



Case No : C3 / 2011 / 0724

Neutral Citation Number: [2011] EWCA Civ 1645
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM UPPER TRIBUNAL
LANDS CHAMBER
(MR BARTLETT QC, PRESIDENT)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date : Tuesday 8th November 2011

Before:

LORD JUSTICE LAWS
LORD JUSTICE TOULSON
and
LADY JUSTICE BLACK

Between:

Zenios

- and -

Appellant

Hampstead Garden Suburb Trust Limited

Respondent

(DAR Transcript of
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Ms Alison Foster QC and Mr Christiaan Zwart (instructed by R A Rosen and Co)
appeared on behalf of the **Appellant**.

Mr Tom Weekes (instructed by Lee Bolton Solicitors) appeared on behalf of the **Respondent**.

Judgment

(As Approved by the Court)

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Lord Justice Laws:

1. This is an appeal brought with permission granted by Mummery LJ on 3 May 2011 against a decision of the Lands Chamber of the Upper Tribunal, (Mr Bartlett QC President) dated 15 December 2010 by which the tribunal dismissed the appellants' application made under section 84(1) of the Law of Property Act 1925 for the modification of a restriction contained in a transfer of the freehold interest in the appellants' property and also in a scheme of management to which I will refer. The application was made in order to allow the appellants to construct a first floor extension over their garage.
2. The property in question is a substantial house at 25 Ingram Avenue in the Hampstead Garden Suburb. The President described Hampstead Garden Suburb in paragraph 4 of his judgment as follows:

"Hampstead Garden Suburb is an estate in north London of about 800 acres containing over 5000 properties. It was developed, mostly between 1907 and 1938, through the vehicle of the Hampstead Garden Suburb Trust Limited, a predecessor of the present body, on the basis of a formal plan initially prepared by Barry Parker and Sir Raymond Unwin, with Sir Edwin Lutyens as consultant and designer of part of the area, and then carried on by J C S Soutar. Soutar was the Trust architect, in succession to Unwin, from 1915 to 1951. The Suburb represents the implementation of the social and architectural concept of its founder, Dame Henrietta Barnett. One of the guiding principles was that the interests of individual property owners should be subservient to the interests of the wider community. Sir Nikolaus Pevsner described the Suburb as 'The aesthetically most satisfactory and socially most successful of all C20 garden Suburbs' (The Buildings of England: London 4: North 1951)".

3. The "present body" there referred is a company of the same name incorporated in 1968 following the coming into force of Part 1 of the Leasehold Reform Act 1967. It is the respondent to this appeal. Its principal object is to maintain and preserve the character and amenities of the suburb.
4. The right of enfranchisement given by the 1967 Act had obvious implications for the character of estates of dwelling houses let by a single landlord where, under the Act, the houses in the estate might pass to individual freehold owners. This was confronted in the statute by measures described by the President as follows at paragraph 6:

" Under section 9(1) of the 1967 Act application could be made to the High Court for approval of a

scheme of a management in an area occupied under tenancies held from one landlord where the Minister for Housing and Local Government had given his certificate that

'in order to maintain adequate standards of appearance and amenity and regulate redevelopment in the area in the event of the tenants acquiring a landlord's interest in their house...it is in the general interest that the landlord should retain powers of management in respect of the house'.

And under subsection (3) the Minister in considering whether to grant a certificate and the High Court in considering whether to approve a scheme were required to have regard

'primarily to the benefit rightly to result from the scheme to the area as a whole...and the extent to which it is reasonable to impose, for the benefit of the area, obligations on tenants so acquiring their freeholds; but regard may also be had to the past development and present character of the area and to architectural or historical considerations to neighbouring areas and to the circumstances generally.'

5. Paragraph 7 of the President's judgment :

"On 7 July 1970 the Minister granted a certificate that 'for the purpose of ensuring the maintenance and preservation' of the Suburb the Trust should have in respect of enfranchised properties powers of management under a scheme of management. An order of the High Court of 17 January 1974, amended by an order of 17 February 1983, approved the scheme "

6. Ingram Avenue is in an area added to the original suburb after acquisition by the Trust in 1930/1931. Many of the houses including No. 25 were designed by Soutar. No.25 was built in 1933. The majority of the houses have flat roof garages to the side. At two of them, Nos. 11 and 17, a first floor has been constructed above the garage. The restriction in question in this case is contained in a transfer of 9 March 1979 and so far as relevant provides that without the consent of the Trust:

"no alteration shall be made to the external appearance of any building for the time being standing on the property."

7. The scheme of management authorised, as was explained by the Minister, contains this:

"without the consent as aforesaid no alteration shall be made to the external appearance of any building for the time being standing on an enfranchised property."

Thus plainly the restriction is expressed in the same words in the two documents. I should add that the scheme also provides that consent is not to be unreasonably withheld.

8. There is a little more history relating to the Hampstead Garden Suburb. It is described by the President at paragraphs 24 to 26:

"24. In 1984 Hampstead Garden Suburb was designated a conservation area, and the council as local planning authority has made an Article 4 direction, the effect of which is to give the council control over almost all external works to properties in the Suburb and new building works. In 1994 the Trust and the council produced joint Design Guidance giving advice on any building works, alterations to existing properties and works to trees that might be proposed in the Suburb. It stated that the Trust and the Council would judge any application in the light of the guidance that it gave. The section of the document headed 'Extensions' says:

'Extensions will permanently alter the appearance and character of a property. The low overall density of development on the Suburb means that in many cases some extensions can be allowed without harm to the individual house or its neighbourhood. Rear ground floor extensions may be acceptable, but the impact on neighbouring properties will be carefully assessed. Front extensions are most unlikely to prove acceptable. Side extensions may close up the gaps between properties, creating continuous 'terracing' which destroys the open character of the layout and the carefully designed views between buildings.'

25. The document then set out six points, which, it said, The Trust and the Council would consider

when assessing whether to accept a proposed extension. Of particular relevance to the present case is point 4:

‘ Will the extensions be visible from the road or another public viewpoint and, in particular, will they encroach upon spaces between buildings, closing out distant views?’

In general, any extensions should be to the rear of the property. We normally resist extensions that would intrude upon well established views, for example two-storey side extensions or extensions above existing garages.’

26. Then this was said:

‘These points serve as guidelines, but it should be borne in mind that all proposals are assessed on their individual merits and that there may be cases where extensions are considered unacceptable, even though they may appear to conform with these guidelines.’”

9. Section 84(1) of the Law of Property Act 1925 allows the tribunal to modify or discharge in whole or in part the terms of a restriction such as that which applies in this case if certain conditions are met. Section 84(1C) allows that to be done if the tribunal is satisfied that the modification sought will not injure persons entitled to the benefit of the restriction. Section 84(1) (aa) applies "in a case falling within subsection (1A)". If the continued existence of the restriction would impede some reasonable user of the land for private purposes, section 84(1A) and (1B) provide as follows :

“(1A) Subsection (1) (aa) above authorises the discharge or modification of a restriction by reference to its impeding some reasonable user of land in any case in which the Upper Tribunal is satisfied that the restriction, in impeding that user, either—

(a) does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them; or

(b) is contrary to the public interest;

and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification

(1B) In determining whether a case is one falling within subsection (1A) above, and in determining whether (in any such case or otherwise) a restriction ought to be discharged or modified, the Upper Tribunal shall take into account the development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the

relevant areas, as well as the period at which and context in which the restriction was created or imposed and any other material circumstances.”

10. The applicant had undertaken substantial works at number 25 quite aside from the first floor extension to the garage which they seek to construct. Ms Foster showed us plans and pictures. The appellants have remodelled the front elevation with a new porch, new dormer windows, built a single storey side extension, rebuilt a rear side extension, created a new dormer window in a second storey bedroom and constructed a substantial basement.
11. On 12 December 2006 the appellants applied to the London Borough of Barnet for planning permission and to the respondent Trust for consent under the transfer of the scheme, for the construction of a first floor extension over the garage. Because the property is within a conservation area the council in considering the planning application was required under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to "pay special attention to the desirability of preserving or enhancing the character of the area". They have a conservation officer and a Hampstead Garden Suburb Consultation Area Advisory Committee ("CAAC") to give advice. Moreover in 1994 the London Borough of Barnet and the respondent Trust produced a joint design guidance. It is stated to have been produced to ensure that "any advice given by both bodies is consistent”.
12. This is an aspect of the documentation upon which Ms Foster this morning laid particular emphasis. The guidance stated that, at least generally, planning permission should not be granted for "extensions above existing garages". The CAAC advised that the appellants' proposed first floor extension was "badly proportioned and inaccurately illustrated" and recommended that permission be refused on the ground that the development " conflicts with all guidance on two-storey side extensions".
13. The council's conservation officers had either not been consulted or had no comment to make. The note of a telephone conversation does not make it entirely clear which. The officers' report on the application, while noting the CAAC view, nevertheless stated that the proposal "would not detrimentally impact on the character of the house or the conservation area" and would be "in keeping with council policies and design guidance". On 19 April 2007, acting under delegated powers, a planning officer granted planning permission. However, the respondent Trust for its part refused consent on 15 May 2007.
14. The grant of planning permission was subject to a condition that the development be commenced within three years. On 18 January 2010, that not having been done, the appellants applied for a further permission. It seems that on this occasion the conservation officer was consulted. Planning permission was granted on 1 March 2010. The Trust's refusal of consent was, however, seemingly maintained. Hence the application to the Upper Tribunal pursuant to section 84(1).

