

United Kingdom Report

presented by

FRANCIS JACOBS
Professor

INTRODUCTION

The categories of English administrative law do not admit of a detailed answer to some of the questions raised here. In the absence of any administrative code or code of administrative procedure, English administrative law is based essentially on decisions of the courts in cases where it is alleged that the authorities have acted unlawfully, and does not otherwise concern itself with administrative procedure.

Insofar as the questionnaire presupposes a distinction between administrative control (Section I) and judicial review (Section II), English law therefore focuses on the latter.

Supervision of the administration is, however, also entrusted to a variety of bodies of a non-judicial character; for example in matters of public finance, the Comptroller and Auditor General; on the running of central government departments, various committees of the House of Commons; on administrative tribunals, the Council on Tribunals; and, with a wide remit, the Parliamentary Commissioner for Administration. There are specialised bodies for other fields, such as the local authorities, and the National Health Service. But the terms of reference of all these bodies are drawn in very broad terms and their jurisdiction is not usually regarded as a justiciable issue. Moreover such supervision is generally exercised after the event; it does not generally include control in the course of implementation of administrative action.

Where the powers of the public authorities are conferred by Act of Parliament, the Act usually confers a general discretion on the Minister or other person or body and rarely prescribes any particular procedure, except for such matters as consultation. In some cases, however, the specific approval of another authority is required. The law relating to the compulsory purchase of land provides a useful example. Many public authorities have power to acquire land compulsorily, but the exercise of such power is generally subject to ministerial approval. For instance local planning authorities have powers to this effect under section 112 of the Town and Country Planning Act 1971. Before acquisition can occur the compulsory purchase order must be confirmed by the Secretary of State (Acquisition of Land Act 1981). Parliamentary approval is required where acquisition of a special class of land is sought. Although not individual acts, it may be mentioned that bye-laws made by a local authority must generally be confirmed by a Minister, and must be advertised and open to inspection for one month before the application for confirmation.

Although there are in general no special provisions for refugees in the U. K. immigration legislation, the immigration rules provide certain safeguards and include a requirement that all applications for asylum be referred to the Home Office whether or not the immigration officer considers that the applicant should otherwise be allowed to enter.

1. Where powers are conferred on the administration by legislation they will be exercisable without the prior intervention of the Court unless such prior intervention is required by the legislation as a condition of the exercise of the power. Such a requirement is exceptional; and the principal examples are those usually regarded as falling within constitutional rather than administrative law, e.g., the requirement of a warrant for arrest of a person or for search or seizure of property. Generally the administration can exercise powers without prior judicial intervention.

An administrative order will be presumed to be valid unless and until successfully challenged. Ordinarily the burden of proving that it is invalid will fall on the person challenging it. There may be exceptions where personal liberty or property are affected, e.g., in the case of detention of an alleged illegal immigrant. In *R v Secretary of State for the Home Department ex p. Khawaja* (1983) 1 All ER 765 at 782, Lord Scarman stated that the initial burden was on the applicant but that this was transferred to the detaining authority once the applicant showed that he had a prima facie case that his liberty or property were being interfered with; the burden of proof would then be on the detaining authority to justify the detention. (See also Lord Bridge at 791.)

2. «Exécution d'office» represents a power in the administration to ensure the practical implementation of a decision which is in accordance with the law and not capable of effective execution by another route. There is no such general power in English administrative law but examples may be drawn from specific areas.

One example is found in the law relating to compulsory purchase orders for land. If the individual/body named in the order refuses or neglects to comply with its terms then the authority may act as follows:

- a) If compensation has been agreed between the parties then the authority may pay the correct sum into court and execute a deed poll which has the effect of vesting legal ownership in the authority absolutely;

b) If compensation has not been agreed, or if it is a case of emergency, the authority may execute a general vesting declaration at least two months after confirmation of the order was published and after a further minimum period of 28 days title to the land vests in the authority which then takes possession.

3. Forcible execution may take place under the conditions provided for by legislation. A person whose claim for admission as a refugee fails or otherwise is not admitted to remain in the United Kingdom can be forcibly removed. There are however a number of judicial and extra-judicial safeguards including application for Habeas Corpus, appeals to the immigration appellate tribunals against decisions of the immigration officer or of the Home Secretary and political channels including representations through Members of Parliament (considered below).

