Neutral Citation Number: [2022] EWHC 3303 (Admin)

Case No: CO/1544/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/11/2022
Start Time: **11.00 am** Finish Time: **11.43 am**

Before:

THE HONOURABLE MRS JUSTICE LANG

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Between:

The King

on the application of

Roger James Beaumont	**Claimant**
- and -	
(1) East Hertfordshire District Council	
(2) Harlow District Council	**Defendants**
(1) Places for People Developments Limited	**Interested**
(2) Taylor Wimpey North Thames Limited	**Parties**

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Mr Richard Turney (instructed by **Pinsent Masons LLP**) for the Claimant
Mr Douglas Edwards KC (instructed by Weightmans) for the Defendants
Mr David Elvin KC and Mr Richard Moules for the **First Interested Party**
Mr Tim Corner KC and Mr Nicholas Grant for the **Second Interested Party**

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Approved Judgment

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THE HONOURABLE MRS JUSTICE LANG:

1. This is a renewed application for permission to apply for judicial review, following a refusal of permission by Sir Ross Cranston, sitting as a High Court Judge, on 23 August 2022.

2. The claimant seeks permission to challenge five decisions of the individual defendants, both of which are local planning authorities for the areas adjoining the River Stort in Hertfordshire. The decisions, each taken on 18 March 2022, together authorise the construction of new roads and two new river crossings.

3. East Hertfordshire District Council ("EHDC") made the following decisions: (a) to grant planning permission with reference 3/19/1046/FUL, relating to the Central Stort Crossing ("CSC") for:

> "Alterations to the existing Fifth Avenue Road/rail bridge and creation of new bridges to support the widened highway to west of the existing structure to create the Central Stort Crossing, including embankment works, pedestrian and cycle facilities, a pedestrian and cycle bridge over Eastwick Road, lighting and landscaping works and other associated works"

(b) to grant detailed planning permission with reference 3/19/1051/FUL relating to the Eastern Stort Crossing ("ESC") for:

> "Erection of a new road, pedestrian and cycle bridge, replacement of an existing rail bridge at River Way, alterations to the existing local highway network, lighting and landscaping works, listed building works to Fiddlers' Brook bridge and other associated works"

(c) to grant listed building consent with reference 3/19/1049/LBC for listed building consent for works to Fiddlers' Brook bridge.

4. Harlow District Council ("HDC") made the following decisions:

(a) to grant planning permission with reference HW/CRB/19/00220 relating to the CSC for:

> "Alterations to the existing Fifth Avenue Road/rail bridge and creation of new bridges to support the widened highway to west of the existing structure to create the Central Stort Crossing, including embankment works, pedestrian and cycle facilities, a pedestrian and cycle bridge over Eastwick Road, lighting and landscaping works and other associated works"

(b) to grant planning permission with reference HW/CRB/19/00221 relating the ESC for:

> "Erection of a new road, pedestrian and cycle bridge, alterations to an existing rail bridge at River Way, alterations to the existing local highway network, lighting and

> landscaping works, listed building works to Fiddlers' Brook bridge and other associated works."

5. The claimant is the owner of land at Gilston, together with his mother. Their land forms a large part of the land comprised in the ESC application. The river Stort forms the administrative boundary between HDC and EHDC. As part of a wider planned development of the Harlow and Gilston Garden Town. It is proposed to construct 10,000 houses in seven "villages" in the Gilston area. Villages 1-6 are promoted for 8,500 houses by the first interested party (IP1). Village 7 is promoted for 1,500 houses by the second interested party (IP2). The planning applications for the villages have been submitted but not yet determined.

6. The CSC and ESC are intended to facilitate the development of the villages. Both the villages' development and the Stort crossings are supported by adopted policies in the relevant local plans.

7. Funding for the works and the crossing schemes is to be provided through a grant from the Housing Investment Grant, administered by Homes England. The land required for the CSC and ESC is partly in private ownership, including the land owned by the claimant. It is expected that a compulsory purchase order will be sought to require the land to construct the schemes.

