Neutral Citation Number: [2013] EWCA Civ 1178

Case No: C1/2013/1376/QBACF

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
HIS HONOUR JUDGE SYCAMORE
CLAIM NO 11203/2012

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/10/2013

Before :

LORD JUSTICE GOLDRING
LORD JUSTICE ELIAS
and
SIR DAVID KEENE

- -

Between :

(1) MARGATE TOWN CENTRE REGENERATION COMPANY LIMITED **(2) DREAMLAND LEISURE CINEMA LIMITED** **(3) MARGATE RIDE LIMITED** **(4) DMS 3 LIMITED** **(5) MIDOS SERVICES LIMITED** **(6) MIDOS INVESTMENTS LIMITED** **(7) CHARLES TOBY HUNTER,** **as trustee of the Hunter Family Settlement** **(8) EMMA LOUISE HUNTER,** **as trustee of the Hunter Family Settlement**	**Appellants**
- and -	
(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT & ANR **(2) THANET DISTRICT COUNCIL**	**Respondents**

- -
- -

Mr Richard Glover QC (instructed by **Fladgate LLP**) for the **Appellants**
Mr David Forsdick (instructed by **Treasury Solicitors,**) for the **First Respondents**
and **Mr Martin Edwards** (instructed by **Trowers & Hamlins LLP)** for the **Second Respondent**

Hearing date : 25 September 2013

- -

Approved Judgment

Lord Justice Elias :

1. This is an appeal against the judgment of HHJ Sycamore sitting as a judge of the High Court. The judge dismissed the Claimants' application pursuant to section 23 of the Acquisition of Land Act 1981 ("the 1981 Act") to quash the Compulsory Purchase Order ("CPO") for the acquisition of certain land, known as Dreamland, in Margate. The Secretary of State had followed the recommendations of an inspector following a 14 day inquiry.

2. Since the application for permission to appeal was made, the Second Defendant, Thanet District Council ("the Council") has made two General Vesting Declarations. The latter was made on 2 August 2013. Their effect is that the land which is the subject of this appeal is now vested in the Second Defendant. However, it is accepted that these declarations could and should be unravelled if this appeal succeeds and they do not affect the standing of the appellants to pursue the appeal.

3. The Dreamland site was developed as an amusement park in 1919 and in its heyday was an important attraction in Margate, then a popular and successful seaside town. The site included a scenic railway, the oldest timber rollercoaster in the United Kingdom, and an art deco cinema. These are both Grade 2* buildings. Sadly, like many other seaside towns, Margate has lost much of its former glory and is now one of the most deprived areas in South East England. The park declined in popularity and was closed in 2002. For a few years thereafter travelling fairground operators leased the site but even their activities ceased by 2006.

4. In 2005 the whole site was purchased by Margate Town Centre Regeneration Company Limited ("MTCRC"), the first appellant in this appeal. That company has since sold parts of the site to subsidiary companies; the cinema was transferred to Margate Cinema Limited and the scenic railway to Margate Ride Limited. Following the High Court hearing, but before any appeal was lodged, Margate Cinema Ltd sold its interest to Dreamland Leisure Cinema Limited and they have been substituted as appellants in this appeal. The other appellants have charges over one or more of the freehold estates.

5. It is universally recognised that Margate is in urgent need of regeneration. A regeneration of the amusement park on the Dreamland site is one of two key features in that regeneration project, the other being the (now completed) Turner Art Gallery. The proposed regeneration of Dreamland is reflected in policy T8 of the 2006 Thanet Local Plan.

The site and Policy T8.

