

**Appendix 1 - a copy of the Interest Owner's leasehold title in the form of office copy entries
and a title plan**

1. The title plan is a copy of the title plan of the leasehold title, showing the boundaries of the leasehold title and the location of the leasehold title within the site.

2.

3.

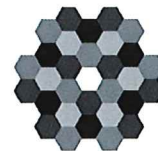
4.

5.

6.

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.



Official copy of register of title

Title number SYK618610

Edition date 10.09.2014

- This official copy shows the entries on the register of title on 13 JUN 2023 at 14:32:02.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 13 Jun 2023.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Nottingham Office.

A: Property Register

This register describes the land and estate comprised in the title. Except as mentioned below, the title includes any legal easements granted by the registered lease but is subject to any rights that it reserves, so far as those easements and rights exist and benefit or affect the registered land.

SOUTH YORKSHIRE : DONCASTER

- 1 (02.07.2014) The Leasehold land shown edged with red on the plan of the above title filed at the Registry and being 4 Trafford Court, Doncaster (DN1 1PN).
- 2 (02.07.2014) The title includes any legal easements referred to in clause LR11.1 of the registered lease but is subject to any rights that are granted or reserved by the lease and affect the registered land.
- 3 (02.07.2014) The land has the benefit of the rights reserved by a Transfer of the land adjoining the eastern boundary of the land in this title dated 11 September 2008 made between (1) Trafcourt Properties Limited and (2) Doncaster Borough Council.

NOTE: Copy filed under SYK558011.

- 4 (02.07.2014) Short particulars of the lease(s) (or under-lease(s)) under which the land is held:
 Date : 24 June 2014
 Term : from and including 1 September 2014 and ending on 31 August 2024
 Parties : (1) Trafcourt Properties Limited
 (2) Taskmaster Resources Limited
- 5 (02.07.2014) The landlord's title is registered.
- 6 (10.09.2014) The Lease prohibits or restricts alienation.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title number SYK618610

Title absolute

- 1 (02.07.2014) PROPRIETOR: TASKMASTER RESOURCES LIMITED (Co. Regn. No. 03289148) of 8 Leodis Court, Leeds LS11 5JJ.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (02.07.2014) The land tinted blue on the title plan is subject to such restrictive covenants as may have been imposed thereon before 10 May 1849 and are still subsisting and capable of being enforced.
- 2 (02.07.2014) The land tinted pink on the title plan is subject to such restrictive covenants as may have been imposed thereon before 28 October 1972 and are still subsisting and capable of being enforced.

End of register

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

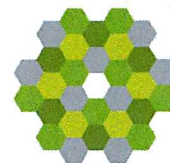
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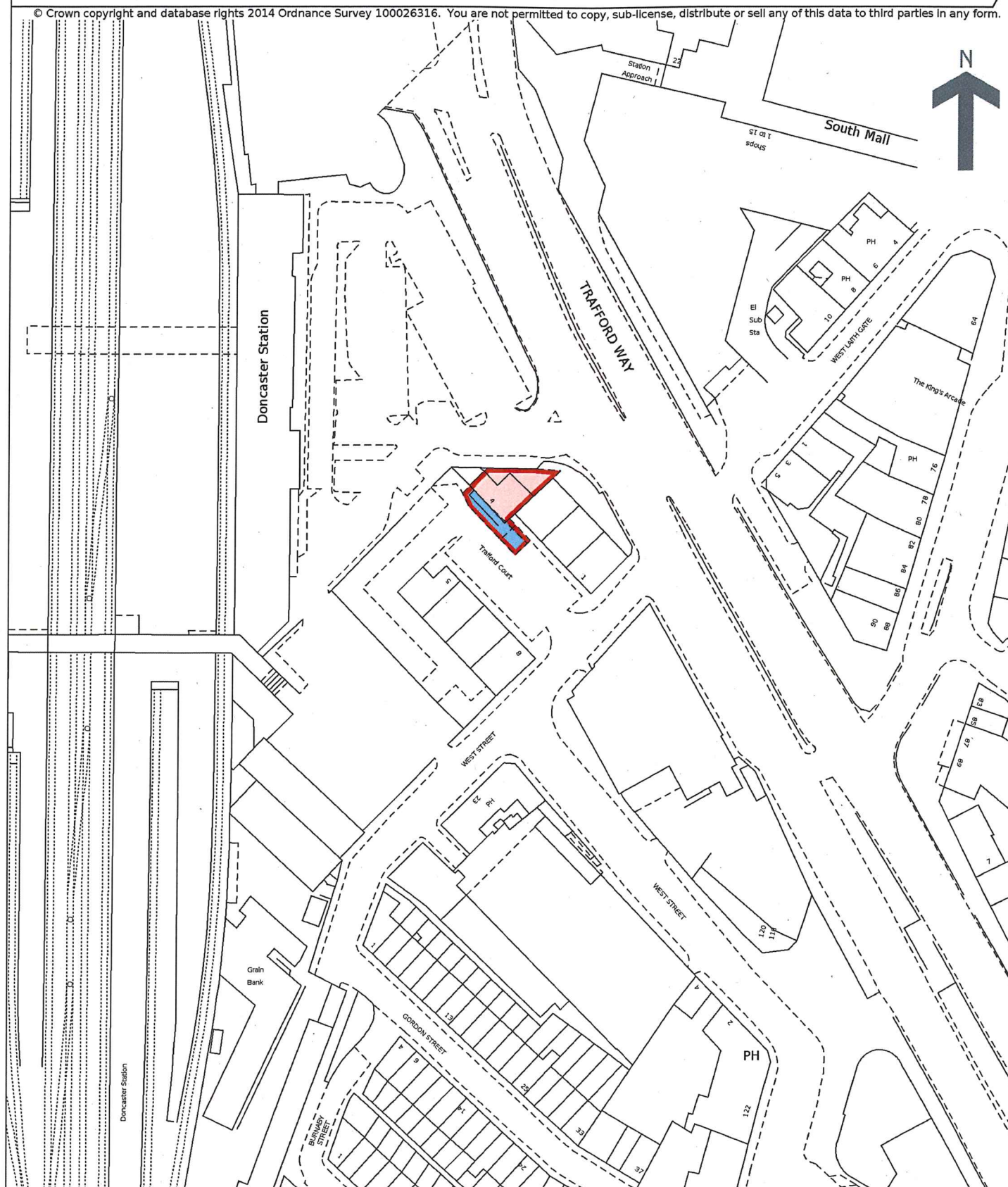
This official copy is issued on 14 June 2023 shows the state of this title plan on 14 June 2023 at 15:24:15. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. This title is dealt with by the HM Land Registry, Nottingham Office .

HM Land Registry Official copy of title plan

Title number **SYK618610**
Ordnance Survey map reference **SE5703SW**
Scale **1:1250**
Administrative area **South Yorkshire :**
Doncaster



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Appendix 2 - a copy of the Council's freehold title in the form of office copy entries

The electronic official copy of the register follows this message.

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Official copy of register of title

Title number SYK21229

Edition date 14.04.2023

- This official copy shows the entries on the register of title on 13 JUN 2023 at 13:48:51.
- This date must be quoted as the "search from date" in any official search application based on this copy.
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- Issued on 13 Jun 2023.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Nottingham Office.

A: Property Register

This register describes the land and estate comprised in the title.

SOUTH YORKSHIRE : DONCASTER

- 1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 1-8 Trafford Court, Doncaster (DN1 1PN).
- 2 (26.09.2008) The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.
- 3 (26.09.2008) The land has the benefit of the rights reserved by a Transfer of the land edged and numbered SYK558011 in green on the title plan dated 11 September 2008 made between (1) Trafcourt Properties Limited and (2) Doncaster Borough Council.

NOTE:-Copy filed under SYK558011.

- 4 (23.05.2018) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered SYK661263 in green on the title plan dated 14 May 2018 made between (1) Doncaster Assets Limited and Doncaster Assets (No 2) Limited and (2) Doncaster Borough Council.

NOTE: Copy filed under SYK661263.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (14.04.2023) PROPRIETOR: CITY OF DONCASTER COUNCIL of Civic Office, Waterdale, Doncaster DN1 3BU.
- 2 (14.04.2023) The price stated to have been paid on 31 March 2023 was £2,382,500.
- 3 (14.04.2023) A transfer dated 31 March 2023 made between (1) Doncaster Assets Limited and Doncaster Assets (No 2) Limited and (2) City Of

Title number SYK21229

B: Proprietorship Register continued

Doncaster Council contains purchaser's personal covenants.

