



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: C1/2014/3881



R on the application of –v– LONDON BOROUGH OF SUTTON & ANR  
KHAN

**ORDER made by the Rt. Hon. Lord Justice Sullivan**

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

**Decision:** granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

Permission to appeal refused.

**Reasons**

The three Grounds of Appeal do not have a real prospect of success.

Ground 1

The Judge's interpretation of Policy WP3 in paragraphs 47-49 of the judgment, and her conclusion that the SLWP did not provide "site specific policy guidance that the Beddington site will no longer be suitable for waste treatment after 2023 as it will be incorporated into the Wandle Valley Regional Park" (paragraph 9 Appellant's Skeleton) is not arguably in error. Policy WP3 applies to "All existing permitted sites" (AB/760). The express function of Schedule 1 is to provide a list of those existing permitted sites (AB/761-762). The footnote referred to by the asterisk beside the Beddington Lane site in the Schedule is simply a factual description of the terms of the existing planning permission at Beddington Lane. It does not purport to be, and is not, a statement of future planning policy post 2023 (after the expiration of the ten year period of the SLWP in 2021).

In any event, the Planning Officer's Report clearly recognised that the existing planning permission required all the buildings and structures to be removed by 2023 and the land to be fully restored soon thereafter, and considered the impact of permitting the ERF against this background: see the extracts from the Officer's Report cited in paragraphs 41 and 73 of the judgment.

Ground 2

The underlying proposition: that compliance with a particular policy can never amount to a very special circumstance is not reasonably arguable. The weight to be attached to compliance with any particular policy in a particular case is a matter of planning judgment for the LPA. While compliance with policies is not uncommon, a LPA might reasonably consider that a particular policy was of such importance that compliance with that policy did amount to "very special circumstances." In any event, this ground of appeal ignores the fact that the safeguarding of the Beddington site in the SLWP was only one of a number of factors listed in paragraphs 7.4–7.10 of the Officer's Report as constituting "very special circumstances." The proposition that, in aggregate, those factors could not lawfully amount to "very special circumstances" is hopeless.

Ground 3

There is no necessary inconsistency between the LPA's conclusion that there was significant potential for an ERF to provide CHP (to which significant weight should be attached), and its conclusion that there was insufficient information as to the route of the pipe line(s) to enable an assessment of the environmental effects of laying them down and using them to be carried out in accordance with the EIA Regulations. One can be reasonably certain that CHP will be provided even though the precise routes of the necessary pipelines have not yet been

provided even though the precise routes of the necessary pipelines have not yet been determined.

**Information for or directions to the parties**

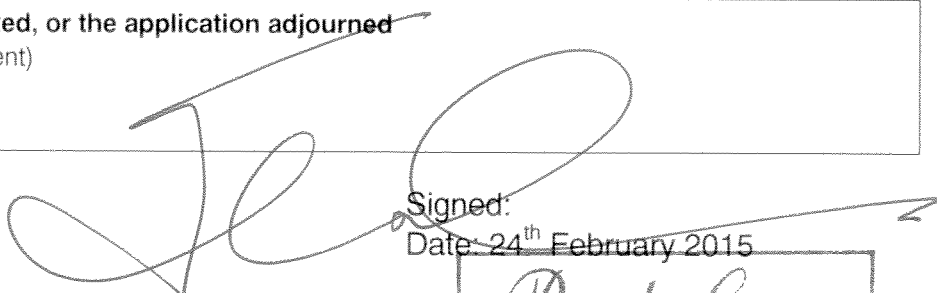
This case falls within the Court of Appeal Mediation Scheme automatic pilot categories\*. Yes  No

Recommended for mediation Yes  No

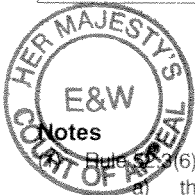
If not, please give reason:

**Where permission has been granted, or the application adjourned**

- a) time estimate (excluding judgment)
- b) any expedition



Signed:  
Date: 24<sup>th</sup> February 2015



By the Court

- (1) Rule 52.3(6) provides that permission to appeal may be given only where –
  - a) the Court considers that the appeal would have a real prospect of success; or
  - b) there is some other compelling reason why the appeal should be heard.
- (2) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 16(1) of CPR PD 52C.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 7 days of the date of the listing window notification letter and seek to agree the bundle within 21 days of the date of the listing window notification letter (see paragraph 21 of CPR PD 52C).

DATED 24TH FEBRUARY 2015  
IN THE COURT OF APPEAL

**ORDER**

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Lower Court Ref: CO18782014