

creating a better place



Richard Buxton
Environmental and Public Law
19B Victoria Street
Cambridge
CB1 1JP

Our ref: NH
Your ref: PS/MRG-1
Date: 12 November 2008

Without prejudice, save as to costs

Dear Sirs,

**Morgan & Baker –v- Hinton Organics (Wessex) Limited
Court of Appeal 2-3 February 2009**

The Agency formally invite your clients to discontinue their attempt to appeal the order of HHJ Seymour QC made on 21 December 2007, in so far as it involves the Environment Agency (The Agency).

Our proposal is that your clients agree to meet the existing costs order against them in favour of the Agency and BANES, as made by HHJ Seymour QC on 21 December 2007. On this basis the Agency would seek no order in relation to their costs on the appeal if this proposal is accepted within 21 days of the date of this letter. If this proposal is agreed, your clients would of course be entirely free to continue their appeal and run the Aarhus point in respect of which the issue of permission to appeal was adjourned.

In summary, the position as it appears to us is as follows:

- (1) The continued involvement of the Agency does not assist the Aarhus point that you wish to run on this appeal (in the event that permission to appeal is granted).
- (2) The Aarhus point was not raised below, which of itself is liable to create difficulties for your client in reversing the order for costs below.



- (3) The costs order in favour of the Agency and BANES flows from (i) them having been inappropriately named in the original interim order made by HHJ Seymour QC, the setting aside of which the claimants no longer seek to challenge; and (ii) your clients proceeding to obtain an injunction in this way without notice to the Agency and BANES that it was proposed that they should be named in the order; and (iii) the letters of 16 November 2007 which you wrote to the Agency giving a misleading impression of the effect of the order (in terms that HHJ Seymour QC recorded that he felt surprising should have been considered appropriate).
- (4) Furthermore, both the modest level of the costs ordered in favour of the Agency and BANES (£5,130 in total) and the fact that your clients have been able to produce these funds to be held in a solicitors' account pending the determination of the proposed appeal, seem to indicate that the order has not impeded their access to environmental justice – providing support for the view that the Agency and BANES are not relevant to your appeal.
- (5) Set against this, the continued involvement of the Agency and BANES would put your clients at significant risk of an additional costs order against them in the event that their appeal fails (either through refusal of permission, or on a substantive hearing). The hearing is listed for 2 days, at your request, before the Court of Appeal. The costs of the Agency and BANES associated with this are, you will appreciate, likely to be substantial, even with the saving to be achieved through the Agency and BANES being jointly represented by one counsel.

We set these matters out for your consideration, not your detailed submissions in response. We are not inviting a debate in correspondence as to the merits of your clients' position.

In the event that our proposal is not accepted within the time period specified, we put you on notice that the Agency would seek all their costs from your clients, incurred in relation to your clients' attempt to appeal the order of 21 December 2007 – either if your clients thereafter sought to discontinue against the Agency after expiry of the offer set out in this letter, or ultimately failed to displace the costs order in their favour. As set out above, we would contend that such costs would have been unnecessarily incurred as a result of your clients' conduct – and this has nothing to do with any arguments as to their access to environmental justice.

Yours faithfully



Nick Hayden
Solicitor

Direct dial 01392 442121

Direct fax 01392442112

Direct e-mail nick.hayden@environment-agency.gov.uk