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CO/6442/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 15 June 2016

B e f o r e:

MR JUSTICE HOLGATE

Between:
THE QUEEN ON THE APPLICATION OF ROYAL BOROUGH OF KENSINGTON AND CHELSEA

Claimant

v

(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

(2) DAVID REIS

(3) GIANNA TONG

Defendants

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(Official Shorthand Writers to the Court)

TIMOTHY STRAKER QC and DILPREET K DHANOA appeared on behalf of the **Claimant**

ROBERT WILLIAMS appeared on behalf of the 1ST **Defendant**

CHRISTOPER LOCKHART-MUMMERY QC appeared on behalf of the **2nd and 3rd Defendants**

J U D G M E N T
(Approved)

1. MR JUSTICE HOLGATE: The Royal Borough of Kensington and Chelsea (the "Council") applies to the High Court to quash four decisions of the first Defendant, the Secretary of State for Communities and Local Government given by an Inspector in two decision letters dated 27 November 2015. The second and third Defendants, Mr David Reis and Ms Gianna Tong ("the owners"), are the long leasehold owners of two self-contained flats known as Flats 1 and 3, 44 Stanhope Gardens, London SW7 5QY ("the flats").

2. In the first decision letter the Inspector allowed appeals by the Owners, Mr David Reis and Ms Gianna Tong, against (1) the Council's refusal to grant a certificate of the lawfulness of a proposed use under section 192 of the Town and Country Planning Act 1990 ("TCPA 1990") and (2) a refusal of planning permission. The Owners' application for a section 192 certificate related to a proposal to amalgamate the flats to form a single self-contained maisonette. The proposal involved internal alterations. The application for the certificate was made on 13 October 2014. The Owners contended that the proposed amalgamation did not amount to a material change of use under section 55(1) of TCPA 1990 and so did not require planning permission. But in the event of the certificate being refused, the Owners also applied for planning permission for the amalgamation of the flats.

3. In his decision letter, the Inspector granted both the section 192 certificate and the planning permission sought by the Owners. He also granted a listed building consent for certain internal and external works to number 44 but the Council has not challenged that decision in the High Court.

4. In the second decision letter the Inspector made orders requiring the Council to pay the costs of (1) the appeal against the refusal of the section 192 certificate (2) the appeal against the refusal of planning permission and (3) the appeal against the refusal of listed building consent. The Council challenges the first two of these decisions but not the third.

5. On 10 February 2016 Mr Justice Collins gave permission for the bringing of the Council's claim.

6. Legal principles

7. The principles upon which the court may intervene to quash a planning decision by the Secretary of State are well established and have been set out in decisions such as Turner v Secretary of State for Communities and Local Government [2015] EWHC 2728 (Admin) (paragraphs 10 to 18) and Bloor Homes East Midlands v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin) (paragraph 19).

8. In relation to the determination by the Inspector of the appeal against the refusal of the

section 192 certificate, the main legal principles established in Westminster City Council v Great Portland Estates plc [1985] AC 661, 669 to 670; Mitchell v Secretary of State for Environment (1995) 69 P & CR 60, 62; and Richmond LBC v Secretary of State for the Environment Transport and the Regions [1994] 2 PLR 115, 120 to 124; may be summarised as follows:

(1) A planning purpose is one which relates to the character of the use of land;

(2) Whether there would be a material change in the use of land or buildings falling within the definition of "development" in section 55 of TCPA 1990 depends upon whether there would be a change in the character of the use of land;

(3) The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. Thus, the need for a land use such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;

(4) Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;

(5) The issues in (2) and (4) above are issues of fact and degree for the decision maker and are only subject to challenge on public law grounds;

(6) Whether or not a planning policy addresses a planning consequence of the loss of an existing use is relevant to, but not determinative of, an issue under (4) above.

9. The above principles are generally accepted by the parties in this case. However, Mr Straker QC for the Council suggests that in principle (4) I should substitute "consideration" for "assessment" and "material" for "significant" (in the latter case to reflect the wording of

section 55(1)). I do not consider any of these alterations to be necessary. The wording I have adopted reflects the decisions cited and I do not think that the alternative wording suggested would materially affect the meaning of the principles stated. There can be no doubt that, in some cases, an "assessment" of the "significance" of a planning consequence or factor will be necessary.

10. However, Mr Straker QC rightly submits that the "material change of use" test merely represents the legal threshold for the application of planning control to non-operational development. It does not involve a determination of the planning merits of a proposal in those cases where planning permission needs to be obtained. There is a public interest in the maintenance of effective development control (Harrods Ltd v Secretary of State for Environment, Transport and the Regions [2003] 1 PLR 108 at paragraphs 12 to 13).

11. Relevant Planning Policies

12. Policy CH1 of the Council's Consolidated Local Plan requires the Council to make provision for a minimum of 350 net additional dwellings a year across the Borough until the London Plan is replaced. From the replacement of the London Plan that requirement increases to 600 net additional dwellings a year until 2027 to 2028. In fact, with the "publication" of the Consolidated London Plan in 2015, that net annual figure has been further increased to 733 units.

13. As Mr Williams for the Secretary of State accepted, the target figures for the plan period are set in net terms so as to take account of any loss in homes.

14. By policy CH2 the Council seeks to ensure housing diversity by delivering, inter alia, a mix of housing types, tenures and sizes to reflect the varying needs of Borough. Specifically, policy CH2F resists:

i. "... development which results in the net loss of five or more residential units."

15. The explanatory text for the policy on housing diversity is set out at paragraphs 35.3.8 to 35.3.33. Paragraph 35.3.10 states:

i. "The main identified shortfalls in terms of market housing are for three and four or more bedroom homes. Over the next 20 years, the size of new market housing likely to be required in the Borough is 20 per cent one and two bedroom units and 80 per cent three and four or more bedroom units."

16. Paragraph 35.3.18 states:

i. "However, as stated above, there is also demand for larger residential dwellings of three or more bedrooms in the Borough. On this basis, an appropriate balance needs to be struck between the loss of residential units and the need for larger family dwellings. Therefore, in order to limit the loss of residential units while allowing some flexibility in terms of the creation of larger residential units, a policy has been developed which resists proposals which result in the net loss of five or more residential units. Future amalgamation will be restricted to ensure that successive developments do not lead to loss of residential units."

17. Thus, the setting of the criterion in CH2F, whereby the Council will oppose development which results in the net loss of five or more dwellings, was a deliberately chosen balance between the disadvantages of losing dwellings overall and the need to accept some flexibility by allowing the creation of larger family dwellings through the loss of smaller numbers of units.

