simply, wrong. This is, one suspects, the underlying ratio of the Court of Appeal's decision. As Glidewell L.J. said, 69 P.&C.R. 324, 356:

> "Thus, in the absence of reasons, we are entitled to infer that he had no valid reasons - that either he failed to have regard to this very material consideration, - or that he reached his decision on the issue without any good reason, i.e. perversely."

I shall have to come back to the question of perversity. But before doing so, I should first mention the other matters on which Mr. Purchas relied under this head.

ASDA

One of the proposals which the inspector considered in the 1988 inquiry was for an ASDA superstore on the site adjoining Trafford Park. The inspector recognised that the combination of the new sub-regional shopping centre and the ASDA superstore would cause unacceptable damage to nearby shopping centres. Accordingly, he recommended refusal of ASDA's application. If, however, it were to be granted, then he recommended the imposition of a condition on the appellants' planning permission, so as to limit the amount of floor space devoted to convenience goods.

On 5 March 1992 ASDA obtained planning permission for a superstore with a total floor space of 115,000 sq. ft., including 75,000 sq. ft. for convenience goods. Yet the Secretary of State makes no mention of this in his decision letter.

Shudehill

On 4 June 1992 the Co-operative Wholesale Society and the Co-operative Insurance Society obtained planning permission for a new shopping centre of 500,000 square feet at Shudehill, in the inner city area, adjoining Manchester City Centre. On 22 February 1993 they wrote to the Secretary of State to complain that if the Trafford Park scheme went ahead, their own scheme would not be viable:

> "We believe that these matters are material to your deliberations on the Dumplington scheme; in our view, approval for Dumplington is incompatible with your recent stated objective of protecting city centres from the effects of such out-of-town developments."

Meadowhall, Sheffield and Merryhill, Dudley

In paragraph 5.5 of the representations the respondents point out that at the time of the first inquiry in 1987-1988 there was very little direct experience of the impact of major sub-regional centres on existing shopping centres, since only Brent Cross and Gateshead were operational. Since 1988 evidence has begun to accumulate, though it is still not available in great quantity. Thus the authors of a study on Sheffield demonstrate that the effect of Meadowhall on the city centre is worse than the city council originally expected; and in another study Messrs. Drivers Jonas say the same about the effect of Merryhill on Dudley. Indeed, subsequent evidence seems to show that Messrs. Drivers Jonas underestimated the likely impact. The respondents conclude: "Any detrimental impact of this kind in Greater Manchester Centres would be a significant step in the wrong direction."

Urban regeneration - conclusion

There can be no doubt that the ASDA consent was a material consideration to which the Secretary of State was bound to have regard when reaching his decision. Should it have been mentioned in the decision letter? This is in some ways the strongest of Mr. Purchas's points, because of the inspector's recommendation that, if the ASDA consent were granted, a condition should be imposed on the appellants' consent. I find it strange that there is no reference to any such condition in the decision letter, especially as the point was mentioned again by the inspector in paragraph 9.7.4 of his second report. Indeed, the inspector records that the appellants offered to accept such a condition, an offer which was, incidentally, repeated before your Lordships. What is the explanation? It may be that the failure to impose a condition was due to simple oversight. But whatever the explanation, I am not prepared to hold that the absence of any reference to the ASDA consent is fatal. True, it was a material consideration. But it was not itself one of the "principal important controversial issues", to use the language approved by this House in *Save Britain's Heritage v. Number 1 Poultry Ltd.* [1991] 1 W.L.R. 153, 167B. It was part of the wider issue as to the effect, if any, of

permissions granted since the first inquiry. The first sentence of paragraph 17 of the decision letter refers specifically to such permissions. So the Secretary of State clearly had such permissions in mind, including presumably the ASDA consent, when reaching his decision. It was not necessary for him to spell them all out. It is significant in that connection that the ASDA consent is nowhere mentioned in the respondent's own five-page summary of their written submissions. I cannot, therefore, infer from the absence of any reference to ASDA in the decision letter that the Secretary of State disregarded the ASDA consent altogether.

For the same reason, it was not necessary for the Secretary of State to mention Shudehill by name, or the experience at Sheffield or Dudley. The reference to "the experience of the effect on other centres" in a quotation from the respondents' summary in paragraph 14 of the decision letter shows again that the Secretary of State had the point in mind. All these points were elements in the overall issue of urban regeneration. This was clearly a controversial issue, second only in importance to traffic. If the Secretary of State had failed to deal with urban regeneration at all, then of course his decision letter would have been vulnerable. But that is not the case. He stated his conclusion, right or wrong, on that vital issue; and although his reasons may not be very full, and are in certain respects badly expressed, they are in my opinion adequate.

This brings me back to the question whether the decision is so clearly wrong, that it ought to be characterised as perverse. It is here that I feel compelled to part company with the Court of Appeal. Schiemann J. expressed himself thus, 67 P.&C.R. 333, 353:

> "In my judgment the decision letter read as a whole leaves one in no doubt that the Secretary of State looked at all matters which were before him at the time when he issued his decision, apprehended that a number of matters had changed since the first inquiry, perceived that the proposal had a number of disadvantages but nevertheless took the view that its advantages were such as to outweigh the disadvantages. That view is not a perverse one as such. The decision letter is expressed with sufficient clarity to show to the applicants that the Secretary of State had grappled with the problems to which the implementation of the planning permission might give rise. In so far as there is any lack of fuller exposition of the reasoning the applicants have not been substantially prejudiced thereby."

I find myself in agreement with this view. The Secretary of State had a difficult decision to make in 1989 when he issued his interim decision letter. He had not only to balance the advantages of allowing development within an urban development area at Trafford Park against the disadvantages to other shopping centres, but also to take numerous other factors into account. By 1993 the decision had become even more difficult, since the balance of advantage had shifted in the meantime. The question is whether it had shifted

sufficiently to justify reopening the inquiry, or refusing permission. This was essentially a matter for the Secretary of State's planning judgment. I have much sympathy for the conclusion reached by the Court of Appeal, since the respondents put forward a powerful case in their post-inquiry representations. But I feel unable to agree that the decision taken by the Secretary of State in the exercise of his planning judgment was perverse. This was not a case where, in Lord Keith's words in *Reg. v. Secretary of State for Trade and Industry, Ex parte Lonhro Plc.* [1989] 1 W.L.R. 525, 540, the other known facts and circumstances pointed overwhelmingly in favour of a different decision. I am, therefore, unable to infer, as Glidewell L.J. inferred, that the Secretary of State had "no rational reason" for maintaining his original view on retail impact.

High technology

The argument here is that at the time of the first inquiry there was no shortage of land for industrial development: (see paragraph 21.8.6. of the Inspector's conclusions of 1988 inquiry). In 1989 the Secretary of State issued *Regional Planning Guidance* (RPG4 December 1989) in which he required local authorities in the Greater Manchester area to identify "major high amenity sites for high technology industry" (paragraph 5). By 1993 it had become clear that there was a shortage of such sites: (see the inspector's second report, paragraph 9.6.7). According to the case put forward by the respondents, Trafford Park is ideally located as a strategic site for high technology industry and should be safeguarded for that purpose. The inspector accepted that Trafford Park would be suitable for high technology industry, but nevertheless recommended, on balance, that it should not be reserved for that purpose. In his view, the balance of advantage lay with the appellants' proposal.

How then did the Secretary of State deal with this new point? In paragraph 14 he refers to Salford City Council's argument that the Trafford Park site might more appropriately be developed for a different purpose. In paragraph 19 he returns to the same point:

> "The Secretary of State has considered the arguments advanced about the relationship of the proposed development to published and proposed planning guidance and development plans. In summary those were that the appeals and applications before him should not be determined in advance of the preparation of Regional Planning Guidance and Unitary Development Plans, particularly those for Trafford and Salford; that the Trafford Centre site should be reserved for development as a high amenity site for high technology industry which, it has been argued, Strategic Guidance for Greater Manchester suggests merits greater weight than the building of a sub-regional shopping centre in the western sector of Greater Manchester . . ."

Later in the same paragraph, he comments:

> "[The Secretary of State] has had regard to the stage reached in the preparation of both the Trafford and Salford Unitary Development Plans but he does not accept that the arguments advanced show that the development of the proposed Trafford Centre is so central to Regional Planning Guidance, which is as yet at a very early stage of preparation, or to emerging development plans, that he would be justified in deferring further his decision on the proposals before him. Nor does he accept that weight should be attached to the possibility of reserving the site for some alternative form of development . . ."

Clearly, therefore, the Secretary of State has taken account of the new argument. It cannot be said that he has disregarded it altogether. But what is said against him is that he has disregarded the shortage of land for industrial development. This is the argument which found favour with the Court of Appeal, 69 P.&C.R. 324, 357:

> "As to the use of the site for high technology industry, the inspector made it clear that this would have disadvantages. Nevertheless the consortium argued that the shortage of land for such industrial development was a new feature which counter-balanced the disadvantages. To say, as the Secretary of State did, that he did not accept that weight 'should be attached' to the suggestion that the site should be used for high technology industry apparently ignores the point about the shortage of land, or fails to explain why the point is not material."

I agree that it would have been better if the Secretary of State had mentioned the shortage of land. But it was only one aspect of the issue. He does not have to mention everything. I am unwilling to infer from the absence of any reference to the shortage of land in paragraph 19 that the Secretary of State left it out of account.

Various other criticisms are made. For example, it is said that there should have been a reference in the decision letter to the abandonment of the arena, as originally proposed by the appellants. But as Glidewell L.J. acknowledged, it was the combination of deficiencies which led the Court of Appeal to its conclusion. For the reasons which I have already mentioned. Mr. Purchas has failed to persuade me on the two major issues of urban regeneration and high technology. In those circumstances the remaining criticisms are of little avail.

In conclusion, I would allow the appeal and restore the order of Schiemann J. It is unnecessary to consider alternative arguments advanced by Mr. Ash Q.C. and Miss Hamilton Q.C. that the respondents have failed to show that they have suffered substantial prejudice, and that in any event relief

should be refused in the exercise of the discretion vested in the court by section 288 of the Town and Country Planning Act 1990.

LORD STEYN

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Lloyd of Berwick. For the reasons he gives I, too, would allow the appeal and restore the order of Schiemann J.