

Re: Communication concerning compliance by the United Kingdom with the provisions of the Convention in connection with planning consent for the redevelopment of a former hospital site (ACCC/C/2015/131)

I write in response to your letter dated 5 November 2018 which contained questions relating to the above communication. We would like to offer our thanks for your agreement to the extension we requested.

We have been working closely with Merton Council to gather the full extent of the information requested, but as you will appreciate, due to the passage of time since the case was decided there are some gaps in the documentary evidence that we were able to gather within the allotted timeframe. We have nevertheless sought to provide as much information as possible in order to answer the questions of the Committee to the fullest extent we can, and are grateful to Merton Borough Council for providing the UK Government with the information and evidence contained herein.

1. *Please specify on what date were each of the following:*
 - (i) *made available to the communicant, and*
 - (ii) *made available to the public.*

Please provide documentary evidence to substantiate your reply:

- a. *The Council's negative screening opinion of 12 March 2012;*
- b. *The grant of planning permission by the Council on 18 December 2012.*

The committee report for 19 July 2012, when the case was first considered, made clear that a screening opinion was required and the outcome. Annex 1 is a screenshot showing that this was created and published on Merton Council's website on 11 July 2012, in advance of the meeting.

The negative screening opinion was published on Merton Council's website on 21 July 2014. Annex 2 is a screenshot confirming this.

The notice of the grant of planning permission was published on Merton Council's website on 4 September 2013. Annex 3 is a screenshot confirming this.

2. *Please specify on what date were:*
 - (i) *Jean Bennett, the officer who made the report to the Planning Applications Committee dated 6 September 2012, and*
 - (ii) *the decision-making body in the Council responsible for granting planning decision 12/PO418, provided with each of the following documents.*

Please provide documentary evidence to substantiate your reply:

- a. *The Council's negative screening opinion of 12 March 2012;*
- b. *Comments from statutory consultees, including comments that significant adverse impacts on bats could be avoided if certain mitigation measures were included;*
- c. *The Noise Assessment conducted in May 2012.*

Supporting evidence to confirm the date on which Jean Bennet was provided with the documents (a) to (c) has not been identified.

The Planning Applications Committee at Merton Council (and by extension, the public as these were made publicly available at the same time) were made aware of the conclusions of documents (a) to (c) in the committee report dated 6 September 2012. A summary of all consultation responses is at section 5 of that report (see Annex I to the response to communication from the Party concerned, 13 May 2016, a summary of the consultation response from Natural England is at paragraph 5.19). The results of the screening opinion are at paragraph 8.2, and a summary of the noise survey can be found at paragraph 7.22.

The negative screening opinion was published on Merton Council's website on 21 July 2014. Annex 2 is a screenshot confirming this.

The Noise Assessment was uploaded to Merton Council's website on 15 July 2014. Annex 4 is a screenshot confirming this.

3. Please specify on what date the following documents were made available to the public. Please provide documentary evidence to substantiate your reply:

a. Comments from statutory consultees, including comments that significant adverse impacts on bats could be avoided if certain mitigation measures were included;

b. The Noise Assessment conducted in May 2012.

The conclusions of documents (a) & (b) were made available to the public in the Committee report dated 6 September 2012 (see Annex I to the response to communication from the Party concerned, 13 May 2016). Comments from Natural England that permission could be granted subject to appropriate conditions, including a detailed mitigation and monitoring strategy for bats, are summarised at paragraph 5.19 of the Committee report.

The Noise Assessment was uploaded to Merton Council's website on 15 July 2014. Annex 4 is a screenshot confirming this.

4. Please confirm whether an appropriate assessment or another procedure evaluating whether there might have been significant negative impacts associated with the development (such as to water or air quality) other than the EIA screening in March 2012 was carried out with respect to the project.

An appropriate assessment was not carried out in this case as it was determined that the proposals would not affect any protected sites listed in the relevant legislation (see Phase 1 Habitat Survey and Protected Species Assessment, October 2011 which was provided previously).

5. Please indicate the relevant provisions of the Town and Country Planning Act 2010 or other legislation specifying:

a. The list of statutory consultees that were required to be consulted with respect to planning application 12/P0418;

b. The required timing of such consultations; and

c. The stages of the decision-making at which the outcomes of those consultations are to be taken into account.

At the time the relevant provisions were to be found in the Town and Country Planning (Development Management Procedure) (England) Order 2010 (“the DMPO 2010”). These are now superseded by The Town and Country Planning (Development Management Procedure) (England) Order 2015). This was attached as Annex 3(ii) to the response to communication from the Party concerned, 13 May 2016.

Article 16 DMPO 2010, read with Schedule 5, requires the local planning authority to consult specified statutory consultees (depending on the nature of the proposed development) prior to granting planning permission.

Article 16(5) DMPO 2010, says that the application shall not be determined until a period of 21 days has expired following the statutory consultee being notified of the application.

Article 16(7) 2010, requires the local planning authority to have regard to any representations of the statutory consultee in determining the application. Therefore the outcome of consultations is considered by the decision maker before planning permission is granted or refused. In the case of applications dealt with by the Planning Advisory Committee, such as in this case, consultation responses are summarised in the officer’s report.

6. *Please provide the relevant statutory provisions specifying that:*
 - a. *8% interest is payable on unpaid cost awards;*
 - b. *Interest on unpaid cost awards accumulates from the date of the court order awarding the costs;*
 - c. *A lay-litigant is entitled to costs recovery of £19 per hour; a statutory authority is entitled to costs recovery of £250 per hour plus barristers’ fees (see page 13 of the communication).*

When an order for payment of costs to be assessed is given, this order is construed as a ‘judgment debt’ under [section 17](#) of the Judgments Act 1838. The rate of interest on High Court judgment debts has been 8% since April 1993 ([Article 2](#), Judgment Debts (Rate of Interest) Order 1993). This rate is fixed, i.e. it is not open to variation by the courts and can only be altered by statutory instrument.

Interest on a judgment debt in the High Court begins to run from the date that judgment is given unless a rule or practice direction makes a different provision or the court orders otherwise (Civil Procedure Rules, [rule 40.8](#)).

Where a litigant in person (i.e. a lay-litigant) is awarded costs then the only absolute cap on the amount of costs that can be recovered by a litigant in person is that it shall not exceed two thirds of the amount that would have been allowed if the litigant in person had been represented by a legal representative (see CPR, [rule 46.5\(2\)](#)). The onus is on the litigant in person to prove financial loss. Where the litigant cannot prove financial loss, the amount of the time reasonably spent on doing the work is calculated and chargeable at the rate set out in CPR [Practice Direction 46 paragraph 3.4](#) and [rule 46.5\(4\)\(b\)](#). At the time of this case the sum was £19.

The amount recoverable by a party to litigation is based on the fact of the usual hourly rate (for a solicitor) or brief fee (for a barrister). The schedule of costs in this case demonstrates this breakdown, and was submitted as Annex 3b to the Communicant’s reply to the Committee’s questions of 3 December 2018.

The amount recoverable for a barrister will depend on their year of call and their brief fee. In the present case the barrister instructed was called to the Bar of England and Wales in 1980 and his brief fee was £2,500. The amount recoverable by a solicitor depends on their grade. In the present case the instructed solicitor was Grade A and charged £250 an hour. 14 hours work was billed, totalling £3,500.

In undertaking a summary assessment of costs a judge will have regard to the [Guideline Hourly Rates](#) published by the Master of the Rolls.

The costs order in this case was made by the High Court on 20 March 2015. Merton Borough Council's costs were assessed at £6,000 but as this was a case coming within the Aarhus Convention, these costs were capped at £5,000.