4. Methods of Obliging the Administration to Act

The usual method of obliging public authorities to act or to restrain them from acting unlawfully is now by application to the High Court for judicial review. As mentioned in Section II, the High Court can grant the remedy of mandamus, requiring the administration to act in a specified way. (One common method of bringing the matter before the Court was for the Attorney General to bring a so-called «relator» action at the instance of some other person who might not have had the necessary standing. As the rules of standing have been increasingly liberalised the role of the Attorney General has diminished in recent years.)

Various administrative techniques have been used. For example financial penalties may be imposed on local authorities. In extreme cases members of local authorities may be removed from office and disqualified from holding office again.

There are also examples of statutory provisions which, in the last resort, empower a superior body in the administrative hierarchy or the Minister to act where the authority entrusted with a task has failed to carry it out. These powers, known as «default powers», are normally not exercised until the defaulting authority has been warned and has been given a specific period within to act. Failing such action, the duties will be transferred to the Minister or to the independent body, or new members may be appointed to the defaulting authority.

«It is common for ministers to be given statutory powers to compel local authorities to fulfil their duties, together with power for the minister to step in and remedy the default himself. Thus the Education Act 1944 provides that if the minister is satisfied, on complaint by any interested person or otherwise, that a local authority has failed to discharge any duty under the Act, the minister may by order declare them to be in default and give them such directions as he thinks expedient for performing the duty; and that any such directions may be enforced by mandamus on the minister's application. Under the Public Health Act 1936 the minister may cause a local inquiry to be held if complaint is made to him, or he is himself of opinion, that a local authority has failed to discharge their functions under the Act; he may then, if satisfied as to the failure, give them directions for making good the default; and if they do not, he may by order transfer any of their functions to a county council or to himself, the expense being charged to the defaulting authority. Default powers of a similar kind are conferred by the Housing Act 1957. The Town and Country Planning Act 1971 contains more limited powers which the Secretary of State may enforce by mandamus. The Housing Finance Act 1972 empowered the Secretary of State, in case of default, to appoint a housing commissioner to take over the defaulting authority's functions under the Act, acting in their name and at their expense. Powers of this kind are a standard administrative mechanism for enabling the central government to deal with an inefficient or recalcitrant local authority. The mere fact of their existence puts a powerful lever in the minister's hands. In principle they should be powers of last resort and rarely used. But in recent years the tensions between central and local government have called them into play quite frequently.» Wade, *Administrative Law* (5th ed., 1982), pp. 626-7.

A notable example was a case in which more than twenty local authorities refused to implement the Housing Finance Act 1972: See *Asher v Secretary of State for the Environment* (1974) Ch. 208. The Act was replaced by the Rent Act 1974 and most of the councillors were discharged from personal liability to district auditors' charges by the Housing Finance (Special Provisions) Act 1975.

In the environmental field, self-help is also sometimes available as a last resort. Historically this remedy derives from the concern to enforce the duties of highway authorities (originally, the inhabitants of the area themselves) to repair and maintain highways and bridges. Until 1959 criminal proceedings could be brought against these authorities on the basis that a public nuisance (a criminal offence) had been committed. In 1959 this

procedure was abolished in favour of statutory proceedings which anyone may institute against a highway authority, with the ultimate sanction that the complainant may carry out the work himself and recover the cost from the defaulting authority: Highways Act 1959, s.59, replaced by Highways Act 1980, s.56.

5. Legal Sanctions for Unlawful Action

There are no immediate legal consequences for the administrative action itself in absence of judicial intervention (Section II). The answers here are therefore confined to the potential liability of the authorities or officials.

Disciplinary action against civil servants is little documented, partly because of the anonymity and secrecy which shrouds the operation of the civil service and partly because the doctrine of ministerial responsibility traditionally made the minister personally answerable for departmental irregularities.

The position is well described by Professor Wade (*Administrative Law*, 5th ed., 1982, p. 61):

«Crown service is one of the most curious departments of public law. In most other democratic countries the position and rights of the state employees form an important branch of administrative law, and the tenure of posts in the civil service gives rise to many questions for the courts, whether they be ordinary courts of law or special administrative courts. In England the position is just the opposite. The civil service, despite its great size and importance, is largely staffed and regulated under arrangements which are not legally enforceable. This accords, perhaps, with the way in which the civil service works, withdrawn as much as possible from the public gaze, and screened from scrutiny by the doctrine of ministerial responsibility. But legally it is anomalous. It has generally been held that at common law civil servants of the Crown, and military servants also, have no legal right to their salaries and no legal protection against wrongful dismissal. Although recently the picture has begun to change, the law has long regarded the civil service as if it consisted of a handful of secretaries working behind the scenes in a royal palace. Although it has lost its domestic character in every other respect, it is still in a primitive state of legal evolution.

