

## Ward v Secretary of State for the Environment and others

COURT OF APPEAL

*Woolf, Nicholls and Staughton LJJ*

September 25 1989

**Conservation area — Grant of planning permission — Circular guidance on conservation areas — Meaning of open space — Whether reference to open space in circular includes private gardens — Whether Secretary of State failed to have proper regard to open space as a feature of a conservation area**

A

The first respondent, the Secretary of State for the Environment, granted planning permission to the third respondent, Mr Mosley, for residential development of land within a conservation area at Tur Langton, Leicestershire, following an appeal against a decision of the second respondents, Harborough District Council, to refuse planning permission. On behalf of himself and other villagers of Tur Langton the appellant applied under section 245 of the Town and Country Planning Act 1971 to quash that decision. That appeal was dismissed by Mr Malcolm Spence QC, sitting as a deputy judge of the Queen's Bench Division. On appeal the appellant contended that the inspector had failed to have proper regard to section 277(8) of the Town and Country Planning Act 1971 in allowing the third respondent's appeal. In particular the inspector was in error in concluding that the references to "open space" in Circular 8/87 as being features for preservation or enhancement were references to open land and did not include open space in the form of private gardens.

B

C

**Held** The appeal was allowed.

D

A pattern of private gardens could be capable of being a feature of a conservation area which would have to be taken into account by an inspector in complying with his duty under section 277(8) of the 1971 Act and in following the guidance in Circular 8/87: see pp 89F and 93A. The inspector was in error in ruling that no private gardens were an open space or open land; he misunderstood and misinterpreted the circular and consequently misunderstood the structure plan in its reference to the protection of open land. The inspector had not applied his mind to the question of whether what was there in the conservation area would be more or less beneficial to the area than what was proposed by the third respondent. The inspector had not given weight to the primary objection to the proposed development, the loss of open space: see pp 90G-91C. The inspector's decision letter fell short of the required standards with regard to the adequacy of its reasons: see p 91E-H.

E

### Case referred to in the judgments

F

*Steinberg v Secretary of State for the Environment* [1989] 2 PLR 9; [1989] JPL 258

### Appeal against a decision of Mr Malcolm Spence QC

This was an appeal against a decision of Mr Malcolm Spence QC (sitting as deputy judge of the Queen's Bench Division) who had dismissed an application by the appellant under section 245 of the Town and Country Planning Act 1971 against a decision of the first respondent, the Secretary of State for the Environment, allowing an appeal by the third respondent against a refusal of outline planning permission by the second respondents, Harborough District Council.

G

*Anthony Smith QC and Nadia Sharif (instructed by Marron Dodds & Waite, of Leicester) appeared for the appellant.*

*Robert Jay (instructed by the Treasury Solicitor) appeared for the first respondent, the Secretary of State for the Environment.*