JUDGMENT : Mr Justice Coulson : TCC. 9th September 2008

A. Introduction

1. The Applicant ("*the Authority*") is the body responsible for compensating those who have suffered subsidence damage due to coal mining operations, pursuant to the Coal Mining Subsidence Act 1991 ("*the Act*"). The Respondents are brothers and respectively the owners of 14 and 16 Rowley Lane, South Elmsall, Pontefract in South Yorkshire ("*the properties*").

2. On 28th November 2007, the Respondents commenced separate arbitration proceedings against the Authority under the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994. The claim centred on the Respondents' claims that, by reason of subsidence damage, the properties were unsaleable. By two awards dated 11th June 2008, the arbitrator, Mr Michael D Joyce, found in favour of each Respondent and ordered the Authority to purchase the properties for sums of £84,500 each. The Authority now seeks permission to appeal against those awards pursuant to section 69 of the Arbitration Act 1996.

3. Akenhead J set down a timetable relating to the application leading to today's hearing, at which both permission to appeal and, if granted, the substantive appeal were to be heard. Due to their financial situation, the Respondents did not play any part in the run up to the hearing until yesterday, when I received a full skeleton argument from Mr Morris. I should express my particular gratitude to him for his considerable assistance on behalf of the Respondents.

4. I set out at Section B below a short summary of the principles relevant to applications under section 69 of the Arbitration Act 1996. I then summarise briefly at Section C below the agreed facts and the arbitrator's awards. At Section D, I set out the relevant provisions of the Act and refer to a few of the authorities to which it has given rise. Finally, in Sections E and F below, I set out the Authority's criticisms of the awards and my analysis of their submissions. There is a short summary of my conclusions at Section G below.

B. Application Under Section 69/ Principles

5. For present purposes, the relevant parts of section 69 of the Arbitration Act 1996 are as follows:

"(1) Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings…

(2) An appeal shall not be brought under this section except—

(a) with the agreement of all the other parties to the proceedings, or

(b) with the leave of the court. …

(3) Leave to appeal shall be given only if the court is satisfied —

(a) that the determination of the question will substantially affect the rights of one or more of the parties;

(b) that the question is one which the tribunal was asked to determine;

(c) that, on the basis of the findings of fact in the award —

(i) the decision of the tribunal on the question is obviously wrong, or

(ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt; and

(d) that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question."

6. It is trite law that a court will only rarely grant leave to appeal against an arbitrator's award. I consider that the following statements of principle are directly applicable to the present case:

(a) An error of law is a failure to ascertain the correct legal principle, not the misapplication of the correct principle to the facts: see ***Northern Elevator Manufacturing Limited v United Engineers (Singapore) Ltd*** [2004] 2 SLR 494.

(b) There is no error of law if the arbitrator reached a decision within the permissible range of solutions open to him: see ***The Matthew*** [1992] Lloyd's Rep 323.

(c) The obvious error must be demonstrable on the face of the award itself: see ***Benaim UK Limited v Davis Middleton & Davis Limited*** [2005] EWHC 1370 (TCC); [2005] 102 Con LR.

(d) When considering whether it is just and proper for the court to determine any question of law, the court will have regard to the nature of the point in issue and the qualifications of the arbitrator: see ***Reliance Industries v Enron Oil & Gas India Ltd*** [2002] 1 All E R (Comm) 59.

7. I should record at this stage that the principal issue on this application, namely whether a house owner can claim compensation for blight in circumstances where his property has suffered no physical subsidence damage but the adjoining property has, is agreed by the parties as being a point of general public importance. I respectfully agree with that. Thus, for the purposes of leave, the test is whether the arbitrator's decision is at least open to serious doubt, a broader requirement than that propounded by Lord Diplock in ***The Nema*** [1982] AC 724 at 743D.

C. Relevant Facts and Findings

8. Together with Nos. 18 and 20 Rowley Lane, the properties form part of a terrace. Nos. 18 and 20 have suffered severe subsidence damage and have been purchased by the Authority with a view to demolition. It is proposed that when this happens the gable wall of No. 16 will be underpinned and a new outer skin brick wall will be constructed in order to provide the support which was previously provided by Nos. 18 and 20.

