1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

***1037** Regina v. Somerset County Council ex parte. Fewings and Others

Court of Appeal
CA (Civ Div)
Sir Thomas Bingham M.R., Simon Brown and Swinton Thomas L.JJ.
1995 March 6, 7; 17

Local Government--Powers--Use of land--Council acquiring common land over which deer hunting taking place--Decision of authority to ban hunting on moral grounds--Whether decision lawful--Local Government Act 1972 (c. 70), s. 120

The council acquired land in the Quantock Hills in 1921 over which red deer were hunted. The land was held for amenity purposes, and formed part of a larger area designated under the National Parks and Access to the Countryside Act 1949 as an area of outstanding natural beauty. In 1993 the council, by a majority of 26 to 22, imposed an immediate ban on the hunting of deer by hounds on the land. On application for judicial review by representatives of the Quantock Staghounds the judge held that the majority who had supported the ban had done so because of their belief that such hunting involved unacceptable and unnecessary cruelty to the deer and that the council, in founding their decision on moral repugnance to hunting, had exceeded their powers under section 120(1)(b) of the Local Government Act 1972 [FN1] to manage the acquired land for "the benefit, improvement or development of their area." He further concluded that the decision was flawed on the alternative ground that the council had failed to take account of the effect of the ban on herd management and conservation. He accordingly granted the application and quashed the resolution.

FN1 Local Government Act 1972, s. 120: see post, p. 1043A.

On the authority's appeal: --

Held, dismissing the appeal (1) (Simon Brown L.J. dissenting) that, since the council's attention had not been directed to ***1038** section 120(1)(b), which governed the exercise of their powers, they had failed to take account of its prescribed objects or to appreciate the overriding statutory constraint to which as local authority landowners, as distinct from private landowners, they were subject; and that, accordingly, they had not exercised their power to promote the benefit of their area and had not been entitled to make their decision on the ground relied on (post, pp. 1046B-G, G-H, 1047A, 1053A-B, D-E).

But (2) that, since in any event the question of herd management and conservation did not require immediate solution, the resolution was not vulnerable to attack on the judge's alternative ground (post, pp. 1047B-C, 1050F, 1054E-F).

Per Sir Thomas Bingham M.R. Given the broad language of section 120(1)(b) neither the cruelty argument nor the contrary argument is necessarily irrelevant to consideration of what is for the benefit of the area (post, p. 1045F-G).

Per Swinton Thomas L.J. A resolution to ban hunting on the basis that it was in fact imposed does not properly fall within the ambit of section 120(1)(b) (post, p. 1054D).

Per Simon Brown L.J. Both the cruelty argument and the countervailing ethical considerations were necessarily relevant to the council's decision. Provided that those councillors espousing the cruelty argument had regard to such other considerations as were necessarily in play they were entitled to regard it as decisive. There is no sufficient reason for holding that they gave effect to unlawful considerations or failed to address the true question before them (post, pp. 1049F-G, 1050D, 1051C).

Decision of Laws J. [1995] 1 All E.R. 513 affirmed.

The following cases are referred to in the judgments:

Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223; [1947] 2 All E.R. 680, C.A.

Calder and Hebble Navigation Co. v. Pilling (1845) 14 M. & W. 76

Costello v. Dacorum District Council (1982)

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499

81 L.G.R. 1, C.A.

CREEDNZ Inc. v. Governor-General [1981] 1 N.Z.L.R. 172

Kruse v. Johnson [1898] 2 Q.B. 91, D.C.

Reg. v. Tower Hamlets London Borough Council, Ex parte Chetnik Developments Ltd. [1988] A.C. 858; [1988] 2 W.L.R. 654; [1988] 1 All E.R. 961, H.L.(E.)

Rex v. London County Council, Ex parte London and Provincial Electric Theatres Ltd. [1915] 2 K.B. 466, C.A.

Slattery v. Naylor (1888) 13 App.Cas. 446, P.C.

The following additional cases were cited in argument:

Bromley London Borough Council v. Greater London Council [1983] 1 A.C. 768; [1982] 2 W.L.R. 62; [1982] 1 All E.R. 129, H.L.(E.)

Mixnam's Properties Ltd. v. Chertsey Urban District Council [1965] A.C. 735; [1964] 2 W.L.R. 1210; [1964] 2 All E.R. 627, H.L.(E.)

Reg. v. Amber Valley District Council, Ex parte Jackson [1985] 1 W.L.R. 298; [1984] 3 All E.R. 501

Reg. v. Barnet London Borough Council, Ex parte Johnson and Jacobs (1990) 3 Admin.L.R. 149

Reg. v. Lancashire County Council, Ex parte Telegraph Service Stations Ltd. (1988) 153 Loc.Gov.Rev. 510

Reg. v. Secretary of State for Foreign Affairs, Ex parte World Development Movement Ltd. [1995] 1 W.L.R. 386; [1995] 1 All E.R. 611, D.C.

Secretary of State for Education and Science v. Tameside Metropolitan Borough Council [1977] A.C. 1014; [1976] 3 W.L.R. 641; [1976] 3 All E.R. 665, H.L.(E.)

***1039** Stepney Borough Council v. Joffe [1949] 1 K.B. 599; [1949] 1 All E.R. 256, D.C.

Stoke-on-Trent City Council v. B. & Q. Plc. [1991] Ch. 48; [1991] 2 W.L.R. 42; [1991] 4 All E.R. 221

Wedgwood, In re; Allen v. Wedgwood [1915] 1 Ch. 113, C.A.

The following additional cases, although not cited, were referred to in the skeleton arguments:

Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government [1958] 1 Q.B. 554; [1958] 2 W.L.R. 371; [1958] 1 All E.R. 625, C.A.

Reg. v. Broadcasting Complaints Commission, Ex parte Owen [1985] Q.B. 1153; [1985] 2 W.L.R. 1025; [1985] 2 All E.R. 522, D.C.