6. Policy T8, insofar as is material, is as follows:

> "1. Proposals that seek to extend, upgrade or improve the attractiveness of Dreamland as an amusement park will be permitted. Development that would lead to a reduction in the attractiveness, leisure or tourist potential will be resisted.
>
> Exceptionally, development of a limited part of the site may be accepted as a part of a comprehensive scheme for the upgrading

> and improvement of the amusement park. The scheme will be required to demonstrate that the future viability of the amusement park can be assured and the Council will negotiate a legal agreement to ensure that the proposed development and the agreed investment in the amusement park are carried out in parallel.
>
> 2. In the event that evidence, in the form of an independent professional assessment, is submitted (and accepted by the Council) as demonstrating that it is not economically viable to operate an amusement park on the whole or majority of the site in the foreseeable future, then proposals for redevelopment may be accepted subject to:
>
> i Proposals demonstrating that such redevelopment would sustainably contribute to the economic wellbeing and rejuvenation of Margate, and being supported by a business plan demonstrating that such proposals are economically viable;
>
> ii The predominant use of the site being for leisure purposes. (An element of mixed residential would be appropriate but only of such a scale needed to support delivery of the comprehensive vision for the site);"

7. This policy therefore envisages the regeneration of the whole site but allows for the possibility of redevelopment on part of the site, including mixed residential development, provided that it is consistent with, and does not undermine, the attractiveness and leisure and tourist potential of the amusement park.

8. Historically the site itself has comprised three different areas. First, there is the listed Dreamland cinema and associated buildings which fronts Marine Terrace. Second, behind that is the area with the remains of the scenic railway (which was subject to an arson attack in 2008) and other dilapidated but listed structures known as menagerie cages. These two parts of the site were identified in the inquiry as plots 1 to 4. Third, to the east of that area lie two open areas which are tarmac surfaced. One is used as a car park and the other is vacant. These two areas were identified as areas or plots 5 and 6.

9. Various proposals for developing the site had been under consideration by the Council before it finally settled on a proposed scheme which, for its implementation, required the making of the CPO.

10. Initially, the Council was in active discussions with the MTCRC about developing the site. Those discussions were premised on the assumption that there would be some residential development in the areas 5 and 6 in accordance with part 2 of policy T8 which would help fund the park. It was envisaged that some £4 million would be provided by MTCRC and that other funds would be secured from other grants, namely £4 million from the Government's Sea Change Programme ("SCP"), a scheme which funds the regeneration of seaside resorts; and £4.4 million from the Heritage Lottery Fund ("HLF"). Whilst those negotiations were still in place, a firm called Locum Business Consulting were asked to provide a business plan to be used

as a basis for making grant applications. That plan concluded that the proposed scheme was viable. However, subsequent negotiations between the Council and MTCRC broke down, principally over the nature, size and character of the proposed residential development in areas 5 and 6.

11. The Council resolved to adopt a different funding package, which would not rely upon the £4 million from MTCRC. This was developed in partnership with Dreamland Trust, a not for profit company which was evolved out of a lobby group which sought to regenerate the park. The Council authorised officers compulsorily to purchase the site if negotiations ultimately failed, as indeed they did.

12. The new scheme differed in certain respects from the original proposals and also it was less expensive (costing some £10.4 million, as opposed to £12.4 million). It was envisaged that the Council would borrow monies in place of the funding from MTCRC which would not, on the basis of this new proposed scheme, be forthcoming. This new scheme was then reviewed by Brittan McGrath, also expert consultants in the field, and they produced a second business plan. This focused on the part of the site for which HAP funding was sought. This included the restoration of the scenic railway, stabilising the cinema complex, providing the menagerie cages and restoring the classic amusement rides in a landscaped setting thereby providing the centre piece, the Heritage Amusement Park ("HAP"). This first phase only directly involved areas 1 to 4.

13. A third business plan was prepared by Mr Michael Collins. This related to an alternative proposal for the HAP from the appellants. It envisaged the regeneration being achieved together with some residential development in areas 5 and 6 rather in the way that the original scheme, rejected by the Council, had done. He concluded that a viable amusement park could be developed but it would need to be subsidised for ten years and that subsidy would come from the proposed residential development in areas 5 and 6. That proposal was one which was subsequently actively considered by the Inspector. Had it been acceptable, it would have secured the regeneration without the need for a CPO at all. However, the inspector did not accept it and indeed was highly critical of it.

