

085/22/14

Case No: CO/520/2002

Neutral Citation No: [2002] EWHC 921 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand,
London, WC2A 2LL

Friday 10 May 2002

Before :

THE HONOURABLE MR JUSTICE RICHARDS

Between :

(1) STEVEN WILLIAM LOMAX
(2) ELLEN MARY LOMAX
(3) CHRISTOPHER CEDRIC JONES

Claimants

- and -

(1) THE SECRETARY OF STATE FOR THE TRANSPORT,
LOCAL GOVERNMENT AND THE REGIONS
(2) ROCHDALE METROPOLITAN BOROUGH COUNCIL

Defendants

(Transcript of the Handed Down Judgment of
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Mr Martin Carter (instructed by **Field Cunningham & Co**) for the Claimants
Mr Timothy Mould (instructed by **The Treasury Solicitor**) for the First Defendant
Mr Philip Kolvin (instructed by **Rochdale Borough Solicitor**) for the Second Defendant

Judgment
As Approved by the Court

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Mr Justice Richards:

1. The court has before it an application pursuant to s.23 of the Acquisition of Land Act 1981 to quash the Borough of Rochdale (Rochdale Canal, Trub, Rochdale (No.1)) Compulsory Purchase Order 2000 ("the CPO"). The CPO was made by Rochdale Metropolitan Borough Council under s.226 of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 for the purpose of restoring the Rochdale Canal and carrying out works to facilitate the development of neighbouring land. The project for the restoration of the Rochdale Canal is part of a wider scheme for the restoration of the South Pennine Ring, which has links (including a trans-Pennine link) to other parts of the national canal network. Work has been required at 15 sites in order to restore the canal to navigation. Work at the other sites has either been completed or is due to be completed to deadline. The only remaining obstacle is at Trub, the site to which the CPO relates. At that point the line of the canal is broken by the M62 motorway. It is not practicable to create a direct link between the two parts of the canal because it would have an unacceptable effect on the motorway. The purpose of the CPO is to create a more elaborate, indirect link by diverting the canal through an existing underpass under the motorway. The details are unimportant, but the result, if achieved, will be to render the entire canal navigable.
2. The three claimants own or have proprietary rights over land affected by the CPO. The first and second claimants, Mr and Mrs Lomax, operate a transport business from land owned by them at Trub Farm, to the north of the motorway. The third claimant, Mr Jones, lives at Maden Fold Farm, owned by his father. The main part of his farm is to the south of the motorway but he also farms land to the north of the motorway, currently using the underpass for the purpose of access. All three claimants were statutory objectors to the CPO.
3. The inspector appointed by the Secretary of State held a public inquiry in October 2000. In his report the inspector summarises the objections originally advanced by Mr and Mrs Lomax. They did not object to the principle of restoring the canal under the motorway but wished to protect their interests in relation to the specific works proposed. During the course of the inquiry, however, their legal representative, Mr Delaney, informed the inspector that his clients and the council had agreed Heads of Agreement and undertook to withdraw their objection in writing following the inquiry. After the end of the inquiry Mr Delaney wrote to confirm his clients' acceptance of the Heads of Agreement and withdrew their objection. The Heads of Agreement provided inter alia for the grant of rights of passage to Mr Lomax and Mr Jones over a swing bridge to be constructed over the realigned canal and for the upgrading of the existing access road from the main road, Manchester Road, so as to enable it to take agricultural vehicles used by Mr Jones.
4. Mr Jones had a number of concerns. They related in part to the fact that the new section of canal would cross the eastern part of his farmyard and require the removal of various buildings, as well as making the farm much more public and exposing it to an increased risk of vandalism. More important for present purposes, however, is the loss of access through the underpass from the farm buildings to the area of land farmed to the north of the motorway. That area includes land used for turf-cutting and it is necessary for Mr Jones to gain access to it with turf-cutting equipment. If

the canal is taken through the underpass it will be necessary for Mr Jones to take a detour via Manchester Road, travelling to the south of the motorway from the farm buildings to that main road, going under the motorway along the main road and then travelling to the north of the motorway along a track in order to gain access to the land. It is in connection with the latter part of that route that the Heads of Agreement deal with the widening of the track and the provision of rights of passage over the swing bridge to be constructed over the new section of canal.

