

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW))

IN THE MATTER OF AN APPLICATION BY KINNEGAR RESIDENTS ACTION GROUP, PARK ROAD AND DISTRICT RESIDENTS ASSOCIATION, OLD STRANMILLIS RESIDENTS ASSOCIATION, BELFAST HOLYLAND REGENERATION ASSOCIATION AND CULTRA RESIDENTS ASSOCIATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A RECOMMENDATION AND REPORT BY W H WALKER CBE C Eng FI Struct E (Chairman), C SWAIN OBE MA(Cantab) MPhil FRTPi and S McDOWELL CBE AS MEMBERS OF THE EXAMINATION IN PUBLIC PANEL (EiP PANEL) IN RESPECT OF ISSUES RELATING TO THE BELFAST CITY AIRPORT PLANNING AGREEMENT 1997

AND IN THE MATTER OF A DECISION BY THE DEPARTMENT OF THE ENVIRONMENT PLANNING SERVICE ON THE 30TH JUNE, 2003 PURSUANT TO ARTICLE 41 OF THE PLANNING (NORTHERN IRELAND) ORDER 1991

NOTICE OF MOTION

TAKE NOTICE that pursuant to the leave of Mr Justice Weatherup granted on 29th March 2007 the Court will be moved on 12th September 2007 by counsel on the applicant's behalf for an Order for the following relief:

- (i) An Order of Certiorari quashing the determination issued to BCA by the Department of Environment/Planning Service on or about 30th June 2003 pursuant to Article 41 of the Planning (Northern Ireland) Order 1991 stating that an application for planning permission was not required on the basis that an increased offer of seats for sale does not constitute development.
- (ii) An Order of Certiorari quashing the recommendation made at paragraphs 5.6.37 and 7.1.11 of the EiP Panel Report that seats for sale from BCA should be increased from 1.5 million per annum to 2.0 million per annum.
- (iii) A Declaration that the recommendation of the EiP Panel at paragraphs 5.6.37 and 7.1.11 of the Report is based on an assumption outlined at paragraph 5.6.31 which is both factually and legally incorrect.

- (iv) A Declaration that an increase in the seats for sale at Belfast City Airport from 1.5 million to 2 million, as recommended by the EiP report would constitute "development" as defined in Article 11 of the Planning (Northern Ireland) Order 1991.
- (v) A Declaration that the Department of Environment erred in law in convening an Examination in Public to consider amendments to the 1997 Planning Agreement when the proper action was a formal planning application and a new Environmental Impact Statement and/or a public inquiry pursuant to Article 31 of the Planning (Northern Ireland) Order 1991.
- (vi) An Order of Mandamus requiring the EiP Panel to reconsider the recommendations made in relation to increased seats for sale.
- (vii) An Order of Prohibition preventing the Department of Environment from acting in reliance upon the recommendation contained at paragraphs 5.6.37 and 7.1.11 of the present EiP Report that the number of seats for sale from BCA be increased from 1.5 million to 2 million.
- (viii) Further or other relief;
- (ix) Costs.

The grounds on which the said relief are sought are as follows:

- (i) The EiP Panel have erred in law in that:
 - (a) they have wrongly assumed at paragraph 5.6.31 of the EiP Panel Report that if BCA had requested an increase in seats for sale at the time of the planning application for the replacement passenger terminal in 1999 that this would have been capable of being negotiated through a new Planning Agreement without the need for a formal planning application. Planning Service officials unequivocally stated on 15th June 1999 that if BCA had not complied with the terms of the 1997 Planning Agreement in relation to the seats for sale limit then planning permission would not have been granted for the replacement terminal and a Public Inquiry would be necessary;
 - (b) On the basis of this false and incorrect assumption the EiP Panel made a recommendation at paragraphs

5.6.37 and 7.1.11 of the EiP Panel Report that there should be an increased level of 2 million seats for sale which is 500,000 above the current limit of 1.5 million.

If this recommendation were carried through by the Department it would result in significant further growth by the Airport being permitted without the need for a planning application, a new Environmental Impact Statement and/or a public inquiry pursuant to Article 31.

- (ii) The EiP Panel have acted in a procedurally improper manner in that:
 - (a) The EiP Panel failed to take into account as a material consideration in making a revised recommendation in respect of the seats for sale figure that the submitted application for a replacement terminal made by BCA in 1999 was accompanied by an assurance that the BCA would continue to operate within the terms of the extant Planning Agreement. This Agreement made pursuant to Article 40 of the Planning (Northern Ireland) Order 1991 stated that BCA will permit airlines to offer for sale seats for no more than 1.5 million passengers per annum;
 - (b) The EiP Panel failed to give due consideration to the fact that if the BCA had retreated from the statement which accompanied their planning application in 1999 for a replacement Terminal, that they were intending to abide by the terms (including the 1997 seats for sale requirement) then it would have been necessary to bring the issue back before a Public Inquiry and planning permission would not have been granted on the terms that it was or at all.

- (iii) The Department of the Environment ("The Planning Service") have erred in law in issuing an Article 41 determination on or about 30th June 2003 stating that an application for planning permission was not required on the basis that an increased offer of seats for sale does not constitute "development".

- (iv) The Planning Service have acted in a procedurally improper manner in:
 - (a) Failing, despite being asked in writing, to advise or inform the Applicants prior to the commencement of the Examination in Public in May 2006 that BCA had sought an Article 41 determination in March 2003;

- (b) Failing, despite being asked in writing, to advise or inform the Applicants prior to the commencement of the Examination in Public in May 2006 that an Article 41 determination had issued to BCA on or about 30th June 2003 indicating that an application for planning permission would not be required prior to an increased offer of seats for sale;
- (c) Failing to advise the Minister who decided to convene the Examination in Public in December 2005, rather than convene a Public Inquiry which was supposedly under consideration, that an Article 41 determination had, in fact, issued on 30th June 2003.

AND take notice that on the hearing of this motion the Applicant will rely upon the affidavits filed by Mr Herbert McCracken.

SIGNED.....

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BELFAST.