

G.W.CHAPMAN LL.M., D.B.A., Dip.L.G., M.C.M.I., Solicitor
Deputy Chief Executive and Director of Customer Corporate Services
Dirprwy Brif Weithredwr a Chyfarwyddwr Gwasanaethau Corfforaethol Cwsmeriaid

Richard Buxton
Environmental and Public Law
19B Victoria Street
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CB1 1JP

MERTHYR TYDFIL COUNTY BOROUGH COUNCIL
CYNGOR BWRDEISTREF SIROL MERTHYR TUDFUL

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Dyddiad/Date : 5th November 2008

Ein Cyf/Our Ref.: GM/PLA 173

Llinell Uniongyrchol/Direct Line : (01685) 725301

Ich Cyf/Your Ref.: PS/CND-2

Gofynnwch am/Please Ask For : Geraint Morgan
e-bost/e-mail: geraint.morgan@merthyr.gov.uk

Dear Sir,

Re: Cwmbargoed Disposal Point – Judicial Review

We note your invitation to consent to an Order quashing the council's decision. We have to inform you that your claim is considered to be wholly without foundation and as such the Council will not be consenting to judgment as you have requested.

The Council will also oppose the Protective Costs Order that you are seeking.

We should also advise you that we are concerned with the contents of your claim and the procedure that you have followed.

We will be filing an acknowledgment of service within the appropriate time.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'G Morgan'.

G Morgan
For Head of Legal Services

c.c. DLA Piper
Caerphilly CBC
AN Davies
GW Chapman

RICHARD BUXTON

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Merthyr Tydfil County Borough Council
Ty Keir Hardie
Riverside Court
Ave de Clichy
Merthyr Tydfil CF47 8LW

Attn: Geraint Morgan

Your ref. GM/PLA 173

Our ref. PS/CND-2

Also by e-mail. geraint.morgan@merthyr.gov.uk

6th November 2008

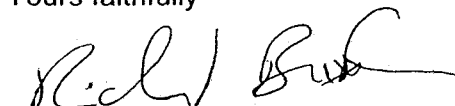
Dear Sirs

R (Condron) v Merthyr Tydfil CBC & others CP/10241/2008

Thank you for your letter of 5th November 2008, and we note your comments on filing an acknowledgement of service within time.

We will proceed with preparing the detailed statement of grounds and a claim bundle which we will aim to file and serve next week. You may wish to wait until you receive this before serving your acknowledgement of service.

Yours faithfully



Richard Buxton

cc DLA Piper (Kate Hall)
Caerphilly CBC(Mr J Rogers)



Penallta House,
Tredomen Park,
Ystrad Mynach,
Hengoed.
CF82 7PG

Tŷ Penallta,
Parc Tredomen,
Ystrad Mynach,
Hengoed.
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Daniel Perkins LL.B
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Daniel Perkins LL.B
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Our Ref/Ein Cyf:
Contact/Cyslltwch â:
Telephone/ Ffôn:
E Mail/E Bost:
Date/Dyddiad:

PS/CND/2
GR/CL21950
Gareth Richards
01443 863020
Richag@caerphilly.gov.uk
11th November 2008

Dear Sir,

RE: CWMBARGOED DISPOSAL POINT – JUDICIAL REVIEW

I note your request for confirmation that this Council consents to an Order quashing its decision. I would inform you that I consider your claim to be wholly without foundation and as such the Council will not be consenting to judgement as you have requested.

The Council will also oppose the Protective Costs Order that you are seeking.

We should also advise you that we are concerned with the contents of your claim and the procedure that you have followed.

We will be filing an acknowledgement of service within the appropriate time. Please note that we are not disposed to wait for your full statement of facts before filing our evidence.

Yours faithfully,


For Head of Legal Services

c.c. DLA Piper
Merthyr Tydfil CBC

Director of Corporate Services: Nigel Barnett
Cyfa wyddor Gwasanaethau Corfforaethol: Nigel Barnett

RICHARD BUXTON

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Administrative Court Office
Royal Courts of Justice
Strand
London, WC2A 2LL

Your ref. CO/10241/2008

Our ref. PS/CND-2

17th November 2008

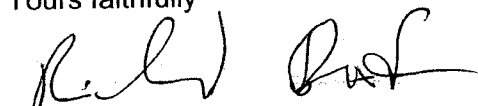
Dear Sirs

R (oao Condrón) v Merthyr Tydfil CBC & others, CO/10241/2008

Thank you for your letter of 3rd November 2008 and we enclose for the court file a claim bundle including:

- a) a claim bundle with index;
- b) a list of essential reading; and
- c) a detailed statement of facts and grounds.

