



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

CO/1439/2019



IN AN APPLICATION FOR LEAVE UNDER S.288 OF THE TOWN AND
COUNTRY PLANNING ACT 1990

The Queen on the application of HINTON PROPERITES (GROVEFIELD
WAY) LIMITED

and

- 1) SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL
GOVERNMENT
- 2) CHELTENHAM BOROUGH COUNCIL

CONSENT ORDER

UPON the parties agreeing that the claim should be allowed for the reasons in the statement of reasons below and upon permission having been granted by order of His Honour Judge Worster on 22nd May 2019, it is ordered with the consent of the parties that:

1. The claim is allowed
2. The planning Inspector's decision (dated 27th February 2019) to refuse planning permission in respect to Appeal A (Appeal Reference APP/B1605/W/18/3200395) is quashed, and the appeal is remitted to the First Defendant for redetermination.
3. The First defendant to pay the Claimant's costs, to be subject to detailed assessment if not agreed.

Signed His Honour Judge Cooke

Dated this 5th day of June 2019

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

Claim No. CO/1439/2019

IN AN APPLICATION FOR LEAVE UNDER S.288 OF THE TOWN AND
COUNTRY PLANNING ACT 1990

BETWEEN:

HINTON PROPERTIES (GROVEFIELD WAY) LIMITED

Claimant

and

(1) SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT
(2) CHELTENHAM BOROUGH COUNCIL

Defendants

CONSENT ORDER

UPON the parties agreeing that the claim should be allowed for the reasons in the statement of reasons below, it is ordered with the consent of the parties that:

1. Permission is granted and the claim is allowed.
2. The planning Inspector's decision (dated 27th February 2019) to refuse planning permission in respect to Appeal A (Appeal Reference APP/B1605/W/18/3200395) is quashed, and the appeal is remitted to the First Defendant for redetermination.

3. The First Defendant to pay the Claimant's costs, to be subject to detailed assessment if not agreed.

Date this day of 2019

We the parties consent to an order in the above terms:

Signed: Anna Cawledge

Position: Partner, Shoosmiths LLP

Date 22nd May 2019

For and on behalf of the Claimant

We the parties consent to an order in the above terms:

Signed: Tracy Saffin

Position: LAW/62

Date 22/5/19

For and on behalf of the First Defendant

We the parties consent to an order in the above terms:

Signed: Sarah Schuster

Position: Borough Solicitor + Monitoring Officer

Date 29th May 2019

For and on behalf of the Second Defendant

STATEMENT OF REASONS

1. These proceedings concern an application brought pursuant to section 288 of the Town and Country Planning Act 1990 against the decision (dated 27 February 2019) of an Inspector appointed by the First Defendant to determine a planning appeal.¹ The decision being challenged has appeal reference APP/B1605/W/18/3200395 and the application reference was 16/02208/FUL. The Inspector referred to the decision as 'Appeal A'.

2. Appeal A related to land at Grovefield Way, the Reddings, Cheltenham GL51 6RF ('the Site'). It was for a hybrid planning application seeking full and outline planning permission for the following description of development ('the Proposed Development'):

(A) 5,034 square metres (sqm) of commercial office space (Use Class B1), 502 sqm day nursery (Use Class D1), 1,742 sqm Aldi food retail unit (Class A1), a 204 sqm Costa Coffee retail unit and drive-thru (Use Classes A1 and A3), with associated parking, landscaping and infrastructure works. Outline planning permission sought for the erection of 8,034 sqm of commercial office space (Use Class B1), together with associated car parking, landscaping and infrastructure works, with all matters reserved (except access);

3. Having carefully considered the challenge the Defendants agree that the Claimant's secondary case was a 'principal important controversial issue' (per *South Buckinghamshire DC v Porter (No.2)* [2004] 1 WLR 1953 at 53). The first defendant further agrees that the Inspector failed to provide adequate reasons for rejecting this secondary case, and that on that basis the decision in Appeal A should be quashed and remitted for re-determination.

4. For the avoidance of doubt, the Inspector's decision letter is only quashed insofar as it relates to Appeal A. The Inspector's decision to grant planning permission in respect to Appeal B remains unaffected by this claim/Order and thus the permission related to Appeal B still stands/remains extant. Appeal B

¹ Pursuant to section 78 of the Town and Country Planning Act 1990

was made pursuant to Appeal Reference APP/B1605/W/18/3214761 and application reference 18/01004/FUL. It related to the following description of development:

(B) 5,914sqm of commercial office space (Use Class B1), 502 sqm day nursery (Use Class D1), 1,742 sqm Aldi food retail unit (Class A1), with associated parking, landscaping and infrastructure works. Outline planning permission sought for the erection of 8,034 sqm of commercial office space (Use Class B1), together with associated car parking, landscaping and infrastructure works, with all matters reserved (except access).

5. For the avoidance of doubt, the Inspector's Costs Decision remains unaffected by this claim/Order. Thus, the Inspector's decision to award Costs to the Claimant remains enforceable as against the Second Defendant.