



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

CO Ref:
CO/580/2015

In the matter of an application for Judicial Review

The Queen on the application of TRACY BREAKELL

versus LONDON BOROUGH OF MERTON and NHS SOUTH WEST
LONDON and McCarthy and Stone Retirement Lifestyles Ltd.

**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 Mitting

1. Community Health Partnership Limited and BBH – SWL (Fund co 4 Limited) are substituted for the first interested party, NHS South West London.
2. Permission is hereby refused; the application is considered to be totally without merit

Reasons:

1. Ground 1
 - (a) The challenge to the omission to adopt a screening opinion for application 13/P2192 is hopelessly out of time. The conditions discharged pursuant to this application were discharged in November 2013 and April 2014, long before the claim form was issued and have been acted upon by the second interested party.
 - (b) The conditions discharged on 29 December 2014 pursuant to application 14/P4189 were not discharged pursuant to a "subsequent application" (as defined by regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 under regulation 9: no part of the application was for approval of a matter where the approval must be obtained before all or part of the development may be begun.
 - (c) The same applies for application 14/P4301 and for all conditions covered by application 15/P0121, apart from conditions 5, 6 and 8.
 - (d) No decision has yet been made on application 15/P0121. In relation to conditions 5, 6 and 8, the three weeks specified in regulation 5(5) for adoption of a screening opinion had not elapsed when the claim form was issued. Accordingly, even if the defendant and the second interested party do not agree extend that time, the defendant had not unlawfully failed to fulfil its statutory duty when the claim form was issued.

2. Ground 2

This ground of claim is hopelessly out of time. It involves a challenge to a screening opinion adopted on 12 March 2012 and the grant of planning permission in partial reliance upon it on 18 December 2012. The planning permission has been acted upon by completion of the development on site one and substantial building works on site two.

3. Ground 3

The matters relied on are not new and were covered in the screening opinion

adopted on 12 March 2012 and/or in the conditions of the planning permission granted on 18 December 2012.

Costs

This is an Aarhus Convention case. The costs of the claimant are capped at £5,000 and of the defendant and interested parties at £35,000. The claimant must pay the defendant's costs of preparing and filing its acknowledgment of service, which I assess at £6,000, but limit to £5,000 under the cap. There will be no order for costs in favour of the interested parties.

BY VIRTUE OF CPR 54.12(7) THE CLAIMANT MAY NOT REQUEST THAT THE DECISION TO REFUSE PERMISSION BE RECONSIDERED AT A HEARING.

Signed



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:

Ref No.

20 MAR 2015

Form PC1 JRLJ twm v. APRIL 2014 Judicial Review Permission Refused. AS TOTALLY WITHOUT MERIT (LA claim)