9. In the past, the properties at 14 and 16 Rowley Lane have themselves suffered damage due to subsidence. This was the subject of an earlier claim by the Respondents in the 1990s. The Authority's predecessor, British Coal, accepted liability and carried out repairs between 1993 and 1995. In addition, agreed payments were made for residual tilt and distortion. Thus the Respondents' earlier claim for subsidence damage was compromised many years ago. In the intervening period, it appears that no mining operations have been carried out in the vicinity of the properties.

10. In the arbitration, the Respondents claimed that the properties had suffered further subsidence damage. However, a joint inspection by the experts revealed that there had been no subsequent damage to the properties due to subsidence. The arbitrator therefore found, at paragraph 6.5 of each of his awards, that:
"… I do not find there to have been any new physical damage in the last six years."

11. Notwithstanding that finding, the arbitrator went on to conclude that the Authority was liable to pay compensation to the Respondents and that indeed the Authority should purchase each of the properties from the Respondents. His reasoning can be found at paragraphs 6.3 to 6.5 inclusive, and I set out those paragraphs in full:
"6.3 The question I have to determine is whether or not mining subsidence has caused damage or loss to the property within the last six years. There is agreement that mining subsidence has affected Nos. 18 and 20, hence the decision for the respondent to purchase them. In my view, this would reduce the value of both Nos. 14 and 16, which would be left as a single pair with an obviously new gable wall and an ongoing suspicion of subsidence.
6.4 One question that I have to consider is whether or not damage equates to loss and vice versa. Certainly in law damages and loss can be synonymous. Although the Subsidence Act is primarily concerned with physical damage due to mining, its main purpose is to compensate house owners for damage caused by mining subsidence. Although the damage or loss in this case occurs indirectly as a result of mining subsidence, I find it to be undoubtedly due in one way or another to past mining.
6.5 The Respondent maintains that it fulfilled its obligation in respect of mining subsidence many years ago, since no new cause of action has accrued in the last six years. Although I do not find there to have been any new physical damage in the last six years, I do find there to have been damage in the form of loss in value within the last six years, which flows directly from the damage to Nos. 18 and 20, which in turn was due to mining subsidence. I do not, therefore, find the claim to be statute barred."

12. It is these passages which lie at the heart of the Authority's application for permission to appeal. They submit that, given the finding that there was no actionable physical damage to the properties, the arbitrator had no power in law to make any award to the Respondents under the Act. They dispute that they can be liable to the Respondents for blight that arose as a result of subsidence damage that has occurred, not to the Respondents' properties, but to the adjacent houses.

D. The Act

13. The relevant part of section 1 of the Act provides as follows:
'1. Subsidence damage to which Act applies
(1) In this Act "subsidence damage" means any damage —
(a) to land; or
(b) to any buildings, structures or works on, in or over land,
caused by the withdrawal of support from land in connection with lawful coal-mining operations.
(2) An alteration of the level or gradient of any land not otherwise damaged which does not affect its fitness for use for the purposes for which, immediately before the alteration occurred, it was used, or might reasonably have been expected to be used, shall not be regarded as damage for the purposes of subsection (1) above.'

14. Section 2 imposes on the Authority a duty to take remedial action:
"(1) Subject to and in accordance with the provisions of this Part, it shall be the duty of the [Authority] to take in respect of subsidence damage to any property remedial action of one or more of the kinds mentioned in subsection (2) below.
(2) The kinds of remedial action referred to in subsection (1) above are —
(a) the execution of remedial works in accordance with section 7 below;
(b) the making of payments in accordance with section 8 or 9 below in respect of the cost of remedial works executed by some other person; and
(c) the making of a payment in accordance with section 10 or 11 below in respect of the depreciation in the value of the damaged property."

15. By section 3, the Authority does not have to take any remedial action unless the owner of the property has both given notice to the Authority of the damage within the period of six years from the owner first having the knowledge required for founding a claim in respect of the damage, and has afforded the Authority reasonable facilities to inspect the property.

16. Section 4 provides what the Authority must do in response to such notice. It requires the Authority, as soon as reasonably practicable, to give to the claimant, and to any other person interested, a notice indicating whether or not they agree that they have a remedial obligation in respect of the whole or any part of the damage specified in the damage notice. In circumstances where they agree that they have such an obligation, the Authority must also give to the claimant, and to any other person interested, a notice stating the kind or kinds of remedial action

available for meeting that obligation and, if more than one, which of them the Authority proposes to take; and, in the case of a notice stating that the Authority proposes to execute remedial works with respect to any damage, the Authority must also inform the claimant or that person that, if he makes such a request as is mentioned in section 8(3), the Authority may elect to make a payment in lieu instead of executing the works.

