Neutral Citation Number: [2015] EWCA Civ 582

Case No: C1/2015/0892

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE QUEENS BENCH DIVISION
ADMINISTRATIVE COURT
MR JUSTICE COLLINS
CO/3348/2014

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/06/2015

Before :

LORD JUSTICE LONGMORE
LORD JUSTICE DAVIS
and
LORD JUSTICE SALES

- -

Between :

George Turner	**Appellant**
- and -	
(1) The Secretary of State for Communities and Local Government	
(2) Mayor of London	
(3) The Shell International Petroleum Company and Braeburn Estates Limited Partnership	
(4) London Borough of Lambeth	**Respondents**

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Mr Jonathan Darby (appearing Pro Bono) for the **Appellant**
Mr Daniel Kolinsky QC & Ms Zoe Leventhal (instructed by **The Government Legal Department**) for the **1st Respondent**
Mr Douglas Edwards QC & Ms Caroline Daly (instructed by the **Solicitor to the London Borough of Lambeth and Mayor of London**) for the **2nd & 4th Respondents**
Mr Timothy Corner QC & Mr Paul Brown QC (instructed by **Hogan Lovells**) for the **3rd Respondent**

Hearing dates : 20 May 2015

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Approved Judgment

Lord Justice Sales :

Introduction

1. This is the judgment of the court.

2. This case concerns decisions by the Secretary of State dated 5 June 2014 to allow the proposed development of a site of 3.5 ha in central London on the south bank of the Thames presently occupied as the headquarters of the Shell Petroleum Company and known as the Shell Centre. According to the development plans, the Shell Tower, an existing part of the Centre, will remain in place but adjoining buildings will be demolished and redeveloped for office, retail and residential uses, along with pedestrian walkways and open spaces. The Secretary of State's decisions were made pursuant to a Report by an inspector appointed by him (Mr John Braithwaite: "the Inspector") produced after a public inquiry.

3. This is an appeal against the judgment of Collins J ([2015] EWHC 375 (Admin)) brought with permission granted by Sullivan LJ on a single ground, namely a contention that the Inspector gave an appearance of bias by the way in which he dealt with matters before and in the course of the inquiry and in his Report. The appeal is brought by Mr George Turner, who represented Riverside Communities Limited as one of the principal objectors to the proposed development at the inquiry. Other challenges to the Secretary of State's decisions brought by Mr Turner were dismissed by Collins J and permission to appeal in relation to them was refused by Sullivan LJ.

4. In relation to the part of the judgment to which the sole ground of appeal relates, it is common ground that Collins J directed himself correctly as to the test for apparent bias at para. [64]. The judge found that no part of the conduct of the Inspector in the period before the inquiry commenced gave any appearance of hostility against the objectors to the applications for planning consents, pre-determination or bias: para. [53]. The judge was critical of certain respects in which the Inspector behaved during the inquiry, but held that the conduct was not such as to give rise to an appearance of bias on his part: paras. [55]-[67]. In the course of his reasoning, the judge said that it was clear that the Inspector's conduct "fell short of that which should have been displayed" (para. [65]), and stated that "His conduct in appearing to favour the applicants' counsel against the claimant was most unfortunate, but is consistent with judicial misconduct as opposed to bias" (para. [66]).

5. At first instance, Mr Turner appeared in person. On the appeal, Mr Darby appeared for Mr Turner, acting pro bono. The court was greatly assisted by Mr Darby's attractively presented submissions. Mr Darby's contention was that the judge had erred in his application of the test for appearance of bias by concluding that there was no appearance of bias given by the Inspector, whereas on the basis of his own findings he ought to have concluded that the test had been satisfied. In the alternative, Mr Darby submitted that all the evidential material before the judge was before this court, no oral evidence had been given, and so this court could and should make its own assessment on that material that the Inspector had given an appearance of bias in his conduct, taking account of his conduct before the inquiry commenced, at the inquiry and in how he dealt with certain points in his Report.

6. The response of Mr Kolinsky QC for the Secretary of State was the mirror image of Mr Darby's submissions: the judge had correctly applied the test for appearance of bias on the basis of the facts found by him, but in the alternative the judge's criticism of the conduct of the Inspector had gone beyond what was properly justified on the evidence and this court should make its own evaluation of the facts of the case and should conclude that no appearance of bias had been given. A Respondent's Notice was filed to that effect. Other interested parties who supported the proposed development scheme (the Greater London Authority, the London Borough of Lambeth – "Lambeth" - and the developers) appeared at the hearing to support those submissions.

7. In our judgment, for reasons explained below, the appeal must be dismissed. The objectors to the scheme, including in particular Mr Turner, were treated fairly by the Inspector both before and during the inquiry. We can detect nothing that was done by the Inspector which gave any appearance of bias to the notional fair-minded and informed observer. We do not endorse the criticisms of the Inspector made by the judge at paras. [65] and [66] of his judgment. In our view, the Inspector's conduct cannot be castigated as something equivalent to judicial misconduct.

The legal test for appearance of bias

8. There was no significant dispute between the parties regarding the test for an appearance of bias. Collins J summarised it pithily and accurately at para. [64]:

> "The test applicable to determine whether there has been apparent bias is based on the notional fair minded and informed observer. That individual must be taken to have formed an objective judgment having regard to all the circumstances. The fears expressed by a complainant that there has been an appearance of bias are relevant, as Lord Hope said in paragraph 104 of *Porter v Magill* [2002] 2 AC 387 at 494, at the initial stage when the court has to decide whether the complaint needs to be investigated. But they lose their importance when the stage is reached of looking at the matter objectively. And the assertions by the inspector that he was not biased are not likely to be helpful even if true. The test applicable is whether having regard to all the circumstances a fair minded observer would conclude that there was a real possibility that the inspector was biased."

9. For other recent authority, see *Resolution Chemicals Ltd v H Lundbeck A/S* [2013] EWCA Civ 1515; [2014] 1 WLR 1943, [36]: while the test of a real possibility of bias "is certainly less rigorous than one of probability, it is a test which is founded on reality. The test is not one of 'any possibility' but of a 'real' possibility of bias."

10. Mr Kolinsky also drew our attention to, among other authorities, *National Assembly for Wales v Condron* [2006] EWCA Civ 1573, at [50], where Richards LJ emphasised that in applying the test "The court must look at all the circumstances as they appear from the material before it, not just at the facts known to the objectors or available to the hypothetical observer at the time of the decision." Mr Darby did not dispute this.

11. Mr Kolinsky and Mr Darby, for their own separate reasons, each emphasised passages in *Halifax Building Society v Secretary of State for the Environment* [1983] JPL 816, in the summary form of report of the decision available in the Journal of Planning Law. That case concerned an appeal to the High Court in relation to a refusal of planning permission by the Secretary of State after an inquiry before an inspector. The disappointed applicant appealed to the High Court, contending that the decision was unlawful by reason of an appearance of bias given by the inspector in the course of the inquiry. It was said that the inspector seemed wholly uninterested in the evidence, had pursued a number of small points on the witness statement of the applicant's primary witness at the inquiry "in the form of a hostile cross-examination" and accused the witness of lying because of a trivial matter regarding frontage measurements for the site in question. Woolf J (as he then was) found that the complaint of apparent bias was made out on the facts and quashed the decision. In particular, he found that "[t]here was no possible basis, on the difference in frontage measurements, for making any criticism of [the witness]". On the facts, this is far removed from the present case.

12. Mr Kolinsky emphasised that at p. 817 Woolf J is reported as accepting certain submissions of the Secretary of State, as follows:

> "Mr Brown [for the Secretary of State] properly submitted that an inspector was entitled to have his conduct considered by the court in the same way as a judge's conduct would be considered if criticism of this nature [i.e. an alleged breach of the rules of natural justice and impartiality] was made. Indeed, Mr Brown, with justification, submitted that, in some ways, the position in relation to criticisms of this nature of the inspector was less vulnerable than that of a judge because the inspector's role, at least in part, was inquisitorial. Mr Brown rightly pointed out that a tribunal, be it a judge or inspector, should not be criticised if he made clear his view of issues which were advanced. He was not to be criticised if he manifested a lack of enthusiasm for submissions or evidence advanced before him. Indeed, it was often desirable that litigants or appellants should know the provisional views of a tribunal, be it a judge or any other type of tribunal, so that they could address their arguments and evidence to the matters on which the tribunal had reservations.
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> [Woolf J] accepted all the points of that nature made by Mr Brown, so long as they did not impinge upon the general principle that a litigant before a court, or a party conducting an appeal before an inspector, was entitled to have a fair crack of the whip and was also entitled to a hearing at which justice not only was done, but appeared to be done."

