[redacted]

Secretary to the Aarhus Convention Compliance Committee
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6 June 2016

Dear Ms Marshall,

ACCC/C/2015/131
Comments on response from the party concerned (UK)

I would like to address some of the points raised in the response from the party concerned (UK) as it has redefined my allegations and reported some of the facts inaccurately. There is also some misunderstanding of the timing of events and the issues that were the subject of the judicial review claim.

It is of serious concern that the UK appears either to be very confused about the differences between an initial assessment of a project in the form of "screening" and a full "environmental impact assessment", or that it is deliberately mixing up these procedures.

Before commenting on the UK's response, I feel that I must clarify my understanding of these terms:

The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (known as the EIA Regulations – see my original communication Annex 1) prescribe the procedures that are to be followed where permission is sought for a project which has the potential to be "EIA development".

On receipt of an application that is defined as being "Schedule 2 development", such as the project in this case, the local authority must make a preliminary assessment as to whether that project is likely to have a significant effect on the environment, taking into consideration the criteria set out in Schedule 3 (see Regulation 4(6)). This procedure is usually referred to as "**screening**".

The local authority must then issue its decision on whether or not it considers the project is likely to have a significant effect on the environment in a document known as a "**screening opinion**" (Regulations 4(7) and 5(5)).

A project that is likely to have a significant impact is known as "EIA development". If it is determined that a project is EIA development, then a more detailed assessment is required. This is usually referred to as an "**environmental impact assessment**". As part of that assessment, the developer is required to submit an "**environmental statement**" which includes defined information as set out in Schedule 4.

The UK's response begins by attempting to summarise the decisions that I challenged. I do not understand why the party concerned has felt the need to do this. The new descriptions contain multiple errors and just confuse matters further. This appears to be a result of the party's confusion between "screening" and full "environmental impact assessment". I did not challenge the decisions as described by the party concerned in paragraph 2, sections (i) to (iv).

My allegations concerning the UK's failure to comply with the Convention are:

(a) The screening and grant of planning permission for the intial planning application were undertaken:

(i) in the absence of adequate assessment of the impact on the conservation area and the impact on the amenity of neighbours as determined by the Local Government Ombudsman (LGO);
(ii) without the responses of the statutory consultees, the Screening Opinion or the Environmental Noise Assessment having been made available to the Council's planning committee or the public despite that fact that these documents were in the possession of Council Planning Officers.
[Note: the planning committee comprised a group of publicly-elected Councillors who made the decision to grant planning permission to the initial application. The decisions on most of the subsequent applications were taken by individual Planning Officers]

(b) The subsequent consents were granted without screening and/or without notification or consultation with the public.

(c) The Council allowed the project (i.e. a project which may have a significant impact on the environment) to proceed whilst there were still outstanding subsequent applications remaining to be screened and awaiting consent.

(d) The Courts have refused permission to challenge these actions/ommissions by judicial review and the procedure failed to comply with the requirements of Article 9(4) of the Convention.

Preliminary submissions

In paragraph 4, the UK states that it is critical to understand what lies at the heart of my communication. However its analysis at this point is too simplistic. I consider the heart of the matter to be threefold:

(a) the Council withheld that environmental evidence which indicated that there may be a significant impact on the environment;
(b) the Council excluded the public from subsequent decision-making in order that the development could proceed unhindered by any objection or intervention;
(c) the Council allowed the project to proceed despite the fact that the Council had not granted all those subsequent consents which were required before development could proceed.

The UK's reference, in paragraph 5, to ACCC/C/2008/24 (Spain) is not relevant – I am not asking the ACCC to adjudicate on the results of screening. As the UK points out in its submission, the Committee is concerned with ensuring that environmental information available to the authorities taking the decision was available to the public, see paragraph 79 of the Committee's decision in ACCC/C/2006/16 (Lithuania):

> *79. With regard to the communicants' allegations …the role of the committee is to find out if the data that were available for the authorities taking the decision were accessible to the public and not to check whether the data available were accurate.*

My allegation that the UK failed to comply with Article 5 concerns the fact that the responses from the statutory consultees, the Environmental Noise Assessment and the initial Screening Opinion were not available to the public at any time during the initial decision-making process (i.e. the initial grant of planning permission to application 12/P0418). My allegation that the UK failed to comply with Article 6(1)(b) concerns the fact that subsequent applications were not subject to screening or consultation.