NOTE: Copy filed.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 The parts of the land affected thereby are subject to the leases set out in the schedule of leases hereto. The leases grant and reserve easements as therein mentioned.

NOTE: Each lease is references by edging and numbering in yellow on the title plan unless otherwise stated in the Schedule of Leases.

- 2 The land tinted blue on the title plan is subject to such restrictive covenants as may have been imposed thereon before 10 May 1849 and are still subsisting and capable of being enforced.

- 3 The land tinted pink on the title plan is subject to such restrictive covenants as may have been imposed thereon before 28 October 1972 and are still subsisting and capable of being enforced.

- 4 (27.07.2016) The land is subject to the easements granted by a Lease dated 20 July 2016 of Unit 3, Trafford Court for a term from 12 April 2016 to 11 April 2019.

NOTE: Copy filed.

- 5 (07.03.2019) UNILATERAL NOTICE affecting Unit 5 Trafford Court, shown edged red on the plan attached to this Notice in respect of an Agreement for Lease dated 1 February 2019 made between (1) Doncaster Assets Limited and Doncaster Assets (No 2) Limited and (2) Keltbray Aspire Limited.

- 6 (07.03.2019) BENEFICIARY: Keltbray Aspire Limited (Co. Regn. No. 06000882) of St Andrew's House, Portsmouth Road, Esher, Surrey, KT10 9TA.

- 7 (30.07.2019) The land is subject to the easements granted by a lease of Units 1 & 2 Trafford Court dated 12 July 2019 made between (1) Doncaster Assets Limited (2) Doncaster Assets (No 2) Limited and (3) Central Young Men's Christian Association for a term of 3 years commencing on 12 July 2019 and expiring on 11 July 2022.

NOTE: Copy filed.

- 8 (14.09.2022) UNILATERAL NOTICE in respect of a lease of Unit 3, Trafford Court dated 12 September 2022 made between (1) Doncaster Assets Limited and Doncaster Assets (No 2) Limited and (2) Leger Education Trust for a term of 5 years commencing on 12 September 2022 and expiring on 11 September 2027.

NOTE: Copy filed.

- 9 (14.09.2022) BENEFICIARY: Leger Education Trust (Co. Regn. No. 07736364) of Campsmount Academy, Ryecroft Road, Norton, Doncaster, DN6 9AS.

Schedule of notices of leases

	Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
1	22.12.2005 5	Unit 7 Trafford Court	20.11.2002 15 years from 20.11.2002	SYK512677
2	29.07.2009 6	Unit 8 Trafford Court	28.05.2009 from 28.5.2009	SYK569527

Title number SYK21229

Schedule of notices of leases continued

	Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
			ending on 19.11.2017	
3	02.07.2014 4	Unit 4 Trafford Court	24.06.2014 from 1.9.2014 to 31.08.2024	SYK618610
4	08.07.2019 5, 6 and 7	Unit 7 and Unit 8 Trafford Court	08.07.2019 15 years commencing on 8 July 2019 and expiring on 7 July 2034	SYK673798

NOTE: The airspace more particularly described in the lease is excluded from the title

End of register

of the company, directors and secretary of the interest owner.

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TASKMASTER RESOURCES LIMITED

Company number **03289148**

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- [Overview \(https://beta.companieshouse.gov.uk/company/03289148\)](https://beta.companieshouse.gov.uk/company/03289148)
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Filter officers



5 current officers

SKORUPKA, Andrew George

Correspondence address

8 Leodis Court, David Street, Leeds, 8 Leodis Court, David Street, Leeds, England, LS11 5JJ

Role Active **Secretary**

Appointed on **16 December 2002**

Nationality **British**

Occupation **Director**

ATKINSON, Miranda

Correspondence address **8 Leodis Court, Leeds, England, LS11 5JJ**

Role Active **Director**

Date of birth **January 1982**

Appointed on **22 February 2023**

Nationality **British**

Country of residence **England**

Occupation **Support Manager**

FLETCHER, Adam Justin Denis

Correspondence address **22 Gilbert Street, London, England, W1K 5HD**

Role Active **Director**

Date of birth **April 1969**

Appointed on **9 December 2022**

Nationality **British**

Country of residence **England**

Occupation **Director**

KEEGAN, Mark Anthony

Correspondence address

8 Leodis Court, David Street, Leeds, 8 Leodis Court, David Street, Leeds, England, LS11 5JJ

Role Active **Director**

Date of birth **March 1979**

Appointed on **25 January 2023**

Nationality **British**

Country of residence **England**

Occupation **Finance Director**

SKORUPKA, Andrew George

Correspondence address

8 Leodis Court, David Street, Leeds, 8 Leodis Court, David Street, Leeds, England, LS11 5JJ

Role Active **Director**

Date of birth **February 1958**

Appointed on **16 December 2002**

Nationality **British**

Country of residence **England**

Occupation **Director**

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Appendix 4 -Section 149 of the Equality Act 2010



Equality Act 2010

2010 CHAPTER 15

PART 11

ADVANCEMENT OF EQUALITY

CHAPTER 1

PUBLIC SECTOR EQUALITY DUTY

149 Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Changes to legislation: There are currently no known outstanding effects for the Equality Act 2010, Section 149. (See end of Document for details)

- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) tackle prejudice, and
 - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- (7) The relevant protected characteristics are—
 - age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.
- (8) A reference to conduct that is prohibited by or under this Act includes a reference to—
 - (a) a breach of an equality clause or rule;
 - (b) a breach of a non-discrimination rule.
- (9) Schedule 18 (exceptions) has effect.

Changes to legislation:

There are currently no known outstanding effects for the Equality Act 2010, Section 149.

Appendix 5 – Prest v Secretary of Sates for Wales (1982)

Estates Gazette Law Reports/1983/Volume 1/Prest and others v Secretary of State for Wales and another - [1983] 1 EGLR 17

[1983] 1 EGLR 17

Prest and others v Secretary of State for Wales and another

Court of Appeal

September 24 1982

(Before Lord DENNING MR, Lord Justice WATKINS and Lord Justice FOX)

Estates Gazette May 7 1983(1982) 266 EG 527

Compulsory purchase — Challenge to confirmation by Secretary of State for Wales of order for compulsory purchase of land for sewage works — Alternative sites offered at agricultural value by landowner but rejected on the ground that the costs of construction would be higher on these sites — At public inquiry consideration was not given to the higher land acquisition costs, as distinct from the construction costs, which would be incurred by the selection of the site favoured by the acquiring authority, with the result that the total costs involved would be likely to be higher — This factor was pointed out by the landowner after the inquiry had concluded, but before the minister made his decision — Subsequent evidence, if admissible, confirmed this point — Some difference of view between Lord Denning and the other members of the court as to admissibility of evidence of subsequent events — Even without such evidence, however, the Secretary of State could reasonably have anticipated, and indeed had his attention drawn to, the probability that the site chosen by the authority had an industrial potential which would be reflected in land costs — Held that the Secretary of State had confirmed the order without taking into account, or seeking information as to, the material factor of land acquisition costs in respect of the CPO site — Appeal allowed

In these proceedings Sir Brandon Rhys Williams Bt and trustees of family trusts sought to challenge the decision of the Secretary of State for Wales confirming a compulsory purchase order for the acquisition by the Welsh Water Authority of land in the Vale of Glamorgan required for sewage disposal works to be sited at Cryngallt. Sir Brandon and the trustees offered to convey at existing use value (ie at agricultural value) either of two alternative sites in the same area to the authority, but if this offer were refused full compensation, including any industrial development value, would be required for the CPO site.

Lord Hooson QC and J Howell (instructed by Roche Hardcastle) appeared on behalf of the appellants; Simon Brown (instructed by the Treasury Solicitor) represented the Secretary of State; M T Pill QC and Miss Jane Booth (instructed by the area solicitor, Welsh Water Authority) appeared on behalf of the authority.

Giving judgment, **LORD DENNING MR** said:

Sir Brandon Rhys Williams is a doughty fighter. He is under attack in his own homeland. It is in the Vale of Glamorgan. You pass by it if you go by the main line from Cardiff to Bridgend. Also if you go by car along the new M4 motorway near the Miskin interchange. He and his forebears have been in those parts for over 300 years. They have a considerable estate there which they let out to tenant farmers. Yet now they are under threat. The Welsh Water Authority are about to seize 30 or so acres of their land. It is agricultural land on a

site next the railway line. The Welsh Water Authority have made a compulsory purchase order on it: and it has been confirmed by the minister. It is now under appeal to this court.

The reason for this imminent seizure is to make a new sewage works for the neighbouring towns and villages. It is urgent. The existing sewage works are grossly overloaded. It is anticipated — and hoped — that the district may be developed for industrial use. So more facilities are needed for the disposal of sewage.

Sir Brandon and his children's trustees all recognise the need for a new sewage works — and the urgency of it. They are just as keen as the Welsh Water Authority. But they do not agree to the site seized — or about to be seized — by that authority. They offer an alternative site: or rather one of two alternative sites. Each of them is about 30 or 40 acres. Each of them is close by in the same area. One is 60 yds away from the railway line. The other is 160 yds away. Each is very convenient for the new sewage works.

The contest in the case is this: which of the sites should be used for the new sewage works? Should it be the site proposed by the authority or one of the two alternative sites offered by Sir Brandon?

In November and December 1977 there was a long public inquiry as to the comparative merits of the sites. It took 12 days. The long and short of it is that there is nothing to choose between the sites — save as to cost. Everything was considered at the inquiry, such as the means of access, the interference with agriculture, the effect on the amenities, the impact of flooding, and so forth. In no material respect was any one site to be preferred to the others — save as to cost.

Now the cost was the rub. At the inquiry there was much evidence as to the cost of *constructing* the plant for treating the sewage. The total cost, as at 1976 prices, would be £7,616,900 on the site proposed by the authority. But as to the alternative sites, nos 1 and 2, offered by Sir Brandon:

the construction of similar treatment works would cost some £230,000 more on site 1, and some £320,000 more on site 2.

Those were, of course, only estimates at that time. Like all estimates they are often falsified in execution. They are certainly out of date by this time. Even so, the saving of £230,000, or even £300,000, would seem to be marginal in relation to a figure of nearly £8,000,000. Yet that saving seems to have been the determining factor with the inspector. He made his report on April 20 1978. It covered 64 closely typed pages. He said in it:

The cost of development is not normally a factor which enters into the determination of a planning application. But in my opinion this case is peculiar.....the applications (by Sir Brandon for sites nos 1 and 2) should be refused on the grounds that they represent unnecessary and wasteful expenditure of public funds.

In recent letters the Welsh Water Authority have made it clear that the determining factor has been one of cost. On April 23 1982 they said that the proposals of Sir Brandon “impose an unacceptable cost-penalty on its proposed sewage disposal scheme”: and on May 14 1982 that the alternative site “has been considered and rejected because of the additional cost involved”.

The offer by Sir Brandon

Now I come to the crucial point in the appeal. Both at the inquiry and ever since, Sir Brandon and his children's trustees have offered to convey either of the *alternative* sites offered by them at “existing use value”

that is, at its value as agricultural land. But if the Welsh Water Authority insist on the site proposed by the authority themselves, then Sir Brandon and his children's trustees will require the authority to pay the full compensation allowed by law. That is its value, not as agricultural land, but as land with a potential for development for industrial purposes. This will be much higher than the agricultural value. It would far more than outweigh the saving of £230,000 to £300,000 on construction costs.

The point that was omitted

Here is the strange thing. The inspector did not take any account of that offer. He recorded it among his findings in paragraph 264(9), but he did not take it into account in assessing the cost of the whole project. He only took into account the cost of *constructing* the sewage treatment works. He did not take into account the cost of *acquiring* the land itself. That is a most significant omission. Both sides agree that it was omitted. Neither side adduced any evidence before the inspector about it. So he did not take it into account.

[1983] 1 EGLR 17 at 18

The letter of October 20 1978

While the inspector's report was with the minister — and before he gave his decision — the trustees and Sir Brandon wrote a letter of October 20 1978. They asked for the inquiry to be reopened. They pointed out that the site proposed by the authority had much potential for industrial purposes: so the cost of acquiring it would be much greater than that of the site offered by Sir Brandon which was being offered at agricultural value. This was clear enough in the somewhat clumsy language of the letter:

This obvious potential of the CPO site (the site proposed by the authority) for industrial purposes if the sewage works were not required to be built on it introduces material questions of relative land costs into the choice of sewage works sites. These issues cannot be resolved until the nature of the industrial development of the area has been decided but are likely to be a material factor which ought to be taken into consideration before the compulsory purchase order is confirmed. This matter was not considered at all during the inquiry.

The planning applications

While all these things were going on, the trustees and Sir Brandon were making planning applications for the development of much of their land in the area for industrial purposes. These were called in by the minister so that he could determine them himself. They had not been determined at the date of the decision letter in November 1978. A local inquiry was held into them by a different inspector. He recommended that the applications should be allowed. But, on August 7 1980, the minister turned them down at that stage. He said:

While not disputing the inspector's view that there is a need for industrial land in the general area, the Secretary of State notes that other industrial sites are available and he is not convinced that the industrial need would justify a major intrusion into this attractive part of the Vale of Glamorgan.

Nevertheless, the trustees and Sir Brandon made another application. It was called in by the minister again for his determination. Another inspector, Miss Ellis, held another local inquiry. It is believed that she reported in favour of industrial development. In a letter of March 12 1982 the minister indicated his willingness to permit industrial development, subject to certain conditions.

It is quite clear, therefore, that by this time it is very probable that (if it were not acquired compulsorily) the site proposed by the authority would be developed for industrial purposes and would command a very high price. The cost of the whole project would be far greater than it would be if the authority accepted the alternative site offered by Sir Brandon.

These findings give rise to several points of law.

The use of compulsory powers

The first is fundamental. To what extent is the Secretary of State entitled to use compulsory powers to acquire the land of a private individual? It is clear that no minister or public authority can acquire any land compulsorily except the power to do so be given by Parliament: and Parliament only grants it, or should only grant it, when it is necessary in the public interest. In any case, therefore, where the scales are evenly balanced — for or against compulsory acquisition — the decision — by whomsoever it is made — should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands: and then only on the condition that proper compensation is paid, see *Attorney-General v De Keyser's Royal Hotel Ltd* [1920] AC 508. If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen. This principle was well applied by Forbes J in *Brown v Secretary of State for the Environment* (1980) 40 P & CR 285, where there were alternative sites available to the local authority, including one owned by them. He said (at p 291):

It seems to me that there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary.....If, in fact, the acquiring authority is itself in possession of other suitable land — other land that is wholly suitable for that purpose — then it seems to me that no reasonable Secretary of State faced with that fact could come to the conclusion that it was necessary for the authority to acquire other land compulsorily for precisely the same purpose.

The facts to be considered

The second point is this: When a case reaches the courts, is it to be decided on the facts as they appeared to the minister at the date of his decision or can the courts look at subsequent facts? In this very case the inspector took the view that, at the time of his inquiry, it was a matter for “speculation” whether or not there would be an industrial use of the site proposed by the authority. But, by the time that the case reached the courts, or at any rate reached this court, it was no longer speculative. It was highly probable that the landowner would get permission for development for industrial purposes. If these had been proceedings in a court of law, this subsequent evidence would have been regarded as so material that it would have been admitted in the Court of Appeal, see *Murphy v Stone-Wallwork (Charlton) Ltd* [1969] 1 WLR 1023; *Mulholland v Mitchell* [1971] AC 666. So here it seems to me that, when the decision of the minister was under challenge in the courts, it was not final. It was *sub judice*. So far as I am aware, the acquiring authority does not act on it until the court proceedings are finally disposed of. Rarely indeed would fresh facts be admitted to counteract the decision: but I think that in a proper case they should be. Take this very case. The Welsh Water Authority are not bound to take up the compulsory purchase order. If they exercise it, the price will not be assessed at the date of the order. It will be assessed at the time when they actually take the land, see *West Midland Baptist (Trust) Association (Inc) v Birmingham Corporation* [1970] AC 874. That would be much higher than at the date of the inspector's inquiry. If the authority can wait — till after the Court of Appeal order — to see what prices are, it is only fair that the landowner should be able to have his case — against compulsory purchase — also determined at that date.

