Costs & legal aid:

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

CO Ref: CO/2996/2016

B5

In the matter of an application for Judicial Review

The Queen on the application of

LOUISE VENN
versus
LORD CHANCELLOR & SECRETARY OF STATE FOR JUSTICE
SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS
Defendants

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
Interested Party

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 of service filed by the Defendant and Interested Party

Order by the Honourable Mr Justice OUSELEY

Permission is hereby refused; the application is totally without merit

Reasons: The reasons are set out in the AoS. It is bound to fail and is utterly misconceived.

I observe at the outset that the claim was instituted before the Court of Appeal ruled against her application for a PCO for her appeal against the decision of Elizabeth Laing J: Lindblom LJ on paper 12 February 2016, Sales LJ after argument on 22 April 2016. Lord Dyson MR then refused, twice, her application for a stay of her appeal while these JR proceedings were resolved. She then withdrew her appeal. So there are no proceedings afoot which this claim can affect. Further, all the points which she wishes to make could or should have been deployed before the Court of Appeal on the four occasions when either the PCO or a stay pending resolution were considered. I do not see how a court could rule in her favour without holding that the CoA erred in one respect or another. That is a task for the Supreme Court.

The claim that the Defendants have failed or acted unreasonably in failing to give effect to the CoA judgment in Venn v SSCLG [2015]1 WLR 2238, is utterly misconceived. The Court did not require the Ds to act in any particular way or at all. That is because it is not for the CoA to decide whether or not to give effect to international conventions which are not directly effective and are not incorporated into domestic law, nor is it for the CoA to tell the Ds how to do so or on what terms to do so. The allegation, ground 4, that the failure to provide costs protection is unreasonable could only be made by reference to Aarhus and the contrast between JR and statutory review. That is in essence precisely the same point. The CoA has made its views known on the illogicality of the contrast between JR and statutory appeals, but it remains entirely open to Ds to refuse to go further than they have done, if they do not wish to go further or to do so at their own pace, and consider qualifications and so on. It is not for the Courts to instruct Government to give effect to such Conventions and it did not do so. If it were open to the CoA to have done so, it could have done so but it decided not to do so. In such circumstances, it is not for this Court to hold that it should have done so.

There is plainly no breach of this C's Article 6 ECHR rights. This Claimant abandoned her appeal because she says she could not afford to take the risk of losing again. She presumably made that point to the CoA; but it led to no PCO. That is the lot of many litigants, including wealthy ones. It is not arguable that Article 6 is breached in such circumstances. If the CoA breached Article 6, it is not for this Court to find so, let alone to order damages against the Ds in consequence. ECtHR decisions are made on the basis of the individual case. There is no basis for saying that Article 6 would be breached in every environmental case, or indeed any other sort

of case where a litigant's resources, or decision as to how to spend their resources, led them to abandon or not to bring or defend litigation. The discrimination point, presumably related to the Article 6 point, is no better than her other points.

I see no reason not to order payment of costs of the AoS up to the accepted Aarhus limits. She chose to bring these utterly misconceived proceedings, and to maintain them after the CoA refused a stay of the appeal, and this case could not assist her appeal.

- The costs of preparing the Acknowledgment of Service are to be paid by the Claimant to the Defendant. The full costs, subject to the Aarhus limit, are assessed in the sum of £5000. If the Claimant wishes to take issue with the amount, she must make written submissions within 14 days of the date of this order, and the Ds shall reply within a further 7 days. C has 7 days to reply if so advised. The costs can then be considered on paper.

BY VIRTUE OF CPR 54.12(7) THE CLAIMANT MAY NOT REQUEST THAT THE DECISION TO REFUSE PERMISSION BE RECONSIDERED AT A HEARING.

Signed D. Z. W. Ormsley 11. 8. 16

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

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For completion by the Planning Court

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date): 15 AUG 2016
Solicitors: RICHARD BUXTON & CO
Ref No. P STOOKES