

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

SAM TINGEY

-and-

**(1) SECRETARY OF STATE FOR HOUSING
COMMUNITIES AND LOCAL GOVERNMENT**

(2) HORSHAM DISTRICT COUNCIL Defendants



Following consideration of the Claimant's application notice dated 13 July 2020, the Witness Statement of Gurpreet Sanghera dated 16 July 2020 and the emails submitted by the parties

IT IS ORDERED THAT –

- 1. The Claimant's application to adjourn the hearing of this claim set down for Wednesday 22 July 2020 is refused.**
- 2. There be no order for costs.**

REASONS

- 1. This claim was listed for hearing on 19 March 2020. On that day, Timothy Corner QC (sitting as a Deputy High Court Judge) adjourned the case to be heard on the first date on which it could be accommodated by the Court. The reason for that adjournment was that Leading Counsel for the Claimant was self-isolating under the COVID-19 pandemic. The Deputy Judge also said that since the claim concerns the home of the Claimant and his family, the most appropriate course would be for the claim to be heard in open court rather than by telephone or video link.**
- 2. On 6 May 2020, following liaison with the parties, the Court Office listed the case for hearing on 22 July 2020.**
- 3. On 10 July 2020, the Claimant's representatives emailed the Court Office seeking an adjournment of the hearing on 22 July 2020. They were requested to make a formal application.**
- 4. The Claimant's application notice was submitted on 13 July 2020. The Claimant's representatives acknowledged that during the COVID-19 pandemic, hearings**

should take place remotely where possible. The application drew attention to the Deputy Judge's observations that in this case, the most appropriate means of hearing the claim was in open court, given that it concerns the Claimant's family home. The Claimant's legal representatives stated that Leading Counsel is currently shielding his wife who is vulnerable, and therefore unable to attend the hearing in person. It was also said that the Claimant does not have a computer or an email account but communicates primarily by phone or in person. The Claimant would struggle to operate the technology associated with remote hearings and to give instructions during a remote hearing to his legal and professional representatives.

5. Both the First and Second Defendants oppose the application to adjourn. They emphasise that the established practice of the Court since March 2020 and during the COVID-19 pandemic is that hearings should take place remotely. They further argue that during the period since March 2020, the Court has been able to hold remote hearings successfully and to make arrangements where necessary to accommodate the needs of the parties. They acknowledge the importance of the case to the Claimant and his family but argue that arrangements could be made in the present case to enable the Claimant to give instructions to Leading Counsel and to his professional representatives.
6. Upon reading the application notice, it appeared to me that whilst a hearing in open court would be the most appropriate means of proceeding, for the reasons given by the Deputy Judge, the practical difficulties that a remote hearing presented to the Claimant and his representatives were not obviously so serious as to rule out a remote hearing on grounds of fairness and in the interests of justice. In particular, given that the Claimant uses the telephone as one of his primary means of communication, it should be possible to accommodate his needs by holding a remote, telephone hearing and allow time during the course of that hearing for him to give instructions to Leading Counsel and to his professional representatives.
7. I therefore proposed to the parties that the hearing could properly take place remotely by telephone on 22 July 2020. I would be willing to begin earlier than usual; and to allow breaks during the course of the day to allow time for both parties and their representatives to give and take instructions. I had in mind that the claim proceeds on a single ground of challenge, concerning the proper interpretation of policy, and may raise a consequential issue as to whether that alleged error, if made out, would have affected the overall outcome of the planning appeal decision. It was therefore reasonable to anticipate that a remote telephone hearing would be concluded comfortably within a single day.
8. The Defendants raised no objection to my proposal. The Claimant's representatives repeated their previous concerns but stated that, if the hearing is to proceed remotely, Leading Counsel would prefer to be heard by videolink and to communicate with his clients by phone, as necessary. The Claimant's representatives also drew my attention to the fact that the Claimant had made a fresh planning application seeking to address the highway safety objection found by the inspector. The Second Respondent has informed the Court that a decision on that planning application is likely to be made in the next few days. The

Claimant argues that his claim should be adjourned to allow that decision to be made, since if planning permission is granted, the present claim will become academic.

9. The Court then received a further email from the Claimant's representatives stating that the Claimant does not have full phone coverage from his home and currently no landline. The Court was also informed that the Claimant and his family were self-isolating. In the light of this further information, which appeared to me, at least on the face of it, to be somewhat at variance with what had been said in the application notice, I directed that the Claimant's representatives should file a witness statement.
10. The Claimant's representatives filed that witness statement on 16 July 2020. Paragraphs 4 to 6 confirmed the position in relation to telephone coverage and self-isolation. Paragraph 7 of that statement informs me that, whilst it is certainly not ideal, if necessary the Claimant's planning advisor can make arrangements for the Claimant and his family to have access on 22 July 2020 to a location with reliable phone lines.
11. I do not dissent from the view of the Deputy Judge that a hearing in open court would be most appropriate in this case. However, it does not follow that a remote hearing would be inappropriate, unfair or contrary to the interests of justice. I bear in mind that the case was listed for hearing in March 2020; and that since that date, the great majority of cases heard by the Planning Court have been heard remotely, in accordance with the now settled practice of the courts during the COVID-19 pandemic. Experience now tells us that Planning Court and Administrative Court judges have been able to hold remote hearings successfully, with the co-operation of Counsel and the parties and making allowance for the particular needs of court users as they arise.
12. In the present case, Leading Counsel for the Claimant has helpfully indicated that he is willing to appear by video link on 22 July 2020 and to take instructions from his clients by telephone. The Claimant's representatives have made the constructive suggestion that the Claimant's planning advisor is in a position to arrange for the Claimant and his family to have access to a location with reliable phone lines on that date. The Defendants have raised no objection to a remote hearing or to the arrangements that I proposed as outline in paragraph 7 above. I am therefore satisfied that lines of communication can be established on 22 July 2020 which will enable Counsel and their respective clients to attend a remote hearing (whether by video link or telephone) and to take and receive instructions during the course of that hearing. In any event, I shall allow Leading Counsel for the Claimant a proper opportunity to take final instructions before he concludes his reply.
13. Turning to the substance of the claim, the sole main issue is a relatively narrow question of law, namely whether the inspector determined the planning appeal on the basis of a misinterpretation of the First Respondent's Planning Policy for Traveller Sites. The possible consequential issue (as to the impact that any such error of understanding may have had on the decision as a whole), is also a narrow one, turning primarily on consideration of the inspector's decision letter. Counsel

have had the advantage of seeing each other's skeleton arguments for many weeks and will have been able to take instructions from their respective clients on any matters arising, well in advance of the hearing on 22 July 2020.

14. I am not persuaded that the existence of the pending planning application materially affects my decision whether to proceed on 22 July 2020. That application appears to have been directed at the inspector's concerns about the safety of access to the site. The underlying question of national policy interpretation that lies at the heart of this claim is a different issue, and one that should now be determined by the Court.

15. For these reasons, I am satisfied that it is fair and reasonable to all parties for the adjourned hearing of this claim to proceed remotely on 22 July 2020, following the procedure that I have outlined in paragraph 7 above. I shall finalise the detailed timetable for the day with Counsel at the start of the hearing itself. If Counsel are able to agree a draft timetable and submit it to me by email prior to the hearing, they should not hesitate to do so. I am also willing to consider holding a trial run, if Counsel would find that helpful.

Timothy Mould QC (sitting as a Deputy High Court Judge)

17 July 2020

By the Court