17. Sections 5, 6, 7 and 8 are concerned with the carrying out of remedial works and they are irrelevant for present purposes.

18. Section 10 concerns discretionary depreciation payments made at the election of the Authority *"equal to the amount of the depreciation in the value of the damaged property caused by the damage … instead of executing any remedial works …"* Section 11 relates to obligatory depreciation payments. Section 11(3) provides as follows:

"(3) Where in the case of any property affected by subsidence damage—

(a) remedial works have been executed; but

(b) there is a depreciation in the value of the property caused by any damage the making good of which to the reasonable satisfaction of the claimant and any other person interested was not reasonably practicable,

the [Authority] shall make in respect of the property a payment equal to the amount of that depreciation."

19. Section 29 provides for the making of regulations to alleviate cases of hardship suffered as a result of properties being blighted by subsidence damage or the possibility of such damage. The regulations are the Coal Mining Subsidence (Blight and Compensation for Inconvenience During Works) Regulations 1994 (SI 1994 No. 2564). The relevant parts of those regulations for the purposes of this application are as follows.

(a) Section 2(2), which provides that:

"A dwelling-house is blighted for the purposes of regulations 3 and 4 if—

(a) it has been affected by subsidence damage and either a stop notice in respect of that damage is in force or there is a reasonable probability that such a notice will be given; or

(b) there is a reasonable probability that the dwelling-house will be affected by subsidence damage within nine months and that a stop notice will be given in respect of that damage."

(b) Section 3 deals with the situation where a dwelling-house is blighted and the circumstances specified in paragraph (2) (set out below) apply. In such circumstances, the owner of the dwelling-house is entitled to require the Authority to purchase his interest in the property in accordance with Regulation 4. Paragraph (2) contains various conditions, such as the reasonable endeavours necessary on the part of the owner to sell his interest in the property and the fact that he has been unable to do so because the dwelling-house is blighted. There is also a provision that covers the situation where the principal reason for the proposed sale was a change in the owner's personal or family circumstances.

20. Turning to the case law in this area of the law, the leading case in respect of compensation for mining subsidence remains the relatively old case of ***West Leigh Colliery Company v Tunnicliffe & Hampson Limited*** [1908] AC 27. In that case, the House of Lords held that, in assessing the damages recoverable by a surface owner for subsidence owing to the working of minerals under or adjoining his property, the depreciation in the market value of the property attributable to the risk of future subsidence must not be taken in account. To recover damages the surface owner is obliged to wait until the damage or injury caused by subsidence has happened. That case has been cited with apparent approval in some of the more recent authorities under the Act to which I refer below.

21. I have been referred to a number of the more recent cases, although counsel are agreed that they are of limited relevance to the issues before the court today. In ***McAreavey v The Coal Authority*** (80 P & CR 41), the Court of Appeal dealt with a situation where the Act could not be complied with because the property had suffered such severe subsidence damage that it had been demolished. It does not seem to me that the judgments in that case are of any great assistance to the present dispute. Of perhaps greater relevance is the Court of Appeal decision in ***Langley v The Coal Authority*** [2003] EWCA (Civ) 204. Although the point at issue in that case concerned the precise calculation of depreciation payments (which is not an issue here), the Court of Appeal discussed more general questions of blight and the circumstances in which such payments might be made. They concluded that, in certain limited circumstances, claims in respect of blight were appropriate. Of course, in ***Langley,*** just as in ***McAreavey,*** there was physical damage to the subject property. It should also be noted that ***Langley*** is one of the more recent cases in which ***West Leigh*** was expressly referred to.

22. The only other authority to which I was referred, ***Collins (Pontefract) Limited v British Coal Corporation*** (unreported 16th October 1997), was also a Court of Appeal case. Again, the point specifically at issue in that case was immaterial to the present dispute, since it concerned the recoverability (if at all) of various financial and consequential heads of claim and whether or not those claims were validly made under the Act. However, I do derive some assistance from the general remarks made by Hirst LJ in that case, and in particular the passage at the top of page 21, when he said:

"Far from proposing some kind of unfettered right to compensation for both physical and economic loss, the criteria [in the Act] are carefully circumscribed in many key respects so as to exclude several categories of potential claims. In those circumstances, it seems to me that Mr Lloyd-James is right that there is no warrant for some rather loose or extended interpretation of the natural and ordinary meaning."

