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

CO Ref: CO/2189/2014

Benjamin Cameron Howell **Claimant**

versus

(1) Secretary of State for Communities and Local Government

(2) Waveney District Council

(3) Stamford Renewables Limited **Defendants**

On the Claimant's application for a protective costs order

Following consideration of the documents lodged by the parties

Order by the Honourable Mr Justice Lindblom

Order

1. The Claimant's costs liability to the First Defendant is limited is not to exceed £5,000.
2. The First Defendant's costs liability to the Claimant is not to exceed £35,000.
3. Each party has liberty to apply to vary or discharge this order on not less than two days' notice in writing to the other parties.

Reasons

I have considered the written submissions made on behalf of the Claimant and those made on behalf of the First Defendant on the Claimant's application for a protective costs order.

I accept that, at least arguably, this is not properly to be regarded as an Aarhus Convention claim, as defined in CPR 45.41(2), because it is an application made under section 288 of the Town and Country Planning Act 1990 and not a claim for judicial review. And I am aware that permission to appeal against Lang J.'s decision in *Venn v Secretary of State for Communities and Local Government* [2013] EWHC 3546 has been granted by the Court of Appeal. But in any event I am satisfied that on the facts of this particular case the court's very broad discretion as to costs protection can and should be exercised consistently with the principles embodied in CPR 45.41-44 and paragraphs 5.1 and 5.2 of Practice Direction 45, and having regard to the jurisprudence in *R. (on the application of Corner House Research) v Secretary of State for Trade and Industry* [2005] EWCA Civ 192, *R. (on the application of Compton) v Wiltshire Primary Care Trust* [2008] EWCA Civ 749, *R. (on the application of Buglife) v Thurrock Thames Gateway Development Corporation* [2008] EWCA Civ 1209, *Morgan v Hinton Organics (Wessex) Ltd.* [2009] EWCA Civ 107 and *R. (on the application of Garner) v Elmbridge Borough Council* [2010] EWCA Civ 1006. This approach is not, in my

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view, contrary to the observations made by Lord Carnwath in paragraphs 26 and 28 of his judgment in *R. (on the application of Edwards) v Environment Agency (No.2)* [2013] UKSC 78.

The range of environmental matters to which the Aarhus Convention relates is, I believe, broad enough to encompass issues of the kind with which these proceedings are concerned. The case concerns a proposal for a large wind turbine in a statutorily protected landscape of national importance. The proposed development is EIA development. The grounds on which the decision is challenged include complaints as to the Inspector's interpretation and application of the duty in section 17A(1) of the Norfolk and Suffolk Broads Act 1988 to have regard to the conservation and enhancement of "the natural beauty, wildlife and cultural heritage of the Broads", and as to the way in which he dealt with the likely noise impacts of the proposed turbine in operation and the question of whether it would have effects on the settings of listed buildings which ought to have been addressed in accordance with the duty in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

I am satisfied that the Claimant's challenge to the Inspector's decision engages a wider public interest than his own opposition to the proposed development. I am not going to pre-judge its merits. It may fail. But the grounds do not seem to me to be entirely lacking in force. I recognize that the Claimant's resources are not as slender as those of many individuals who, as third party objectors to proposals for development, pursue claims in the Planning Court. However, I do not accept the submission made for the First Defendant that this would justify withholding costs protection in the circumstances here. Nor am I persuaded that I should reject the Claimant's contention, in paragraph 14 of his witness statement, that if the protective costs order he seeks is not granted he will have no option but to withdraw his claim.

I am therefore unable to accept the submissions made on behalf of the First Defendant opposing this application. I think this is a case in which it is right to make a protective costs order reflecting the approach the court would take if the same or similar issues had been raised in a claim for judicial review qualifying as an Aarhus Convention claim under CPR 45.41-44. The order should be consistent with the regime for costs protection applying to such claims. A level of costs protection for the Claimant equivalent to that provided for in paragraph 5.1 of Practice Direction 45 is realistic and just here, with a reciprocal cap on the First Defendant's potential liability in costs to the Claimant equivalent to that provided for in paragraph 5.2.

Signed: Sir Keith Lindblom **Date: 27 June 2014**

For completion by the Planning Court

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

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