Reg. v. Essex County Council, Ex parte Clearbrook Contractors Ltd. (unreported), 3 April 1981, McNeill J.

Reg. v. Reading Borough Council, Ex parte Quietlynn Ltd. (1986) 85 L.G.R. 387

Reg. v. Stockport Metropolitan Borough Council, Ex parte Papay (unreported), Mann J.

Reg. v. Waltham Forest London Borough Council, Ex parte Baxter [1988] Q.B. 419; [1988] 2 W.L.R. 257; [1987] 3 All E.R. 671, C.A.

Startin v. Solihull Metropolitan Borough Council [1979] R.T.R. 228

APPEAL from LAWS J.

By notice of motion dated 3 November 1993 the applicants, William Charles Fewings, Master of the Quantock Staghounds, William Stewart Leyland, Chairman of the hunt's executive committee, and Richard Down, huntsman, sought judicial review by way of an order of certiorari to quash a resolution of the Somerset County Council made on 4 August 1993 that "This council, as landowners, with immediate effect, resolves to ban the hunting of deer with hounds on the county council owned land at Over Stowey Customs Common." The grounds of the application were that (1) the ban conflicted with the public's right of access and was not authorised by section 193 of the Law of Property Act 1925 which applied to the area; (2) alternatively, since the land was held under section 193 of the Act of 1925, the council could not hold the land under the National Parks and Access to the

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

Countryside Act 1949 as they asserted (see section 60(5) of the Act of 1949). However on the assumption that the area was so held the council had a duty to manage the land so as to give the public access for open air recreation to so much thereof as appeared to be practicable; since the council did not assert that access to the area was impracticable the ban thus conflicted with the public right of access and was not authorised by the Act of 1949; (3) in passing the resolution "as landowners" the council failed to take into account material considerations, namely the statutory powers under which they held the area, the statutory purposes for which it was held and the public's statutory right of access; (4) the council reached a decision based on the views of individual members as to the ethics of hunting, as distinct from a consideration of only those matters which were relevant to the statutory purposes for which the land was held; (5) the council failed to have regard to a material consideration, namely the future control and management of the size of the herd; (6) the council failed to have regard to material considerations, namely, the Quantock Hills management plan, the deer survey of the Somerset Trust for Nature Conservation, the report of the deer hunting working party to the Council of the National Trust, the views of the Quantock Hills Joint Liaison Group and the Quantock Deer Management ***1040** and Conservation Group; and (7) since the area lay within the Quantock site of special scientific interest notified by English Nature under the Wildlife and Access to the Countryside Act 1981 any change in hunting practice or game management required notification to and the consent of English Nature; the council failed to exercise their duty of notification and consultation with that body and accordingly failed to take account of a further material consideration to the banning of the hunt and the consequent question of herd management. By his order made on 9 February 1994 the judge granted the application and directed that the resolution be quashed.

By notice of appeal dated 3 March 1994, and with leave of the judge, the council appealed on the grounds, inter alia, that (1) the judge wrongly held that in passing the resolution in the exercise of their powers under section 120(1)(b) the council were not entitled to take into account their views as to the hunting of deer with hounds; (2) the judge, having correctly held that the objects for which the land was held included management for, inter alia, maximum wildlife benefit, wrongly held that the council's views as to the ethics of hunting were not properly relevant to the issue of the welfare of the deer on the land; (3) the judge failed to make any finding on the unchallenged evidence of the council that members voting in favour of the resolution were giving effect to the strength of feeling throughout their area on the ethics of hunting with hounds; and the judge should have held that the council were entitled to take into account those views as elected representatives for their area; (4) the judge wrongly held that the decision should be quashed on the further ground that the council had failed to take account of the effect of the ban on future management since such a conclusion was inconsistent with his findings as to the extent of the material before the members on that issue and their reference to it.

By his order dated 28 February 1995 the Registrar of Civil Appeals directed that Audrey Leyland as executor of William Stewart Leyland deceased be made a party to the cause in his place and that the proceedings be carried on as if she had been substituted for him.

The facts are stated in the judgment of Sir Thomas Bingham M.R.

Representation

Michael Supperstone Q.C. and Philip Sales for the local authority.

Michael Beloff Q.C. and David Holgate for the applicants.

Cur. adv. vult.

Sir Thomas Bingham M.R.

17 March. The following judgments were handed down.

The parties to this appeal are, on one side, the Somerset County Council and, on the other, representatives of the Quantock Staghounds ("the hunt"). The issue which divides them is whether the county council acted lawfully when it resolved, on 4 August 1993, that

> "This council, as landowners, with immediate effect, resolves

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

> to ban the hunting of deer with hounds on the county council owned land at Over Stowey Customs Common."

The hunt say that the resolution was unlawful, because based on considerations which members of the county council were not permitted to take into account. Laws J. agreed with them, and accordingly quashed ***1041** the county council's decision. The county council say that the decision was lawful and that the judge erred in holding otherwise. That is the issue now before us.

The facts are clearly set out by the judge in his judgment [1995] 1 All E.R. 513, to which reference should be made for a full account of the background. I confine myself to a summary of the bare facts necessary to show how the issue arises.

In 1921 the county council acquired land known as the Quantock Lodge Estate. Most of this land was thereafter let by the county council on a long lease to the Forestry Commission. Under this lease the commission enjoyed the right to permit or prohibit the hunting of deer, and it has permitted this land to be used for that purpose. Some of the land was farmland, let to tenant farmers: sporting rights over this land were reserved to the county council, which has in practice left the decision whether to permit hunting on their land to the tenant farmers, who have chosen to do so. Part of the land acquired by the county council was Over Stowey Customs Common ("the common"), the land which is (alone) the subject of these proceedings. The common is a long, thin strip of land, about 148 acres in area, which almost bisects the territory over which red deer have for many years been hunted by staghounds. It forms a very small proportion of this territory, but the evidence suggests that the common is so placed as seriously to impede the conduct of the hunt if use of this land is forbidden. The common is part of a larger area designated by the Countryside Commission as an area of outstanding natural beauty under 4section 87 of the National Parks and Access to the Countryside Act 1949.