8. The CSC and ESC proposals were supported by a single environmental statement, which also assessed the impact of the development of the villages. The substantial part of the CSC site lies within the green belt. Almost all of the ESC development is located within the green belt.

9. The claimant made written representations on the ESC and CSC applications, accompanied by technical representations from consultants. His solicitor also made oral representations at the EHDC and HDC committee meetings.

Grounds of Challenge

Ground 1

10. The claimant submitted that the development of the CSC and ESC was approved by the defendants without ensuring that they would deliver the benefits which were said to justify the proposals. The claimant relied on three main points in support of his contention that the defendants' approach was irrational.

11. First, condition 4 on each planning permission links the delivery of the CSC and ESC to the grant of planning permission for Villages 1-6, but it does not require the implementation of the permission or the completion of the developments. Therefore, it would be possible for the CSC and ESC to proceed with the harms identified, but without any of the benefits.

12. Second, the EIA assumes that the CSC and ESC would come forward in association with the villages. There is no EIA assessment for the crossings on their own.

13. Third, the defendants justified the disturbance of protected species on the basis of imperative reasons of overriding public importance, namely, delivery of the benefits of the villages, without ensuring that those benefits will arise.

14. I agree with Sir Ross Cranston that this ground is unarguable. First, as to condition 4, the defendants had a broad discretion under section 70(1) of the Town and Country Planning Act 1990 to impose such conditions as they think fit. The ORs dealt expressly with the scenario in which the Villages 1-6 application was not granted and stated:

> "Given the harm to the green belt and other harms arising from this ESC proposal, there is a need to ensure that these harms do not occur unless the Gilston area Villages 1-6 outline application is granted."

(CSC OR, paragraph 13.8(40) and ESC OR, paragraph 13.8(43))

15. The ORs then went on to advise:

> "It is submitted that the grant of planning permission for Villages 1-6 will give sufficient confidence that the residential development will proceed such that the development of the ESC scheme in the green belt can proceed and it is appropriate to determine the ESC as promptly as practicable to allow sufficient time for this critical piece of infrastructure to be delivered in a timely manner. Given that the planning application for Villages 1-6 has been submitted by the same applicant as the application for the ESC, such condition 4 is considered to be reasonable."

16. Thus the ORs advised, and the members accepted, that as a matter of planning judgment the form of condition 4 was acceptable. Officers and members were made aware of the claimant's concern that the CSC and the ESC might proceed but not the villages. But their judgment was that this was not likely because the developer of the crossings is the same as the developer of Villages 1-6. It was reasonable for the defendants to take that view, given the costs of delivering the crossings for the developer of Villages 1-6, which would be unnecessary were that development not to take place.

17. Second, in regards to the EIA, the development of CSC and ESC was linked to planning permission for Villages 1-6 by condition 4 and the crossings facilitated the benefits that would flow from the villages. Consequently, the "project" for EIA purposes was correctly understood as comprising the CSC, ESC and Villages 1-6. The scenario of ESC and CSC coming forward on their own was judged not to be "likely" and not a serious possibility. Therefore, there was no requirement to assess it as a "likely significant effect". It follows that it was not irrational for the defendants to conclude that the information in the environmental statement ("ES") was adequate.

18. Third, for the reasons I have already given, it was reasonable for the defendants to take into account the benefits of Villages 1-6 in assessing whether any harm to protected species would be justified.

Ground 2

19. Under Ground 2, the claimant made essentially the same point as in Ground 1, in the context of the policy tests for development in the green belt. The claimant submitted that the defendants acted irrationally in attaching any weight, or the weight which they did, to the benefit to be delivered by Villages 1-6, when they concluded that there were very special circumstances which justified development in the green belt. The claimant also contended that the defendants failed to have regard to the decisions and reasoning of the local plan inspectors who did not release the land in question from the green belt.