In paragraph 7, the UK considers that "…It was neither necessary, nor appropriate, for her to wait until she had pursued other avenues prior to seeking a remedy from the courts…". The fact is that I did not "wait" whilst I pursued other avenues. The reason that I did not challenge the earlier decisions is that I did not have sufficient grounds or evidence on which to challenge those decisions within six weeks of when they were taken because the Council had withheld those documents that would have provided grounds, i.e. information in the statutory consultees' responses, the Environmental Noise Assessment and the Screening Opinion.

A summary of dates and relevant events is detailed below:

12 March 2012	**Screening Opinion issued for initial planning application 12/P0418**	**Public not notified of decision. Screening Opinion not placed on planning register.**
September 2012	Planning committee resolves to grant planning permission to application 12/P0418 at a public meeting	Public notified of the initial submission of the planning application and invited to comment. Several statutory consultees' responses not placed on register. Noise assessment not placed on register. Screening Opinion still not on register.
18 December 2012	**Decision Notice granting conditional planning permission issued**	**Public not notified of decision. Decision Notice not placed on register.**
February 2013	Work begins on "Site 1"	
March 2013	Several subsequent planning applications approved for "Site 1"	Some of these were approval of conditions assessing flood risk, noise and other environmental effects. Public not notified or invited to participate.
September 2013		**Decision Notice for 12/P0418 placed on planning register (9 months late)**
November 2013	Some conditions for "Site 2" approved under subsequent application 13/P2192	Public not notified or invited to participate. [Note: most conditions submitted under this application remain undetermined.]
April 2014	Building work begins on Site 2	
14 April 2014	Request for screening direction for 13/P2192 sent to Secretary of State	
25 April 2014	Condition no. 4 (regarding construction materials) of application 13/P2192 approved	Public notified of Condition 4 and invited to comment on the construction materials submitted for approval. [Note: most conditions submitted under this application remain undetermined.]
July 2014		**Council's initial Screening Opinion for 12/P0418 placed on register (over 2 years late)**
July 2014		**Environmental Noise Assessment for 12/P0418 placed on register (over 2 years late)**
20 August 2014	Secretary of State declines to issue screening direction	
28 August 2014	Request sent to Council to adopt new screening opinion	
December 2014	Some pre-occupation	Public notified and invited to participate

	conditions approved under subsequent applications 14/P4189 and 14/P4301	
15 January 2015	15/P0121 registered and validated	This includes both pre-commencement and pre-occupation conditions. Public not notified or invited to participate. Permission granted 21 September 2015.
6 February 2015	Judicial Review Claim issued	Note: claim issued 22 days after 15/P0121 registered/validated

I am not a planning expert. At the time that the intial planning permission was being considered, my neighbours and I had no knowledge that this development should have been subject to an EIA procedure (i.e. screening) or that the results of such a procedure could be challenged.

However, we did consider that various aspects of the project had not been considered adequately by the planning committee at the public meeting in September 2012 (not December as referred to in the UK's response), which prompted our complaints to the Council and the LGO. This was an attempt to get the matter investigated before planning permission was granted formally by the issue of the Decision Notice.

The public were not informed of the grant of planning permission in December 2012, so it would not have been possible to challenge it within the required six-week time period. Even when the Decision Notice was placed on the register in September 2013, the public (including myself) were still unaware of the missing documents (the responses from the statutory consultees, the Environmental Noise Assessment and the Screening Opinion), so there were no grounds to challenge the Decision Notice at this time either.

I only became aware of the grounds for challenge when the Screening Opinion and Environmental Noise Assessment were finally placed into the public domain in July 2014. But, as I stated in my intial communication, applying for judicial review of the Screening Opinion at this stage seemed pointless because a) it could have been argued by the Council that the Screening Opinion was valid at the time it was written and that environmental information received after that date would be considered in a new, subsequent assessment, b) subsequent screening was, in any event, already required for the subsequent applications by legislation, and c) I was still awaiting a response from the Secretary of State to my request for him to make a Screening Direction for subsequent application 13/P2192. I also suspected that the earlier decisions would be considered valid due to the passage of time.

At this point in time subsequent application 13/P2192 had already been submitted to the Council and was still awaiting decision on various pre-commencement conditions. A Screening Direction from the Secretary of State, determining whether the project was or was not EIA development, would have resolved matters but he declined to issue one. His decision not to issue a direction was not unlawful and therefore could not be challenged in court.

