



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

CO Ref: CO/26/2017

In the matter of an application for Judicial Review

The Queen on the application of

ST ALBANS CITY AND DISTRICT COUNCIL

Claimant

versus

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Defendant

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant, the Acknowledgement of service filed by the Defendant, the Claimant's Response and the application by CEG Land Promotions Limited

Order by the Honourable Mr Justice Holgate

- (1) The application for permission in respect of the remaining grounds in the claim is adjourned to be listed in court as a "rolled up hearing", on notice to the defendant and interested party, as soon as possible after 6 June 2017 with a time estimate of 2 days. If permission to apply for Judicial Review is granted at that hearing, the Court will proceed immediately to determine the substantive claim.
- (2) CEG's application to be joined as an interested party is refused.
- (3) The issue of whether this is a claim within CPR 45.43 is adjourned to be dealt with at the rolled-up hearing.

Observations:

- (1) It is necessary for there to be an oral hearing in order to determine the arguability of grounds 2 to 5. This is best dealt with at a rolled-up hearing which can also provide an appropriate degree of expedition. For the reasons given in the Defendant's AOS there are doubts about the arguability of ground 1, but I consider it better for that to be dealt with at the hearing if this ground is to be pursued. In the light of the AOS the Claimant must now reconsider the grounds to see which points it can properly pursue, within the ambit of the legislation and the principles in such decisions as Zurich and Barker Mill. In addition, the grounds are lengthy and diffuse. The Claimant must consider amending the grounds so that they are more focussed. The Defendant can then reply to that document and the issues and competing arguments should be clearer for the court to determine.
- (2) Interested parties are those who are directly affected by the grant of the remedy sought, here the quashing of the decision that the Claimant failed to satisfy section 33A (CPR 54.1.1(f) and Muldoon). On the material presented by CEG I am not persuaded that they qualify as an interested party. There must be many parties with interests in allocations in the draft plan, whether for or against the inclusion of that allocation, and others interested in sites which have not been allocated. Such parties are not to be equated, for example, with a developer who has received a planning permission which another party seeks to have quashed. In that situation the developer plainly has a direct interest in the grant of the remedy sought. Furthermore, in the present case, CEG effectively wishes to obtain a quashing order but has not applied by judicial review within the time limit. It may be that CEG would wish to consider applying to intervene, but before allowing that to happen the Court would want to know whether they are taking any different point from those advanced by the Claimant (and if so what). As matters stand it appears that their points align with those of the Claimant. Even if CEG were to be allowed to intervene the Court would want to consider how that should happen (eg written submissions). Any application to intervene must, of course, be served on the other parties.
- (3) On the other hand, the Claimant has not identified any interested parties in the claim form. It seeks to quash the decision that the duty to co-operate with certain planning

- (4) authorities has not been satisfied. That decision would appear to benefit directly those other authorities to whom the duty applied and on that basis they are directly interested in the remedy sought. They are the other parties to whom the duty in this case applied. It is not clear from the papers whether they have been identified. They must be identified by the Claimant forthwith and served with the Amended Claim and papers. Paragraph 4 of the Claimant's pre-action protocol letter refers to the SWHG authorities and so it is difficult to see why the Claim Form is silent on this point. The Claimant must also address whether any other local authority should be treated as an interested party.
- (5) Local authorities who wish to participate should consider (inter alia) whether they can properly be represented jointly or feel able to rely upon the Defendant's submissions.
- (6) Any effect of these steps on the time estimate for the hearing must be notified to the Court immediately.
- (7) The Defendant's submission that the Claimant may not rely upon CPR 45.43 because it is a local authority is bad (see the HS2 case at [2015] EWCA Civ 203). The Court must apply the CPR as it stands and not as it might be amended. There remains an issue as to whether the challenge to the Inspector's section 33A decision is an Aarhus Convention Claim. If this point cannot be resolved between the parties, it requires citation of authority and oral argument. It does not appear that the willingness and ability of the Claimant to proceed depends upon a ruling being made at this stage. I draw the attention of both sides to CPR 45.44(3).

Case management directions

- The claimant must lodge, within 7 days of service of this order, an undertaking to pay the appropriate fee if permission to apply for Judicial Review is granted (or complete an Application for Remission of a Fee, if appropriate).
- The Claimant within 14 days of the service of this order file and serve Amended Grounds of Claim and must serve the Claim on interested parties, namely local authorities directly interested in the grant of the remedy sought in respect of the decision on the section 33A duty.
- Any interested party served must file an Acknowledgement of Service within 28 days of the service of this order.
- The defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve detailed grounds for contesting the claim or supporting it on additional grounds and any written evidence, within 49 days of service of this order.
- Any reply and any application by the claimant to lodge further evidence must be lodged within 14 days of the service of detailed grounds for contesting the claim.
- The claimant must file and serve a trial bundle not less than 3 weeks before the date of the hearing of the judicial review
- The claimant must file and serve a skeleton argument not less than 14 days before the date of the oral hearing.
- The defendant and any interested party must file and serve a skeleton argument not less than 7 days before the date of the oral hearing.
- Not less than 3 days before the date of the oral hearing. The claimant must file an agreed bundle of authorities together with the following documents agreed between all parties: a list of legal principles, a chronology and a narrative, and a list of the legal issues which the court is to determine.

Listing Directions

- The hearing of the application is to be listed for 2 days; the parties to provide a written estimate within 28 days of service of this order if they disagree with that estimate.

Case NOT suitable for hearing by a Deputy High Court Judge

Directions as to venue, if applicable: RCJ

Signed

27 February 2017

The date of service of this order is calculated from the date in the section below

For completion by the Planning Court

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendants, and any interested party's solicitors on (date)

Solicitors:
Ref No.

28 FEB 2017