

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/6460/2006

Before the Honourable Mr Justice Jackson.

BETWEEN:

R (on the application of) Lord and Lady Hart of Chilton

Claimants

- and -

Babergh District Council

Defendant

- and -

Caverswall Holdings Limited

Interested Party



JUDGMENT AND CONSENT ORDER

UPON the decision of His Honour Judge Gilbert Q.C. (sitting as a Deputy Judge of the High Court) of 1st December 2006 granting permission to the Claimants to apply for judicial review on grounds (i)(a) and (b), (ii) and (iii) of the Statement of Grounds and Reasons and

UPON the parties through their Solicitors agreeing terms in writing

IT IS BY CONSENT ADJUGED THAT:

- 1 The approval by Babergh District Council of reserved matters issued on 12 June 2006 under outline planning permission B/01/01747/OUT dated 13 May 2002 in relation to land at County Farm (East) fronting Church Field Road, Chilton, Sudbury (the "Decision") be quashed with immediate effect

and

IT IS ORDERED BY CONSENT THAT:

- 2 The Defendant submits to Judgment pursuant to paragraph 60(3)iv(b) of the Claimants Statement of Grounds and Reasons, namely that the Defendant's screening opinion dated 12

April 2005 issued in the name of the Head of Planning Control was defective in that the Planning Officer issuing the screening opinion erred in law in taking into account criteria other than the criteria in Annex (iii) of the Directive and for screening Schedule 2 development set out in Schedule 3 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

3 The quashing of the Decision is without prejudice to the Claimant's other grounds as set out in the Statement of Grounds and Reasons, namely:-

Grounds i(a) and (b) being the conditions which can be imposed on any reserved matters approval; and

Grounds (ii) and (iii) mentioned in paragraphs 56, 59, 60(1), 60(2) and 60(3)(i), being the failure to comply with the EU Directives; and

Grounds (iv)(a), (iv)(b), (iv)(c) and (v).

4 The Claimants application under CPR 54.12(3) for reconsideration of the decision of His Honour Judge Gilbart Q.C.'s refusing permission in respect of Grounds (iv)(a), (iv)(b), (iv)(c) and (v) be withdrawn.

5 The costs of this claim be paid by the Defendant to the Claimants, such costs to be the subject of detailed assessment if not agreed by the parties and to be paid within 14 days of such agreement or assessment.

DATED 30th ~~February~~ 2007
March

<p><i>Norton Rose</i> <i>Jalene Jones</i></p> <p>Norton Rose Solicitors for the Claimants Kempson House Carnomile Street London EC3A 7AN Ref: VEMD/LN01642</p>	<p><i>Barlow Lyde & Gilbert</i></p> <p>Barlow Lyde & Gilbert Solicitors for the Defendant Beaufort House 15 St Botolph Street London EC3A 7NJ Ref: 82654-309/NKC/SLCR/3.58</p>	<p><i>Thomas Eggar</i></p> <p>Thomas Eggar Solicitors for the Interested Party 76 Shoe Lane London EC4A 3JB Ref: LT/0522/RJAB/45041765</p>
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Approved
[Signature]

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ADMINISTRATIVE COURT

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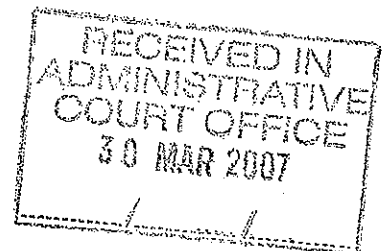
Caverswall Holdings Limited

Interested Party

JUDGEMENT AND CONSENT ORDER

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Ref: VEMD/LN01642





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

CO Ref:

CO/6460/2006

In the matter of an application for Judicial Review

The Queen on the application of

LORD AND LADY HART OF CHILTON

versus BABERGH DISTRICT COUNCIL

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 Acknowledgement(s) of service filed by the Defendant and / or Interested Party]

Order by the Honorable Mr Justice

HH Judge Gullant QC

Permission is hereby granted / ~~refused~~ (*delete as appropriate)

Observations:

see attached

Permission is given on some grounds only

Case suitable for hearing by a Deputy High Court Judge**

Criminal case suitable for hearing by a Single Judge**

Case is considered to be totally without merit**

Hearing to be expedited**

Directions as to expedition or other matters:

**Tick if applicable

Andrew Gullant QC

01 DEC 2006

Signed

Where permission to apply has been granted, claimants and their legal advisers are reminded of their obligation to reconsider the merits of their application in the light of the defendant's evidence.

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors: NORTON ROSE
Ref No. vemd/hkkv/ln01642

Notes for the Claimant

- (1) Where the Judge has refused permission a claimant or his solicitor may request the decision to be reconsidered at a hearing by completing and returning form 86B within 7 days of the service upon him of this notice.
 - (2) If permission has been granted the claimant or his solicitor must within 7 days of the service upon him of this notice, lodge a further fee of £180.00, or a Fees exemption certificate if appropriate, to continue the proceedings. Failure to pay the fee or lodge a certificate within the specified period may result in the claim being struck out.
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Note to Defendants and Interested Parties

- (1) Where permission has been granted, a defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve –
 - (a) detailed grounds for contesting the claim or supporting it on additional grounds; and
 - (b) any written evidence,within 35 days after service of the order giving permission.

CO/6460/2006

THE QUEEN
(ON THE APPLICATION OF
LORD AND LADY HART OF CHILTON)

V

BEBERGH DISTRICT COUNCIL
AND
CAVERSWALL HOLDINGS LIMITED (INTERESTED PARTY)

OBSERVATIONS OF SINGLE JUDGE

1. This application is a substantial one and covers many grounds. If permission is granted, I agree with the Defendant and the Interested Party that I should consider whether permission should be granted on some rather than all grounds. I have granted permission on grounds (i), (ii) and (iii) and refused it on the other grounds.

Ground (i) (a) and (b)- the ability to impose conditions

2. It is strongly arguable that the Defendant Council wholly misunderstood the principles of law relating to the scope of conditions at the reserved matters stage. The outline application and permission were quite unspecific about the amount, disposition or mix of the proposed B1, B2 and B8 development. I have found it more difficult to see how there is any arguable defence to this aspect of the claim.

Ground (ii) – the effect on Chilton Hall

3. I consider it arguable that the effect on the setting and character of the Hall and its grounds, in terms of landscape, visual effects and noise, was not properly addressed by the Council, having regard to the 1990 Act, PPG 15, the Development Plan and the emerging Local Plan.

Ground (iii)- failure to comply with EC Directive 85/337

4. In the light of C-290/03 R (Barker) v Bromley BC and C-508/03 EC Commission v the United Kingdom it is now strongly arguable that the traditional UK approach to reserved matters – i.e. that a reserved matters application is not an application for development consent which requires environmental assessment- is wrong. This case bears out why that may be so. A proposal for 37,000 m2 of mixed industrial development close to listed buildings of considerable quality has been approved without any environmental assessment.
5. I think it arguable that the screening opinion was one which no reasonable authority could have issued.. I also consider that the fact of the previous permission is not material to the issue of whether an EIA was required. The issue is to consider what the effects of the proposed development would be,

and whether they would be significant, not whether they would be acceptable in planning terms.

6. The delegation point is arguable, but the parties should also have regard to the judgement of Schiemann J in Cheshire CC v Sec of State for Env't [1988] JPL 30

Ground (iv) (a) Access

7. I do not consider this ground arguable. The outline consent, and the application for consent, were silent on the number of accesses. Permission is refused on this ground.

Ground (iv) (b) layout plan

8. I do not consider this ground arguable. The Plan showed what the condition required. Permission is refused on this ground.

Ground (iv) (c) Condition 17

9. I do not consider this ground arguable. In any event even if made out I would not conceive of exercising discretion in favour of the Claimants on this ground, which has no effect on their interests as occupiers/owners of Chilton Hall, not as users of bus stops or cycleways through the proposed industrial development. Permission is refused on this ground.

Ground (v) Highways Matters

10. No reasons are advanced by the Claimant why this is objectionable. In their absence I do not consider this ground arguable. Permission is refused on this ground.

Andrew Gilbert QC
Sitting as Deputy High Court Judge

30^h November 2006