House of Lords before Lords Fraser of Tullybelton; Wilberforce; Roskill; Brandon of Oakbrook; Brightman. 13th October 1983

**LORD FRASER OF TULLYBELTON** ; My Lords,

1. This appeal is a sequel to the decision of this House in the case of ***O'Reilly v. Mackman*** [1982] 3 W.L.R. 1096. The issue of most general importance raised in the appeal relates to the circumstances in which a person with a cause of action against a public authority, which is connected with the performance of its public duty, is entitled to proceed against the authority by way of an ordinary action, as distinct from an application for judicial review.

2. The respondent is the owner of premises known as Riverside Works, Nutty Lane, Shepperton. The appellants are the local planning authority for the district within which those premises are situated. On 28th September 1977 the respondent made a planning application for the retention for a period of ten years of the existing buildings and the continued use of the premises as a pre-cast concrete works. Thereafter, the respondent made another planning application, which was later withdrawn, and amended his original application, which was refused, and he met officers of the appellants on several occasions when he discussed with them the future use of the premises. The respondent alleges that eventually, as a result of the discussions and correspondence with the appellants' officers, on or about 6th November 1979 he entered into an agreement with the appellants whereby he undertook not to appeal against an enforcement notice to be served by the appellants upon him in respect of the use of the premises, provided that the notice would not be enforced by the appellants for a period of three years from the date of its service. The appellants served an enforcement notice on 15th October 1980 which, the respondent alleges, was in accordance with that agreement. The enforcement notice stated that the appellants required the respondent, within three years of the date when the notice took effect, to cease using the land for the manufacture of concrete products and to remove from it all buildings and works. The respondent did not appeal against the enforcement notice and the time for so doing has long since expired. The notice took effect thirty-five days after the date of service, 15th October 1980, and the time for appealing against it expired when it took effect. The respondent alleges that he refrained from appealing against the enforcement notice in pursuance of the agreement of 6th November 1979 and that he entered into that agreement on the advice of the appellants' officers.

3. On 24th August 1982 the respondent issued a writ against the appellants. In his statement of claim he made allegations including those which I have summarised. He also alleged that the agreement of 6th November 1979 was ultra vires the appellants and void on several grounds which I need not now particularise. He claimed damages from the appellants on the ground that the appellants, or their officers, had purported to advise him as to his rights under the Town and Country Planning Act 1971 ("the 1971 Act"), and that their advice had been negligent. The appellants deny that there was any legally enforceable agreement between the respondent and themselves. They also deny that they, or their officers, purported to advise the respondent on his rights, and they say that, if they did give any such advice, it was not given negligently. For the purposes of the present appeal the respondent's allegations must be taken to be true.

4. The relief claimed by the respondent was as follows:
(a) An injunction ordering the appellants not to implement the enforcement notice.
(b) Damages.
(c) An order that the enforcement notice be set aside.

5. The appellants applied to have the writ and statement of claim struck out under the Rules of the Supreme Court, Order 19 Rule 1, or under the inherent jurisdiction, on the ground that they were an abuse of the process of the court. Their application was rejected by the Vice Chancellor on 11th October 1982, before the decision of this House in ***O'Reilly*** (supra), and the learned Vice Chancellor's reasons have been largely superseded by that decision.

6. The appellants appealed and the Court of Appeal (Cumming-Bruce and Fox L.JJ. and Bush J.), with the decision of your Lordships' House in ***O'Reilly*** before them, ordered that Claims 1 and 3, and certain portions of the statement of claim relating to them, be struck out, on the ground that they raised questions of public law which could only be raised by way of judicial review under Rules of the Supreme Court, Order 53. The Court of Appeal left the respondent's claim for damages for negligence alive. In the instant appeal, the appellants' seek to have that, the only remaining claim, struck out.

7. The first contention of the appellants is that the respondent's claim for damages involves a challenge of the enforcement notice which is, in substance, a challenge of its validity, and which is therefore barred by section 243 of the 1971 Act. In order that the respondent may succeed in his claim for damages, he must establish three things - viz. (1) that the appellants, or their officers, advised him on his rights under the 1971 Act and that they owed him a duty of care when they did so; (2) that they were in breach of that duty by negligently advising him not to appeal against the enforcement notice, and (3) that he has suffered damage flowing from the breach. The damages are claimed because, according to the respondent, he had a good defence to the enforcement notice which he could, or at least might, have established, if he had appealed against the notice timeously, but which he lost the chance of establishing when he acted on the appellants' advice and, in accordance with the agreement of 6th November 1979, did not appeal. It is thus a necessary step in the respondent's case for him to show that he had a good defence, good enough to give him at least a chance of successfully challenging the enforcement notice, if he had appealed against it in time. The amount of damages to which he would be entitled will, of course, depend largely on the prospects of success if he had appealed. The appellants maintain that the

respondent is not entitled to have the merits of his defence investigated in these proceedings because the defence is in substance a challenge of the validity of the enforcement notice, and is therefore barred by section 243 of the 1971 Act. Section 243(1) (as amended by the Local Government and Planning (Amendment) Act 1981) ("the 1981 Act") provides as follows:

*"243(1). Subject to the provisions of this section -*

*"(a) The validity of an enforcement notice shall not, except by way of an appeal under Part V of this Act, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought;"*

8. Part V of the 1971 Act deals with enforcement of planning control. The first section in Part V is section 87 which (as substituted by the 1981 Act) provides that a local planning authority shall have power to serve an enforcement notice in cases where there has been a breach of planning control. Section 88 (as substituted by the 1981 Act) provides:

*"88(1). A person having an interest in the land to which an enforcement notice relates may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.*

*(2). An appeal may be brought on any of the following grounds -*

*(a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;*

*(b) that the matters alleged in the notice do not constitute a breach of planning control;*

*(c) that the breach of planning control alleged in the notice has not taken place;*

*(d) in the case of a notice which, by virtue of section 87(4) of this Act, may be issued only within the period of four years from the date of the breach of planning control to which the notice relates, that that period had elapsed at the date when the notice was issued;*

*(e) ....*

*(f) ....*

*(g) ....*

*(h) ....".*

9. The defence on which the respondent would have relied would have been under paragraph (d) of that section. The effect of section 243(1)(a) is to prohibit the bringing of appeals on any of the grounds to which it relates before the High Court and, in accordance with section 88(1), to substitute the Secretary of State as the forum for deciding such appeals. Section 88(1) also limits the time for appealing to the period before the date on which the enforcement notice is to take effect. Accordingly, the appellants say that the present proceedings, being in substance an appeal against the enforcement order, are incompetent because they are brought before the wrong tribunal and also, although I did not understand this to be relied on as a separate point, because they are out of time.

10. I note in passing that although section 243(1)(a) provides that the "validity" of an enforcement notice is not to be questioned except as therein provided, the word "validity" is evidently not intended to be understood in its strict sense. It is used to mean merely enforceability. That appears from a consideration of the grounds on which an appeal may be brought under Part V of the 1971 Act, which are not limited to matters affecting the validity of the notice. The relevant grounds are set out in section 88(2) part of which I have already quoted, and it is apparent that paragraph (a), (at least) goes to the merits rather than to the validity (In the strict sense) of the notice. Accordingly, the fact that the respondent is not questioning the "validity" of the notice is immaterial. In fact, of course, the respondent now accepts the notice as perfectly valid and, as at the date of instituting the present proceedings, unappealable; indeed, that is the essential basis of his claim for damages.

11. But in my opinion, the respondent's claim for damages is not barred by section 243(1)(a). That paragraph provides that the validity of an enforcement notice shall not be questioned in any proceedings whatsoever "on any of the grounds on which such an *"appeal may be brought*." The words "*such an appeal*" are a reference back to an appeal under Part V of the 1971 Act, and they mean in effect the grounds specified in section 88(2). But section 243(l)(a) does not prohibit questioning the validity of the notice on other grounds. If, for example, the respondent had alleged that the enforcement notice had been vitiated by fraud, because one of the appellants' officers had been bribed to issue it, or had been served without the appellants' authority, he would indeed have been questioning its validity, but not on any of the grounds on which an appeal may be brought under Part V. So here, the respondent's complaint that he acquiesced in the enforcement notice because of negligent advice from the appellants is not one of the grounds specified in section 88(2), and it would not have entitled him to appeal to the Secretary of State under Part V of the 1971 Act. Accordingly, even on the assumption that the validity of the enforcement notice is being questioned in the present proceedings (an assumption which in my opinion is open to serious doubt), it is certainly not being questioned on any of the grounds referred to in section 243(l)(a) and the proceedings are not barred by that subsection. In my opinion, therefore, the appellants' first contention fails.

