


**IN THE COURT OF APPEAL, CIVIL DIVISION**

REF: C1/2020/1345

Her Majesty's  
Court of Appeal

[SEAL]

03 NOV 2020

**KEEP BOURNE END GREEN –v– WYCOMBE DISTRICT COUNCIL AND OTHERS**
**ORDER made by the Rt. Hon. Lady Justice Andrews DBE**

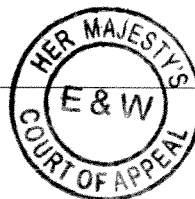
On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal and a costs capping order and for permission to amend to raise further grounds of challenge

**Decision:** refused.

An order granting permission may limit the issues to be heard or be made subject to conditions

**Reasons**

1. The judge was fully entitled for the reasons which he gave to exercise his discretion to refuse the very late application to amend the Statement of Facts and Grounds. He was unquestionably right to say what he did in paras 37-41 of his judgment below. Skeleton arguments should not be used as a substitute for pleadings especially when permission has been granted on specified grounds and the argument seeks to informally introduce new grounds. The judge was best placed to assess whether the points had been properly pleaded. A challenge to this unimpeachable exercise of judicial discretion stands no prospect of success. Moreover, the prolix and diffuse skeleton argument on appeal fails to identify any proper basis for interference with that discretion. The points raised at 99-101 provide no arguable basis for such a challenge but rather seek to argue that the judge was wrong to find the grounds had not been pleaded (which is not a ground of appeal) or that he took the wrong view of their merits. That is not a valid ground for impeaching the exercise of judicial discretion either. Irrespective of the merits, the judge was still entitled to take the view that the grounds of challenge could and should have been raised earlier and to refuse to entertain them as a matter of good case management
2. The judge cannot conceivably be criticized for failing to allow an amendment to run a further ground of challenge which was not even included in the draft amended Statement of Facts and Grounds that was put before him for consideration. An appeal should not be used as a means of trying to introduce by the back door arguments that were neither formally raised nor permitted to be raised by the judge. An amendment at this stage of the proceedings to allow the proposed new paragraph 147 would not serve the interests of justice and would be contrary to the overriding objective. If the applicant had wished to raise this ground it should have made that application to the judge. It is plain that ample opportunity was given to the applicant to put its tackle in order.
3. The Judge's grounds for refusing permission to appeal explain clearly why an appeal would have no prospect of success and I endorse them without repetition. The Judge decided that the 2014-based Household Projections remained the correct starting-point for the assessment of OAN and that decision cannot be impugned. There is no engagement with the Judge's analysis which properly applied the principles set out in the relevant Supreme Court and Court of Appeal authorities. The applicant's approach is overly forensic and flies in the face of those authorities. The Secretary of State has cogently explained the lack of merit in Ground 1 and Ground 2 cannot arise if Ground 1 does not get off the ground. The remaining grounds are little more than attempts to re-argue points that the judge comprehensively refuted for good reasons.
4. This case does not raise important issues of principle. The law does not require clarification and the judge's observations are not setting down any wider precedent. The judge was right to castigate the suggestion that it does as "spurious". There is no compelling reason for an otherwise unmeritorious appeal to be considered by this Court.
5. Since permission to amend and permission to appeal have been refused the question of costs protection does not arise.

**Information for or directions to the parties**


**Mediation:** Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? Yes/No (delete as appropriate)

Pilot categories:

- All cases involving a litigant in person (other than immigration and family appeals)
- Personal injury and clinical negligence cases;
- All other professional negligence cases;
- Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;
- Boundary disputes;
- Inheritance disputes.
- EAT Appeals
- Residential landlord and tenant appeals

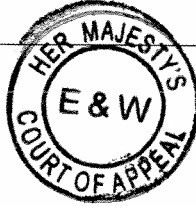
If yes, is there any reason not to refer to CAMS mediation under the pilot? Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation? Yes/No (delete as appropriate)

**Where permission has been granted, or the application adjourned**

- a) time estimate (excluding judgment)
- b) any expedition



Signed:

Date: 30 October 2020

**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).

Case Number: **C1/2020/1345**

*By the Court*

DATED 30TH OCTOBER 2020  
IN THE COURT OF APPEAL

**ORDER**

Copies to:

Appellant in Person

Sharoe Pritchard Solicitors  
William Rose  
Dx 353 London/Chancery Lane  
Ref: WMHR/253.78

Government Legal Department  
Matthew Hunt  
Dx 123243  
Westminster 12

Eversheds Sutherland  
Matthew Nixon  
One Wood Street  
London  
EC2V 7WS

Fladgate Solicitors  
16 Great Queen St  
Holborn  
London  
WC2B 5DG  
Ref: MSH/34464/0004

Lower Court Ref: CO/3809/2019