18. Policy CH3 states:

i. "The Council will ensure a net increase in residential accommodation.

ii. To deliver this the Council will:

19. protect market residential use and floor space except:

i. [a number of exceptions are then listed]."

20. Paragraph 35.3.34 states:

i. "Loss of housing through deconversion, and, additionally to other uses, can reduce the overall provision of housing stock. The AMR monitors losses of residential use, and has identified the need to further prevent against losses. To achieve the annual housing target in policy CH1, which takes account of net losses of units, it is therefore important to protect residential units in most circumstances. However, there are a limited number of situations in which losses will be permitted in order to meet various policy objectives of this plan ..."

21. That has to be read alongside CH2 and the explanatory text to which I have referred. It is accepted by the Council that, unlike its neighbour, Westminster City Council, the local plan

policies for Kensington and Chelsea do not seek to resist a development which results in the net loss of only one residential unit, or indeed any net loss up to and including four units.

22. The Cases of the Parties put Before the Inspector

23. The appeals were dealt with by way of an informal hearing, preceded by the submission of written statements for each party.

24. The Council's statement dealt, firstly, with the appeal on the section 192 certificate. Paragraphs 1.9, 1.10, 1.11 and 1.12 stated:

i. "1.9 The proposal to amalgamate the units would only affect the interior of the two flats and would not materially affect the external appearance of the flat. Therefore, the reason for refusal relates only to the material change of use involved.

ii. 1.10 As the nature of the housing market changes, the Council has seen a gradual but steady erosion of the Borough's housing stock as existing flats have been joined together to create a smaller number of larger units, either as larger flats or single houses. Whilst the newly created large units will serve a need, the level of loss has implications for the ability of the Council to meet its increased housing targets. To address this issue, this authority reconsidered its position regarding the level of loss of residential units carried out through the process of amalgamation without the need for planning permission.

iii. 1.11 This authority has asserted for some time that the loss of units through amalgamation can amount to development within the context of section 55 of the Town and Country Planning Act 1990, and requires planning permission. This view is supported by a legal opinion received from Leading Counsel. This opinion had regard to the Richmond case (2000) [London Borough of Richmond v SSETR and Richmond upon Thames Churches Housing Trust, QBD, 28.3.2000] which confirmed that whether planning permission is required for amalgamation of housing units should be a matter of fact and degree. The nature of the planning policies in place, and any evidence of need, will also be relevant.

iv. 1.12 To address this issue, in August 2014 the Council changed its interpretation

as to how much amalgamation could occur without planning permission being required. It is important to note that this was not a change in development plan policy (ie in the Core Strategy/Local Plan) and as such no consultation/examination was necessary, or indeed appropriate. The Council now takes the view that any amalgamation which includes the loss of a unit will be development which requires planning permission. This reflects increasing housing targets and the impact that amalgamation is having upon progress on achieving these."

25. In paragraph 1.14 the Council stated:

i. "There is a pressing need to ensure there is an adequate supply of low cost small units that provide an affordable form of accommodation both within the Borough and the region as a whole and this is supported by the Development Plan which seeks to retain and increase the stock of dwellings. Allowing existing units to be lost would have profound implications on both the supply of housing within the Borough and the Local Planning Authority's ability to meet the targets set out within the plan period. The unrestricted consolidation of dwellings into larger housing units could also have an impact on the character of an area by altering the housing mix and number and type of people residing in a particular location."

26. Paragraph 1.15 continued:

i. "Therefore, the Council is of the opinion that the amalgamation of two residential units into one constitutes a material change of use, since it would remove a housing unit from the site and also from the Borough's overall housing stock. Regardless of the size of the units being lost, proposals of this nature would generate material considerations that should be assessed as part of a full planning application."

27. On the section 78 appeal against its refusal of planning permission the Council relied upon past data as to completions achieved and also losses attributable to amalgamations. Unfortunately, the Council did not provide the Inspector with the fuller picture contained in its Annual Monitoring Report (AMR). It was the Owners' representatives who assisted the Inspector in that regard.

28. Nevertheless, I note that paragraph 2.10 read:

i. "The change in national and regional guidance, specifically in relation to the increased housing target, together with the Borough's record of underdelivery against these targets, are considered to be material considerations which demonstrate that the loss

of any housing units can have a harmful impact on meeting the need for new housing within the Borough. The Council considers that due to the changes in national and regional planning objectives since the Core Strategy was adopted in terms of prioritising an increase in overall housing supply to meet needs. This outweighs the benefits of providing for the creation of larger residential units through amalgamations."

29. In their written statement the Owners referred to relevant policies in the Core Strategy, including the passages to which I have already referred (see paragraphs 4.3 to 4.6).

30. At paragraph 4.7 they submitted:

i. "The Development Plan expressly recognises the need for three or four or more bedroom homes. There is 'the need for as high a proportion of large dwellings to be provided as possible'. This objective is to be balanced with a concern about the loss of residential units. That balance is being drawn precisely in the Development Plan, so as to relate (only) to the net loss of five or more residential units."

ii. ...

iii. "Accordingly, a proposal which will produce a five bedroom family home, with no loss of residential floor space, will comply with the Development Plan."

31. When dealing with the appeal against the refusal of the section 192 certificate, the Owners stated that the issue for the Inspector was whether the proposal would involve, firstly, a change of use and, secondly, whether that change should be considered to be material. They submitted, against the background that the Borough contained 78,500 households, that after making allowances for vacancies and second homes, the implied total number of dwelling units in the Borough would approach 90,000. They suggested that the amalgamation of only two flats into a single maisonette would be imperceptible in these terms.

32. In relation to the section 78 appeal against the refusal of planning permission, the Owners submitted that there was no objection to the grant of planning permission for the operational works involved in the proposal and, as regards the proposed change of use, assuming it to be a material change of use, the development accorded with the Development Plan.

33. The parties put before the Inspector a Statement of Common Ground which included the following:

i. "5.2 The Council contends that it has operated for some time on the assumption that the net loss of five or more dwellings amounts to development requiring planning permission, and less than that does not amount to development. The Appellants make reference to a pre-application meeting with the Council at the end of 2013 at which they were told that the amalgamation of the flats to form one maisonette over two floors would be acceptable in planning terms.

ii. 5.3 The Council contends that the scale of amalgamation currently under way in this Borough is having a material effect on a matter of public interest, namely it is significantly reducing the number of dwellings in the housing stock. There is a pressing need for more dwellings. Therefore, from August 2014, the Council took the view that any amalgamation of two or more dwellings amounts to development requiring planning permission. This is the approach taken by many other planning authorities. A second pre-application advice response was sent to the applicant by RBKC on 8 September 2014 following the change in the Council's position on amalgamations stating that the conversion of two units would be deemed to constitute development. The appellant is of the view that the conversion of two residential units into one does not amount to development requiring planning permission."

