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

CO Ref: CO/ 8229/2011

In the matter of an application for Judicial Review

The Queen on the application of
GREENPEACE LTD
versus
SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE

On the application for costs

Following consideration of the written submissions of the parties

Order by Mr Justice OUSELEY

Order: The Claimant shall pay £8000 to the Defendant by way of costs for the AoS.

Reasons: I ordered the Claimant to pay the costs claimed by the Defendant for its AoS of £11813,when refusing it permission to apply for judicial review, but giving it the right to make representations on principle and amount. The claim is not now pursued. The principle of an award of costs in respect of the AoS is not at issue but the amount is, and the amount itself gives rise to what are seen as issues of principle. The Claimant suggests that the award should not exceed £1500.

This is plainly not an ordinary claim: the claim raised issues concerning the legality of the National Policy Statement issued for consideration by the IPC in determining applications for planning consent for the construction of new nuclear power stations. The Claimant asserts rightly that it raised issues of the highest public interest and concern. It was obviously important to the parties and to the public. The grounds of claim were 37 pages long, and accompanied by 1611 pages of material. The time required to deal with it on paper was well outside the normal length for a paper application and renewal would not have been a half hour hearing. The grounds were cast, as they had to be, in JR mode, but the statutory role of the different bodies involved was complex, and the arguability of the allegations that material considerations had been ignored and that the consultation was flawed could not be resolved devoid of factual analysis. The costs claimed measured against ordinary claims are obviously high, but not obviously so when measured against this claim. The grounds of defence were not too detailed or long in view of the nature and detail of the claim, and the elimination of all grounds and parts is a proper aim of an AoS. The suggestion of £1500 is far too low.

I think that the use by the Defendant of two silks, one of whom is Treasury Counsel, and a junior, must be measured against the use by the Claimant of two experienced counsel. I have not seen a breakdown of the costs. However, I think that there is likely to be an element of costs which the Government was willing to incur to do all that it possibly could to eliminate the challenge at the first stage, which went beyond what was necessary for a sound reply of the sort which, even in a case which is far from normal, is what is contemplated the losing party should pay for.

I do not regard the absence of response to the Pre-Action Protocol letter as itself of significance. The deadline set by the Claimant was half the time which would have been allowed in an ordinary case; it was set after nearly a month had passed since the publication of the NPS, which itself could not have come as a surprise to the claimant given its involvement with it; it was not a bolt from the blue in timing or content. But I bear in mind that had the Defendant supplied a reply, having been asked in time, it would have incurred irrecoverable costs. There is probably some overlap between the costs it would have had to incur without recovery and the costs it in fact incurred and for which it seeks recovery.

The Aarhuis convention is itself irrelevant; it has only been incorporated into UK law to the extent that an EC Directive is involved; the Directives were not involved, other than as an element of the background. Besides , even if relevant to discretion, I do not believe that the sum involved would have a chilling effect on public interest litigation over issues as important as this, nor would it

affect this claimant which is a well-funded campaigning body which litigates as part of its campaigns. Judged objectively, this sort of exceptional claim would still be brought.

Taking those points together, I have concluded that there should be some reduction from the full claim to reflect the costs which a Pre-Action Protocol reply would have incurred and the extra costs involved in giving the greatest re-assurance to the Defendant that it had done all it could to win the day. Hence my award of £8000.

Signed D.R.W. Ouseley Mr Justice Ouseley 5 March 2012

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

19 MAR 2012

FORM MPA