



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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A.S.	NEWMAN

D.O. COOR.

Berwin Leighton
Adelaide House
London Bridge
LONDON
EC4R 9HA

Your reference
IRT/h767/1
Council's reference
LEG/AS/4/A/2602/AC
Our reference
APP/Y5420/C/91/614554/P6
Date

08 FEB 1993

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY HIGHGATE GARDEN CENTRE
LAND AT HIGHGATE GARDEN CENTRE, TOWNSEND YARD, HIGHGATE.

1. I have been appointed by the Secretary of State for the Environment to determine your clients' appeal against an enforcement notice issued by the Haringey London Borough Council concerning the above land. I held an inquiry into the appeal on 17 November 1992 and 5 January 1993, and inspected the site on 18 November 1992. At the inquiry an application was made on behalf of your clients for an award of costs against the Council. This is the subject of a separate letter.

2. a. The date of the notice is 1 August 1991.
- b. The breach of planning control alleged in the notice is the erection of 7 portacabins on the land.
- c. The requirements of the notice are to remove the portacabins from the land, and restore the land to its condition before the development took place.
- d. The period for compliance with the notice is 2 months.

3. Your clients' appeal was made on grounds (a), (c), (d) and (h) as set out at section 174(2) of the 1990 Act prior to its amendment by the 1991 Act. At the inquiry grounds (c) and (d) were withdrawn but additional legal submissions were made as set out below.

Site and surroundings

4. Highgate Garden Centre occupies a sloping site to the north of Highgate village, and is reached via Townsend Yard, a narrow lane leading off the north side of Highgate High Street. The ground within the site falls generally from south to north so that the highest point is by the site entrance; the land falls southwards from the High Street and drops away north of the site to Cholmeley Crescent. Eastwards the slope trends to the south-east, while within and to the west of the site it sweeps round in an arc to continue northwards. From parts of the site there are extensive views to the north-east. This half-amphitheatre shaped area is known locally as the Highgate Bowl. It is historically of interest as grazing land on an old drovers' route into London. In the mid-19th Century nurseries were established



on the appeal site and the adjoining land to the east to provide cut flowers for Highgate Cemetery. In recent years the nursery on the appeal site has evolved into the present garden centre.

5. At the southern end of the garden centre (and outside the enforcement notice area) is a bungalow permitted in 1952, west of which is a chalet-style building used as an office and reception. The roadway into the site passes to the east of the bungalow to a small car park for visitors, where it turns left and goes down to the larger car park at the bottom of the hill on the north-western side of the site. To the south-west of that roadway is an area planted with shrubs, and a public convenience, with a hardstanding at the lower level. The portacabins the subject of this appeal are ranged along this south-western and western site boundary, partly behind the hardstanding and partly on the slope behind the shrubs, as detailed below. From the car park, the roadway continues along the bottom or north-eastern side of the site, where there is a garden ornament display area. The south-eastern part of the site is occupied by greenhouses. Apart from these and the portacabins, the remainder of the garden centre is largely open in character. The central part of the site is occupied by the plant display area, the plants being mainly set out in pots on racks.

6. At the date of my visit there were 5 portacabins on the land, approximately in the position of the structures numbered 3, 4, 6, 7 and 8 on the plan accompanying the Council's letter to you of 17 September 1992. The ones numbered 3 and 4 are at the bottom of the site, behind the hardstanding referred to above. They are about 9 or 10 m long. They rest on concrete bases which however are smaller in size: where the portacabins overlap the bases they are supported on bare ground by jacks. Both are used as offices and have mains electricity. As I noted from sign-boards and as your clients confirm, these units are occupied by Mark Enright Landscapes Ltd, a wholly owned subsidiary of your clients which carries out landscape design and maintenance. One cabin houses the drawing office and the other the maintenance division. These cabins are separated from Nos 6-8 by a small plant display area and a wooden shed (structure No 5).