15. There is no contest, as I understand it, but that the restrictions continuing in force would impede some reasonable user of land for private purposes. The first floor extension would constitute such a user. Accordingly the issue on Section 84(1) (aa) was as to the applicability of Section 84(1A). The President succinctly described the case for the respondent Trust as follows (paragraph 13):

"The case for the Trust is that the restriction secures to it, as the body with the function of protecting the character and amenities of the area, a practical benefit of substantial advantage in enabling it to prevent the proposed extension. The extension, it is said, would be out of keeping with the design of the principal part of the house and with that of houses in the area; it would significantly reduce views of trees and bushes and the rear gardens beyond; and it would constitute a precedent for other such extensions in the vicinity which collectively would have a severely adverse effect. For these reasons ground (aa), it is said, is not made out. Alternatively, Mr Tom Weekes for the Trust argues, even if the benefit secured is not a substantial advantage, the Trust would nevertheless suffer some disadvantage through the modification: money would not be an adequate compensation for this disadvantage, since the interests of the Trust is in protecting the interests of the neighbourhood; and accordingly the second requirement under subsection 1A will not have been established. Moreover the disadvantage that the Trust would suffer would also constitute injury for the purposes of ground (c), which consequently would not have been made out. "

16. It was submitted to the tribunal for the appellants that the proposal was by no means inappropriate in design terms, the President observing, correctly in my judgment, that :

The purpose of the restriction imposed by the transfer and under the scheme of management is to ensure the preservation of the amenities of the suburb." (Paragraph 16 of the judgment)

The President directed himself that if the proposal had no adverse effects on those amenities the section 84(1C) ground would be made out.

17. One issue before the Upper Tribunal which is also very much alive on this appeal concerns the nature of the Trust's interest. Its case was, as recorded by the President at paragraph 17, that the disadvantage which would be occasioned to it by the development was in its role of capacity as guardian of

the public interest. Observations of Fox LJ in Re Martin [1998] 57 P&CR 119 at 126 were relied on as effectively applied in Re Willis [1997] 6 P&CR 97 see page 114. The President accepted that the Trust's interest was that of the public interest. The appellant says by Ms Foster QC that this conclusion was not open to the President and I shall return to it. A linked point was the submission (paragraph 34 of the skeleton) that the Trust's decision whether or not to consent should largely be driven or at least heavily influenced by the council's grant of planning permission. In fact Ms Foster submitted this morning that in the circumstances of this case the grant of permission should have concluded the question for the purposes of the Trust's function. The President effectively concluded that it was for the Trust to reach its own independent view. This debate has been at the centre of the submissions in the argument this morning.

18. In considering the environmental effects of the proposal, the President referred to and relied on the evidence of a Mr Velluet, a chartered architect, who gave evidence for the Trust. The president described his evidence at some length at paragraphs 37 to 39. I will just set out paragraph 38 and the first sentence of 39:

"38. The particular character of Ingram Avenue, Mr Velluet said, was not only shaped by the prevailing neo-Georgian architectural character of the individual houses but also by the generous spacing of the property that allowed views to be gained, through the spaces between the individual houses and above the garages, of the trees in the open green areas beyond the houses and the gardens to the rear -- Hampstead Golf Club to the north and east and the remaining part of Turner's Wood to the south and west. This feature reflected a fundamental objective of the creators of the Garden Suburb.

39. Mr Velluet said that he considered that the scale proportion and design of the proposed extension, in addition to seriously compromising the view through to the trees on the land to the rear of the property, would seriously challenge the important pre-eminence of the existing house when viewed from the street and the ancillary and subordinate character of the single-storey garage to the side."

19. By contrast Mr Pask for the appellant said (paragraph 40 of the judgment):

"...that the proposal was expressly designed to harmonise with his [that is Mr Pask's] own redesign of the house "

and its effect on the view from the pavement would be very modest. The President concluded as follows:

“41. While I recognise the care and skill that Mr Pask has brought to bear in an effort to make acceptable in design terms the first floor extension that his clients wish to have, I prefer the assessment of Mr Velluet. That assessment accords with the strongly expressed view of the CAAC. It is clear that the design concept, applied to the great majority of the houses in Ingram Avenue, is that the garage, being single-storey and flat-roofed (and thus utilitarian in appearance, as Mr Pask put it) and set well back from the facade, should be seen only as a minor addition to the house, recessive and unobtrusive. Here the front of the garage has already been brought forward from its original position. The proposal to add a first floor, having a hipped roof set behind a parapet, with one of the gables being angled away from the house, would be contrary to the design concept both in terms of its physical features and the impact that these would have on the relationship of garage and house.

42. I accept that the degree to which views of greenery to the rear of the house would be reduced is small. The principal feature to be seen is the large oak tree and this can be seen above the roof of the house itself as well as through the garage gap. . However, the raising of the garage roof would in my view inevitably reduce the sense of openness, and it would compound the purely architectural effect of the extension in making the garage less subordinate to the house. The contribution that the house makes to the character of the area would in consequence be adversely affected. . These are essentially the effects about which the Design Guidance is concerned and which underlie the policy that such extensions should normally be resisted. In my view the Trust was justified in concluding that the proposal would be contrary to the policy and should not be granted consent.”

20. There follows a passage (paragraphs 43 to 45) in which the President also accepted the Trust's case that the development if allowed would constitute a deleterious precedent. In this passage the President referred to the evidence given for the Trust by Mrs Blackburn, who was also an architect. She figures in one of Ms Foster's submissions.

21. I may now turn to the grounds of appeal. The first ground is compendiously expressed as follows in Ms Foster's junior's skeleton:

"The tribunal could not, on the evidence before it, have concluded that the applicants had failed to satisfy the tribunal that 'the proposed development does not secure to the Trust a practical benefit of substantial advantage'. The tribunal should have concluded and could only reasonably have concluded on the evidence before it that the proposed modification did not harm the character of the area and (insofar as precedent was relevant at all) did not constitute an undesirable precedent for the area."

22. As will be apparent from that formulation, this ground embraces a number of points. It is convenient first to take the submission that Mr Velluet's evidence, accepted as I have said by the Upper Tribunal, proceeded upon a false basis of fact and the Upper Tribunal failed to appreciate as much. The alleged error was that No. 25 is not a surviving original property as designed by Mr Soutar. It had been much modified by the appellants, as I have described, and Mr Velluet appears not to have appreciated the fact or at any rate not to have acknowledged it. Mr Velluet had indeed described the house in his report or statement as "a surviving original property" -- Ms Foster showed us the document. But so it was, subject of course to such modifications as had been carried out. In their joint report Mr Velluet and Mr Pask agreed that the house had been "subject to physical modification". It is beyond reasonable contemplation that Mr Velluet somehow was unaware of the fact or had forgotten it. The President's reasoning owes nothing to any perception that the house had not been modified and it follows that this point is at best marginal in any event. However, in refusing permission to appeal to this court the President himself said this :

"There is no reasonable prospect of success on any of the grounds advanced. As far as Mr Velluet is concerned, his evidence on the effect of the extension was based on the house in its existing state and I placed reliance on his evidence on this basis. His views in this respect were not dependent on whether the house was in its original state or altered, and no suggestion that they were was advanced by counsel in closing. If they had been I would have dealt with them in this way. It was the case for the applicants that the recent alterations to the façade of the house were an improvement, and the Trust did not dissent from that."

23. I see no basis on which the court can go behind those observations of the President. It follows there is nothing in the point relating to Mr Velluet. I should add that Ms Foster, entirely rightly in fairness to her junior, was at pains to point out that although Mr Zwart may have said nothing about the point in closing it was indeed referred to in opening. If that be so I readily acknowledge it.

