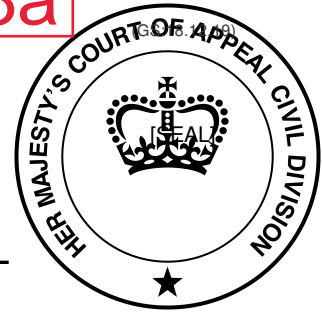




IN THE COURT OF APPEAL, CIVIL DIVISION

REF: C1/2021/1117



R (RONALD WYATT) –v– FAREHAM BOROUGH COUNCIL
NATURAL ENGLAND

ORDER made by the Rt. Hon. Lord Justice William Davis

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 order of Mr Justice Jay sealed on 28 May 2021 whereby he dismissed the appellant's claim for judicial review and an application for a costs cap order

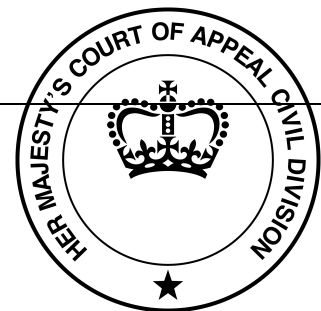
Decision: Application for permission to appeal granted on Grounds 1, 2, 4 and 5.

Liability for costs of the appeal to the respondents on the part of the appellant limited to £10,000 pursuant to CPR 59.19A(2).

Reasons

1. When refusing permission to appeal Mr Justice Jay recognised that there could be some other compelling reason for granting permission on Ground 1 though he did not consider the ground to be arguable. His anxiety on the point was apparent in the post hearing e-mail exchange he had with counsel for the parties in relation to the consequence of a finding by him that the use of a national average occupancy rate of 2.4 did not correspond to the best available scientific evidence. In my view this an issue which raises an arguable ground of appeal. Given its potential for wider connotations it provides a compelling reason for appellate consideration of the case.
2. Grounds 2 and 4 are considered by the respondents to be linked to Ground 1. Had they stood alone I would not have given permission. In particular, the proposition in Ground 2 that the use of averages of itself is contrary to the requirement of certainty proceeds on the assumption that certainty is required in the kind of assessment being undertaken here. That seems to me to be an unrealistic argument. However, given the link between these Grounds and Ground 1, it is appropriate to give permission.
3. I do not give permission in relation to Ground 3. It is a standalone ground which depends on the judge's conclusion that any lack of access to documents due to technical issues with the respondent council's website was immaterial. His reasons for reaching that conclusion are set out clearly in his judgment. It is not arguable that they were wrong and there is no other compelling reason for the submission to be part of any appeal.
4. Had Ground 5 stood alone, I doubt whether I would have given permission. However, the matters set out within the judgment of Mr Justice Jay at paragraphs 150 to 162 thereof demonstrate that the issue is not wholly straightforward and it is appropriate for the matter to be reviewed.
5. A costs cap was ordered in the court below and is appropriate on the appeal.

Information for or directions to the parties



Mediation: Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)?

Yes/No (delete as appropriate)

Pilot categories:

- | | |
|---|---|
| <ul style="list-style-type: none"> • All cases involving a litigant in person (other than immigration and family appeals) • Personal injury and clinical negligence cases; • All other professional negligence cases; • Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual; | <ul style="list-style-type: none"> • Boundary disputes; • Inheritance disputes. • EAT Appeals • Residential landlord and tenant appeals |
|---|---|

If yes, is there any reason not to refer to CAMS mediation under the pilot? Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation? Yes/No (delete as appropriate)

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment) 1 day
- b) any expedition **The appeal requires expedition. Natural England may wish to amend advice given to planning authorities in the light of the judgment on appeal. For administrative reasons unconnected with any party to the appeal, there already has been delay and the appeal should be listed as soon as possible.**



Signed:

Date: 22 November 2021

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) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **C1/2021/1117**