13. Mr Kolinsky also emphasised a later passage (p. 818), where Woolf J is reported as saying:

> "It will be rare, because of the right of the tribunal to form preliminary views about issues, that the necessary degree of unwillingness to consider the issues will be established",

and Woolf J's description of the case before him as an "exceptional" case in which the court was justified in intervening.

14. Mr Darby, for his part, drew particular attention to a passage at p. 818, where the report says this:

> "Looking at the material as a whole, [Woolf J] came firmly to the conclusion that there was at least a degree of hostility and a degree of refusal to pay attention to the evidence manifested by the inspector, so that it gave the impression to reasonable people attending the inquiry that justice was not being done. If reasonable people could take the view that they were not being given a fair crack of the whip, and that view was reasonably taken in this case, it seemed that that was the sort of situation where the court must intervene."

15. Mr Darby referred to witness statements from Mr Turner, from another objector (Mr Tamplin, who represented the Twentieth Century Society) and from a Mr Ball, who all said that there had been an impression of unfairness in relation to the inquiry in the present case. Mr Darby submitted that Mr Ball, in particular, was a reasonable and neutral person who attended the inquiry, so that considerable weight should be given to his evidence about the impression given by the Inspector. Mr Darby suggested that Mr Ball was a good proxy, in real life, for the notional fair-minded and informed observer referred to in *Porter v Magill*.

16. The *Halifax Building Society* case needs to be approached with some care. The report which is available is not a transcript of Woolf J's judgment. The leading authorities on the issue of appearance of bias, particularly *Porter v Magill*, came much later, and require adoption of a rather more sophisticated approach, as explained in them. The notional fair-minded and informed observer is a legal construct, and a court will be very cautious about treating any particular person who attends a hearing in real life as the actual personification of that observer. We deal below with the weight to be attached to the evidence from various sources, including Mr Turner, Mr Tamplin and Mr Ball. It suffices at this stage to say that we do not accept Mr Darby's submission that Mr Ball should be taken to be the personification of the notional observer referred to in *Porter v Magill*.

17. We do, however, consider that *Halifax Building Society* provides some support for a series of points made by Mr Kolinsky at the start of his submissions, which in any event appear to us to be correct. Mr Kolinsky rightly submitted that an assessment whether an unlawful appearance of bias has been given has to take into account the nature of the functions and responsibilities of an inspector acting in the present type of situation.

18. The notional fair-minded observer would appreciate a number of aspects of the present context: (i) an inspector's role has a strong inquisitorial dimension, investigating matters in a way which will enable him to report helpfully to the

relevant decision-maker, the Secretary of State; with that end in view, it is fair and appropriate for an inspector to seek to focus debate at an inquiry by making interventions to ensure that he is provided with material to assist him in his task; (ii) an inspector has to manage efficiently the conduct of an inquiry within a limited time-frame and involving a range of parties wishing to give evidence, make submissions and participate in cross-examination of witnesses; this may require robust case management in the interests of all participants; (iii) an inspector is entitled to expect, and may legitimately seek to encourage, focused questioning and short and focused answers in the course of cross-examination of witnesses; (iv) the inquiry process provides an inspector with relevant information through a range of media, including written opening statements, examination of plans and the making of detailed closing submissions, as well as through the evidence of witnesses (both by witness statement and orally in cross-examination), and an inspector is expected to have done a good deal of preparation before an inquiry commences and is entitled to seek to focus debate on particular issues in the form which is most likely to provide clarity about what is at stake and assistance for him in writing a report; and (v) as part of his inquiry-management function, and to encourage a focus on what is most likely to assist him in his reporting task, an inspector is entitled to give indications in the course of an inquiry of points which appear to him to be unrealistic or bad and to require concentration on what appear to him to be the real substantive points of contention or where continued debate will be most helpful to him. It is of course possible that an inspector may go too far in robust inquiry management or in closing down debate, so as to give an appearance of bias. But given the expectation that an inspector should be actively managing the inquiry process to ensure that it is efficient, effective and fair to all interested parties, it will be a rare case, as Woolf J observed, in which it is likely that robust inquiry management will be found to have done so.

19. Another part of the context is the guidance issued by the Planning Inspectorate in the form of "The Inspector's Code of Conduct". This sets out principles of conduct for inspectors. Amongst other things, they "should make their decisions and recommendations fairly and in the public interest"; "should not be fettered with pre-determined views and should not judge cases before they have considered the evidence"; "should not be influenced by irrelevant considerations or outside influences when making their decisions and recommendations"; "should avoid unnecessary delay in reaching their decisions and recommendations"; and "should treat each person with dignity and respect", behaving "at all times with courtesy, patience and understanding, whilst at the same time ensuring that cases are conducted efficiently and effectively." This guidance is designed to promote best practice. It does not in itself create the standard by which an appearance of bias is to be judged. For example, a lapse in courtesy or patience on the part of an inspector in the course of an inquiry will not in itself give an appearance of bias in the requisite sense. A good deal more than that would be required: cf *HCA International Ltd v The Competition and Markets Authority* [2015] EWCA Civ 492, in which even a serious element of actual unfairness of treatment of the appellant by the relevant public authority, which misled the appellant at one stage about an aspect of its inquiry, was found not to create an appearance of bias or pre-determination such as to prevent the same personnel in that authority from making a re-determination of matters in contention. (So that we are not misunderstood, and in fairness to the Inspector in the present case, we should add that on the limited evidence which is available we are not persuaded that he behaved discourteously to Mr Turner or anyone else at the inquiry).

The factual background

20. Mr Darby divided his submissions about the facts into three chronological phases (conduct pre-inquiry, at the inquiry and in the writing of the Report), whilst also rightly emphasising that it is the overall impression given by the Inspector's conduct which is in issue.

21. The main thrust of Mr Turner's criticisms of the Inspector relate to his conduct at the inquiry. This posed a difficulty for the judge and for this court, since there were conflicting accounts of what happened at the inquiry and of the overall impression given. Mr Turner, Mr Tamplin and Mr Ball were critical of the Inspector in their witness statements. Mr Turner and Mr Tamplin were objectors to the scheme at the inquiry, and so not disinterested observers. We address Mr Ball's position below. On the other hand, Mr Gallimore, the experienced solicitor who attended the inquiry for the developer (who, again, therefore, was not a disinterested observer), said that he did not consider that there was any unfairness in the way the Inspector treated Mr Turner or anyone else at the inquiry. Ms Nicks, the principal planning officer for Lambeth (and hence, again, not a disinterested observer), who also attended the inquiry, said the same. The Inspector put in a witness statement to explain decisions he had made before and in the course of the inquiry, which he said were aimed at ensuring that it was conducted in a fair and efficient manner which would best assist him in carrying out his task of preparing a report for the Secretary of State. Another participant at the inquiry, Mr Ayton, a planning officer for Westminster City Council ("Westminster", which objected to the development), who Mr Turner maintained had been treated unfairly, did not provide a witness statement and appears not to have complained in the course of the inquiry or subsequently about how he was treated.

22. Mr Ball is the Director of Waterloo Community Development Group ("WCDG"), which has a remit to consult the local community on planning issues and to advocate on residents' behalf. There was a range of local opinion, both for and against the development, so WCDG agreed neither to support nor to object to the applications, but simply to comment on them. Mr Ball participated at the inquiry on that basis. However, he does not explain his personal attitude to the proposed development and it is fair to say that his representations for WCDG at the inquiry (as summarised in paras. 14.15 to 14.18 of the Inspector's Report, in a passage which was not suggested to be inaccurate) were hostile to significant aspects of the proposed development. Mr Ball says that he was alarmed at the pre-inquiry meeting and at the inquiry by decisions and behaviour of the Inspector, and that during the inquiry he drafted a letter of complaint to the Chief Inspector on behalf of himself and the other rule 6 parties (Westminster, the Twentieth Century Society and Riverside Communities Limited – all objectors to the scheme), although in the event it was decided not to send it. In the draft letter Mr Ball aligned himself with the objectors to the scheme (he wrote: "… the Inspector has made and continues to make decisions and interventions which are proving systematically unhelpful to the Rule 6 parties, all of whom are opposing the proposed scheme"). The points of concern set out in that letter included matters where the Inspector had plainly acted fairly: e.g. "Dispensing with the need for any party to provide a Statement of Case" (even though no-one had in fact objected to that proposal at the pre-inquiry meeting: see paras. [24]-[25] below) and "Dispensing with the need for any party to provide Summaries of Proofs of Evidence … this was reinstated by email after complaints were made by the Rule 6 parties" (i.e.

the Inspector acted to uphold the objectors' complaints: see para. [26] below). In the light of all this, we do not consider that Mr Ball can be regarded as a wholly neutral and disinterested observer. It is not appropriate to treat his personal views as equivalent to, or a proxy for, those of the notional fair-minded observer which the relevant legal test requires us to postulate.