Test it this way: take a case where the minister has confirmed the compulsory purchase order. But after the confirmation the acquiring authority alters its proposals radically, or abandons them, or decides to use the land for a different purpose from that which it originally intended. In that case the compulsory purchase order would no longer be available to it. The court would restrain the acquiring authority from going on with the purchase. That is shown by *Grice v Dudley Corporation* [1958] Ch 329, where Upjohn J said (at p 344):

..... what are the corporation doing? They seem to me to be endeavouring to acquire the plaintiffs' property for some purpose other than that for which they were authorised to exercise compulsory powers by the compulsory purchase order.....they are going entirely outside the order and, if that be so, then they must be restrained from doing so.

If that can be done by the court — after the order has been confirmed — surely it can be done where there is an application to the court to set aside the order under the statutory powers available. I am aware that this would need fresh evidence over and above that which was before the inspector and the minister. But there is power to receive it. Not usually. Only rarely. As I said in *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 1 WLR 1320 at p 1327: “Fresh evidence should not be admitted save in exceptional circumstances.”

Those exceptional circumstances need not be closely defined. I would suggest that fresh evidence can and should be admitted on similar grounds to that in the courts of law — in those cases where it has arisen since and would in all probability have an important influence on the result.

The matters to be taken into account

The third principle asks this question: what matters is the Secretary of State to take into account? Is he limited to those canvassed before the inspector or should he go beyond them and consider other matters, if they are relevant?

This was one of the principal points made by the minister and by the water authority. They said that the trustees and Sir Brandon never raised the point about the cost of acquisition of the land, nor did they give any evidence upon it. So they should be shut out from canvassing it now. To my mind this is a mistake. It treats a public inquiry — and the minister's decision — as if it were a *lis inter partes*. That it certainly is not. It is a public inquiry — at which the acquiring authority and the objectors are present and put forward their cases — but there is an unseen party who is vitally interested and is not represented. It is the public at large. It is the duty of the minister to have regard to the public interest. For instance, in order to acquire the land the acquiring authority have to use the taxpayers' money or the ratepayers' money. The minister ought to see that they are not made to pay too much for the land — especially where there is an alternative site which can be acquired at a much lower price. So also with the planning and development of this land. It is the public at large who are concerned. If planning considerations point to the alternative site rather than to the site proposed by the authority, the

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minister should take them into account: cf *Hanks v Minister of Housing and Local Government* [1963] 1 QB 999. The principle was implicit in the decision of the House of Lords in *Board of Education v Rice* [1911] AC 179. It was expressed by Lord Greene MR in a single sentence in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at p 229:

He must call his own attention to the matters which he is bound to consider.

This was put a little more fully by Lord Diplock in *Education Secretary v Tameside Borough Council* [1977] AC 1014 at p 1065:

Or, put more compendiously, the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?

The power of the court

The fourth principle is the power of the court to intervene. Often we are referred to the classic judgment of Lord Greene MR in the *Wednesbury case* [\[1948\] 1 KB 223](#), but I ventured to restate it in my own words in *Ashbridge Investments Ltd v Minister of Housing and Local Government* [\[1965\] 1 WLR 1320](#) at p 1326, which has been repeatedly applied. This was in relation to the very statutory words applicable here:

Seeing that that decision is entrusted to the minister, we have to consider the power of the court to interfere with his decision. It is given in Schedule 4, para 2 [of the Housing Act 1957]. The court can only interfere on the ground that the minister has gone outside the powers of the Act or that any requirement of the Act has not been complied with. Under this section it seems to me that the court can interfere with the minister's decision if he has acted on no evidence; or if he has come to a conclusion to which on the evidence he could not reasonably come; or if he has given a wrong interpretation to the words of the statute; or if he has taken into consideration matters which he ought not to have taken into account, or vice versa; or has otherwise gone wrong in law.

I went on to say that in some cases fresh evidence might be admitted:

We have to apply this to the modern procedure whereby the inspector makes his report and the minister gives his letter of decision, and they are made available to the parties. It seems to me that the court should look at the material which the inspector and the minister had before them, just as it looks at the material before an inferior court, and see whether on that material the minister has gone wrong in law..... Fresh evidence should not be admitted save in exceptional circumstances.

Conclusion

It remains to apply these principles.

In the first place, we have fresh evidence which shows that the present proposals of the acquiring authority are radically different from those which were considered by the inspector at the inquiry: The main differences are these:

- (i) Modern methods of treating sewage have reduced the whole scale of the project so that the area required for the actual works has been halved in size.
- (ii) It is very probable that planning permission would be given for the development of the order land for industrial purposes (that is the CPO site): so that it would command a very considerable "hope" value far in excess of agricultural land: *cf Camrose (Viscount) v Basingstoke Corporation* [\[1966\] 1 WLR 1100](#).
- (iii) The trustees and Sir Brandon have made it clear that they will make the alternative site available at existing use value, that is, its agricultural value.

In view of the fresh evidence it would be quite unreasonable for the acquiring authority to proceed with the compulsory purchase order. Yet on May 18 1981 they gave notice to treat and have only held their hand pending these proceedings.

In the second place, even if the fresh evidence be disregarded, when the minister wrote the decision letter confirming the compulsory purchase order he failed to take into account the cost of acquiring the site pro-

posed by the authority (the CPO site) as against the cost of acquiring the alternative site offered by Sir Brandon. This was a most relevant consideration. It would probably have made a crucial difference because, even at that date in 1978, there was a potential of development for industrial use which would have given a considerable "hope" value to the order land (the CPO site). The minister ought to have had regard to this point — in the public interest — even though it was not canvassed by the parties at the inquiry. In any event he ought to have considered it — after receiving the letter of October 20 1978 — and asked for evidence of values before coming to his decisions. If he had considered it, the only reasonable conclusion would be that the compulsory purchase order would not have been confirmed.

I would, therefore, allow the appeal and set aside the compulsory purchase order. Everyone must regret the long delay in making the new sewage works. But I think that the responsibility must rest primarily with the Welsh Water Authority. All could have been avoided if they had not insisted on their own site, but had accepted the offer made by Sir Brandon and his children's trustees long ago. If they had done so, the sewage works could have been completed by this time — at much less cost than they will be now. It is, I understand, still open to them to accept the offer. They should do so and get on with the work at once. I would allow the appeal accordingly.

Agreeing that the appeal should be allowed, WATKINS LJ said: The attempted acquisition of land by compulsory purchase is, when strongly resisted by the owners of it, likely to give rise to a protracted and sometimes bitter contest fought in the forum of public inquiry and thereafter in the courts. Seldom, however, can there have been such a long-drawn-out struggle to preserve for himself and his family a part of their land at Miskin in the heart of Glamorgan as that waged by Sir Brandon Rhys Williams and the trustees of the family trusts.

Sir Brandon's family have lived in Miskin Manor for a century. They have been associated with the lands thereabouts for three centuries or more. He has set ideas of his own as to how his land should be developed in the interests of good and profitable estate management. He has not for many years been averse to selling some part of his land, at agricultural value, initially to the local authority and later on to the Welsh Water Authority when this was created in 1944 so that a sewage disposal plant could be constructed upon it and a suitable access road provided to that.

But he insists upon making available for this purpose a site which in extent and in every other way is, in his estimation, suitable for this purpose and he will not, in any circumstance, treat with the Welsh Water Authority in respect of another part of his land, which is its considered choice for the construction of a plant which is to be provided for the benefit of the inhabitants of Miskin, Llantrisant and other villages nearby.

But the construction of this is, after a decade of strife concerning its location, still not imminent. Indeed, local inhabitants could be excused for thinking that it never will be, seeing that the Welsh Water Authority is, it could be said, inexcusably obdurate in pursuing its objective and Sir Brandon is at least equally determined and resourceful in thwarting it.

There have been from time to time substantial changes in the schemes or proposals put before the Secretary of State for Wales by both sides. The Welsh Water Authority has made fundamental changes in its conception of the kind of plant designed to be constructed, which has meant, among other things, that the amount of land sought to be acquired has diminished in size, and Sir Brandon has changed the location of the alternative site he is willing voluntarily to sell at agricultural value to accommodate the plant.

A sensible and reasonably expeditious resolution to this dispute has also been affected by other factors outside the control of both the Welsh Water Authority and Sir Brandon. Notable among these has been the planning and construction of the M4 motorway, which passes through the Miskin Estate, and various proposals, some of which have been the subject of planning applications, for industrial development of this part of Glamorgan which lies immediately to the south of the Rhondda Valley, wherein coal mining has been for

years a declining industry — just as in other valleys in Glamorgan and Gwent has the manufacture of steel. These two heavy industries were the economic bedrock of South Wales.

For many years now, since the end of the second world war especially, the local industrial scene has gradually moved from the valleys to the agricultural coastal plain where lie the ports and through which run the railway line and now the motorway. New industries hitherto alien to this part of Wales have been placed near or not very far away from these essential facilities for transporting people and material.

Some of the land around Llantrisant has already been used for this purpose. During the last 15 years a much more extensive industrial development there has been envisaged by planners, including Professor Buchanan, in a specially commissioned report. These proposals have included, among other things, the creation of a new town. Today the approach to development there is much less grandiose, but the determination to bring some new industry to the area appears to be in some quarters as firm as ever.

Accordingly, it can with justification, so it is argued, be said that

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the area has a potential for industrial use. The Welsh Land Authority, which is answerable to the Secretary of State, has been and seemingly remains very conscious of this. Various provisions of the [Community Land Act 1975](#) remain available to this authority. Armed with these it seeks to acquire land for industrial use near Llantrisant, including a part of the Miskin Estate. It has not yet succeeded in obtaining the requisite consents with which to implement its proposals for land acquisition, but there is no sign that its resolve to acquire a reserve of land in this neighbourhood is weakening.

Furthermore, the local and county authorities, which themselves have undergone convulsive changes in recent times, have advanced proposals for development so as to bring in new industry.

So the long-endured pressures imposed upon the Secretary of State for Wales and his predecessors to grant planning permissions and approve the purchase of land by compulsory acquisition have been many and various.

It would not be in the least surprising, therefore, if the Secretary of State and those who advise him, in a mood of desperation if not exasperation, resolved to put an end to the battle over the siting of the sewage plant by, as he has done, giving the Welsh Water Authority the powers of land acquisition it seeks accompanied by planning permission to construct the plant which he stipulated was to begin by November 30 1983.

In the decisive decision letter of November 14 1978, after describing outstanding applications for planning permission for industrial use by Sir Brandon and the Welsh Land Authority, it was stated:

Whilst it would not be for the Secretary of State to prejudge the issue regarding the siting of industry south east of the Miskin Interchange, he is satisfied on the evidence that the construction of a sewage disposal works on the site proposed by the authority or on either of the two sites advanced by Sir Brandon Rhys Williams would not jeopardise the development of an industrial estate in the area. Accordingly, he considers he would not be justified in withholding his decisions in relation to the sewage disposal works.

It was contended on behalf of the appellants that in this passage the Secretary of State revealed that he had reached a decision in advance of detailed appraisals of the planning applications which, if successful, would inevitably have seriously affected the cost of compulsory acquisition of the Welsh Water Authority site. The decision to confirm the order was swayed against Sir Brandon solely by the costs factor, a full and proper

appreciation of which could not be gained without regard to the user, present or prospective, of adjoining parts of his lands.

As subsequent events have shown, so it is argued, this cost factor viewed in that way will involve the Welsh Water Authority in a sum for the acquisition of the site which is the subject of the compulsory purchase order, which will be based not on agricultural value but on a valuation which takes account of at least the hope of planning permission being granted for use for industrial purposes of the site and of adjoining lands as a composite whole or for adjoining lands excluding the site. In this context, it is of interest to learn of the Secretary of State's recent indication that he is quite likely to regard favourably a recommendation made by an inspector in 1981 that conditional planning permission be granted to Sir Brandon and the trustees upon their applications therefor for the use for industrial purposes of a very considerable area of land which includes the compulsory purchase order site.

In her report following the inquiry into the applications, the inspector somewhat significantly concluded, upon the need for land for industrial use, that, if it was necessary urgently to attract large prestige firms with exacting requirements which can serve the Rhondda, then Miskin was the only site she was shown which meets the criteria of accessibility, availability and attractiveness.

In March 1982 the Secretary of State informed Sir Brandon and the trustees that the existence of an acceptable agreement with the local planning authority under the provisions of section 52 of the Town and Country Planning Act 1971 — apparently such an agreement is in being — would be an important factor in his consideration of the applications. And he inquired whether, in view of the areas of land covered by the agreement, account could be taken of any possible requirements which might arise for alternative sites for a sewage disposal works.

What is one to make of all that, save, it seems inevitable, that a large part of the Miskin lands, the CPO site included, will soon be the subject of planning permission for industrial use. And the cost of acquisition of the CPO site, if the order is to remain confirmed, will be based not on agricultural land value but on the much higher value attributed to land used for industrial purposes. This is obviously in the public interest a very important consideration, especially when it is borne in mind that, in the present case, land can still be acquired by the Welsh Water Authority without the use of compulsory powers at agricultural value which is, so it is submitted by Lord Hooson, as suitable as the compulsory purchase order site for the construction of a sewage plant.

Looking at the whole situation as it appears now, that is, I think, a valid and powerful argument. Despite attempts made on behalf of the Secretary of State and the Welsh Water Authority to demonstrate that his decision to confirm the compulsory purchase order was not exclusively founded on the difference between the cost of construction of the CPO site and the alternative site, I am persuaded, for reasons which I shall later explain and which arise out of the contents of the several reports and decision letters which are summarised in the decision letter of November 14 1978, that this was the sole factor which caused the Secretary of State to prefer the CPO site.

Accordingly, seeing nothing has happened to change the character of either of the two sites during the last three-and-a-half years, if it were permissible to regard the situation as it appears now for the purpose of fairly disposing of the appeal, I would unhesitatingly allow the appeal. The cost factor is altogether different now. Land values are a powerful, if not overwhelming, ingredient of it, whereas it was absent from the Secretary of State's consideration in the autumn of 1978.

But is it lawful and otherwise proper to look at the Secretary of State's decision taking account of subsequent events so as, with hindsight, to adjudge it right or wrong? It is very tempting to do so, especially when what is at stake is the right of a man to retain his land or to dispose of it when and how and to whom he chooses. There are instances in recent times when this court has, notably in claims for personal injury, looked at an

event or events subsequent to judgment in order to decide whether a plaintiff or a defendant has been justly treated, but I regard them as an exception to the general rule, which is that a decision appealed against can only be regarded within the circumstances from which it was derived. Generally to conduct the appellate process otherwise would be to introduce into it an undesirable combination of rehearing and fresh evidence which would put at peril the imperative need for judgments or orders or decisions to be final unless they are wrong in law or because, for example, the principles explained in the well-known *Wednesbury* case have not been followed.

I did not understand Lord Hooson to invite us to resolve this appeal otherwise than in the conventional way. This I propose to do, firmly believing it to be wrong to proceed differently. The most he asks of us with regard to the post-decision history is to pay regard to it as an unfolding of events, the main effect of which the Secretary of State could reasonably have anticipated as likely to occur some time soon in the future when he made his decision in November 1978. In other words, it demonstrates what it was the Secretary of State might have anticipated if he had given thought to it, namely that there was hope value in the CPO site and adjoining lands which inevitably would markedly affect the cost of acquisition under the CPO and, therefore, the cost factor which he acted upon.

So regarded, reception of evidence of that kind is, I think, unobjectionable but otherwise it must be ignored. Even when acted upon in that context it may prove to be of little or no value. This is especially so in long-drawn-out planning disputes during which time all manner of conditions and needs may change so as radically to alter a pre-existing situation.

In the present appeal I do not find the subsequent events helpful, having regard to the vast bulk of the past history, every detail of which must have been known to the Welsh Office and, therefore, to the Secretary of State if he had wished to acquaint himself of it. His role in making planning decisions and confirming or otherwise compulsory purchase orders is, if not inquisitorial, which Mr Simon Brown submits that it is not, surely investigatory, especially when he is given notice of a relevant matter which might affect his decision by a person likely to be affected by it. He must acquaint himself, from the formidable amount of assistance available to him in his department and from public inquiry, with all the information which is indispensable to the making of a just and equitable decision in the

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making of which he is entrusted with a broad discretionary power. The proper use of a discretionary power is in peril if less than the information essential for its exercise is available to him. If proper use involves him in "routing around" — see *Rhodes v Minister of Housing and Local Government* [1963] 1 WLR 208 at p 213 — relied upon by Mr Pill — he must either cause that to be done or resolve the issue in favour of the landowner.

