



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

2997/2018
CO/ 12047



BETWEEN

R(oao CORDELIA LAW)

Claimant

and

TORBAY COUNCIL

Defendant

TORQUAY WATERSIDE DEVELOPMENTS LIMITED

Interested Party

CONSENT ORDER

UPON the Claimant having applied for judicial review of the Defendant's decisions to grant approval for application no. P/2015/0961 and Listed Building Consent no. P/2015/0962 of 15.6.18 and having regard to the statement of reasons set out below:

BY CONSENT IT IS ORDERED THAT:

1. The application for permission to apply for judicial review be granted;
2. The claim for judicial review be allowed;
3. The Defendant's decisions of 15.6.18 to grant permission for application no. P/2015/0961 and listed building consent (P/2015/0962) are quashed; and
4. The Defendant pay the Claimant's costs of the proceedings in the agreed sum of £12,999.61 (plus VAT, where applicable) and within 14 days of the Court sealing the Consent Order.
5. There be no order of costs in respect of the Interested Party.

By the Court

Signed: [Signature]

Dated: 25-7-18

Richard Buxton Environmental & Public Law
For the Claimant

Signed: [Signature]

Dated: 25.07.18

Torbay District Council, the Defendant

The Council of The
Borough of Torbay S/No: 1430

Signed: [Signature]

Dated: 25/07/2018

Torquay Waterside Developments Limited, Interested Party

Order approved

By the Court

[Signature]
2.8.18

Statement of Reasons

1. This statement sets out the agreed matters justifying the making of a Consent Order for the application for judicial review, the quashing of the Defendant's decision to grant Planning Permission and Listed Building Consent and the payment of the Claimant's costs by the Defendant (contingent upon the quashing of the planning permission and in the agreed sum).
2. On 15.6.18, the Defendant Council granted Planning Permission (P/2015/0961) and associated Listed Building Consent (P/2015/0962) in relation to the change of use and restoration of Pavilion to form hotel reception and spa and the construction of 4/5 storey 60 bed hotel and 5/11 storey block of residential apartments along with ancillary development at Torquay Pavilion and Marina Car Park Office and adjoining land, Vaughn Parade, Torquay, TQ2 5EL.
3. The Claimant challenged the Defendant's decisions by way of a pre-action protocol letter dated 10.7.18 which set out five grounds of claim.
4. The Defendant fully reserves its position as to the contents of the pre-action protocol letter dated 10.7.18. However, the Defendant does accept that Ground 3 of the Claimant's grounds is made out, in that the Defendant Council placed incorrect reliance on mitigation measures in relation to the impact of the development on the adjoining Lyme and Torbay Special Area of Conservation ('SAC').
5. Torbay Council Local Plan Policy SDT1 requires that 'Any proposal that may lead to likely significant effects on sites protected under European legislation will only be permitted where no adverse effect on the integrity of the site can be shown'. It was recognised by Natural England in their consultation response (22.6.16) to the impugned decisions that 'potential impacts from construction of the development include increased sedimentation and alteration in water quality within Tor Bay' and therefore required a Construction Environment Management Plan ('CEMP') to be undertaken, to be approved by Natural England prior to commencement of works.
6. However, as recently held by the CJEU in Case C-323/17 ¹⁷ People over Wind' it was found to be 'not appropriate at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of a plan or project on that site' and take into account such measures at the screening stage 'would be liable to compromise the practical effect of the Habitats Directive in general'.
7. For the above reason, and without prejudice to the parties' positions in all other respects, the parties agree that decision for application P/2015/0961 and listed building consent P/2015/0962 of 15.6.18 should be quashed on the basis of ground 3 as set out in the Claimant's Pre-Action Letter of 10.7.18.
8. In the light of the above, and to avoid the need and cost of further litigation, it is requested that the Court makes the Consent Order sought without the need for attendance by the Parties.

I agree that the decision here was in breach of
art 6(3) of the Habitats Directive + the 2017 Regs
following People over Wind C-323/17 12.4.18
and Grupe e Sweetman C-164/17 25.7.18

A J. Smith

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