«The Crichton Down Affair of 1954 provides a good example. This was one of the rare cases where serious complaints against the conduct of

officials were investigated in a public proceeding. The charge was that they had not given proper attention to a landowner's claims for the restoration of land taken under compulsory powers before the war. There was no infringement of legal rights, but clearly there had been bad administration. A public inquiry was ordered by the Minister of Agriculture and all the correspondence was published — a most unusual opportunity for the public to see the contents of official files. But despite the strong criticism which the report contained, there were no dismissals, and in the civil service the result of all the upheaval was no more than some rearrangements of duties. The Minister of Agriculture, however, resigned, although he personally was entirely free from blame.»

In the past few years, however, the convention of ministerial responsibility has operated with greater flexibility. Ministers have not always accepted responsibility and resigned in consequence of departmental blunders, and there has been an increasing tendency in the activities of House of Commons Committees and in the Press to attach responsibility to named officials. Documented cases of sanctions being imposed on officials remain, however, remarkably infrequent.

Criminal Liability

The common law regarded public authorities as criminally liable for failure to carry out their duties in the same way as private citizens. Wilful neglect of a public duty was an indictable offence, punishable by fine or imprisonment. Cases of criminal liability of officials are almost unknown, except in the rare instance where a breach of the ordinary criminal law is committed, e.g., corruption by officials of local authorities in the award of municipal contracts. There have also been occasional instances of prosecutions of civil servants for disclosure of information in breach of the Official Secrets Act 1911.

Financial Penalties

The principal case is the imposition of financial penalties on councillors (members of local authorities) for improper expenditure. The accounts of local authorities are audited by officials of the Department of the Environment who are thus, in effect, central government inspectors or by other approved auditors who may apply to the court for a declaration that a particular item of expenditure which they consider improperly incurred is

contrary to law; if the court so declares, it may order that any person responsible for incurring or authorising the expenditure shall repay it in whole or in part and may also order that a member of a local authority be disqualified from membership for a specified period.

Civil Liability

The civil liability of public authorities and officials is an important area of English administration law.

In general public authorities, unless acting within their powers, are subject to the ordinary law of contract and tort, and public authorities will be liable without fault for breach of statutory duty. Officials may also be liable personally, both for their own acts and for acts of their subordinates.

Lord Denning MR stated the liability of an official as follows:

«He is a public officer and comes within the settled principle of English law that, when an official duty is laid on a public officer, by statute or by common law, he is *personally* responsible for seeing that the duty is carried out. He may, and often does, get a clerk or minor official to do the duty for him, but if so he is responsible for the transgression of the subordinate... If the duty is broken, and injury done thereby to one of the public, then the public officer is answerable. The injured person can sue him in the civil courts for compensation... Our English law does not allow a public officer to shelter behind a *droit administratif*.» (!) (*Ministry of Housing and Local Governments v Sharp* (1970) 2 QB at 266)

While in general public authorities are subject to the same principles of civil liability as private individuals, there are certain special principles of limited application. Thus in the field of foreign affairs, the Crown may be able to rely on the «act of State» doctrine which protects in from liability for acts of force committed abroad. Conversely in some cases the Crown will be liable in circumstances where a private individual would not be, e. g., for the tort known as misfeasance in public office, including deliberate abuse of power. There are very few reported cases in either category.

Other Consequences

As already mentioned, local councillors may be disqualified from public office where they are held responsible for improper expenditure. In

recent cases, Councillors from two local authorities, the London Borough of Lambeth and Liverpool, were barred from public office for five years.

II

6. **Intervention of the Courts in the Execution of the Measure**

The courts will rarely intervene in the execution of the measure: their function is to provide a remedy after the event.

A relator action may be brought by the Attorney General against a public authority that is threatening to act unlawfully. A private citizen with sufficient standing may seek interlocutory relief.

Only the High Court has jurisdiction in such cases.