So long as all those persons who are going to be affected by his decision are aware of the information he expects to take account of, so that they are given full opportunity to make representations to him about it at public inquiry or through correspondence either before or after public inquiry, he is not restricted in his sources of gathering relevant information. A public inquiry is the best known, most used and most useful means at his disposal to ensure that he is fully equipped to decide the matter in hand. There are times, however, when a vital point, as it seems to him later, has either been insufficiently ventilated or not touched upon at all at an inquiry.

In either of these circumstances, if he is going to allow the point to affect him, he must cause inquiries to be made into it even to the extent of reopening the public inquiry. Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at p 229 said:

He must call his own attention to the matters which he is bound to consider.

What he may not do is to proceed to exercise his discretion and allow it to be swayed by a factor which is inadequately presented to him. It matters not, so it seems to me, that he could reasonably have expected an objector or a supporter of his ultimate decision to have fully exposed for him that factor in all its facets at public inquiry or in some other way. He conducts a process of administrative decision which is quite unlike that conducted by courts and some, if not all, tribunals. Nevertheless, it is a process which is governed by disciplines vital to the public interest.

In *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 at p 1065 Lord Diplock said:

Or, put more compendiously, the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?

It could be said that the Secretary of State did ask himself the right question, although Lord Hooson submits to the contrary in the circumstances, namely whether the financial implications alone could allow him to confirm the compulsory purchase order. But whether, as on any view he should have done, he acquainted himself with all the relevant information or, I would add, all the relevant considerations indispensable to answer the question correctly, has not to my mind been established by anything we have read or heard in this court.

In this regard he cannot, contrary to a submission made to us, in my opinion, invoke, nor can anyone else who seeks to support his decision here invoke, the doctrine of estoppel against an appellant who challenges that decision, no matter that that person could, had he thought of doing so, have ventilated at public inquiry what may turn out to be a crucial facet of the factor upon which the decision is hinged. To allow a legal principle or doctrine of that kind to intrude into an administrative process such as this would, in my opinion, be both inappropriate and unjust. Moreover, in the circumstances under review here, even if the issue of estoppel were validly to be raised, it should not, in my opinion, be determined in favour of either the Secretary of State or the Welsh Water Authority. It is clear, I think, that he gave his consent to the compulsory acquisition of Sir Brandon's land solely because of the financial implications arising out of the use of that land. If, as in my view he did, he considered those implications, leaving out of account a fact vital to a proper appraisal of them, Sir Brandon cannot possibly be estopped from inviting this court to examine the effect of that omission.

The inspector whose conclusions and recommendations he accepted made it abundantly plain, as I read his report, that he was in favour of recommending the CPO site upon a financial implication only, having, so it would seem, recognised that, upon all other relevant considerations, there was nothing of consequence to cause him to prefer the CPO site to Sir Brandon's alternative. In other words, there was nothing to choose between them. In order to substantiate this appreciation of his views, it is necessary, I regret in the interests of brevity, to record in detail the contents of the following paragraphs of his report:

(xix) Sir Brandon is right again to insist that costs are not the whole story, and that other factors are also important and need to be placed in the balance. The question which therefore arises is whether those other factors, either individually or collectively, weigh so heavily against the CPO site that the considerable additional expenditure likely to prove necessary at sites 1 or 2 should be accepted in the wider public interest. Having carefully considered the origins of the dispute, the FFB Report, and the evidence of the inquiries relating to all those matters, I am convinced that they do not. I therefore propose to make a favourable recommendation in respect of a modified CPO site.

(xx) As to Sir Brandon's applications, nothing in the evidence concerning appearance, agriculture, flooding, the Nant Coslech or possible future industry suggests to me that planning permissions for sites 1 and 2 need be withheld. The evidence concerning the ancient monument and the site of special scientific interest shows that sites 1 and 2 have "negative" advantages (in the sense that damage elsewhere would be avoided or reduced), although in my

view these are marginal and are far outweighed by the prospect of heavy operational traffic being thrown on to the local road network.

(xxi) The cost of development is not normally a factor which enters into the determination of a planning application. But in my opinion this case is peculiar, in the sense that the sole object of Sir Brandon submitting his applications has been to force thorough and proper consideration of the alternative sites. There is no question of Sir Brandon ever implementing a permission(s) for the construction of a sewage treatment works, and there can be no doubt that the WNWDA (ie the public) would foot the bill.

(xxii) The machinery of physical planning control does not, and should not, operate in a financial vacuum, divorced from the harsh realities of everyday economics. Rather, I believe that wisely used it should seek to channel public investment into the right places at the right time. Thus, having concluded that the development of sites 1 and 2 is likely to incur substantial and unnecessary penalties in the shape of scarce public resources, it would be wholly illogical for me to recommend that permission be granted in respect of those sites, unless it had been demonstrated that they possess other overriding advantages compared with the authority's preferred scheme. I am convinced that they possess no such advantages, and conclude that the applications should be refused on the grounds that they represent unnecessary and wasteful expenditure of public funds.

If the inspector had thought there were other grounds including, for example, agricultural, environmental, access and highway considerations, he would have undoubtedly, in my view, expressly so stated. Thus, although these considerations are mentioned in paragraph (v) of the decision letter, it cannot be supposed, having regard to the inspector's detailed assessment of them, that they influenced the Secretary of State into confirming the CPO.

Paragraph (v) reads as follows:

Apart from the specific issues referred to in paragraphs 11(i)-(iv) above the Secretary of State has also carefully considered and accepts his inspector's general conclusions in relation to the agricultural, environmental, access and highway implications. He also accepts the inspector's assessment of the financial implications, contained in the conclusions to the report of the second reopened inquiry, concerning the water authority's proposed redevelopment and the cost comparisons with the sites advanced by Sir Brandon Rhys Williams.

In the following paragraph — (vi) — the Secretary of State said he had also considered written representations submitted to him by Sir Brandon. These were contained in his solicitor's letter of October 20 1978 wherein this paragraph appears:

This obvious potential of the CPO site for industrial purposes if the sewage works were not required to be built on it introduces material questions of relative land costs into the choice of sewage works sites. These issues cannot be resolved until the nature of the industrial development of the area has been decided but are likely to be a material factor which ought to be taken into consideration before the compulsory purchase order is confirmed. This matter was not considered at all during the inquiry.

Regardless of the main purpose of the letter this paragraph clearly alerted, or should have done I think, the Secretary of State to the likelihood that a decision based upon financial implications without consideration of relative land costs would be ill founded and, therefore, unjust to Sir Brandon. The raising of the matter of land

costs is nowhere, as I understand the decision letter, answered by it directly or, by implication, within it. The assumption must be, therefore, that the Secretary of State, in refusing to reopen the inquiry or to delay his decision, regarded the financial implication from the standpoint of construction costs and no other.

It was submitted to us that the foregoing paragraph of the solicitor's letter could not possibly have indicated to the Secretary of State that Sir Brandon was suggesting that hope value *inter alia* was being referred to by the words "material questions of relative land costs". As already indicated, I do not agree. The Secretary of State has the benefit of advice from senior civil servants well versed in such

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matters as compulsory purchase and planning. I am not persuaded that they, knowing, of course, that there were material unresolved planning applications before them, did not appreciate that it was being suggested that hope value should be taken account of.

In any event, I do not think it required this paragraph to introduce this financial factor into the mind of the Secretary of State. He was so concerned about the financial implications as to found his decision upon them. That being so, how could he neglect to consider something so fundamental as the cost of the acquisition of land upon which these wage plant was to be constructed? If this kind of decision were being taken in the commercial world I venture to think that the cost of land would have been very high on the agenda. If the Secretary of State did have it on his agenda — he has failed to prove that — he may have come to the same decision as that which is being challenged, but there is no evidence whatsoever that he gave it so much as a passing thought.

