

02079477876



**In the High Court of Justice
Queens Bench Division
Administrative Court**

CO Ref: CO/454/2008

TALA GOLEN

In the matter of an application for Judicial Review

The Queen on the application of
TWIGDEN HOMES LTD AND BELLWINCH HOMES LTD
versus
WTTLESFORD DISTRICT COUNCIL
Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant and interested supporting party

Order by the Honourable Mr Justice OUSELEY

Permission is hereby refused.

Observations:

This application is unarguable largely for the reasons given in the AoS.

Delay: the real decision under challenge is that of the EC on 4 9 07; the later decision of the EC on 30 9 07 was simply not to rescind that decision. An extension of time because of the possibility of an alternative remedy could be granted but it would have to be shown that the Claimants acted with due expedition after that. I would not refuse permission on that point without an oral rolled up hearing.

I see nothing in the points about the procedure adopted at the meetings over who should speak; the SO do not require the Council to give opponents of a point of view the right to respond; the assertion that the EC gave overmuch weight to one speaker's arguments is not an argument of law.

I would not refuse permission at this stage because of a possible remedy once the whole statutory process is complete; if there is incurable error at this stage, it might as well be dealt with now. The problem faced by the Claimants is not just that the statutory process has other stages to go through in which they might succeed on the development merits, but that if they fail on the arguments on the development merits at the other stages it will in reality be impossible or pointless for them to complain about any defect in the pre public participation consultation phase. But that highlights why they do not have any arguable case at this stage: the merits of the various options remain for full debate.

The true argument made by the claimants is that no option which has not featured as a formal option can be added after consultation and before the next stage of public participation. That is just wrong. There is no statutory provision to that effect. The guidance does not say that that is what should happen. Although the guidance is better met by the inclusion of the ultimately preferred option at the consultation phase, the fact that an option may emerge as a result of that process cannot show that the guidance has been breached let alone breached in a way which makes the decision of the EC unlawful. It would be a real fetter on the process if another option could not emerge from the views expressed about the inadequacies of the options consulted on, or if it were to do so the whole process of consultation had to be repeated before the public participation stage. Besides, it is clear that aspects of a new settlement at Elsenham were part of the consultation process and views were legitimately expressed in its favour and against the three options. I see no reason at all why it is unlawful for the council to adopt as a preferred option for public participation a proposal which emerged as an option as a result of consultations. The asserted weakness of the basis for the newly emerged preferred option will no doubt feature in any event in the arguments about its soundness. There is nothing which has happened at this stage which would vitiate whatever emerges as the preferred option for the PDP.

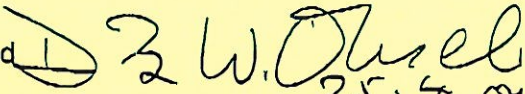
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- Case suitable for hearing by a Deputy High Court Judge**
- Criminal case suitable for hearing by a Single Judge**
- Hearing to be expedited**
- Case is considered to be totally without merit**

Directions as to expedition or other matters:

**Tick if applicable

Signed  25.4.08

Where permission to apply has been granted, claimants and their legal advisers are reminded of their obligation to reconsider the merits of their application in the light of the defendant's evidence.

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors: DLA PIPER UK LLP
Ref No.

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Notes for the Claimant

- (1) Where the Judge has refused permission a claimant or his solicitor may request the decision to be reconsidered at a hearing by completing and returning form 86B within 7 days of the service upon him of this notice.
- (2) If permission has been granted the claimant or his solicitor must within 7 days of the service upon him of this notice, lodge a further fee of £180.00, or a Fees exemption certificate if appropriate, to continue the proceedings. Failure to pay the fee or lodge a certificate within the specified period may result in the claim being struck out.

Note to Defendants and Interested Parties

- (1) Where permission has been granted, a defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve –
 - (a) detailed grounds for contesting the claim or supporting it on additional grounds; and
 - (b) any written evidence,

within 35 days after service of the order giving permission.