



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

CO/3199/2021

In the matter of an application for judicial review

THE QUEEN

on the application of

THE OPEN SPACES SOCIETY

Claimant

-and-

NORTH YORKSHIRE COUNTY COUNCIL

Defendant

-and-

THE RICHMOND BURGAGE PASTURES COMMITTEE

Interested Party

Notification of the Judge's decision on the application for permission to apply for judicial review (CPR 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant

ORDER by the Honourable **Mrs Justice Lieven**

1. The application for permission to apply for judicial review is granted.
2. The parties to provide a written time estimate for the listing within 7 days of service of this order.
3. The case should be heard in London as it will be easier to find a specialist judge to hear the matter in London.
4. This is an Aarhus Convention claim within the meaning of CPR Part 45.41. The Claimant's liability for the costs incurred by the Defendant and Interested Party is limited to £10000, and the Defendant's liability for costs incurred by the Claimant is limited to £35000.

Observations

Ground One

1. This ground is arguable. The area alighted upon as the curtilage by the Defendant was an arbitrary one with no rational justification on the ground. Although the historic relationships between the building and the land said to be curtilage can be highly material, on the facts of this case it is arguable the Defendant has fallen into error. The buildings have not been in their historic use for over 100 years and were partly

demolished many years ago. There is no physical or functional relationship that demarcates the curtilage and reference to a historic use that has long since ceased and which has no physical presence on the ground which appears to me to be incapable of justification.

2. Further, the Defendant appears to have proceeded on the basis that there must be a curtilage, and therefore that it had to find some area. However, the caselaw is clear that although most buildings will have a curtilage some may not. The Defendant has not addressed its mind to the issue of whether on the unusual facts of this case the buildings had any curtilage at all.

Ground Two

3. It is arguable that the decision was outside the wide band of a rational decision.

Case Management Directions

1. The Defendant and any other person served with the Claim Form who wishes to contest the claim or support it on additional grounds shall, within **[35]** days of the date of service of this Order, file and serve (a) Detailed Grounds for contesting the claim or supporting it on additional grounds, and (b) any written evidence that is to be relied on. For the avoidance of doubt, a party who has filed and served Summary Grounds pursuant to CPR 54.8 may comply with (a) above by filing and serving a document which states that those Summary Grounds shall stand as the Detailed Grounds required by CPR 54.14.
2. Any application by the Claimant to serve evidence in reply shall be filed and served within **[21]** days of the date on which the Defendant serves evidence pursuant to 1(b) above.
3. The parties shall agree the contents of the hearing bundle and the Claimant must file it with the Court not less than **[21]** days before the date of the hearing of the judicial review. An electronic version of the bundle shall be prepared and lodged by the Claimant in accordance with the Guidance on the Administrative Court website. The Claimant shall, if requested by the Court lodge hard-copy versions of the hearing bundle not less than **[4]** days before the hearing.
4. The Claimant must file and serve a Skeleton Argument not less than **[14]** days before the date of the hearing of the judicial review.
5. The Defendant and any Interested Party must file and serve a Skeleton Argument not less than **[7]** days before the date of the hearing of the judicial review.
6. The parties shall agree the contents of a bundle of authorities to be referred to at the hearing. An electronic version of the bundle shall be prepared by the Claimant in accordance with the Guidance on the Administrative Court website. The Claimant shall if requested by the Court, prepare a hard-copy version of the authorities bundle. The electronic and hard copy versions of the bundle must be lodged by the

Claimant with the Court not less than [4] days before the date of the hearing of the judicial review.

7. If permission has been granted on some grounds but refused on others, the Claimant may request that the decision to refuse permission be reconsidered at a hearing by filing and serving a completed Form 86B within 7 days after the date this order is served on the Claimant. The reconsideration hearing will be fixed in due course.

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

Criminal case NOT suitable for hearing by a Single Judge*

[*Tick if applicable]

Signed Mrs Justice Lieven
Dated 26 October 2021

The date of service of this order is calculated from the date in the section below

For completion by the Administrative Court Office

Sent / Handed to

either the Claimant, and the Defendant [and the Interested Party]

or the Claimant's, and the Defendant's, [and the Interested Party's] solicitors

Date: 27/10/2021

Solicitors:
Ref No.

Notes for the Claimant

To continue the proceedings a fee is payable.

For details of the current fee please refer to the Administrative Court fees table at <https://www.gov.uk/court-fees-what-they-are>.

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from

the Justice website <https://www.gov.uk/get-help-with-court-fees>

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