14. The CPO was made on 27 May 2011 in relation to the whole site and this was submitted to the Secretary of State for approval. The appellants lodged objections and an inquiry was set up. The Inspector heard evidence over some 14 days in 2012. He recommended that the CPO be confirmed without modification, and the Secretary of State followed the recommendation. He was satisfied that there was "a compelling case in the public interest" for confirming the Order.

15. The appellants challenged this decision by way of an application under section 23 of the Acquisition of Land Act 1981. This allows persons aggrieved by the making of a CPO to challenge it and seek to have it quashed on the grounds that certain requirements specified in the section have not been complied with. It is common ground that the appellants are persons aggrieved and that their complaints would, if established, properly fall within the scope of section 23.

16. HH Judge Sycamore dismissed the application, and the appellants now appeal against his decision. However, the issues in dispute have narrowed. The judge heard challenges on nine different grounds; only two of them are pursued in this appeal. The

arguments addressed before us on these issues mirror those unsuccessfully advanced before the judge below.

The relevant legal principles.

17. The applicable law is not in dispute and so I will summarise the relevant principles briefly.

a) "A CPO should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land affected": see para. 16 of Circular 06/2004. To similar effect are certain observations of Lord Denning MR in *Prest v Secretary of State for Wales* [1982] 266 EG 527.

b) A consequence of principle (a) is that "the draconian nature of the order will itself render it more vulnerable to successful challenge on *Wednesbury/Ashbridge* grounds unless sufficient reasons are adduced affirmatively to justify it on the merits": per Slade LJ in *De Rothschild v Secretary of State for Transport* (1988) 57 P. & C.R. 330.

c) The grounds of challenge under section 23 do not entitle the court to revisit the merits of the decision, only to see whether there is any legal or procedural error in the confirmation: see the observations of Sullivan J, as he was, in *R (James Powell and Others) v Secretary of State for Communities and Local Government* [2007] EWHC 2051 (Admin) para.3.

d) When deciding whether or not to confirm an order, the Secretary of State must have regard to all material considerations and must not take into account immaterial considerations. But it is for the court to decide what are material considerations: see *Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759 at 764 per Lord Keith of Kinkel.

e) The reasons for a decision must be intelligible and adequate. In determining whether those criteria are satisfied the decision letter must be read fairly as a whole, as if by a well-informed reader: *South Buckinghamshire District Council v Porter (No.2)* [2004] 1 WLR 1953 at 1964 per Lord Brown of Eaton-under-Heywood.

f) The Court should interfere only if the decision leaves a "genuine as opposed to a forensic doubt" as to what has been decided and why: *Clarke Homes Limited v Secretary of State* (1993) 66 P. & C.R.263, 271 per Sir Thomas Bingham M.R.

g) Where a decision maker has erred in law the decision should be quashed unless the court is satisfied that the decision maker would necessarily have made the same decision had the error not been made:

> see *Simplex GE (Holdings) Ltd v Secretary of State for the Environmen*t [1988] 3 PLR 25 at 42 per Staughton LJ.

With that brief summary I turn to consider the two grounds of appeal.

Ground 1: the issue of viability.

18. The challenge here is to the conclusion of the Inspector, whose analysis was relied upon in terms by the Secretary of State, that the HAP scheme finally adopted by the Council was operationally viable. In the court below it had been alleged that its viability was suspect on a number of grounds: the Inspector was wrong to find that the Council had the funding in place to implement phase 1 or to acquire the lands subject to the Order; the Dreamland Trust had demonstrated a degree of optimism beyond all reason; and finally, that the scheme was not operationally viable. It was asserted that the Brittan McGrath business plan, which suggested that it was operationally viable, was fundamentally flawed. The judge rejected each of these grounds. Only the last is still pursued in this appeal.

19. Appendix A of circular 006/2004 identifies in paragraph 16 certain factors which the Secretary of State will be expected to consider when deciding whether to confirm a compulsory purchase order. These include, by paragraph 16(iii)

> "the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed."

20. The paragraph seems to suggest that where there is a reasonable prospect that the scheme will go ahead, that of itself will be evidence that it is viable. No doubt this is because local authorities can be assumed not to want to pursue uneconomic schemes; their commitment to pursuing it is itself evidence that the scheme will be operationally viable. No doubt there will be exceptional cases where the Secretary of State will take a different view and override what he thinks may be the unrealistic optimism of a council determined to press ahead with an unviable scheme, but I would expect them to be rare.

21. In this case there can be no doubt that the Council was determined to implement the scheme, and it had the funding to do so. The Council's Chief Executive wrote a letter to the Inspector in which she unambiguously asserted the Council's strong commitment to regenerate the site. Moreover, she confirmed to the Inspector that the Council considered that the Brittan McGrath business plan had been based on prudent figures, and the Council was prepared to invest from within its own resources if necessary.

22. The Inspector summarised his conclusions on operational viability in paragraphs 193-195 of his report:

> "193. The objectors maintain that the HAP would not be commercially successful and would be likely to fail [150, 151]. It is, however, quite clear from the evidence that the TDC/DT approach to the HAP development has been anything but rash. His role as the Chairman of Dreamland Trust aside, Mr Laister is a successful professional and businessman. Despite the objectors' attempts to portray him as a man blinded by enthusiasm [101, 111], it was clear from his composure under cross examination and from his evidence that he and the DT Board had, throughout, been cautious and objective in their approach to the project. Having commissioned a Business Plan from a leading specialist consultancy firm, they decided that its conclusions were achievable but optimistic and commissioned a second Business Plan, which took a more cautious approach (35].
>
> 194. Much time at the Inquiry was taken up with discussions about the merits of the Business Plan. Business planning is essentially a matter of judgement rather than science [52-54, 113-115]. The selection of data on which they are based and assumptions made about that data rely on experience and judgement. In all, three separate Business Plans have been produced for the HAP, each prepared by a firm with specialist knowledge of the industry, Notwithstanding the dispute as to which of them should be preferred [54], all three conclude that an amusement park on the Dreamland site would be viable [143]. Moreover, the difference between the two latest Plans is small and depends on the selection of particular rides [54]. As the Council points out that is also a matter of professional judgement [54].
>
> 195. The Business Plan has been independently assessed by the Council, prior to its decision to become associated with the Dreamland Trust's proposals, and again by central government, the Princes Trust and the HLF [35]. While there can be no guarantee that any Business Plan will prove to be a wholly accurate predictor of future events the TDC/DT Business Plan has been subjected to intensive independent scrutiny and there is no reason to doubt its robustness. In short, the evidence suggests that there is no reason to doubt the viability of the HAP proposals."

23. The appellants submit that this displays a number of errors of law whose cumulative effect would have been to give the Secretary of State a wholly false impression of the scheme's viability. Far from the evidence suggesting that there was no reason to doubt the viability of the proposals, it supported the conclusion that there were very considerable doubts about whether they were viable at all.

24. Mr Glover QC, counsel for the appellants, advanced a number of related submissions. He focused on three alleged misrepresentations. First, he alleged that it was wholly misleading and factually inaccurate for the Inspector to say that there had been three separate business plans for the HAP, all of which had concluded that "an amusement park .... would be viable." There were not three business plans for the HAP. The plan considered by Mr Collins did not limit itself to that aspect of the proposal alone. In a brief witness statement produced for the court below, the Inspector accepted that the paragraph was not in this respect entirely accurate and that he should have said that there were three business plans for the site, two of which related to the HAP. I agree with counsel for the Secretary of State that nothing turns on that minor infelicity of expression and I am not sure that the appellants were really disputing this. The error was simply not material.