In 1974 the common was appropriated to the planning and transportation committee of the county council for amenity purposes, and in more recent times the environment committee of the county council has succeeded to the role of the planning and transportation committee.

On 2 April 1986 the planning and transportation committee considered whether deer hunting on the common should be banned. Papers before the committee rehearsed arguments for and against a ban. The committee resolved that it would not at that stage exercise its right to ban hunting on the common, but would await the outcome of a deer survey and agreement of a common land management plan. The management plan was prepared. In 1992 and 1993 a study and a working party report were commissioned by the National Trust, and these prompted a report to the Quantock Hills joint liaison group (a local body on which local authorities and the Countryside Commission were represented). This report was directed to the issue whether hunting should continue to be permitted on the common. The group concluded by a majority that it should. This report was also before the environment committee of the county council on 7 July 1993 when the committee resolved to recommend the county council to continue to permit hunting.

When the county council met on 4 August 1993 this recommendation was before it. But the leader of the council moved, as an amendment, the motion quoted at the outset of this judgment, which was carried by a majority of 26 to 22. This decision followed a debate lasting some 1 hours, said to have been of a very high quality. Although we have only an impressionistic note of the debate, the drift of the argument is clear. Some speakers urged, at times using strong and emotive language, that hunting deer with hounds involved an unacceptable degree of cruelty, which they ***1042** and others found offensive and which they felt the county council should not permit on its land. Others argued that hunting was a more humane way of controlling the size of the herd than any other, and that it was only the existence of the hunt which preserved the deer from piecemeal and often cruel destruction by local farmers. Reference was made to alternative means of culling deer, and dispatching accidental casualties, if hunting were not permitted. It is common ground on this appeal (and the judge held) that the majority who supported the ban were moved to do so by their belief that hunting involved unacceptable and unnecessary cruelty to the red deer who were the victims of the chase. I shall hereafter refer

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

to this, for convenience, as "the cruelty argument."

It appears from the note that in his opening remarks the leader of the county council referred to its clear right to control its own land. His motion made reference to the county council "as landowners." After the meeting of the county council, in answer to a complaint by the Quantock deer management and conservation group that it had not been consulted, the council replied:

> "it is for every landholder to decide (within the general framework of the law) what activities he or she wishes to allow on his [or her] land. In this case the county council took the view that it did not wish to allow deer hunting on this piece of land."

The judge was at pains to emphasise [1995] 1 All E.R. 513, 515-516 what these proceedings are not about. This is so important that I must repeat it.

The point is often made that unelected unrepresentative judges have no business to be deciding questions of potentially far-reaching social concern which are more properly the preserve of elected representatives at national or local level. In some cases the making of such decisions may be inescapable, but in general the point is well made. In the present case it certainly is. The court has no role whatever as an arbiter between those who condemn hunting as barbaric and cruel and those who support it as a traditional country sport more humane in its treatment of deer or foxes (as the case may be) than other methods of destruction such as shooting, snaring, poisoning or trapping. This is of course a question on which most people hold views one way or the other. But our personal views are wholly irrelevant to the drier and more technical question which the court is obliged to answer. That is whether the county council acted lawfully in making the decision it did on the grounds it did. In other words, were members entitled in reaching their decision to give effect to their acceptance of the cruelty argument?

In seeking to answer that question it is, as the judge very clearly explained, at pp. 523-525, critical to distinguish between the legal position of the private landowner and that of a land-owning local authority. To the famous question asked by the owner of the vineyard ("Is it not lawful for me to do what I will with mine own?" St. Matthew, chapter 20, verse 15) the modern answer would be clear: "Yes, subject to such regulatory and other constraints as the law imposes." But if the same question were posed by a local authority the answer would be different. It would be: "No, it is not lawful for you to do anything save what the law expressly or impliedly authorises. You enjoy no unfettered discretions. There are legal limits to every power you have." As Laws J. put it, at p. 524, the rule for local authorities is that any action to be taken must be justified by positive law.

***1043** The positive law in issue in this case is agreed by the parties to be section 120(1)(b) of the Local Government Act 1972. That provides:

> "(1) For the purposes of ...
> (b) the benefit, improvement or development of their area, a principal council may acquire by agreement any land, whether situated inside or outside their area."

At first sight this section has little to do with the present case, since we are not dealing with the acquisition of land but with the management or use of land which the county council acquired over 70 years ago. But the county council is a principal council within the statutory definition; we have been referred to no statutory provision or rule of law more closely in point; any other provision, unless more specific, would be bound to require powers to be exercised for the public good; and it seems perhaps reasonable to accept that the purposes for which land may be acquired are or may often be those to which the land should be applied after acquisition. I would therefore agree with Laws J. [1995] 1 All E.R. 513, 525, adapting his language a little, that the primary question in this case is whether the councillors' acceptance of the cruelty argument is capable of justifying the ban as a measure which conduces to "the benefit, improvement or development of their area" within section 120(1)(b) of the Act.

> "Did they reach a decision on grounds which transgressed the fetter or limit which Parliament

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

> had imposed upon them, so that there was no positive legal justification for what they did?" See p. 525.

It is noteworthy that section 120(1) does not provide that principal councils may acquire land for the purposes of the benefit, improvement or development of that land. The reference is to the benefit, improvement or development of their area. That indicates that the draftsman was concerned not merely with improved husbandry of particular land but with wider questions of public benefit. The power to acquire land outside the council's area reflects the same intention. So a principal council would, it would seem, be authorised, in the absence of more specific provisions, to acquire land outside its area to be used as an adventure training or field-craft centre, or perhaps as a home for the elderly, if to do so would benefit its area.

The researches of counsel have unearthed only one authority in which section 120(1)(b) has been applied. In Costello v. Dacorum District Council (1982) 81 L.G.R. 1, a council, having tried but failed to prevent the use of a site by gypsies and other caravan-dwellers by means of an enforcement notice, itself took a lease of the land and then started proceedings to evict the occupiers. Lawton L.J. (with whom Brightman and Oliver L.JJ. agreed) said, at p. 10:

> "The real problem in this case is whether they had any statutory rights to take leases of land for the purposes for which they said they were taking them, as set out in the council's resolution of 21 June 1978. In my judgment, on the face of that resolution, they were acting well within the powers conferred upon them by section 120(1)(b) of the Local Government Act 1972. That section provides: 'For the purposes of ... (b) the benefit, improvement or development of their area, a principal council may acquire by agreement any land, whether situated inside or outside their area.' The object of the council in acquiring this land under the leases was, in my judgment, clearly for the benefit and improvement of their area. The site had long been, as ***1044** I have already said, an eyesore. It gave offence, because of what was done on it, to large numbers of people living in the neighbourhood. The council were under pressure from the ratepayers to do something about the site. It follows, in my judgment, that what they did was for the benefit and improvement of the area. They were intending to get rid of the caravan dwellers. They were intending to get the site cleaned up and the rubbish disposed of and the site returned to its proper use as common land. I find it difficult to think of a clearer case of acquisition of land by a local authority coming within the provisions of section 120(1)(b). The fact that the consequence was that they could get rid of the caravan dwellers, even though the Secretary of State had given them temporary planning permission to be there, in my judgment, in no way was a misuse of their powers under section 120."

This case is perhaps too obvious to give much help. The council acquired the land to remedy a nuisance. Had the council acquired the land for another purpose beneficial to its area, and had the nuisance then arisen, it could no doubt have taken appropriate steps to mitigate the nuisance, but it would scarcely have needed to rely on section 120 for that purpose.

Laws J. held the county council's resolution to be an unlawful exercise of power for reasons which he succinctly summarised [1995] 1 All E.R. 513, 529- 530:

> "What then is the true scope of the words in section 120(1)(b) 'the benefit, improvement or development of their area?' In my judgment, this language is not

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

> wide enough to permit the council to take a decision about activities carried out on its land which is based upon freestanding moral perceptions as opposed to an objective judgment about what will conduce to the better management of the estate. Section 120(1)(b) is not within the class of provisions which require the decision-maker to have regard to moral considerations as such. A prohibition on hunting, which manifestly interferes with the lawful freedom of those who take part in the sport, could only be justified under the subsection if the council reasonably concluded that the prohibition was objectively necessary as the best means of managing the deer herd, or was otherwise required, on objective grounds, for the preservation or enhancement of the amenity of their area. The view that hunting is morally repulsive, however pressing its merits, has nothing whatever to do with such questions. Section 120(1)(b) confers no entitlement on a local authority to impose its opinions about the morals of hunting on the neighbourhood. In the present state of the law those opinions, however sincerely felt, have their proper place only in the private conscience of those who entertain them. The council has been given no authority by Parliament to translate such views into public action; there is nothing in the section to indicate that it has."

The judge did not base his decision on, but found support for it in, Calder and Hebble Navigation Co. v. Pilling (1845) 14 M. & W. 76. In that case the proprietors of a canal were empowered by a local Act to make byelaws "for the good and orderly using the said navigation." The proprietors made a byelaw that the canal be closed on Sundays. It was held ***1045** to be bad, because the power conferred on the proprietors was solely for the orderly use of the navigation and, *per* Alderson B., at p. 88:

> "The rules which they are empowered to make have nothing to do with the regulation of moral or religious conduct, which are left to the general law of the land, and to the laws of God."

It was not open to the proprietors to give effect to their view that use of the canal on Sundays was indecorous: see *per* Rolfe B., at p. 90. I agree with the judge that this is an interesting case, but I also agree that it does not advance the present case very much. It turned on the construction of a particular statutory provision in terms much more specific than those in issue here; and it does not seem to me that acceptance of the cruelty argument imports, otherwise than indirectly, any attempt to regulate the morals or religious conduct of those who hunt deer on the common.

Mr. Supperstone, for the county council, submitted that the judge had construed section 120(1)(b) too narrowly. It was, he reminded us, common ground that "the benefit ... of their area" included wildlife benefit: see [1995] 1 All E.R. 513, 523. Those who accepted the cruelty argument were, he said, entitled to give effect to their view that the use of the county council's land for hunting was not for the benefit of the area, and the judge was wrong to treat that expression as applying to the management of the herd alone. He argued that on an issue of this kind county councillors were bound, and if not bound entitled, to have regard to the ethical arguments for and against hunting and the judge had been wrong to treat such considerations as irrelevant. Where power had been entrusted to a popular assembly, the court should be slow to interfere with the exercise of that power.

For the hunt, Mr. Beloff supported the judge's reasoning. The issue was a short point of statutory construction and the judge had construed the section correctly. Acceptance of the cruelty argument had nothing to do with the benefit of the area. The resolution was an impermissible attempt by those who accepted the cruelty argument to outlaw an activity very recently regulated by Parliament in the Deer Act 1991. In resolving as it did the county council acted as if it enjoyed the free discretion of a

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

private landowner and without regard to the constraints which bound a local authority.

I accept the county council's basic contention that the judge put too narrow a construction on the words "the benefit ... of their area." The draftsman would have been pressed to find broader or less specific language. I would not accept the judge's view that the cruelty argument, or the contrary argument that hunting is a less cruel means of controlling the herd than available alternatives (also, in the judge's terms, a moral argument), is necessarily irrelevant to consideration of what is for the benefit of the area. That is in my opinion to place an unwarranted restriction on the broad language the draftsman has used.

There is, however, as I think, a categorical difference between saying "I strongly disapprove of X" and saying "It is for the benefit of the area that X should be prohibited." The first is the expression of a purely personal opinion which may (but need not) take account of any wider, countervailing argument. There are, for example, those so deeply opposed to the capital penalty on moral grounds that no counter-argument (however cogent) could shake their conviction. The second statement is also the expression of a personal opinion, but involves a judgment on wider, community-based grounds of what is for the benefit of the area. ***1046** Both statements may of course lead to the same conclusion, but they need not. There is nothing illogical in saying "I strongly disapprove of X, but I am not persuaded that it is for the benefit of the area that X should be prohibited." Thus a person might be deeply opposed to the capital penalty but conclude that it would not be for the benefit of the community to prohibit it so long as its availability appeared to deter the commission of murder.

The question therefore arises whether, in resolving as it did on 4 August 1993, the county council exercised its power to further the object prescribed by the statute, the benefit of the county council area. I conclude that it did not, for these reasons.

(1) At no point, before or during the debate, was the attention of the council drawn to what is now agreed to be the governing statutory provision. The minds of councillors were never drawn to the question they should have been addressing. As the judge observed [1995] 1 All E.R. 513, 523F: "It follows that if the ban was lawful, it was so more by good luck than judgment."

(2) A paper circulated to county councillors with the agenda concluded:

> "In the final analysis people go hunting primarily because they find it a sport they enjoy. The county council must come to a decision, as the National Trust report said, 'largely on the grounds of ethics, animal welfare and social considerations ...' which are matters for members to decide."

I accept that animal welfare and social considerations were relevant matters to take into account, and I have accepted that ethical considerations could be. But this statement does not express or exhaust the statutory test, and could well be read as an invitation to councillors to give free rein to their personal views.

(3) The reference in the resolution to the county council "as landowners," and the statement in the letter (quoted ante, p. 1042C-D), written after the resolution, that it was for every landowner to decide what activities he wished to allow on his land, appear to equiparate the positions of private and local authority landowners. This in my view reflected a failure to appreciate the overriding statutory constraint.

(4) The lack of reference to the governing statutory test was not in my view a purely formal omission, for if councillors had been referred to it they would have had to attempt to define what benefit a ban would confer on the area and conversely what detriment the absence of a ban would cause. It may be that they could have done so, but as it was they did not need to try. The note certainly suggests that the debate ranged widely, and reference was made to "economic grounds" and "social damage" as well as to the cruelty argument and the contrary moral argument. But the note also suggests that expressions of purely personal opinion loomed large: "rituals unwholesome instincts," "systematically torture," "barbaric and amusement," "uniquely abhorrent," "pleasure torturing animals." In the absence of legal guidance, it was not, I think, appreciated that personal views, however strongly held, had to be related to the benefit of the area.

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

I accordingly agree, although on much narrower grounds, that the county council were not entitled to make the decision they did on the grounds they relied on. I leave open, but express no view on, the possibility that the same decision could have been reached on proper grounds. In reaching this conclusion I gain no assistance from authorities such as Slattery v. Naylor (1888) 13 App.Cas. 446 and Kruse v. Johnson [1898] 2 Q.B. 91 ***1047** on judicial review of byelaws made by popular assemblies. The present case involves no issue of reasonableness. The question is whether a statutory power was exercised to promote the purpose for which the power was conferred. I conclude that it was not.

The judge ruled [1995] 1 All E.R. 513, 532, that he would, had it been necessary, have quashed the county council's decision on an alternative ground. This was that the county council failed to take account of a relevant consideration in reaching their decision, namely the effect which a ban would have on the management of the herd and how the deer were to be conserved in the light of it. If I am wrong in the main conclusion I have expressed, I do not share the judge's view that the decision is vulnerable on this alternative ground. The note shows that frequent references were made in the debate to the use of marksmen to cull deer and dispatch casualties. But in any event the question of management and conservation did not require an immediate solution. On the assumption that the ban would take effect at once, it remained to be seen what effect it would have (since it only applied to the common) on the herd as a whole. There was time to explore alternative measures later. And if alternative measures proved impracticable the ban could be revoked. I would dismiss this ground of challenge.

In common, as I understand, with other members of the court, I was concerned during the hearing whether section 120(1)(b) could really be the source of the county council's powers relevant to this appeal, although agreed by both sides to be so. Prompted by that concern, the parties were invited to draw our attention to the relevant byelaw-making powers of the county council, on which neither side had up to then relied.

It appears to be clear that under section 90 of the National Parks and Access to the Countryside Act 1949 the county council has power to make byelaws

> "for the prevention of damage to the land ... or anything thereon ... and for securing that persons resorting thereto will so behave themselves as to avoid undue interference with the enjoyment of the land ... by other persons."

Before making byelaws the county council is obliged to consult the Countryside Commission: see the Act of 1949, section 90(4). There must be publicity and an opportunity for inspection of draft byelaws (see Local Government Act 1972, section 236(4) and (5)), and the byelaws do not have effect unless confirmed by the Secretary of State: see the Act of 1972, section 236(3) and (11). The county council have made byelaws which apply to the common, but they have not at any time sought by byelaw to ban the hunting of deer on the common.

The county council suggest that acceptance of the cruelty argument would of itself empower the county council to ban the hunting of deer on the common by byelaw: deer are things on the common and killing them cruelly on the common by hunting could be to cause them damage. The hunt reply that "anything thereon" in section 90(1) refers to inanimate objects, that prevention of damage does not include prevention of the perceived cruelty to deer by hunting and that section 90 does not permit activities to be banned on grounds of moral repugnance.

It is unnecessary, and probably undesirable, to express a firm conclusion. I am tentatively inclined to the view that wildlife could rank as things and that the county council could by byelaw prohibit the destruction, otherwise lawful, of (say) squirrels, pigeons or rabbits on the ***1048** common by any means regarded as cruel, or altogether, and if these creatures could be so protected it would be hard to distinguish between them and deer. I am, however, persuaded that the parties were probably right to eschew argument about byelaw-making powers: the safeguards which attach to the making of byelaws are appropriate where conduct is to be criminalised; and if (as the parties agree) section 120(1)(b) is the governing provision its proper construction cannot be affected by the existence or non-existence of byelaw-making powers.

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

Neither party relied in argument before us on section 193 of the Law of Property Act 1925.

For the reason given, ante, p. 1046B-G, I would dismiss this appeal.

Simon Brown L.J.

Somerset County Council own Over Stowey Customs Common. They acquired it in 1921 and in 1974 appropriated it for amenity purposes. Since 1917 it has been part of a substantially larger area of land hunted for deer by the Quantock Staghounds.

On 4 August 1993 the council resolved to ban hunting on the common. They did so because the majority of those voting thought it morally repulsive: they found "the cruelty argument" decisive -- I gratefully adopt Sir Thomas Bingham M.R.'s term to describe the view that hunting involves unacceptable and unnecessary cruelty to the deer and, indeed, his exposition of the facts.

The central questions raised by these proceedings are first, whether the council was entitled to give effect to the cruelty argument: was it, in short, a relevant and permissible consideration? Second, assuming that it was, did those councillors who found it decisive have proper regard also to such other relevant considerations as arose?

As to the first question: was the cruelty argument properly relevant to the decision? Laws J. held that it was not. Clearly this question falls to be answered in the context of the particular statutory power which the council was exercising. Throughout these proceedings it has been accepted on both sides that the governing statutory provision is section 120(1)(b) of the Local Government Act 1972. Sir Thomas Bingham M.R. has already set it out and I need not repeat it. The ruling words are that the council may acquire land for "the benefit, improvement or development of their area." Both parties further agree that the section also governs the management of the acquired land.

In short, the council is required to manage the common for the benefit of its area. Put like that, odd though its statutory origin may be, the obligation appears far from surprising. Indeed it accords closely -- I would suggest precisely -- with what in any event would necessarily dictate the council's regulatory actions: considerations of public interest and a desire to advance the public good: see Reg. v. Tower Hamlets London Borough Council, Ex parte Chetnik [1988] A.C. 858, 872.

The crucial question therefore becomes: is the cruelty argument relevant to determining what will benefit the council's area or, as I think no different, relevant to their determination of what will advance the public good.

Despite Mr. Beloff's strenuous arguments to the contrary, I find it impossible to say that the councillors must shut their minds to the cruelty argument, still less that they must do so as a matter of the strict construction of section 120(1)(b).

I readily accept that the concepts of benefit to the area, and public interest and good, invite consideration first of the council's human ***1049** community, rather than its wildlife. But the two considerations are not discrete: human wellbeing for many will depend upon their satisfaction as to animal welfare. That explains much animal legislation and why such activities as bear-baiting and cockfighting have long since been abolished. It explains too why a spacious zoo provides enjoyment when a cramped one may not, and why bullfighting is unlikely to catch on here. The examples could be multiplied. Why then should it be thought illogical and thus impermissible for councillors to have regard to their sentiments as representatives of the local community in deciding whether that community's land -- the common -- should be hunted? As the judge himself recognised:

> "individual councillors ... may readily suppose that as representatives, not delegates, of their electors they ought to give effect to their opinions about any issue of principle which they perceive as touching a question before them for decision:" see [1995] 1 All E.R. 513, 523.

He, of course, concluded that the councillors should have been warned to the contrary. I disagree.

I am not convinced that it has assisted the argument hitherto to have glossed the council's statutory duty by the concession that it was bound "to manage the estate for maximum landscape, wildlife and public recreation benefit:" see [1995] 1 All

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

E.R. 513, 523. But even if the focus is properly upon wildlife benefit, that surely encompasses the cruelty argument -- what Mr. Supperstone called "the deers' quality of life and manner of death." The cruelty argument is, indeed, only one aspect of the overall ethical debate. There are powerful arguments both ways on the issue of hunting and each side invokes ethical considerations in support. By no means all those in favour of hunting themselves enjoy the sport: rather many believe that it represents the kindest as well as the most effective method of managing the herd. The anti-hunt faction enjoys no moral monopoly. Is it to be said that those opposing the ban must put aside their moral views too? Surely not, and yet I have difficulty in reconciling the judgment below with councillors giving proper consideration to such suffering as would result from uncontrolled shooting and poaching.

It follows that I agree with Sir Thomas Bingham M.R. that the judge construed too narrowly the statutory power here in question and erred in regarding the cruelty argument as necessarily irrelevant to the council's decision. I, for my part, indeed, would go further than the Master of the Rolls and conclude that the cruelty argument, as well indeed as the countervailing ethical considerations, were necessarily relevant to the decision. Had they been ignored I believe that the council would have been open to criticism.

There is a passage in the judgment below, at p. 525C, in which the judge speaks of "a decision-maker who fails to take account of all and only those considerations material to his task." It is important to bear in mind, however, as Mr. Supperstone contended and Mr. Beloff accepted, that there are in fact three categories of consideration. First, those clearly (whether expressly or impliedly) identified by the statute as considerations to which regard must be had. Second, those clearly identified by the statute as considerations to which regard must not be had. Third, those to which the decision-maker may have regard if in his judgment and discretion he thinks it right to do so. There is, in short, a margin of appreciation within which the decision-maker may decide just what ***1050** considerations should play a part in his reasoning process. On Wednesbury challenges (see Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223) it is often salutary to bear in mind this short passage from Cooke J.'s judgment in CREEDNZ Inc. v Governor-General [1981] 1 N.Z.L.R. 172, 183:

> "What has to be emphasised is that it is only when the statute expressly or impliedly identifies considerations required to be taken into account by the authority as a matter of legal obligation that the court holds a decision invalid on the ground now invoked. It is not enough that a consideration is one that may properly be taken into account, nor even that it is one which many people, including the court itself, would have taken into account if they had to make the decision."

Even had I not thought the cruelty argument a category one consideration, I should certainly have regarded it as falling into category three. But in either event, of course, it does not follow that those councillors espousing the cruelty argument were bound to regard it as decisive. They could have concluded that it was preferable to allow hunting to continue until Parliament addressed the issue on a national level. Or they might have felt that their own personal views did not properly represent those of the majority of their community so that it would be wrong to give effect to them.

Provided only and always, however, that those councillors espousing the cruelty argument had regard to such other considerations as were necessarily in play, they were clearly entitled to regard it as decisive: its weight in the overall balance was exclusively a matter for them.

I pass, therefore, to the second question: can the council's decision be impugned on the conventional Wednesbury basis that those voting for the ban failed to have regard to certain matters that they were bound to consider?

The judge found the decision flawed on this ground too; he criticised the council for failing to have regard to the future management of the deer in the event of a ban. In common with Sir Thomas Bingham M.R. and for the reasons he gives -- essentially that it was not necessary for the council to fix upon a contemporaneous solution to whatever problem might result from the ban -- I disagree.

What then of other relevant considerations? On this question I reluctantly find myself in respectful

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

disagreement with Sir Thomas Bingham M.R. I would not for my part conclude that the council failed to have regard to the true nature of the question before it. I recognise, of course, that the councillors had not been advised as to the actual terms of their statutory power. But, as I have indicated, that power I believe merely to mirror the common law constraints that must in any event invariably rule council decision making.

I recognise too that both in its resolution, and in Mr. Temperley's subsequent letter, the council was emphasising the significance of its ownership of the common. But I would not think it right to infer from this that the councillors lost sight of their duty to act in the public interest and for the benefit of their area. The fact of ownership surely was of some significance. Given, as Mr. Temperley's letter postulated (although as the applicants reserve the right to contest), that there exists no right to hunt under the provisions of section 193(1) of the Law of Property Act 1925 (quoted [1995] 1 All E.R. 513, 552), the council's licence is required. The ***1051** fact that it could not ban hunting on other land in its area (and may well not have been entitled under section 120(1)(b) to acquire other land in its area with a view to banning hunting over it, or for that matter with a view to allowing hunting over it -- questions I think it unnecessary to decide) does not mean that it must allow hunting on its own land, and it seems to me harsh to construe the letter as a bald assertion that the councillors felt entitled merely to indulge their personal wishes in the matter. Given, moreover, that the hunt required the council's continuing licence, it seems to me inappropriate to speak of the prohibition as "manifestly interfer[ing] with the lawful freedom of those who take part in the sport:" see [1995] 1 All E.R. 513, 529. It would be otherwise if section 193(1) conferred the right to hunt; then I accept it would be inappropriate for the council to attach weight to their status as owners of the common and I would be inclined to concur in quashing the ban and dismissing the appeal on that basis.

As it is, however, I find no sufficient reason for holding that those councillors in favour of the ban gave effect to unlawful considerations or failed to address what ultimately was the true question before them: what to do in the public interest and for the benefit of their area. Of course, combing through the notes of the debate, one can always find arguments recorded in terms suggesting an improper approach to the question at issue. That, however, is not a sound basis for impeaching a decision of this nature: see Rex v. London County Council, Ex parte London and Provincial Electric Theatres Ltd. [1915] 2 K.B. 466, 490-491.

In short, I conclude that the majority of the council here genuinely regarded hunting over the common as a cruel and socially undesirable activity inimical to the best interests of their area. It is not, of course, for me to say whether I think that a sound and sensible view. But that being a view which I believe the council was entitled to reach and reached, it follows that I for my part would have found the decision lawful and would accordingly have allowed this appeal.

Swinton Thomas L.J.

The Somerset County Council acquired Over Stowey Customs Common in 1921. It is a strip of land amounting to 148 acres which bisects a larger area which is regularly hunted by the Quantock Staghounds. The hunt was formed in 1917 and has hunted over the land since that date.

On 4 August 1993, the council resolved:

> "This council, as landowners, with immediate effect, resolves to ban the hunting of deer with hounds on the county council owned land at Over Stowey Customs Common."

The question that has to be resolved on this appeal is whether that resolution was lawful. As Laws J., against whose decision that the resolution was unlawful the council appeals, forcefully pointed out the views of individual judges on ethical or moral questions relating to hunting are entirely irrelevant to the legal question that has to be answered.

It was common ground before the judge and before this court, and was certainly conceded by Mr. Supperstone on behalf of the council, that the council derived its powers to impose this resolution solely under the provisions of the section 120(1)(b) of the Local Government Act 1972. The section provides:

> "(1) For the purposes of --
>
> (a) any of their functions under this or any other enactment or

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

> (b) the benefit, improvement or development ***1052** of their area, a principal council may acquire by agreement any land, whether situated inside or outside their area."

In this part of the Act of 1972 section 121 deals with compulsory acquisition of land, section 122 with appropriation of land, and section 123 with disposal of land, in each case by principal councils. It is of central importance that the section relates to the acquisition and, by concession, management, of land. Whereas the provisions of section 120(1)(b) of the Act of 1972 are entirely apt to a decision to acquire land, they are, in my judgment, singularly inapt to decisions taken in relation to the management of land, and this causes difficulty in resolving the question that arises on this appeal.

The resolution of the council was preceded by a debate. Laws J. having considered the documentation that was before the councillors, and the notes that were taken of the debate, made this finding [1995] 1 All E.R. 513, 527:

> "it is in my judgment entirely plain that the decision was not taken on the basis that the ban would conduce to the herd's better management, and I do not think that Mr. Supperstone's submission went so far. It was taken because those in favour of the ban thought hunting to be morally repulsive, and on no other basis."

It is, of course, true that the finding of the judge was not a finding of fact based on evidence heard by the judge, but it was a finding which was not challenged by Mr. Supperstone, and Mr. Beloff for the hunt places considerable reliance on it.

Mr. Supperstone submits that the reasoning of Laws J. was flawed and that the words of section 120(1)(b) that the council may acquire (or manage) land "for the purposes of ... the benefit, improvement or development of their area" are in wide terms which encompass a decision which is based on the councillors' own views as to the morality of hunting. Mr. Beloff submitted that the language of section 120(1)(b) could not be so construed as to permit a decision to ban hunting on the basis of an antipathy to hunting as opposed to considerations relating to the management of the estate.

It seems to me that two questions arise for determination, one a narrow one and the other a broader one. (1) The narrow question is whether the council in passing the resolution ever considered or purported to act under section 120(1)(b). (2) The broader question is whether, if they did act under that section, they were entitled in law to impose the ban on hunting on the grounds that they did impose it.

As to the first question, it is right that a report on the issue of hunting rights was prepared by the county planning officer, dated 13 March 1986, which was available to the councillors. The Quantock Hills management plan was prepared in 1989. A report was prepared on behalf of the National Trust on the question of prohibiting hunting on their land in 1993, and this was also available to councillors. None of those documents were distributed to the councillors with the agenda for the meeting of the 4 August 1993. There was with the agenda a report from the county solicitor and director under the heading: "Deer Hunting on County Council Land." The conclusion was:

> "In the final analysis people go hunting primarily because they find it a sport they enjoy. The county council must come to a decision as the National Trust said 'largely on grounds of ethics, animal ***1053** welfare, and social considerations' which are matters for members to decide."

The councillors were not advised that they must make the decision pursuant to section 120(1)(b), nor was it pointed out to them that in making decisions relating to land they were in a different position as owners of land to the National Trust. They would have been led to believe that they were entitled to act in the same way as a private landlord. Nowhere in the debate of the 4 August, on a topic which was recognised by the councillors as being very important and sensitive, is there any reference to the powers they were exercising or to any restraint upon them. On 20 September 1993, the Quantock Deer Management and Conservation Group wrote to the chairman of the council to complain that the group had not been consulted prior to the passing of the resolution. The chairman of the environment committee replied on 7 October, saying:

> "It is for every landholder to decide (within the general framework of the law) what

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

activities he or she wishes to allow on his (or her) land. In this case the county council took the view that it did not wish to allow deer hunting on this piece of land."

It follows that the chairman was of the opinion that the council could act in the same way as a private landlord, and that there was no statutory requirement which had to be considered by the council before making a decision in relation to the management of the land.

In my judgment the council passed a resolution without any consideration of the statutory restraints imposed on it, albeit in wide terms, by section 120(1)(b). It is certainly not fanciful to think that had they done so, some councillors might have taken a different view. Accordingly, the council never considered the powers under which they were acting, or applied them, and for that reason I would uphold the decision of the judge.

I turn to the broader issue. It is right, as Mr. Supperstone said, that the question of the management of the deer was a matter which was discussed by some of the councillors in the debate. There were also available the documents that I have referred to. There could be no doubt, in my view, that it was open to the council to ban hunting on this land after a proper consideration of section 120(1)(b) and on appropriate grounds. For example, the council could impose such a ban if hunting deer ran the risk that the herd would become extinct, and they concluded that the retention of deer on the land was for the benefit of their area. However the decision was not reached on any such basis but on the basis that hunting was morally repulsive. Mr. Supperstone submitted that that basis for the decision, encompassing, in the view of councillors, that hunting involved cruelty to animals, fell squarely within the phrase "benefit of their area." It does appear that the debate was in fact fuelled to a substantial extent by antipathy to the hunters as opposed to a perceived cruelty to the deer. The question is whether the views of the majority of councillors that hunting was morally repulsive is a proper basis, applying the words of section 120(1)(b), "the benefit, improvement or development of their area" for imposing the ban. In answering this not altogether easy question, it is helpful to pose the question whether under the provisions of section 120(1)(b) it would be lawful for the council to acquire land over which hunting took place in order to ban it on the ***1054** ground that hunting was morally repulsive, with the result that the acquisition and the subsequent ban were for "the benefit of their area." As I have stressed the section relates to the acquisition of land for specific purposes, and I do not believe that acquiring land for the purpose of banning hunting would fall within its provisions. If Mr. Supperstone's broad proposition was right then it seems to me that a council would be able to ban many activities taking place on their land which were perfectly lawful and not contrary to any byelaw, for example cadets marching across the land on the basis that the army cadet force instilled undesirable militaristic tendencies in young people.

Mr. Supperstone pressed on the court the fact that the resolution was made by a democratically elected council, representing the views of the electorate, and that the court should be slow to quash a decision made by such a body, to whom Parliament has delegated certain functions. In so far as it goes, that submission is well founded, but I am reinforced in the view that I have formed by the concept that, unless satisfied that this decision falls within the ambit of the empowering section, a sensitive national issue such as this is more properly dealt with by the national Parliament which is not encumbered with a statutory framework within which it must make its decisions, as opposed to a county council which is. Furthermore, Parliament has very recently enacted legislation relating to the taking and killing of deer by the Deer Act 1991.

I have come to the conclusion, as did Laws J., that a resolution of the council to ban hunting on this land on the basis that the ban was in fact imposed does not properly fall within the ambit of the acquisition or management of land for the benefit, improvement or development of their area.

Laws J. also found that he would quash this decision on the basis that it was to have immediate effect and the council had failed to consider the effect of an immediate ban on the management of the herd or how the deer could be conserved in the light of it. For my part, I would not uphold the judge's decision on that ground. In my judgment, if the council was entitled in law to impose the ban, they were entitled to consider the consequences that flowed from it thereafter. For these reasons, I

1995 WL 1082499 (CA (Civ Div)), (1995) 7 Admin. L.R. 761, [1995] 3 All E.R. 20, [1996] C.O.D. 76, (1995) 139 S.J.L.B. 88, [1995] 1 W.L.R. 1037, (1995) 92(16) L.S.G. 43, (1995) 145 N.L.J. 450, 3-23-1995 Times 1082,499, 3-22-1995 Independent 1082,499
(Cite as: [1995] 1 W.L.R. 1037)

would dismiss the appeal.

Representation

Solicitors: Knights, Tunbridge Wells; Sharpe Pritchard for County Solicitor, Taunton.

Appeal dismissed with costs. Leave to appeal.

D. E. C. P.

END OF DOCUMENT