Subsequent application 13/P2192 still required screening, so I made a request to Merton Council to adopt a screening opinion for application 13/P2192 as required by regulation 9 of the EIA Regulations. This request was submitted on 28 August 2014.

I anticipated that the Council would either issue a new screening opinion or refuse my request. Either of these "decisions" could then have been challenged within the six-week time limit.

On 30 September the Council refused my request giving the reason that an Environmental Statement had already accompanied the initial planning application. This was a very important revelation – if it were true, it meant that the development was automatically considered to be EIA development, in which case screening was not required, but the Environmental Statement and all associated documents should have been consulted upon with the public. There would have been completely different grounds for challenge.

I suspected that this was an error and, on 10 October, sent a Letter Before Claim to the Council challenging the decision not to screen and asking for confirmation of whether an Environmental Statement existed.

The Council responded on 4 November to say that the email of 30 September 2014 should not be taken as a formal decision and agreed to review its position regarding the need for a screening opinion. Hence I was once again left awaiting a decision that could be challenged.

By the end of November the Council had still not made a decision, so I gave them a deadline of 5 December 2014. When the Council failed to respond by that date I sent them a Letter Before Claim indicating that I would be challenging their failure to adopt a screening opinion for subsequent application 13/P2192. Over the following few weeks more subsequent applications were submitted/discharged and these were added to the Judicial Review Claim. In particular, application 15/P0121 was registered on 15 January 2015 for the approval of several conditions which, under the terms of those conditions, required approval before development could commence.

As the High Court Judge confirmed, the Council had to be given 21 days to produce a screening opinion. My Judicial Review Claim was issued on 6 February 2014, 22 days after application 15/P0121 was registered by the Council.

I object strongly to the accusations that I have "waited" anything between nine months and three years to challenge the actions of the Council. The Courts have artificially created this perceived delay by reassigning my grounds of challenge from the later decisions (subsequent applications and failure to screen) to the initial decisions (initial planning application and Screening Opinion) – decisions that were, in any event, hidden from the public.

Quite separately from any issues about timing, I do not consider that a failure to challenge an earlier decision in a series of tiered decision-making should preclude the public from challenging a later decision – particularly when that later decision is a decision on a proposed activity which may have a significant effect on the environment, as referred to by Article 6(1)(b) of the Aarhus Convention. To preclude such a challenge could lead to a situation where a project, which at the outset is not expected to have a significant impact on the environment but is later found to have an actual impact, is granted immunity from subsequent challenge.

In paragraph 9, the UK considers that there are no issues regarding costs that are not already the subject of discussion under decision V/9n of the Meeting of the Parties. I disagree. The following issues are not currently under consideration:

(i) whether the "costs cap" of £5000 is prohibitively expensive;
(ii) the inequality of allowable costs for a self-litigant compared with a local authority;
(iii) the allegation of profiteering in this case;
(iv) the failure of both the High Court and the Appeal Court Judges to take into account the principles of Article 9(4) of the Aarhus Convention when apportioning costs in this case.

Background

The UK's response summarises the background to my communication in paragraphs 10-21.

It is of concern that the UK has summarised details of my judicial review claim and the judges' Orders inaccurately. Original copies of these were provided with my initial communication.

In particular, paragraph 21 states that the Appeal Court Judge "…expressly endorsed the decision of Mitting J…". This is not correct. In respect of the challenge to planning application 15/P0121 (concerning pre-commencement conditions 5, 6 and 8), Mitting J, considered that my challenge was premature as I had not given the Council enough time, i.e. 21 days, in which to fulfill their statutory duty (although there were 21 full days between the validation of the application and the issue of my claim). In refusing permission to proceed with the claim, the Appeal Court Judge gave a different reason entirely – he stated that my remedy was to apply to the Secretary of State for a screening direction.

The domestic legal framework

In paragraphs 22-28 the UK summarises the domestic requirements for publicity and consultation on applications for planning permission set out in the "DMPO".

Paragraph 27 refers to Article 36 of the DMPO which requires that the local authority keep a register of planning applications and that it include details of any decisions and related conditions. The Decision Notice for application 12/P0418 was not placed on the register until nine months after the decision was made.

In paragraph 28 the UK highlights the fact that these requirements apply to all applications for planning permission and subsequent consent. But almost every one of the subsequent applications was not publicised, contrary to Article 13(4) of the DMPO.

Paragraphs 29-37 describe the requirements regarding applications for potential EIA development.

Paragraph 34 describes Regulation 23 of the EIA Regulations which requires that the local authority places the Screening Opinion on the planning register. The Screening Opinion for application 12/P0418 was not placed on the register until more than two years after it was made.

Paragraph 36 does not interpret Regulations 8 and 9 accurately. This is an important point in relation to my communication as it is Regulation 9 that applied in this case:

Regulations 8 and 9 prescribe the procedure when a "subsequent application" as defined by Regulation 2(1) is submitted for approval. Regulation 8 prescribes the procedure for a subsequent application where the initial planning application was accompanied by an "environmental statement". Regulation 9 prescribes the procedure for a subsequent application where the initial application was not accompanied by an "environmental statement". It is Regulation 9 that applies to all the subsequent applications concerning the project in this case.

Regulation 9 requires that, in these cases, "…paragraphs (4) and (5) of regulation 5 shall apply as if the receipt or lodging of the application were a request made under regulation 5(1)" , i.e. that a screening opinion should be adopted for these applications.

The Council did not screen any of the subsequent applications – a procedure which would have determined whether each decision on those applications should be subject to the provisions of Article 6 of the Aarhus Convention – thereby failing to comply with Article 6(1)(b).

The alleged breaches of the Convention

Articles 5(1) and (2)

The UK considers that my allegation that the Council failed to possess information relevant to its functions is a complaint about the substantive decision-making process, and thus not a matter for the Committee's consideration.

However, I am not challenging the outcome of the screening process. It is clear from the dates set out in my communication that relevant and important environmental information (i.e. responses from the statutory consultees and the Environmental Noise Assessment) was not in the possession of the Council until after the date that the initial Screening Opinion was created. In addition, the Local Government Ombudsman made a finding of maladministration in the Council's assessment of the impact on the conservation areas and amenity of neighbours. Such information would have been vital for the Council to adequately undertake its function as the authority responsible for screening potential EIA development.

Although the responses from the statutory consultees and the Environmental Noise Assessment were in the possession of the Council by the time of the grant of planning permission, neither these nor the

Screening Opinion had been placed on the register, so they were not available to the planning committee members who made the decision to grant permission. In my communication I had considered this to be a failure to comply with Article 5(1)(a) but it would, perhaps, be better classified under 5(1)(b).

Neither am I asking the Committee to adjudicate on the initial grant of planning permission. My allegation that the UK failed to comply with Article 5(2) concerns the fact that the responses from the statutory consultees, the Environmental Noise Assessment and the initial Screening Opinion were not available to the public at any time during the initial decision-making process. Therefore the public were unable to participate effectively.

In paragraph 45 the UK argues that because domestic legislation exists which requires local authorities to maintain a planning register containing related documents, there is no merit in the allegation that the UK is not in compliance with Article 5(2). But the local authority, as a representative of the party concerned, clearly did not comply with this legislation and therefore I consider that the UK is in breach of Article 5(2).

Article 6(1)(b)

The UK has completely misunderstood my position concerning Article 6(1)(b). At paragraph 46, the UK claims that my complaint centres on the allegation that the Council reached the wrong decision when it screened the initial planning application. This is not correct. I am not challenging the substance of the initial screening opinion.

My complaint centres on the fact that the Council failed to screen all subsequent decisions on this project.

The Aarhus Implementation Guide, at page 130, explains the situation regarding multiple permits in EU law. It states:

> *"If national law provides for a consent procedure comprising more than one stage, the EIA Directive has been interpreted by the ECJ (C-290/03 Barker [2006]) to require an environmental impact assessment to be carried out if it becomes apparent, in the course of the later stage, that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location. In practice, this includes both those situations where (i) it was decided at the initial screening stage that the project was unlikely to have significant environmental effects and thus no EIA was done; and (ii) an EIA was carried out at the earlier stage, but it subsequently becomes apparent that the project is likely to have further significant environmental effects that have not been assessed."*

In paragraph 37 of the UK's response, the party concerned quotes government guidance on the approach to be taken to considering whether an EIA is required where a consent procedure involves more than one stage (see page 13):

> *"An application for approval for [matters required by a condition attached to a planning permission] is referred to in the regulations as a "subsequent application" (regulation 2(1)). A consent granted in approving a subsequent application is a "subsequent consent" … There are <u>requirements for screening</u> for the need for an Environmental Impact Assessment for "subsequent applications" set out in regulations 8 and 9."* (my underlining)

and

> *" … there may be circumstances where an environmental impact assessment will be required even after outline planning permission has been granted (Commission v UK (C-508/03)). This is because it is not possible to eliminate entirely the possibility that it will not become apparent until a later stage that the project is likely to have significant effects on the environment. In that event, account will have to be taken of all the aspects of the project which have not yet been assessed, or which have been identified for the first time as requiring assessment."*