Yours faithfully



Richard Buxton

cc Merthyr Tydfil CBC
Caerphilly CBC
DLA Piper (for Miller Argent (South Wales) Ltd)

G.W.CHAPMAN LL.M., D.B.A., Dip.L.G., M.C.M.I., Solicitor
Deputy Chief Executive and Director of Customer Corporate Services
Dirprwy Brif Weithredwr a Chyfarwyddwr Gwasanaethau Corfforaethol Cwsmeriaid

**MERTHYR TYDFIL COUNTY BOROUGH COUNCIL
CYNGOR BWRDEISTREF SIROL MERTHYR TYDFIL**

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Dyddiad/Date:

17 November 2008

Ein Cyf/Our Ref.: GM/PLA/173
Eich Cyf/Your Ref.: PS/CND-2

Llinell Uniongyrchol/Direct Line : (01685) 725301
Gofynnwch am/Please Ask For : Geraint Morgan
E-bost/E-mail : geraint.morgan@merthyr.gov.uk

By special delivery

Dear Sirs


**APPLICATION FOR JUDICIAL REVIEW
REFERENCE NUMBER CO/10241/2008: R (ON THE APPLICATION OF)
ELIZABETH CONDRON AND (1) MERTHYR TYDFIL COUNTY BOROUGH
COUNCIL (2) CAERPHILLY COUNTY BOROUGH COUNCIL AND MILLER
ARGENT (SOUTH WALES) LIMITED**

Further to the above matter, please find enclosed by way of service an Acknowledgement of Service and supporting documentation filed on behalf of the Interested Party Miller Argent (South Wales) Limited.

We confirm that these documents have been lodged at court today and served on DLA Piper UK LLP and Caerphilly County Borough Council.

Kindly acknowledge safe receipt.

Yours faithfully


Geraint Morgan
for HEAD OF LEGAL

Miscellaneous Letter



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Tredomen Park,
Ystrad Mynach,
Hengoed.
CF82 7PG

Tŷ Penallta,
Parc Tredomen,
Ystrad Mynach,
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Head of Legal
Services
Daniel Perkins LL.B
Solicitor

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Your Ref/Eich Cyf:

Our Ref/Ein Cyf:

Contact/Cyslltwch â:

Telephone/ Ffôn:

E-mail:

Fax Number:

Date/Dyddiad:

GR/DLG/CL21950

Mr. G. Richards

01443 863020

richag@caerphilly.gov.uk

01443 863154

17 November 2008

Dear Sirs,

Condron -v- (1) Merthyr Tydfil CBC, (2) Caerphilly CBC -v- Miller Argent
Case Number: CO/10241/2008

Please find enclosed Acknowledgement of Service together with accompanying documentation in relation to the above matter.

Yours faithfully,


For: Head Of Legal Services

Director of Corporate Services: Nigel Barnett
Cyfarwyddwr Gwasanaethau Corfforaethol: Nigel Barnett

Correspondence may be in any language or format • Gallwch ohebu mewn unrhyw iaith neu fformat

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Your reference

Our reference

KH/MAG/68560/120003
UKM/21834242.1

17 November 2008

By special delivery

Dear Sirs

**APPLICATION FOR JUDICIAL REVIEW
REFERENCE NUMBER CO/10241/2008: R (ON THE APPLICATION OF)
ELIZABETH CONDRON AND (1) MERTHYR TYDFIL COUNTY
BOROUGH COUNCIL (2) CAERPHILLY COUNTY BOROUGH COUNCIL
AND MILLER ARGENT (SOUTH WALES) LIMITED**

We act on behalf of Miller Argent (South Wales) Limited who is the Interested Party in the above proceedings. We enclose an Acknowledgement of Service in response to the claim form submitted on behalf of Elizabeth Condron.

We confirm that copies of the Acknowledgement of Service have today been served upon Merthyr Tydfil County Borough Council, Caerphilly County Borough Council and on Richard Buxton solicitors on behalf of the Claimant.

Yours faithfully

DLA PIPER UK LLP

c.c. James Poyner
Stephen Tillman
Rhodri Price Lewis QC
Richard Buxton
Geraint Morgan - Merthyr Tydfil County Borough Council
J Rogers - Caerphilly County Borough Council

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A list of members is open for inspection at its registered office and principal place of business, 3 Noble Street, London, EC2V 7EE and at the address at the top of this letter. Partner denotes member of a limited liability partnership.

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Richard Buxton
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19B Victoria Street
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Your reference

Our reference

KH/MAG/68560/120003
UKM/21834122.1

17 November 2008

By email and special delivery
pstookes@richardbuxton.co.uk

Dear Sirs

APPLICATION FOR JUDICIAL REVIEW
REFERENCE NUMBER CO/10241/2008: R (ON THE APPLICATION OF)
ELIZABETH CONDRON AND (1) MERTHYR TYDFIL COUNTY
BOROUGH COUNCIL (2) CAERPHILLY COUNTY BOROUGH COUNCIL
AND MILLER ARGENT (SOUTH WALES) LIMITED

We write further to your letter of 28 October 2008 enclosing your client's Judicial Review Claim Form.

We now enclose by way of service on you the following:

1. Judicial Review Acknowledgment of Service filed on behalf of our client, the Interested Party;
2. Summary grounds for contesting the claim.

These documents have been filed at court today.

We should be obliged if you would acknowledge receipt.

Yours faithfully

DLA PIPER UK LLP

c.c. James Poyner
Stephen Tillman
Rhodri Price Lewis QC
Geraint Morgan - Merthyr Tydfil County Borough Council
J. Rogers - Caerphilly County Borough Council

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Attn: Mr G Richards

Your ref. GR/DLG/CL21950

Our ref. PS/CND-2

also by e-mail. richag@caerphilly.gov.uk

20th November 2008

Dear Sirs

R (Condrón) v Merthyr Tydfil CBC & others CP/10241/2008

Thank you for your letter of 17th November 2008, enclosing the Council's grounds of defence.

There are one or two new points that arise from these and we will provide a formal reply to these shortly. In the meantime we would be grateful if you could confirm the present status of the conditions precedent contained in permission 08/0231/FULL. Details of these were requested in our letters of 27th October 2008 with a reminder on the 31st October 2008. You have written to us twice since then but still failed to provide the copy documentation or clarification of the points raised.

We enclose a copy of our letter for your convenience and look forward to hearing from you by return.

Yours faithfully



Richard Buxton

cc DLA Piper (Kate Hall)
Merthyr Tydfil County Borough Council (Geraint Morgan)

Administrative Courts Office
Royal Courts of Justice
Strand
London
WC2A 2LL

Your reference

Our reference

KH/JH/68560/120003

UKM/21953460.1

26 November 2008

Special Delivery and Fax - 0207 947 6330

Dear Sirs

APPLICATION FOR JUDICIAL REVIEW
REFERENCE NUMBER CO/10241/2008: R (ON THE APPLICATION OF)
ELIZABETH CONDRON AND (1) MERTHYR TYDFIL COUNTY BOROUGH
COUNCIL (2) CAERPHILLY COUNTY BOROUGH COUNCIL AND MILLER
ARGENT (SOUTH WALES) LIMITED

We act on behalf of the Interest Party in the above matter and have now had the opportunity of reading the Claimant's Statement of Facts and Grounds, which documentation was deliberately omitted from her Claim Form and which was not received by us until after the submission of our clients' Acknowledgement of Service and Summary Grounds for Contesting the Claim. The Claimant's Statement has a number of factual errors and misleading statements contained within it, and we correct these, following the paragraph numbering in her Statement.

1. **Paragraph 1.** The Claimant states: "Coal extraction is expected to last between 15-20 years.....". This is factually wrong as under the terms of the planning permission under which the Ffos y fran Land Reclamation Scheme ("FLRS") operates, coaling must cease within 15 years and 3 months, and restoration must be completed within 17 years 6 months, from commencement of development. Development actually commenced on 6 June 2007 and, therefore, coaling operations and the restoration of the site must be completed by September 2022 and December 2024 respectively.
2. **Paragraph 3.** The Claimant states: "As a consequence, the Claimant and other residents are likely to be more seriously affected by the adverse impacts of the opencast operations due to a significant expansion of operations". This is factually wrong and misleading in its implications; the applications the subject of this latest challenge by the Claimant, by their very nature cannot in any conceivable way have the effect of increasing or expanding the opencast operations of the FLRS.
3. **Paragraph 17.** The Claimant states: "The Claimant submits that there is likely to be significant environmental effects arising from the

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processing, washing and transportation of up to 1.5 million tonnes of coal per annum...". The figure of 1.5 million tonnes has been invented by the Claimant and is factually wrong. It is quite simply impossible to produce and process 1.5 million tonnes from the FLRS.

- 4. Paragraph 27.** The Claimant states: "The Claimant contends that this statement is wrong for the purposes of the EIA Regulations and Directive. While it may be the case that the applications can be considered separately, the proposal does have a bearing on the application for the development of Cwmbargoed Disposal Point. In particular it could well significantly increase the use and operations at the site over and above that anticipated without the proposal". This is factually wrong and clearly intended to mislead; there will be, as a matter of fact, no increase in either the use or the operation of the FLRS. The development permitted by these planning permissions cannot increase either the tonnage obtained or the quantities excavated, which are incapable of being altered by the treatment and distribution of the coal produced. The permitted tonnage for the FLRS output is up to 1,000,000 tonnes.
- 5. Paragraph 35.** The Claimant states: "...The permissions granted will enable the opencast operations at Ffos y fran to expand significantly and to nearly double the opencast operations originally envisaged by the Planning Inspector in 2004, ie from around 0.75-1 million tonnes of coal extraction per annum up to 1.5 million tonnes." This figure of 1.5 million tonnes has been invented by the Claimant and her advisers and bears no relationship to either the permitted reserves in the original permission for the FLRS, or to the development permitted by the permissions the subject of this latest challenge.

