

Judicial Review

Acknowledgment of Service

Name and address of person to be served

name
Tracy Breakell

address
13 Manor Gardens
London
SW20 9AB

In the High Court of Justice Planning Court in the Administrative Court	
Claim No.	CO/580/2015
Claimant(s) <i>(including ref.)</i>	Tracy Breakell
Defendant(s)	Merton London Borough Council
Interested Parties	(1) NHS South-West London (2) McCarthy and Stone Retirement Lifestyles Limited

SECTION A

Tick the appropriate box

- | | | |
|---|-------------------------------------|-----------------------------------|
| 1. I intend to contest all of the claim | <input checked="" type="checkbox"/> | } complete sections B, C, D and F |
| 2. I intend to contest part of the claim | <input type="checkbox"/> | |
| 3. I do not intend to contest the claim | <input type="checkbox"/> | complete section F |
| 4. The defendant (interested party) is a court or tribunal and intends to make a submission. | <input type="checkbox"/> | complete sections B, C and F |
| 5. The defendant (interested party) is a court or tribunal and does not intend to make a submission. | <input type="checkbox"/> | complete sections B and F |
| 6. The applicant has indicated that this is a claim to which the Aarhus Convention applies. | <input type="checkbox"/> | complete sections E and F |

Note: If the application seeks to judicially review the decision of a court or tribunal, the court or tribunal need only provide the Administrative Court with as much evidence as it can about the decision to help the Administrative Court perform its judicial function.

SECTION B

Insert the name and address of any person you consider should be added as an interested party.

name

address

Telephone no.

Fax no.

E-mail address

name

address

Telephone no.

Fax no.

E-mail address

SECTION C

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it. If you are a court or tribunal filing a submission, please indicate that this is the case.

See attached Grounds for Contesting the Claim

SECTION D

Give details of any directions you will be asking the court to make, or tick the box to indicate that a separate application notice is attached.

[Empty box for directions]

If you are seeking a direction that this matter be heard at an Administrative Court venue other than that at which this claim was issued, you should complete, lodge and serve on all other parties Form N464PC with this acknowledgment of service.

SECTION E

Response to the claimant's contention that the claim is an Aarhus claim

Do you deny that the claim is an Aarhus Convention claim? Yes No

If Yes, please set out your grounds for denial in the box below.

[Empty box for grounds for denial]

SECTION F

**delete as appropriate*

~~I~~(I believe)~~The~~ defendant believes) that the facts stated in this form are true.
*I am duly authorised by the defendant to sign this statement.

(if signing on behalf of firm or company, court or tribunal)

Position or office held
Solicitor

(To be signed by you or by your solicitor or litigation friend)

Signed
George Chesman NP - Solicitor

Date
2nd March 2015

Give an address to which notices about this case can be sent to you

name
South London Legal partnership

address
Gifford House
67c St Helier Avenue
Morden
SM4 6HY

Telephone no.
020 8545 3328

Fax no.
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george.chesman@merton.gov.uk

If you have instructed counsel, please give their name address and contact details below.

name
David Smith

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Landmark Chambers
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020 7421 6060

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Completed forms, together with a copy, should be lodged with the Administrative Court Office (court address, over the page), at which this claim was issued within 21 days of service of the claim upon you, and further copies should be served on the Claimant(s), any other Defendant(s) and any interested parties within 7 days of lodgement with the Court.

Administrative Court addresses

- Administrative Court in **London**

Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.

- Administrative Court in **Birmingham**

Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street, Birmingham B4 6DS.

- Administrative Court in **Wales**

Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.

- Administrative Court in **Leeds**

Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.

- Administrative Court in **Manchester**

Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

PLANNING COURT

BETWEEN:

THE QUEEN

(on the application of)

TRACY BREAKELL

Claimant

and

LONDON BOROUGH OF MERTON COUNCIL

Defendant

and

NHS SOUTH WEST LONDON

and

MCCARTHY AND STONE RETIREMENT LIFESTYLES LTD

Interested Parties

GROUNDS FOR CONTESTING THE CLAIM

on behalf of

THE DEFENDANT

Preface

This proposed claim stems from and relate to a planning permission granted by the Defendant Council in 2012 pursuant to a resolution to grant it made in September 2012. A copy of the report to the Council's Planning Applications Committee (PAC) dated 6th September 2012 accompanies this Acknowledgement of Service. The Defendant invites the Court to review pages 198 and sections 7 - 9 at pp208 - 218 as advance reading. Except for references to page numbers within that Report, the Council's references to documents herein adopt the pagination in the Claimant's bundle.

Introduction

1. The Claimant has for some years been expressing dissatisfaction over the Defendant Council's approval of redevelopment proposals for the Nelson Hospital site. Planning permission for that redevelopment was granted in December 2012 (J1, J10) and it is way beyond time for any direct challenge to it (and to any process by which it was reached).
2. The redevelopment can be described as being essentially in two parts: a Local Care centre (LCC, or site 1) and an Assisted Living Extra Care development (ALEC or site 2). The LCC is sometimes called the health care centre and the ALEC the 'assisted living' development. A third element embraces access and public realm improvements at or in the vicinity of The Rush (APR) (see drawings at Report pp243 and 246 for Site 1, Site 2 and The Rush in context). As noted by the Claimant (C3 §14),
 - (i) the LCC development on Site 1 is now almost complete and ready for occupation and
 - (ii) work is well under way for the ALEC development on Site 2.
3. The planning permission included a number of conditions which called for approval of various details and development management measures. Between January 2013 and December 2014 over 40 conditions have been discharged (and 6 partially discharged) for site 1 or 2 as the case may be (C2, C3 §13). The claimant now seeks, it seems, an order quashing the discharge of the conditions under reference 13/P2192 (for ALEC site 2) and 14/P4189 (for APR) (see C1 §5). The salient characteristics are summarised in the table below. (The conditions themselves and the reasons for their imposition appear at J1 and following.)

Condition	Topic	Ref N^o	Date of Discharge	Bundle
22 (ALEC)	Secure cycle provision	13/P2192	19 th November 2013	K1
34 (ALEC)	Noise attenuation / management	13/P2192	19 th November 2013	K1
44 (ALEC)	Drainage strategy	13/P2192	27 th November 2013	K2
16 (ALEC)	Notification of works (trees)	13/P2192	29 th November 2013	K3
7 (ALEC)	Site / floor levels	13/P2192	29 th November 2013	K3
4 (ALEC)	External materials	13/P2192	26 th April 2014	K4
18 (APR)	Vehicular access detail	14/P4189	29 th December 2014	K7
46 (APR)	Access signage	14/P4189	29 th December 2014	K7
43 (APR)	Public realm at The Rush	14/P4189	29 th December 2014	K7

Ground 1

4. Even if Regulation 9 is engaged for the ALEC conditions, the claim in respect of the decision to discharge them is hopelessly out of time.
5. Whatever may be said about the ALEC conditions, the APR conditions are not conditions which require approval before those parts of the development "*may be begun*"¹: (see K5, K6 for the conditions). Regulation 9 cannot be said to be engaged in respect of them. The proposed claim is therefore unfounded.

Grounds 2 and 3

6. The Claimant's further proposed grounds are no more than (i) an oblique challenge to the planning permission based (ii) on seeking to persuade the Court to entertain and adjudicate upon a different view of the planning merits for the screening opinion and for the decision to grant planning permission.

Context

7. Following a resolution to grant planning permission made in September 2012², the Planning Permission Decision Notice dated 18th December 2012 expressed the Reason[s] for Approval (J9, §54) as being:
"The proposals involve well designed new buildings providing enhanced health care and specialist residential accommodation for elderly persons, in keeping with the scale and character of nearby buildings in the local conservation areas. The scheme raises no undue impacts for neighbour amenity or highway safety, but proposes enhancements to the public realm and biodiversity with new landscaping and tree planting and accords with policies contained in the London Plan (2011), Core Strategy (2011) and the Council's Adopted [UDP] (October 2003). The policies listed below were relevant to the determination of this proposal [which were then set out]."
8. As is clear from the Officer's Report, (and as might be expected) a number of planning judgements fell to be made within the officer team and then by members of the PAC before reaching the decision after reading the Report. A copy of the full Report (together with recommended conditions) is attached.

¹ See definition of "*subsequent application*" at the end of Regⁿ 2(1) which although not included in the 'V series' in the bundle is conveniently reproduced at C4 §22.

² Page C2 §10.

9. The Report shows (p197) the application was accompanied by many plans and drawings as well as a series of specialist reports or strategies which had informed the Report and guided consultees.
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10. The Claimant recites how she (and others) challenged the Council to reconsider its decision as long ago as October 2012. This was based on claims (inter alia) that (i) conservation area and (ii) neighbour amenity issues had not been properly considered (C2 §11). Those complaints also underlie the present proposed challenge expressed in support of Grounds 2 and 3.

Ground 2: Screening Opinion

11. The Council accepts (but cannot explain) that the Screening Opinion was not 'uploaded' until July 2014 (C2 §8) (albeit a 'paper copy' could have been provided if requested). Whilst no time limit for its publication is set out in the Regulations, it did come to the Claimant's attention in or about July 2014. Even by reference to that date, the time for challenge based on any alleged deficiencies in or related to that matter has long-since expired.
12. Further and in any event, the proposed challenge is no more than an invitation to the Court to embark upon a consideration of the planning judgements made. The Court cannot be expected to adjudicate (for example) on traffic figures nor whether or not the figures relied upon are even compatible for the purposes of analysis even if it were so persuaded.

Ground 3: Claimed requirement to reassess Screening Opinion for 12/P0418

13. The screening process has been completed – long ago. Even allowing for delayed publication, the proposed challenge to it - or more particularly, the subsequent planning permission - is way out of time. The Claimant invites the Court to adjudicate upon matters of planning judgement.
14. But there are short answers to the points raised in any event.
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Conservation Area (C9 §§57 - 62)

15. In terms of Conservation Area aspects, this is a complaint on the merits which has been raised since as far back as October 2012 (if not before, see eg C2 §11).

16. The ALEC site (the subject of the complaint) is outside of but adjacent two Conservation Areas (report p198 §2.1). The Report describes the location and the policy expectation that relevant development should enhance the setting (p213 §7.27) together with an analysis in the paragraphs following. The Report makes the scale of the development and the relationship with surrounding areas clear. It reported consultation responses which included objections to the effect (eg) that the proposal was of an industrial scale (p203 §5.8) but addressed the proposal in the context of a policy expectation of enhancement (p213 §7.27 *et seq*).

17. The Officer Report discussed CA matters and (although subject of a formal complaint by the Claimant) Members viewed the site and surroundings before making their decision. Members could hardly have been better placed to make a judgment.

18. This element is simply inviting the Court to reach a different view from Members on a matter of planning judgement. The Reason[s] for Approval (J9 §54) shortly encapsulate Members' conclusions.

Noise (C9 §§63 - 65)

19. Again, an invitation to the Court to adjudicate on planning judgement, but this time in relation to the LCC (site 1, now essentially completed).

20. The Claimant seeks to invite the Court to disagree with qualified officers who took account of all the material available (together with their own skill, experience and judgement) and not simply a page or two from a single report. The judgement is summarised at p212 of the Report, and the Reason[s] for Approval (J9 §54) shortly encapsulate Members' conclusions.

Neighbour amenity (C10 §§66 - 67)

21. This complaint asks the Court to revisit the judgements about neighbour amenity relating to the ALEC development. The essence of the basis for judgement made is set out at

p215 of the Report (§§7.35 - 7.36) and summarised in the Reasons[s] for Approval (J9 §54). There is no basis for the Court to substitute its own judgement as to significance.

Bats (C10 §§68 - 69)

22. The Claimant fails to acknowledge that the prime element of mitigation proposals was directed at habitat mitigation and enhancement through the tree protection and landscaping proposals which are covered by conditions (J3, conditions 13 – 16). (See also Report p213 §7.26 for LCC site 1, and p215 §§7.37 - 7.39 for ALEC site 2). The reason[s] for approval (J9 §54) shortly encapsulate Members' conclusions relating to biodiversity.

Demolition and construction (C10 §§70 - 71)

23. Officers and Members can have been in no doubt about the scale of the proposals and that demolition of substantial buildings would be involved (see eg Report p199 §3.3 and drawings at pp226 -229). Qualified and experienced Officers raised no objections but judged that various controls be imposed (Report p204 §5.12 and eg J6 condition 34). The Claimant has a different interpretation of 'short term' in the context of a development of this scale. There is no basis for inviting the Court to reach a different view from the Council's on what is a matter of planning judgement.

Overall

24. This ground is also no more than an attempt to impugn the original planning permission (and screening opinion) way out of time, and based upon an invitation to the Court to revisit planning judgements.

None of the Grounds is arguable and the Application for permission should be refused, and The Council claims its costs of its Acknowledgement of Service in accordance with the schedule attached.

David Smith
Landmark Chambers
London
EC4A 2HG
2nd March 2015
