

in that case to the protection of the tenants of a dwelling-house, but also because the terms of the consent judgment in this case clearly evidence the agreement reached by the parties and the certificate included in the judgment.

16 In the circumstances, while having considerable sympathy for the plaintiff, I find that in the absence of any consent by the defendants to further withhold enforcing the court's order that the plaintiffs deliver up possession of the premises, the defendants' application for leave to issue a writ of possession to enforce the consent judgment of October 14th, 1985 should be granted, and I so order.

Application granted.

[1980–87 Gib LR 392]

IN THE MATTER OF CULATTO AND LANGDON

SUPREME COURT (Alcantara, A.J.): September 26th, 1986

Administrative Law—judicial review—legitimate expectation—legitimate expectation not created by single speech of Minister—applicant may not legitimately expect opportunity to be heard on matters concerning town planning or demolition merely because Chairman/Deputy Chairman of Gibraltar Conservation Society

Town Planning—development—public participation—under Town Planning Ordinance, public entitled to seek judicial review of decision of Development and Planning Committee to demolish building intended to be conserved under City Plan—public to be informed about City Plan and involved in every stage of development process

The applicants sought judicial review of a decision of the Development and Planning Commission, to grant a demolition permit, contrary to the 1976 City Plan, for the Old Command Education Centre; an order prohibiting the redevelopment of that area; and a declaration that the Commission had acted in breach of its statutory duties under the Town Planning Ordinance.

The Government of Gibraltar offered for development the area in which the Old Command Education Centre was located. The development guidelines for the Centre specified that it was to be conserved, but stated that prospective developers were free to make proposals as to the potential

development of the land. Three development schemes were submitted, all of which recommended the demolition of the Centre. One of the schemes was accepted and the Commission issued a permit for its demolition.

The applicants sought judicial review of this decision, submitting that (a) they were entitled to seek judicial review, not only as members of the public, but also as the Chairman and Deputy Chairman of the Gibraltar Conservation Society; (b) in ordering the demolition of the Centre, the Commission had disregarded its duties under the Town Planning Ordinance, s.15, as the 1976 City Plan specified that the Centre was to be conserved; (c) by failing to allow members of the public to advance their views and objections concerning the development scheme, the Commission had also disregarded its statutory duty under s.7 of the Town Planning Ordinance; and (d) they had had a legitimate expectation, as a result of a speech made by the Minister of Economic Development, that they would be given the opportunity to be heard on the matter of demolition.

The respondent submitted that (a) the Development and Planning Commission had been fully justified in granting a demolition permit on the grounds of public safety as the building was likely to have become a danger to the public if left in its existing state; and (b) the applicants had lost their right to seek judicial review as they had unnecessarily delayed in bringing the application—the decision to allow the Centre to be demolished could have been challenged before the demolition permit was issued.

Held, dismissing the application for judicial review but granting a declaration that the Commission had acted *ultra vires*:

(1) Judicial review of the decision of the Commission would not be granted. It was a discretionary remedy and as there had been no utter or blatant disregard of the law, the court was entitled to refuse it. A declaration would be made, however, that the issue of the demolition permit had been *ultra vires* the powers of the Development and Planning Commission. Under the Town Planning Ordinance, the Commission was required to act in conformity with the 1976 City Plan which stated that the Old Command Education Centre was to be conserved. It could not be argued that the state of the building justified the grant of a demolition permit as, although it was true that if the building were allowed to deteriorate it would become hazardous, in its existing state it posed no danger to the public. The declaration would sufficiently remedy the situation as it would serve both to affirm the need for public participation in planning and ensure that the Commission was made aware, not only of its powers, but also its duties under the Town Planning Ordinance (para. 18; paras. 35–36; paras. 50–51; paras. 53–55).

(2) That the applicants were the Chairman and Deputy Chairman of the Gibraltar Conservation Society gave them no better right than any other group to seek judicial review. Nor could they claim to have had a legitimate expectation that, as individuals representing the Conservation Society, their views regarding the demolition would be heard, particularly

since a legitimate expectation could not be said to arise from a single speech made by a minister. They were entitled, however, under the Town Planning Ordinance, to seek judicial review of decisions of the Commission as members of the public and although delay could defeat the right to judicial review, in the present case there was no delay to defeat the application. Under the Town Planning Ordinance, the general public had a right, not only to be fully informed about the City Plan and any developments, but also to express their opinion, put forward objections and be involved in every stage of the development process (para. 17; para. 39; para. 48).