34. Interpretation of Local Planning Policy

35. In relation to the appeals against the refusal of both the section 192 certificate and planning permission, the Inspector agreed with the Owners that the proposed change of use did not conflict with any of the relevant local policies. Indeed, he concluded that the proposal accorded with the Development Plan.

36. Mr Straker QC confirmed that the Council does not contend that the Inspector misinterpreted any part of the Development Plan (Tesco Stores Limited v Dundee City Council [2012] PTSR 983) or that the decision is open to challenge because of a failure to take into account any relevant policy or because of any legally defective reasoning in this respect.

37. The Challenge to the Decision On the Section 192 Certificate

38. In DL9 the Inspector accurately summarised the Council's position that, in this particular case, the proposed amalgamation of the flats would not have any effect on the character of the use of the land, other than by the loss of one residential unit, but that the scale upon which

amalgamations are taking place in the Borough is having a material effect on a matter of public interest, namely a significant reduction in the number of dwellings in the housing stock. In DL11 he recorded the Council's reliance upon the decision in the Richmond case in which the High Court quashed an Inspector's decision that a conversion from seven flats to one dwelling did not amount to a material change of use because that Inspector had disregarded the effect of the loss of a particular type of accommodation from within the Local Planning Authority's area.

39. In DL12 and 13 the Inspector stated:

i. "12. The Richmond judgment refers to Mitchell v Secretary of State for the Environment (Mitchell), in which it is stated that 'it is undoubtedly the law that material considerations are not confined to strict questions of amenity or environmental impact and that the need for housing in a particular area is a material consideration...'. But to be a material consideration the need for housing must be expressed in and supported by local planning policy and has thus often been referred to as the policy factor.

ii. 13. Mitchell, and other case law, set the scene for Richmond. The High Court Challenge in Richmond was successful because the Inspector had failed to take into account what was found to be a material consideration, the policy factor, which he considered to be '... a question of planning merit than of law'. Richmond did not establish that the policy factor can be the sole determinative factor in an LDC case but one that must be taken into account with all other considerations. But, in this case, the Council is wholly reliant on the policy factor. Nevertheless, it is necessary to consider whether it is a material consideration of any weight."

40. In DL14 and DL15 the Inspector set out his reasoning as to why the proposed amalgamation did not conflict with any of the relevant policies.

41. In DL16 the Inspector stated:

i. "The Council has referred to similar LDC cases in a neighbouring council area but planning policy in place, or planning decisions made, in that area cannot be imported to support the Council's case. The scale of amalgamation in the Borough may be having a material effect on the number of dwellings in the housing stock but the proposed amalgamation of the two flats does not conflict with CS policy CH 2, UDP policy H17 or LP policy 3.14. The policy factor, in this case, given that there is no policy conflict, is a material consideration of no weight. Given that the council accepts that no harm would be caused to the character of the building or to the surrounding area the proposed amalgamation of the two flats to create one residential unit, as a matter of fact and degree, is not a change of use that is material and that constitutes development as defined

in section 55 of the Act. Planning permission is not required for the proposed use."

42. In that paragraph it is to be noted that the Inspector accepted that "the scale of amalgamation in the Borough may be having a material effect on the number of dwellings in the housing stock..."

43. That conclusion is similar to the one he reached in DL22, where he stated:

i. "The AMR projects that, by 2024/25, housing supply will exceed London Plan housing targets for the Borough by 1,342 units. However, the London Plan has recently been altered and the annual housing target for the Borough has been increased by 133 units for each year up to 2024/25. Housing supply for the next 10 years must therefore increase by 1,330 units, which absorbs the projected surplus. So the loss of housing units over that period through the amalgamation of units could jeopardise the Council's attempts to meet the London Plan housing targets."

44. However, it is plain from DL12 that the Inspector expressly disregarded that consideration on the sole basis that that need argument was not expressed in and supported by local planning policy. It is agreed by the Secretary of State that that amounted to an error of law because of a breach of principle (6) set out above.

45. The Richmond case did not decide that the need for housing, or any other planning consideration relevant to a determination of whether a material change of use would be involved, must be supported by a planning policy. It may be, or it may not be.

46. In this case, the Local Planning Authority was entitled to rely upon their analysis of the effect of conversions upon housing supply (as summarised, for example, in DL22) as a factor supporting the view that the proposal should be treated as a material change of use and subject to planning control. The Inspector was therefore obliged to consider whether that factor was significant for the specific purpose of deciding whether the proposal fell within the scope of planning control under section 55(1). He was not entitled to decide that question simply by saying that the consideration raised by the Council was unsupported by any planning policy.

47. It is accepted by the parties that, under principle (6), a decision maker may have regard to the extent to which a planning consequence is, or is not, supported by planning policy when considering the significance of that consequence. But because that is not determinative of the question whether planning control should apply, and because circumstances may vary widely, some care will be needed in the application of that principle. The mere absence of support from a planning policy may not suggest that a planning consequence is of no significance. For

example, the current Local Plan may not have addressed the circumstances which have arisen because they were not foreseen when the Plan was proposed and adopted, or because the use involved is of a specialist nature not addressed by the Plan, or because circumstances have materially changed.

48. In the present case, the Council has reached the view at officer level that the rate at which the housing stock is decreasing in the Borough through amalgamations is jeopardising the achievement of housing targets, which targets have been increased since the adoption of the relevant Local Plan policies. The Council rightly says that the mere absence of any policies in the existing Local Plan to deal with those circumstances is not a sufficient basis in itself for concluding that they are of no significance to the application of planning control. In my judgment, it is plain that the Inspector, in his decision, did not get as far as considering issues of this kind because he wrongly treated the absence of policy support as determinative of the issue he was obliged to decide under section 55(1).

49. Mr Lockhart-Mummery QC also recognised the flaw in DL12 but suggested that the decision should nonetheless be upheld because in DL17 the Inspector had allowed the appeal, not only for the reasons he had given previously, but "on the evidence now available", suggesting, it was said, that he had taken into account the Council's housing need case.

50. I do not think that that wording can properly be read as overcoming the error of law in DL12 and DL16, which was to treat the absence of policy support as determinative. Moreover, that reading of DL17 would simply reveal an internal inconsistency in the decision letter which, at the very least, would result in the decision being quashed on the grounds of inadequate reasoning. Mr Williams, for the Secretary of State, did not rely upon DL17 in that way.

51. Both Mr Williams and Mr Lockhart-Mummery QC went on to submit that the decision should not be quashed in the exercise of the court's discretion, applying the principles in Simplex (GE) Holdings Limited v Secretary of State for the Environment (1998)57 P&CR 306 and R (Smith) v North East Derbyshire PCT [2006] 1 WLR 3315. They relied upon DL25 which formed part of the reasoning for the Inspector's decision to allow the appeal against the refusal of planning permission, in which he stated:

i. "Given the AMR projections, the loss of one residential unit at this time would not have a material adverse effect on the efforts towards meeting London Plan housing targets."

52. I have no hesitation in rejecting this argument. On the material before the court, I cannot

be satisfied that the Inspector would necessarily have granted the section 192 certificate if he had not fallen into the legal error which has been identified. First, the conclusion reached in DL25 is on the supposition that the proposal *was* subject to planning control as a material change of use. Second, in DL22 the Inspector did recognise the planning harm that could arise from an amalgamation of dwellings in the Borough. In DL25 the Inspector merely expressed his judgment that the effect of losing one residential unit in this case would not have a "material adverse effect" on the achievement of London Plan housing targets. That could only mean an adverse effect of such significance as to justify, and it must be emphasised, *the refusal of planning permission*.

53. It does not follow from such a conclusion on the planning merits of the proposed amalgamation, that the housing need concerns raised by the Council were not significant for the *threshold* purpose of *deciding whether planning control even applied*. Self-evidently, the two questions are not the same and must not be confused by decision makers. The questions need not be answered in the same way. A decision that a planning consideration is not significant for the purposes of section 55(1) means that it does not even merit assessment under section 70(1) in the exercise of planning control.

54. For these reasons the decision to allow the appeal under section 195 and the grant of the certificate under section 192 must be quashed and the appeal must be re-determined by the Secretary of State.

55. The Costs Order in respect of the Section 195 Appeal

56. It is accepted by the Defendant and the Owners that, if the decision on the section 195 appeal is quashed, then, likewise, the related order for the Owners' costs of that appeal to be paid by the Council must be quashed. DL13 of the costs decision letter is tainted by the same legal error.

57. The Council also sought to challenge this costs order by criticising the Inspector's handling of an offer by the Council to produce to him a legal opinion it had received. However, given the decision in R v Camden LBC ex Parte Cran (1996) 94 LGR 8 and the consequent inability of the Council to challenge the Inspector's witness statement, Mr Straker QC understandably did not pursue this line of attack.

58. The Appeal against the refusal of Planning Permission

59. Mr Straker QC confirmed that this challenge is solely directed to DL25, in which the Inspector stated:

i. "Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Given the AMR projections, the loss of one residential unit at this time would not have a material adverse effect on their efforts towards meeting LP housing targets. The proposal is not in conflict with any Development Plan policies and there are no material considerations to indicate that determination of the appeal cannot be made other than in accordance with the Development Plan. Planning permission has thus been granted for the amalgamation of two self-contained flats to form one self-contained residential unit at Flats 1 and 3, 44 Stanhope Gardens, London."

60. The sole criticism relates to the sentence:

i. "The proposal is not in conflict with any Development Plan policies and there are no material considerations to indicate that determination of the appeal cannot be made other than in accordance with the Development Plan."

61. The words "there are no material considerations" were interpreted by him to mean "no relevant considerations", with the consequence that this decision should be quashed because of the same legal error that vitiated the decision on the section 195 appeal.

62. In my judgment, this ground of challenge is unarguable. It involves reading a single sentence in DL25 out of context. The Inspector took some trouble in DL21 and DL22 to set out the Council's concerns as to the adverse effect upon meeting housing targets resulting from amalgamations of all kinds, even those involving a loss of only one unit. Indeed, to be fair to the Inspector, he did this more clearly than the Council has sought to do in their written statement produced before the hearing.

63. Although in DL23 and DL24 the Inspector explained why the proposals did not conflict with existing policies, in the second sentence of DL25 he expressed the additional conclusion that the loss of one dwelling in this case would not have a "material adverse effect" on meeting London Plan housing targets. That was a judgment for the Inspector to reach and it has not been suggested by the Council that it is open to any legal ground of challenge. Other Inspectors might reach the opposite conclusion but that is a different matter. It follows that, in the third sentence of DL25, the phrase "no material considerations" was used by the Inspector to explain that there

were no other factors of sufficient weight to justify the refusal of planning permission, and not to mean "no other relevant considerations". The challenge to the decision on the section 78 appeal must therefore be dismissed.

64. The Costs Order on the Section 78 Appeal

65. The Owners sought an order for costs against the Council in respect of the section 78 appeal, on the grounds set out in paragraphs 5 and 6 of their application dated 9 October 2015. Mr Lockhart-Mummery QC explained that the application was essentially based on the contention that the Council had acted unreasonably by "preventing or delaying development which should clearly be permitted, having regard to its accordance with the Development Plan, national policy and other material considerations". He accepted that in DL15 and DL16 the Inspector did not adopt the Owners' arguments in paragraphs 6(1), (4) and (5) of their application.

66. It is plain that in DL16 the Inspector decided the Council had acted unreasonably by failing to determine the application in accordance with the legal principle, as he saw it, that the proposal "be determined in accordance with the policies within the Development Plan" when it was plain that the proposal accorded with those policies. However, that approach did not address the Council's reliance upon another relevant consideration, albeit unsupported by planning policy, namely the effect of amalgamations of fewer than five dwellings upon the present and future housing supply. I accept the Council's submissions that:

67. The Inspector agreed in DL16 and DL22 of the main decision letter that the scale of amalgamations taking place in the Borough (including smaller amalgamations) may be jeopardising the meeting of London Plan targets, which could be said to amount to a harmful planning consequence;

68. (2) At DL25 the Inspector reached his own conclusion that the loss of one unit in the present case would not have a "material adverse effect", albeit without any further elaboration. That was a judgment reached as a matter of fact and degree;

69. However, at no point in the costs decision letter did the Inspector consider whether it had been unreasonable for the Council to raise this issue on the planning merits of the section 78 appeal;

70. DL15 of the costs decision letter raised a wholly irrelevant consideration,

namely the Council's acceptance that the "material change of use" issue was a question of fact and degree, and so it had been wrong for them to state that any amalgamation would require planning permission. Irrespective of whether that criticism had any merit or not, self-evidently it had nothing to do with the decision to refuse planning permission;

71. The cost decisions letter did not consider, or give any reasoning in relation to, the reasonableness of the council raising before the Secretary of State the need to prevent loss of housing to amalgamations so as to justify the conclusion that the Council had acted unreasonably.

72. For these reasons, the costs order made in relation to the section 78 appeal must be quashed.

73. MR JUSTICE HOLGATE: I would be grateful if counsel could agree an order for me to approve. I would be grateful if it could be provided, if not this afternoon, then by 10 o'clock tomorrow morning. That leaves the question of costs.

74. MS DHANOA: My Lord, I am grateful. I notice from my learned friend that we will be able to provide that agreed order to you by no later than 10 am tomorrow morning.

75. MR JUSTICE HOLGATE: Thank you.

76. MS DHANOA: In respect of costs, as you yourself mentioned yesterday, my Lord, costs follow the event. Given that the Council has won on the substantive portion of the matter before you, we would leave it in the court's hands to apply an appropriate reduction.

77. MR JUSTICE HOLGATE: Well, you are not asking for all of your costs then?

78. MS DHANOA: Well, we would seek to ask for all of our costs, but it is recognised that --

79. MR JUSTICE HOLGATE: Well, I am not going to give you all of your costs, so what proportion would you like to ask for? It is quite obvious that the Council should not receive all of its costs in a situation like this. The section 78 decision should never have been challenged. The fact that Mr Justice Collins gave permission is not conclusive on costs, because in a situation like this, when a judge is dealing with paper applications, having decided that there is at least some merit in some matters being considered at a substantive hearing, particularly if the issues or reasoning are interconnected, as I think the parties here treated the reasoning, it is not uncommon for permission to be granted on all aspects. So I don't think that affects my decision. The question is what proportion would be appropriate?

80. MS DHANOA: My Lord, in my submission, given that the planning appeal formed the majority of the litigation, the planning permission element formed a much smaller part, a cost reduction of no more than 20 per cent at the highest would be appropriate.

81. This is a case of great importance and significance and the Council has succeeded on the majority of the litigation on which this matter had been focused on.

82. MR JUSTICE HOLGATE: Right.

83. What does the Secretary of State want to say about that? This is really an issue between you and the local authority.

84. MS DRING: Yes. Well, my Lord, as a matter of principle I would argue for no order as to costs in this case.

85. MR JUSTICE HOLGATE: You are going to struggle.

86. MS DRING: Well, the reason I say that is the two costs appeals, in my submission, can be put to one side. They were --

87. MR JUSTICE HOLGATE: They had to incur some costs in order to get the case before the court and they had to go through the permission stage.

88. MS DRING: Yes but in terms of the amount of time spent, the two cost appeals took a very short amount of time.

89. MR JUSTICE HOLGATE: The amount of time spent in court is only part of the total cost.

90. MS DRING: Yes. In relation to the two substantive appeals, this is a situation where, effectively, we have won one and we have lost one. In my submission, the fair and just outcome, in those circumstances, is no order.

91. MR JUSTICE HOLGATE: Can we just break this down a little bit. I appreciate you are stepping into someone else's shoes and I fully take that into account.

92. The outcome of the challenge to the costs order on the LDC stood or fell with the outcome on the first challenge.

93. MS DRING: Yes.

94. MR JUSTICE HOLGATE: There was some time taken up, albeit not very much, in dealing with the additional argument raised by the Council which I have rejected. On the other hand, the Council's challenge to the other costs order could not be determined by just simply saying, well, that follows what the court does on the section 78 appeal. In fact it has gone the other way.

95. MS DRING: No, I mean, my Lord, obviously I wasn't here during the arguments but at least in part --

96. MR JUSTICE HOLGATE: From the reasoning I have just given, first of all the outcome is different to what happened on the section 78 appeal and, secondly, you couldn't resolve that question by simply looking at the reasoning in the substantive decision letter on the section 78 appeal.

97. MS DRING: No. I accept those points.

98. I think the overriding point I make about the two costs appeals is that, when one looks in the round at how the costs have been incurred in this matter, the costs in relation to those are not a substantial part of it. In terms of determining the principle of costs, one should really be

focusing primarily on the two substantive appeals.

99. On those appeals, as I say, we have won one and lost one. The fact that the Council have succeeded on one of those substantive appeals still leaves them in a position where the amalgamation which they were seeking to oppose can proceed. They needed to be successful on both of the substantive appeals to avoid that situation.

100. MR JUSTICE HOLGATE: Could we just break it down simply, because this has to be a broad brush assessment. There is not going to be a detailed assessment because no one is asking for that.

101. So far as the bundle is concerned, I suspect there could have been no saving in the quantity of documents, at least not to any material extent, if the Council had only challenged the decisions on which they have been successful. In other words, if one simply took out the section 78 matter, because all the policies would have had to go in, the representations, the decision letters. Really, I don't see much scope for paring away the bundle.

102. The witness statements, arguably, were unnecessary.

103. MS DRING: I think that must be right in relation to the bundle.

104. MR JUSTICE HOLGATE: So bundle minus witness statements.

105. MS DRING: And I think that there is the application form in relation to -- and those documents in relation to section 78.

106. MR JUSTICE HOLGATE: Yes. Fair enough.

107. The other aspect is hearing time.

108. MS DRING: Yes, I can't --

109. MR JUSTICE HOLGATE: Well, we might have shaved half an hour or an hour. And likewise the skeletons.

110. On the other hand, the Secretary of State incurred some costs in resisting the challenge to the section 78 appeal.

111. MS DRING: Exactly.

112. MR JUSTICE HOLGATE: So it is not enough just to simply say, I want 80 per cent. There is an offset as well.

113. Could I tell you what I have in mind as a fair proportion. That is two thirds of the

council's overall costs. Do you want to argue further about that?

114. MS DHANOA: My Lord, I am grateful for the points in respect of the bundle. It was simply not possible from the Council's perspective to reduce the bundle any further.

115. MR JUSTICE HOLGATE: I am sorry, I am against you on that. Given that you were not successful on a matter which I don't think should have been brought before the court, the bundle could have been slimmer. I don't see why time was taken up on the witness statements. Again, Mr Straker abandoned the challenge on the opening submissions -- sorry, the legal advice point, so I think you cannot get all the costs of the bundle.

116. What do you say about two thirds as a broad brush?

117. MS DHANOA: My Lord, I would say that, given the amount of time spent, both in respect of that which was originally in the bundle and the time spent in litigation yesterday and the preparation of litigation, the focus and the vast majority of that litigation -- significantly more than two thirds, my Lord, I would argue that it would be closer to three quarters to 80 per cent -- was focused on the first part in which the Council has been successful. Indeed, as my Lord has noted, yesterday in respect of the planning permission aspect was no more than half an hour to an hour in a full day's hearing. To reduce costs by one-third, in my submission, would not be an appropriate or reasonable reflection of the result and the outcome. Hence my submission that a reduction of no more than 20 per cent would be reasonable in this particular circumstance.

118. MR JUSTICE HOLGATE: right.

119. MS DRING: Well, my Lord, in my submission that doesn't do justice to a situation --

120. MR JUSTICE HOLGATE: First of all, there is a question of the broad apportionment, and you may not want to look at the two in isolation admittedly, and secondly do you want to say anything about the way the bill has been submitted?

121. MS DRING: I have additional submissions in relation to quantum.

122. MR JUSTICE HOLGATE: Have these been raised --

123. MS DRING: They have. There certainly was an email exchange.

124. MR JUSTICE HOLGATE: I am very grateful. This is what should normally happen. At least it gives the Council a fair chance to deal with the point.

125. MS DRING: We make a broad comment on the overall quantum of the costs in this case, which amounts to £35,000, which we say is, on the face of it, too high, given that this was a one day appeal, relatively straightforward, one key point. Also by way of comparison with our costs

it is too high. We also make an overall point in relation to the use of only grade A fee earners. The point there being that, in relation to some of the work done, particularly work done on documents but work also done on letters as well, that that could have and should have been --

126. MR JUSTICE HOLGATE: Which particular items would you challenge?

127. MS DRING: Well, in relation to the schedule of documents, for example, there are a number of items on that schedule which could have been done by somebody at a lower level than a grade A fee earner at less cost.

128. MR JUSTICE HOLGATE: This is the last page. Which items should I look at?

129. MS DRING: For example, work on bundle issuing claim form. That is something that would have been appropriate for a lower level of fee earner. Similarly certificate of service, similarly work on updating bundle index, similarly statement of costs.

130. MR JUSTICE HOLGATE: So how should I adjust those then?

131. MS DRING: I would suggest reducing those down say by 50 per cent. That is just on the level of fee earner.

132. MR JUSTICE HOLGATE: What would be the alternative grade?

133. MS DRING: Well --

134. MR JUSTICE HOLGATE: If is not grade A it would be grade what? B? C?

135. MS DRING: Maybe C.

136. MR JUSTICE HOLGATE: What is the figure for C? The hourly rate? I think there may be some help.

137. MS DRING: My Lord, I am told that £80 is a rate for an administrator, which is grade D.

138. MR JUSTICE HOLGATE: What about C, I am asking?

139. MS DRING: C, I don't have a figure immediately to hand.

140. MR JUSTICE HOLGATE: I think I had this argument in another case and someone showed me what D was. I don't think I would want to entrust a bundle to grade D, is the view I reached at the time.

141. What would C be?

142. MS DRING: My Lord, in terms of our schedule, I can't give my Lord an exact figure as --

143. MR JUSTICE HOLGATE: This is the way it is normally done.

144. MS DHANOA: Perhaps I might assist my learned friend.

145. MR JUSTICE HOLGATE: It is in the White Book. Can you give me a figure?

146. MS DHANOA: If I am not mistaken, I believe the fee for grade C, if I can recall to mind, is £110 to £120. Grade B is somewhere in the region of £150.

147. MR JUSTICE HOLGATE: Let's call it £120, it is roughly half the grade A, which is basically what the Secretary of State says. So you challenge that item, item 3, and say that should be really divided by two. Right?

148. MS DRING: Well, yes, and the other items on the document schedule.

149. MR JUSTICE HOLGATE: The whole lot?

150. MS DRING: Well, no, the bundle, the certificate of service, the updated bundle and the statement of costs.

151. MR JUSTICE HOLGATE: Okay. So it is items 3, 4, 7, and 8; is that right?

152. MS DRING: Yes.

153. MR JUSTICE HOLGATE: Have you done the arithmetic?

154. MS DRING: I haven't on that point.

155. MR JUSTICE HOLGATE: Right. Any other points?

156. MS DRING: Still in relation to the schedule of documents, we also take issue with the number of hours spent on some of those points.

157. MR JUSTICE HOLGATE: How many points have you got?

158. MS DRING: Probably around eight points, my Lord, on various items.

159. MR JUSTICE HOLGATE: Have we done four of them or have we got seven more to go?

160. MS DHANOA: No, because the first point was the grades, which was a general point.

161. The work done on the bundle and issuing the claim form, 11.4 hours, we say is far too high, given that this is a one lever-arch file bundle with nothing unusual about it.

162. MR JUSTICE HOLGATE: So what should the figure be?

163. MS DRING: I would suggest reducing that down to around 3 hours for producing a bundle. It shouldn't take 11 hours to do that.

164. MR JUSTICE HOLGATE: Right, got it. Next point?

165. MS DRING: The work on the skeleton argument at 2 hours, I would suggest that is too high.

166. MR JUSTICE HOLGATE: Instead of just saying it is too high -- it is self-evident you are going to say it is too high -- tell me what the alternative figure should be.

167. MS DRING: Half an hour, my Lord, given that that work was already -- the skeleton argument was --

168. MR JUSTICE HOLGATE: Done by counsel.

169. MS DRING: Exactly.

170. In relation to the work on the updated bundle index and authorities, I would ask that that is completely disallowed, the reason being that there was only around ten additional documents in the first place.

171. MR JUSTICE HOLGATE: Are any of these points accepted by the Council? None of them?

172. MS DHANOA: No, my Lord. The reason being that we did have the benefit of conversing beforehand in respect of the parties and I would say these three points. Firstly --

173. MR JUSTICE HOLGATE: No, sorry, I didn't ask that question. I asked whether any of them were accepted.

174. MS DHANOA: No, my Lord.

175. MR JUSTICE HOLGATE: Let's press on. I am surprised.

176. MS DRING: So, in relation to the updated bundle I am instructed that the additional documents were actually provided by my clients and that no update --

177. MR JUSTICE HOLGATE: So disallow 7, work done by C.

178. MS DRING: Effectively, yes.

179. MR JUSTICE HOLGATE: By D sorry. Right okay. Any more on that schedule?

180. MS DRING: I think that is it on the schedule.

181. MR JUSTICE HOLGATE: Before we move on, unless any of your later points relate to the schedule, let's deal with the schedule first.

182. What is said by the Council on this? The first point is four items, divide by two. Should be grade C rather than grade A.

183. MS DHANOA: My Lord --

184. MR JUSTICE HOLGATE: I think, actually, before you get to that, we ought to see whether you disagree with the number of hours spent. What about point 3? 11.4 to 3 hours?

185. MS DHANOA: My Lord, in my respectful submission that wouldn't be an appropriate reduction.

186. MR JUSTICE HOLGATE: Just tell me what the submission is. Let's cut the waffle, please.

187. MS DHANOA: The principal reason is that there was only one lawyer working on this, there were not two or three, there was just one grade A lawyer at any time.

188. MR JUSTICE HOLGATE: Sorry, the question is how many hours?

189. MS DHANOA: Bearing in mind the planning permission having been removed, I would say no more than a reduction of 2.4.

190. MR JUSTICE HOLGATE: Down to?

191. MS DHANOA: So down to 9 hours.

192. MR JUSTICE HOLGATE: Right.

193. The next one, I think, was work on the skeleton argument, not 2 hours, 0.5. What do you say about that?

194. MS DHANOA: Not appropriate because the officers had to look at that as well. I would say, again, reduce by half an hour to 1.5.

195. MR JUSTICE HOLGATE: Sorry reduce to?

196. MS DHANOA: 1.5 hours.

197. MR JUSTICE HOLGATE: Okay, thank you.

198. And then item 7 it is said was done by the Defendant.

199. MS DHANOA: I am not sure that that is entirely the accurate position, my Lord, because the updated bundle index, as was circulated by those instructing me, and further authorities that had to be collated, that was certainly done to a greater part I can say by Miss Flemming to my left.

200. MR JUSTICE HOLGATE: Right.

201. MS DHANOA: I would say that a reduction of no more than half an hour again would be appropriate.

202. MR JUSTICE HOLGATE: Okay. So those, I think, were the three items, unless I have missed anything.

203. MS DHANOA: There was the work on statement of costs, my Lord.

204. MR JUSTICE HOLGATE: I beg your pardon. You are absolutely right. Was that the length of time or the hourly rate?

205. MS DRING: That was in relation to the rate, my Lord.

206. MR JUSTICE HOLGATE: That is what I thought.

207. I am going to give my decision on this, this has got to be proportionate, so you are going to have to work out the costs from the decision I give. That is the way it is normally done.

208. Item 3, I accept that some reduction is justified and I am going to assess that as 6 hours.

209. Item 6, work on the skeleton, I assess that as 1 hour.

210. Item 7, I assess that as 1 hour instead of 2.

211. The other issue, then, is the hourly rate to be applied. Do you want to say anything about that?

212. MS DHANOA: My Lord, there was only ever one lawyer working on this. Given the importance of this case to the Council, it was a grade A lawyer, as is appropriate in this nature.

213. MR JUSTICE HOLGATE: A grade A lawyer doesn't necessarily need to prepare the bundles and photocopy and so on.

214. MS DHANOA: No, the administrative costs haven't been accounted for in this. That was done by a junior in the local authority.

215. MR JUSTICE HOLGATE: So there are other costs as well on top of this which you

haven't claimed?

216. MS DHANOA: Precisely so, my Lord.

217. MR JUSTICE HOLGATE: Right. I am going to allow this at grade A.

218. MS DHANOA: I am grateful, my Lord.

219. MR JUSTICE HOLGATE: That is enough on that.

220. What are the other points please?

221. MS DRING: My Lord, in relation to letters out, attendances on the claimant, we say that that should be reduced to 4 hours in total.

222. MR JUSTICE HOLGATE: Sorry, you are on --

223. MS DRING: It is currently 5.5 hours.

224. MR JUSTICE HOLGATE: I beg your pardon, you are on?

225. MS DRING: The first page of the costs schedule, my Lord. The letters out and emails, attendances on the claimants, claimed at 5.5 hours.

226. MR JUSTICE HOLGATE: Sorry, I can't see that at the moment. I have got it, yes.

227. MS DRING: We say that should be reduced down to 4 hours.

228. MR JUSTICE HOLGATE: 4 instead of 5.5. Thank you.

229. Next one?

230. MS DRING: The attendances on others, the Council and interested party. There is 7.4 hours claimed in relation to that, which is in addition to a separate item, which is instructing counsel on the documents schedule. We say that should be reduced down to 3 hours.

231. MR JUSTICE HOLGATE: Right.

232. MS DRING: Then, in terms of -- travel time is claimed at 1.5 hours. In my submission, that should not be recoverable under the practice direction to part 47. It is local travel within a 10-mile radius so that should be disallowed.

233. MR JUSTICE HOLGATE: I am sorry, I can't find the item at the moment.

234. MS DRING: It is under "attendance at hearing", 1.5 hours of travel.

235. MR JUSTICE HOLGATE: So disallow altogether?

236. MS DRING: That should be disallowed altogether.

237. MR JUSTICE HOLGATE: Got it. Thank you.

238. MS DRING: Finally, in relation to counsel's fees, on that point we say that this isn't a case of sufficient complexity as to justify a QC and a junior at all stages of the matter for a start.

239. MR JUSTICE HOLGATE: At which stage would it be justified?

240. MS DRING: Well, at the hearing we would accept. What we don't accept in relation to the hearing is the attendance of QC, junior and grade A solicitor. Three legal representatives at the hearing.

241. MR JUSTICE HOLGATE: It is top heavy. But sometimes it is said that if you didn't have a junior helping out at some stages, the time spent by the Silk, if working by themselves, would be greater in terms of hours.

242. MS DRING: That may be the case in some cases.

243. MR JUSTICE HOLGATE: Maybe one way of looking at this, taking your earlier point, is to say at the hearing no need, no justification for two counsel for this sort of case. On the other hand, there was a potential cost saving in the preparation of the case at an earlier stage. The question instead is perhaps more to do with the total amount, because between the two it amounts to nearly £14,000 for the earlier stage.

244. MS DRING: Just for the early stage. So this doesn't actually seem to necessarily be a case where the bulk of the preparation work was done and a cost saving in that respect.

245. The total for the whole thing, in terms of counsel fees, comes to almost £22,000, which we say is very high. We say, both in relation to the involvement of both throughout and just in relation to the justification for the use of someone so senior, we would ask for a reduction of 50 per cent.