7. The other 3 portacabins are ranged up the steep slope forming the south-west boundary of the site. They rest on a series of old brick terraces on which a number of sheds or small buildings appear previously to have been located in the late 1970s and early 1980s, as shown on the Highgate Society's photograph dated 1982. Where the portacabins overlap these bases they are supported on the sloping ground by wooden posts and beams. This timber also supports wooden staging in front of the cabins, linked by wooden steps between the different levels. In front of Nos 7 and 8 is a dense screen of cypresses. These portacabins are also used as offices and have mains electricity, the supply cables being attached to the retaining wall behind. Nos 7 and 8 are of similar size to Nos 3 and 4, but No 6 is shorter. Nos 6 and 7 are used as for garden centre accounts and operations, and No 8 for goods purchasing. Beyond No 8 is a small brick building (structure No 9 on the Council's plan).

The notice

8. There are two matters to be resolved at the outset: firstly the validity or otherwise of the notice, and secondly the numbers of portacabins on the land. As to the first, it was contended on your clients' behalf that the notice is a nullity, or alternatively is invalid, because it describes the breach as a building, engineering, mining or other operation, whereas the placing of portacabins on the site is a use of land, if indeed it is development at all. Section 55(1A) of the 1990 Act as amended defines building operations as including demolition of buildings, re-building, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder. In Parques v Secretary of State for the Environment, 1979 1AER 211, it was stated that operations comprise activities which result in some physical alteration to the land, which has some degree of permanence to the land itself. In Cardiff Rating Authority v Guest

Keen Baldwin's Iron and Steel Co Ltd, 1949 1KB 385, factors relevant to what constitutes a building were defined as: size, in that a building would normally be something which was constructed on site as opposed to being brought already made to the site; the permanence resulting from the physical change involved; and the question of physical attachment. It was considered therefore that there has been no building operation here, in that there was no creation or demolition of structures. By a similar process of reasoning, the placing of the portacabins was not an engineering, mining or other operation in, on, over or under the land.

9. It was considered that if this contention be accepted, then no power exists to amend the notice to allege a material change of use rather than operational development. Firstly it is not clear what material change of use, if any, has taken place. The land continues in use as a garden centre or uses ancillary to it. Secondly, because of this fresh issue thus raised, such amendment would cause substantial prejudice to your clients. In Miller-Mead v Minister of Housing and Local Government, 1963 2QB 196, it was stated that if the misrecital goes to the substance of the matter, then the notice may be quashed.

10. In response, it was maintained on behalf of the Council that the erection of portacabins on the site was a building operation. The portacabins have altered the physical characteristics of the land. Adaptation of the land was necessary in order to position or erect them. They have a high degree of permanence: they have been on the land for 2 years already and the your clients wish to retain them for another 5 years. They are stationary, in use as office buildings, and supplied with light and electricity. They can only be removed by dismantling and removing the timber framework to which they are attached. Reference was made to Barvis Ltd v Secretary of State for the Environment, 1971 22P&CR 710, in which the Cardiff Rating Authority case mentioned above was cited; and to an appeal decision by the Secretary of State at Gravesham, reported at 1978 JPL 571.

11. Alternatively, if I were to find that the notice was wrongly worded, it was contended that it could be amended without causing injustice to either party, to allege the making of a material change of use by the stationing of the portacabins. Support for this was found in Wealden District Council v Secretary of State for the Environment, 1983 JPL 234.

12. It was then further contended on your clients' behalf that the Council had no evidence for their submissions. Prior to the inquiry they had not known how the portacabins were brought onto the site; at the inquiry, your clients had said that they were brought in by lorry and deposited on the land by crane. They had not been erected in the sense of being assembled on the site. There had been no physical adaptation of the land. There was no evidence as to whether or how the portacabins were attached to the land or to the timber supports. The Barvis case, in contrast, related to a large tower crane which was assembled on the site, an operation taking several days, and which ran on rails set in concrete. In the Gravesham case, the Secretary of State had no evidence as to the method of arrival of the portacabin on the site, and it was on that basis that he concluded on the balance of probability that the placing of it constituted a building operation.