Paragraph (vii) of the decision letter is noteworthy in this connection. He therein contended that all submissions made to him after the close of the inquiries were sufficiently covered by evidence already before him. The plain fact undoubtedly is that no evidence of comparative land costs was before him. This I take to be a clear indication of his neglect to take account of them.

Does the Secretary of State's failure to inquire into and to consider the full implications of the cost of land acquisition invalidate his decision, bearing in mind the planning and all other relevant considerations? Lord Hooson submits his failure to do so is fatal to the decision — cost of land acquisition was overwhelmingly the main factor to be considered if financial considerations governed the decision. He goes further and asserts that it was wrong in principle in the exclusive context of finance to prefer the CPO site unless there were overwhelming reasons for this, eg a gross disparity in costs which the difference involved in the construction of the plant could not properly be said to amount to.

For the Secretary of State and the Welsh Water Authority it is submitted that he was not called upon to inquire into the cost of the acquisition of land, and that it was reasonable for him and therefore a proper exercise of his discretion to determine the matter as he did.

Mr Simon Brown conceded, however, that, if there were a glaring lacuna in the evidence and the considerations required properly to found a decision which is capable of being clarified without delaying the decision, the Secretary of State may be *Wednesbury* unreasonable if he does not make inquiries. In other words, he must be shown to have acted perversely.

In the sphere of compulsory land acquisition, the onus of showing that a CPO has been properly confirmed rests squarely on the acquiring authority and, if he seeks to support his own decision, on the Secretary of State. The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. Compulsory powers must not be used unless it is clear that the Secretary of State has allowed those proprietary rights to be violated by action based upon

the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought.

I have come to the conclusion that his decision should not be upheld. A vital consideration was not inquired into, in my view. It was, therefore, left out of account in the exercise of the Secretary of State's discretion. The hope value of parts of the Miskin lands should not have been disregarded as it was, especially seeing that there was evidence of its possible existence. An inquiry into it would not, it seems to me, have delayed the decision by much time, if any. To fail to make that inquiry was a glaring omission going to a fundamental consideration.

For these reasons I, too, would allow this appeal.

Also agreeing that the appeal should be allowed, FOX LJ said: I approach this case on the basis that the propriety of the Secretary of State's decision must be determined by reference to the facts as they existed at the date when he gave the decision. No argument to the contrary was addressed to us. Indeed, Lord Hooson, as I understood him, accepted that basis as correct. That concession was, in my view, rightly made. I see no ground upon which the propriety of the Secretary of State's decision in November 1978 can be determined by reference to an event occurring over three years later (ie the Secretary of State's letter of March 12 1982 indicating that he was prepared to permit industrial development subject to conditions).

The principal matter raised by the appeal is what attitude the Secretary of State should have taken to the question of comparative acquisition costs. The matter was not considered at all at the public inquiry, where the investigation of comparative costs was directed to the costs of construction. The inspector records, however, in paragraph 263(a) of his report: "All these lands are in the ownership of Sir Brandon or his children's trustees. Gwern-y-Gedrych is no longer being actively farmed and such land as the authority might require is 'on offer' at existing use value." Gwern-y-Gedrych is the alternative site offered by Sir Brandon. Are the appellants now estopped from raising the point? At the date when the Secretary of State gave his decision there had already been three public inquiries. The opponents of the order were not lacking in professional advice or, I think, in determination in their resistance to the confirmation of the order. They had every opportunity and incentive to raise the matter. In my view, however, there is no question of estoppel here. The Secretary of State's duty was to review the position in the light of all relevant considerations. He had a duty to direct his mind to the material questions and to take reasonable steps to inform himself. If the Secretary of State fails to discharge that duty I do not think that the landowner is precluded from complaining merely because he failed to see the point at an earlier stage. The inquiry is not litigation, it is merely an aid to the ascertainment of the material facts and issues. It may well be that, in determining whether the Secretary of State has directed his mind to the right questions and has taken reasonable steps to inform himself, the court should have regard to what was, at the time the Secretary of State made his decision, common ground or unquestioned between the parties. Thus, if at the inquiry (a) the question of cost was in issue, (b) Gwern-y-Gedrych was on offer at existing use value, (c) it was then speculative whether the possibility of industrial development would materially increase land values and (d) the complainants put forward no case that the land values were materially increased by that possibility, it might be said that the Secretary of State could reasonably infer, without further inquiry, that the mere possibility of industrial development being permitted consequent upon the planning applications had no material effect upon land values. But, if that proposition is correct (and, as I mention later, I feel doubt as to what the impact of the applications on value might be), it is not, in fact, the situation which faced the Secretary of State when he made his decision. By that time he had received the letter from Sir Brandon's solicitors dated October 20 1978. There are a number of passages in that letter to which I should refer. Thus, the letter in its opening paragraph states:

We understand that the report of the inspector following the public inquiry which closed in December 1977 has been submitted to you and the purpose of this letter is to request that this inquiry be reopened before a decision is taken to enable certain matters which arose since the inquiry closed or were not placed before the inquiry to be fully and openly investigated.

The matters thus referred to are set out in 10 numbered paragraphs.

In paragraph 1, after a reference to the applications for planning permission for industrial development, it is stated: "Your decision on the CPO should not, therefore, we submit with respect, be made until these two applications have been considered."

Paragraph 4 is in the following terms:

This obvious potential of the CPO site for industrial purposes if the sewage works were not required to be built on it introduced material questions of the relative land costs into the choice of sewage works sites. These issues cannot be resolved until the nature of the industrial development of the area has been decided but are likely to be a material factor which ought to be taken into consideration before the compulsory purchase order is confirmed. This matter was not considered at all during the inquiry.

Finally, in paragraph 10, the letter states:

Our client considers that for these and other reasons the conclusions of the Secretary of State following the public hearing into the applications to develop the red and the green land should be available before the crucially relevant question of the choice of site for the sewage works can be determined..... It would, we submit, be contrary to natural justice to announce a precipitate decision in favour of the CPO site before the industrial site hearings have taken their proper course and decisions have been taken.

There is no doubt that the main object of this letter was to ask that the Secretary of State reopen the inquiry or defer a decision upon the compulsory purchase order until the planning applications had been determined. The Secretary of State considered that request and he rejected it. He was perfectly entitled to do so.

[1983] 1 EGLR 17 at 23

While I think that the main object of the letter was as I have indicated, the provisions of para 4 are, I think, of wider effect and are important. The paragraph asserts that the potential of the CPO site for industrial purposes introduced material questions of comparative land costs which had not previously been considered. It is true that the paragraph also states that "these issues cannot be resolved until the nature of the industrial development of the area has been decided", but it also states that those issues "are likely to be a material factor which ought to be taken into consideration before the compulsory purchase order is confirmed". In my view, paragraph 4 must be read as bringing to the attention of the Secretary of State the contention that the possibility of industrial use now introduced material factors of comparative land costs which should be taken into consideration before the order was confirmed. That condition replaced the attitude adopted by Sir Brandon at the inquiry.

The Secretary of State, in confirming the order, accepted, in general, the conclusions and recommendations of the inspector. In paragraph 11(v), the Secretary of State says:

Apart from the specific issues referred to in paras 11(i)-(iv) above the Secretary of State has also carefully considered and accepts his inspector's general conclusions in relation to the agricultural, environmental, access and highway implications. He also accepts the inspector's assessment of the financial implications contained in the conclusions to the report of the second reopened inquiry concerning the water authority's proposed development and the cost comparison with the sites advanced by Sir Brandon Rhys Williams.

The inspector had reported in the decision letter:

(xviii) Mr Shiell's assessment of the engineering evidence accompanies this report and is wholly accepted by me. It is to be expected that however hard promoters of different schemes may attempt to take a disinterested view they will tend, perhaps subconsciously, to maximise the difficulties of the rival site and minimise the problems of the one they favour. The truth often lies somewhere between. The manner in which Mr Shiell has picked a scrupulous path through the various elements of the alternative schemes strikes me as being fair, rational and comprehensive. The result of that impartial analysis suggests that, compared with the CPO site, the construction of similar treatment works would cost some £230,000 more on site 1, and some £320,000 more on site 2.

(xix) Sir Brandon is right again to insist that costs are not the whole story, and that other factors are also important and need to be placed in the balance. The question which therefore arises is whether those other factors, either individually or collectively, weigh so heavily against the CPO site that the considerable additional expenditure likely to prove necessary at sites 1 or 2 should be accepted in the wider public interest. Having carefully considered the origins of the dispute, the FFB Report, and the evidence of the inquiries relating to all those matters, I am convinced that they do not. I therefore propose to make a favourable recommendation in respect of a modified CPO site.