7. **The Purpose of Judicial Intervention** is variously conceived as the protection of the rights of the individual or the observance of the public interest in performance of the law. The answer to this question has important consequences for the rules of standing, the role of the Attorney General in taking proceedings, the grounds of review and the relief granted. The decision of the court on a challenge to the implementation of a measure is likely to be influenced primarily by concern for the protection of the rights of the individual.

8. **The remedies** available are those normally available under administrative law; the usual procedure is by way of application for judicial review.

The application for judicial review involves two stages. First, leave to apply must be obtained from a single judge. Such applications are usually made *ex parte* and by affidavit. If leave is granted the (full) application will be heard by another single judge. The High Court is divided into three divisions, one of which is the Queen's Bench Division. Some judges from this division with expertise in Administrative Law matters have been designated for hearing judicial review cases. (If leave to apply is denied then appeal may lie to the Court of Appeal via a single judge or the Divisional Court.)

Leave may be refused if the application has not been made promptly (in any event within three months), or if the applicant does not have sufficient standing, or if the application does not raise a sufficiently grave issue.

The following remedies are available:

Certiorari — Quashes the administrative act in dispute;

Prohibition — Prevents the administration from acting in excess or abuse of its powers;

Mandamus — Requires the administration to act in a specified way;

Injunction — Requires the party to whom it is addressed either to do or to refrain from doing a particular thing;

Declaration — This is a formal statement of the legal position but has no coercive element; although it is persuasive it is usually acted on.

Clearly the timing of the application will reduce the choice of remedies available; for instance, there is no point in seeking prohibition of an act that has already been executed.

Damages may be awarded whether or not one of the above remedies is also granted, provided they are specifically sought in the application for judicial review, but only for infringement of a private right. Normally damages will be awarded against a public authority only if they could have been obtained against a private individual, e. g., for commission of a tort, such as trespass to the person, trespass to goods, negligence or breach of statutory duty. Exceptionally, damages can be obtained, as mentioned above, for misfeasance in public office, but such cases are extremely rare.

Illustrations of remedies against public authorities may be found in the environmental field. An injunction was granted to an angling club whose fishing rights in a river were injured where a local authority discharged inadequately treated sewage into the river: *Pride of Derby and Derbyshire Angling Association Ltd. v British Celanese Ltd.* (1953) Ch. 149. Damages may also be awarded. By way of example in the environmental field, under the Land Compensation Act 1973 compensation is payable by public authorities and other bodies where the value of an interest in land is depreciated by «physical factors» caused by the use of public works: the physical factors in question are noise, smell, fumes, smoke, artificial lighting and the discharge of any substance on to the land.

Apart from judicial review, there may also be statutory rights of appeal, e. g., in the case of refugees.

The rights of appeal of a person whose application to enter the United Kingdom as a refugee is refused are somewhat limited. The position can be summarised as follows:

- (i) If a person applies from abroad for leave to enter the United Kingdom as a refugee, he has and must be informed of a right to appeal against the refusal of his application, but his appeal must

fail because the refusal would not force him to «go» to a country of persecution.

- (ii) If he arrives at a port of entry without an entry clearance and is denied asylum he has a right of appeal but can only exercise it from abroad. If he travels to another country from which his appeal can be prosecuted, his appeal is like to fail on the ground that the refusal did not force him to go to a country of persecution. If he returns to a country in which he is persecuted, he is unlikely to be in a position to prosecute his appeal.
- (iii) If he enters by deception (e. g., claiming to be a student) and then presents an application for asylum, he will have no right of appeal against its refusal since he is an «illegal entrant».
- (iv) If he enters in good faith and becomes a refugee while lawfully present in the UK and applies for asylum at that time, he will have a right of appeal against any refusal. If, however, his leave expires before his application is made, he will have no right of appeal against any refusal to grant it.
- (v) Once an applicant has remained beyond the time allotted to him, the Home Office can make a decision to deport, which attracts a right of appeal. Alternatively a prosecution can be initiated followed by a decision to make a deportation order which does not attract a right of appeal. The choice of procedure is at the discretion of the authorities; they have recently accepted however that they will not exercise their discretion so as to deprive the applicant of a right of appeal.
- (vi) If the applicant is prosecuted and recommended for deportation he can appeal but it appears that he cannot raise a claim for asylum in the course of such an appeal.
- (vii) Once a deportation order has been made the Home Secretary may make directions for removal.