13. I consider that even if the notice were in error in the manner alleged, this would not make it a nullity. A breach of planning control has been alleged, and the question is whether it has been rightly stated. If it has not, then the decision turns on the validity of the notice, i.e. whether it is capable of correction without causing injustice. As to that I incline to the view that such a correction would be unjust to your clients because it is not evident that there has been a material change of use, and your clients would have been deprived of the opportunity to appeal in relation to that matter. However it is only necessary to decide that if the notice is wrong in the first place.

14. There is no full definition of either "building" or "building operations" in the Town and Country Planning Act, although the partial definitions contained in sections 55 and 336 are of some assistance, as are the judicial authorities referred to above. The Concise Oxford Dictionary defines a building as a "permanent fixed thing built for occupation", and gives as examples a house, school, factory or stable.

15. Another line of approach is to consider the purpose of planning control over building operations. It seems to me that this is primarily to do with physical change to the character or appearance of an area. Normally a building operation will involve works within the land itself, such as excavating foundations, but I do not see that it necessarily need do so. The placing of structures on land may result in such a change to its character or appearance that, having regard to the above statutory and dictionary definitions, it is itself capable of being a building operation. I would regard such assessment as being mainly a matter of fact and degree in each case, but find some support for this premise from the cases cited. In Barvis, reference was made to Cheshire County Council v Woodward, 1962 2QB 126, where it was stated that, in deciding whether operational development was involved, the test was whether the effect of the operation was to change the physical character of the land, and that, in relation to a mobile hopper and conveyor, "the mere fact that it can be removed and is not affixed does not determine the matter". In the Cardiff Rating Authority case it was stated that "a thing is not necessarily removed from the category of buildings or structures or things in the nature of buildings or structures because by some feat of engineering or navigation it is brought to the hereditament in one piece". That case related to rating legislation but in Barvis was considered to be fully applicable to town and country planning. Later in the same case (at p.403), reference is made to "the false criterion of movability or physical attachment to the hereditament".

16. I accept that these portacabins are not conventional buildings, because they are not set on foundations, and they were brought onto the land whole rather than being assembled on site. However, from the above reasoning, I do not regard that as conclusive. Their size and number mean that they have had a material effect on the appearance and character of the site (leaving aside for now the merits of such effect). They have the appearance of being permanently sited there, at any rate for as long as they are needed and allowed to remain. They are used as offices forming an integral part of the administration of the site, or of a wholly owned subsidiary company, in a way indistinguishable from such use of a conventional building. Placing them where they now are can have been no easy task, particularly those on the sloping ground. The portacabins are not mobile, unless they are taken away by crane or similar means. Whether or not they are bolted or otherwise physically attached to the land, the supports under them must, as a matter of common safety, have had to be constructed and installed in such a way that they would rest firmly in all weathers. Portacabins 6-8 on the Council's plan, in particular, have a complicated sub-structure of timber supports which is extended into and integrated with the staging and steps required to gain access. Taken as a whole, I am satisfied that the work of installing the portacabins and their associated supports was the kind of work that one would expect to be undertaken by a builder.

17. For these reasons I conclude that, as a matter of fact and degree, the installation of the 5 portacabins that are now on the land did amount to a building operation, so that the allegation set out in the recital of the notice is correct. As a subsidiary point, it was contended that it was incorrect to describe the portacabins as having been "erected" on the land, because they were brought in in one piece. However, turning again to the dictionary, the verb "erect" is defined as "raise, set upright, build, establish". Thus it does not necessarily imply assembly or construction on the site. To my mind it is a reasonably near definition of what has taken place, and left your clients in no doubt as to what was alleged.

18. The other question, that of the number of portacabins on the site, can be resolved more quickly. Your clients say that the other two alleged portacabins (Nos 1 and 2 on the Council's plan, located near the northern boundary) were not portacabins, but transport containers. They were there during the summer of 1991 but had been removed by 20 August. Neither your clients nor the Council knew whether they were there on 1 August when the notice was issued. Taking together the nature of these items and the short time that they were there, I consider that it has not been shown on the balance of probability that there were 7 portacabins on the land when the notice was served. There were 5 portacabins. This is a correction of fact which I am satisfied can be made without causing injustice to either party, and I shall amend the notice accordingly.

Appeal on ground (a)

19. The statutory Development Plan for this site consists of the Greater London Development Plan (the GLDP) and the Haringey District Plan adopted in 1982. In the GLDP the site is within the Hampstead/Highgate Ridge Area of Special Character, the relevant policy for which (paragraph 6.4 and Table 5) is "protection of skyline, viewpoints, historic, architectural, village and rural character". In the District Plan it is within the Highgate Conservation Area, so that the policy set out at paragraph 9.121 of the Plan applies. This designation also means that the duty applies as set out at section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. The garden centre with adjoining land to the east is also site 37 of schedule 7 of the Plan, namely one (paragraph 10.4) "where there are particular land use problems but no firm solution has been finalised". The schedule states that the western and central parts of the site (including the appeal site) should be retained as open land. The functions of that area are given as: to mark a physical limit of the organic growth of the village area; to enhance the skyline of the village; to protect and underpin distant views from the ridge; to accommodate open land uses of community benefit within the urban area; and to provide visual relief from urban development and potential for recreation.

20. In addition to the above, you draw attention to the Plan's employment policies, including paragraph 3.5 which seeks to retain within the Borough existing employment, and assist the retention and creation of opportunities for employment. Paragraph 3.25 states a general policy to help arrest the decline in the numbers of small firms. These policies are reinforced by national planning guidance relating to industrial and commercial development and small firms, and enforcing planning control, set out in Planning Policy Guidance notes 1, 4 and 18.

21. The Council have prepared a draft Unitary Development Plan which they expect to place on deposit shortly. In view of the early stage that this has reached I take it into account only insofar as it indicates the Council's present intentions to retain or alter the policies of the District Plan. The draft UDP retains the status of the site within the Conservation Area and the Area of Special Character, and proposes policies similar to those in the District Plan. However schedule 7 is not repeated. Instead it is proposed to include the site within Metropolitan Open Land (MOL). The area so defined is similar to site 37 but excludes the eastern part of that site and adds land to the west and north of the garden centre. Policy ENV 6.4 of the UDP states that the Council will not permit within MOL any development which is not compatible with its functions and essentially open characteristics. Policy ENV 6.5 defines appropriate uses within MOL, one such being allotments and nursery gardens, provided that any ancillary buildings do not damage the open nature or character of the site. Such designation would also apply paragraph 61 of Regional Planning Guidance note 3, which states that the presumption against development in the Green Belt applies equally to MOL. Your clients intend to pursue an objection to the designation of the appeal site as MOL.

22. Having regard to the above, and from the evidence given at the inquiry and in written representations, and my inspection of the site and its surroundings, I consider that the main issues are firstly the effect on the amenities of residents in the area, and secondly the effect on the character and appearance of the area.

23. As to the first issue, I noted during my site visit that some of the portacabins can be seen from the upstairs rooms of houses in Cholmeley Crescent which back onto the site, and from the backs of some of the modern houses built in Kingsley Place. Portacabins Nos 3 and 4 on the Council's plan, at the lower level, and No 6 which is higher up and not screened by shrubs as Nos 7 and 8 are, can in particular be seen, and their prominence is increased by the lighting within. The portacabins are more visible in the winter when leaves are off the trees; there may also be a greater need for interior lighting at that season of the year. Insofar as these factors affect the appearance of the site I shall examine them below. But I am satisfied that the portacabins are sufficiently far from the nearest houses, and partially screened, that residents suffer no material loss of amenity. Any marginal deterioration in the quality of view from these houses does not amount to a clear planning objection. Objectors also refer to noise from the site, including the barking of a security dog; but it does not appear that this arises specifically from the existence of the portacabins.

24. I turn then to the second issue. In a 1988 appeal decision that the Council referred to, concerning office development at 64A Highgate High Street, the Inspector described Highgate village and Highgate Bowl as probably of national importance. You questioned whether there was any evidence for that conclusion for Highgate Bowl, but without going so far I would say that it is at any rate an important element in the present and historical fabric of London. This is reflected in the Development Plan designations and policies summarised above. These current policies stress the need to maintain the predominantly open character, both as visual relief from the surrounding built development and as a context for Highgate village.

25. Any built development (including portacabins) within the appeal site must be examined critically in this context, but the policies do not go so far as to prohibit all development. That would conflict with the need to identify specific harm in order to justify a refusal of permission. It might itself cause harm to the appearance of the area if the viability of existing uses were lost without there being any clear alternative. To the extent that this in turn caused loss of jobs, there would be employment consequences, relevant to local and national planning policy, to be taken into the balance. It is at least premature to apply the additional presumption against development which would be implied by any Metropolitan Open Land designation.

26. Another relevant factor is the previous planning history of this site and its vicinity. Residential development on the appeal site and/or adjoining land has been dismissed on appeal 4 times in the past 30 years or so. Your clients have recently submitted a further planning application for residential development on part of the site. There is a history of refusals, some supported on appeal, of extensions and other built development at the rear of Highgate High Street to the south of this site, including that at No 64A in 1988. The garden centre itself has evolved from the previous nursery garden without any grant of planning permission, although you presented persuasive evidence that the site has been a garden centre since the 1970s: if so, the use would by now be lawful. It also appears that various buildings have come and gone over the years without, in most cases, planning permission having been obtained or the Council seeing fit to take any action. The Council say that these were stock-in-trade, and perhaps some of them were, but I was given no clear evidence either way. The large greenhouse buildings and the reception office remain, and the Council have permitted the replacement of a storage building lost in the 1987 storm.

27. Drawing together all the above strands, my first conclusion is that the portacabins are not an acceptable permanent form of development for this site. Apart from the additional built development that has resulted, their design and appearance are out of keeping with the special nature of this area. However this must be balanced against other material considerations. The portacabins do not intrude into views of the skyline ridge, as most of the developments refused at the rear of Highgate High Street would have done, and they are not comparable with those proposals in scale or visual impact. On the contrary, they are tucked unobtrusively under the slope and partly under trees, with those numbered 7 and 8 on the Council's plan being particularly well screened. They can be seen from within the site and from some viewpoints outside, as mentioned above, but views of them are limited, and they are seen against the walls and vegetation behind them. More distant views from the north-east are far enough away that the portacabins would not be clearly seen. They have been painted green in an effort to merge with their surroundings. It seems to me that if the garden centre is to remain here, it needs some office accommodation although the scope for using some of the existing permanent buildings could be investigated. Lastly your clients say that they only intend the portacabins to be temporary accommodation, and they would accept a planning permission limited accordingly.

28. There are a number of planning issues to be resolved in relation to this garden centre, which were beyond the scope of this inquiry. Firstly, as indicated above, there is the question of whether the use itself is lawful. I was asked on your clients' behalf to find that this was so, as a matter of fact. However this is not a matter before me to decide, and without hearing all the evidence relating to it I do not think I should do so; it remains therefore uncertain. Secondly there is the planning status of the land, and the draft Unitary Development Plan proposal that it should be MOL; and related to this, thirdly, the determination of your client's proposals for some residential development, and hence the long term future of the garden centre. Fourthly and in the context of the above, the reasonable need of the garden centre for ancillary buildings has to be decided if it is to remain here; and, fifthly, the amount, location and design of any such permanent development, having regard to the prevailing planning policies. It would also be desirable to give time to seek alternative locations for any activities displaced from the garden centre as a result of such an assessment.