(i) Conduct pre-inquiry

23. The inquiry was scheduled to begin on Thursday, 21 November 2013. It sat on 21 and 22 November, for the whole week commencing 25 November, and then after a break resumed on 9 and 10 December, with a site visit on 11 December and closing submissions on 12 December 2013. There was a pre-inquiry meeting on 9 October 2013.

24. At the pre-inquiry meeting, at the request of the developers, the Inspector directed that statements of case by the parties should be dispensed with. He did this for understandable reasons, because parties' cases would be set out in their proofs of evidence and he thought there would be unnecessary duplication of work in the short time before the inquiry began. The developers had already submitted extensive information about their applications and the justifications for them. It is common ground that no party at the meeting objected to the Inspector's decision to dispense with statements of case.

25. In fact, however, under the relevant rules in the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, the provision of statements of case is mandatory and it is now common ground that the Inspector had no discretion to dispense with them. This was overlooked by everyone attending the pre-inquiry meeting and was a simple mistake. It gives rise to no impression of bias.

26. On a distinct application by the developers dated 15 October 2013, the Inspector also agreed (without first obtaining the views of other parties) that summaries of proofs of evidence should be dispensed with and notified the parties of this by email dated 17 October. Again, the Rules require such summaries for longer proofs of evidence, but this was overlooked by mistake. On 18 October, however, Mr Turner sent an email to the Inspector to object and to request that summaries of proofs should be provided. By email dated 22 October, the Inspector acceded to Mr Turner's request and directed that summaries should be provided. This incident shows that the Inspector was prompt in responding to Mr Turner's complaint and in correcting the error. One of the objectors, Mr Tamplin, in fact emailed to thank him "for the prompt notification of this very welcome decision". Again, it gives rise to no impression of bias.

27. Mr Darby complains that the Inspector decided that the inquiry should sit the full week commencing 25 November 2013, rather than a more usual four-day inquiry week, to accommodate counsel for the developers. It seems that this decision was made despite the objection of Mr Turner, who said it would raise difficulties for the less well-resourced objectors if they did not have a long weekend to prepare. Again, this incident gives rise to no impression of bias. It was a routine and unremarkable inquiry-management decision. By way of comparison, on another occasion the inquiry timetable was adjusted to accommodate Mr Tamplin, one of the objectors. Five day sitting weeks are not unusual for planning inquiries, when necessary to accommodate parties. There was no serious detriment to the objectors from being expected to cope

without the additional day. In particular, there was to be a significant break of a week before Mr Turner came to present his evidence in opposition to the scheme.

28. A further complaint was that on 24 October the Inspector acceded to a request by Lambeth (which was supporting the development) for an extension of time to 28 October to exchange the proof of evidence of its planning witness, which Mr Turner agreed to. However, when it emerged that the developers maintained that all other proofs of evidence should be exchanged on the original assigned date, Mr Turner sent an email to the Inspector, also on 24 October, to ask for exchange when all proofs of evidence were ready, and at 12.15 pm the same day the Inspector acceded to his request and directed that all proofs of evidence be exchanged on 28 October. This decision shows that the Inspector was seeking to be fair and even-handed in his management of the inquiry. It gives rise to no impression of bias.

29. Next, Mr Darby complains that the Inspector accepted the submission of a report on viability by BNP Paribas for Lambeth just two working days before the commencement of the inquiry, and refused an adjournment of the inquiry to allow the objectors more time to study this document. However, there is no extant challenge that any of this was unfair. We therefore proceed on the footing that this constituted fair conduct of the inquiry. In fact, Mr Turner was going to have ample time to consider and respond to the BNP Paribas report before he came to give his evidence and present his case in the week commencing 9 December. This is plainly not something which gives rise to any impression of bias.

