PTA Template 269C1 - First Appeal

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2024-001402**

HER MAJESTY'S COURT OF APPEAL CIVIL DIVISION
(GS 22.02.23)
[illegible]
30 Sep 2024
CA-2024-001402

THE KING ON THE APPLICATION OF, SEAN WILKINSON **–v–** **LONDON BOROUGH OF ENFIELD**

ORDER made by the Rt. Hon. Lord Justice Warby

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

Decision: Applications refused.

Reasons

1. An appeal would have no real prospect of success. On each of the three issues raised by the grounds of appeal the judge was plainly right for the reasons he gave. There is no compelling reason for the court to hear an appeal which would be bound to fail.

Ground 1 (impact of the 1967 Act Order)

2. The respondent decided to dispose of open land pursuant to s 123 of the 1972 Act. Its powers under s 123(1) are, on the face of it, broad and subject only to the provisions of that same section. A procedural restriction is prescribed by s 123(2A). The respondent followed the prescribed procedure. Was its decision nonetheless unlawful because it involved acting "otherwise than in accordance with" the 1967 Act Order within the meaning of s 131(2)(k) of the 1972 Act? The judge held that it was not, because the regime laid down by the 1967 Act Order is a permissive one that does not restrict or fetter the powers conferred by s 123 but is separate from and sits alongside those powers. In reaching that conclusion the judge addressed the issues carefully and comprehensively, analysing both the statutory language and the legislative history. The analysis in the judgment and in the judge's reasons for refusing permission to appeal is entirely convincing. The Grounds and Skeleton Argument provide no plausible basis for impugning that analysis.

Ground 2 (prior appropriation)

3. Appropriating land to a new purpose is a different process from disposing of land. Sections 122 and 123 are formally separate and distinct. Their language affords no reason to think that the powers conferred by the latter are subject to or dependent on compliance with the formal requirements that attach to the other. To the contrary, s 123(1) confers on councils a power to dispose of land "in any manner they wish" subject to "the following provisions of this section". None of those provisions has to do with the use to which the land is or is to be put. The judge's conclusion on this issue is consistent with and derives some support from the observations of Lord Scott in the *Oxfordshire* case (see J[199]-[200]). The applicant's contention that disposal by way of a lease is subject to the s 122 criteria is fully answered by the reasoning in J[205]-[209].

Ground 3 (failure to have regard to material consideration)

4. The judge was plainly entitled to find as a fact that the respondent did understand and have regard to the status of the land (or some of it) as public trust land and the legal impact its decision would have. Indeed, it appears to me that the judge was plainly right so to find. J[225]-[231] are entirely compelling.

Compelling reason

5. Ground 3 is case-specific and raises no point of general importance. Although grounds 1 and 2 relate to points of law with wider relevance I strongly suspect that their practical significance has been overstated in the Grounds and Skeleton Argument. In any event, the judge's reasoning and conclusions on these issues are clear and consistent with the case law. A decision of the High Court provides sufficient authority. There is no need for appellate review and affirmation in order to "settle" the issues (to quote the grounds). On the contrary, an appeal would involve delay, continued uncertainty, and consume substantial resources to no useful end.

6. The waste of resources would be all the greater if, as I am inclined to think, this case falls within the *Aarhus* regime (because the legislative provisions under consideration are environmental in the relevant sense). A

costs capping order would serve to increase the amount of irrecoverable expenditure for the respondent and interested party.

Costs capping

7. As indicated, I see force in the contention that this is an *Aarhus* case which would have justified a costs capping order had there been grounds of appeal with arguable merit. But given my conclusions on the merits the issue does not arise for decision.

Signed: BY THE COURT
Date: 30 September 2024

Notes

(1) Rule 52.6(1) 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) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

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