29. Circular 1/85 warns against granting a temporary planning permission on the grounds of the effect on the amenities of an area. However it goes on to say that a temporary permission may be appropriate where the applicant himself proposes temporary development, and in my view that can be applied here even though it is the temporary retention of existing buildings which is at issue. I do not think the Circular is intended to go so far as to say that some developments may not be more acceptable in amenity terms for a short period than for a longer one. I consider that it is open to me to grant a temporary permission in this case pending resolution of the above matters.

30. In my judgement the planning of this area would not be unduly prejudiced, nor would the long term character or appearance of the Conservation Area or the Area of Special Character be harmed, if the portacabins were retained for a temporary period to give an opportunity for these matters to be settled. In saying this I take into account their relative unobtrusiveness as mentioned above. As this view is reached in the particular circumstances of this case as set out above, I do not think it implies any precedent for other development in the vicinity. This approach has the positive benefit of helping to sustain the vitality of the garden centre in the interim period. The question then is whether this objective would be better served by extending the period for compliance with the notice, or granting a temporary permission. On balance I favour the latter course, having regard to the time period that I believe to be reasonably necessary, and to my above comments on the acceptability of the portacabins in the short term. As to the duration of the planning

permission, your clients requested 5 years, but I see no reason why sufficient progress should not have been made on the above issues within 3 years, and I therefore intend to limit the permission to that period.

31. Before reaching this conclusion I have taken account of all the other matters raised, but there is nothing which outweighs the above considerations. Of the further conditions requested by the Council, I agree that the use of the portacabins ought to be defined as being in connection with the garden centre only. It will be for the parties to decide whether that should embrace the landscape contracting business of Mark Enright Ltd, but it may help if I express my view that they should be allowed to remain while the future building needs of the garden centre are settled, and to give time for them to seek alternative premises if that should be found to be necessary. However I do not consider that a landscaping condition is justified, as new planting is unlikely to have much screening effect within 3 years. On this basis the appeal on ground (a) succeeds and permission will be given on the deemed application; ground (h) does not therefore fall to be considered.

FORMAL DECISION

29. For the above reasons and in exercise of the powers transferred to me, I hereby direct that the enforcement notice be corrected by deleting the word "seven" from schedule 2 and inserting "five". Subject thereto, I allow this appeal, direct that the enforcement notice as so corrected be quashed, and grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act for the erection of five portacabins on land at Highgate Garden Centre, Townsend Yard, Highgate, subject to the following conditions:

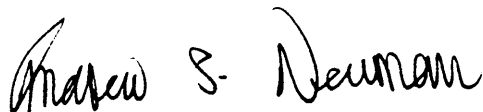
1. The portacabins hereby permitted shall be removed from the land on or before the expiration of 3 years from the date of this letter.
2. The portacabins shall only be used in connection with the use of the land as a garden centre.

30. This decision does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990. Attention is also drawn to the enclosed note relating to the requirements of the Buildings (Disabled People) Regulations 1987.

RIGHT OF APPEAL AGAINST DECISION

31. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant



A S NEWMAN BA MA DipTP MRTPI
Inspector

APPEARANCES

FOR THE APPELLANT

Mr H Wolton

- of Queen's Counsel, instructed by
Berwin Leighton, Solicitors, Adelaide
House, London Bridge, London EC4.

He called:

Mrs Y A Phillips BA FRTPI

- Chairperson, Phillips Planning Serv-
ices Ltd, 1 Hassett Street, Bedford.

Mr C A Campbell-Preston

- Managing Director, Highgate Garden
Centre Ltd.

FOR THE PLANNING AUTHORITY

Miss A Singh

- Solicitor, Haringey London Borough
Council.

She called:

Miss E Riordan BA DipTP

- Principal Planning Officer, Haringey
London Borough Council.

Mr D Scott

- Enforcement Officer, Haringey London
Borough Council.

INTERESTED PERSONS

Mr D Lowe-Watson

- 68 Milton Park, London N6 (for the
Highgate Conservation Area Advisory
Committee and the Highgate Society).

DOCUMENTS

1. Lists of persons present at the inquiry.
2. Letter of notification and list of addresses.
3. Extracts from Greater London Development Plan, 1976.
4. Extracts from District Plan for the London Borough of Haringey, 1982.
5. Extracts from draft Haringey Unitary Development Plan, 1990.
6. Extract from Greater London Development Plan Report of Studies submitted by the Council.
7. Extract from Report of Local Inquiry into Haringey District Plan submitted by the Council.
8. Extract from Strategic Planning Advice for London, LPAC, 1988, submitted by the Council.

9. Extract from RPG3: Strategic Planning Guidance for London, submitted by the Council.
10. Notes of cases referred to by the appellant.
11. Notes of cases referred to by the Council.
12. Schedule of conditions submitted by the Council.
13. Other appeal decision letter submitted by the appellant.
14. Other appeal decision letters submitted by the Council.
15. Letter, 9 January 1991, from the Highgate Society to the Council, submitted by the Council.
16. Letter, 31 July 1991, from Highgate Garden Centre to the Council, submitted by the appellants.
17. Other documents submitted by Mrs Phillips.
18. Other documents submitted by Mr Campbell-Preston.
19. Other documents submitted by Miss Riordan.
20. Plans, photographs and other documents submitted by Mr Lowe-Watson.
21. Additional third party representations submitted by the Council.

PLANS

- A. Plans submitted by Mrs Phillips.
- B. Plan submitted by the Council dated May 1989 defining the Highgate Bowl.

PHOTOGRAPHS

1. Photographs submitted by the appellants.
2. Aerial photographs submitted by the appellants.
3. Photographs submitted by the Council.
4. Additional copy photographs submitted by the Council.



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APP/Y5420/C/91/614554/P6
Date

08 FEB 1993

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATION FOR COSTS BY HIGHGATE GARDEN CENTRE

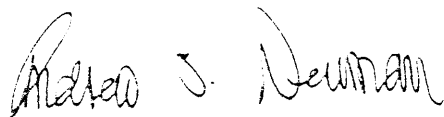
1. I refer to your clients' application for an award of costs against Haringey London Borough Council which was made at the inquiry held at Haringey Civic Centre on 17 November 1992 and 5 January 1993. The inquiry was in connection with an appeal against an enforcement notice alleging the erection of 7 portacabins on land at Highgate Garden Centre, Townsend Yard, Highgate. A copy of my appeal decision letter is enclosed.
2. In support of your clients' application, it was stated that costs were sought only in the event of my upholding their case on legal grounds. In that event, the notice was invalid and your clients should not have had to incur the expense of contesting it. The Council had been given notice of the legal challenge prior to the inquiry, but they had given no adequate consideration to the validity of the notice, and to whether the notice ought to have been withdrawn. They had been unable to respond before the second day of the inquiry. Their response then had consisted of assertions unsupported by evidence.
3. In response, the Council stated that your clients' legal submissions had not been made available to them until the inquiry opened. They had considered all the facts before issuing the notice, and had concluded, taking account of the relevant cases, that operational development had taken place. Even if I were to find against the Council on that point, the matter was a complicated one and they had not acted unreasonably in deciding to proceed.
4. The application for costs falls to be determined in accordance with the advice contained in Circular 2/87 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may be awarded only against a party which has behaved unreasonably.
5. As I have not found in favour of your clients in relation to the legal submissions made on their behalf, for the reasons set out in my decision letter, it follows that I do not find that the Council acted unreasonably in this matter. I conclude that your clients' application for an award of costs is not justified.



FORMAL DECISION

6. For the above reasons and in exercise of the powers transferred to me, I hereby refuse the application by Highgate Garden Centre for an award of costs against Haringey London Borough Council.

I am Gentlemen
Your obedient Servant

A handwritten signature in cursive script that reads "Andrew S. Newman". The signature is written in dark ink and is positioned centrally below the typed name.

A S NEWMAN BA MA DipTP MRTPI
Inspector