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

**CO Ref: CO/12953/2012**

In the matter of an application for Judicial Review

The Queen on the application of

HAROLD GREATWOOD

versus LONDON BOROUGH OF HAMMERSMITH AND FULHAM AND OTHERS

**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 / or Interested Party]

Order by the Honourable Mr Justice Mitting

Permission is hereby refused.

Reasons:

Ground 1.

It is not reasonably arguable that the defendant failed to undertake a fair and proper consultation. The consultation was not undertaken too late. Although the defendant had signed an exclusivity agreement with the interested parties, under which it had received £15 million, of which £5 million was non-refundable, the defendant was not committed legally or practically to enter into the Conditional Land Sale Agreement with the interested parties. The proposal was sufficiently developed when put out for consultation, even though it was not final. The defendant did, on 3 February 2012, explain that the development, if it occurred, would be phased and that the interested parties were not legally bound to proceed with each phase; and that the imperative for them to do so was commercial not legal. The defendant was entitled not to circulate the current draft of the agreement and adequately summarised it. The defendant was under no obligation to set out a detailed precise timetable for the phasing of the development which it did not, in any event, know. The analysis of the consultation responses put to Cabinet on 23 April 2012 and 3 September 2012 was balanced and fair. The suggestion that the results of the consultation were hidden is unwarranted. The defendant was entitled to consult residents of the borough other than those on the two estates, because the proposed development would be likely to have significant impact upon them, too. The time for consultation – 9 weeks – was adequate. It is unreasonable to expect the defendant to send a printed copy of the draft Equalities Impact Assessment to every consultee. Finally, the suggestion that because the defendant did not address the consultation documents to tenants by name or to the "tenant", the process was flawed is absurd.

Ground 2

The allegation of impropriety in identifying those who would be re-housed in the first phase of development is an allegation of collateral impropriety which does not affect the decision to enter the agreement. In any event, proper steps are being taken to investigate it.

Ground 3

The Equality Impact Assessment is adequate. The underlying suggestion that the evolution of the Equality Impact Assessment is a "mere device" to avoid genuine

consideration of impacts on disadvantaged people is no more than an assertion, unsupported by any evidence, let alone cogent evidence. In the absence of such evidence, the defendant must be assumed to have attempted to fulfil its statutory duties in good faith. Articles 8 and 14 ECHR are not yet in point. They may become so if, and when, steps are taken to obtain possession of the claimant's home to permit the part of development which affects it to be undertaken.

Ground 4

The claim that the decision to enter into the agreement is motivated by improper political considerations is no more than an assertion. The material relied on, in particular pages 1759 – 1779 does not disclose any improper political motive for the decision, rather the legitimate expression of views by a variety of people concerned in the proposal. The fact that the tenants and residents associations split did not mean that the defendant was required to consult only with those who did not support the proposal.

In the light of my decision, I do not intend to make a protected costs order. Nor do I order the claimant to pay the defendants' costs of preparing and filing their acknowledgment of service, because, although the defendant is entitled to such an order, no good purpose would be served by making it at this stage. I do not certify the claim as totally without merit, because, except for the allegations of political impropriety, the claim has been moderately advanced and because the claimant has withdrawn obviously hopeless arguments, such as reliance on the lack of a strategic environmental impact assessment or an environmental impact assessment. If, contrary to my hope, the claimant does renew his application for permission to an oral hearing, the judge who determines that application will not be bound by my costs decision and may order costs to be paid by the claimant. I also make no order either way for the representation of the claimant at any hearing by Mr. Rosenberg. That will be a matter for the judge at any hearing.

The claimant has wisely not sought an interim injunction. If he had done, I would have refused it, for two reasons: the claim is not arguable; and he is in no position to give an undertaking as to damages. It follows that, even if the claimant does renew his application for permission to an oral hearing, the defendant is not prevented by any order of the court from entering into the Conditional Land Sale Agreement authorised on 3 September 2012.

Signed 

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date): 21 JAN 2013
Solicitors: IN PERSON
Ref No. In Person

**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