23. Accordingly, from the general words of the Act and the various authorities to which I have referred, I derive the following general principles.

(a) The underlying assumption is that, for a claim for compensation to succeed, there must be physical damage caused by subsidence: see in particular section 1(1) of the Act and ***West Leigh***.

(b) In the absence of any physical damage, no claim for pure economic loss can be pursued: see ***West Leigh***.

(c) In circumstances of physical damage, some claims for economic loss, including blight, can be recoverable in accordance with the Act: see ***Langley***.

(d) Even where there has been physical damage, the right to make claims for economic loss has been carefully circumscribed in many key respects so as to exclude several categories of potential claim: see ***Collins***.

E. The Authority's Principal Criticism – Blight

24. The Authority's principal criticism of the arbitrator's awards is simply stated. They submit that the Authority can only be liable to the Respondents in circumstances where there has been physical subsidence damage, as defined in section 1(1) of the Act, i.e., physical damage to the properties themselves. Since the arbitrator expressly found that there had been no such damage, he was obviously wrong to find them liable to purchase the properties. They maintained that this is a point of general public importance and, as I have said, that point is expressly conceded by the Respondents.

25. In my judgment, the arbitrator's conclusion on this fundamental issue was obviously wrong and the Authority is not only entitled to permission to appeal, but has successfully demonstrated that the awards should be varied so as to dismiss all of the Respondents' claims. In view of the significance of that conclusion to both parties, I ought to summarise the reasons for it in some detail.

26. I consider that the whole regime of the Act and the 1994 Regulations is based upon the assumption that the property in question has suffered physical damage due to subsidence. The Act regulates the situations in which the Authority may be liable for subsidence damage to land, buildings, structures or works. The words at section 1(1) admit of no definition of subsidence damage other than physical damage to land or things on the land. The words make no reference to loss or damages sustained, and I conclude that, as a matter of simple construction, the words "*subsidence damage*" cannot encompass any loss or claim for damages which may have been suffered in the absence of such physical damage.

27. There are two further points to be made in relation to section 1 of the Act. First, it is important to note that it is referring to damage to land or things on land caused by the withdrawal of support. It is not referring to damage sustained by an individual. Damage to land or things on land can, therefore, only mean physical damage; land or buildings can suffer physical damage but they cannot sustain a loss. Secondly, section 1(2) deals in great detail with how and why an alteration of the level or gradient of land not otherwise damaged shall not be regarded as damage for the purposes of subsection (1). That is a very clear exclusion relating to the physical alteration of land. That, again, confirms my view that section 1 is dealing only with physical subsidence damage.

28. Going on through the Act, it is plain that the subsequent sections are all based upon the occurrence of physical subsidence damage. Take, for example, section 3, which requires a notice from "the owner of the property or some other person who is liable to make good the damage in whole or in part". That can only refer to the making good of physical damage. Take section 6 as another example: that deals with schedules of remedial work. Again, that can only make sense if the damage being referred to is physical rather than economic.

29. In the course of his submissions, Mr Morris maintained that the word *"damage"* in the statute was wide enough to cover economic loss. He helpfully referred me to the decision of Nigel Teare QC (as he then was) in ***Booth v Phillips*** [2004] WLR 3292, which is a decision on the words within CPR 6.20(8)(a), and which deals with service out of the jurisdiction. Under sub-rule (8), it identifies circumstances where a Claim Form dealing with a claim in tort may be served out of the jurisdiction. One of the requirements is that *"damage was sustained within the jurisdiction"*. It seems to me that, as the learned deputy judge held, it is clear that these words must encompass economic damage, because they refer to damage being *'sustained'*, with no distinction between physical or economic loss. In my judgment, that is to be starkly contrasted with the clear definition of subsidence damage in section 1(1) of the Act, which refers to subsidence damage to land or buildings, not damage sustained by an individual.

30. Whilst it is, of course, right that, for example, sections 10, 11 and 29 of the Act envisage a situation in which the Authority will make a payment to, or otherwise compensate, the respondent in respect of economic loss or blight, each time the relevant section clearly states that it is limited to "*the case of any property affected by subsidence damage*". In other words, those sections, like the rest of the Act, refer back to section 1 and, on my construction of the words there, have no applicability to a property that has *not* suffered from physical subsidence damage.

