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

CO Ref: CO/4850/2018

In the matter of an application for Judicial Review

The Queen

on the application of

LAKENHEATH PARISH COUNCIL

versus

SUFFOLK COUNTY COUNCIL

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 Defendants

Order by John Howell QC (sitting as a Deputy High Court Judge)

1. **Permission is hereby granted on Ground 3 but refused on Grounds 1 and 2.**
2. **The limit specified in CPR 45.43(2)(b) is varied to £15,000.**

Observations:

1. *Ground 1*: in considering the effect on the rights of children in Lakenheath who might attend the proposed school, there was a tension between their interest in being educated at a school and the potential adverse effects on them and their teaching, when in external areas associated with the proposed school where they may be taught and play, by virtue of aircraft noise. There was no arguable legal requirement to refer to article 8 of the ECHR or the Convention on the Rights of the Child (assuming that such rights were engaged and are matters on which the Claimants may rely) or to state that the best interests of children should be a primary consideration. It is manifest, given the contents of the Officer's Report that they were treated as such: the need for a school and the potential adverse effects were unarguably both treated as primary considerations and the justification for such effects (and thus the interference with any such rights) was considered. It is not alleged that the decision involved was incompatible with any child's rights under article 8.

2. *Ground 2*: there is no legal requirement that reference must be made to section 149 of the Equalities Act 2010. The identified adverse effect on children's health (said to be identified by the WHO Guidelines), for "school playground and outdoors" during play, is "annoyance": see Grounds at paras 4 and 19.1(b) and [CB564]. Such annoyance was unarguably considered in the Officer's Report and "noise mitigation huts" proposed to mitigate such effects: see OR 35, 126 [CB480, 493] (cf also the Environmental Statement at [7.15.1] and [7.16.1] ([CB380], [383])). In considering potential effects on external teaching for those future pupils that might have special needs, the report considered guidelines for the noise environment for such areas for teaching (which must inevitably address teaching children with different needs) and the Committee were entitled to take into account the mitigation huts proposed as well as the acceptability of the proposed development to the local education authority that is responsible for meeting the requirements of pupils with special needs. In such circumstances any contention that no reasonable authority could have

considered the information available to be appropriate, in order to take into account the needs of potential pupils when taking the decision impugned, is unarguable.

3. *Ground 3*:

(a) The Environmental Statement identified the alternative locations studied and the reasons for the choice made: see [CB350]-[CB352]. The issue (assuming such alternative locations may be alternatives for the purpose of the EIA Directive) is whether (i) "information [was supplied] in relation to the environmental impact...of all the main alternatives studied" and (ii) the reasons for the choice of the proposed development, "taking account at least of the environmental effects": see *C-416/17 Holohan v An Bord Pleanála* (2018) EU:C:2018:883 at [69].

(b) What each of these two requirements (as enunciated by the CJEU) may require is not clear beyond argument.

i. In relation to the first of these requirements, the Advocate General simply stated in that case that "Article 5(3)(d) of the EIA Directive imposes no obligation to identify, describe and assess the environmental effects of the alternatives" in the Environmental Statement: see at [122]. In the Court's view (at [66]) the Directive "does not require the main alternatives studied to be subject to an impact assessment equivalent to that of the approved project". But that does not exclude the need to provide any information on the environmental impact of the alternatives in that Statement. The issue which arises is how much a developer is nonetheless required to provide.

ii. On the second matter, in the view of the Advocate General in that case, the developer "is obliged only to make known the reasons for his choice in so far as these relate to the environmental effects": see at [126]. Whether the CJEU intended to indicate that more may be required (and, if so, what) may be open to argument.

(c) Some information about the environmental impact of some of the alternatives considered was provided in the Environmental Statement. In respect of others the Defendants contend that some effects in consequence of longer journeys could be inferred from references to their location. Whether this is sufficient to meet the requirements of the Directive for information about the environmental impact of the alternatives is at least arguable, having regard in any event in some cases to the lack of any information about the noise environment of such sites in a consideration of alternatives.

(d) The Defendants contend that any deficiency in the environmental statement was immaterial or that it is highly likely that it would have made no substantial difference to the outcome. The function of an environmental statement provided by a developer is to provide a basis for consultation in the light of which the relevant authority must carry out the environmental impact assessment required by the EIA Directive: see *C-50/09 Commission v Ireland* EU:C:109, [2011] PTSR 1122, at [36] and [40]. If and insofar as that assessment involves the consideration of the environmental impact of the main alternatives, the Defendants do not contend that the Officer's Report (at [CB481-2]) contained any more information or that it would have meet the requirements of articles 2.1 and 3 of the EIA Directive. Their contention appears to be that, whatever further environmental information might have been provided, in the circumstances planning permission would necessarily have been granted or that it is highly likely that it would have made no substantial difference to the outcome. I am not prepared to reach either conclusion on the basis of the information now available in the

absence of argument.

