



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

CO Ref: CO/6116/2013

In the matter of an application for Judicial Review

The Queen on the application of

**HELIOSLOUGH LIMITED**

versus

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

Defendant

**THE CITY AND DISTRICT COUNCIL OF ST ALBANS (1)  
HERTFORDSHIRE COUNTY COUNCIL (2)  
STRIFE LIMITED (3)**

Interested Parties

**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 and the Acknowledgement of service filed by the Defendant and the First Interested Party

Order by Mr John Howell QC (sitting as a Deputy High Court Judge)

**Permission is hereby refused.**

Reasons:

*Ground 1*

1. It is common ground that the time set by the Secretary of State in the applicable timetable within which the Secretary of State's decision on the appeal must be taken (June 30th 2012) has passed and that the Secretary of State had no power thereafter to vary that date in the applicable timetable.
2. The Claimant's contention in effect that the Secretary of State is accordingly under a statutory duty to determine the appeal forthwith after that date, regardless of the circumstances, is unarguable.
3. The relevant legislation imposes no express duty on the Secretary of State to take a decision on the appeal by the time set. It requires him to give written reasons explaining any such failure to the parties mentioned in paragraph 5(1) of Schedule 2 to the Planning and Compulsory Purchase Act 2004 and to Parliament: see paras 7 and 8 of that Schedule.
4. While the Secretary of State should no doubt vary the timetable before the date he has set for his decision if it appears likely that there are circumstances which are likely to prevent him taking it within the time set under paragraph 6 of that Schedule, it is unarguable that Parliament intended that his failure to do so would impose a duty on him to determine the appeal forthwith, regardless of the circumstances. Such a result would be inconsistent with the Secretary of State's duty to determine any appeal in the public interest having regard to all considerations that are material to the application for planning permission under consideration, an obligation that may require him to investigate matters further. He may not be able to discharge that duty immediately following the date he has previously set. That may not merely prejudice the parties to any appeal (who may not be at fault) but also the public interest in the determination of the appeal on its merits. Ground 1 is

accordingly unarguable.

#### Ground 4

5. It is not reasonably arguable that, given the statement in the letter dated March 29th 2012 (p777) that the Secretary of State "will now issue his decision on or before 13 June 2012", the Claimant had a legitimate expectation that it would be issued by then. When read in context there was no representation in language "clear, unambiguous and devoid of relevant qualification" such as would be necessary to found a legitimate expectation: cf *R (Bancoult) v Foreign Secretary (No.2)* [2009] 1 A.C. 453 per Lord Hoffmann at [60]. It was necessarily implicit in thus setting a date under the applicable timetable that it might be subsequently varied or that the Secretary of State might fail to comply for reasons which he would have to provide. Ground 4 is accordingly unarguable.

#### Ground 2

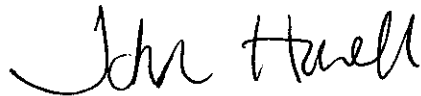
6. It is arguable that the Secretary of State is under a public law duty to determine any appeal within a reasonable time. The issue is whether he was in breach of that duty by the time this claim was issued.
7. In his letter dated December 20th 2012 indicating that he was minded to grant planning permission, the Secretary of State indicated that a planning obligation was required to be obtained first since the imposition of the two conditions which the Claimant had proposed in its place would be contrary to paragraph 13 of Circular 11/95 (p864). Although the Claimant initially sought to obtain such an obligation, on February 28th 2013 it invited the Secretary of State to take a decision on its appeal (supplying him with an Opinion to the effect that a negative condition could lawfully be imposed and was not in conflict with paragraph 13 of Circular 11/95). St Albans City Council made submissions in response on March 28th 2013. These the Claimant has not produced. This claim was filed on May 20 2012.
8. In normal circumstances the subsequent delay in dealing with the latest representations on the matters which the "Condition 33" issue is likely to raise might not be unreasonable. However, but for one thing, I would have found that it was at least arguable that in the particular circumstances of this case the delay was unreasonable given the background of how this issue had been dealt with before the Secretary of State's letter dated December 22nd 2012.
9. Following the making of the application for planning permission over 4 years ago in April 2009, the "condition 33 issue" had been canvassed at a public inquiry in 2009 and by the Inspector in his report dated March 19th 2010 (p158-9 at IR12.20-IR12.25). The Secretary of State had expressed conclusions on that issue in his initial decision letter dated July 7 2010 (p271). Following the quashing of that decision the Secretary of State invited further submissions on that point on September 15th 2011 (p560). St Albans Borough Council responded on that matter on October 14th 2011 (p586) and November 10th 2011 including the point that a condition in a negative form would lead to an unacceptable element of uncertainty (p740-2).
10. It was against that background that the Secretary of State repeated his views about paragraph 13 of Circular 11/95 in his letter dated December 20th 2012. Given the more general background of the delay in determining this appeal which had already occurred, the failure to comply with his own timetable and the extent to which the Secretary of State had previously considered the issues relating to the "Condition 33 issue", a further delay of nearly two months in reaching a conclusion in the light of the submissions by the Claimant and the Council might at least arguably have been unreasonable. The fact that there was a period in which, by convention, certain decisions are not announced does not at least arguably provide any reason why preparations for making it cannot be made.
11. The reason why in my judgment the Claimant has not shown an arguable case,

however, is that it has chosen not to produce the representations made by the Borough Council on March 28th 2013, thus making it impossible to ascertain the extent of the issues which it may have raised which the Secretary of State may have to deal. Whilst the failure of the Secretary of State and the Council to produce the relevant submissions with their Acknowledgements of Service is unimpressive, the burden remains on the Claimant to show that it has an arguable case.

*Ground 3*

12. Ground 3 seeks a declaration that there is no rational basis for the Secretary of State not to adopt the Claimant's approach to the "condition 33 issue". The question whether the Secretary of State may lawfully refuse to grant planning permission without a planning obligation entered into by the County Council and cannot reasonably refuse to grant it subject to one of the two alternative conditions put forward by the Claimant can only be answered on the basis of the circumstances which apply when the Secretary of State determines the appeal. The Claimant has no realistic prospect of obtaining the declaration sought, which is both hypothetical and premature, in the exercise of the court's discretion.

Signed



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

Solicitors:

Ref No.

01 JUL 2013

**Notes for the Claimant**

If you request the decision to be reconsidered at a hearing in open court, you must complete and serve the enclosed FORM within 7 days of the service of this order – CPR 54.12