Cases cited:

- (1) *Council of Civil Serv. Unions v. Minister for Civil Serv.*, [1985] A.C. 374; [1984] 3 W.L.R. 1174; [1984] 3 All E.R. 935; [1985] I.C.R. 14; (1984), 128 Sol. Jo. 837; *sub nom. R. v. Foreign & Commonwealth Secy., ex p. Council of Civil Serv. Unions*, [1985] I.R.L.R. 28, considered.
- (2) *Inland Rev. Commrs. v. National Fedn. of Self-Employed & Small Businesses Ltd.*, [1982] A.C. 617; [1981] 2 W.L.R. 722; [1981] 2 All E.R. 93; (1981), 125 Sol. Jo. 325, considered.

Legislation construed:

Town Planning Ordinance (1984 Edition), s.6: “Any planning scheme, prepared under the direction of the Commission, which the Commission deems suitable for publication, shall be exhibited by the Commission for public inspection, at reasonable hours for a period of two months, and during such period the Commission shall advertise once a week in a local newspaper and shall notify in each issue of the Gazette the place and hours at which such scheme may be inspected, and shall supply a copy of such scheme to any person on payment of such fee as the Commission may determine.”

s.7: The terms of this section are set out at para. 9.

s.15: The relevant terms of this section are set out at para. 16.

P.J. Isola for the applicants;

K. Harris, Senior Crown Counsel, for the respondents;

J. Levy and *D.J.V. Dumas* for an interested party.

1 **ALCANTARA, A.J.:** This is an application for judicial review seeking (a) an order of certiorari to quash a demolition permit dated July 4th, 1986, which authorizes the demolition of the buildings known as the Old Command Education Centre; (b) an order of prohibition prohibiting the redevelopment of that area; and (c) a declaration that the Development and Planning Commission was in breach of its statutory duties under the Town Planning Ordinance.

2 The applicants allege:

“In granting a demolition permit of the buildings, the Commission have—

(1) disregarded their duties under s.15 of the Ordinance in that they have ignored entirely the standards of guidance to which the Ordinance requires them to adhere in the exercise of their statutory duties;

(2) disregarded their statutory duty to allow members of the public to give their views and objections to any changes of substance to planning schemes.”

3 The application was heard as a matter of urgency during the vacation between August 27th–29th and September 1st, 1986. On the last day of the hearing, I made the following pronouncement:

“This case merits a considered judgment which I will deliver in due course, but my decision must be made known now as a matter of some urgency and practicability because of a development which has been stayed:

(i) The applicants have the requisite *locus standi* to apply for judicial review.

(ii) The applicants have satisfied me as to the merits of their application.

(iii) Although the applicants have succeeded, this court is not prepared to make an order of certiorari or prohibition. It is, however, prepared to make the following declaration:

‘That the order of demolition issued by the Development and Planning Commission was contrary to the City Plan and not in conformity with the Town Planning Ordinance.’

One consequence of my decision is that there is no longer a stay.”

4 To understand this application for judicial review, it is necessary to find out what the Town Planning Ordinance is all about. It was enacted in 1973, and its Preamble reads:

“An Ordinance to promote the health, safety, physical, economic and general welfare of the community by making provision for the preparation and approval of planning schemes for the future physical development of Gibraltar as well as for the control of buildings suitable for erection therein.”

5 By s.3 of the Ordinance, the Development and Planning Commission was established. The Commission was to be a high powered one as can be seen from paras. 1 and 2 of the Schedule to the Ordinance under the heading “Development and Planning Commission”:

“(1) The Commission shall consist of the following members:

- (a) the Minister charged with responsibility for economic development;
- (b) two persons nominated by the Chief Minister;
- (c) two persons nominated by the United Kingdom departments;
- (d) the Financial and Development Secretary;
- (e) the Director of Public Works;
- (f) the Director of Crown Lands.

(2) The Directors of Public Works and of Crown Lands shall have no vote.

2.(1) The Minister charged with responsibility for economic development shall be the Chairman of the Commission and shall preside at all meetings of the Commission.”

