



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: C1/2015/1176



ST. ALBANS CITY AND DISTRICT COUNCIL –v– SECRETARY OF STATE FOR COMMUNITIES  
AND LOCAL GOVERNMENT AND ORS

**ORDER made by the Rt. Hon. Lord Justice Sullivan**

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

**Decision:** granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

Permission to appeal refused.

**Reasons**

The Grounds of Appeal do not have a real prospect of success for the following reasons.

Ground 1

1. Paragraphs 40-59 of the judgment are an impeccable analysis of the Inspector's reasoning in paragraphs 13.8-13.19 of his report (which the Secretary of State had adopted in paragraph 22 of the decision letter).
2. Although the Inspector recorded the parties' legal submissions, he is not a lawyer and in his responses to those submissions he does not purport to lay down a novel legal test which had not been suggested by any party at the inquiry. In giving his "opinion" he is describing how he will approach the matter as a planner. Given the practical realities, in particular the comprehensive nature of the previous Inspector's report, it is hardly surprising that he concluded that there would have to be very good planning reasons which would have to be clearly explained for differing from his predecessor's conclusions.
3. In paragraph 3.15 the Inspector correctly rejected as far too simplistic the Council's submission that "simply..... a change of view" would be a sufficiently good reason for a decision maker to come to a different decision. As the Inspector rightly said, a change of view "would have to be supported by an adequate chain of logic otherwise it would be too easy for that decision to appear unsound" i.e. adequate reasons would have to be given for a change of view.
4. For the reasons given by Holgate J, the three examples relied upon by the Council as demonstrating the "flawed approach" of the Inspector demonstrate precisely the opposite: that the Inspector did not regard himself as being in any way fettered by his predecessor's conclusions, made his own independent assessment of the three issues, and explained in each case why he agreed with his predecessor's view.
5. This conclusion is reinforced if the report is read as a whole. The parties were not prevented from raising any issues (paragraph 3.19). Very many issues were raised. The Inspector examined all of those issues in detail, and reached his own conclusions upon all of them. Had the Inspector improperly fettered his discretion as a result of an erroneous legal self-direction as alleged by the Council, his report would have been a great deal shorter.
6. In view of 1-5 (above) the other criticisms of the judgment are of no consequence.

Ground 2

Such fine differences as there are between the *Derbyshire Dales* and *Bolton* approaches may well be of some interest to the textbook writers, but the Judge's factual conclusion that whichever approach was adopted the Veolia decision was not material was plainly correct for the reasons given in paragraphs 112 – 122 of his judgment.

Ground 3

This ground of appeal is academic given the amount of the costs claimed by the Second Respondent.

PCO

In these circumstances it would not be appropriate to grant a PCO.

**Information for or directions to the parties**

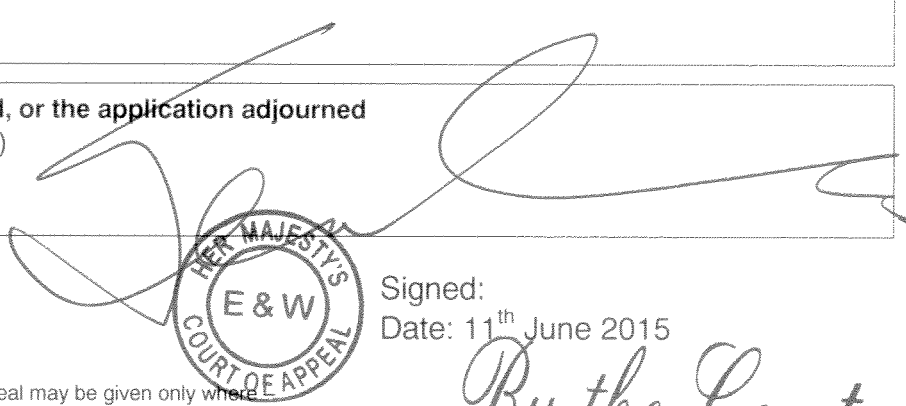
This case falls within the Court of Appeal Mediation Scheme automatic pilot categories\*. Yes  No

Recommended for mediation Yes  No

If not, please give reason:

**Where permission has been granted, or the application adjourned**

- a) time estimate (excluding judgment)
- b) any expedition

A large, stylized handwritten signature in black ink is written across the middle of the page. Below the signature is a circular stamp from Her Majesty's Court of Appeal, E & W. The stamp contains the text 'HER MAJESTY'S COURT OF APPEAL' around the perimeter and 'E & W' in the center.

Signed:  
Date: 11<sup>th</sup> June 2015

*By the Court*

**Notes**

- (1) Rule 52.3(6) provides that permission to appeal may be given only where
  - a) the Court considers that the appeal would have a real prospect of success; or
  - b) there is some other compelling reason why the appeal should be heard.
- (2) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 16(1) of CPR PD 52C.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 7 days of the date of the listing window notification letter and seek to agree the bundle within 21 days of the date of the listing window notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **C1/2015/1176**

DATED 11TH JUNE 2015  
IN THE COURT OF APPEAL

ST ALBAN CITY AND DISTRICT COUNCIL

- and -

SECRETARY OF STATE FOR COMMUNITIES AND  
LOCAL GOVERNMENT & ORS

## ORDER

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