There are a number of ways in which an individual may challenge an act without going to court. A complaint may be made to the Parliamentary Commissioner for Administration (or to the equivalent in Local Government or the National Health Service). The complaint will first of all have to be made to an MP who will in turn refer the complaint to the PCA. Thus the MP acts as a filter system.

A complaint might in any event be made to an elected representative at

national or local level. As mentioned below this was until recently a method employed by those contesting deportation.

9. Stay of Performance

A stay may be obtained by an application to the court for an interlocutory injunction. It used to be thought that an interlocutory injunction could not be obtained against the Crown. This view was based on a questionable interpretation of the Crown Proceedings Act 1947 and very recently judicial opinion on the issue has begun to shift: see *R v Secretary of State for Home Department exp Herbage (No. 1)* (1986) 3 WLR 504, where it was held, on an application by a person detained in prison pending extradition, that an interim injunction could be granted against the Crown and that the Crown's immunity from such relief did not apply on proceedings for judicial review. In addition, the Rules of the Supreme Court (Order 53, rule 10) provide generally that the Court may grant a stay and this has been understood as allowing a stay to be granted against the Crown.

Where there is doubt about the standing of a private citizen, proceedings may be brought, as mentioned above, by the Attorney General in a relator action. The protection of the environment affords an illustration: where a public authority creates a public nuisance which does not cause special damage to any private person, only the Attorney General could apply for an injunction: for it was a «fundamental rule» that «the court will only grant an injunction at the suit of a private individual to support a legal right»: *Thorne v British Broadcasting Corporation* (1967) 1 WLR 1104 (Lord Denning MR). Here too, however, the rules of standing are being liberalised and there is now some recognition of legal interests so that injunctions may be granted when a person has a special interest without a specific legal right.

9.1 An injunction cannot be sought independently of an application for judicial review or of a private action. However an injunction may be sought and granted before the main proceedings are launched.

9.2 An injunction cannot, of course, be sought to restrain performance of an act which has already been performed, but may be sought to restrain any further action: e. g., to prohibit a threatened ultra vires act by a public authority.

9.3 The making of an application for an injunction does not itself have any suspensory effect. However, such applications are heard very swiftly. Where an injunction is granted and is appealed against, the status quo will be preserved until the final disposition of the appeal.

9.4 The court cannot grant a stay *ex officio*. But if the court grants leave on an application for judicial review, the administration may well refrain from implementing the measure in question until the application has been determined.

9.5 The scope of an interlocutory injunction is within the discretion of the court. The party seeking the injunction may be requested to give an undertaking in damages to compensate the other party if the case ultimately fails.

9.6 An appeal can be lodged against the grant of an interlocutory injunction. In addition, where circumstances change, the party against which an interlocutory injunction has been granted may apply to have it discharged.

Relevant illustrations are the grant of an injunction to restrain a local authority from executing a demolition order without a proper hearing of the appeal by the owner of the property for the exercise of the statutory power of postponement: *Broadbent v Rotherham Corporation* (1917) 2 Ch. 31; or to restrain a local authority from demolishing part of a school, where the by law under which the authority claimed the power was void for unreasonableness: *Repton School Governors v Repton Urban District Council* (1918) 2 KB 133.

Examples of obtaining a stay of execution can be found in the law on immigration. An *ex parte* injunction may be obtained to prevent the removal of a refugee: *Goldstein*, *The Times*, 3 January 1974.

It may also be possible to obtain a stay extra-judicially. There was until recently an ad hoc arrangement whereby asylum seekers or immigrants facing deportation might lobby an MP who in turn might request a 'stop'. This was an informal arrangement. The effect of such a stop was that the Home Office would not deport until all proceedings had been concluded. Thus a suspensive effect was achieved. However the practice has been discontinued. Clearly such arrangements are capable of negotiation in particular cases.

10. The bringing of an application for judicial review does not in itself have any suspensory effect. However, as mentioned above, if the court grants leave then the administration may refrain from further measures until the application has been determined.

11. Effects of the court quashing a measure which has already been executed

11.1 Clearly the administration may be faced with some difficulty in executing the court's decision. In some cases it may be possible to amend

the measure retrospectively if the rights and interests of third parties are not adversely affected. In other cases compensation may be the only appropriate solution. However the difficulty arises less often than might be expected since the court will be influenced by the the probable consequences of deciding that an act was void and may prefer a finding that the act was voidable.