24. It is next suggested under the first ground that the Upper Tribunal misunderstood and in consequence undervalued the 2010 planning permission, effectively treating it as a mere rubber stamp for the continuance of the expired 2007 permission. In his judgment at paragraph 33 the President said this :

"For the applicants Mr Swart and his witness Mr Burroughs placed reliance on the history of the planning applications in two respects. The first point was a narrow one. They said that the CAAC advice on the 2010 application shows that it had reversed the view that it had earlier expressed on the 2007 application that 'the scheme conflicts with all guidance on two storey extensions'. I am quite unable to accept this. The 2010 application was made to renew an earlier permission that was just about to expire, and an officer had said that renewal ought to be entirely routine. It is in my view improbable that the 'No objection' [I interpolate that was the CAAC's comment on the 2010 application] reflected an unexplained reversal of the trenchantly expressed advice of 2007 rather than a recognition that the application was for the renewal of an extant permission in respect of which no new material considerations arose."

25. This narrative is in my judgment a very far distance from a conclusion to the effect that the local planning authority had unlawfully fettered its own discretion in 2010 by simply waiving the renewed application through. In my judgment the President neither so held nor manifestly was it the case. Ms Foster also points to the fact that for the 2010 application the council had the advice of their Conservation Officer and no doubt they did.

26. In any event, as it seems to me, points as to the soundness or integrity of the grant or grants of planning permission ought to be viewed in the context of the second ground of appeal to which I will come shortly. First, still under the first ground, there is an argument as to the President's approach to precedent. As I have said, the President accepted the Trust's contention that the proposal would constitute an undesirable precedent. In the course of doing so he said this:

"45...Applications for similar developments have not so far been made, she [that is the witness, Mrs Blackburn] thought because it was known that the Trust, applying the policy, would refuse them. If the present proposal was permitted through modification of the restriction, she had little doubt that further applications would be made, and she instanced two houses in Ingram Avenue, currently

in the hands of a developer, for which such proposals could well be made. On this issue I prefer the views of Mrs Blackburn, who impressed me with her knowledge of the suburb and the evident integrity and balance that she brought to her assessments."

27. The appellants submit (see paragraph 39 of the skeleton) that communal decisions do not set a precedent, but it seems to me to be plain that the Upper Tribunal was not purporting to create any legal precedent and was by contrast entitled to consider this proposal's likely precedent effect as a matter of fact, as is often done in planning appeals. The President's conclusion on the point is in my judgment free from legal error. This includes his treatment of Mrs Blackburn's evidence. The appellants say she was only called as a witness on and only gave evidence of fact, but the President treated her as an expert. However, clearly she had detailed local knowledge and the President was entitled to consider that to be a helpful resource.
28. Ms Foster submits that there was no evidence for the President's conclusion on this aspect of the case. However it seems to me as I have said he was entitled to rely on Mrs Blackburn's judgment on the matter. I have considered the reasoning of HHJ Reid QC in Vertical Properties Limited [2010] UKUT 51 (LC) to which Ms Foster referred in the course of her submissions. Particular passages are at paragraphs 144 to 146 and 148 to 149. The case was concerned with another house, indeed the next door house, No. 24 I think, in Ingram Avenue. However, the judge's observations in that case are largely fact sensitive. His reasoning does not seem to me to undermine the President's conclusions. While it may be said there is no factual history of similar developments at Ingram Avenue or very little, the President was here undertaking a judgment assessing the position in the light of Mrs Blackburn's evidence as to the possible or likely impact of this proposal. It seems to me he was entitled to conclude as he did.
29. Overall, in relation to the first ground of appeal I would reject Ms Foster's suggestion that this is a case in which the Upper Tribunal arrived at a perverse conclusion. The President has carefully and properly rehearsed the reasons why he considers that the application under section 84 ought to fail. They are all matters of planning merit. They are based on the evidence which the President heard. Another tribunal might perhaps have come to a different conclusion. The President in my judgment was entitled to arrive at the one at which he did.
30. I turn to the second ground of appeal, which is articulated in the skeleton as follows:

"If and insofar as the tribunal could have concluded that there was some (rather than substantial) advantage to the Trust, the Tribunal was wrong to conclude the Trust was a 'guardian of the public interest' (or if so) that the application failed because

money would not constitute an adequate compensation for the disadvantage. The Tribunal's approach distorted the intended statutory effect of section 84(1) and (1A)...making it near impossible for an application to succeed where there is (i) a Scheme of Management and effectively fettering the discretion of the Tribunal in such cases."