We ask therefore that the factual errors and misleading statements made by the Claimant in her Statement of Facts and Grounds are disregarded by the Court in its consideration of her Claim.

Yours faithfully

DLA PIPER UK LLP

c.c. Richard Buxton
Caerphilly County Borough Council
Merthyr Tydfil Country Borough Council
Hugh Jarrett - Legal Services Commission
James Poyner - Miller Argent (South Wales) Limited
Stephen Tillman- Miller Argent (South Wales) Limited
Pamela Smyth - The Miller Group Limited

Rhodri Price Lewis QC

RICHARD BUXTON

ENVIRONMENTAL & PUBLIC LAW

DLA Piper UK LLP
Princes Exchange
Princes Square
Leeds LS1 4BY

Your ref. KH/JH/68560/12003

Our ref. PS/CND-2

27th November 2008

Dear Sirs

R (Condrón) v Merthyr Tydfil CBC & others CP/10241/2008

Thank you for sending your copy letter to the Administrative Court.

We will reply to your Acknowledgement of Service shortly. However, we wish to record that we regard your allegations made of our client and, in particular, that she invented output of 1.5 million tonnes of coal as wholly inappropriate, the extent of coal processing is contained in your client's planning application. That said, we are grateful that you have highlighted matters that are of critical concern to our client.

To answer your allegations of non-disclosure; we advised you and the Defendants on 6th November 2008 that we would be serving a claim bundle with detailed grounds and that you may wish to wait until you receive this before serving your acknowledgement of service. The bundle was served on 17th November 2008, the date of your client's defence. There has been no deliberate omission of documentation by our client.

It is, however, that there is still material evidence yet to be disclosed by the 2nd Defendant. This relates to the permission of 18th June 2008 and whether or not certain conditions precedent have been approved. These are relevant because the permission does not formalise until the conditions have been satisfied. You will be aware that we have asked for details of the conditions three times since 27th October 2008. It is, of course, open to your client as well as the 2nd Defendant to provide us with the relevant information.

In relation to the level of coal extraction and processing; your client's planning application states that the proposal relates to the processing of 1.5 million tonnes of coal. In particular, paragraphs A1.6 and A1.7 provide:

Mineral processing

A1.6 Type and quantity of material to be processed on site

| Type | Maximum tonnes per annum |
|---|--------------------------|
| "This application relates to the processing of coal | 1.5m tonnes |

A1.7 Mineral products from processing:

| | | |
|---------------------------------|-----------------------------|------------------------|
| type a) Energy Generation | Estimated annual production | Up to 1,000,000 tonnes |
| type b) Domestic/Industrial | Estimated annual production | Up to 100,000 tonnes |
| type c) Potential other markets | Estimated annual production | Up to 400,000 tonnes |

27 . 12

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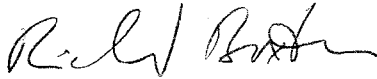
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Thus, while you may wish for parts of our client's statement of grounds to be disregarded, we will resist this. Further, we will also refer to your client's planning application in support.

We reserve the right to take further issue with your allegations. However, we do not wish to enter into detailed correspondence which, in our view, will only seek to inflame the dispute between the parties.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Richard Buxton', written in a cursive style.

Richard Buxton

cc Administrative Court
 Caerphilly County Borough Council (Mr J Rogers)
 Merthyr Tydfil County Borough Council (Geraint Morgan)
 Legal Services Commission (Hugh Jarrett)

Administrative Courts Office
Royal Courts of Justice
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Dyddiad/Date : 28th November 2008

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Ich Cyf/Your Ref.:

Gofynnwch am/Please Ask For : Geraint Morgan
e-bost/e-mail: geraint.morgan@merthyr.gov.uk

Dear Sirs,

Re: Application for Judicial Review

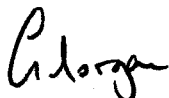
Reference Number CO/10241/2008: R (on the application of) Elizabeth Condon and (1) Merthyr Tydfil County Borough Council (2) Caerphilly County Borough Council and Miller Argent (South Wales) Limited

We consider that the approach to this case of the claimant and her advisors demonstrates a wilful disregard for almost any of the proper procedures under CPR 54 and the Practice Directions. The filing of initially Summary Grounds for the claim to be followed 21 days later by a full Statement of Grounds and numerous new documents not filed with Form N461 is we respectfully suggest contrary to the normal or required practice for Judicial Review.