31. The arbitrator found that there had been no physical damage to the properties in the past six years and, indeed, the inference must be that there has been none since the repair work of about 15 years ago. That was a finding that there had been no damage within the definition of section 1(1). Accordingly, so it seems to me, he should have found that no other parts of the Act were applicable to the Respondents and their claims and that, therefore, those claims were bound to fail.

32. At paragraphs 21 and 22 of his skeleton argument, and during the course of his succinct oral submissions this morning, Mr Morris appeared to question the validity of the arbitrator's finding of fact. He suggests that it is difficult to understand how the subsidence damage should (as he puts it) *"miraculously cease half way between an interconnected line of terraced houses"*. Whilst I have some sympathy with that submission, it seems to me that it faces an obvious difficulty. It is not open to the Respondents to endeavour to challenge the arbitrator's findings of fact on this appeal. The arbitrator has found that there was no physical damage to the properties and the

Respondents are not able now to argue for a contrary finding. In those circumstances, the court is obliged to deal with the application on the basis that the arbitrator has found that there was no physical subsidence damage to the properties.

33. In my judgment, in the passages of the award that I have set out above, the arbitrator misdirected himself by confusing physical subsidence *damage* (as defined in section 1(1) of the Act and referred to repeatedly thereafter) and the suffering of *damages* which can, in certain circumstances, include economic loss or blight. As I have indicated, damages or their equivalent caused as a result of blight may be recoverable under the Act – see, for example, section 29 and the Regulations – but only where they are the consequence of physical subsidence damage. Damages for blight are not recoverable under the Act where there has been no subsidence damage as defined in section 1(1).

34. This brings me to Mr Morris' final submission on this part of the case, which he carefully developed during his oral submissions. This was to the effect that the arbitrator had properly applied section 2(2)(a) of the 1994 Regulations (set out above) and had found that the properties "*had been affected by subsidence damage"* because of the problems at 18 and 20 Rowley Lane. Mr Morris, therefore, maintained that the arbitrator had arrived at a perfectly reasonable application of the Act to the facts which cannot now be overturned by the court.

35. There are a number of significant difficulties with that argument. If it were right, it would mean that the Regulations allowed a much wider category of claim than was permitted under the Act itself, which would be a most surprising result and one which, given the ordinary rules of construction relating to secondary legislation, the court should strive to avoid. In my judgment, the Act must be treated as the foundation for all claims for compensation for mining subsidence; the Regulations are only there to provide for the detailed procedure by which such claims are to be considered and, if appropriate, paid by the Authority.

36. In my view, section 2(2)(a) of the Regulations and the words there used are not in any event wide enough to encompass a claim in respect of property which has not suffered physical subsidence damage, but the value of which has or might have been affected because an adjacent property has suffered such physical damage. It seems to me that any other finding would be contrary to the whole regime of the legislation. It is also relevant to note, as Mr Darling QC puts it, that if *"affected by subsidence damage"* means that the property may suffer a loss in value or blight in the future because of damage to another property, then there would be no need for section 2(2)(b) at all, because that expressly deals with the circumstances in which claims for potential future blight might be permitted. It seems to me that this submission is right, and it is another reason why 'a property affected by subsidence damage' means a property that has suffered physical subsidence damage.

37. In addition, clause 2(2) of the Regulations can have no relevance to these particular claims in any event. There was never a claim under these Regulations against the Authority; there are no stop notices under section 16 and no finding by the arbitrator that there had been or should have been any such stop notices; there is no reasonable probability of any such notices and, again, no finding by the arbitrator that there is any such reasonable probability.

38. For all those reasons, therefore, I am obliged to reject the submission that the Act allows property owners to recover economic loss in circumstances where they have not suffered subsidence damage. For completeness, I should say that, in my judgment, the position is no different at common law. A property owner whose property has been damaged by the negligence or nuisance of another may have, in addition to his claim for the cost of repair, an additional claim for any residual blight following completion of the relevant works. No authorities have been cited to me in which a property owner in those circumstances has a valid blight claim in the absence of any physical damage to the property in question. I consider that is unsurprising, because such a claim would amount to no more than a claim in tort for pure economic loss and, in the absence of special circumstances, would be irrecoverable in law. That, after all, is what, in the context of subsidence, the House of Lords decided in ***West Leigh.***

39. That leaves the underlying thrust of Mr Morris' position, which was the suggestion that the Authority's interpretation of the Act was excessively legalistic; as he put it on behalf of the Respondents, *"where there was a right, there was a remedy"*. I have considerable sympathy for the Respondents' position, but the difficulty is that, in my judgment, the Respondents do not have a right, either under the statute or at common law, to compensation for economic loss in the factual circumstances found by the arbitrator.