246. MR JUSTICE HOLGATE: You can't criticise the use of a senior Silk can you?.

247. Let's hear what counsel says on counsel's fees first of all and then we will go back to the earlier items.

248. MS DHANOA: Certainly. My Lord, in respect of counsel's fees, the Owners themselves -- it was reflected in just how significant the case is --

249. MR JUSTICE HOLGATE: They used a Silk.

250. MS DHANOA: And they used a very well renowned Silk in this area.

251. MR JUSTICE HOLGATE: Yes. I saw the fee as well.

252. MS DHANOA: I am grateful, my Lord. To that end --

253. MR JUSTICE HOLGATE: I think the question for you is can you justify two counsel at the hearing? First question.

254. MS DHANOA: Yes, my Lord, for this reason: as my Lord noted, it was a time saving and cost saving mechanism.

255. MR JUSTICE HOLGATE: No, I mean at the hearing.

256. MS DHANOA: At the hearing, principally because junior counsel had been involved in the preparation of the litigation from the outset. Junior counsel had been the principal correspondence between chambers and instructing solicitors and, certainly insofar as general assistance to senior counsel was needed throughout the preparation of the litigation on this matter, I would say it was completely appropriate.

257. MR JUSTICE HOLGATE: What about the total fees at the earlier stage, 12,250? I don't think anyone could criticise you, if you will forgive me for saying so, for your fee for the preparation, it is really the considerably larger fee for the silk during pre-trial preparation.

258. MS DHANOA: My Lord, that is also encompassing -- and I am grateful to my learned friend for pointing out actually, albeit I appreciate in the context of a challenge, the difference in instruction to counsel and then attendance on counsel, because senior counsel did meet with instructing solicitors to provide advice both by way of teleconference and an in-person conference at which junior counsel was not present. That was again a cost and time saving mechanism that was employed. It made better sense --

259. MR JUSTICE HOLGATE: Any written opinions?

260. MS DHANOA: There were two written opinions, my Lord, which time was spent on by senior counsel. Junior counsel had no involvement in those either. In my submission, that is --

261. MR JUSTICE HOLGATE: Were they all before the claim started?

262. MS DHANOA: No, my Lord, some were after.

263. MR JUSTICE HOLGATE: And some of them might have been to do with the witness statements?

264. MS DHANOA: They were to do with the witness statements, my Lord. Yes.

265. MR JUSTICE HOLGATE: Right. Anything more you want to say on this, please?

266. MS DHANOA: My Lord, I think in my submission the Council have approached this case, bearing in mind that they too were very watchful of their purse strings, in as prudent a fashion as possible but recognising that this must be balanced against the fact that this is a case of great and significant importance. Not just to them as a Local Authority but to their neighbours in and around London as well. Hence the use of two counsel, a senior Silk but also a junior, in order to do a lot of the preparation work.

267. MR JUSTICE HOLGATE: I think this is repetition but I have got the point.

268. MS DHANOA: I am grateful, my Lord.

269. MR JUSTICE HOLGATE: I am going to disallow, I am afraid -- no criticism of you -- the fee for junior counsel at the hearing of £1,750. I allow junior counsel's fee, obviously, for the pre-trial preparation.

270. So far as leading counsel's fee is concerned, it does take into account work done both before and after the claim, including the preparation of witness statements. In my view a proportionate fee would be £7,500.

271. One bears in mind that on a detailed taxation, you wouldn't recover more than a proportion of costs in any event.

272. That leaves the other matters then, the specific items which were challenged on the first two pages. I think there were two -- sorry, three, I beg your pardon. The first one is on the first page, letters out. It is suggested that the figure of 5.5 hours should be reduced to 4 for letters out. Do you want to say anything? I haven't heard you on that yet.

273. MS DHANOA: My Lord, I am grateful. It is submitted that it is not appropriate to reduce any of that. The time spent was the time spent and it required consideration. Without rehashing the point, this is a case of some importance, there was a significant amount of correspondence between the parties.

274. MR JUSTICE HOLGATE: This is attendances on the claimant.

275. MS DHANOA: Attendances on the claimant, yes. The only one which --

276. MR JUSTICE HOLGATE: Attendances on opponents is only 1.4 hours.

277. MS DHANOA: Quite so. There has been considerable liaison between the parties, certainly from the local authorities. The only one which I will say, my Lord, in terms of making

any submissions on, the Council agree to the attendance at hearing, the travel, to be disallowed.

278. MR JUSTICE HOLGATE: Thank you for that. So we disallow on page 3 the 1.5 hours. Thank you.

279. MS DHANOA: Yes, my Lord.

280. MR JUSTICE HOLGATE: Okay. You maintain the 5.5 hours on page 1. What do you say about the second page, 7.4 hours, letters out to counsel and Owners? What does that cover?

281. MS DHANOA: That covers the instructions that would cover also the amount of correspondence as between the various parties in this particular matter. I don't think it was all made available to the court but there were a significant amount of letters.

282. MR JUSTICE HOLGATE: Right. On the basis that I will uphold your 5.5 hours on the first page, I think that figure of 7.4 hours, taking a broad brush approach, should be reduced to 5.5 hours.

283. MS DHANOA: I am grateful, my Lord.

284. MR JUSTICE HOLGATE: Are there any other specific points? I think we are getting close to eight.

285. MS DRING: No, my Lord.

286. MR JUSTICE HOLGATE: Right. That only then leaves the countervailing point that you have raised already, that the Secretary of State has been successful to some extent and is entitled to some costs.

287. Bearing in mind I must avoid double counting of deductions, some of which we have discussed already, I think the fair thing to do is to ask counsel or solicitors to agree how the Council's schedule would be adjusted in the light of the changes I have already decided upon and then, in relation to the final figure, the Council should then be entitled to recover 75 per cent of that. I would ask you, please, to work out -- do you think you can still do that by 10 o'clock tomorrow?

288. MS DHANOA: I can certainly -- I will certainly work on that this evening and send it through to my learned friend for consideration.

289. MR JUSTICE HOLGATE: Yes. I really do not think any more court time should be taken on this issue. Even if you have some disagreements on the precise arithmetic you should be able to arrive at a figure.

290. Any other matters?

291. MS DRING: No thank you, my Lord.

292. MS DHANOA: No, my Lord.

293. MR JUSTICE HOLGATE: Thank you.

294. I thank all counsel for their help in this case. What I propose to do myself is to make amendments to my notes for giving the judgment. I am happy to email that to counsel on the basis that it is not to go any further. It is not to get into the public domain because it is not an official transcript, but if you would find that helpful -- if you think it is not helpful you can wait for the transcript.

295. MS DRING: I am sure, my Lord, we would find it helpful.

296. MR JUSTICE HOLGATE: Right. Thank you very much.