12. Their second contention is that, when the respondent alleges that he had a good defence to the enforcement order, he is asserting a right to which he is entitled to protection under public law, and one which therefore he cannot be permitted to defend by way of an ordinary action. The contention was based on the speech of my

noble and learned friend, Lord Diplock, in O'Reilly, (supra), in the following passage at page 1110 C to D: ". . . . it would in my view as a general rule be contrary to public policy, and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed "by way of an ordinary action and by this means to evade the provisions of Order 53 for the protection of such authorities."

13. The appellants accept that there are, of course, many claims against public authorities which involve asserting rights purely of private law, and which can be pursued in an ordinary action. They accept also that if a question as to the validity of the enforcement notice had arisen incidentally in an action to which they, the appellants, were not parties, it could properly have been decided in the High Court - for example, if it had arisen as a preliminary issue in an action by the respondent against his solicitors for negligence. But Mr. Sullivan maintained that, when there is an issue between a citizen and a public authority which involves determining whether the citizen can challenge a public notice or order, the only way to decide the issue is by way of procedure under Order 53. He maintained further that it makes no difference whether the issue concerns a present right or a past right to challenge the notice or order. The only relevant distinction, he says, between a past right and a present right is that investigating a past right tends to be more difficult, and more burdensome to the public authority, than investigating a present right, so that the authority's need for the protection of Order 53 will be all the greater in the former case.

14. Although the argument was presented most persuasively, it is in my view not well founded. The present proceedings, so far as they consist of a claim for damages for negligence, appear to me to be simply an ordinary action for tort. They do not raise any issue of public law as a live issue. I cannot improve upon the words of Fox L.J., in the Court of Appeal, when he said this:

15. "I do not think that the negligence claim is concerned with 'the infringement of rights to which [the plaintiff] was entitled to protection under public law' to use Lord Diplock's words in ***O'Reilly v. Mackman.*** The claim, in my opinion, is concerned with the alleged infringement of the plaintiff's rights at common law. Those rights are not even peripheral to a public law claim. They are the essence of the entire claim (so far as negligence is concerned)."

16. It follows that in my opinion they do not fall within the scope ofthe general rule laid down in ***O'Reilly*** (supra). The present proceedings may be contrasted with the case of ***Cocks v. Thanet District Council*** [1982] 3 W.L.R. 1121, which was decided in this House on the same day as ***O'Reilly (***supra). In ***Cocks,*** the House held that the general rule stated in ***O'Reilly*** applied (and I quote the headnote) "where a plaintiff was obliged to impugn a public "authority's determination as a condition precedent to enforcing "his private law rights". In that case, the plaintiff had to impugn a decision of the Housing Authority, to the effect that he was intentionally homeless, as a condition precedent to establishing the existence of a private law right to be provided with accommodation. It is quite clear from the speech of Lord Bridge of Harwich, with which all the other members of the House agreed, that the plaintiff was asserting a present right to impugn or overturn the decision - see page 1127 D: *"the decision of the "public authority* ***which the litigant wishes to overturn".*** (Emphasis added). In the present case, on the other hand, the respondent does not impugn or wish to overturn the enforcement order. His whole case on negligence depends on the fact that he has lost his chance to impugn it. In my opinion therefore the general rule stated in ***O'Reilly*** supra is inapplicable. The circumstances in which the procedure under Order 53 is appropriate were described in some detail by Lord Diplock in ***O'Reilly.*** At page 1100 G he mentioned the fact that in that case no claim for damages would lie against the defendants, and that the only relief sought was for a declaration, a form of relief that is discretionary only. At page 1106 D he explained that one of the reasons why the procedure under Order 53 is appropriate in certain cases is that it provides *"a very speedy means, available in urgent cases within a matter "*of days rather than months, for determining whether a disputed *"decision was valid in law or not."* The importance of obtaining a speedy decision is (see page 1106 B) that: *"The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."*

17. That explanation points the contrast with the present case, where the validity of the enforcement order is not now challenged, and no public authority or third party is being kept in suspense on that matter. Procedure under Order 53 would in my view be entirely inappropriate in this case.