We have sought Counsel's advice as to whether we should respond substantively to the new material and reserve the right to do so.

In the meantime we have seen the letter of 26th November 2008 from the interested party to the Court and wish to adopt its contents on behalf of the first and second defendants. We are equally dismayed by the apparent lack of understanding shown by the claimant and/or her advisors of the factual planning position in relation to the Ffos-y-fran site and the Cwmbargoed Disposal Point.

Yours faithfully,



G Morgan
For Head of Legal Services

c.c. Richard Buxton
Geoffrey Stephenson
Caerphilly County Borough Council

DLA Piper
Gareth Chapman
Norman Davies

RICHARD BUXTON

ENVIRONMENTAL & PUBLIC LAW

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Merthyr Tydfil County Borough Council
Riverside Court
Ave de Clichy
Merthyr Tydfil CF47 8LW

Attn: Geraint Morgan

Your ref. GM/PLA 173

Our ref. PS/CND-2

1st December 2008

Also by e-mail. geraint.morgan@merthyr.gov.uk

Dear Sirs

R (Condrón) v Merthyr Tydfil CBC & others CP/10241/2008

Thank you for the copy letter to the Court of 28th November 2008.

You and the interested parties appear to cloud the facts both before and after the permissions granted. The errors of law by both Defendants are quite clear and are central to the decisions taken. The Councils have failed to ask, as required and to the extent required by EU law, whether or not the proposals by the Interested Party are 'EIA development'. That is, they have failed to carry out the comprehensive screening assessment regarded as fundamental by the ECJ in *Commission v Italy* [2005]. Further, given the size, nature and location of the site and proposed activities it is highly likely that an EIA would be required had the Councils asked this question.

Conscious of the concerns raised in wasting public funds we issued proceedings on a summary basis; ie without preparing detailed grounds or claim bundle and in order that you could consent to judgment for minimum costs. You declined to do so. In our letter of 6th November 2008 (sent to all parties) we advised that we would issue a statement of grounds and claim bundle and that you may wish to wait to receive this before serving your acknowledgement of service. You chose not to. The claim bundle and grounds were served on 17th November 2008.

The parties' acknowledgements of service raise matters including choice of venue, claimant funding and earlier proceedings. Our client has a right to respond to these and we have drafted a summary reply. However, before we serve this we would be grateful if you could confirm whether or not you will be providing a further reply to our client's grounds. It seems sensible to deal with any further matters in our summary reply.

We ask that you provide any further response by 8th December 2008 (21 days from serving the claim bundle) bearing in mind that any acknowledgement should, in any event, be in summary form. If we have not received a further response by this date we will serve the summary reply.

Yours faithfully

Richard Buxton



cc Caerphilly CBC (Mr J Rogers), DLA Piper (Kate Hall), Administrative Court

27.15

RICHARD BUXTON

ENVIRONMENTAL & PUBLIC LAW

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Administrative Court Office
Royal Courts of Justice
Strand
London, WC2A 2LL

Your ref. CO/10241/2008

Our ref. PS/CND-2

1st December 2008

Dear Sirs

R (Condrón) v Merthyr Tydfil CBC & others, CO/10241/2008

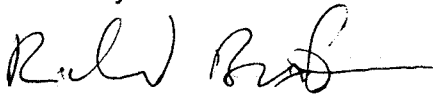
We act for the Claimant in the above matter.

We enclose a letter to the 1st Defendant dealing with matters raised in its letter to the Court of 28th November 2008. We ask that this matter is not considered by the Court until the Claimant has had the opportunity of providing a summary reply to new matters raised by the Defendants and Interested Party in their acknowledgement of service.

The 1st Defendant has indicated that it may serve further argument. We have suggested that any further correspondence be served by 8th December 2008. We will then aim to provide any summary reply on behalf of the Claimant by the 15th December 2008.

We trust that the above is acceptable. However, if you have any queries please do not hesitate to contact us.

Yours faithfully



Richard Buxton

cc Merthyr Tydfil CBC
Caerphilly CBC
DLA Piper (for Miller Argent (South Wales) Ltd)



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Environmental & Public Law
19B Victoria Street
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CB1 1JP

Your reference

Our reference

KH/JH/68560/120003

UKM/22060067.1

2 December 2008

By post and email - pas@richardbuxton.co.uk

Dear Sirs

**APPLICATION NO: P/08/0091:
REFURBISHMENT OF CWMBARGOED DISPOSAL POINT
PROPOSED CLAIM FOR JUDICIAL REVIEW**

We are in receipt of your letter of 27 November and, dealing firstly with your reference to "non-disclosure" and your claim that you advised ourselves and the Defendants that you would be serving a claim bundle, in your claim form to which our Acknowledgement of Service and Summary Grounds for Contesting the Claim responded, you stated in section 9 that:

"We are of view that the unlawfulness of both Defendants is a clear error of law and so have invited the Defendants to consent to judgement.

In the circumstances we have not prepared detailed Statement of Facts and Grounds, although we have set out the Claimant's Case for quashing the Decision in pre action correspondence (the attached).

We are serving this Claim Form on the basis that the Defendants consent to judgement"

Your Claimant and yourselves were fully aware that in correspondence both Defendants had confirmed that they would not be consenting to judgement. It was quite clear that there was a deliberate statement that the necessary documents were not being served, which is in breach of the procedures under CPR 54 and the Practice Direction.

As to the reference to the "level of coal extraction and processing.." (paragraph 5 of your letter of 27 November 2008) we would remind you of the statements made by your client in her Statement of Facts and Grounds where it said:

"The permissions granted will enable the *opencast operations* at Ffos-y-fran to expand significantly and to *nearly double the opencast coal operations* originally envisaged by the Planning Inspector in 2004, ie from around 0.75 - 1 million tonnes of coal extraction per annum up to 1.5 million tonnes." (our emphasis)

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As we stated in our letter to the Court, this statement is clearly intended to mislead the Court as the figures which you now quote in your letter of 27 November refer to materials which will be "*processed*" through Cwmbargoed Disposal Point, and which processing operations at such throughputs have taken place since 1957. The activities and the throughput of materials continue an existing use of the site and this was made clear in the planning applications to which this challenge relates.

This has no relationship whatsoever to the coal production which would arise out of the Ffos y fran Land Reclamation Scheme which was considered by the Inspector at the Public Inquiry in 2004 and which received planning permission from the National Assembly in 2005. It is, therefore, entirely misleading to transpose figures from a separate planning consent and draw the conclusion that those figures represent coal production from a completely separate scheme, the Ffos y fran Land Reclamation Scheme.

Yours faithfully

DLA Piper UK LLP

DLA PIPER UK LLP

cc: Royal Courts of Justice
Merthyr Tydfil County Borough Council
Caerphilly County Borough Council
Hugh Jarret, Legal Services Commission
Rhodri Price Lewis QC
James Poyner - Miller Argent (South Wales) Limited
Stephen Tillman - Miller Argent (South Wales) Limited
Pamela Smyth - Miller Group Limited

G.W.CHAPMAN LL.M., D.B.A., Dip.L.G., M.C.M.I., Solicitor
Deputy Chief Executive and Director of Customer Corporate Services
Dirprwy Brif Weithredwr a Chyfarwyddwr Gwasanaethau Corfforaethol Cwsmeriaid

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Dyddiad/Date : 4th December 2008

Ein Cyf/Our Ref.: GM/PLA 173

Llinell Uniongyrchol/Direct Line : (01685) 725301

Ich Cyf/Your Ref.:

Gofynnwch am/Please Ask For : Geraint Morgan
e-bost/e-mail: geraint.morgan@merthyr.gov.uk

Dear Sirs,

Re: Application for Judicial Review
Reference Number CO/10241/2008: R (on the application of Elizabeth Condon)
and (1) Merthyr Tydfil County Borough Council (2) Caerphilly County Borough
Council and Miller Argent (South Wales) Limited

We have considered the new Statement of Grounds and documents submitted by the applicant and this reply is sent on behalf of both the first and second defendants.

We do not wish to amplify our Summary Grounds of Opposition at this stage since they deal with the essential points in issue.

We have seen the letter of 4th December 2008 from the interested party to the Court and we entirely agree with its contents.

Yours faithfully,

G Morgan
For Head of Legal Services

c.c. Richard Buxton
Geoffrey Stephenson
Caerphilly CBC

DLA Piper
Gareth Chapman
Norman Davies

G.W.CHAPMAN LL.M., D.B.A., Dip.L.G., M.C.M.I., Solicitor
Deputy Chief Executive and Director of Customer Corporate Services
Dirprwy Brif Welthrodwr a Chyfarwyddwr Gwasanaethau Corfforaethol Gwamrfaeld

Richard Buxton
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MERTHYR TYDFIL COUNTY BOROUGH COUNCIL
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Ich Cyf/Your Ref.: PS/CND-2

Gofynnwch am/Please Ask For : Geraint Morgan
e-bost/e-mail: geraint.morgan@merthyr.gov.uk

Dear Sirs,

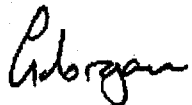
Re: Application for Judicial Review
Reference Number CO/10241/2008: R (on the application of Elizabeth Condron)
and (1) Merthyr Tydfil County Borough Council (2) Caerphilly County Borough
Council and Miller Argent (South Wales) Limited

Thank you for your letter of 1 December.