40. For all those reasons, I conclude that the arbitrator was obviously wrong to find that the Authority was liable to the Respondents under the Act, in circumstances where there was no relevant physical subsidence damage. He had no power in law to make such an order. Going back to section 69 for a moment, it is, therefore, clear that his erroneous decision fundamentally affected the rights of both parties and concerned the principal question that he had been asked to determine. In these circumstances, since the issue is a pure point of law, it is just and proper for the court to determine the issue afresh, notwithstanding the agreement of the parties to go to arbitration. Accordingly, it seems to me that the Authority has made out every necessary ground under section 69 of the Arbitration Act 1996 and I, therefore, grant them permission to appeal.

F. Other Criticisms of the Award

41. I deal very briefly with other criticisms of the arbitrator's award because, on analysis, I consider that they do not add anything to the debate set out above. The first criticism is that, having found that there had been no physical damage during the preceding six years, the arbitrator should have found that any claim was statute barred. It is right to note that this was a point that was emphasised strongly by the Authority during the arbitration.

42. In my judgment, as I put to Mr Darling QC this morning, this submission adds nothing to the blight/ economic loss point that I have just analysed. There could only be a cause of action if there had been physical damage. The arbitrator found that there was no such damage; therefore, there was no cause of action. Limitation becomes irrelevant in such circumstances. In any event, the physical damage that led to the claim in 1993 to 1995 was irrelevant because it was the subject of a binding compromise and no subsequent physical damage was identified by the Respondents or found by the arbitrator. There was, therefore, no claim under the Act at all and this is not a situation in which limitation has any relevance.

43. The other criticism was that the arbitrator had no power to order the Authority to purchase the properties. I consider that to be correct. Section 2 of the Regulations is, for the reasons that I have given, only triggered if there has been physical subsidence damage. In those circumstances, I hope that the Authority will forgive me if I express no view on the separate argument as to whether or not the arbitrator was wrong in law because no permission from the Secretary of State had been obtained under section 5(7) of the Coal Industry Act 1994.

G. Conclusions

44. For the reasons that I have given, I consider that the arbitrator was obviously wrong to find that the Authority was liable to compensate the Respondents in circumstances where their properties had not suffered physical subsidence damage within the meaning of section 1(1) of the Act. A claim for blight due to subsidence damage that has occurred to neighbouring properties is not a valid claim under the Act.

45. Akenhead J's order in this case made clear, as is common practice, that the substantive appeal would be dealt with at the same time as the application for permission to appeal. Since I am in no doubt that the arbitrator was obviously wrong, I not only grant permission to appeal, but, in accordance with the learned judge's order, I vary the arbitrator's awards so as to dismiss all claims.

46. Although Mr Morris urged me to send the matter back to the arbitrator so that he could deal with the dispute afresh and, as he very fairly put it, "*with greater clarity*", it seems to me that there would be no point in my so doing. The arbitrator has made the relevant findings of fact. Where he went wrong was that, in his wholly understandable desire to endeavour to find compensation for the Respondents, he awarded to them a remedy to which they were not entitled in law.

47. I have found this a difficult case, not because of any real complexities in the construction of the Act, but because of the particular position of the Respondents. They firmly believe that they have suffered a loss affecting their principal assets, which has arisen through no fault of their own and which, as a result of this Judgment, I have concluded they have no right of compensation. It is, therefore, impossible not to feel considerable sympathy for them. However, Parliament has, in the words of Hirst LJ, "*expressly circumscribed the rights of those affected by subsidence and the ability of claimants recover under the Act*". In those circumstances, those in the position of the Respondents, whose properties have not suffered physical damage but who consider that they have suffered an economic loss in consequence of physical damage to neighbouring properties, must look to Parliament to amend the Act itself because, for the reasons I have given, it does not presently provide an entitlement to claim.

48. Finally, I should record Mr Darling QC's statement that, in all the circumstances of the case, the Authority did not seek any of their costs against the Respondents. I consider that, particularly due to the Respondents' financial position, such a stance was entirely proper and appropriate.

Mr Paul Darling QC (instructed by Messrs DLA Piper UK LLP) for the Applicant.
Mr Paul Morris (instructed by Messrs Lawsons) for the Respondents.