5. I have covered those matters only in outline. They were dealt with in very considerable detail in the inspector's report. In his conclusions the inspector examined the effect of the proposed works on the claimants in equal detail. In relation to Mr and Mrs Lomax he observed that the clauses of the Heads of Agreement which committed the parties to the creation of legal agreements to permit the passage of vehicles across the swing bridge appeared to be satisfactory. In relation to the undertaking to secure improvements to the track to enable the turf cutter to pass, together with related works, the inspector observed that there were no details of the necessary works, the works and subsequent maintenance required the approval of, and placed obligations on, agencies and landowners not represented at the inquiry, and the site of the works was outside the CPO. Whether or not the works proceeded would depend on negotiation and agreement. For these reasons, despite the willingness of Mr Lomax's agent to reach agreement by negotiation using the Heads of Agreement, the clauses in that document did not give certainty that the works could or would be completed.
6. In relation to Mr Jones, the focus of the inspector's concerns was the new route between the two parts of the farm. It would be considerably longer and would involve opening and closing four locked gates. It would be necessary to drive the turving machinery along the heavily trafficked Manchester Road, and at the inquiry the Council could not demonstrate that the equipment would satisfy all necessary regulations to allow it to be driven along a public highway. The track to the north of the motorway was not wide enough for the turf-cutting equipment to pass and, despite the Heads of Agreement informally agreed with the agent for Mr and Mrs Lomax, the Council had not shown that there was a legally binding procedure in place to guarantee the necessary improvements to the track. The Council's submission that suitable buildings could be constructed on the northern part of the holding to accommodate the turving machinery was not accepted. The inspector considered that access between the two parts of the farm would be essential to the continuation of the farm business. It followed that if the works contained in the Heads of Agreement were not completed, the continuation of the turving business could not be guaranteed.
7. The inspector stated his overall conclusion as follows:

"112. The Heads of Agreement upon which the objection by Mr and Mrs Lomax has been withdrawn are not sufficient to demonstrate that all of the matters listed can be fulfilled. The terms involve other parties whose formal legal agreement has not been provided. They involve a scheme of construction and use of land for which there are no details and no evidence that the relevant parties would accept.

113. The proposal would affect the landholding and the operation of Maden Fold Farm greatly. I consider the proposed access from Manchester Road to the farmyard would be satisfactory. It seems to me that the vehicular access route across the farmyard and the re-organisation of the farmyard could be determined with further negotiations. The farmyard would become more exposed to passing people in a location where present levels of vandalism are high. These matters could, I believe, be resolved to the reasonable satisfaction of Mr Jones. However, the Council's case is that the two parts of the farm will be provided with a suitable interconnecting route to replace the present underpass under the motorway. The driving of specialist farm machinery along a busy public highway has been shown to be undesirable and there is no guarantee that the access road to the north of the motorway can be widened sufficiently to accommodate the farm equipment. The erection of a farm building on the isolated land north of the motorway to accommodate the turf cutting machinery would not amount to a satisfactory alternative.

114. The restoration of the link in the Rochdale Canal would provide great social economic and environmental benefits for the local community and to a lesser degree, similar benefits over a much wider area. Nevertheless, the Council have not demonstrated that their solutions to overcome the consequences of the scheme on two property owners can be carried out. In these circumstances the case for the acquisition of the land proposed in the CPO is not sufficiently compelling to justify confirmation."

8. Accordingly the inspector recommended against confirmation of the CPO by the Secretary of State.
9. After receipt of the inspector's report by the Secretary of State, the Government Office for the North West wrote to the Council on 21 March 2001 referring to the Heads of Agreement and to post-inquiry correspondence on the issue which had not been available to the inspector. The letter went on:

"The Secretary of State notes, however, that there does not appear to be any legally binding agreement in place to provide for the widening of the access track, in the event that the Order is confirmed. From the information currently available, he is unable to reach a view on whether formal agreement has been obtained from all necessary parties to a specific programme of works for the widening of the track, or that completion of the works would accord with the planned programme for the works for the linking of the Canal.

The Secretary of State therefore invites the Council to submit within 21 days of the date of this letter such information and

documentation as it considers sufficient in order to satisfy the Secretary of State that in the event that the Council's scheme for the Canal were to proceed, Mr Jones' property would enjoy the proposed rights of access as a legally enforceable right. In the light of any submissions from your Council, the Secretary of State will then consider the matter further.."

10. Between then and the date of the Secretary of State's decision letter there was a substantial amount of additional correspondence on this issue, some of which I will need to refer to in due course.
11. In the decision letter itself, dated 20 December 2001 and sent by the Government Office for the North West, that additional correspondence was listed in detail. Paragraphs 11-16 of the letter went on to discuss the material at considerable length, leading to the following observations in paragraph 17:

"The Secretary of State notes that the current position is that the agreement of all of the necessary parties has not yet been obtained to a precise scheme to ensure that access would be enjoyed by Mr Jones between Manchester Road and his land north of the motorway and to meet the concerns raised on behalf of the Lomax family in respect of matters relating to the access arrangements. However, the Secretary of State considers that in principle a satisfactory scheme based upon either the widening of the existing access track or the construction of a new roadway could be agreed by the parties. Whilst the Secretary of State accepts that at the current time there is no certainty that such a scheme will be agreed, he notes that negotiations are continuing with a view to obtaining agreement. He accepts, however, that there is no guarantee that such an agreement will be reached in time to enable the works to be completed to accord with the planned programme of works for the linking of the Canal. The Secretary of State also notes the offer by British Waterways to provide an alternative means of access within the Order lands in the event that a satisfactory agreement cannot be reached."

12. The decision letter then examined various other points concerning the effect of the scheme on Mr Jones. The Secretary of State agreed with the inspector's view that maintenance of an access between the two parts of the farm would be essential to the continuation of the farm business. As to the question whether the turf cutter could lawfully or safely be driven on the public highway, the Secretary of State noted that the machinery would only be driven along the public highway for a short distance and he considered that this would be acceptable in principle. He also considered that there was no evidence to suggest that the driving of the machinery along the public highway would present any overriding legal difficulties.

13. Paragraph 22 of the letter set out the Secretary of State's view that the Rochdale Canal restoration project offered very important public benefits and that the CPO scheme was an important part of the project. He agreed with the inspector that Rochdale is a deprived borough with relatively high unemployment, below average education and health standards, and relatively low wages. He agreed that the environmental, employment and tourist benefits created by the restoration of the canal would assist in improving all of these circumstances for residents. He had also taken into account that this was the last remaining scheme of significance necessary to enable navigation along the whole of the canal. He referred in addition to the availability of funding.

14. There followed, in paragraph 24, this key paragraph:

"He has taken into account the lack of finalised arrangements to meet the concerns raised on behalf of the Lomax family and to guarantee access by Mr Jones to the northern part of his farmholding, and the concerns expressed in respect of the driving of turf cutting machinery along the highway. As stated in paragraph 22 above, the Secretary of State considers that the Order scheme, as part of the wider Canal restoration project, offers considerable and very important public benefits to the Region. He considers that these benefits weigh heavily in favour of confirming the Order to ensure the success of the overall restoration project. For these reasons he does not accept the Inspector's recommendation that the Order should not be confirmed."

15. In conclusion, the letter stated that for the reasons given the Secretary of State had decided to confirm the Order without modification.

The challenge to the decision

16. Section 23(2) of the Acquisition of Land Act 1981 provides:

"If any person aggrieved by –

(a) a compulsory purchase order ...

desires to question the validity thereof on the ground that any relevant requirement has not been complied with in relation to the order ... he may make an application to the High Court."

17. Section 24(2) provides:

"If on the application the court is satisfied that ...

(b) the interests of the applicant have been substantially prejudiced by any relevant requirement ... not having been complied with,

the court may quash the compulsory purchase order or any provision contained therein ... either generally or in so far as it affects any property of the applicant."

18. In this case the "relevant requirement" relied on is contained in rule 17(4) of the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 ("the 1990 Rules") which, so far as material, is in the following terms:

"If, after the close of an inquiry, the Secretary of State –

...

- (b) takes into consideration any new evidence or new matter of fact (not being a matter of Government policy)

and is for that reason disposed to disagree with a recommendation made by the inspector, he shall not come to a decision which is at variance with that recommendation without first notifying the persons entitled to appear at the inquiry who appeared at it of his disagreement and the reasons for it; and affording them an opportunity of making written representations to him within 21 days of the date of the notification, or (if the Secretary of State has taken into consideration any new evidence or new matter of fact, not being a matter of Government policy) of asking within that period for the re-opening of the inquiry."

19. The claimants' case in essence is that the Secretary of State did take into consideration new evidence or new matters of fact as to the progress and content of the negotiations between the claimants, the Council and other interested persons in relation to the matters covered by the Heads of Agreement. It was for that reason, amongst others, that he was disposed to disagree with the inspector's recommendation. But he came to his decision without first notifying the claimants of his disagreement with the inspector's recommendation and the reasons for it, and without affording them an opportunity of making written representations to him or of asking for the re-opening of the inquiry. He thereby failed to comply with rule 17(4), which resulted in the interests of the claimants being substantially prejudiced.

20. That case gives rise to the following principal issues: (1) are the claimants "persons aggrieved"? (2) did the Secretary of State fail to comply with rule 17(4)? (3) have the claimants suffered substantial prejudice as a result of such non-compliance? and (4) if the claimants' case is well founded, should the court nevertheless withhold relief in the exercise of its discretion?

Persons aggrieved

21. Mr Kolvin, for the Council, submits that Mr and Mrs Lomax, the first and second claimants, are not "persons aggrieved" within the meaning of s.23(2) of the 1981 Act

since, having entered into the Heads of Agreement, they withdrew their objection to the CPO during the course of the inquiry: they cannot possibly be "aggrieved" by an order that by the end of the inquiry they were expressly not opposing.

22.

Although that argument has considerable attraction, I am reluctant to rule against Mr and Mrs Lomax on this ground in circumstances where they did originally object to the CPO and did appear at the inquiry. I am inclined to agree with Mr Mould, for the Secretary of State, that the effect of withdrawal of the objection to the CPO is best examined in the context of substantial prejudice. It is not inconceivable that a procedural error by the Secretary of State at the post-inquiry stage could result in substantial prejudice to someone whose objection was withdrawn during the inquiry; and if that were to occur, it would be very unsatisfactory if the person concerned were precluded from challenging the decision on the basis that withdrawal of the objection necessarily precluded their being a person aggrieved. In any event the right of Mr Jones to challenge the CPO as a person aggrieved is not in dispute, so that little is gained by dealing with the point as a threshold issue in relation to Mr and Mrs Lomax.

Non-compliance with rule 17(4)

23. It is common ground that after the close of the inquiry the Secretary of State took into consideration new evidence or new matters of fact concerning the continuing negotiations between the claimants and the Council in respect of matters covered by the Heads of Agreement. The question that arises is whether in those circumstances there was a failure to comply with rule 17(4) of the 1990 Rules.
24. Mr Kolvin submits that there was no such failure. Rule 17(4) does not require the Secretary of State to notify relevant persons and to afford them an opportunity to make representations merely because he takes into consideration new evidence or new matters of fact. The requirement arises only where he is for that reason disposed to disagree with a recommendation made by the inspector. The words "for that reason" import a requirement of causality: the taking of new evidence or matters of fact into consideration does not have to be the sole cause of the disagreement, but must be a cause of that disagreement. In this case, it is submitted, it is clear from the Secretary of State's decision letter that he did not depart from the inspector's recommendation because of the new evidence. He did not take a different view from the inspector as to the lack of finalised arrangements to meet the concerns raised on behalf of Mr and Mrs Lomax and to guarantee access by Mr Jones to the northern part of his farm. He reached a different conclusion only because he struck a different balance between this and the wider public interest in the CPO scheme, as part of the Canal restoration project, going ahead.
25. For the Secretary of State, on the other hand, Mr Mould accepts that there was a failure to comply with rule 17(4), on the basis that the Secretary of State disagreed with the inspector in drawing the overall balance between the continuing uncertainty over the arrangements affecting the claimants and the important public benefits which the CPO scheme conferred: the Secretary of State's knowledge of the new material informed his decision to disagree with the inspector's recommendation on the overall

balance of advantage. Since the claimants appeared at the inquiry and the Secretary of State did not notify them of the fact that he was disposed to disagree with the inspector on the overall balance, nor did he offer them the chance to make written representations or to ask for the reopening of the inquiry, there was to that limited extent a failure to comply with a relevant requirement in the form of rule 17(4).

26. Mr Carter, for the claimants, relies on that concession and adopts the same reasoning in resisting the argument advanced on behalf of the Council.
27. It is clear that, as Mr Kolvin submits, the mere taking of new material into account is not enough to engage the requirement of notification in rule 17(4). For that requirement to be engaged, the new material must be a causative factor in the decision (at this stage a provisional decision) to disagree with a recommendation made by the inspector. In this case, however, Mr Mould's acceptance that the new material "informed" the Secretary of State's decision to disagree with the inspector's recommendation seems to me to amount to a concession that the new material influenced the decision and was therefore a causative factor, rather than simply forming part of the background against which the decision was made. Faced with such a concession on behalf of the actual decision-maker, the court should plainly be very slow to reach any different conclusion.
28. But in any event the concession is in my judgment correctly made. The decision letter contains a detailed examination of the new material, leading up to the observations in paragraph 17, quoted above. In that paragraph, whilst accepting the absence of finalised arrangements, the Secretary of State points to a number of considerations that tend to reduce the significance of the continuing uncertainty: "in principle a satisfactory scheme ... could be agreed by the parties"; "negotiations are continuing with a view to obtaining agreement"; "the offer by British Waterways to provide an alternative means of access within the Order lands in the event that a satisfactory agreement cannot be reached." To my mind that represents a shift in position from what was said in the inspector's report. For example, the inspector's view was that "the Heads of Agreement ... are not sufficient to demonstrate that all of the matters listed can be fulfilled" (para 112), "there is no guarantee that the access road to the north of the motorway can be widened sufficiently to accommodate the farm equipment" (para 113) and "the Council have not demonstrated that their solutions to overcoming the consequences of the scheme on the two property owners can be carried out" (para 114). The Secretary of State, unlike the inspector, takes the view that solutions can be found, albeit that there is no certainty that agreement will be reached. This is plainly material when it comes to striking the balance between the interests of the claimants and the wider public interest. The Secretary of State reaches a different conclusion from the inspector both because he attaches greater weight to the public benefits of the scheme and because, although there are no finalised arrangements to protect the interests of the claimants, he has satisfied himself that satisfactory arrangements can be made and negotiations are continuing to that end.
29. There is an additional factor which I have omitted in order to avoid complicating the analysis. The inspector was influenced by what he considered to be the undesirability

of driving specialist farm machinery along the main road. The Secretary of State considered that this would be acceptable in principle and that there was no evidence that it would present any overriding legal difficulties. Accordingly this was a factor which weighed against the scheme in the inspector's reasoning but was neutral in the Secretary of State's reasoning. It was, however, simply a difference of judgment and did not depend upon taking new evidence or new matters of fact into consideration.

30. For the reasons given, however, I hold that there was a failure to comply with the relevant requirement of rule 17(4). I therefore turn to consider what I consider to be the central issue in the case, namely whether the interests of the claimants were substantially prejudiced by that failure.

Substantial prejudice

31. Mr Carter submits, and I accept, that in order to establish substantial prejudice it is not necessary for the claimants to establish that the decision would have been different if rule 17(4) had been complied with. The claimants need only show that the Secretary of State's decision might have been different; or, to express the same point in a different way, they need only exclude the contention that the Secretary of State would necessarily have made the same decision. Mr Carter relied on Simplex GE (Holdings) Ltd v. Secretary of State for the Environment [1988] 3 PLR 25. Although that is not itself a case about substantial prejudice, there was no dispute before me that the principle is the same.

32. Mr Carter also submitted that in assessing the effect of a failure to comply with rule 17(4) I should have in mind the importance attached to ownership of land, described in Chesterfield Properties PLC v. Secretary of State for the Environment (1997) 76 P&CR 117, 130, as a "constitutional right". In my view this point does not assist the claimants. The importance of ownership of land is not in issue (though it may be noted that Mr Jones does not himself own the property that he farms). The Secretary of State had this well in mind in his decision, in which he concluded inter alia that the CPO would constitute a justifiable interference in the rights of owners and lessees under Article 1 of the First Protocol to the European Convention on Human Rights. But the fact that the claimants own or have interests in land, although of central relevance factually, does not have any deeper bearing upon whether their interests have been substantially prejudiced by non-compliance with a relevant requirement.

33. In considering the remainder of the submissions it is necessary to examine the position of Mr and Mrs Lomax separately from that of Mr Jones.

34. In relation to Mr and Mrs Lomax, the submission made by Mr Mould, supported by Mr Kolvin, is that the non-compliance with rule 17(4) can have given rise to no possible prejudice to them, since at the inquiry they were content to withdraw their objection to the CPO on the basis that the Heads of Agreement met their concerns. They thereby accepted that the Heads of Agreement gave them sufficient protection and that the process of finalising the arrangements should not be allowed to hold up

the CPO scheme. That was the logic of their position; it was also the logic of the Secretary of State's conclusion; and it follows that what happened cannot have caused them substantial prejudice.

35. That is a formidable submission. Mr Carter seeks to avoid its impact by focusing on the progress of the negotiations to give effect to the Heads of Agreement. He submits that Mr and Mrs Lomax were substantially prejudiced because they had been seeking unsuccessfully to persuade the Council that Mr Jones should be involved in the negotiations and be a party to the proposed agreement to enter into a deed of easement; matters had reached a position of deadlock; they could have sought to persuade the Secretary of State to endorse their position and to break the deadlock; and in those circumstances the Secretary of State might have thought it right not to confirm the CPO until arrangements had been concluded. It is true that the solicitors acting for Mr and Mrs Lomax drew the Secretary of State's attention to the lack of involvement of Mr Jones in the negotiations (see in particular their letter dated 5 October 2001). Mr and Mrs Lomax were, however, deprived of the opportunity to make the point in the context of the Secretary of State's reasons for being disposed to disagree with the inspector's recommendation. Had those reasons been communicated as required by rule 17(4), Mr and Mrs Lomax could have made more focused representations.
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36. I find that line of argument by Mr Carter wholly unconvincing. Mr and Mrs Lomax had engaged in extensive post-inquiry correspondence with the Secretary of State and he took such correspondence expressly into consideration. From that correspondence he was already aware that Mr Jones had not been involved in the negotiations. It is just possible that, if more focused representations had been made, he would have identified this as one of the reasons why progress had been so slow (subject, however, to a submission by Mr Kolvin, upon which I think it unnecessary to reach any conclusion, that examination of the correspondence shows that the problem over the negotiations lay with Mr and Mrs Lomax themselves rather than with the non-involvement of Mr Jones). But even if the Secretary of State had taken the view that progress had been hindered by the non-involvement of Mr Jones, that could at most have confirmed him in his view that satisfactory arrangements could in principle be agreed and that the lack of finalised arrangements should not be allowed to stand in the way of the CPO, i.e. it would if anything have been an additional factor weighing in favour of the same conclusion. It is inconceivable that the Secretary of State might have reached a different conclusion as to the balance of advantage, or might have deferred a decision, simply because he took the view that negotiations had stalled through the lack of involvement of Mr Jones.
37. Much the same point about lack of involvement in the negotiations is advanced by Mr Carter in relation to Mr Jones. What is said is that, although Mr Jones was copied in on letters, he played no real part in the post-inquiry correspondence. Mention of his position was made by the solicitors acting for Mr and Mrs Lomax, but they were not acting for Mr Jones at that time. He had appeared himself at the inquiry and did not instruct solicitors until after the decision letter. At no time did he get the opportunity to point out that he had not been involved in the negotiations on alternative access to his land to the north of the motorway. Had he been asked, he would have stressed the

importance of his being a party to any enforceable agreement to secure such access; and the point would have carried more weight if it had come directly from him. The Secretary of State might have been persuaded to take a different view concerning the progress of the negotiations and to strike the balance in a different way. Moreover Mr Jones could have relied on the lack of progress of the negotiations as a basis for reverting to his more basic objections to the CPO scheme going ahead at all: although he had not objected to the principle of restoring through navigation along the Canal, he had objected to the CPO because of what he considered to be its unacceptable effect on his farm.

38. I consider the argument in relation to Mr Jones to be as untenable as that in relation to Mr and Mrs Lomax. Although Mr Jones played little direct part in the post-inquiry correspondence, he was aware of what was happening and the Secretary of State was aware of his lack of involvement in the negotiations. The Secretary of State was also informed, by letter dated 13 December 2001 from the solicitors for Mr and Mrs Lomax, of the precise access arrangements favoured by Mr Jones (as by Mr and Mrs Lomax themselves); and it has not been suggested that the letter was in any way an inaccurate statement of his position. Thus the Secretary of State was made aware of the substance of Mr Jones's position.
39. In any event nothing has been put forward in these proceedings which, if submitted on behalf of Mr Jones in the form of representations in the context of rule 17(4), would have added materially to the information in the possession of the Secretary of State or would have been capable of influencing the Secretary of State's decision. It is unnecessary for me to repeat what I have already said on the question of Mr Jones's lack of involvement in the negotiations. As to Mr Jones's basic objections to the CPO, the inspector was satisfied that his interests in other respects could be properly safeguarded; the Secretary of State agreed with the inspector; and there was no sensible possibility that Mr Jones might have been able to persuade the Secretary of State to accept that the CPO should not be confirmed because of his objections to it. The submission on this issue had the merit of bringing out the underlying motivation of Mr Jones in bringing the present challenge, namely that he still seeks to stop the CPO scheme altogether. His case, however, is in my view hopeless.
40. In conclusion, I am satisfied that none of the claimants suffered substantial prejudice by reason of the Secretary of State's failure to comply with rule 17(4). None of the matters relied on by Mr Carter could conceivably have made any difference to the decision. At paragraph 24 of the decision letter the Secretary of State observed that the "considerable and very important public benefits" offered by the CPO scheme, as part of the wider Canal restoration project, "weigh heavily in favour of confirming the Order" (emphasis added). In my view it is clear that the Secretary of State considered the balance to come down strongly in favour of confirmation of the CPO. It would have taken matters of considerable weight to cause him to take a different view. Even taken at their highest, the matters relied on by the claimants plainly lacked anything like the requisite weight.
41. I should add for completeness that it has not been suggested that any of the claimants, if given notification under rule 17(4), would have called for the reopening of the

inquiry. Even if they had, there was plainly no basis for the inquiry to be reopened and I have no doubt that any such request would have been refused and that such refusal would have been lawful.

42. Accordingly I hold that, although there was a failure to comply with a relevant requirement, the interests of the claimants have not been substantially prejudiced thereby. It follows that the conditions for a quashing order have not been made out and the claim must fail.

Discretion

43. The submissions advanced under the head of discretion are now academic. I should, however, make brief reference to the points advanced. Mr Kolvin asked the court to take into account a number of factors militating against the exercise of the court's discretion to quash the CPO if the conditions for a quashing order were otherwise met. The most important of those factors were: (1) the public importance of the Rochdale Canal restoration scheme and the severe consequences that might flow from quashing the CPO, including the risk of loss of public funding and inward investment to the area; and (2) an offer by the Council of an undertaking that the construction of any new canal waterway within the existing motorway underpass will not be commenced until alternative access routes, both north and south of the motorway, are completed and available to Mr Jones and his turf-cutting machinery, save with the agreement of Mr Jones (an undertaking similar to that offered by British Waterways, as mentioned at paragraph 17 of the decision letter).

44. If the court is satisfied that the interests of a claimant have been substantially prejudiced by non-compliance with a relevant requirement, it will be very slow indeed to withhold relief on grounds of discretion. I cannot say for certain how I would have decided the matter in the present case if it had got to this point. Much would have depended upon what precisely I had identified by way of substantial prejudice. Nevertheless it is right to record that I would have been very reluctant to grant a quashing order in the circumstances of this case. In relation to Mr Jones, at least, the proffered undertaking would probably have been sufficient to justify the withholding of relief. In relation to all the claimants, the public importance of the scheme, coupled with the fact that, as the Secretary of State found, it is possible in principle for satisfactory access arrangements to be agreed, would have pushed me in the same direction. It is of some materiality that, if the CPO were quashed, it would be necessary to go through the entire statutory process again, so that the Rochdale Canal restoration project would at the very least suffer a very lengthy delay. But in the circumstances I need say no more about the issue of discretion.

Conclusion

45. For the reasons given, the claim is dismissed.

46. At the hearing I heard submissions on costs so that, whichever way I decided the case, it would be possible for me to hand down judgment without causing the parties to incur extra expense through attendance at the hearing.
47. Having regard to the outcome, I will order the claimants to pay the Secretary of State's costs, summarily assessed in the sum of £5,300. In reaching that figure I have allowed for the fact that the costs schedule was based on a longer hearing time than was actually the case, but that a small amount of additional time was spent by counsel after the hearing in preparing a short written submission on costs, a course adopted in order to avoid taking up further time at the hearing itself.
48. I will also order the claimants to pay the Council's costs, but limited to those incurred in preparing and filing written evidence, such costs to be subject to detailed assessment if not agreed. I am satisfied that it was necessary for the Council to put in that evidence, to which substantial reference was made in the course of the hearing. I am unable to isolate with confidence the relevant costs in the Council's costs schedule and cannot therefore deal with the matter by way of summary assessment.
49. Mr Kolvin submitted that the claimants should pay the Council's costs of the hearing as well. It was entirely understandable that the Council wished to be represented at the hearing; and I accept that on the issue of discretion it was appropriate for the case to be advanced by the Council rather than by the Secretary of State. Against that, however, I take into account that the case did not ultimately depend on the issue of discretion and that Mr Kolvin advanced a number of submissions (on persons aggrieved and on non-compliance with rule 17(4)) that did not succeed. Looking at the matter in the round, I take the view that justice is done by making no order as to the costs of the Council beyond those incurred in the preparation and filing of its evidence.
50. Any other matters arising out of, or consequential upon, this judgment can be dealt with by written submissions if all parties are content with that course.