

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

Royal Courts of Justice
Strand
London WC2A 2LL

21 January 2008

Before:

MR JUSTICE BEAN

Between:

**THE QUEEN ON THE APPLICATION OF
WINIFRED DE BIERRE**

Claimant

v

**SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL
GOVERNMENT**

Defendant

**The claimant appeared in person
Mr R Warren appeared on behalf of the Defendant**

1. MR JUSTICE BEAN: The claimant Winifred De Bierre is the owner of a number of properties in Nottingham, including Nos 5, 7 and 9 Worksop Road. She lives at No 9.
2. The city council, on 27 July 2003, approved a compulsory purchase order for Nos 5 and 7. This required confirmation by the Secretary of State, at that time the First Secretary of State, now the Secretary of State for Communities and Local Government. The order was submitted to the Secretary of State for confirmation. A public inquiry was held by an inspector, Mr P J Asquith, on 10 and 11 January 2006 followed by a site visit on 12 January. In his report dated 17 February 2006 the inspector recommended that in respect of No 7 Worksop Road the order be not confirmed but that in respect of No 5 Worksop Road the order be confirmed without modification.
3. The Secretary of State's decision letter of 20 March 2006 follows both those recommendations and accordingly an order was made in respect of No 5 only on 14 April 2006.
4. Miss De Bierre is naturally satisfied with the decision in respect of No 7 and nothing arises on that. This claim is her application under Section 23 of the Acquisition of Land Act 1981 to quash the order effecting the compulsory purchase of No 5.
5. The law applicable in applications of this kind is well established and not in dispute. There is no appeal to the High Court on the merits of the order. A decision such as the decision letter in this

case is susceptible to judicial review on the basis of the principles set out by Mr Justice Forbes in *Seddon Properties v Secretary of State* [1978] JPL 835 which, in turn, followed observations of Lord Denning MR in the Court of Appeal in *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 1 WLR 1320. Lord Denning MR said:

“The court can interfere with the Minister’s decision if he has acted on no evidence; or if he has come to a conclusion to which on the evidence he could not reasonably come; or if he has given a wrong interpretation to the words of the statute; or if he has taken into consideration matters which he ought not to have taken into account, or vice versa; or has otherwise gone wrong in law.”

Mr Rupert Warren, for the Secretary of State, has rightly reminded me that one now has to add that the Human Rights Act 1998 must be taken into account.

6. The upshot of this is that matters of judgment or weight are for the decision maker and not for the court.
7. I have also been referred, in the context of scrutinising the decision letter and the inspector’s report for the adequacy of their reasoning, to well known observations of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter No 2* [2004] 1 WLR 1953 at paragraph 36:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. Such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact on future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

8. Circular ODPM 02/2003 – issued by what was then the Office of the Deputy Prime Minister – reminds decision makers that –

“A compulsory purchase order should only be made where there is a compelling case in the public interest.”

That was the circular in force at the time that the council approved this order in July 2003.

9. By the time of the hearing before the inspector and the Secretary of State’s subsequent decision letter Circular 06/2004 had been issued by the ODPM. Headed “Compulsory Purchase and the Crichel Down Rules”, and therefore reminding all of us of the famous 1954 case about the unlawful acquisition of property, it, like its predecessor, sets out detailed guidance on a number of matters. Appendix E, paragraph 2, of that circular echoes the 2003 Circular by saying housing compulsory purchase orders “should not be made unless there is a compelling case in the public interest”. It is not necessary, as I see it, to consider the detailed transitional provisions of Circular 06/2004 because neither party has pointed to any part of either circular which is relevant to the present case and where the two circulars differ.

10. Miss De Bierre has submitted that the fact the council relied on the 2003 Circular whereas the inspector and the Secretary of State may have relied on the 2004 Circular somehow vitiates the decision. I disagree. If the two circulars are, insofar as relevant, identical or not materially different then it is not necessary to inquire further into which circular was applicable to the decision.
11. The inspector's report – dealing with both No 5 and No 7 Worksop Road in the same document begins by dealing with some procedural matters not in issue before me; then describes the relevant part of Worksop Road; and then sets out the case for the council at paragraphs 8 to 32 and the case put forward by the objector, that is Miss De Bierre, at paragraphs 33 to 41. I note that, as one would have hoped, there is a substantial overlap between the case for Miss De Bierre as recorded by the inspector and the points which she has put in written and oral argument to me. I shall return to the points she made in a moment.
12. The report then describes the two properties, the subject of the order (in paragraphs 42 to 46), and then sets out the inspector's conclusions, some of which I must cite in this judgment (using his paragraph numbers):

