FORM 269G1

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **C1/2015/1030**

The Queen, on the application of

BREAKELL –v– LONDON BOROUGH OF MERTON AND ORS

ORDER made by the Rt. Hon. Lord Justice Sullivan

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal against:

i) a decision by the High Court to refuse permission to apply for judicial review of a decision of the Upper Tribunal; or

ii) a decision by the High Court to refuse permission to apply for judicial review where the application has been recorded as totally without merit.

Decision: granted or refused. An order granting permission may limit the issues to be heard or be made subject to conditions.

Permission to appeal: ☐ **Granted** ☒ **Refused**

OR

Permission to apply for judicial review: ☐ **Granted**

Where permission to apply for judicial review is granted, the application should be returned to the Administrative Court ☐

OR

There are special reasons (set out below) why the application should be retained in the Court of Appeal ☐

Reasons

I endorse Mitting J's conclusion that your application for permission to apply for judicial review is totally without merit. The claim was filed on 6th February 2015.

(i) The challenge to the negative screening opinion which was adopted in March 2012 is hopelessly out of time. The contention that the Council "is allowing Schedule 2 development to proceed unlawfully" is, in substance, a challenge to the lawfulness of the negative screening opinion.

(ii) On the premise (see (i) above) that there was a lawful negative screening opinion in March 2012 there is no reason why the discharge of pre-commencement and pre-occupation conditions pursuant to the planning permission dated 18th December 2012 should give rise to the need for any further screening opinion(s). In reality, no new issues have been raised.

(iii) In any event, the challenges to the decisions to discharge certain conditions in November 2013 and April 2014 are hopelessly out of time. The fact that other conditions remain to be discharged does not alter the fact that it is far too late to challenge these decisions.

(iv) The new basis on which the decisions in respect of Applications14/P4189 and 14/P4301 are now challenged is based upon a false premise. If planning permission for a change of use was required, it was granted by the December 2012 permission, not the discharge of any pre-occupancy conditions imposed by that permission. Those conditions related to the uses permitted by the 2012 permission.

(v) If, notwithstanding (ii) and (iv) above, you still consider that the Council should have adopted a screening opinion in respect of application 15/P0121 then your remedy was to apply to the secretary of State for a screening direction.

(vi) It is clear in any event that relief would be refused as a matter of discretion given the fact that the 2012 permission has been substantially implemented (site 1 is operational).

(vii) There is no arguable error of principle in the judge's decision on costs, it was well within the ambit of his discretion.

Where permission has been granted, any directions to the parties (including, if appropriate, any abridgement of the 35 day time limit for filing evidence provided for in CPR 54.14)

COURT OF APPEAL
HER MAJESTY'S
E & W

Where permission has been refused, the applicant may not request the permission decision to be reconsidered at an oral hearing: Rule 52.15(1A)(b)

Signed:
Date: 1st July 2015

By the Court

Note:
Rule 52.3(6) provides that permission to appeal may be given only where –

a) the Court considers that the appeal would have a real prospect of success, or
b) there is some other compelling reason why the appeal should be heard.

Case Number: C1/2015/1030