



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

CO Ref: CO/2919/2017

In the matter of a claim for Planning Statutory Review

HANGERFORD TOWN COUNCIL

Claimant

versus **WEST BERKSHIRE COUNCIL**

Defendant

and

(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

(2) CALA MANAGEMENT LIMITED

(3) WATES DEVELOPMENTS LIMITED

Interested Parties

**Application for permission to apply for Planning Statutory Review
NOTIFICATION of the Judge's decision (CPR PD 8C 7.1 to 7.8)**

Following consideration of the documents lodged by the Claimant and the Acknowledgements of service filed by the Defendant and the First, Second and Third Interested Parties

Order by the Honourable Mr Justice Holgate

- (1) The Claimant's application for an extension of time within which to serve the claim is granted.
- (2) CALA Management Limited and Wates Development Limited are added as second and third Interested Parties and granted permission to file and serve their Acknowledgment of Service out of time.
- (3) The maximum amount which the Court may order the Claimant to pay in respect of the costs of these proceedings is capped at £10,000. The maximum amount of the Claimant's costs which the court may order to be paid by another party is capped at £35,000.
- (4) The costs of preparing the acknowledgment of service are to be paid by the claimant to the defendant, in the sum of £2,710. This is a final order as to costs unless within 14 days the claimant notifies the court and the defendant, in writing, that it objects to paying costs, or objects to the amount now ordered to be paid, in either case giving reasons. If it does so, the defendant has a further 14 days to respond to both the court and the claimant, and the claimant the right to reply within a further 7 days, after which the defendant's claim for costs and any submissions in relation to it will be put before a judge to be determined on the papers, or at a hearing to reconsider the application for permission. Where the claimant seeks a reconsideration of the application for permission the above order now made as to costs will be final unless the claimant files the written representations referred to above or further order is made by the Court either at a permission hearing or as a consequence of the parties settling the claim and reaching agreement as to costs.
- (5) Permission is hereby refused.

Reasons:

- (1) Initially the Defendant (but no other party) argued that the claim was barred by the 6 weeks "ouster clause" because although the claim had been issued in time, it had not been served in time. It appears from the D's letter of 1/8/17 that it no longer argues that service as well as issue must be effected inside the 6 weeks' time limit. That was decided in Corus [2006] EWCA Civ 1775. No objection is now made to the modest extension of time which I grant.

- (2) It is appropriate to make the PCO under CPR 46.16 to 46.19. Given the nature of the grounds pleaded in this case, this is not an Aarhus Convention claim as defined in the CPR.
- (3) Only the Defendant has sought an order for costs of its AOS. The costs order sought is reasonable.
- (4) Despite the prolixity of the grounds, the claim is really a barely disguised attempt to reargue the planning merits of the Inspector's decision. Each of the AOSs advances cogent points which comprehensively demonstrate that each of the allegations made is completely unarguable. I see no point in summarising those points here. They have been clearly set out in the AOSs.
- (5) I would add that the claim relies upon a fallacious approach to the interpretation and/or application of a provision in development plan which states an objective of "conserving or enhancing X" and then asserts that there is a conflict with that objective if any degree of harm would be caused to X, albeit a level which the decision-maker judges to be acceptable (Preston New Road Action Group [2017] EWHC 808 (Admin)).

Signed

David Holgate

10 September 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, defendant's, and any interested party's solicitors on (date):

Solicitors:
Ref No.

26 SEP 2017

Richard Buxton Environmental & Public Law
HGF1-001/LF

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR PD 8C 7.8, you must complete and serve the enclosed FORM 86B within 7 days of the service of this order.



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

CO Ref no: CO/2919/2017

In the matter of a claim for Planning Statutory Review

HUNGERFORD TOWN COUNCIL

versus WEST BERKSHIRE COUNCIL

Notice of RENEWAL of claim for permission to apply for Planning Statutory Review (CPR PD 8C 7.4)

- 1. This notice must be lodged in the Planning Court Administrative Court Office, by post or in person and be served upon the defendant (and interested parties who were served with the claim form) within 7 days of the service on the claimant or his solicitor of the notice that the claim for permission has been refused.*
- 2. If this form has not been lodged within 7 days of service (para 1 above) please set out below the reasons for delay:*
- 3. Set out below the grounds for seeking reconsideration:*

4. Please supply

COUNSEL'S NAME:

COUNSEL TELEPHONE NUMBER:

Signed

Dated

Claimant's Ref No.

Tel.No.

Fax No.

**To the Planning Court Administrative Court Office, Royal Courts of Justice, Strand,
London, WC2A 2LL**

FORM 86B PLN