



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

CO/3041/2021

**In the matter of an application for Planning Statutory Review**

**LONDON HISTORIC PARKS AND GARDENS TRUST**

**Claimant**

**-and-**

**(1) MINISTER OF STATE FOR HOUSING  
(2) WESTMINSTER CITY COUNCIL**

**Defendants**

**-and-**

**SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL  
GOVERNMENT (now the SECRETARY OF STATE FOR LEVELLING UP,  
HOUSING AND COMMUNITIES)**

**Interested Party**

**DAVID COOPER [Putative Interested Party]**

**LEARNING FROM THE RIGHTEOUS [Putative Interested Party]**

**Notification of the Judge's decision on the application for permission to  
apply for Planning Statutory Review (CPR PD 8C)**

Following consideration of the documents lodged by the Claimant and the  
Acknowledgements of service filed by the Defendant and/or Interested Party

**ORDER by the Honourable Mrs Justice Lieven**

1. Permission granted on Ground One and Four. Permission refused on other grounds.
2. The application is to be listed for 1.5 days. The parties to provide a written time estimate for the hearing within 7 days of service of this order if they disagree with this direction.
3. This is an Aarhus Convention claim within the meaning of CPR Part 45.41. The Claimant's liability for the costs incurred by the Defendant and Interested Party is limited to £10000, and the Defendant's liability for costs incurred by the Claimant is limited to £35000.
4. The application to be joined and to revoke the judicial review by David Cooper is dismissed.
5. Learning from the Righteous are joined as an Interested Party.

## **Observations**

1. Ground One is arguable for the reasons set out in the Claimant's Reply, particularly paragraphs 16-20. The Inspector referred to Bedford at IR15.12 and the analysis in that case appears to have been a material part of his reasoning and therefore his approach to significant harm in the NPPF. Although, as the Defendant says, the Inspector also relied on the NPPG, he appears to have considered that the tests were the same. It is arguable that the test or language in Bedford is not consistent with the NPPF and with the natural meaning of the words "substantial harm". It is appropriate for a Court to consider whether the language of Bedford should be applied in the light of the CA judgment in Bramshill.
2. Given that the approach in Bedford seems to be an integral part of the Inspector's analysis, I do not consider that the decision would have inevitably been the same in any event.
3. Ground Two is not arguable. This is a challenge to the rationality of the Inspector (and SoS's) planning judgement. The Inspector considered harm to VTG and reached a conclusion that was not arguably irrational, given the broad scope of judgement in this field.
4. Ground Three in my view is not arguable. Section 8 of the LCC (Improvements) Act 1900 does not prevent development within VTG, s.8(8) is a maintenance obligation.
5. Ground Four is arguable. Although the Inspector did consider the IWM as an alternative location, the way that he has done so effectively places the burden on the objector to produce a "detailed scheme", which would in practice be almost impossible to discharge.
6. Ground Five is not arguable. The Inspector considered the impact on the trees in considerable detail.
7. Mr Cooper has not submitted any documentation in support of his application despite it being some 4 weeks since the application was made. As such it is appropriate to dismiss it.

## **Case Management Directions**

1. The Defendant and any other person served with the Claim Form who wishes to contest the claim or support it on additional grounds shall, within **[35]** days of the date of service of this Order, file and serve (a) Detailed Grounds for contesting the claim or supporting it on additional grounds, and (b) any written evidence that is to be relied on. For the avoidance of doubt, a party who has filed and served Summary Grounds pursuant to CPR PD 8C 5.5 may comply with (a) above by filing and serving a document which states that those Summary Grounds shall stand as the Detailed Grounds required by CPR PD 8C 12.1.
2. Any application by the Claimant to serve evidence in reply shall be filed and served within **[21]** days of the date on which the Defendant serves

evidence pursuant to 1(b) above.

3. The parties shall agree the contents of the hearing bundle and the Claimant must file it with the Court not less than **[21]** days before the date of the hearing of the judicial review. An electronic version of the bundle shall be prepared and lodged by the Claimant in accordance with the Guidance on the Administrative Court website. The Claimant shall, if requested by the Court lodge hard-copy versions of the hearing bundle not less than **[4]** days before the hearing.
4. The Claimant must file and serve a Skeleton Argument not less than **[14]** days before the date of the hearing of the judicial review.
5. The Defendant and any Interested Party must file and serve a Skeleton Argument not less than **[7]** days before the date of the hearing of the judicial review.
6. The parties shall agree the contents of a bundle of authorities to be referred to at the hearing. An electronic version of the bundle shall be prepared by the Claimant in accordance with the Guidance on the Administrative Court website. The Claimant shall if requested by the Court, prepare a hard-copy version of the authorities bundle. The electronic and hard copy versions of the bundle must be lodged by the Claimant with the Court not less than **[4]** days before the date of the hearing of the judicial review.
7. If permission has been granted on some grounds but refused on others, the Claimant may request that the decision to refuse permission be reconsidered at a hearing by filing and serving a completed Form 86B within 7 days after the date this order is served on the Claimant. The reconsideration hearing will be fixed in due course.

**Case NOT suitable for hearing by a Deputy High Court Judge\***

[\*Tick if applicable]

Signed      Mrs Justice Lieven  
Dated        28 October 2021

**The date of service of this order is calculated from the date in the section below**

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**For completion by the Administrative Court Office**

Sent / Handed to

**either** the Claimant, and the Defendant [and the Interested Party]

or the Claimant's, and the Defendant's, [and the Interested Party's] solicitors

Date:29/10/2021

Solicitors:  
Ref No. MON1/2

**Notes for the Claimant**

To continue the proceedings a fee is payable.

**For details of the current fee please refer to the Administrative Court fees table at <https://www.gov.uk/court-fees-what-they-are>.**

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from the Justice website <https://www.gov.uk/get-help-with-court-fees>

You are reminded of your obligation to reconsider the merits of your claim on receipt of the defendant's grounds of defence and evidence.