31. This ground seems to me to have some connection with the points made under the first ground as regards the force of the local planning authority's grant of permission. The principal argument on this ground is that the Upper Tribunal mischaracterised the Trust's role or function as "guardian of the public interest". It is said that the Trust is not a public body and therefore not "capable as a matter of public law" of being a guardian of the public interest. The source of its legal power is essentially contractual. The statutory scheme, says Ms Foster, tends against the possibility that the Trust has a freestanding role to play in circumstances where the facts before it and the facts before the local authority when an application for permission is made are the same.
32. In the case of Martin to which I have referred in passing, dealing with a like legislative scheme, Fox LJ said this at page 126:

"The members said that money would not be an adequate compensation to the corporation for the discharge of the covenant. I think that must be right. If the covenant is of value to the corporation for the protection of the public interest in the preservation of the amenities, it is difficult to see how a money payment could be adequate compensation."

33. The respondent Trust also cites (see Mr Weekes' skeleton argument) Willis's Application [1997] 76 P&CR and Thames Valley Holdings Limited's Application [2010] UKUT 325. With respect I need not set out any text from those authorities. The case of Martin I note was the subject of some doubt expressed by Carnwath J as he then was in Cardiff City Council [1998] 3 PLR 55 to which Ms Foster took us in the course of her submissions.
34. I am unable to accept Ms Foster's argument. First, the question is not whether the Trust is a public body such that it might be amenable to the judicial review jurisdiction. It seems to me plain that, as a matter of fact, the Trust's powers of control over applications to set aside restrictions such as here in play exist for the preservation of maintenance of the amenities of the suburb. So much is stated at paragraph 31 of the Trust's Memorandum of Association, which Ms Foster showed us. Ms Foster accepted, so far as it went, that this was so, but in my judgment that amounts to an acceptance also that the Trust's duty was to consider and act for the promotion of the public interest, not in some sense the general public interest, obviously and not the national public interest; not even perhaps the London wide public interest, but certainly the public interest in the amenities of this area.

35. This brings me to the question which is at the centre of the second ground of appeal, whether the Trust is to arrive at its own decision on an application of this kind or effectively be driven by the local planning authority's view of the planning merits. In my judgment the President was right to conclude that the Trust has its own decision to make. The planning authority's decision falls to be considered but should not drive the decision to be made by the Trust. Ms Foster does not accept this. She submits that where the considerations before the Trust and the local planning authority are identical, where that is there are no separate or special supervening circumstances for the Trust alone to consider, then the Trust must bow to the planning authority's view expressed in the grant of planning permission. She said, in answer to a question from Black LJ, that if the Trust had disagreed with the grant of permission, then they may seek judicial review. That would not of course, in the ordinary way, give the Trust any voice on the factual merits. I see nothing in the scheme of management to justify a construction of the power to refuse consent which contemplates that the discretion so to refuse may be wholly fettered in some or any circumstances. I see nothing in the amendments to section 84, that is section 84(1)(aa) and section 84(1A) and 1B, which supports Ms Foster's position. Nothing in Shephard v Turner [2006] 2 P&CR 28 to which Ms Foster went this morning, in which the amendments are discussed at paragraph 16 and following, seems to me to assist the appellants. There is, in my judgment, nothing unorthodox or eccentric in a state of affairs where there are two controls, the local planning authority and the Trust, rather than just one upon the implementation of proposals such as that before the Upper Tribunal here. Moreover if it was intended that the view of the local planning authority should prevail as a matter of principle in the hard-edged manner submitted by Ms Foster, one would expect that to be provided for in terms in the legislation.
36. I would therefore reject the principal argument advanced by Ms Foster on the second ground of appeal.
37. I would also hold that, on the true construction of section 84(1A), the reference to the circumstance that money might not be an adequate compensation for any loss or disadvantage is simply a condition for the satisfaction of Section 84(1) (aa), so that in this case that condition is not met since the damage to the public interest represented by the Trust could not sensibly be compensated by money. The Upper Tribunal accepted this construction at paragraph 13. I am, with respect, not assisted by Ms Foster's reference to Stockport MBC v Alwiyah Developments 52 P&CR 278. Loss of an amenity such as a view or a vista may perhaps be compensatable in money where the loss is that of an individual, but it is quite another thing to postulate an award of compensation to a representative body guarding the public interest, as I have held the Trust may properly be described.
38. For all these reasons, then, I would reject the second ground of appeal as I have rejected the first and for my part dismiss the appeal. I would add only that it is as well to have firmly in mind the proper scope of an appeal such as

this. It is an appeal on law only: see the Tribunals, Courts and Enforcement Act 2007, section 13(1) and 2.

Lord Justice Toulson:

39. I agree.

Lady Justice Black:

40. I also agree.

Order: Appeal dismissed