11.2 This is not a recognised category of action in English administrative law. Such inaction would only be appropriate where an appeal was pending.

11.3.1 In general, decisions against public authorities are enforceable by the same means as decisions against private citizens. Forcible execution may consist e. g., in distraint or seizure of property by the sheriff or bailiff. However the Crown is exempt from such process by the Crown Proceedings Act 1947 which provides (s.25)(4) that no execution or attachment or process shall issue for enforcing payment by the Crown. This has given rise to no practical difficulties since the Crown invariably complies with the declaration of the court.

In the case of other public authorities a further sanction is available in that, if the order of the court is not obeyed, disobedience is punishable as a contempt of court by fine or imprisonment. In *R v Poplar Borough Council ex. p. London County Council No. 2* (1922) 1 KB 95, members of the defaulting council were imprisoned.

11.3.2 The Court can compel the administration to reopen the matter by quashing in whole or in part the decision that has been executed and by mandamus, specifically requiring the administration to reconsider the matter: see *Padfield v Ministry of Agriculture, Fisheries and Food* (1968) AC 997 where the House of Lords granted mandamus requiring the Minister to direct the committee of investigation established by the Act to investigate the matter in dispute.

The Supreme Court Act 1981, which by section 31 uncharacteristically sets out in legislative form some of the rules governing applications for judicial review which were previously contained in case-law and in the Rules of the Supreme Court, provides that if the High Court quashes the decision to which the application relates, the High Court may remit the matter to the court, tribunal or authority concerned, with a *direction* to reconsider it and reach a decision in accordance with the findings of the High Court: Supreme Court Act 1981, s. 31(5). This marks a significant contrast with those legal systems in which the measure challenged is

quashed but it is left to the authorities concerned to decide what fresh action to take.

Conclusions and general observations

One lacuna in English administrative law was the absence of an effective interlocutory remedy against the Crown. The Crown Proceedings Act 1947, which was intended to put the Crown on the same footing as a private litigant, forbids the grant of an injunction but allows the court to make «an order declaratory of the rights of the parties». But although the court can grant a declaration, which will be effective because the Crown will always comply, there is no interim declaration and consequently the citizen's rights cannot be protected prior to the final decision of the court. Lord Diplock regarded the absence of interim relief against the Crown as a serious procedural defect: *R v Inland Revenue Commissioners ex. p. Rossminster* (1980) AC 952 at 1014-5. Recently, however, as indicated above, the courts have begun to develop the practice of granting interlocutory relief against the Crown.

Secondly, it has recently been proposed that a new office of Director of Civil Proceedings should be established (see Lord Justice Woolf in *Public Law*, 1986, at pp. 236-7). His role would be as follows:

«First of all, it should be open to members of the public to refer to him situations where they consider that the intervention of the court is needed. He should have a discretion to bring proceedings himself whenever he considers this is required in the public interest, rather than requiring citizens to take action themselves. Then he should be available to monitor applications which are coming before the court and relying on the information which would be available to him decide whether or not the court would be assisted by an argument being advanced which would not necessarily be covered by the parties, having regard to their sectional interest, but which is important to the public.

«The Director would also be responsible for ensuring that in the appropriate cases the orders of the court are not allowed to be thwarted because of the inactivity of the applicant who obtained the order. If necessary, he could also take over proceedings which an application no longer wished to prosecute. As the position is at present, an order can be obtained against a public body, but the

public body can continue the course of conduct which the order prohibited if, perhaps for political reasons, the applicant is not prepared to enforce the order.

«Finally, the Director should have access to the papers of public bodies as does the Ombudsman so that he can advise the court as to what if any discovery would be appropriate in cases where this might be ordered by the court.»

The Director so envisaged would no doubt also be able to play an active part in securing the intervention of the Court in the execution of individual administrative measures and so avoid the risk that intervention came too late.

Finally, in the absence of timely intervention, the only effective remedy may be damages. Here there is scope for re-considering the rule that damages can be obtained only when a personal right is infringed. For example in the environmental field there could be scope for a damages claim where a person's interests are adversely affected by a planning decision. The present rules governing damages claims may be unduly restrictive and may be too much influenced on this point by the private law basis of English administrative law.

FRANCIS JACOBS