It appears, therefore, that the inspector regarded construction cost as the determining factor and that the Secretary of State accepted that. But, if the increased cost of construction on the alternative site was a determining factor on the figures available to the inspector, that was a circumstance which could be altered if in fact the cost of acquisition of the alternative site was much lower by reason of the beneficial offer made by Sir Brandon to sell the alternative site at existing use value coupled with the possibility of a large increase in value of the compulsory purchase order site consequent upon the likelihood of industrial development.

So the position is this. The Secretary of State decided in favour of the compulsory purchase order on the basis of the increased construction costs if the alternative site were used. The letter of October 20 1978, however, asserted that a new factor was introduced into the equation, namely comparative acquisition costs. The Secretary of State was bound to consider that. In para 11(viii) of the decision letter he states:

All representations received after the close of the inquiries.....have been carefully considered. It has been concluded, however, that there is nothing contained therein which is not sufficiently covered by evidence already before the Secretary of State.

That statement does not answer the present problem. We have no reason to suppose that the Secretary of State ever had any evidence of comparative land costs in front of him. He does not appear to have received any at the inquiries and there is nothing to suggest that he obtained any from any other source. I do not think it is sufficient to say that nobody suggested at the inquiry that the difference in value was significant and that the making of the planning application in 1978 left the position as to industrial user as speculative as it was before the planning applications were made. So far as the inquiry is concerned, the importance of the letter of October 20 1978 is that it raised a new contention which, as the letter itself stated, was not considered at all during the inquiry. That being so, I do not think that the fact that no point was taken at the inquiry can be a reliable guide to the question of value at the time of the inquiry. If it was not, then the fact that the planning position remained uncertain still does not give a reliable guide to value. I am not, in any event, satisfied on any evidence before us whether the making of the applications might not have affected value. Dealers in land might be influenced by applications made by major local landowners and the Land Authority for Wales.

I can only conclude that, in a case where the Secretary of State decided to confirm the compulsory purchase order primarily on considerations of cost, and where shortly before his decision he was asked to take ac-

count of land acquisition costs, he confirmed the order without material as to what the latter costs were. Accordingly, I do not think that he can have given the proper degree of consideration to the overall question of cost. The onus of establishing that a compulsory purchase order has been properly made must be on the acquiring authority. The question of cost was a material issue. One of the elements in the total cost was land acquisition cost. I am not satisfied that the Secretary of State had adequate material to judge the latter cost when he made his decision. I would allow the appeal.

The appeal was allowed with costs in the Court of Appeal and below. Leave to appeal to the House of Lords was refused.

Appendix 6 – Policy 4 of the Doncaster Local Plan 2021

Policy 4: Employment Policy Areas (Strategic Policy)

Buildings or land, the use of which fall within Use Classes B2 and/or B8 within Employment Policy Areas, as defined on the Policies Map, will continue to be supported primarily for these uses. Where possible existing land and premises used for offices, research and development and light industrial (Use Class E(g)) will be retained.

The Council will consider the use of planning conditions for applications which are for offices, research and development or light industrial uses (Use Class E(g)) to ensure that they remain within that use in perpetuity.

Other uses will be supported within Employment Policy Areas provided the following criteria are satisfied:

- A)** It can be clearly demonstrated they support the existing or permitted employment uses on the site; or
- B)** They are a specialist use appropriate to the site; or
- C)** Are a mix of commercial and/or community uses that provide clear additional benefits to the community.

If one of the above criteria is satisfied, the following should be demonstrated:

- D)** Alternative employment sites are accessible from the locality which are suitable in terms of quality and quantity so as to ensure there is still easy access to employment uses;
- E)** The proposed use is appropriate in terms of scale, design and location will not adversely affect the operation of adjacent employment land or uses through environmental, amenity or traffic problems; and
- F)** There is compelling evidence that the buildings or land are no longer viable for B2, B8 or E(g).

Explanation

- 4.62. Employment Policy Areas play an important role in ensuring that there is a range of employment land and buildings available to meet employment needs. It is important that these sites are retained whilst having regard to the NPPF which states that employment land should not be protected for employment use if there is no reasonable prospect of the land being used for that purpose and that applications for alternative uses of land or buildings should be treated on their merits.
- 4.63. Any planning application on Employment Policy Areas will need to consider if a greater level of mitigation is required for new proposals to ensure the amenity of surrounding uses are taken into account. Similarly, new development proposals adjacent to or near Employment Policy Areas will need to take account of the existing business activities and ensure suitable mitigation measures are in place so that businesses can operate efficiently and that neighbouring uses are compatible.
- 4.64. This policy seeks to ensure that any loss of employment land or buildings still provides additional benefits to the community in which it is located. It is important that other uses are not granted permission on employment land just because the land values are more acceptable to the applicant.
- 4.65. It is imperative that there is compelling evidence that clearly shows that the building or land is no longer viable for employment use. The applicant will need to demonstrate that the building or land has been marketed to the Council's satisfaction for at least 12 months. This should include traditional and web-based marketing as well as regular advertisement in local, regional

and national publications as appropriate. In addition to this, opportunities to re-let the building need to be fully explored. It should be demonstrated that the building or land have been marketed at a price commensurate with market values (based on evidence from recent and similar transactions and deals). It should also be demonstrated that the terms and conditions set out in the lease are reasonable and attractive to potential business and that no reasonable offer has been refused.

- 4.66. In the past the Borough has seen increased pressure on employment sites for community, leisure, specialist retail uses (such as car or caravan showrooms) and service uses which do not have specific allocations or which prefer to be on employment sites where business needs are met. However, these uses will only be permitted where relevant considerations have been addressed such as proving demand for the use, passing a sequential test (if relevant), addressing highways and parking issues and environmental health concerns. It is recognised that the changes to the Use Class Order which came into effect on 1 September 2020 now mean that some uses no longer require planning permission to change to a different use.

Housing Allocations

- 4.67. To help deliver the Spatial Strategy (Policy [1](#)), meet the needs for housing (Policy [2](#)) and support sustainable communities, the following policy allocates new site specific housing proposals. It should be read together with the policies in [Chapter 6](#); and [Chapter 16](#) where the site specific allocations are found at settlement level.

Policy 5: Housing Allocations (Strategic Policy)

Housing Allocations to deliver the housing requirement and distribution set out in Policy [2](#) are shown on the Policies Map and set out in [Tables H1\(A-O\)](#) and [Tables H2 \(A-Q\)](#).

Tables [H1\(A-O\)](#) of Chapter [16](#) identify sites with planning permission (as at 1/4/2018) as Housing (or Mixed-use including housing) Allocations that will help deliver the housing requirement.

Tables [H2\(A-Q\)](#) of Chapter [16](#) identify sites without planning permission (as at 1/4/2018) as Housing (or Mixed-use including housing) Allocations that will help deliver the housing requirement. They will be developed having regard to both the specified developer requirements set out at Appendix [2](#) and the indicative number of homes specified in Tables [H2\(A-Q\)](#) and at Appendix [2](#). Proposals for lower or higher densities will be supported where this would assist in the delivery of a better design solution.

Housing and Mixed-use Allocations will be developed primarily for residential uses (or in the case of mixed-use, the uses specified). Other uses will only be permitted on these sites where they:

- A)** are small scale and ancillary to the housing;
- B)** provide a service or other facility mainly for local residents; and
- C)** would not harm residential amenity or undermine the delivery of housing.

Tables [H3 \(A-E\)](#) of Chapter [16](#) identify sites, shown on the Policies Map, as designated Potential Development Sites. They are suitable for housing (or mixed-use including housing) development but are not currently considered developable in the plan period. Housing (or mixed-use including housing) development will be supported in accordance with the policies of the Local Plan and will be additional to the allocated land supply. Proposals that would remove the anticipated housing potential will not normally be supported unless it is demonstrated that housing is unlikely to be viable.

Explanation

- 4.68. Policies [1](#) and [2](#) set the minimum housing requirement of 15,640 net new dwellings (or 920 net new dwellings per annum) over the remaining 17 year plan period (2018-2035), commits to