18. A further consideration is that if the claim based on negligence, which is the only one of the original three claims now surviving, were to be struck out, the blow to the respondent's chances of recovering damages might well be mortal. The court has no power to order the proceedings for damages to continue as if they had been made under Order 53. The converse power under Order 53 rule 9 operates in one direction only - see ***O'Reilly*** at page 1109 A. So, if 'the present appeal were to succeed, the respondent's only chance of bringing his claim for damages before the court would be by obtaining leave to start proceedings for judicial review (now long out of time) and then by relying on Order 53 rule 7 to attach a claim for damages to his claim for judicial review. That would be an awkward and uncertain process to which the respondent ought not to be subjected unless it is required by statute - see ***Pyx Granite Co. Ltd, v. Ministry of Housing*** [1960] A.C. 260 per Viscount Simonds page 286. In my view it is not.

19. The third contention for the appellants was that the claim for damages had the same purpose and would have the same effect as the other reliefs claimed, namely injunction and setting aside. My Lords, this contention seems to me

entirely without justification. The ostensible purpose of the claim for damages is clearly different from the purpose of the other claims, and for all that your Lordships can tell, the respondent may at this date prefer to receive a payment in cash rather than to have the enforcement order set aside. It seems to me quite impossible to hold that the true purpose of the claim for damages is only to put pressure on the appellants not to enforce the order. As regards the effect of the claim for damages being allowed to proceed, the suggestion was that the threat of the claim hanging over the head of the appellants would be likely to cause them to refrain from enforcing the order, if the respondent has not complied with it when the three year period expires in November 1983. I have some doubt whether it would be proper for the appellants to allow their decision to be influenced by such a threat, but, assuming that the threat would be a legitimate and proper consideration, it could only operate by affecting the exercise of the appellants' discretion in deciding whether to prosecute the respondent for failing to obey the enforcement notice, and it would in my opinion be something much less compelling than an injunction or an order to quash. I have no hesitation therefore in rejecting the appellants' third contention.

20. For these reasons I would dismiss this appeal.

**LORD WILBERFORCE** My Lords,

21. Although, with one qualification which I shall state, I agree with the judgments in the Court of Appeal, I will make some observations upon this appeal both from respect to the attractive argument of Mr. Sullivan Q.C. for the appellant and because this case may be of some general importance.

22. The issue as it reaches this House, after other matters have been disposed of without cross appeal, is simply whether a common law action for damages against the appellant council arising from alleged negligence should be struck out as an abuse of the process of the court. There are two grounds on which this is sought to be done. The first is that the claim is precluded by section 243(l)(a) of the Local Government Act 1971 (as amended) which reads:

*"243(1). Subject to the provisions of this section -*

*(a) The validity of an enforcement notice shall not, except by way of an appeal under Part V of this Act, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought;"*

23. I agree with the Court of Appeal that this section does not apply. In my opinion the enforcement notice is not questioned in the proposed action, and, even if it is, it is not questioned on the grounds specified. Although there may be some warrant for not giving to this subsection a restricted meaning (see ***Square Meals Frozen Foods Ltd, v. Dunstable Corporation*** [1974] 1 WLR 59), to extend it so as to cover a claim such as that we are concerned with would amount to a reconstruction too radical to be contemplated. I need add no more on the point to what has been said by my noble and learned friend Lord Fraser of Tullybelton.

24. The second point is the substantial one. For proper appreciation it is necessary to define the claim to which it relates. As pleaded (and for the purpose of this appeal we are only concerned with the pleading and not with its substance or merits) it is that the appellant council owed to the respondent plaintiff a duty of care in, through its officers, advising him as to his planning application; that the council was negligent in so advising him; that by reason of this negligence he suffered damage, namely the loss of a chance of successfully appealing against the enforcement notice served upon him by the council. Though this was initially one of several claims, it now stands on its own, and should be judged as an independent and separate action.

25. To say that such a claim, so formulated, ought to be, or indeed can be, struck out as an abuse of the process of the court seems on the face of it a remarkable proposition. There is no doubt that, side by side with their statutory duties, local authorities may in certain limited circumstances become liable for negligence at common law in the performance of their duties (see for example ***Dorset Yacht Co. v. Home Office*** [1970] A.C. 1004, ***Anns v. London Borough of Merton*** [1978] A.C. 728, 756, 788). In what circumstances then can it be said to be an abuse of process to sue them for negligence in the common law courts?

26. It is said that, in this case, the right should be denied because the claim involves consideration of a question not of "private law" but of "public law" - namely whether the respondent had or would have had a defence against the enforcement notice, that this consideration cannot take place in an ordinary action but can only take place in a proceeding of what is now called "Judicial Review" under the provisions of the R.S.C. Ord. 53.