4. In my judgment this is an Aarhus claim, for the reasons given in my judgment in *Crondall Parish Council v SSCLG and others* (2018) Nov 28 CO/3900/2018. I dealt in that judgment with the decision of the Compliance Committee to which the Defendant refers me.

5. The Defendants seek a variation in the amount specified in CPR 45.43(2)(b) as limiting the amount of costs that the Claimant may be liable to pay from £10,000 to £35,000 while leaving the limit in respect of their own liability for costs of £35,000 specified in CPR 45.43(3) unchanged. On that basis it appears that the Claimant has financial resources in the form of its anticipated general reserves as at March 31st 2019 of £71,000 plus the ability to raise funds through a precept. However the amount of the limit proposed for the Claimant would make the costs for the Claimant in my judgment objectively unreasonable having regard to the factors listed in CPR 45.44(3)(b). If £35,000 is a reasonable limit for the Defendants' liability for costs, the same cannot reasonably be regarded as such for the Claimant whose financial reserves and tax base are far more constrained than the Claimant's. I have also had regard to the other matters listed, recognising, for example, that the conditions in which education occurs in Lakenheath are matters of importance for the Claimant and that the issue on which I have granted permission raises a legal issue that is not straightforward. I have also taken into account the assertion that the Claimant will not proceed if the amount in CPR 45.43(2)(b) is varied upwards. But the Claimant has provided no explanation why a somewhat larger precept for the next financial year may not be issued. In my judgment, therefore, given the limit on the Defendants' costs proposed by the them, a limit of £15,000 would be objectively reasonable for the Claimant.

Case management directions

- The 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 detailed grounds for contesting the claim or supporting it on additional grounds and any written evidence, within 35 days of service of this order.
- Any reply and any application by the claimant to lodge further evidence must be lodged within 21 days of the service of detailed grounds for contesting the claim.
- The claimant must file and serve a trial bundle not less than 4 weeks before the date of the hearing of the judicial review.
- The claimant must file and serve a skeleton argument not less than 21 days before the date of the hearing of the judicial review.
- The defendant and any interested party must file and serve a skeleton argument not less than 14 days before the date of the hearing of the judicial review.
- The claimant must file an agreed bundle of authorities, not less than 3 days before the date of the hearing of the judicial review.
- If permission has been granted on some grounds but refused on others, you may request that the decision to refuse permission be reconsidered at a hearing by filing and serving a completed form 86B within 7 days of the service on you of this order. The reconsideration hearing will be fixed in due course. However, if all parties agree - and time estimates for substantive hearing allow - the reconsideration hearing may take place immediately before the substantive hearing. The Planning Court Office must be notified within 21 days of the service and filing of form 86B that the parties agree to this course.

Listing Directions

The application is to be listed for 1 day; the parties to provide a written time estimate within 7 days of service of this order if they disagree with this direction.

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

Criminal case NOT suitable for hearing by a Single Judge* ☐

[*Tick if applicable]

Directions as to venue, if applicable:

Signed John Howell

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

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendants, and any interested party's solicitors on (date): 28 JAN 2019

Solicitors:
Ref No. LAK1/001/LF

Notes for the Claimant

- To continue the proceedings a further fee, or a certified Application for Fee Remission if appropriate, must be lodged within 7 days of the service on you of this order. ***For details of the current fee see the Court website.*** Failure to pay the fee or lodge a certificate within that period may result in the claim being struck out.

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

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Queen's Bench Division
Administrative Court

CO Ref no: CO/4850/2018

In the matter of a claim for Judicial Review

The Queen on the application of

LAKENHEATH PARISH COUNCIL

versus SUFFOLK COUNTY COUNCIL

Notice of RENEWAL of claim for permission to apply for Judicial Review (C P R 54. 12)

1. *This notice must be lodged in the Administrative Court Office, by post or in person and be served upon the defendant (and interested parties who were served with the claim form) within 7 days of the service on the claimant or his solicitor of the notice that the claim for permission has been refused.*

2. *If the claim was issued on or after 7 October 2013, a fee is payable on submission of Form 86B. Failure to pay the fee or lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do*

3. *If this form has not been lodged within 7 days of service (para 1 above) please set out below the* ***reasons for delay:***

4. *Set out below the grounds for seeking reconsideration:*

5. *Please supply*
   COUNSEL'S NAME:
   COUNSEL'TELEPHONE NUMBER:

Signed Dated

Claimant's Ref No. Tel.No. Fax No.

To the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL