
APPENDIX THREE

London Borough of Tower Hamlets
Legal Department
Mulberry Place
5 Clove Crescent
London
E14 2BG

APPENDIX THREE

29/08/2014	Refusal Decision of Mr Justice Parker
05/09/2014	Application for Oral Permission Hearing
05/09/2014	Grounds for Renewal

APPENDIX THREE



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO/3037/2014

In the matter of an application for Judicial Review

THE QUEEN

on the application of **LONDON BOROUGH OF TOWER HAMLETS**

versus

Claimant

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

Defendant

On the Claimant's application for Judicial Review

Following consideration of the documents lodged by the parties

Order by the Honourable Mr Justice Kenneth Parker

1. Permission Refused

Reasons

1. The first ground is hopeless. PwC was not appointed as inspector until after the relevant legislation was in force on 4 April 2014. The Defendant, before that date, was plainly entitled to exercise his common law power to ask an expert body to assist him by providing advice on any aspect of public affairs that was of potential concern to him.
2. As to the second ground, there was no express statutory duty to give reasons, and any implied duty was limited to telling the local authority in brief terms why the Defendant had appointed an inspector. The matters set out in paragraph 2 of the letter of 4 April 2014 were sufficient, especially against a background of serious and responsible concern in the public domain, to inform the Council why the appointment had been considered appropriate. This is not a case where the Council can credibly complain that it was in the dark as to why PwC had been appointed.
3. As to the third ground, this is labelled 'irrationality'. That is a misnomer. What is alleged is that the Defendant exercised the relevant power for a purpose that was not within the proper scope of the legislative intent. However, that legislative purpose is broad: to carry out an inspection of an authority's compliance with its best value duty. That latter duty is itself broad: to secure continuous improvement in the way in which an authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Where concerns have been raised that a local authority is poorly governed, poorly managed financially and may even have engaged in fraud, it stands to reason that there must be concerns as to whether such an authority has exercised its functions as economically, efficiently and effectively as could properly have been expected. The contrary is simply not arguable.
4. There is also a serious issue as to delay. This is an application that plainly had to be brought within days, not months. All of the grounds relied on, though unmeritorious, were there to be advanced on 4 April when the decision was taken. A prompt challenge could have been dealt with expeditiously. Instead, the Council allowed the inspector to carry out its investigation for a substantial period, no doubt at considerable public expense and with the diversion of Council resources, before launching its belated challenge, and asking months later that the decision be quashed and that the national tax payer indemnify this Council for the inspection fees. In my view, there is no good reason for extending time beyond the prompt period in which this claim

should have been brought; and it is, furthermore, not arguable that, having regard to the Council's conduct, this Court, taking into account the interests of good administration (of which the Council is, or should be, fully aware) would grant the relief requested.

5. If the application for permission is renewed to an oral hearing, it must be heard by a High Court judge (not a Deputy).

Signed

Kerell Parker

Sent to the claimant, defendant and any interested party / the claimants, defendants, and any interested party's solicitors on (date): **29 AUG 2014**

FORM MPA

LBTH
LEGAL DEPARTMENT
- 3 SEP 2014



In the High Court of Justice
Queen's Bench Division
Administrative Court

CO Ref no: CO/3037/2014

In the matter of a claim for Judicial Review

The Queen on the application of

LONDON BOROUGH OF TOWER HAMLETS

versus SECRETARY OF STATE FOR COMMUNITIES AND LOCAL
GOVERNMENT

Notice of RENEWAL of claim for permission to apply for Judicial Review (C P R 54. 12)

1. This notice must be lodged in the Administrative Court Office, by post or in person and be served upon the defendant (and interested parties who were served with the claim form) within 7 days of the service on the claimant or his solicitor of the notice that the claim for permission has been refused.
2. If the claim was issued on or after 7 October 2013, a fee is payable on submission of Form 86B. Failure to pay the fee or lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>
3. If this form has not been lodged within 7 days of service (para 1 above) please set out below the reasons for delay:
N/A
4. Set out below the grounds for seeking reconsideration:

Please see attached Grounds for Renewal

5. Please supply

COUNSEL'S NAME: Jonaman Swift QC and Christopher Knight
COUNSEL TELEPHONE NUMBER: 02076328500
HKBW

Signed

Dated

5th September 2014

Claimant's Ref No.

L/C/BestValue/STCS8/DG

Tel.No.

02073644348

Fax No.

02073644804/4861

To the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL

IN THE HIGH COURT OF JUSTICE

Claim No: CO/3037/2014

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN

THE QUEEN

on the application of

LONDON BOROUGH OF TOWER HAMLETS

Claimant

-and-

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Defendant

GROUNDS FOR RENEWAL

Estimated time for oral renewal hearing: 1-2 hours

A. Introduction

1. The Council renews its application for permission to apply for judicial review of the Decision of the Defendant to carry out an inspection of the Council under section 10 of the Local Government Act 1999. The Council repeats the facts set out in its Grounds for Review and Statement of Facts, and adopts the definitions used in those Grounds.
2. It is at least an arguable case that the Defendant unlawfully failed to provide any, or any sufficient, reasons for his Decision. Consequently, the rationality and propriety of the Decision cannot be assumed. Kenneth Parker J erred in refusing permission on the papers.¹

B. Failure to Give Reasons

¹ For the avoidance of doubt, the Council does not renew its application for permission on the first ground concerning the lack of power to commence the inspection.

3. The Council has set out why fairness requires that the Decision imposed an implied obligation to give reasons: see Grounds at §36. The Judge's reasons do not engage with the requirements of fairness, or those specific arguments, at all. Without such an engagement, the extent or scope of the duty cannot sensibly be determined.
4. The Judge accepted that there was an implied duty to give reasons but that it "*was limited to telling the local authority in brief terms why the Defendant had appointed an inspector*" because there was a background of "*serious and responsible concern in the public domain*". This conclusion was wrong. Precisely because various allegations had been made (for example, the range of matters referred to in the course of the BBC Panorama programme) it was necessary for the Defendant to explain, even in brief terms, which of those allegations he deemed worthy of justifying an inspection and which are not. The 4 April Decision letter does not explain this; it simply states that the Defendant "*had regard*" to the BBC Panorama programme [MSG1, p.14]. The Judge does not explain how the 4 April letter is consistent with *South Buckinghamshire DC v Porter (No.2)* [2004] UKHL 33; [2004] 1 WLR 1953, or alternatively why it is not necessary to comply with Lord Brown's judgment in that case. The Council has explained in its Grounds at §37 how the *Porter* guidelines have been breached.
5. For the avoidance of doubt, it is not the Council's case that it was wholly "*in the dark*". Rather the Council's case is clearly explained at §§39 – 40 of the Grounds. Without a clear statement of the allegations relied on to make the inspection Decision, the Council is unable to assess the propriety of the scope of that inspection, or the rationality of the Decision to commence it. Given the very significant consequences (set out at §36 of the Grounds) to the Council, the failure to identify the allegations relied on causes considerable unfairness.

C. Irrationality

6. The point made above explains the Council's position on irrationality. This is set out clearly at §§47 and 49 of the Grounds. The Judge was wrong to characterise the Council's case as solely about whether the Defendant acted for a permissible purpose

(although it is an aspect of the irrationality challenge: see at §49 of the Grounds). The Council's complaint under this ground arises as a consequence of the failure to give reasons. Without information as to the allegations were relied on in taking the Decision, and the Court cannot be satisfied as to the rationality of the grounds relied upon, or the rationality of the belief, if any, the Defendant had.

7. The Judge was wrong to adopt the Defendant's mischaracterisation of the Council's case on irrationality. The Council has always accepted that the section 10 power is broad (see Grounds at §42), and it does not doubt that in cases of alleged poor governance the best value duty may have been breached (Grounds at §45), but the assertion of those points in stronger terms does not answer the point in the preceding paragraph, which the Judge did not address.

D. Delay

8. The Judge was wrong to state that the Council has improperly delayed.
 - (1) The Council requested reasons and further detail from the Defendant on 10 April 2014 [MSG1, pp.23-24], within days of the Decision. The Council reiterated that request and queried the scope of the inspection in a further letter to the Defendant of 8 May 2014 [MSG1, pp.36-38]. The Defendant's response to these queries was leave the scope of the inspection in the hands of PwC, without any apparent direction or oversight (letter of 14 May 2014 [MSG1, pp.41-43]).
 - (2) Had the Council not raised these matters in correspondence and proceeded straight to legal action, the Defendant would doubtless have criticised it for acting precipitately.
 - (3) Following the correspondence in April and early May 2014, the Council was not able to proceed directly to issuing a pre-action letter because of the local government and Mayoral elections taking place on 22 May. The pre-action letter was sent shortly after the conclusion of the elections and the confirmation that the Mayor had been re-elected.

9. Moreover, the Judge erred in concluding that even if the Council's claim succeeded the Court would not grant relief, taking into account "*the interests of good administration*". He does not explain what interests of good administration would prevent the grant of relief given (on this hypothesis) conclusions that the Defendant had acted both unfairly (the Council's second ground) and irrationally (the Council's third ground). In such circumstances it is unclear why good administration, in whatever sense, would unarguably require the refusal of relief. The Defendant's Summary Grounds do not themselves rely on the interests of good administration.

E. Conclusion

10. Permission to apply for judicial review should be granted.

**JONATHAN SWIFT QC
CHRISTOPHER KNIGHT**

11KBW

5 September 2014