(GS: 14.06.19)
Her Majesty's Court of Appeal
18 OCT 2019 [SEAL]

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **C1/2019/1847**

The Queen, on the application of

SALFORD ESTATES (NO.2) LTD –v– DURHAM COUNTY COUNCIL & ANR

ORDER made by the Rt. Hon. Lord Justice Lewison

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, against the refusal of the High Court to grant permission to apply for judicial review

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

OR

Permission to apply for judicial review: Granted in part (delete as necessary)

Where permission to apply for judicial review is granted, the application should be returned to the Administrative Court ☐

OR

There are special reasons (set out below) why the application should be retained in the Court of Appeal ☐

Reasons

1. It is clear from OR [112] that the report set out two propositions (a) that there was no general requirement for disaggregation and (b) there was no persuasive argument for disaggregating the particular scheme. The first proposition was a correct summary of the policy. The second was an exercise of planning judgment. In the following paragraphs the OR considers and agrees with the applicant. That, too, is a question of planning judgment.

2. I cannot see that, although the OR identifies the proposed occupants, their identity was treated as a material consideration, rather than simply as a means of describing the units. OR [135] to [137], for example, deal with the "drive-thru" units in neutral terms, even though they are introduced at [135] by reference to the intended occupiers.

3. An appeal would have no real prospect of success. The judge was right on both points.

4. I note that the interested party has asked for its costs. The *CPRE* case on which it relies concerned costs at first instance rather than in the Court of Appeal. PD 52C para 20 applies to appeals. There is no reason to depart from the general rule that the Respondent is not entitled to its costs.

Where permission has been granted, or the application adjourned, any directions to the parties (including, if appropriate, any abridgement of the 35 day time limit for filing evidence provided for in CPR 54.14)

HER MAJESTY'S E & W COURT OF APPEAL

Signed [redacted]

Date: 18th October 2019

By the Court

Notes

(1) Rule 52.6(1) 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) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Rule 52.15 provides that, in granting permission, the Court of Appeal may grant permission to appeal or permission to apply for judicial review. Where the Court grants permission to apply for judicial review, the Court may direct that the matter be retained by the Court of Appeal or returned to the Administrative Court.

DATED 18TH OCTOBER 2019
IN THE COURT OF APPEAL

ORDER

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Lower Court Ref: CO16642019