6 The functions of the Commission are set out in s.4. Rather than set out the section in full, I will highlight its duties which are set out in sub-s. (a) as to “undertake the preparation of planning schemes for the physical development of existing urban areas and such other areas as the Governor may direct, as well as for the type of buildings suitable for erection therein.” The whole of Part III, consisting of ss. 5–15 of the Ordinance, is dedicated to planning schemes. To understand the schemes, it would be helpful to set out the marginal notes to the different sections with an explanatory note as to what each section purports to achieve.

7 Section 5 concerns the context of planning schemes and powers of the commission. This section gives the Commission guidelines as to what planning schemes should consist of. Of special interest is para. (1) of sub-s. (3), which is to the following effect: “The demarcation of areas for the preservation and restoration of buildings and sites of archeological or historical or similar interest (including ancient monuments and other sites protected by law).”

8 Section 6 concerns the exhibition of schemes. Planning schemes must not only be exhibited for a period of 2 months, they must also be advertised and any member of the public is entitled, not only to inspect it, but is also to be supplied with a copy, on payment of a fee.

9 Section 7 concerns the consideration of objections. Any member of the public is entitled to object to anything in a planning scheme. In certain circumstances, the member of public objecting has a right to be heard at a meeting of the Commission. Sub-section (10) of this section is also of interest:

“Any person aggrieved by the decision of the Commission on the hearing of an objection may within fifteen days of the notification of the Commission’s decision appeal to the Governor in writing who shall determine the same upon consideration of a planning scheme under section 10.”

10 Section 8 concerns the amendment of schemes otherwise than upon objection. There is provision for the Commission to amend a planning scheme before it receives the approval of the Governor. Such amendment must be made public and the person affected can object.

11 Section 9 concerns the submission of schemes to the Governor. It is only after the objections have been considered by the Commission that the planning scheme is submitted to the Governor for approval. Amendments and objections must be brought to the attention of the Governor.

12 Section 10 concerns the powers of the Governor. The Governor has very wide powers. He can approve, disapprove, correct a planning scheme or refer it back. Once approved, it must be printed and exhibited for public inspection. It then becomes what, in this case, has been referred to as the City Plan.

13 Section 11 concerns the refusal of a scheme. The Governor can refuse to approve a planning scheme. His refusal must be made public by notice in the *Gazette*. Section 12 concerns the deposit of copies of approved schemes. A copy of the approved planning scheme or City Plan must be deposited in the Government Secretariat and must be made available for public inspection without payment of a fee.

14 Section 13 concerns the revocation, replacement and amendment of approved schemes. The Governor has wide powers in this respect but the exercise of such powers must be notified to the public by notice in the *Gazette*, and any replacement or amendment to the planning scheme must be duly exhibited, considered and submitted.

15 Section 14 concerns the revision of approved schemes. The Ordinance envisages that the City Plan should be a living thing and not a fossil, and therefore there should be periodic revisions. Originally, a revision had to take place at least once every five years. Later a discretion was given to the Commission to extend that period.

16 Section 15 concerns approved schemes which are to serve as standards. I will reproduce this section in its entirety as it was the cause of considerable argument between the parties: “Approved planning schemes shall be used by the Commission and all public officers and bodies as standards for guidance in the exercise of any powers vested in them.”

17 Having considered the Town Planning Ordinance as a whole and in particular Part III, I have formed the opinion that it was the intention of

the legislature that the public should not only be fully informed about the City Plan, but that they should also have the right to express their opinion and put forward objections which are to be considered. The public involvement is at all stages—preparation, exhibition, hearings and appeals—not only with regard to the approved plan itself but also with regard to any replacement or amendment.

18 The other conclusion I have come to is that the Development and Planning Commission has only the powers granted to it by the Ordinance. It has no residuary or prerogative powers. It is the creature of legislation and as such is confined by the relevant legislation. I will now proceed with the historical or background aspect of the matter, on which there is some agreement.

19 All the parties accept that there is only one approved City Plan. It came into existence in 1976. Mr. Culatto, one of the applicants, in his affidavit in support of this application, dated August 7th, 1986, states in para. 3: “The paper now shown to me is a true copy of the ‘Gibraltar City Plan’ and the survey and analysis of the ‘Gibraltar City Plan’ which was duly approved by the Governor under the provisions of the Town Planning Ordinance.”

20 The respondents do not agree and have produced an affidavit from Mr. Sanguinetti, who was the Chief Planning Officer when the City Plan first saw the light of day. Mr. Sanguinetti, in his affidavit dated August 26th, 1986, states at para. 4 that—

“Mr. Culatto incorrectly describes his exhibit as the ‘Gibraltar City Plan.’ The ‘Gibraltar City Plan’ which was approved by the Governor, consists of all plans prepared pursuant to what is now s.5 of the Town Planning Ordinance, along with the relevant written statements contained in the ‘Survey and Analysis’ and the ‘Approach and Proposals.’”

21 What Mr. Sanguinetti is saying is that the City Plan is not just one document, but a number of documents, including; (a) the actual plans, drawings or maps; (b) the document “Survey and Analysis”; and (c) the “Approach and Proposals.” The applicants do not quarrel with this view. In fact, they could not, taking into account the definition of “planning scheme” to be found in s.2 of the Ordinance: “‘planning scheme’ means any plan or plans prepared by the Commission under s.4, and includes any written statement or explanation forming part thereof.”

22 The parties might well have been *ad idem* about what the “City Plan” consisted of had it not been for what Mr. Sanguinetti further deposed in his affidavit at para. 6:

“I can most certainly state, however, that the drawings and sketches appearing after p.24 of the ‘Approach and Proposals’ were not intended for the Governor’s approval as part of the planning scheme and these drawings were therefore not approved by the Governor.”

And further, at para. 14 of the same affidavit:

“The drawings and plans appearing in the ‘Approach and Proposals’ immediately after p.24, referred to by Mr. Culatto, were simply illustrations of one possible example of what could be done in this particular area, including the Old Command Education Centre, in the context of the designation of the area as a conservation and development area. These plans are certainly not an approved planning scheme within the Town Planning Ordinance.”

23 What is most significant is that Mr. Sanguinetti does not depose that the drawings contained after p.24 were not submitted to the Governor. Neither does he depose that the Governor disapproved of them or that he referred them back to the Commission. With all due respect to Mr. Sanguinetti, his statement is not at all clear. I wonder whether he is saying that the Commission had a secret intention which they did not communicate to the Governor when submitting the City Plan for approval. I think not. What I think he is saying is that the drawings after p.24 were specific types of illustrations which were meant to be flexible.

24 I find as a fact that the City Plan includes the drawings to be found after p.24 as part and parcel of the document “Approach and Proposals,” which was submitted to the Governor, without amendment, as part of the City Plan. We have now cleared the decks and know what the 1976 City Plan comprised.

25 The next milestone took place in 1982. I extract from Mr. Sanguinetti’s affidavit a statement he made concerning the Old Command Education Centre. He says at para. 17:

“Similarly, the proposals made by Professor Simon Atkinson in the report by Atkinson International Associates in 1982, were drawn up on the basis of conserving and developing the area in accordance with its earlier designation. The brief, however, extended no further than the making of proposals in accordance with town planning and design principles.”

26 Following this study, the Minister of Economic Development, speaking on behalf of the Commission, gave an address at an exhibition held on

May 8th, 1982. The major theme of his address was the conservation of the Old Command Education Centre and public participation. I extract some quotations from his address:

“... [H]owever, we felt it was important to deal with the Cornwall’s Parade area as an initial design pilot scheme ... The Commission was totally convinced that the quality and character of the buildings that form the setting of the entire area contained in this exhibition were, by and large, worth conserving ... The purpose of this exhibition is to provide information to the general public ... Your views would be most welcomed as these will certainly be considered in the formulation of final proposals.”

27 It appears that the thinking, both of Government and the Commission, was that the Old Command Education Centre should be both conserved and developed. There is confirmation of this in a document known as the “Development Brief.” The Government, by notice in the *Gazette* in 1985, was offering the Old Command Education Centre for development within certain guidelines which stated:

“The design guidelines are described in detail in the attached booklet entitled ‘Development Brief.’ The area shaded blue ... shows the extent of permissible demolition. The remaining area, comprising the main building fronting in Cornwall’s Parade and part of Bell Lane, should be retained and incorporated into the scheme ... The development brief has been the subject of a public participation exercise and has been approved by the Development and Planning Commission.

Although the extent of demolition and renovation is shown on the plans, the developer is free to submit his own scheme taking into consideration the objectives and design criteria contained in the Development Brief (paras. 5.1 and 5.2 of the booklet).”

28 In para. 1 of 5.2 of the booklet referred to above, it says that: “The former Old Command Education Centre should be retained, adapted, and improved as an outstanding building, both in the floor space it offers, and within its architectural and urban context.” There can be little doubt that it was both explicit and implicit in the Atkinson Report, in the address by the Minister of Economic Development and in the development brief that the Old Command Education Centre was going to be retained, conserved, adapted and developed. These documents, however, do not form part of the City Plan, they are subsequent to it. Their value is that they might throw some light on the City Plan. They just cannot be totally disregarded. What I have to do now is to find out what the City Plan said about the Old Command Education Centre.

29 Before I do so, I must identify the last important document which has given rise to this application. That is the demolition permit:

“By virtue of the powers vested in it by the above Ordinance and for the purpose of the said Ordinance, the Development and Planning Commission hereby permits the demolition of the building described below to be executed in accordance with plans and specifications submitted to the Commission by Taylor Woodrow of Gibraltar Ltd. on May 21st, 1986, namely: the proposed demolition of Crown Property Nos. 233, 234 and 235, being the Old Command Education Centre situated at Cornwall’s Parade subject to the conditions in the schedule hereto.”

30 On the hearing of this application, the circumstances which gave rise to the issue of this permit have been explained. I will refer to them later. They were not before me on the hearing of the application for leave to apply. There was not then or at the hearing of this application, a building or development permit. Insofar as I am concerned, no building permit has so far been issued. One thing to notice about the demolition permit is that Taylor Woodrow of Gibraltar Ltd. was given two years to demolish the Old Command Education Centre.

31 What, however, does the City Plan have to say about the Old Command Education Centre or in relation to it? Within the city there are only three areas which are “general improvement and conservation area[s],” one of them is the area of the Old Command Education Centre and the immediate vicinity. This can be seen in the drawings of district No. 2. The relevant area is diagonally delineated blue and white. So we come to the conclusion that the area of the Old Command Education Centre was a “general improvement and conservation area” in what I have already described as the City Plan. In order to understand the significance of the City Plan, it must be read and interpreted in conjunction with the “Survey and Analysis” and the “Approach and Proposals.”

32 The “Survey and Analysis” has a chapter on Conservation, Townscape and Landscape. Here are some extracts:

“The other aspect of conservation previously mentioned, *i.e.* the desirability of designating certain areas within the walled city as conservation areas, is dealt with in considerable detail in this analysis

...

... The need for the conservation of certain areas of townscape is obvious if we wish to retain the character of the city. But it is also obvious that there are many areas which require general improvement. Some areas may require general redevelopment, others a combination of improvements, some redevelopment but predominantly conserved as existing ...

. . . Only if the recommended measures are adopted or others that might be equally effective, can we succeed in the type of exercises of conservation, redevelopment and general improvements that are presented in the report showing proposals.”

33 The report showing proposals is the “Approach and Proposals.” Note that it does not say that the illustrations after p.24 are excluded. The “Survey and Analysis” was prepared and written by Mr. Sanguinetti who was Chief Planning Officer at the relevant time. Note that there is no mention of the Old Command Education Centre—only conservation areas are mentioned.

34 We now come to the “Approach and Proposals.” Under the heading “Area 2—Control area within the City Walls,” we find the following:

“For these reasons, this area is being presented under the Gibraltar City Plan as a District Plan with detailed proposals for change and growth within defined limits and the designation of conservation areas and general improvement areas within it. This report contains illustrations and sketches of examples for a conservation area and a general improvement area, *i.e.* Castle Street/Cornwall’s Parade and Tank Ramp respectively. The views of the general public on these two proposals would be welcome.”

35 The Cornwall’s Parade area, also known as the Old Command Education area, was to be a conservation and improvement area, not even a development area. The plans and sketches after p.24 are only illustrations of what could be done, but they also confirm that the Old Command Education Centre was going to be conserved. Corroboration of this can be found in the Atkinson report, the minister’s address and the development brief. I have no hesitation in coming to the conclusion that it was part of the City Plan that the Old Command Education Centre should be conserved.