25. Second and more importantly, it is alleged that the comment is also misleading because it would have given the Secretary of State the false impression that there had been three business plans relating to the Council's final proposal, each of which had accepted its operational viability, whereas in fact only the Brittan McGrath business plan related to that scheme. The other two business plans had assessed different and more expensive proposed developments and were of no value in assessing the viability of the scheme which had triggered the CPO. Moreover, Mr Collins had trenchantly argued that the Brittan McGrath business plan was flawed and unreliable.

26. Finally, Mr Glover submitted that the observation by the Inspector in paragraph 194 that the difference in the Brittan McGath and Collins' plans was small and depended on the selection of different rides was again factually wrong. The Collins plan had envisaged a much more expensive operation, with the amusement park being subsidised for a period of some ten years.

27. I do not accept either of these submissions. I think it is important to note that the Inspector was saying that "an" amusement park was viable. That was plainly what each of the experts was saying, albeit in relation to different proposed schemes. I do not think that anyone fairly reading the Inspector's report could legitimately think that the Inspector was suggesting that the particular scheme finally adopted by the Council had been considered viable by each of these business plans. The report makes it plain beyond doubt that Mr Collins was asserting that there were fundamental flaws in the Council's final scheme. Indeed, the Inspector set out in some detail at paragraphs 111 – 115 the reasons why the appellants had submitted that the proposed scheme was hopelessly optimistic and unsustainable. Moreover, the Inspector noted in terms that Mr Collins had considered that it was not financially viable because there would be "significant, repeated losses and no scope for critical reinvestment" (para 113). No-one reading those words could therefore have concluded that in paragraph 194 the Inspector was representing that all three experts had considered the particular scheme to be operationally viable. He was simply observing that there was general agreement that an appropriate amusement park was in principle operationally viable. That was factually accurate even if of limited relevance.

28. The Inspector's reference to the differences between the two plans being "small" was also a legitimate observation. He was not making a comment about the two plans as a whole, merely on the proposed operation of the HAP itself. He was obviously under no misapprehension that the plans taken overall were similar, as Mr Glover suggested, and no-one reading the report could have supposed that they were. In terms of

funding they were poles apart, as the inspector appreciated, and indeed he was highly critical of the MTCRC scheme. But with respect to the actual operation of the amusement park, he was entitled to find that the two plans were envisaging essentially similar rides. Mr Collins considered that it was important to increase what he termed the "wow" factor by adopting a 4D "heritage experience", a particular ride which the Council's proposed scheme did not include. That was in the Inspector's view the main difference between the operational features of the two plans, and he considered this difference to be small. No doubt the appellants think that this down-plays an important attraction of their proposed amusement park, but its significance was a matter of judgment for the Inspector, as he recognised in paragraph 53, and it is not open to challenge.

29. A further and potentially more far reaching criticism is that the inspector could not properly, on the evidence before him, have concluded that the Council's plan was viable. The only independent and detailed analysis of the Brittan McGrath business plan, it is alleged, was conducted by Mr Collins, and he had identified a whole series of errors in the Brittan McGrath analysis.

30. Mr Glover focused on six alleged weaknesses in particular which he alleged had cast considerable doubts on the reliability of the Brittan McGrath plan's projections and figures, and only one of these had been rebutted by the Council. The Inspector had not engaged with these criticisms in his report. Further, contrary to the view expressed by the Inspector, it could not be assumed that other bodies who had made grants of funds for this project had necessarily conducted an intensive independent scrutiny. There was simply no evidence about that, and in particular nothing from those bodies to counter the adverse points made by Mr Collins. In the circumstances it was simply not open to the Inspector confidently to state that the plan was robust and had been subject to intensive independent scrutiny. This erroneous description would inevitably have misled the Secretary of State and caused him to make his decision on the basis of a false perception of the plan's viability.

31. I reject this distinct ground also. In my judgment, the Inspector gives cogent reasons for reaching his conclusion on viability. First, he noted that Mr Laister, the chairman of the Dreamland Trust who had obviously impressed him as a witness, had been cautious and objective in his analysis of the Brittan McGrath business plan. Indeed, Mr Laister had sought a second plan because he thought that the first had perhaps been too optimistic.

32. Second, he observed that various bodies who had become associated with the proposal, including those giving it significant grants, had subjected it to strict scrutiny. I reject Mr Glover's submission that there needed to be specific evidence from these bodies to justify that comment. It beggars belief that public bodies or charities would be willing to give grants, in some cases amounting to millions of pounds, without a careful evaluation of the viability of the scheme under consideration. It was wholly legitimate for the Inspector to have made that assumption.

33. As to the six specific criticisms relied upon by Mr Glover, these were to some extent answered by Mr Laister in a document he had produced specifically to rebut the criticisms advanced by Mr Collins. There was some dispute between counsel as to whether all the points had been answered. I do not think that we need to resolve that.

Whether they had been or not, the Inspector indicated in paragraph 194 that in his view there was limited value in analysing in detail the merits of different business plans because they are based on assumptions which are inevitably matters of judgment. That was a wholly legitimate observation.

34. In my judgment, given in particular the strong commitment which the Council had shown to implement the scheme, the Inspector's assessment that the Brittan McGrath business plan was prudent and cautious, and the willingness of third parties to support the scheme by giving substantial sums of money, the Inspector's conclusion that the particular scheme was operationally viable was plainly sustainable. I would dismiss this ground of appeal.

Might the regeneration have been achieved without a CPO?

35. The second ground relates to the question whether it was necessary for the Council compulsorily to purchase the site at all. Mr Glover emphasises in this context the first two legal principles set out above. There must be a compelling public interest to justify compulsory sale of private land and this means that other options should be considered and discarded before that draconian sanction is adopted. He submits that the Secretary of State was misled as the nature of the offer on the table from the appellants to sell the land which, if accepted, would have removed the need for any CPO at all. The Secretary of State understandably did not, therefore, give proper consideration to a possible alternative to the Compulsory Purchase Order, namely that the land could be acquired by agreement. Had he been properly informed of the available offer, he might have reached a different conclusion. Accordingly, the CPO should now be quashed in accordance with the principle in *Simplex*.

36. The alleged misrepresentation as to the offer is contained in paragraph 184 of the Inspector's Report, but it is important to consider that paragraph in the wider context. This is the part of the report where the Inspector was considering the question whether there was a need to acquire all the land subject to the Order (paras 184-189):

> "184. The objectors have offered to transfer to the Council all the land needed for the HAP for £1 [154]. This offer was, however, made in the context of earlier discussions and was dependent on the Council agreeing to development on the rest of the land [36]. It was clear from the evidence at the Inquiry that the objectors' position on this had not changed.
>
> 185. The objectors argue that the Order, if confirmed, should be modified so as to exclude two areas of land (Areas 5 and 6) that did not form part of the HAP proposals [104, 105] and the leasehold of part of the cinema [129].
>
> 186. Under the Council's proposals areas 5 and 6 (a car park and vacant respectively) would be used as a 250 space car park for the HAP, with the remainder providing space for overflow parking and special events [28] that would complement the activities in the HAP. The objectors' argument is that, apart from the 250 parking spaces – which could be provided without

> the need to acquire the land – these areas are not needed for the HAP and should be excluded from the Order 156-159].
>
> 187. It is necessary, however, to distinguish between the grant aided works that form the HAP scheme and the heritage amusement park referred to in the Order. The use of the same phrase in different contexts is potentially confusing but it is clear from the wording of the Order tht it relates to the whole Dreamland site and that it refers to a heritage amusement park on that site, as envisaged by Policy T8, and not simply to the HAP, which would contribute only partly to the regeneration of the whole site that is sought [28, 157].
>
> 188. Apart from retaining the existing car park, the objectors have not suggested how, if Areas 5 and 6 were to be excluded from the Order, they could be developed in a way that complied with Policy T8 [31]. The argument that Policy T8 would be "spent" following completion of the HAP scheme, freeing the land for other forms of development, [28, 160] is not a good one. The Policy seeks the restoration of the amusement park on the whole of the site and would not become redundant simply because the HAP had been created on part of it.
>
> 189. The exclusion of Areas 5 and 6 would, therefore, restrict the regenerative effect of the proposed development, impede the implementation of Policy T8 and would be likely to result in the continued disuse of Area 6."

37. The criticism is directed at the final sentence of paragraph 184. It is said that it is simply wrong as a matter of fact. Whilst it is true that originally the objectors were seeking to insist on the Council agreeing to a development on plots 5 and 6 as part of the agreement under which they would sell plots 1 to 4 for £1, that was no longer a condition which was in play by the time of the inquiry. The appellants had by then made it plain that they were willing to sell plots 1 to 4 for £1 (and provide a car park for 250 cars on some of the remaining land) and take their chance on whether they could develop the rest of plots 5 and 6. Had the Secretary of State been made aware of this he might have concluded that this was potentially a sensible and desirable outcome, given that it would save the Council the cost of having to acquire the land whilst at the same time achieving its objective of establishing the HAP in accordance with policy T8.

38. I accept that the sentence is misleading and potentially inaccurate. Read literally, it suggests that there was simply no change in the objectors' negotiation stance whereas that was not strictly accurate. The appellants had made it clear that they would not insist as a condition of the voluntary sale that the Council had to agree to development on areas 5 and 6. What, however, did not change was that the objectors wished to retain the two plots 5 and 6 and their purpose in so doing was to develop them if they could. The Inspector ruled that this was incompatible both with the terms of T8 and with the longer term ambitions of the Council with respect to the site as a whole as reflected in the scheme. Although areas 5 and 6 were not required for the HAP itself, they were a necessary part of the proposed development in the longer term. The

proposed scheme envisaged the use of those areas initially for overflow parking and special events. The Council would be unable to achieve that objective if the land remained in the hands of the appellants. The appellants were not proposing or willing to sell the whole of the site to the Council and yet that was what both the proposed scheme and policy T8, required.

39. It may be, as the Inspector pointed out, that the appellants were acting on the erroneous impression that T8 was spent once phase one had been completed. It seems that they believed that provided they secured car parking in plot 5, any subsequent development of areas 5 and 6 would not be inconsistent with the terms of the policy. The Inspector thought, in my judgment quite correctly, that this analysis was wrong.

40. Accordingly whilst I accept that the last sentence of paragraph 184 was potentially misleading insofar as it suggested that the negotiating stance had not changed, nonetheless it was an error of no materiality. In terms of the substance of the matter, that change did not resolve the basic problem with the appellants' negotiating stance which was that they wished to retain those two plots for the purpose of developing them. Any such development in accordance with T8 could only be legitimate for the purpose of enhancing the proposed scheme and in any event it was not now required. If the appellants were entitled to retain areas 5 and 6 it would frustrate the Council's longer term objectives for the site.

41. In my judgment, it is also plain that even if this could be said to be a material mis-statement of the objectors' position, the Secretary of State would inevitably have approved this scheme even if he had been accurately informed of the position. The need for regeneration for the economic and social benefit of Margate was overwhelming: there were two schemes in play, only one of which was, in the Inspector's view, satisfactory; the proposed development, in accordance with policy T8, required the whole site; and the CPO was necessary to secure the relevant land because the appellants were not willing to transfer it voluntarily. The offer to sell the areas 1-4 was insufficient to achieve the Council's objective. Similarly, the Secretary of State could not have permitted plots 5 and 6 to be excluded from the terms of the Order because that would have frustrated the Council's legitimate objective as well as being inconsistent with the terms of policy T8.

42. For these reasons I would dismiss the appeal.

Sir David Keene:

43. I agree.

Lord Justice Goldring:

44. I also agree.