



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

CO Ref no: CO/5878/2017

In the matter of a claim for Judicial Review

The Queen on the application of

HILL

versus DERBY CITY COUNCIL

Notice of RENEWAL of claim for permission to apply for Judicial Review (C P R 54. 12)

1. *This notice must be lodged in the 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 the claim was issued on or after 7 October 2013, a fee is payable on submission of Form 86B. 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>*
3. *If this form has not been lodged within 7 days of service (para 1 above) please set out below the reasons for delay:*

4. *Set out below the grounds for seeking reconsideration:*

See attached.

5. *Please supply*

COUNSEL'S NAME: Thea Osmund-Smith, No5 Chambers

COUNSEL TELEPHONE NUMBER: 0845 241 5258

Signed *Richard Buxton* Dated 06/02/2018

Claimant's Ref No. JBE1-001/RB

Tel.No.01223 328933 Fax No. 01223 301308

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

FORM 86B

RECEIVED
01 FEB 2018
BY: _____

1. All three grounds are pursued by the Claimant. In particular, in respect of the first ground, there has been procedural unfairness and consequent prejudice arising from the way in which the Council published the Officer Report (“OR”) regardless of whether any other error of law is identified. The two legal opinions submitted in respect of the previous ORs had caused a review of the material to be presented to Committee and had prompted the submission of additional evidence.
2. If the points had been made to Committee that have been made as part of the Claim, it may well have persuaded members to refuse the application on its merits. See for example, the email from Councillor Lucy Care, at CB/206 who was not aware of the Rollinson Report on which the Claimant relies.
3. In respect of the second and third grounds, it is submitted that the combined effect of the errors in the OR and in the Officer’s oral advice were to seriously mislead the Committee, particularly in respect of the health and safety aspects of the proposals. The reasons for refusing permission cite paragraph 122 of the National Planning Policy Framework in stating the matters that were dealt with separately under the Environmental Permit. However, the Permit [CB/379-406] does not consider the risk of fire and explosion on the application site, and how that might be mitigated. It simply sets out [CB/386] what is to be done in the event of an incident or accident.
4. Similarly, there is no evidence that HSE has considered the risk of fire and explosion on site – no such conclusion can be drawn from the consultation response at CB258-360.
5. There is significant confusion in respect of the interplay between the Environmental Permit and the planning permission, which is not resolved by the Defendant’s Summary Grounds of Resistance (“SGR”). Members were told that matters of “health and safety” were **not** for the Permit (see SGR/40), and questions were raised by Members and answered by Officers at the Committee Meeting. The position of the Defendant (SGR para 20) is that the safe operation of the plant was for the Permit (SGR/20(f)) but that the concerns were known to the Council and it was for Officers to decide what information needed to be communicated to members in the written report (see SGR/20(g)). It does not answer the complaints that Members of the Committee were misled when asking specific questions, as they were entitled to, about the health and safety risks arising from the proposals.
6. Moreover, in respect of the Rollinson Report the email from Councillor Lucy Care [CB/206] - who was one of the more involved Members in the debate at Committee - was not aware of the Rollinson Report on which the Claimant relies. It cannot therefore be said that the planning committee would have been well aware of the Report.

7. For the reasons contained in the Statement of Facts and Grounds, and those above, the learned Judge was wrong to refuse permission and the Claimant requests that the matter is reconsidered at a hearing.
8. As to the orders for costs, the Claimant objects to the award of costs to the Interested Party – she reserves the point in relation to quantum of both awards. Objections will be particularized and served as required by the Order. It is suggested that the issue be adjourned to the oral hearing (as if permission is granted, they will become otiose).

No5 Chambers
Richard Buxton Environmental & Public Law
6.2.18