The initial grant of planning permission (to application 12/P0418) contained around 50 conditions (see Annex 3 to my original communication). Most of the conditions required consent before the project could be commenced. These included several conditions requiring specific environmental reports or details, for example:

> *Condition 30: For the relevant phase: Prior to commencement of the relevant phase of the development a detailed site investigation shall be completed to survey and assess the extent of potential ground contamination (including any controlled waters), considering historic land use data and the proposed end use with the site investigation report (detailing all investigative works and sampling, together with the results of analysis, risk assessment to any receptors and proposed remediation strategy detailing proposals for remediation) submitted to and approved by the Local Planning Authority with the approved remdiation measures/treatments implemented in full prior to first occupation of the relevant phase of the development hereby approved.*
>
> *Reason for condition: In order to protect the health of future occupiers of the site and adjoining areas in accordance with policy PE.8 of the Adopted Merton Unitary Development Plan 2003.*
>
> *Condition 34: Prior to commencement of the relevant phase of the development a noise report shall be submitted to and approved in writing by the Local Planning Authority detailing: (i) The existing noise environment and the potential sources of noise likely to impact on the relevant phase of the proposed development and occupiers of adjacent properties including road traffic noise. (ii) The likely noise impact of the existing noise environment on the relevant phase of the proposed development. (iii) Attentuation and noise management methods proposed to mitigate against the likely impact of the existing noise environment on the relevant phase of the proposed development and occupiers of adjacent properties, utilising appropriate standards, guidance and Government policy, for approval by the local planning authority. [sic]*

[In copying the text of this condition it has struck me that it is rather odd that the Council only required the impact of existing noise to be assessed and not the potential impact of noise caused by the proposed development!]

Other conditions required similar reports be submitted regarding electric sub-station emmissions, plans for sustainable drainage, landscaping, construction materials, etc.

Clearly, as these environmental reports were only required after the grant of planning permission then these apects of the project could not possibly have been assessed at the time of the adoption of the intial screening opinion or the grant of planning permission. Therefore screening of subsequent applications must have been necessary.

Article 6(1)(b) of the Convention states that each Party shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in Annex 1 which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions.

I consider the decisions concerning applications for approval of pre-commencement conditions (i.e. “subsequent consents”), and applications for approval of pre-occupation conditions, were all “decisions on” proposed activities which may have a significant effect on the environment, and therefore each required a determination whether the project (at the time of each subsequent decision-making event) should have been subject to the provisions of Article 6.

In the case of these subsequent consents of pre-commencement conditions, the determination required by Article 6(1)(b) is provided for in domestic law by means of screening under Regulation 9 of the EIA Regulations, which requires a screening opinion to be adopted for each subsequent application. However the domestic regulations do not appear to provide for screening where the decision concerns conditions that must be approved before development may be occupied/used.

The Council failed to screen any of the subsequent applications, and, as a consequence, failed to comply with Article 6(1)(b).

Article 3(2)

The party concerned explains that there are well-established procedures in place for the processing of planning applications. In paragraph 53, it is suggested that if a member of the public is concerned that certain information has not been made available by the Council, then a formal request can be made for that information under the *Environmental Information Regulations 2004*.

Firstly, this is a ridiculous suggestion and would be completely impractical. The public were not aware of the existence of the responses from the statutory consultees, the Screening Opinion or the Environmental Noise Assessment. To obtain this information, every individual member of the public would have to write to the Council, every day, asking if any new information had been received by the Council and what that might be. The same would apply for requests concerning whether a Decision Notice had been issued. The Council would be overwhelmed in paperwork.

Secondly, on discovering that some documents were missing, I made several attempts to obtain the information. This culminated in the requests for information in my Letter Before Claim (see attached Annex 1 Letter Before Claim, pages 10 and 11). The response from the Council's solicitor indicated that there were both paper and electronic planning documents held by Council officers, but did not include copies of that information (see attached Annex 2 Council response to LBC). As a result I made a further request under the *Environmental Information Regulations*, but this time I was informed that there were no such documents and that all information was held on the planning register (see attached Annex 3 EIR response). Again, it would be completely impractical, and time-consuming, if the public were expected to challenge every response via the Information Commissioner on the off-chance that the response provided was not correct.

In paragraph 60, the UK considers that my allegations in respect of the Council's conduct are neither particularised nor supported by proof. Besides the problems in obtaining copies of the Decision Notice and Screening Opinion from the Council, I would refer the Committee to pages 6 and 7 of my original communication in which I summarise the emails between myself and the Council. In response to a request for the Council to screen application 12/P2192, the Council sent me erroneous information, followed by a retraction of that statement, agreed to review the need for screening, then failed to make a decision whether to screen and finally, delayed responding to my Letter Before Claim by a further 8 weeks. As the UK considers that I have not provided sufficient evidence, I have attached copies of the relevant emails in Annex 4 to this letter.

At paragraph 71, the UK makes the incorrect assumption that my complaint to the LGO was related to the Screening Opinion. At the time the complaint was submitted to the LGO, my neighbours and I had no knowledge that a Screening Opinion already existed or even that the project should have been screened. Our complaint concerned that fact that residents felt there had been maladministration by the Council in the consideration of the planning application – particularly its inadequate consideration of the impacts upon the conservation areas and neighbour amenity. At the time of the complaint, we were still under the impression that the application had not yet been granted planning permission.

I consider that the LGO, soon after accepting the complaint, should have realised that domestic legislation required that the project should have been subject to an EIA procedure (i.e. screened) and that vital documents, such as the Screening Opinion and consultees' responses, were missing from the register. The LGO did not indicate to me, at any time during the investigation, that this project should have been screened or that documents were missing from the register. It only became clear later in the investigation, after I requested copies of documents provided to the LGO by the Council, that the LGO had been given documents that were not on the planning register.

Article 3(8)

I do not, as the UK suggests, consider that an award of costs is "penalization, persecution or harassment". My allegation was that I considered the pursuit of additional costs over and above the costs awarded by the Court (interest at 8% backdated to the date of the High Court Order) and the threat to involve the High Court Sheriff (which would also incurr further costs) were not reasonable and could amount to penalization or harassment.

Since the submission of my communication, the Council has agreed not to involve the High Court Sheriff at the present time.

Article 9

The UK considers that this is not a case in which Article 9(2) is engaged. I disagree.

I consider that the lack of screening and/or public participation in the subsequent decisions on this project is a failure to comply with Article 6(1)(b) and therefore engages Article 9(2).

The failings of the Council to comply with domestic legislation engage Article 9(3).

Fairness and rules on timing

I dispute the contention, in paragraph 77, that my opportunity to seek judicial review was lost primarily as a result of delay. I consider my judicial review claim was made within the time limit – it is only the redefinition of my grounds, from challenges to the subsequent decisions to challenges to the intial Screening Opinion and planning permission, that has enabled the Courts to determine that my claim is out of time. This seems extraordinarily unfair and, as suggested earlier, would exclude the public from all subsequent decisions on environmental matters and grant those decisions immunity from challenge, in breach of the Convention.

Costs

In paragraph 79, the UK considers that the provision of statutory "costs caps", in conjunction with the ability of the judge to assess what he considers the appropriate costs to be, is sufficient to ensure that the costs are not prohibitively expensive. I disagree:

(a) The "costs cap" of £5000 for individuals is far too high, especially considering the fact that this entire amount can be awarded at just the permission stage, with court fees, potential Appeal Court costs and any other legal costs of the claimant additional to these. Exposure to such costs would deter many individuals from seeking judicial review in environmental matters.

(b) In their assessment and awarding of costs in my particular case, the judges have not taken into account the public interest nature of the claim or the obligation to ensure that access to justice is fair, equitable and not prohibitively expensive.

I note that the party concerned has not addressed my position regarding the inequality of arms concerning the differing rates of allowable costs for different parties to the judicial review claim, or the allegation of profiteering (note - the Council has now confirmed that their legal representative, SLLP, charged the Council £55 per hour for provision of legal services even though the Council submitted costs of £250 per hour to the court). Both these aspects increase the costs that may have to be paid by a claimant.

Adequate and effective remedy

The party concerned has made no comment on my allegations that the Appeal Court judge's statement that:

(i) my remedy was to make an application to the Secretary of State; and
(ii) that relief would be refused in any event

are not in compliance with the requirement of Article 9(4) to provide adequate and effective remedy.

I hope that you will agree that my communication does have foundation and that it is admissible.

Yours sincerely,

Tracy Breakell