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09 December 2009

Dear Sir / Madam,

Re The Queen on the application of KEITH GARNER v ELMBRIDGE BOROUGH COUNCIL

I refer to the Order of George Bartlett QC sitting as a Deputy High Court Judge of today's date refusing permission in the above case. I have spoken to the Judge this morning to seek clarification of his observation that "*I would also have considered it an appropriate case for a protective costs order.*"

The Judge indicated that the application for a protective costs order (which was made within section 7 of the claim form) falls by the way upon refusal of permission.

It is, of course, open to the claimant to renew his application for a protective costs order should he seek to renew his application for permission to apply for judicial review.

Yours faithfully

Kerryn Cockroft
For Court Manager

Our ref: CO/10474/2009

Claimant's ref:

Defendant's ref: Alan
Harrison

First Interested Party's ref:
SW/78665.00002

Second Interested Party's ref:
70-20381321





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

CO Ref:
CO/10474/2009

In the matter of an application for Judicial Review

The Queen on the application of

KEITH GARNER

versus ELMBRIDGE BOROUGH COUNCIL

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgement(s) of service filed by the Defendant and Interested Parties]

Order by George Bartlett QC sitting as a Deputy High Court Judge

Permission is hereby refused.

Observations:

There was a failure to give a summary of reasons for granting permission in accordance with Article 22(1) of the Town and Country Planning (General Permitted Development) Order 1995, as the defendant accepts. Such a failure may well not justify the grant of permission where it is otherwise apparent that the planning authority have taken into account and weighed properly the relevant policies and other material considerations. Here, however, the council were required to have special regard to the desirability of preserving the setting of Hampton Court Palace, and, in view of this duty, an important issue was whether the river frontage of the site should be kept free of substantial development. There is in any view a clearly arguable case, as evidenced by the officer's report, that, while detailed consideration was given to the design of the proposed buildings, the council failed to apply the statutory requirement, of which there is no mention in the report, and failed to address this important issue, which the report does not discuss, by reference to it.

There is no reasonably arguable case on the application of PPG25, in my view. This matter, which was not apparently of concern to the claimant at any earlier stage, was dealt with in paras 8.4.1 to 8.4.6 of the officer's report in a way that appears to me to address properly both the sequential test and the criteria in the exception test.

Had the claimant objected to the application for planning permission he would have had sufficient standing. On what is not simply a local issue but one of national significance because of the importance of Hampton Court Palace, his interest, as a person concerned with the protection of historic buildings, and the Palace in particular, and as one whose views appear to accord with those of many individuals and groups, including Historic Royal Palaces, would have qualified him to bring proceedings. I would also have considered it an appropriate case for a protective costs order. But he did not object to the application, despite the fact that the committee resolution in December 2008 to grant permission must have alerted him to the need for the council, when determining the applications in June 2009, to consider the issue of keeping the river frontage substantially free of development. Not having sought to influence the decision, I do not think that he has sufficient standing.

In addition the application was not made promptly, in that over 5 weeks elapsed before he sought legal advice and a further 5 weeks elapsed before the pre-action protocol was issued. It appears that delay is financially prejudicial to the charity the Royal Star and Garter.

Despite the importance of the issue that the claimant seeks to bring before the court I do not think in these circumstances that permission should be granted.

I do not think it appropriate that an order for costs should be made.

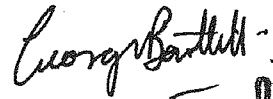
- Case NOT suitable for hearing by a Deputy High Court Judge**
- Criminal case NOT suitable for hearing by a Single Judge**
- Case is considered to be totally without merit**
- Hearing to be expedited**

Directions as to expedition or other matters:

**Tick if applicable

Directions as to venue, if applicable:

Signed



09 DEC 2009

Where permission to apply has been granted, claimants and their legal advisers are reminded of their obligation to reconsider the merits of their application in the light of the defendant's evidence.

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors: RICHARD BUXTON ENVIRONMENTAL AND PUBLIC LAW SOLICITORS
Ref No.



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

CO Ref no: CO/10474/2009

In the matter of a claim for Judicial Review

The Queen on the application of

GARNER

versus **ELMBRIDGE BOROUGH COUNCIL**

Notice of RENEWAL of claim for permission to apply for Judicial Review (C P R 54.12)

1. *This notice must be lodged in the Administrative Court Office and served upon the defendant (and interested parties who were served with the claim form) within 7 days of the service on the claimant or his solicitor of the notice that the claim for permission has been refused.*
2. *If this form has not been lodged within 7 days of service (para 1 above) please set out below the **reasons for delay**:*

3. *Set out below the grounds for renewing the application:*

4. *Please supply*

COUNSEL'S NAME:

COUNSEL TELEPHONE NUMBER:

Signed

Dated

Claimant's Ref No.

Tel.No.

Fax No.

To the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL