

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

CO/4680/2020

IN THE MATTER OF AN APPLICATION UNDER SECTION 287 OF THE TOWN AND COUNTRY
PLANNING ACT 1990

BETWEEN:



THE OPEN SPACES SOCIETY

Claimant

-and-

THE SECRETARY OF STATE FOR TRANSPORT

Defendant

***Draft*/CONSENT ORDER**

UPON the Claimant and the Defendant having agreed the terms of this Order for the reasons set out in the attached Schedule

BY CONSENT IT IS ORDERED THAT:

1. Leave is granted to bring the claim, pursuant to the Town and Country Planning Act 1990 s 287 (2A), and the Claim is allowed, for the reasons set out in the attached schedule;
2. The challenged Decision of the Defendant to make the order to stop up highway land comprised in a public convenient and bus shelter at Station Road, Kowle, in the borough of Solihull (Reference NATTRAN/WM/S247/3985) (**"the Order"**) is quashed.
3. In reconsidering whether to make the Order, the Defendant shall also reconsider whether or not to hold a public inquiry pursuant to section 252 of the Town and Country Planning Act 1990.
4. The Defendant agrees to pay the Claimant's reasonable and proportionate costs of this claim within 21 days of the Claimant and Defendant reaching agreement on costs, to be assessed if not agreed on the standard basis.
5. To the extent required, time is extended for the Claimant to serve the claim by 2 business days to 21 December 2020.

SCHEDULE

1. The Claimant challenges the decision of the National Transport Casework Team (“**NTCT**”) acting on behalf of the Secretary of State to make an order (“the **Order**”) under s. 247 of the Town and Country Planning Act 1990 (“the **1990 Act**”) to stop up highway land comprised in a public convenience and bus shelter at Station Road, Knowle, in the borough of Solihull. That decision was communicated by way of a decision letter dated 23 October 2020 (“the **DL**”).
2. The Defendant conceded that the decision should be quashed on the basis of Ground 2 of the Claimant’s claim in that he failed adequately to consider and explain why he regarded the full extent of the stopping up to be necessary pursuant to section 247(1) of the Town and Country Planning Act 1990. Specifically, the Defendant accepts that the DL does not adequately explain why the entirety of the land edged red on the application, rather than just a part of that land must be stopped up or why either maintenance or landscaping necessitates permanent stopping up of the identified area.
3. CPR PD 8C para 4.4, when read in combination with CPR 6.14, is ambiguous in terms of whether service of the sealed claim form must be deemed to have occurred within the 6-week limitation period. In this case, the Claimant filed the claim on 15 December 2020 and served the unsealed claim documents by email (by prior agreement with the Defendant) simultaneously. The Court issued the sealed claim form on 17 December 2020. The Claimant served this on the Defendant by email on the same day (deemed served on Monday 21 December 2020). In the circumstances, to the extent an extension of time for service is required, the parties agree that such extension should be granted.
4. We confirm agreement to an Order in the terms set out above.

Dated this 21 day of January 2021

Richard Buxton Solicitors
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Solicitors for the Claimant
For the Treasury Solicitor
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For the Defendant Secretary of State

Date: 21 January 2021
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21 January 2021
Date: