

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

Royal Courts of Justice
Strand
London WC2A 2LL
5 February 2013

B e f o r e :

NICHOLAS PAINES QC
(Sitting as a Deputy High Court Judge)

Between:

THE QUEEN ON THE APPLICATION OF MATTEO CASTELLI	Claimant
v	
LONDON BOROUGH OF MERTON	Defendant

Mr Gary Pryce (instructed by PC Legal) appeared on behalf of the Claimant
Mr Michael Rudd (instructed by the London Borough of Merton) appeared
on behalf of the Defendant

1. THE DEPUTY JUDGE: This is a claim for judicial review of a decision of the London Borough of Merton recorded in a letter dated 19 April 2011. The decision was to the effect that four trees complained of by the claimant did not constitute a “high hedge” within the meaning of section 66 of the Anti-Social Behaviour Act 2003.
2. The issue arose in this way. The claimant lives in a house in Wimbledon in South London. The rear garden of the house backs on to a public amenity known as Cannizaro Park, some parkland with a grand house in it. The parkland belongs to the local authority (the defendant in this case), the London Borough of Merton. Before going into the issues it is helpful to set out the relevant legislation.
3. Part 8 of the Anti-Social Behaviour Act 2003, whose general title is “High hedges”, creates a mechanism enabling those who say that their amenity is detrimentally affected by a neighbour’s high hedge to make a complaint to the local authority. Part 8 begins with section 65, which in summary provided in subsection (1), that Part 8 applies to a complaint made by an owner or occupier of a domestic property alleging that his reasonable enjoyment of that property is being adversely affected by the height of a high hedge situated on land owned or occupied by another person. Section 66, which is the crucial section in this litigation, provides as follows:

- “(1) In this Part “high hedge” means so much of a barrier to light or access as—
- (a) is formed wholly or predominantly by a line of two or more evergreens; and
 - (b) rises to a height of more than two metres above ground level.
- (2) For the purposes of subsection (1) a line of evergreens is not to be regarded as forming a barrier to light or access if the existence of gaps significantly affects its overall effect as such a barrier at heights of more than two metres above ground level.
- (3) In this section “evergreen” means an evergreen tree or shrub or a semi-evergreen tree or shrub.”

4. Section 68 then proceeds to set out the procedure for dealing with complaints under Part 8. It begins by saying that the section has effect where a complaint to which Part 8 applies is made to the relevant authority accompanied by such fee (if any) as the authority may determine. It is common ground that the relevant authority in this case is the London Borough of Merton. Subsection 2 goes on to provide that if the authority consider that insufficient steps have been taken to resolve the matter, or that the complaint is frivolous or vexatious, the authority may decide not to proceed with the complaint. Subsection (3), however, provides:

“If the authority do not so decide, they must decide –

- (a) whether the height of the high hedge specified in the complaint is adversely affecting the complainant’s reasonable enjoyment of the domestic property so specified; and
- (b) if so, what action (if any) should be taken in relation to that hedge, in pursuance of a remedial notice under section 69, with a view to remedying the adverse effect or preventing its recurrence.”

Subsection 8 of the section provides that:

“A fee received by a local authority by virtue of subsection (1)(b) may be refunded... in such circumstances and to such extent as [the authority] determine.”

Section 72(1) then provides for appeals and finally section 83, to which my attention was drawn, empowers the Secretary of State by regulations to amend, among other things, the definition of a high hedge in section 66. It is common ground that that has not been done and I am dealing with the wording of section 66 as enacted.

5. One procedural oddity in the legislation is that section 68, as I have read, requires the authority, unless they have dismissed the complaint under subsection (2), to go on to decide whether the height of the high hedge is adversely affecting the complainant, etc. There is no procedural mechanism for the local authority to give a decision to the effect that the growth complained of is not a high hedge at all, unless they do so by dismissing the complaint as frivolous or vexatious under subsection (2). The local authority’s decision in this case was that the growth complained of was not a high hedge. There was no dispute on the part of Mr Pryce, for the complainant, about a local authority’s entitlement to give such a decision, assuming, contrary to his case, that it is given in accordance with the criteria of section 66.
6. It seems to me unfortunate that the only mechanism Parliament has given to an authority for giving such a decision, and then not proceeding under section 68, is to state that the complaint is frivolous or vexatious. I would not describe this complaint as frivolous or vexatious in the ordinary meaning of those terms. It seems to me the only way to cut the Gordian Knot is to interpret those words “frivolous or vexatious”, in the same way as court rules have done, as

including a claim which is bound in law to fail – in present circumstances because of the local authority's decision under section 66.

7. I will return to the interpretation of section 66 and the party's submissions about its application by the local authority in this case. It is convenient before doing so to note that there is an amount of guidance issued by the Department for Communities and Local Government (in fact by its predecessor, the Office of the Deputy Prime Minister). One piece of guidance is entitled "Hedge height and light loss", and the other "High Hedges Complaints: Prevention and Cure". I was shown in the guidance on "Hedge height and light loss" a passage in the introduction on page 5:

"In the Anti-Social Behaviour Act, 'high hedge' means 'so much of a barrier to light or access..."

and then subsection (1) of section 66 is set out. The guidance continues:

"Consequently, these guidelines apply to evergreen hedges. They have not been designed to be applied to individual trees, groups of trees or woodlands."

Since that final sentence is prefaced with the word "consequently" there is implicit in these words an interpretation of the Act to the effect that it does not apply to individual trees, groups of trees or woodlands. That is a matter on which Mr Rudd, for the local authority, relies.

8. In the "Prevention and Cure" guideline I was shown by Mr Pryce the passage in the preface on page 5 which outlines two points that need to be borne in mind when using the guidance – the first being that Councils and others are not required to follow the advice given and the second that the guidance:

"should not be relied on as a definitive statement of the law. The law is contained in the relevant primary and secondary legislation; this document is for guidance only. Anyone unsure of their legal rights or obligations should consult a solicitor."

9. The guidance contains two paragraphs on the topic of "a line of two or more trees or shrubs"; these read as follows:

"4.7 A complaint cannot be made under the Act about single trees or shrubs, whatever their size. A tree or shrub that has multiple stems, all growing from the same trunk or root plate, remains a single tree or shrub and so falls outside the scope of the Act. This is the position even though the multiple stems might result in a considerable spread.

4.8 The two or more trees or shrubs do not have to form a straight line. As long as they are roughly in line, they will be caught. It is unlikely, therefore, that the definition will catch groups of trees, copses or small woodlands – unless they have a row of trees bounding them."

10. Paragraphs 4.15 and 4.16 contain some guidance on the requirement of growth rising more than two metres above ground level. It is to the effect that the two metres should be measured from the base of the plant whether or not the land falls away in any direction. Paragraph 4.17, on the topic of a "Barrier to light or access", says that:

"The Act applies to hedges that, despite any gaps that occur above the 2 metre mark, are a barrier to light or access. This is about the physical appearance of the trees and shrubs in question – and whether or not they form what we might commonly consider to be a hedge."

11. On the topic of the “Location of the Hedge” paragraph 4.24, to which Mr Pryce drew my attention, says:

“...the offending hedge does not have to be growing in someone else’s garden. It could, for instance, be on parkland that backs onto a garden or yard, or on commercial premises.”

As I have already mentioned, the growth complained of in this case is in a public park.

12. The claimant made his complaint using a printed form supplied by the local authority on 11 February 2011. Mr Pryce drew my attention to the second page of the printed form headed “Criteria for making a complaint”, which sets out at paragraph 2.1 to 2.5, in effect, the successive questions that section 66 requires to be answered:

“2.1 Is the hedge ... made up of a line of 2 or more trees or shrubs?

...

2.2 Is it mostly evergreen or semi-evergreen?

...

2.3 Is it more than 2 metres above ground level?

...

2.4 Even though there are gaps in the foliage or between the trees, is the hedge still capable of obstructing light or views?

...

2.5 Is it growing on land owned by someone else?

...”

13. Mr Pryce criticises the local authority’s failure in its decision, to which I shall come, to structure its decision in the way that its own printed complaint form indicates is appropriate. The complaint form was accompanied by several typed pages of further grounds prepared by the complainant. On the second page he said:

“... for the sake of clarity, the complaint concerns all trees within Cannizaro Park facing no. 44, 46 and 48 Sycamore Road [in which he lives], to the extent that such trees are part of the Hedge ... and not only those trees within such Park which are in close proximity to the aforementioned properties. It is obvious that, the distance of the relevant trees from no. 46 ... will have to be taken into account in determining the appropriate remedial measures.”

14. The local authority’s decision, which was adverse to the complainant on section 66, was announced in a letter dated 19 April, which in material part reads:

“I am sorry to tell you that, under the terms of Part 8 of the Anti-Social Behaviour Act 2003, the Council is unable to deal with your complaint and so will be taking no further action on it.

The reasons for our decision are as follows:

- The Council’s Greenspaces Team carried out works to the vegetation behind your property shortly before 16 March 2011. The nature of the work involved the removal of 1

tree and further pruning was carried out to the remaining 4 trees. The remaining 4 trees are not considered to be a hedge.

Your fee of £300 will be refunded under separate cover, by post, shortly.”

There is then an offer of a contact person for further information and a reference to the absence of the right of appeal but the possibility of judicial review.

15. Solicitors acting for the claimant wrote a pre-action letter on 19 May that generated a further response, which I shall come on to consider. Two points were taken in the letter. The first was the Council were wrong in their conclusion that the trees complained of did not constitute a hedge, and secondly that the Council were acting as judge in their own cause, a point which is not pursued in this litigation. The letter was accompanied by two photographs, to which I shall return. The Council’s response of 2 June 2011 says, so far as material, that the contents of the letter provide “a fuller explanation for the second decision”. It then goes on under the heading “The conclusion that the remaining trees are not a hedge is correct in fact and in law” to say that the complaint form and the photographs that accompany it were initially accepted by the Council’s Trees Officer as forming a valid complaint about a high hedge under Part 8. The letter continues:

“Although the quality of the photographs is very poor they appear to show a dense evergreen screen in existence above the fence line thereby supporting Mr Castelli’s written submissions concerning a high hedge.”

16. The letter goes on to say that it was in consequence of that that the claimant received a letter acknowledging that the complaint met the requirements of Part 8, but said that that was written prior to the Trees Officer undertaking a site visit, and solely on the basis of the paperwork and photographs that were submitted. The letter says that there was then a site visit at the time of which the Trees Officer discovered that “the hedge” actually comprised of five separate trees. Some more photographs, together with a reference plan, were included with the letter, which after referring to them continued:

“It can be seen from the photographs that there is no growth in the essential 2 metre zone as measured from ground level on the hedge owner’s side. These are in fact individual trees which form an edge to the woodland in this part of Cannizaro Park. None of the canopies of these trees overhang the boundary to number 46 ... and there is a reasonable gap between the canopy and fence line to that property.”

Then there is reference to paragraphs 4.15 and 4.7 of the guidance, to which I have referred, and a further statement:

“For the Act to apply in this case, these trees would have to form a hedge that is more than 2 metres in height.”

It concluded:

“As a result of the findings during the site visit, [the Trees Officer] concluded that [the claimant’s] complaint did not in fact meet the most basic requirement of the Act.”

17. There was a further exchange of correspondence, a letter from the claimant’s solicitors of 6 June, to which the Council responded on 10 June 2011. They referred in that response to a passage in paragraph 4.17 of the guidance, a sentence stating:

“This is about the physical appearance of the trees and shrubs in question – and whether or not they form what we might commonly consider to be a hedge.”

The Council went on:

“We submit that typically, a hedge consists of a selection of plant species that has been planted close together so as to form a green leafy barrier from the ground level upwards. The photographs enclosed with our previous letter show quite unequivocally that these are trees and not a hedge.”

18. A claim for judicial review was lodged on 18 July 2011. In it each of the three sentences in the paragraph I have read from the letter of 2 June generated a ground of challenge. The first sentence referring to “no growth in the essential 2 metre zone” was said to be wrong in law as applying a test that was not contained in section 66. The second sentence, “These are in fact individual trees which form an edge to the woodland...”, was criticised on the ground that in law lines of trees that were on the edge of woodland were not for that reason excluded. The third sentence to the effect that, “None of the canopies overhang the relevant boundary ... and there is a reasonable gap between the canopy and the defence line”, was criticised on the ground that there was no statutory requirement of “overhang” before section 66 was engaged.
19. Collins J considered the application for permission on the papers and on 11 October 2011 refused permission. His reasoning was as follows:

“While I recognise that there may have been errors so far as Grounds 1 and 3 are concerned, I think the answer to Ground 2 is entirely persuasive. Whether or not there is in truth a hedge is a question of fact and I am bound to say that the photographs for all their shortcomings do not show what would be regarded by a sensible approach a hedge. There are trees at the edge of a woodland. A hedge is normally to be regarded as a freestanding line forming a boundary. True, the other side of the boundary can be woodland, but trees which form part of that woodland would not be a hedge. Having said this, it seems to me that sensible action should be taken by the Council to alleviate the problem so far as possible. No costs.”
20. On 1 February 2012, Mr Vincent Fraser QC, sitting as a Deputy Judge of the Queen’s Bench Division, gave permission to bring this claim after an oral hearing. I do not have an account of his reasons, but I find it understandable that he was persuaded by the submissions ably advanced by Mr Pryce, as I have been for a large part of time I have spent here in considering this case.

Section 66: Preliminary Observations

21. Section 66 begins with the words: “In this part high hedge means...”; it is therefore supplying a definition. The question for a decision-maker under it is therefore not simply as to the natural and ordinary meaning of the words “hedge” and “high” in the English language. On the other hand, the words used within the definition are words of ordinary language with inevitably a degree of imprecision embedded in them. The meaning of “high” in this context is not imprecise; it is defined as “more than 2 metres above ground level”. But other expressions used, for example, in subsection 1(a) “barrier to light or access” that is “formed wholly or predominantly” by a line of two or more evergreens, do contain wording that is inevitably imprecise. The word “predominantly” raises a question of degree. The concept of a line of two or more evergreens raises, to my mind, issues not only of the degree of alignment of the plants complained of, but also of their proximity. Again in subsection (2) the decision-maker has to decide whether the existence of gaps significantly affects the overall barrier effect of the line of evergreens at heights of more than two metres. The nature of the language used inevitably creates the possibility that different decision-makers might decide differently as regards the same subject matter, without either of their decisions being capable of being criticised for error of law.

22. The second observation I would make is that whilst, on the one hand, there is a statutory definition excluding the mere application of the natural and ordinary meaning of the term “hedge”, consideration of the meaning of the word in ordinary language is not, as both counsel agree, completely excluded. Mr Pryce accepted that a decision-maker could consider whether something could not possibly be described as a hedge; indeed a decision-maker should, I would suggest (in agreement with the thrust of his submission) take his or her decision in the light of common sense. It seems to me that in applying the criteria of section 66, and, in particular, the concept of a line of evergreens, a decision-maker should keep it in the back of his or her mind that this is a test for identifying a hedge.
23. I add for completeness that there is no dispute in this case that the trees complained of are evergreen trees, they being three Holly trees and a Cypress.

The Parties’ Submissions

24. Mr Pryce submitted that section 66 sets out a set of questions to be answered:
- Is there a barrier to light or access?
- Is it formed wholly or predominantly by a line of two or more evergreens?
- Does it rise to a height of more than two metres?
- Does the existence of gaps significantly affect the overall barrier effect of the line of evergreens?
25. He criticised the paragraph in the letter of 2 June as not engaging with the statutory questions: there was no discussion of whether there was a barrier to light or access; there was no discussion of gaps. Instead, he submitted, three reasons were given which were erroneous in law. The first sentence of the paragraph, referring to the essential two metre zone amounted, he submitted, to the decision-maker telling herself that there could not be a hedge if there was no growth of foliage below two metres from the ground. The statement in the second sentence, that the complaint concerned individual trees which form the edge of a woodland area, amounted in his submission to the creation, by way of impermissible gloss on the statute, of an exception to the effect that a line of trees is not a line of trees if there are other trees behind it. He said that the statutory question to be answered was merely whether there was a line of trees; if there was, its character as a line of trees could not be removed by the existence of other trees.
26. As regards the third sentence, to the effect that there was an overhang of the canopy of these trees and a gap between the canopy and the fence line, he said that that was looking not at the height of the trees, which was the statutory issue, but rather at the depth of the barrier and its closeness to the boundary, neither of which were considerations set out in section 66. He also said that that sentence strayed, impermissibly at this stage, into a consideration of the section 68 issue of whether the trees were detrimentally affecting the claimant’s enjoyment of his own property. He invoked the permission decision of Collins J in support of his case on the first and third sentences.
27. Mr Rudd, for the local authority, said that Mr Pryce’s approach was contrived. He submitted that section 66 set out a test to be applied in the round, not mechanically by simply supplying answers to a series of questions. As regards Mr Pryce’s first ground relating to the first question, Mr Rudd accepted that it would be wrong in law to say that the absence of foliage below the two metre line excludes a growth from being a high hedge without more, but he said that that consideration could be taken into account as part of the decision-maker’s consideration of the section 66 issues in the round.

28. It is convenient to deal at this point with that first sentence. I have already read it and, in my judgement, it does mean that the absence of foliage in the so-called essential two metre zone, measured from ground level, disqualifies a growth from being a high hedge; and, in my judgement, that is wrong in law. I do not see how this consideration – the absence of foliage below the two metre line – can logically contribute to an overall assessment under the section. It is true that foliage from ground level (or usually not far above it) upwards is a typical characteristic of what would generally be described as a hedge; but we are not concerned purely here with the natural and ordinary meaning of the term “hedge”. I fail to see how this consideration of the absence of foliage below 2 metres can contribute to a decision on the issues in section 66, such as the presence or absence of a line of two or more evergreens, or a barrier to light or access above the two metre line.
29. I move then to consider the second and third sentences. As I have said, the second sentence referred to the trees complained of being individual trees which form an edge to the woodland in this part of Cannizaro Park, and Mr Rudd described ground 2 as raising the primary issue in the case: an issue which, it seems to me, really centres on the reference in section 66 to a line of trees.
30. At the extremes, Mr Pryce, first of all, argued, as I have said, that if a row of trees amounts to a line it does not cease to be a line because it has other trees behind it. He submitted that the decision in this respect misinterpreted paragraph 4.8 of the guidance, which had merely said that it was unlikely that the definition of a line of trees would catch groups of trees, unless they had a row of trees bounding them.
31. Mr Rudd, at the opposite extreme, submitted that in section 66 the word “line” means a line and not a part of a larger body of trees. In other words, that “line” here meant an isolated line. In that connection he referred to the policy that the legislation was pursuing, which was to deal with the anti-social effect of tall dense hedges such as could be formed by leylandii, which has a well-known capacity to grow to overbearing heights if uncontrolled, and, in particular the detrimental effect of such hedges upon neighbours. He said that the purpose of the legislation was not to impinge upon woodlands. If the section was regarded as being capable of applying to the outer row of a body of trees, with the consequence that that row might have to be reduced in height pursuant to an order under section 68, attention would then turn to the row behind them and the result would be a ratchet effect leading to a practical requirement to have a treeless border, or at least a border of trees of reduced height, around the woodland; this he said could not be the intention behind the legislation. He asked rhetorically, regarding a forestry commission plantation, which as one knows are often in aligned rows of planting: “Is such a plantation a line of hedges?” submitting that that could not be the intended meaning.
32. He also submitted that it was a matter for the judgement of the officer whether a row of trees, which formed part of a larger body of trees, was a line of trees in the sense intended by the statute or not.
33. I do not adopt either of the extreme positions taken by either counsel. It seems to me that if one were to imagine (say) a plantation of leylandii in which the front row of trees was situated close to a border and presented an intolerable barrier to light or access of the sort that Part 8 is intended to enable councils to control, Parliament could not have intended the mere presence of more rows of leylandii behind that front row to isolate the front row from the effect of the Act. However, I do agree with Mr Rudd that, in deciding whether a growth complained of amounts to a line of trees within the meaning of section 66, in addition to the matters I have mentioned of alignment and proximity to each other, a decision-maker can take account of the trees’ relationship to other trees, as well as the degree of barrier to light or access that they present in deciding whether there is a barrier to light or access formed by a “line of trees” within the meaning of section 66.

34. Alignment is a matter that is referred to in the guideline; it says that precise alignment is not required, a conclusion with which I agree. It seems to me that proximity must also be relevant. The section refers to a line of two or more trees; if one takes the example of simply two trees, whether they amount to a line of trees that has the characteristics of a hedge will be considerably affected by their proximity to one another. If they are only a few feet apart with the foliage of one reaching the foliage of the other, a decision-maker may well conclude that they form, albeit a short one, a hedge within the meaning of the section, whilst if they are 20 yards apart such a conclusion would be impossible.
35. Those are extreme examples, but in approaching a group of trees of the sort that are concerned in this case, proximity, as well as the extent to which they are in a straight line, must be factored in; so must, in my judgement, their positioning vis-a-vis other trees. It is, in my judgement, open to a decision-maker to decide that something is not a line of trees within the meaning of section 66, weighing up the factors of alignment, proximity and relationship to other trees and bearing in mind, as I have said, that while section 66 is supplying its own definition of a high hedge, it is there for the purpose of enabling decision-makers to identify a hedge.

My Decision

36. I have already explained my reasons for concluding that the first sentence in the paragraph of 2 June letter does not supply a legally good reason for finding these trees not to constitute a hedge, nor as feeding any relevant consideration into a consideration of the requirements of section 66, so I will not revisit that sentence. It is relevant, however, to remind oneself of the terms of the second and third sentences. The second one says:

“These are in fact individual trees which form an edge to the woodland in this part of Cannizaro Park.”

And the third goes on to say:

“None of the canopies of these trees overhang the boundary to number 46 ... and there is a reasonable gap between the canopy and fence line to that property.”

37. It is correct to say that there is no express discussion of the elements of section 66. One would certainly demand a tighter and more focused statement of reasoning from a judicial decision-maker, but I remind myself that I am dealing here with an executive decision taken by a Trees Officer, who is not required to be legally trained.
38. Looking at the second sentence again, I note first the words “these are in fact individual trees”. That seems to me adequately to explain that in the decision-maker’s view this is not a line of trees. When one reads further in the same sentence, one reads:

“these are in fact individual trees which form an edge to the woodland...”

Again, having regard to what I said a moment ago about the approach to the concept of a line of trees, that is a further elaboration of a statement that the four trees complained of are not a line of trees.

39. The third sentence is capable of more than one interpretation. As I have said, Mr Pryce regards it as dealing impermissibly with the question of amenity (only arising under section 68) or alternatively introducing an impermissible consideration of depth or gap, which is not warranted by section 66. Mr Rudd, on the other hand, portrays the sentence as dealing with the issue of barrier. In that connection he took me to the photographs attached to the claimant’s solicitor’s June letter, which weighed with Collins J. He pointed out that the evidence of the

photographs was to the effect that any barrier to light or access was created not by the four trees complained of, but by the taller trees much further away in Cannizaro Park.

40. I have to say that looking at these photographs the trees that the claimant complains of are not of particular beauty. I find it difficult to judge from the photographs to what extent their foliage spreads above the two metre mark. It is also true to say that, in any event, in the line of sight of the photograph there is further foliage behind them, if it be not their own foliage.
41. Since light comes diagonally, at least as much as vertically, questions of positioning of trees on the ground can be relevant to the extent to which they form a barrier to light or access; the further away a tree is the lower its top will appear in one's field of view. However, I find the third sentence entirely unclear as to whether it is considering issues of barrier, or impermissibly considering issues of amenity.
42. Nevertheless, it seems to me that the second sentence does adequately record a conclusion that the trees complained of do not amount to a line of trees within the meaning of the statute; and, having looked at the photographs, I find that that was a conclusion that the decision-maker was plainly entitled to reach.
43. I add, by way of postscript, that there was force in Mr Pryce's argument to the effect that Mr Rudd's in terrorem arguments put the matter too high in terms of the allegedly devastating effect of an alternative interpretation upon the country's woodlands. Mr Pryce was justified in pointing out that the decision under section 66 is merely a prelude to a decision under section 68, which can include a decision that no action is appropriate, even if the height of a high hedge is adversely affecting a complainant's reasonable enjoyment of his property.
44. But, in my judgement, the concept in section 66 of a line of two or more evergreen trees or shrubs is there by way of an indication of the existence of a hedge. Bearing in mind Mr Pryce's correct acceptance that a decision-maker could take into account whether a growth complained of could possibly be described as a hedge, and having looked at the photographs at pages 34 and 35 of the bundle, in particular, I find it hard to see how a decision-maker could find what is shown in those photographs to be capable of being described as a hedge. At all events I have concluded she was entitled, without violating the statute, to conclude that the trees in question are not.
45. MR RUDD: I do have an application for costs on behalf of the local authority. Hopefully you have seen a summary of the costs sent through possibly yesterday.
46. THE DEPUTY JUDGE: Yes.
47. MR RUDD: The costs total £3,655. I would say that obviously costs should follow the event. The local authority were right in dealing with the matter in the way they have, and I would draw to your attention the costs that would have been sought by the claimant in the sum of £19,500. By way of comparison the costs sought by the local authority are, in my submission, very reasonable.
48. MR PRYCE: Perhaps I should have popped up slightly quicker because there is the question of the relief, if any, that you plan to –
49. THE DEPUTY JUDGE: Sorry I dismissed the application.
50. MR PRYCE: As regards costs, we do not have any particular point as to the schedule. It seems a very modest one in the circumstances.
51. THE DEPUTY JUDGE: Yes, I award costs in that figure.

52. MR PRYCE: As regards the application you have dismissed I would ask for permission to appeal, the reason being that as to section 66 I submit that we have a reasonable prospect of success in persuading the Court of Appeal that what has happened as to the decision is that an unwarranted gloss has been put on section 66, rather than simply an interpretation of the words as they stand in the legislation. For that reason I ask for permission.
53. THE DEPUTY JUDGE: I concluded that there is not an unwarranted gloss involved. I think it is sensible for a single Lord Justice to come to the case with fresh eyes.