



**In the High Court of Justice
Queens Bench Division
Administrative Court**

CO Ref:
CO/10241/2008

In the matter of an application for Judicial Review

The Queen on the application of

CONDON

Versus

Merthyr Tydfil County Borough Council & Others

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 Collins

Permission is hereby refused.

Observations:

1. The two permissions granted in 2007 permitted the works to extend facilities on the DP and those works have been carried out. It is far too late to allow any claim to proceed against those.
2. The 2008 permissions (June & September) extend the time to coincide with the Ffos-y-fran scheme. Thus one is beyond the 3 month limit, one not, but both clearly stand or fall together and there has been a failure to act promptly. Delay in itself would justify refusal of permission.
3. In addition, there has been a failure to comply with the Practice Direction in that there was no detailed statement of grounds or facts and no explanation for the delay. While this might be excused if there was an obviously meritorious claim or perhaps an inexperienced claimant, the claimant and her solicitors are well versed in judicial review. Parties must appreciate that a failure to comply with the Rules or Practice Direction may of itself result in refusal of permission.
4. The attempt to rely on the wide purpose of the EIA Directive to show that the developments permitted were within Schedule 2 is without merit. The opencast mining was dealt with through an inquiry and a full EIA as it fell within 2(e). The DP (which has been doing the same for previous coal mines in Wales as it now does for Ffos-y-fran) cannot by any stretch of the schedule be within 2(e). To regard it as within 10b is an unjustifiable extension of the purpose of that and, since it does not itself fall within Schedule 2, any extension or modification equally cannot fall within it.
5. The defendants and IP are right to complain about the claimant's solicitors approach to judicial review. There is indeed no provision for replying to an Acknowledgement of Service, but I have taken it into account. In all stems from a lamentable failure to present the claim properly in the first place.
6. The alleged shortcomings in the pre-action protocol letters and the choice of venue are irrelevant in considering permission.
7. Essentially, I am persuaded that the grounds for objection in the Acknowledgement of Service are correct.

Signed: **Sir Andrew Collins**

09 MAR 2009

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: **1.23**

Solicitors:
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