36 I have already answered this question, but I will answer it again: is the demolition permit contrary to the City Plan? The answer is “Yes.” “To conserve” in the *Shorter Oxford English Dictionary* is “to preserve in its existing state from destruction or change.” By no stretch of the imagination can it be said that the total destruction or demolition of the Old Command Education Centre is in keeping with the City Plan. For example, you do not conserve the Tower of London by razing it to the ground and thereafter building a mock Plantagenet palace in its place. I also arrived at the conclusion that the demolition permit was not in conformity with the Town Planning Ordinance.

37 To succeed, the applicants have to satisfy me on three points. First, that they have *locus standi*; secondly, that their application has merits; and, thirdly, that the court’s discretion should be exercised in their favour.

First, as to the *locus standi* of the applicants; this has been extensively and exhaustively argued, both at the leave to apply stage and on the application itself. The applicants come before me, not only as ordinary members of the public, but as Chairman and Deputy Chairman of the Gibraltar Conservation Society. Counsel on their behalf puts forward two grounds:

(a) that the Town Planning Ordinance gives them a right to question the decisions of the Development and Planning Commission; and

(b) that they also have a “legitimate expectation” of either being informed or given an opportunity to object.

38 I will deal with the latter proposition first. Counsel relies on the House of Lords case, *Council of Civil Serv. Unions v. Minister for the Civil Serv.* (1). This case is commonly known as the *Cheltenham* case, and for the sake of brevity, I shall hereinafter refer to it by that name. Civil servants at the Government Communications Centre (GCHQ) took industrial action on several occasions which disrupted the working of the Centre. In 1984, the Government decided to introduce new conditions of service for the staff, the effect of which was that they would no longer be permitted to belong to national trade unions. They would be permitted to belong only to a departmental staff association approved by the director. The trade unions sought judicial review asking for a declaration that the new conditions were invalid. In the Divisional Court, the judge, Glidewell, J., granted the declaration on the ground that there had been a procedural irregularity in failing to consult before issuing the instructions. The Court of Appeal reversed the judge’s decision, but his decision was upheld by the House of Lords. I have been referred to a number of passages by different Law Lords, but I think that the second holding of the headnote to the case in *The All England Law Reports* deals with the matter succinctly. It states ([1984] 3 All E.R. at 936):

“An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he had been permitted to enjoy and which he could legitimately expect to be permitted to continue to enjoy either until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had been given an opportunity of making representations against the withdrawal.”

39 Counsel for the applicants has sought to argue that the Minister’s address of May 7th, 1982 gave them, as conservationists or members of the Gibraltar Conservation Society, the “legitimate expectation” that they would be consulted or given the opportunity to be heard. There is nothing in the minister’s address, nor is there any other evidence which would lead me to the conclusion that the applicants enjoyed any special position.

Apart from the fact that one can hardly have a “legitimate expectation” arising out of a single speech given by any minister, I find that the conservationists have no better right than any other group, be they philologists or philatelists. The fact that they are conservationists explains their interest but does not give them any other rights. The applicants fail on this ground. The *Cheltenham* case is of no assistance on this score.

40 I now turn to the applicants’ rights as members of the public. They rely on another well-known House of Lords case entitled *Inland Rev. Commrs. v. National Fedn. of Self-Employed & Small Businesses Ltd. (2)*. This case is known as the *Fleet Street Casuals* and once again, for the sake of brevity, I shall refer to it by that name. It has been quoted by Mr. Isola, Mr. Harris and Mr. Levy in support of their own arguments. Before referring to different passages, it is necessary to identify what the case is authority for. The facts of the case were that casual workers, employed by national newspapers, had given false names and addresses so that it was impossible for Inland Revenue to collect tax payable by them, a practice sanctioned by the unions and employers. The Inland Revenue decided that this could not continue and an arrangement was made whereby the casuals would register, pay tax and submit tax returns for the previous two years. In return, the Inland Revenue would not investigate what had happened before that. This arrangement was described inaccurately as an “amnesty.” The applicants were a federation of small businessmen which claimed to represent the body of taxpayers. They challenged this arrangement on the ground that they were aggrieved by the fact that other taxpayers were getting preferential treatment with regard to tax payment and that this was contrary to the Income Tax Act.

41 The applicants failed in their application. As I see it, the *Fleet Street Casuals* case is binding authority for two propositions. First, that, except in an obvious case where an applicant has no sufficient interest, the question of *locus standi* should be ventilated on the hearing of the application and not on the leave to apply. Secondly, that the question of *locus standi* is linked with the question of merits and decided jointly with it.

42 There are two passages in the case to which I should make reference for the purpose of this case or any future application. The first is by Lord Wilberforce, in which he says ([1982] A.C. at 630):

“There may be simple cases in which it can be seen at the earliest stage that the person applying for judicial review has no interest at all, or no sufficient interest to support the application: then it would be quite correct at the threshold to refuse him leave to apply. The right to do so is an important safeguard against the courts being flooded and public bodies harassed by irresponsible applications. But in other cases this will not be so. In these it will be necessary to

consider the powers or the duties in law of those against whom the relief is asked, the position of the applicant in relation to those powers or duties, and to the breach of those said to have been committed. In other words, the question of sufficient interest can not, in such cases, be considered in the abstract, or as an isolated point; it must be taken together with the legal and factual context. The rule requires sufficient interest in the matter to which the application relates.”

43 The other passage I want to refer to is by Lord Diplock, where he had this to say (*ibid.*, at 644):

“It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by outdated technical rules of *locus standi* from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped. The Attorney-General, although he occasionally applies for prerogative orders against public authorities that do not form part of central government, in practice never does so against government departments. It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge.”

Strong words, but then that is what the rule of law is all about.

44 What I have to consider is whether, in granting the demolition permit, the Development and Planning Commission acted *ultra vires* and whether the applicants, as members of the public, have the right to challenge the conduct of the commission. Before I arrive at any conclusion, I should once again refer to the historical background of the case and relate how the demolition permit came to be issued. I have already related how tenders were invited by the Government on the development brief and no tenders were received. I refer to the affidavit of Mr. Francis, dated August 19th, 1986. At para. 5 he says: “There were no tenders submitted in response to the public tender advertisement at that stage and accordingly, the Development and Planning Commission agreed to wait a period of time before re-inviting tenders.”

45 Mr. Francis, who at the time was the director of the Crown Lands and the Executive Officer of the Development and Planning Commission, must be under a misapprehension about the duties of the Commission. It is not up to the Commission to invite tenders, that is for the appropriate

Government department. One of the duties of the Commission is, *inter alia*, to approve building permits. Maybe the Commission itself was confused as to its powers and duties under the Ordinance? Mr. Francis goes on to say that four firms were encouraged to submit their own schemes for development. Three companies submitted schemes, all of which recommended demolition of the Old Command Education Centre. The tender or scheme submitted by Taylor Woodrow of Gibraltar Ltd. was accepted.

46 Let me say at once that the Taylor Woodrow Scheme is a very impressive one. I have seen the model and the photographs and I am impressed by it. In it, however, the Old Command Education Centre goes by the wayside. It is not for me to say whether this a good or bad thing. To conservationists, the Old Command Education Centre might be something akin to the Alhambra; to an iconoclast it might just be a colonial monstrosity. What I can say is that it is clear from the City Plan that the Old Command Education Centre was intended to be conserved.

47 At that stage, the matter could easily have been corrected by amending the City Plan. The Ordinance provides for this. The mechanics for it are neither cumbersome nor time-consuming. The exercise could have been completed in three months. It was not done, however, and a demolition permit was issued.

48 I have come to the conclusion that the demolition permit was *ultra vires* the powers of the Commission under the 1976 City Plan. There is no insinuation that the Commission acted for the wrong reasons or had ulterior motives. It simply did not realize the limitation of its powers. I have also come to the conclusion that the applicants have sufficient interest to apply to the court to have this pointed out or corrected. They are members of the public in relation to the Town Planning Ordinance, which has vested them with a sufficient interest to question a wrong decision of the Commission.

49 Mr. Harris, whilst not admitting that the Commission might conceivably be acting *ultra vires*, has argued that it was fully justified in granting a demolition permit on the grounds of public safety. On this question of the state of the building, a number of affidavits have been sworn by professionals. I list them in alphabetical order rather than by protocol. The professional qualifications I record are what they themselves have deposed to: Michael Manuel Azopardi—qualified architect, holds a diploma in architecture from the Faculty of Architecture, Leicester and is an associate of the Royal Institute of British Architects; John Langdon—graduate architect; David William Lazenby—holds a diploma from Imperial College (London), a diploma from City University London, is a fellow of the Institute of Civil Engineers and a fellow of the Institute of Structural Engineers; Brian Anthony Morton—a chartered engineer and a chartered

civil engineer who holds an architectural diploma in building conservation and has 30 years experience in building conservation; and Eric John Santos—a chartered engineer, a member of the Institute of Structural Engineers and a member of the Institute of Civil Engineers.

50 I have considered their opinions which I think vary in emphasis more than substance. Although they differ as to the state of the building, what they are saying is this: if the building continues as it is, it will become a danger to the public; it is not, however, beyond redemption. That can be said in relation to practically any old building or structure. If the Leaning Tower of Pisa had not been properly maintained, it would have become a public danger long ago and would by now have toppled down. Of one thing I am satisfied; the evidence before me does not lead me to the conclusion that there is imminent danger of the Old Command Education Centre collapsing all of a sudden. I say this for the following reasons:

(a) The development brief, which was put out as part and parcel of the invitation to tender has this to say about the state of the building:

“Initial investigations indicate that the structure of all three principal buildings appears to be sound. The walls are solidly constructed in brick and stone, and rendered. Most floors to the building appear to be sound. The roof of the former Old Command Education Centre would appear to require overhauling, and the roofs to the two adjacent buildings are to be replaced as a part of the development. The external balconies are unsafe and damaged and the outbuildings are in very poor condition, and are to be removed.”

(b) The demolition permit was valid until July 1988. There was nothing to compel the developers to act expeditiously. They could have waited, had they wanted to, a year or more before commencing demolition.

(c) None of the inspections or reports by the experts on the state of the building, other than that of Mr. Lazenby (dated January 1986), is before the issue of the demolition permit.

51 I find that Mr. Harris fails in his submission that there was a legal justification for the granting of the demolition permit because of the state of the building. Mr. Levy, on behalf of the interested party, Taylor Woodrow of Gibraltar Ltd., has supported Mr. Harris in the arguments and submissions made on behalf of the respondents. There is one particular submission, however, which is important and that is the question of delay. This has been very ably argued by Mr. Levy and I agree with him that delay can defeat the right to judicial review. He has quoted a number of authorities to be found in *The Times Law Reports* and *Simon's Tax Cases*. What he is saying is that, the decision to demolish the Old Command Education Centre was made prior to the issue of a demolition permit, as deposed by Mr. Azopardi in his affidavit dated August 20th, 1986. There

he deposes that the Commission decided to demolish the Old Command Education Centre on May 23rd, 1986. He does not produce a copy of the minutes, however, and this assertion runs counter to the wording of the demolition permit itself. I find as a fact that the relevant date is July 4th, 1986. Even if the date was May 23rd, 1986, I find that there was no delay to defeat this application *in limine*.

52 At the close of the hearing, I came to the conclusion that the applicants succeeded in their application. I hope I have now given sufficient reason for such a decision, although I am conscious that I have not dealt or not fully dealt with the many arguments that were addressed to me. I had intended to take more time in preparing this judgment but am fully aware that my reasons are being awaited and further delay would be unwarranted.

53 Now, judicial review is a discretionary remedy. On this all the parties are agreed. What it means is that, although an applicant might succeed, he is not entitled as of right to the remedy or remedies sought. It is up to the court, in the exercise of its discretion, to grant all, any, or none of the remedies sought. The exercise of the discretion must be a judicial exercise of discretion. I refused certiorari and prohibition but granted a declaration in the form set out at the beginning of this judgment.

54 In refusing certiorari and prohibition, I bore in mind the following factors:

(a) The granting of the demolition permit by the Commission was not an utter or blatant disregard of the law. At its highest, it was a *bona fide* exercise of discretion which was mistakenly contrary to the Town Planning Ordinance.

(b) The Commission could easily have remedied, and can remedy, the defect by amending the City Plan.

55 Notwithstanding the above, however, I was satisfied that a declaration would serve a useful purpose. It would emphasize public participation in planning and confirm that this was a wrong exercise of a power, ensuring at the same time that the Commission was made aware for the future not only of their powers but also their duties under the Town Planning Ordinance.

*Application for judicial review dismissed; declaration granted that
Commission's actions ultra vires.*