20. In my judgment, ground 2 is unarguable. It was rational to give significant weight to the benefits of villages when assessing whether there were very special circumstances, as the defendants were confident that those benefits would materialise and condition 4 provided the development, safe for enabling works, could not commence until planning permission was granted for the villages. The ORs were detailed and gave adequate reasons for these conclusions.

21. The defendants' local plans expressly support new infrastructure in the form of the CSC and ESC and recognise that it is required in order to deliver planned growth in the Gilston area. This was a relevant consideration. As explained in detail in the defendants' summary grounds, at paragraph 49, the local plan inspectors were not asked to exclude the ESC or CSC from the green belt and so did not consider the soundness of such a proposal.

Ground 3

22. The claimant submitted that the EIA was inadequate in three respects:

    i) First, it failed to assess the extensive impact of the enabling works on the basis of the possibility that the development of the villages did not proceed.

    ii) Second, the ecological surveys were inadequate in regard to mammals, reptiles and birds. Data was insufficient and a worst case assessment was not undertaken.

    iii) Third, there were a number of fundamental flaws in the transport assessment and, therefore, the assessment did not rationally underpin an adequate EIA.

23. In refusing permission on this ground, Sir Ross Cranston said:

> "The threshold for a challenge on this ground is high. In my view, the defendants had adequate information to allow them reasonably and rationally to grant planning permission for the crossings. The ES was not legally defective and the EIA's approach was reasonable and lawful. There was a disagreement over transport but it was not irrational for the

> defendants to rely upon the advice of the Highways Authorities as to the robustness of the transport assessment."

24. I agree with, and adopt, his conclusions. I also add the following points:

i) First, in regard to the enabling works, the ORs included a full explanation of the enabling works. The defendants reached a balanced judgment to allow a limited number of enabling works to occur, but also imposed condition 40 so that the harm arising from the enabling works would be remedied and reversed if the crossing permission was not able to be implemented, prior to expiry, on account of condition 4 not being satisfied.

ii) Second, the ES was not legally deficient by reason of inadequate surveys. The claimant denied access for the undertaking of surveys and so the ES proceeded to make worst case assumptions. The species that the claimant refers to were dealt with lawfully:

a) *Water vole and otters*: there was a water vole and otter survey appended to the ES. It explained that not all areas could be surveyed. A precautionary assumption was made that these species were present or could be in the future because of a suitable habitat. Mitigation was applied accordingly.

b) *Reptiles*: there was a reptile survey appended to the ES. There was no lack of survey information but the ES made clear that the surveys needed to be refreshed due to their age. A lawful worst case assessment was undertaken and adequate mitigation identified.

c) *Birds*: the survey of birds appended to the ES made it clear that there was no lack of survey information, but that surveys needed to be refreshed due to their age. A lawful worst case assessment was undertaken.

Paragraph 13.6.19 of the ESC OR stated:

> "Access was not permitted by the current landowner in order to carry out detailed empirical surveys. As such, the environmental statement took a worst case scenario approach and used a combination of aerial photography, review of existing data held by the Hertfordshire Biodiversity Records Centre and Essex Ecological Service and visual surveys taken from the edge of the site. Conservative judgments based on this data and detailed surveys of land adjacent were made, assuming that the area could support species of interest and proposing measures to mitigate potential impacts. These assumptions will be verified through up-to-date surveys and any changes to the assumed baseline data can be captured and appropriately mitigated prior to the commencement of relevant phases of the development and controlled through conditions."

In my judgment, this approach was appropriate and lawful.

25. Third, in my view it is clear that there was a difference in professional judgment between the claimant's transport consultants and the defendants regarding modelled predictions of mode share shift. The defendants were entitled to reach the conclusions that they did, which do not disclose any arguable error of law.

Ground 4

26. This relates only to HDC's decision. The claimant submitted that members were given erroneous legal advice by planning officers in the committee meeting, to the effect that they should not consider impact on heritage assets that were located outside their planning area.

27. According to HDC, the comments which are the subject of criticism were directed at the listed building application for works to the listed footbridge, which was to be determined by East Hertfordshire DC, not Harlow DC. I consider that is a reasonable inference to draw from the transcript.

28. In any event, I am satisfied that members were given detailed and accurate advice in the OR as to the impact on heritage assets, including the listed buildings, Fiddlers' Cottage and the footbridge. Moreover, in the same meeting, which is the subject of criticism by the claimant, the correct legal tests were explained by officers to members, and the presentation by the case officer included an assessment of impact on the listed buildings. The case officer did not, at any stage, suggest that these were not matters for members to take into account. Indeed, she advised that as the proposed development crossed the boundary between the two authorities, what happened across the "border" was relevant to each authority.

29. Therefore, I consider that ground 4 is unarguable.

Ground 5

30. Ground 5 was not renewed by the claimant.

Ground 6

31. The claimant submitted that the listed building consent report was flawed as it stated:

> "The wider public benefits of the Eastern Stort Crossing are considered to outweigh the less than substantial harm to the significance of Fiddlers' Bridge and the harm is further mitigated by the repairs proposed to the footbridge, as detailed in this application for listed building consent (paragraph 9.1)."

32. However, the claimant submits the benefits of the housing development in the villages were not secured in the application and so could not be relied upon. For the reasons that I have given under the earlier Grounds, in particular Ground 1, this point is unarguable.

33. So, for all these reasons I have given, I conclude that the application for permission must be refused.

(Following further submissions)

34. Sir Ross Cranston held that this was an Aarhus Convention claim but acceded to the defendants' and interested parties' application for the standard costs cap of £5,000 for an individual to be increased to £30,000. He then ordered that the claimant should pay the other parties' costs of preparation of their acknowledgements of service as follows: £20,000 to the defendants and £5,000 to IP1 and £5,000 to IP2.

35. The claimant objects to the judge's costs orders. First, he submits that it was unreasonable to raise the Aarhus cost cap to £30,000. The claimant and his mother are directly affected by the development proposals. The figure is high in relation to the claimant's means. Second, the claimant submits that the order for costs made in the total sum of £30,000 was unreasonable and disproportionate.

36. In regard to the Aarhus cap applying CPR 45.44, the question is whether the proceedings will be prohibitively expensive for the claimant, either because they exceed his financial resources or are objectively unreasonable, having regard to the situation of the parties, his prospects of success, the importance of what is at stake and the complexity of the relevant law and procedure.

37. In view of the claimant's considerable wealth, as disclosed in his financial statement, I do not consider that a cap of £30,000 exceeds his resources nor is it objectively unreasonable. I consider that this part of Sir Ross Cranston's order was appropriate and do not vary it.

38. Turning now to the question of the individual orders for costs and whether they were reasonable and proportionate, I do consider that the claim for costs made by the defendants in the sum of £38,543 for preparation of the acknowledgement of service and summary grounds of defence was excessively high. Although the judge reduced it to £20,000, I still consider that sum, £20,000, to be unreasonable and disproportionate in all the circumstances of the case. Therefore, I reduce the costs payable by the claimant to the defendants to a total of £15,000.

39. I confirm the costs orders to the interested parties in the sum of £5,000 each. I consider that both interested parties were entitled to their costs as a matter of principle. I also consider their contributions assisted the court and added to the submissions made by the defendants in this complex case.

40. I note that IP2 claimed costs in the sum of £16,000. There was no costs statement lodged by IP1, but it did apply for its costs in the summary grounds. In my view, the judge was entitled to assume that there was no purpose in requiring IP1 to file a costs statement, since the summarily assessed costs were bound to exceed the amount available, once the costs limit under the Aarhus Convention had been applied.

41. In those circumstances, the -- what Mr Elvin describes as -- token sum of £5,000 to each interested party was entirely reasonable and proportionate.

42. Although the total amount of costs payable by the Claimant is high, that reflects the fact that there are a number of parties who are affected by the claim that the claimant has brought. Where the court refuses permission, ordinarily costs will follow the event and there is no reason in this case to depart from that general principle.

(This Judgment has been approved by the Judge.)