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Eich cyf/Your ref: KJG1/KJG1/381408.1

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27 January 2017

Dear Sir / Madam,

**Re The Queen on the application of PARKING OPERATORS AGAINST  
MONOPOLIES LIMITED v NORTH SOMERSET COUNCIL**

Please find attached the approved order of the Court.

Yours faithfully

For Court Manager





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

CO Ref CO/6483/2016

In the matter of an application for Judicial Review

The Queen on the application of PARKING OPERATORS AGAINST MONOPOLIES LIMITED

versus NORTH SOMERSET COUNCIL

Interested Party: BRISTOL AIRPORT LIMITED

**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 parties



**Order by the Honourable Mr Justice Hickinbottom**

1. The claim shall continue to be managed by the Cardiff Administrative Court Office. Any hearings shall be set down for hearing at Bristol Civil Justice Centre.
2. For the purposes of CPR rule 45.43, this claim is an Aarhus Convention claim, and the cost capping provisions of Section VII of CPR PD 45 apply. For the avoidance of doubt, the Claimant's cap on costs liability shall be £10,000.
3. Permission to proceed is refused.
4. The Claimants shall pay the Defendant's costs of preparing the Acknowledgment of Service, summarily assessed in the sum of £5,919.30. There shall be no order as to costs in respect of the Interested Parties' costs.

**Observations**

The Claimant seeks to challenge the decision of the Defendant local planning authority ("the Council") dated 11 November 2016 to grant the application of the Interested Party ("the Developer") for outline planning permission for a 1878 space multi-storey car park ("MSCP") at Bristol Airport ("the MSCP development") and for 3650 seasonal car parking spaces ("SCP") at the airport ("the SCP development") ("the 2016 permission"). The SCP development is in green belt land. It is uncontentious that, in the circumstances of this case, the development in the green belt could only be authorised if there were "very special circumstances".

In 2011, the Council had granted outline permission for extensive development at the airport, including a larger, 3850 space MSCP and similar SCP development, but conditions imposed required the first phase of the MSCP to be completed and in use before the SCP could be brought into use (Condition 7) and that a substantial part of the SVP could only take place when the usage of the airport had reached 9m passengers per annum ("the 2011 permission").

The Claimants seeks to challenge the 11 December 2016 decision on three grounds, all of which substantively concern the SCP development:

Ground 1: The Council misinterpreted development plan policies concerning the green belt, by proceeding on the basis that the issue of "very special circumstances" was addressed in 2011; because, then, it was addressed by Conditions 7 and 8, which do not appear in the 2016 permission. The Council took into account an irrelevant consideration, namely the pricing strategy of the Developer – to charge premium prices

for the MSCP.

Ground 2: The Council based its decision on a material error of fact, namely that there had been "rapid growth" in passenger numbers. In fact, by 2015, the numbers were about 6.7m, and not 9m or indeed as high as was projected in 2011.

Ground 3: The Council failed to provide adequate reasons for its conclusion that there were "very special circumstances".

I do not consider any ground arguable. They fail to take properly into account that the reason for the 2016 application and permission was that commercial circumstances had changed since 2011, notably the type of passengers using the airport had changed so that a higher proportion used the lower-cost SCP parking, the current SCP parking being, at peak times, full. This was clearly explained in the Officer's Report, which analysed whether the new circumstances meant that there were "very special circumstances" to develop green belt land.

In respect of Ground 1, the 2016 permission was granted on the clear basis that the state of affairs envisaged by Conditions 7 and 8 of the 2011 permission had not come about. In concluding that there were very special circumstances in 2016, the Council was entitled to take into account the different economic trends and development requirements then shown: it was not bound to find that there were such circumstances on the same basis as in 2011, and the Officer's Report did not suggest that the same basis was being adopted. The pricing strategy of the Developer is not, in itself, relevant to the planning decision; nor did the Council treat it at such.

In respect of Ground 2, "rapid growth" is evaluative. There had been growth of airport usage, although not as much and of a different type as envisaged in 2011. The Officer's Report did not suggest that the growth had been more rapid than envisaged in 2011. In this regard, the report did not arguably mislead the Council.


In respect of Ground 3: This is parasitic upon Ground 1. The reasons for the grant are quite (and, certainly, adequately) clear.

For those reasons, I do not consider any ground arguable; and I refuse permission to proceed.

In relation to the Aarhus Convention, it is rightly agreed that this claim is covered by the Convention. The Claimant is acting in a representative capacity, and the appropriate cap on its costs liability is £10,000. I have made an appropriate confirmatory order.

In respect of venue, any hearing in this claim should take place on the Western Circuit. Administrative Court claims on that circuit are managed by the Cardiff ACO. I have again given an appropriate direction.

Signed



Dated

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

Solicitors: Thrings LLP.  
Ref: Richard Price.

#### **Notes for the Claimant**

If you request the decision to be reconsidered at a hearing in open court, you must complete and serve the enclosed FORM within 7 days of the service of this order – CPR 54.12