



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

CO/5878/2017

In the matter of an application for Judicial Review

THE QUEEN

on the application of

AMANDA JANE HILL

Claimant

versus

DERBY COUNTY COUNCIL

Defendant

ENVIROFUSION LIMITED

**Interested
Party**

**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 Acknowledgements of service filed by the Defendant and the Interested Party;

Order by the Honourable Mrs Justice Lang DBE

1. Permission is hereby refused.
2. This is an Aarhus Convention claim. The costs limits in CPR r. 45.43 apply and the Claimant's costs liability is limited to £5,000; the Defendant's costs liability is limited to £35,000.
3. The Claimant do pay the Defendant's costs of preparation of the Acknowledgment of Service in the sum of £2,500. This is a final order unless within 14 days the Claimant files at court and serves on the Defendant written objections to it. In that event, the Defendant has 14 days in which to file and serve a response and the Claimant has a further 7 days in which to file and serve a reply. A Judge will then make a final determination on costs, either on the papers or at a hearing of any renewed application for permission.
4. The Claimant do pay the Interested Party's costs of preparation of the Acknowledgment of Service in the sum of £2,500. This is a final order unless within 14 days the Claimant files at court and serves on the Interested Party written objections to it. In that event, the Interested Party has 14 days in which to file and serve a response and the Claimant has a further 7 days in which to file and serve a reply. A Judge will then make a final determination on costs, either on the papers or at a hearing of any renewed application for permission.
5. Where the Claimant seeks a reconsideration of the application for permission the above orders for costs will be final unless the Claimant files and serves the written objections 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.

Reasons:

Ground 1

The statutory requirements were complied with when the Officer's Report ("OR") was posted on the website and made available for inspection at the Council's offices five clear days prior to the meeting on 12 October 2017. Objectors were previously advised by a Council official that the OR would be available via a specific website link, but it was initially posted in a different part of the website. The Claimant and other objectors did not locate the OR until 9 October 2017, which was only 2 clear days prior to the meeting.

In my view, the Claimant has not established an arguable case of procedural unfairness, and has not suffered any prejudice. She had sufficient time to consider the report and to prepare for her 3 minute presentation to the Planning Committee ("PC"), as did other objectors. She claimed that she had insufficient time to obtain a legal opinion on the OR which she otherwise planned to do. I agree with the Defendant's paragraph 13 in its Summary Grounds of Resistance that prejudice could only arise thereby if the legal opinion would or could have identified some error of law in the OR. I have concluded that there is no arguable basis for a challenge to the lawfulness of the OR.

Section 31(3C)-(3D) of the Senior Courts Act 1981 apply. It is highly likely that the outcome would not have been substantially different if conduct complained of had not occurred.

Ground 2

This is the type of "hypercritical scrutiny" of an OR, "laboriously dissected in an effort to find fault", which the Court of Appeal deprecated in *St Modwen Developments Ltd v SSCLG* [2017] EWCA Civ 1643, per Lindblom LJ at [7]. It is unarguable that the members of the PC, with their local knowledge and knowledge of the proposal (including a site visit), were seriously misled by the OR or the Officer's oral advice, so that their decision would or might have been different (*Mansell v Tonbridge and Malling DC* [2017] EWCA Civ 1314, per Lindblom LJ at [42]). I agree with the point-by-point rebuttal in the Defendant's Summary Grounds of Resistance, paragraphs 17 to 20.

Ground 3

The Claimant has failed to establish an arguable case that the Council unlawfully failed to have regard to material considerations when making its decision.

Health and safety issues were dealt with under the separate environmental permit regime: see NPPF para. 122. In any event, objectors raised health and safety concerns in writing and orally and the officer responded, so these matters were known to the PC.

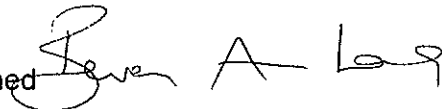
The PC was fully advised about emissions and air quality.

The report of Dr Rollason and the addendum were listed as objections to the application, were summarised in the OR, and were referred to by objectors. The PC would have been well aware of them.

The PC were made aware that the proposal was to have an opportunity to test the technology for a temporary period of 18 months only. It would have been obvious that any benefits of the proposal were potential benefits only.

Costs

As the Defendant accepts, the environmental issues mean that this is an Aarhus Convention claim. The Claimant is an individual of limited means and not supported financially by others. There is no proper basis upon which to increase the standard costs limit of £5,000. The costs claimed by the parties have been reduced so as to bring them within the £5,000 limit.

Signed 
20.1.18

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.

31 JAN 2018

Ref: ER/WB/JH

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed FORM 86B within 7 days of the service of this order. A fee is payable on submission of Form 86B. **For details of the current fee see the Court website.** Failure to pay the fee or lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