27. The expressions "private law" and "public law" have recently been imported into the law of England from countries which, unlike our own, have separate systems concerning public law and private law. No doubt they are convenient expressions for descriptive purposes. In this country they must be used with caution, for, typically, English law fastens, not upon principles but upon remedies. The principle remains intact that public authorities and public servants are, unless clearly exempted, answerable in the ordinary courts for wrongs done to individuals. But by an extension of remedies and a flexible procedure it can be said that something resembling a system of public law is being developed.

28. Before the expression "public law" can be used to deny a subject a right of action in the court of his choice it must be related to a positive prescription of law, by statute or by statutory rules. We have not yet reached the point at which mere characterisation of a claim as a claim in public law is sufficient to exclude it from consideration by the ordinary courts: to permit this would be to create a dual system of law with the rigidity and procedural hardship for plaintiffs which it was the purpose of the recent reforms to remove.

29. The relevant statute to the present case is the Supreme Court Act 1981 section 31. and the relevant statutory rules those contained in R.S.C. Ord. 53 dating from 1977. These lay down the conditions under the procedure by which the courts can be asked to review the actions or omissions of (inter alia) statutory bodies, persons acting under statute, and inferior courts. Before a proceeding at common law can be said to be an abuse of process, it must, at least be shown (1) that the claims in question **could** be brought be way of judicial review (2) that it **should** be brought by way of judicial review.

30. The case of ***O'Reilly v. Mackman*** [1982] 3 WLR 1096 illustrates this in the clearest manner, and goes no distance towards supporting the appellant's case in this appeal. It was not contested there that the appellants, seeking directly to attack the board's decisions, would have had a remedy by way of judicial review (p.1099 H): indeed, as I understand the case, they would not have had a remedy in private law at all. The only question, which my noble and learned friend Lord Diplock was able to put in a single sentence (p.1100 E),, was whether it was an abuse of process to apply for declarations by using the procedure laid down in proceedings begun by writ or originating summons instead of using the procedure laid down by R.S.C. Ord. 53. It was decided that it would be such an abuse of process. The statements of law laid down in the single opinion must be related to that issue, the foundation of which was that the claims in question could have been brought by way of judicial review. Even when this requirement was satisfied, Lord Diplock was careful to make it clear that he was stating no universal rule that such claims could only be brought by this procedure - see p.1109 H. And he expressly stated that though there should be a general rule of public policy against permitting a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of ordinary action, there might be exceptions, particularly where the invalidity of the decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law, and in other instances on a case to case basis. (The contemporaneous case of ***Cocks v. Thanet District Council*** (ibid p.1121) may be regarded as one where a direct issue of public law arose at one remove).

31. It is indeed plain enough that issues which could be characterised as issues of "public law" may arise in a number of contexts besides those where an attack upon, or review of, actions or omissions of public bodies is involved - cases, for example, where the invalidity of such action is set up by way of defence, or where the validity of such action arises collaterally in actions against third parties. The Law Commission in its recommendations of 1971 suggested that the procedure of judicial review should cover such cases, but this suggestion was not accepted and the reforms of 1977 - 1981 were of a more limited character. So we must judge a contention of "abuse of process" according to normal principle.

32. In fact neither of the requirements which I have mentioned above is met.

33. First (and it is here that I venture to differ to some extent from the judgment of Cumming-Bruce L.J. in the Court of Appeal), this claim, treated as it must be as a claim for damages for negligence, could not in my opinion, be pursued by way of judicial review under R.S.C. Ord. 53.

34. This proposition can be established in two steps. First, the right to award damages conferred by Ord. 53 r.7 is by its terms Jinked to an application for judicial review. Unless judicial review would lie, damages cannot be given. Secondly, an action for judicial review in respect of alleged negligence is not "*appropriate*" within the meaning of Ord. 53 r.1. I quote the words of Lord Scarman: *"The application for judicial review was introduced by rule of court in 1977. The new R.S.C., Ord. 53 is a procedural reform of great importance in the field of public law, but it does not - indeed cannot - either extend or diminish the substantive law. Its function is limited to ensuring 'ubi jus, "ibi remedium'. The new procedure is more flexible than that which it supersedes. An applicant for relief will no longer be defeated merely because he has chosen to apply for the wrong remedy. Not only has the court a complete discretion to select and grant the appropriate remedy: but it now may grant remedies which were not previously available. Rule 1(2) enables the court to grant a declaration or injunction instead of, or in addition to, a prerogative order, where to do so would be just and convenient. This is a procedural innovation of great consequence: but it neither extends nor diminishes the substantive law. For the two remedies (borrowed from the private law) are put in harness with the prerogative remedies. They may be granted only in circumstances in which one or other of the prerogative orders can issue. I so interpret R.S.C. Ord. 53 r. 1 (2) because to do otherwise would be to condemn the rule as ultra vires."* ***Reg. v. Inland Revenue Commissioners*** [1982] A.C. 617, 647-8 and similarly per Lord Diplock p. 639.