“49 There is evidence of a general need for housing accommodation in Nottingham. Both Nos 5 and 7 Worksop Road have been unoccupied for in excess of 11 years. Despite the objector's view of a flooded market for rental property, I consider the renovation of No 5, the completion of the refurbishment of No 7 and the subsequent re-occupation of the properties, would result in both a qualitative and quantitative gain in housing accommodation within the city. This would be in line with the objectives of Government policy and the council's strategy on long term vacant property.”

In paragraphs 50 to 53 he gave his conclusions in respect of No 7. At the end of paragraph 53 he said:

“ I conclude that in the particular circumstances relating to No 7 there is not a compelling case for confirmation in the public interest to warrant depriving the objector of her property.”

He returned to No 5 as follows:

“54 In respect of No 5 Worksop Road, this was vacant when purchased by the objector in 1995 and has remained so ever since. Although there have been complaints from nearby occupiers about the state of the property the last such complaint was in November 2003. The main structure of the property appears sound although the previously damaged flat roof over the bathroom has been only temporarily covered to make it look weather tight. Despite requiring painting of the exterior woodwork and rear windows renewing, I do not consider that its overall external appearance is such that it obtrusively detracts from its surroundings. Very little work has been done to the interior of the property, it lacks basic facilities and in its present state I consider it to be uninhabitable.

55 Despite much contact and communication between the council and the objector over a protracted period, the availability of grant assistance towards renovation and the property's eligibility for this, no formal grant application was ever made. Grant assistance for this form of property is no longer available, even though the objector considers that she should be entitled to it (or compensation in lieu). The council's decision in 2003 that a discretionary grant would not be made available was based on its past experience in providing a grant for No 7, yet the property still remained unoccupied. The view was therefore taken that this would not be a good or proper use of public funds. I have no cause to believe that the council was not reasonably entitled to make that decision based on its history of and its past dealings with the objector.

56 From the evidence, it would seem the likelihood of financial assistance towards renovation of the property pursued by the objector by other means is unrealistic. Therefore if No 5 is to be brought up to a habitable standard and re-occupied the objector's own resources are likely to be

required. Miss De Bierre has indicated that No 5 would be renovated and made available for letting even if no financial assistance was available. No detailed costs estimates of renovation have been obtained but she considers more than £30,000 of work would be required. This is perhaps a not unrealistic figure given the council's 2003 estimate for a comprehensive renovation scheme of £18,100, which it accepts would be considerably more today. There is no evidence to suggest that Miss De Bierre lacks the resources to undertake this.

57 Despite over the past 11 years providing differing accounts of her intentions for No 5, it appears clear that her present intentions are that the property should be renovated and tenanted. Nevertheless Miss De Bierre maintains her four properties within the neighbourhood should be viewed together. No 5 would be the last of her properties to be renovated, following No 154 Carlton Road, which still remains to be done. She has no firm plans or timetable to carry out the refurbishment works. In all the circumstances, having regard to the length of time that the property has remained empty and uninhabitable and the objector's past record, I am not convinced that if the property was to remain in her ownership there would be a timely renovation and re-occupation of it.

58 I have concluded in paragraph 49 above that there would be a quantitative and qualitative gain as a result of the property being renovated and re-occupied. In paragraph 53 I considered that there would be a strong likelihood of a ready market for the property. In my judgment if the order was to be confirmed there would be a far greater probability of the property being brought up to a habitable standard and thereafter occupied within a short space of time than if it was to remain in the objector's ownership. This being the case, I conclude that there is a compelling case in the public interest for confirmation of the order in respect of this property.

59 In reaching this conclusion I put little store by the objector's claim that this is a 'second home'. In my view, any common sense definition of a second home would connote a property that could be lived in and one which is generally within a different location to what might be considered a primary residence. No 5 is uninhabitable in its present state, has been unoccupied for many years and lies next-door-but-one to the objector's home. Even if it were to be accepted that the property could be classified as a second home, the case of *Tsao v Secretary of State for the Environment and Kensington and Chelsea Royal Borough Council* would point to there being no bar to the order being confirmed."

13. The inspector goes on to consider arguments under Article 8 of the Strasbourg Convention annexed to the Human Rights Act, Schedule 1, and under Article 1 of the First Protocol. He rejects both of them and in particular – so far as Article 1 of the First Protocol is concerned – finds that –

"In relation to No 5, because of the compelling public interest in the confirmation of the order, this action would be a proportionate one justifying interference with her rights under this Article."

14. Miss De Bierre has raised a number of points before me. I wish immediately to pay tribute to the quality of both her written and oral argument. Her skeleton argument would have done credit to many members of the Bar. The principal one – although it is not the first one she put – is this. She asks why her position was not taken into account by the council. She said:

"It upsets me deeply to say that it is in the public good to take this property away from me."

She argues that she is herself a member of the public and the only other members of the public who might be relevant are the one or two people who could move into and occupy No 5 Worksoop Road if it were renovated whether after compulsory purchase or otherwise. She asks: what about me? She submits, as she did to the inspector, that this dispute is all about her future security. She is, as she told me, 81 years old, and still happily independent; but the day may come when she needs residential or other care and, as she put it, "you need income if you want independence."

15. Miss De Bierre further argues that in the event of compulsory purchase she would not receive the purchase price for the property for about 12 months and that it would be liable in her hands to capital gains tax whereas, as things stand, any gain in the value of the property is unrealised and therefore untaxable. She says that the prospect of a compulsory purchase is “dreadful, alarming and shattering” and that she would be heartbroken by it.
16. I begin with the point about the public good. The City Council, like any local housing authority, is under a duty under Section 8 of the Housing Act 1985 to consider the needs of the district with respect to the provision of further housing accommodation. The inspector found, at paragraph 49, that there is evidence of a general need for housing accommodation in Nottingham and that the renovation of No 5, together with the completion of the refurbishment Miss De Bierre is having to undertake at No 7 and the subsequent re-occupation of the properties, would result in both qualitative and quantitative gain in housing accommodation within the city. It is of course, as all these orders are, a question of balancing the rights of the objector, the property owner, with the public good. That there is a public good in this property being made available in the near future for occupation and housing is a conclusion that the inspector was entitled to reach. He had to balance this against the effect on the applicant.
17. As to her argument that in event of compulsory purchase she would not receive the capital proceeds for about a year, this may be right. But the status quo is, as it has been for 11 years, that she has no income from this property, nor indeed can she make any use of the capital sum which its value represents. I accept and respect the point that she wishes to have enough income in her old age to allow her to be independent or at least to have a choice of the best residential care if it should come to that, but I fail to see why this could not be provided by the income from the sale proceeds of No 5 just as well as – and perhaps with less trouble than – being provided for from a rental income from that property.
18. So far as the capital gains tax point is concerned, it does not appear to have been put, at least in writing, to the inspector, nor in the pleaded grounds. Even putting that aside, it does not seem to me that the incidence of general taxation is a factor which should – even if the decision were for me on the merits, which is not – outweigh the public good to which the inspector refers.
19. Miss De Bierre argues next that the inspector has reached unreasonable conclusions about what she calls the time line. She argues that there is no evidence that under compulsory purchase the property would be renovated more quickly than if it remained in her hands. She points out that the making of the compulsory order has, in her words, paralysed any possible sale since the summer of 2003. She also submits – and I will accept this from her – that there was a delay in the holding of the public inquiry from June 2005 to January 2006 which was attributable to fault on the part of the council because there was a procedural step, I think the provision of a written statement of their case, which they had not carried out in time for the original hearing date to be effective. If that is right, that is undoubtedly their fault rather than hers although it does overlap with the previous point about the making of the compulsory purchase order.
20. The council’s answer to this, which evidently weighed heavily with the inspector, is that from 1995 to 2003 nothing had happened. Miss De Bierre tells me, and I accept this too from her, that for about a year – I am not told exactly when – she was disabled by having had a hip operation and it was not reasonable to expect her to do anything much about her property portfolio. That could, at best, account for one year out of eight.
21. Miss De Bierre put to the inspector her argument that she had four properties, excepting the one she occupied herself, which had come to her in a dilapidated state and all of which needed to be renovated. She had, first, concentrated on the two properties away from Worksop Road, namely No 13 Deniston Road and No 154 Carlton Road. Those had been subject to earlier compulsory purchase action by the council and the compulsory purchase orders were not upheld.

22. Miss De Bierre had then gone on next to concentrate on No 7 Worksop Road. Her progress on that had been sufficient, as the inspector's report indicates, to lead him to recommend the reversal of the council's decision on that point. But on No 5 the inspector said in paragraph 57:

"She has no firm plans or timetable to carry out the necessary refurbishment works."

He went to say that having regard to the length of time for which the property had remained empty and uninhabitable and the objector's past record, he was not convinced that there would be timely renovation and re-occupation if it remained in her ownership.

23. The inspector was entitled to reach that conclusion and the Secretary of State was entitled to issue his decision letter based on those findings. There is no error of law on *Ashbridge Investments* principles or otherwise which would permit me to depart from that conclusion. Given that the period of delay prior to the compulsory purchase order was one of 8 years and given the inspector's acceptance of Miss De Bierre's own figures – that more than £30,000 worth of work would be required on No 5 to bring it up to a habitable standard – I would have been surprised if the inspector had come to any other conclusion.
24. Miss De Bierre says next that the inspector was wrong to say that No 5 Worksop Road had deteriorated in the period of some 10 years between her acquiring it and the time of his report. He does not, as I read his report, say that the property has deteriorated. He says that it is empty and uninhabitable, that very little work has been done to the interior, and that it lacks basic facilities. It does not seem to me that this differs in substance from what Miss De Bierre herself told me. In her graphic phrase –

"Vast things need doing to the property. It will be a big and expensive job and, to start with, the property will require total re-plumbing and re-wiring" –

and, no doubt, much more besides.

25. Miss De Bierre's next point was that the council had wrongly said to the inspector that if the compulsory purchase was allowed to proceed "at least we would get some money from council tax." I think this is a misunderstanding of a sentence which occurs in the paper which was before the council's Executive Board when they approved a resolution to be put before the full council, resulting in compulsory purchase order: namely that if No 5 were compulsorily purchased and renovated the result would be "much needed affordable housing accommodation as well as income from council tax payments." As Miss De Bierre has understandably pointed out, she has to pay council tax on No 5 on an unoccupied property basis, indeed, she said, more than she has to pay on No 9. This may be because the modest reduction for council taxpayers of a certain age is only available on the property in which they reside and not on another property. The reference in the council's internal papers is only saying that as well as income from council tax payments – which are received anyway – the renovation of the property would provide much needed housing accommodation.
26. I do not think that the inspector, with all his experience of matters of this kind, would have been misled in any way by that.
27. Miss De Bierre has queried and indeed challenged, as the inspector records, the argument that there is a general need for housing accommodation in Nottingham. She says there is no shortage of property available for rental, at any rate in the vicinity of Worksop Road. Once again, this is a finding of fact which it was open to the inspector to make. The council have to consider the need for housing accommodation within the district, that is to say the city of Nottingham, and neither their conclusion that they need to find more housing accommodation, nor the acceptance of that conclusion by the inspector and the Secretary of State, is open to challenge in this court. Similarly Miss De Bierre argues that the compulsory purchase order is not made for a properly specified

purpose. The answer to that is a very simple one. The order is made with a view to meeting the need for housing accommodation in Nottingham as indeed the inspector found.

28. Finally there are arguments under the Human Rights Act. I respectfully agree with the inspector that any argument based on the suggestion that No 5 Worksop Road is a “second home” is simply misconceived, for the reasons he gives. Indeed, Miss De Bierre did not use that phrase before me. As to Article 8 more generally, Miss De Bierre lives at No 9 Worksop Road and there is no interference with her private life in the acquisition of No 5 where she does not live. The only Article or Schedule of the Human Rights Act which compulsory acquisition of a home in which the objector does not live brings into play is Article 1 of the First Protocol. As the inspector rightly records, this is a qualified right. And while the action of the public authority in compulsorily acquiring the property albeit at a fair value must be a proportionate one, the inspector was entitled to find that it was proportionate, because of the compelling public interest in confirmation of the order. Article 1 of the First Protocol adds little, if anything, to the requirements stated in the 2003 and 2004 Circulars that there must be a compelling case in the public interest.
29. It was for the inspector to reach conclusions on that matter. He concluded that there was a compelling case in the public interest. While I must thank Miss De Bierre for the way she has put the case, I am quite unable to interfere with that decision.
30. Accordingly the application to quash the order must be dismissed.
31. MR WARREN: I ask, on the Secretary of State’s behalf, for an order to that effect dismissing the application. Furthermore, an application that the claimant pays the Secretary of State’s costs. I do have a copy of the schedule of statement of costs.
32. MR JUSTICE BEAN: So do I, and I trust that Miss De Bierre has had it. I think she has because I have received a letter from her this morning saying that in the event of the case going her way she would wish to claim costs.
33. MR WARREN: Yes. As I understand it, the statement of costs was sent to Miss De Bierre and she has received it. No. I have not received this statement.
34. MR JUSTICE BEAN: First of all, Miss De Bierre, have you received this statement which Mr Warren has handed to me?
35. THE CLAIMANT: No. I have never seen it.
36. MR JUSTICE BEAN: In that case I may have to consider it tomorrow or at some other date which will increase the costs.
37. MR WARREN: Might I suggest that we have a very short adjournment to allow Miss De Bierre to study the document rather than to go over to tomorrow or another day?
38. MR JUSTICE BEAN: I will certainly do that. The alternative is to have it assessed in detail by a costs judge.
39. THE CLAIMANT: Am I able to make any comment?
40. MR JUSTICE BEAN: Not on the merits. You can apply for permission to appeal to the Court of Appeal.
41. THE CLAIMANT: No, I do not want to go and do that. Like mentioning a second home, he got it muddled. It was never ever mentioned as a second home. A lot of the things that were read out – the inspector said this and that – it was in a muddle. Nobody ever said it was going to be a second home. It was a derelict home; well, not derelict, but how could it be? It was not habitable. Many of

the other things that were read out – okay, the inspector said 30,000. I never said 30,000, nowhere near 30,000 to renovate it. Okay, he put these things in his book, but he got muddled. He kept going out to ring up on his mobile phone. He got a bit confused. Certainly it was never suggested as a second home; it could not possibly be. Certainly it was not 30,000.

42. There is another thing he said which is we could use the income from capital for a home. No, we are not allowed to do it. The capital has to be spent. You cannot leave it invested for income if you are in a home. A lot of the things that have been said were completely inaccurate so what can I do about that?
43. MR JUSTICE BEAN: It is not for me to say. I have given my decision, rightly or wrongly. You can seek permission to appeal to the Court of Appeal. I cannot advise you on whether that would be a worthwhile step to take.
44. THE CLAIMANT: I would not want to go to the Court of Appeal. To hear those wrong things said, to base it on. I know they are in the inspector's report, but that is what has happened all the way through. Wrong things have been passed from one to another and my house is going to be taken off me. I cannot get income for it when I am in a home from the capital. You are not allowed. If there is capital the home takes it and you end up with nothing. That is what is bothering me. And these things have not been understood and they have been misunderstood. It is very — can it not be reviewed?
45. Second home, that is rubbish. When he said “no estimates”, of course we have estimates here – in my home – but I did not bring them in because I did not think nobody had raised that point. They are here and so on, in 2006, two years ago, was preparing as soon as we could get this sorted out. All these wrong things have been in that inspector's report. He got totally confused. He was going out with his mobile. I do not know where he got this about a second home from; it is nonsense. There was all sorts of things that he had in that report – 30,000. I have never said 30,000 in my life. When we renovated 13 Deniston we had far less than that. He puts them in the report but that does not make them right, sir. He was very vulnerable, very vulnerable as anyone else. He kept going out on his mobile phone and asking for advice from somebody. I think he was quite new.
46. MR JUSTICE BEAN: There it is, Miss De Bierre. I cannot go into that now. I will comment on one thing: I should not trouble yourself about the second home point because even if that is something the inspector misunderstood in your submissions it was a point which he said was a bad one and could not help your case under the Human Rights Act. I agree. If it was not something you put forward it is irrelevant anyway. That is all I can say at this stage.
47. It may be useful if I rise for a while so you can have a look at the costs schedule. You are supposed to be given a day's notice of this kind of schedule. If you did not receive it on Friday you are entitled to look at it now. I would like you to look at it now and see if you are in a position to make submissions to me about it, say, at half-past-three. If you have not had time to absorb it by then I would have to decide whether to send the case off for detailed assessment by a costs judge or ask everyone to come back tomorrow with proof whether the document was served on you on Friday.
48. THE CLAIMANT: Saturday post is a bit peculiar.
49. MR JUSTICE BEAN: I do have judicial knowledge of that, Miss De Bierre. I will rise until half-past-three, and you have a look at it. Will you think about this: in assessing a costs schedule there are two things I particularly look at. You will see that it is made up of a number of figures which tend to be number of hours spent and rate per hour. I look at two questions: was the time spent reasonable? And is the charging rate reasonable? That helps me to come to a conclusion about the overall figure.

50. THE CLAIMANT: Why could this money not have been spent on renovating the property? This is what has been happening all the way through. I have been having to spend money on court costs, inquiry costs. All of this should be on the property. This is the money I had to renovate the property. It is all going on the council objecting.
51. MR JUSTICE BEAN: Miss De Bierre, the fact is we are here now. The council and the Secretary of State did not want to be here. They are here because you made an application. So I need to consider their application for costs now that they have won the case. I will rise until half-past-three so you can have a look at the schedule, and I will consider it further then.

(Short Adjournment)

52. MR JUSTICE BEAN: Miss De Bierre, are you in a position to make observations to me about the costs schedule?
53. THE CLAIMANT: There has been a slight alteration anyway.
54. MR WARREN: We have made a couple of changes to reflect the relatively short hearing. We estimated five hours; we have taken two of those off, so that affects two of the figures.
55. MR JUSTICE BEAN: It anticipates a point I was about to make myself.
56. MR WARREN: On the second page, “attendance at hearing” under A, it should be three rather than five which makes it 480 rather than 800. Similarly the second box under “counsel’s fees”, instead of 500 it should be 300. That affects the bottom-line figure by replacing 8938 with 8418.
57. MR JUSTICE BEAN: Thank you.
58. THE CLAIMANT: The first one “attendance on client, Secretary of State”. Does that mean the Secretary of State in Nottingham?
59. MR JUSTICE BEAN: I am sure it does not mean Ms Blears – or whoever the cabinet minister is now – in person. It will mean the lawyers taking instructions from the non-lawyers, I suppose.
60. MR WARREN: Yes. That is right. I explained to Miss De Bierre a few moments ago that the Client there (with a capital C) is the Secretary of State, but the real people are the civil servants who work in the Department who are the client de facto for the purposes of the case.
61. THE CLAIMANT: Is that the Nottingham people?
62. MR WARREN: No. They are in London.
63. MR JUSTICE BEAN: I suppose what happens is that the people who give instructions to counsel – at the Treasury solicitor – have to get their instructions from the compulsory purchase section of the Ministry or whatever it is, and that is what is being referred to.
64. MR WARREN: That is right.
65. MR JUSTICE BEAN: Mr Warren, “attendances on opponents”, is that all Miss De Bierre or do the city council form any part of that?
66. MR WARREN: That is all Miss De Bierre. The city council and the court, insofar as the acting court needs to be contacted, come under “others”. “Opponents” is in the plural, it should be “opponent”.

67. MR JUSTICE BEAN: Miss De Bierre, I hope that helps. It certainly helps me. What would you like to say, first, about the hourly rate and, secondly, about the items of time spent?
68. THE CLAIMANT: Obviously I feel they are too high. £160 an hour seems very high to me especially as counsel only gets a third less than that.
69. MR JUSTICE BEAN: What about the hours spent?
70. THE CLAIMANT: It has six hours down for hours time spent on me, sorry, six hours on the Secretary of State. I cannot see where that had affected their papers because it seems to me to be mainly on the things from inquiries. Four hours for counsel. Attendances on me, that is eleven hours; it seems very high. The rate of £160 an hour seems very high just for that too. Eleven hours at £160 an hour seems to me very high. £160 an hour is very high anyway. Work done on documents, nineteen hours on documents and all those hours for me; it is giving an enormously high hour, number of hours. It is a higher rate than counsel is getting.
71. MR JUSTICE BEAN: Thank you. I have some questions for the other side. Mr Warren, attendance on Miss De Bierre, eleven hours at qualified lawyer level. Then work done on documents, including seventeen-and-a-half hours at qualified lawyer level and only one-and-a-half hours at trainee or assistant level. That seems rather surprising.
72. MR WARREN: The attendances on opponents at eleven hours in total largely arose, I am instructed, because of – and I make no criticism – a large number of letters that came from Miss De Bierre directly to the relevant person at the Treasury Solicitor.
73. MR JUSTICE BEAN: What I meant to say was supposing that that is right and that it should be done by (what in private practice would be called – a partner, I suppose, but the Treasury Solicitor does not have that concept) one of the senior people: if one assumes that that is right, why do the senior people also have to do practically all the leg work on the documents?
74. MR WARREN: That is because the leg work – the creation of the photocopying of the bundle and the authorities bundle and so on – is the one that is dealt with by the administrative assistant. The sixteen-and-a-half hours next to (b) was the work that was undertaken by Mr Tayyar who was the Treasury solicitor who was dealing with the matter when it first came in. What that comprises is – the way the Treasury Solicitor works – the papers are received and in the first instance the Treasury Solicitor prepares what is called a Minute of Advice, which is in essence an advice of the merits of the claim for the Secretary of State. So bound up in the sixteen-and-a-half hours or comprising that is the grappling with the papers, understanding what the issues are and then writing a written advice to the Secretary of State setting out the solicitor's view of the merits and any advice to the Secretary of State about tactics or law. That makes time, particularly – and again no criticism is intended – where a litigant in person is the claimant because one has to make sure not just that what the litigant in person has said about the decision letter is covered that other points in the decision letter are also adequately treated.
75. What it required was Mr Tayyar to review the decision letter, the inspector's report and all the associated documentation in relation to the inquiry. He had to receive the inspector's report, evidence from Miss De Bierre, evidence put in by the city council and read all of that and then write an advice. That is what comprises the sixteen-and-a-half hours.
76. There is no advice from me in writing in this case. My costs are preparation for the case, skeleton argument and appearing. In a sense, what might have happened in private practice is a shorter time on the documents from the solicitor and then a written advice from counsel. But that is not the way, in general, that these work.
77. MR JUSTICE BEAN: I think written advice from counsel would have come a little cheaper than that.

78. MR WARREN: Yes.

79. MR JUSTICE BEAN: This is inevitably is a summary assessment. I consider first whether the hourly rate claimed is reasonable and I consider that it is. The Treasury Solicitor's charging rate for qualified lawyers of £160 per hour for offices based in Central London is well below the rate charged by firms in private practice. It may seem a lot compared with earnings in other spheres of activities but I am satisfied that it is below rather than above the properly chargeable rate for solicitors in Central London. But I do not consider that it would be right to require Miss De Bierre to pay for all the hours that have been taken on this. In particular I am concerned by the seventeen-and-a-half hours charged for work done on documents at qualified lawyer rate as opposed to only one-and-a-half hours at the trainee or assistant rate. I understand what Mr Warren says that one of the lawyers, Raith Tayyar had to give written advice to the Secretary of State setting out the Treasury Solicitor's view of the matter. But I think sixteen-and-a-half hours for that does seem rather a lot.

80. Taking therefore a somewhat broad-brush approach, I am going to order Miss De Bierre to pay £6,500 towards the claim of £8,418 (which is the amount claimed in the schedule, less some amendments to reflect the fact that the hearing was slightly shorter than expected). I do not consider that there is anything unreasonable in counsel's fees, nor in the items of attendance on opponents or others. The shaving down that I have done reflects a small adjustment in the figure for attendances on client as well as a substantial reduction in the figure of work done on documents.

81. Are there any other matters to be dealt with today?

82. THE CLAIMANT: I kept missing parts of that. I think you said you reduced them.

83. MR JUSTICE BEAN: £6,500.

84. THE CLAIMANT: I ask you if it is possible to go to the Court of Appeal or Human Rights Court?

85. MR JUSTICE BEAN: The Human Rights Court at Strasbourg is not a matter for me. You will have to take advice about that. Permission to go to the Court of Appeal can come either from me or the Court of Appeal itself. I am not prepared to grant leave to appeal to the Court of Appeal, not because I think I am infallible but because I do not consider that there is a question of law or other point of principle which justifies the case going to the Court of Appeal. You can, if you wish and perhaps after taking advice if you want to take advice, make an application to the Court of Appeal themselves to give you permission to take the case to them.

86. THE CLAIMANT: Is there a time limit for that? I respect your judgment of course, but is there a time limit?

87. MR JUSTICE BEAN: There is a time limit of 21 days. I will give you that one piece of information. I cannot give you any other advice.

88. THE CLAIMANT: 21 days. But Human Rights is something quite different.

89. MR JUSTICE BEAN: Quite different.

90. THE CLAIMANT: Thank you for the costs matter.