



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

CO Ref:
CO/40/2016

In the matter of an application for Judicial Review

The Queen on the application of CHRISTOPHER CHAPPELL	Claimant
versus	
LONDON BOROUGH OF BROMLEY BIGGIN HILL AIRPORT LIMITED	Defendant Interested Party

**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 Honourable Mr Justice Gilbert

Permission is hereby refused.

Reasons:

1. This claim relates to the terms of a lease by the Defendant Council of its land to BHAL. It does not relate to any decision under the Planning Acts or any other statutory regime.
2. The operating conditions at the airport have the potential to affect those in the wider area. It is arguable (without deciding the point) that a decision by the Council to permit extended hours of flying and/or numbers of ATMs is susceptible to judicial review. But if it is susceptible, it is so only on standard public law grounds. It is not possible to import statutory criteria derived from legislative codes as a means of determining whether there has been an error of law or some other public ground. In particular, this was not a planning decision, let alone one about Green belt policy
3. Further, it is important to understand that judicial review is not a way of assessing the merits of a decision. It is directed to considering whether it reveals any error of law, and whether it was properly reached. The merits of the decision are for the democratically elected Council, not a Court.
4. I turn now to the issue of whether the application shows that there are public law grounds to interfere. It is my very firm view that there are no such grounds.
5. The papers show that the proposal was made the subject of extensive consultation.
6. The papers show that the Defendant Council also took advice from noise experts on the effect of the changes on noise contours and the other effects of increased activity. The work undertaken was comprehensive and addressed all relevant criteria for the consideration of aircraft noise and its effect on those in the area.
7. The arguments raised by the Claimant are actually arguments on the merits. There is nothing in the papers to show or suggest that the public consultation was not properly conducted, nor that the reasoning was inadequate, nor that the decision made was irrational.
8. Even if I had thought that there were arguable grounds, I would have refused permission on the grounds of delay, and on the grounds of the breach of CPR 54.7 on the time for service. No pre-action protocol letter was sent. This decision was made on 25th November 2015, but these proceedings, while issued on 5th January 2016 were not served until 26th February 2016, or just over three months after the decision. They should have been served by 12th January 2016. They have still not been served on BHAL, which is plainly an Interested Party.
9. While the Claimant contends that this is not an Aarhus claim (see Claim Form section 6) he asks for a Protective Costs Order. If I were granting permission to apply for judicial review, I would not have granted it without knowing more about

those whom the Claimant represents.

10. This is not a case for the Planning Court. I direct its transfer to the ordinary Administrative Court list.
11. It is one where the Claimant should be expected to pay the Defendant's costs pursuant to *R (Mount Cook (Ltd) v Westminster City Council [2003] EWCA Civ 1346*. The costs of preparing the Acknowledgment of Service are to be paid by the Claimant to the Defendant. The full costs are assessed in the sum of £2000.00 (not £3400 as claimed), unless within [14] days the claimant notifies the court and the defendant, in writing, that it objects to paying costs, or as to the amount to be paid, in either case giving reasons. If it does so, the defendant has a further [14] days to respond to both the court and the claimant, and the claimant the right to reply within a further [7] days, after which the claim for costs is to put before a judge to be determined on the papers

Signed


*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):

Solicitors:

• - 7 JUL 2016

Ref No.

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed FORM 86B within 7 days of the service of this order. A fee is payable on submission of Form 86B. ***For details of the current fee see the Court website***. 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>