There is clearly a difference of opinion between us as to the proper procedures for Judicial Review and we see no point in repeating in correspondence the criticisms we have set out in our Summary Grounds of Opposition. We must however add that you are, yet again, devising rules of Court which do not in fact exist. The next stage should now be that the Court considers your Application and our Summary Response and decides whether or not to grant permission. Because of your idiosyncratic procedure and only because of it, we are now in a position where we have to consider amplifying our Summary Grounds of Opposition. The CPR does not deal with this situation. We have asked Counsel to advise us on any further response and if so advised we will file it as soon as possible. It is not for you to impose a deadline on us and we would point out that the CPR does not permit any reply by you to an Acknowledgement of Service.

The extra work engendered by your methods has been considerable and we reserve our position as to wasted costs entirely.

Please note that this response is made on behalf of both the first and second defendants.



Yours faithfully,

G Morgan
For Head of Legal Services

c.c. Administrative Court (by Fax)
Geoffrey Stephenson
Caerphilly CBC

DLA Piper
Gareth Chapman
Norman Davies

Administrative Courts Office
Royal Courts of Justice
Strand
London
WC2A 2LL

Your reference

Our reference

KH/JH/68560/120003

UKM/22094952.1

4 December 2008

Special Delivery and Fax - 0207 947 6330

Dear Sirs

**APPLICATION FOR JUDICIAL REVIEW
REFERENCE NUMBER CO/10241/2008: R (ON THE APPLICATION OF)
ELIZABETH CONDRON AND (1) MERTHYR TYDFIL COUNTY BOROUGH
COUNCIL (2) CAERPHILLY COUNTY BOROUGH COUNCIL AND MILLER
ARGENT (SOUTH WALES) LIMITED**

We act on behalf of the Interest Party in the above matter and have received a copy of the letter to the Court dated 1 December 2008 from Richard Buxton Solicitors on behalf of the Claimant requesting that her claim should not be considered by the Court until the Claimant has had an opportunity of providing a summary reply to "new matters raised by the Defendant and Interest Party in their Acknowledgement of Service".

On behalf of the Interested Party we object to this request that the matter be delayed, on the basis that the Claimant has established no grounds to justify any delay.

They state in their letter of the 1 December 2008 to the First Defendant, Merthyr Tydfil County Borough Council, that the grounds for the request is that new matters were raised "including choice of venue, claimant funding and earlier proceedings". It is our submission that none of these grounds can justify a delay.

The question of choice of venue has been an ongoing concern since the first challenge by the Claimant against the grant of planning permission for the Ffos y fran Land Reclamation Scheme issued by the National Assembly for Wales in 2005. The National Assembly requested that the case be heard in Wales, and the Claimant refused to do so and insisted on the case being heard in London. The decision to hold that case in London was criticised in the judgment of the Court of Appeal when the matter was finally determined by that Court. In a further claim for a Judicial Review of the decision of Merthyr Tydfil County Borough Council not to issue enforcement proceedings earlier in 2008, again the Claimant refused to agree to the suggestion made by the Council and the Interested Party that, following the advice of the Court of

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Appeal the claim be transferred to Wales. This is, therefore, not a new issue and does not warrant any delay in the proceedings.

Similarly on the objection to the request for a Protective Costs Order made by the Claimant, again no new issues are raised and we can see no reason why this should justify the request for a delay in the proceedings.

Finally, on the issue of "earlier proceedings" to which the Claimant's Solicitors refer, it is difficult to see why this issue should warrant a request for a delay in this latest challenge. All of those earlier proceedings have been determined by the Courts and cannot, therefore, justify a request for delay in these latest proceedings.

The Interested Party has invested many tens of millions of pounds in the scheme overall, and any unjustified delay places an unreasonable and unfair burden upon them in the execution of this development.

We respectfully request, therefore, that the Claimant's request for delay be refused and that this claim be determined by the Court as soon as possible.

Yours faithfully

DLA PIPER UK LLP

c.c. Richard Buxton
Caerphilly County Borough Council
Merthyr Tydfil County Borough Council
Rhodri Price Lewis QC
James Poyner - Miller Argent (South Wales) Limited
Stephen Tillman- Miller Argent (South Wales) Limited
Pamela Smyth - The Miller Group Limited

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Dyddiad/Date : 11th December 2008

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Ich Cyf/Your Ref.:

Gofynnwch am/Please Ask For :
e-bost/e-mail:

Geraint Morgan
geraint.morgan@merthyr.gov.uk

Dear Sirs,

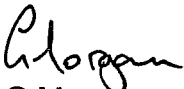
Re: Reference Number CO/10241/2008: R (on the application of Elizabeth Condron) and (1) Merthyr Tydfil County Borough Council (2) Caerphilly County Borough Council and Miller Argent (South Wales) Limited

On behalf of both defendant councils we would like to add our protest to that of the interested party concerning the disregard of the CPR by the claimant's solicitors.

This is not a case of a minor or technical or isolated breach of the rules nor an accidental breach. These solicitors have conducted the case as if there were no rules of court in place at all and have devised their own procedure. The result is that the Court and also the defendants are now in possession of a confusing volume of paperwork and the rules are in disarray. For the defendants at least, and we imagine the interested party also, this has resulted in considerable extra costs.

Leaving aside entirely the merits of the claim we would respectfully suggest that this is a case where permission could be refused on the basis of the flagrant and deliberate breach of the rules as set out above. We have made a similar point in Section 7 of our Summary Grounds of Opposition to which we draw the Court's attention.

Yours faithfully,



G Morgan

For Head of Legal Services

c.c. Richard Buxton
DLA Piper
Caerphilly CBC
Geoffrey Stephenson

Gareth Chapman
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Your ref. CO/10241/2008

Our ref. PS/CND-2

14th January 2009

Dear Sirs

R (Condrón) v Merthyr Tydfil CBC & others, CO/10241/2008

We act on behalf of the Claimant and, following recent correspondence with the parties enclose a note for the judge relating to the question of delay. We would therefore be grateful if you could revise the claim bundle as follows:

- a) replace original index and essential reading list with the enclosed;
- b) insert the Note on Delay (pages 43-44) t after page 42; and
- c) insert the recent correspondence (pages 375 to 385) after page 374.

We trust this is acceptable. However, if you have any queries please do not hesitate to contact us.

Yours faithfully



Richard Buxton

cc Merthyr Tydfil CBC
Caerphilly CBC
DLA Piper (for Miller Argent (South Wales) Ltd)



BETWEEN:

R (ELIZABETH CONDRON)

Claimant

and

(1) MERTHYR TYDFIL COUNTY BOROUGH COUNCIL

(2) CAERPHILLY COUNTY BOROUGH COUNCIL

Defendants

MILLER ARGENT (SOUTH WALES) LTD

Interested Party

CLAIMANT'S NOTE ON DELAY

Note: The documents referred to are paginated and contained in the Claim Bundle marked [].

1. The Claimant makes formal submissions on the question of delay.
2. The Claimant challenges four planning permissions relating to the processing, washing and disposal of up to 1.5 million tonnes of coal at Cwmbargoed Disposal Point, Merthyr Tydfil. The Defendants and Interested Party allege that the proceedings by the Claimant were not brought promptly. The Claimant has maintained that:
 - (a) for decision P/08/0091, proceedings were issued within seven weeks;
and
 - (b) for decisions 08/031/FUL, 07/0250 & 07/0251, that these permission have not formalised yet due to the failure to satisfy a number of conditions precedent attached to the conditions. The 2nd Defendants has now confirmed the current position in relation to the permissions.
3. The Claimant submits that proceedings were brought promptly.
4. For permission P/08/0091, the 2nd Defendant stated in its letter of 16th December 2008 that for conditions 7, 8, 12 and 13:

... written approval has not been given as the Schemes have not yet been submitted for approval, but that they are expected to be submitted shortly. This is because the development is already authorised by the earlier permissions granted in 2007 - 07/250 and 07/251. The 2007 consents were granted for a temporary period expiring in 2010, because some of the supporting infrastructure was subject to a permission granted in 1990 and expiring in 2010. [379]

5. For permissions 07/0250 & 07/0251 the 2nd Defendant stated that plans for the approval of condition 4 of both decisions plan were:

... submitted on the 19th December 2008 and is being dealt with by the Planning Department. [384]

6. We enclose recent correspondence in this regard [377-384].
7. In all the circumstances, there can be no argument that the Claimant has failed to act promptly in bringing the claim when, strictly, the permissions have yet to formalise to the extent that no development can proceed until the plans are approved. See for instance condition 4 of 07/0250/FUL [99] which provides that:

No development shall take place until drainage works have been carried out in accordance with details to be submitted to and approved in writing by the Local Planning Authority. [99]

8. The nature of the correspondence also highlights that, although the Defendants and Interested Party have been quick to criticise the Claimant's approach to pursuing her claim, it has required repeated requests for disclosure to secure information from the Defendants and Interested Party which is highly material to the claim and which those parties had within their knowledge or possession at the outset of the case.
9. In view of the proceedings already filed and served, the Claimant invites the Court to grant permission to pursue her claim.

Paul Stookes
Richard Buxton Environmental & Public Law
13th January 2009