30. For these reasons, we agree with the assessment of the judge (para. [53]) that the pre-inquiry decisions of the Inspector did not indicate any hostility towards Mr Turner or any objector and did not create any impression that the Inspector had pre-determined the inquiry. That is so whether one takes the points of complaint individually or cumulatively with the other points of complaint by Mr Turner.

(ii) At the inquiry

31. Mr Darby referred to a number of incidents at the inquiry which he said gave rise to an appearance of bias.

32. The Inspector asked all advocates to provide time estimates for their evidence and cross-examination, which is accepted to be a normal way of proceeding. However, Mr Darby submits that the Inspector failed to be even-handed in the way in which he applied these time limits. He allowed over-runs for witnesses for the promoters of the scheme without comment and sometimes allowed advocates for the promoters to exceed their time on cross-examination.

33. In our judgment, none of the evidence on these points adduced by Mr Turner gives rise to any appearance of bias. The picture which emerges overall is one of reasonable inquiry management decisions being made by the Inspector.

34. There is little detail given in the evidence before us about the circumstances in which overruns occurred in the giving of evidence in chief, but there is nothing to indicate that this was for any reason other than that the Inspector found it useful to receive relevant information in that way. In relation to cross-examination, an inspector is entitled to expect parties to adhere to their time estimates, since otherwise an inquiry

could be delayed and rendered more costly. There is nothing in the evidence to suggest that the Inspector did anything inappropriate or objectionable in holding objectors (in particular, Mr Ayton for Westminster and Mr Turner) to their estimates. It is said that he counted them down towards the end of their allotted time and then cut them short at the end of that time. But there is no unfairness in this: the counting down consisted of no more than giving the questioner fair warning that their time was coming to an end, at 15 minutes, 10 minutes and 5 minutes before the end, and requiring the conclusion of the cross-examination on time was appropriate, especially given the fairness of the warnings regarding time which had been given.

35. In our view, there was no appearance of bias given by what happened in relation to adherence to time estimates by counsel for the developers. The Inspector did not count down the experienced counsel appearing for the developers and Lambeth as they reached the end of their cross-examinations, but in our view he was entitled to assume that they would observe their time estimates without him having to do that. Mr Turner's main complaint was that Mr Corner QC for the developers applied for and was granted an extension of time to cross-examine Mr Turner on his evidence in opposition to the development, with the Inspector giving as his reason that Mr Turner was not being helpful and had insisted on making statements rather than answering the questions (i.e., in the Inspector's assessment, had not answered questions directly and succinctly). However, the Inspector had heard the evidence and was entitled to make judgments of this kind, to ensure fairness all round. There is no extant challenge of actual unfairness. The available evidence simply indicates that the Inspector engaged in reasonable inquiry management. Again, this gives rise to no appearance of bias.

36. Mr Turner also gave evidence that he was sometimes interrupted by the Inspector in the course of his questioning of witnesses. The Inspector says that it is his practice at inquiries to communicate to advocates where he considers that the line of questioning being adopted does not appear to be of sufficient relevance to assist him in making a decision or reporting to the Secretary of State. This is entirely legitimate. There is nothing in the available evidence which leads us to conclude that the Inspector did anything other than this when supervising Mr Turner's cross-examination of witnesses in the course of the inquiry.

37. Mr Turner gives one detailed example of an interruption by the Inspector. Mr Turner was in the course of putting questions to a witness for the developer regarding the alleged failure of the development to meet design standards, when the Inspector stopped this line of questioning and said words to the effect:

> "You will no doubt list all of the ways in which you find the scheme deficient, in fact I demand you do. And your case will no doubt be that those deficiencies are so terrible that they warrant refusal."

38. The Inspector, in his evidence, does not deny that some such intervention took place. In the absence of a transcript, it is difficult to be sure of the full context for this.

39. However, on the available evidence, this intervention appears to us to have been a legitimate attempt by the Inspector, in line with his description of his usual practice, to focus debate in the cross-examination on points where live witness evidence would

be likely to assist him in his task. In making such an intervention, he was entitled to observe that Mr Turner would have an opportunity to make the points he wished on design matters in his closing submissions, and to encourage him to do so as a way of presenting that part of his case in a manner of greater assistance to the Inspector. It does not give rise to an appearance of bias.

40. Next, Mr Darby complained that the Inspector refused to accept a voluminous document from Mr Turner dealing with viability issues ("RCL2") on the afternoon of Friday, 22 November 2013, on the grounds that it was unbound, inviting him instead to provide it at 9 am on Monday, 25 November so that the Inspector could read it on his arrival at that time before the commencement of evidence for the developers at 9.30 am. The Inspector would not stay to allow Mr Turner to put RCL2 into bound form on the Friday afternoon. But the Inspector only arrived and took receipt of RCL2 at 9.15 am on the Monday. The Inspector did not dispute this account in his witness statement.

41. In our judgment, however, this incident does not give rise to any appearance of bias. The Inspector was entitled to refuse to take receipt of the voluminous RCL2 in unbound form. It was only presented to him after the inquiry had closed on the Friday. In unbound form it would be unwieldy and difficult for the Inspector to use and there would be a risk that pages might get lost. It was not incumbent on the Inspector to hang around after the close of the inquiry hearing on the Friday to allow time for Mr Turner to try to bind the document and re-present it that day. The difference between taking receipt of RCL2 at 9.15 am rather than 9 am on the Monday is minimal. What is important is that it was unnecessary for the Inspector to read and digest RCL in its entirety before oral evidence commenced that day. RCL2 contained Mr Turner's evidence and case, and he was going to have the opportunity to present it many days later, on 9 December (by which time he had supplemented his evidence by a further document, RCL3, which the Inspector permitted him to adduce into evidence). By then, the Inspector would clearly have had time to read and digest it; he confirms in his witness statement that all of the evidence presented by Mr Turner was taken into account in reaching his conclusions and there is no reason to doubt this. On Monday, 25 November, Mr Turner would just be cross-examining witnesses, and he would need to explain any significant point to be drawn from RCL2 for that purpose when putting his questions to them. The Inspector would have had no difficulty in following this, as he confirms in his witness statement.

42. Mr Darby also complained that the Inspector pre-empted and cut short the objectors' case at the inquiry on a number of occasions. He shortened a debate about floor space in the development by stating that "the bottom line" was about jobs. He shortened a debate about the permeability of the development by holding up a map of the development (which showed the entrances, exits and public walkways etc) and said words to the effect, "I will be reporting that this is an eminently permeable scheme". The Inspector told the inquiry that he would not report that the development was too dense nor that there had been any impropriety in the way that Lambeth had come to a decision to support the scheme, despite objections referring to these points. The Inspector does not dispute that he made interventions of this kind. He says he intervened to ensure the efficient conduct of the inquiry: "I did so to prevent wasting time on matters of fact and because I considered that I had all the necessary information to reach conclusions on these matters."

43. Having regard to the way in which it is to be expected that a public planning inquiry should be conducted (see para. [18] above), we do not consider that the way in which the Inspector conducted this inquiry gives rise to any appearance of bias. Mr Turner has not succeeded in making out any complaint of substantive unfairness in the way the inquiry was conducted. It was proper for the Inspector to seek to focus debate, evidence and submissions at the inquiry in the way he did, and his seeking to do so would not lead a fair-minded observer to think that there was a real risk of bias or pre-determination in the requisite sense.

44. The judge was critical of the Inspector's conduct at the inquiry in various respects, albeit at the end of the day he was not persuaded that any appearance of bias had been given. Having had the benefit of detailed and focused submissions on this point and having reviewed the evidence in full detail ourselves, we would not, with respect, endorse the criticisms made by the judge. In particular, we do not agree (if this is what the judge meant to imply at para. [66] of his judgment) that the Inspector's conduct amounted to judicial misconduct. In our view, the Inspector's conduct of the inquiry was proper and appropriate. The steps he took to focus debate were legitimate ones, in line with the standards to be expected for managing the conduct of a planning inquiry in an efficient and effective way. The judge's opinion that the Inspector's conduct appeared to favour the applicant's counsel seems to be based principally on the 5 day sitting week before the non-sitting week and the facts that Mr Corner was not given timing warnings and was given extra time for cross-examination while Mr Turner and Mr Ayton, for Westminster, were not accorded any such extension. For the reasons we have given, however, none of these apparent instances of counsel being favoured constituted indications that there was a real possibility of bias on the part of the Inspector; nor, without more, would they, in a judge, be instances of judicial misconduct.

(iii) Post-inquiry: the Report

45. Before this court, Mr Darby relied on two matters in the Inspector's Report which he said showed that the Inspector failed properly to listen to and report accurately the evidence of the objectors. It does not appear that Mr Turner relied on these points at first instance for his appearance of bias case, though they did feature in relation to substantive challenges to the decision which he made which were rejected by the judge and in respect of which he has not been granted permission to appeal.

46. First, Mr Darby referred to para. 16.64 of the Inspector's Report, which states as follows:

> "I found the criticism at the Inquiry, by Mr Turner for RCL, of the values used to establish the review mechanism and the maximum financial contribution, to be confused. He questioned whether an Internal Rate of Return (IRR) of 20%, used by BNP Paribas in their assessment, was reasonable, *without bringing forward any evidence to justify such a claim*. An IRR of 20% is quite common for a development of such complexity as that proposed for the Shell Centre site. He also questioned the average sales figure per square foot used by the Applicants in their assessment and the sales value used by BNP Paribas as a sensitivity test. He did produce evidence but some of this

> confirmed the figures used to assess the scheme and some was from a source that was used to market and promote schemes to investors, rather than figures used to assess development viability" (emphasis supplied).

47. Mr Darby focused on the words in italics and submitted that they gave the appearance that the Inspector had not read and digested the material in RCL2, which did put forward evidence in support of Mr Turner's contention that an IRR of 20% was not appropriate for the purposes of viability analysis. Mr Turner's challenge based on a substantive claim of unfairness based on the contention that para. 16.64 showed the Inspector had not considered RCL2 was rejected by the judge at paras. [28]-[29], and Mr Turner was refused permission to appeal on the point. However, it is now re-introduced as an aspect of his case on appearance of bias.

48. In our judgment, on a fair reading of para. 16.64 no appearance is given that the Inspector failed to consider RCL2. The substance of the paragraph addresses the detail of the argument on the relevant IRR to be used, as does para. 16.65. Contrary to Mr Darby's submission, these paragraphs show that the Inspector had indeed considered RCL2 and was here concerned to set out his reasoning why he did not accept Mr Turner's case on the IRR as set out in RCL2. The words in italics have to be read in context. They do not bear the weight which Mr Darby sought to place on them. Read in context, they simply express the Inspector's view that Mr Turner had failed to provide evidence to justify (i.e. substantiate) his claim, for reasons which the Inspector then goes on to explain. The Inspector did not say that Mr Turner had failed to provide any evidence at all. Again, therefore, this is not a matter which gives rise to any appearance of bias.

49. Secondly, Mr Darby referred to para. 16.45 of the Inspector's Report, and suggested that it showed that he did not appreciate that it was the case of Westminster and other objectors that the development site constituted part of the setting of the World Heritage Site around the Houses of Parliament on the north bank of the Thames. This also was originally the basis for a complaint by Mr Turner of substantive error on the part of the Inspector which was rejected by the judge at paras. [40]-[41] and in relation to which Mr Turner has not been granted permission to appeal. Again, Mr Darby has re-introduced it as an aspect of Mr Turner's case on appearance of bias.

50. In our judgment, this complaint also fails, essentially for the same reasons as those given by the judge at para. [41]. As the judge says, "It may well be that [the Inspector] has not expressed himself as well as he should have done in paragraph 16.45, but he clearly has considered whether there would be harm caused to the setting of any heritage asset on the north side of the river." This is abundantly clear from the face of the Report. In section 11 of the Report, the Inspector accurately sets out the case for Westminster in opposition to the development, including that it would cause harm to the setting of the World Heritage Site. Paragraph 16.45 appears in a section of the Report entitled "The Setting of the [World Heritage Site] and Heritage Assets on the North Bank", which includes discussion of the impact upon the settings of that Site and those Assets. Read, as it must be, in the context of the whole Report, para. 16.45 gives no appearance whatever of bias on the part of the Inspector.

Conclusion

51. For the reasons set out above, we dismiss this appeal. None of the matters relied on by Mr Turner, whether taken individually or together, indicate that there was a real possibility that the Inspector was biased. The Inspector acted properly and without giving any appearance of bias according to the relevant test in *Porter v Magill*.