



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

CO Ref:
CO/3783/2019

In the matter of a claim for Planning Statutory Review

ERIC SCOTT

versus

(1) WYCOMBE DISTRICT COUNCIL

(2) SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL
GOVERNMENT

AND

DANDARA LIMITED

**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 Amended Acknowledgements of service filed by the First Defendant and Interested Party

Order by Lieven J

- 1. Permission is hereby refused.**
- 2. The Claimant has a cap on its costs liability of £10,000.**
- 3. The Claimant to pay the First Defendant's costs in the total sum of £10,000**

Reasons

1. I agree with the Defendant and the Interested Party that the grounds of challenge amount to a challenge to the merits of the decision, rather than disclosing any arguable error of law.
2. Ground one – that the D erred in law by concluding that the proposed development was not “major development”. The grounds raised appear to be a restatement of the representations that the Claimant and others made to the Inspector in respect to the form of existing development, topography and landscape. All the relevant matters were set out in the AONB report. The allegation is now one of perversity, which is a particularly difficult test to meet in the context of a planning decision, largely if not wholly turning on the Inspector (and Council's) planning judgment.
3. I do not think that the Defendant misunderstood the position of the CCB as to whether the development was major development. As the D says, the CCB did not state a clear and unequivocal view on that precise issue.

4. To the degree that there is a reasons challenge on this ground, as Ouseley J

explained in Cooper Estates 2017 EWHC 224 the Inspector in a local plan examination does not have to spell out the response to every point made by each objector, or every argument. S/he has to deal with the major issues that go to soundness. That has been done.

5. Ground Two – that there were no exceptional circumstances to justify removal from the Green Belt. I accept the point made by D and the IP that the relevant policy context is the 2012 NPPF and not the 2019 version. But in any event, the ground is unarguable particularly in the light of Calverton Parish Council 2015 EWHC 1078, and the need to look at the issue of exceptionality with regard to the whole picture. The Inspector went through the correct exercise in her report and she was not required to disregard the wider context of the level of objectively assessed need.
6. Ground Three – failure to properly consider alternatives. The D had undertaken a sustainability appraisal, which was before the Inspector. The Inspector referred to every effort having been made to identify suitable land outside the Green Belt. The RAF site which the Claimant refers to had been considered through that process.
7. None of these grounds is arguable.
8. Costs –the Claimant seeks a PCO under CPR45.43. The Claimant applies for its costs of both the AoS and the Amended AoS in a total sum of £6325 plus £5266. The Second Interested Party applies for £34,640 plus VAT.
9. The Claimant is entitled to a PCO, this being an Aarhus claim, and seeks the cap of £10,000. This is ordered.
10. The First Defendant is entitled to its Mount Cook costs. Although the costs of the amended AoS seem rather high compared with the original AoS, given the cap of £10,000, I will make an order for the Claimant to pay the First Defendant's costs in the sum of £10,000.
11. The Interested Party is not entitled to its costs. The general principle in cases such as this is that only one set of costs is usually appropriate. The First Defendant was fully able, and did, respond to all the points in the claim and there is no basis to order a second set of costs.

Signed  27/11/19

*delete where not applicable

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): **29 NOV 2019**

Solicitors:
Ref No.

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.