35. So, since no prerogative writ, or order, in relation to the present claim could be sought, since consequently, no declaration or injunction could be asked for, no right to judicial review exists under r.l, and no consequential claim for damages can be made under r.7.

36. Secondly, and even assuming that this claim could in some way be brought under the procedure of judicial review, there is no ground, in my opinion, upon which it can be said that it should only be so brought. Ord. *53* does not state, that the procedure which it authorised was the only procedure which could be followed in cases where it applied. (In this it followed the recommendation of the Law Commission). So prima facie the rule applies that the plaintiff may choose the court and the procedure which suits him best. The onus lies upon the defendant to show that in doing so he is abusing the court's procedure. In ***O'Reilly*** it was possible to show that the plaintiffs were improperly and flagrantly seeking to evade the protection which the rule confers upon public authorities. There is nothing of that sort here. The only "public law" element involved in the present claim is that which may require the court, after it has decided the issue of duty of care and of negligence, in assessing damages to estimate, as best it can, the value of the chance which the plaintiff lost of resisting enforcement of the council's notice. The presence of this element is in my opinion quite insufficient to justify the court, on public policy grounds, from preventing the

plaintiff from proceeding by action in the ordinary way in the court of his choice, particularly when one has regard to the serious procedural obstacles which he would find if compelled to seek judicial review. If he had been suing his solicitor for negligent advice, exactly the same problem in assessing damages would have arisen and nobody could contend that the action would not proceed. I cannot see that it makes any difference that the defendant is a public authority: the claim remains one the essence of which is a claim at common law: any "public law" element is peripheral. On the same line of reasoning, but a fortiori, I reject the appellant's argument that any award of damages against the council might inhibit it in the performance of its statutory duty or might have the same effect, in practice, as granting an injunction - an argument which logically would apply to any "private law" claim against public authorities.

37. In my opinion the decision of the Court of Appeal was right and I would dismiss the appeal.

**LORD ROSKILL** My Lords,
I have had the advantage of reading in draft the speech delivered by my noble and learned friend, Lord Fraser of Tullybelton. For the reasons he gives I too would dismiss this appeal.

**LORD BRANDON OF OAKBROOK** My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Fraser of Tullybelton. I agree with it, and for the reasons which he gives I would dismiss the appeal.

**LORD BRIGHTMAN** ; My Lords,

I would dismiss this appeal for the reasons given by my noble and learned friend, Lord Fraser of Tullybelton.

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Upon Report from the Appellate Committee to whom was referred the Cause Davy against Spelthorne Borough Council, That the Committee had heard Counsel as well on Monday the 18th as on Tuesday the 19th days of July last upon the Petition and Appeal of Spelthorne Borough Council, Council Offices, Knowle Green, Staines, Middlesex, praying that the matter of the Order set forth in the Schedule thereto, namely an Order of Her Majesty's Court of Appeal of the 9th day of February 1983, so far as therein stated to be appealed against might be reviewed before Her Majesty the Queen in Her Court of Parliament and that the said Order might be reversed, varied or altered or that the Petitioners might have such other relief in the premises as to Her Majesty the Queen in Her Court of Parliament might seem meet; as also upon the Case of Arthur James Davy lodged in answer to the said Appeal; and due consideration had this day of what was offered on either side in this Cause:

It is Ordered and Adjudged, by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled. That the said Order of Her Majesty's Court of Appeal of the 9th day of February 1983 complained of in the said Appeal be, and the same is hereby, Affirmed and that the said Petition and Appeal be, and the same is hereby, dismissed this House: And it is further Ordered, That the Appellants do pay or cause to be paid to the said Respondent the Costs incurred by him in respect of the said Appeal, the amount thereof to be certified by the Clerk of the Parliaments if not agreed between the parties.