Status: Positive or Neutral Judicial Treatment

The Queen on the Application of Edward Clarke v Bristol City Council

CO/15893/2013

High Court of Justice Queen's Bench Division the Administrative Court of Cardiff Sitting At Bristol

22 November 2013

[2013] EWHC 4530 (Admin)

2013 WL 7090810

Before: His Honour Judge Lambert (Sitting as a Judge of the High Court)

Friday, 22nd November 2013

Representation

The Claimant did not appear and was not represented.
Miss Cavender appeared on behalf of the Defendant.

Judgment

His Honour Judge Lambert:

1 This is a renewed application for permission to apply for judicial review. The claimant acts in person and now seeks permission to challenge, I believe, two decisions. Firstly, the decision of the council to revoke his premises licence and then secondly, a decision of the magistrates who refused to rule on the lawfulness of a review hearing before the council. Permission was previously refused by His Honour Judge Seys-Llewellyn, who found the claim was out of time, and as there is a right to appeal to the Magistrates' Court, there being an opportunity to put his case to the magistrates, permission should be refused as a matter of discretion, there being an effective alternative remedy.

2 Mr Clarke renews his application before me. He asked the court to consider two separate reasons why his application is to succeed in his initial letter:

> "(a) It is agreed that the review hearing was on the 18th July 2013. No decision was made on or at the time of the hearing and there could be no legal process until the official decision had been declared. I received the official notice of 15th August and that evidence was before the court. The instruction for appealing time stated 21 days from receipt of the notice, therefore it must follow that my application was within the allotted time. In any event there were two of my originating letter of appeal to Bristol Magistrates with this court. The first, in July, which was ignored, as there

could be no appeal until the official decision was with the court. As a primary part of my appeal to the court was failure of the local authority to carry out their statutory duty, the question of needing a High Court ruling did not cross my mind. Further, the two cases that I relied upon, the rulings for Magistrates' Court not judicial reviews. It does not seem possible that a responsible authority could or should be able to ignore the fact that they failed in statutory duty to comply with their own notices and even continue with the hearing once they knew that they had not complied. I told them 4 months before the hearing that their notice was defective. At this point they had a duty to stop all proceeding and reissue the notices or inform me of the legal remedy. To ignore my complaint to a week before the hearing and then arguable wrongly, I was out of time, which as I have said above is not true.

(b) There are probably two more statutory failure which I have cited before the court, one the failure to advertise and the failure to put the notice on their website. I was not aware of these breaches until recently. It seemed reasonable for the law to allow the appeal time to run and the time of breaches were discovered as this is a secondary argument which should not in any way reduce the validity of the first."

(Mr Clarke's note of 31 October 2013)

3 Mr Clarke submitted a skeleton argument to the court which he admitted had been drafted in part by lawyers whom he cannot afford to instruct to appear on the application itself. That skeleton argument contains an extensive citation of authority concentrating myopically on the case of R v Clarke and McDaid and thereafter having cut and pasted in large extracts from a book on statutory interpretation. I will not blame Mr Clarke for anything that I identify as inappropriate in the skeleton argument however.

4 The skeleton argument says that defects appear which would render the review application not in compliance with the statutory regulations. This brings the case within terms of the judgment of District Judge Staveley and the Tinseltown case. The same points must therefore be argued as the outcome of those defects and noncompliance with the regulations would render the review determination by the Licensing Sub-Committee null and void. I have not had any transcript of the judgment of the District Judge Staveley in the Tinseltown case but I detect from the way the case has been argued and from the documents that a complete failure to give notice in similar circumstances to an interested person led to the refusal of relief or a refusal of the grant of a licence or the review.

5 The skeleton argument then goes on to continue with an extensive citation of the regulations, to which I will return later. It moves to the consequences of the alleged procedural defect and states that any later determination must be invalid if there is a failure properly to advertise in accordance with statute and regulations. The skeleton argument cites in favour of the invalidity of the decision the determination of the *House of Lords (as it then was) in R v Clarke and McDaid [2008] UKHL 8* . In that case, the question of an unsigned indictment giving rise to lack of jurisdiction on the

part of the Crown Court was raised. Lord Bingham endorsed the approach which was identified by Fulford J that there is a distinction to be made between noncompliance with a procedural technicality in the course of proper proceedings and the failure of a technicality which robbed the decision-making Tribunal of its jurisdictional power. The present case, it is said, is an example of the latter not the former. It is said it does not matter the nature of the procedural technicality or what the statute comes under. It is said that it was made plain in Clarke there was one principle and one principle only. As Lord Bingham said at paragraph 4:

> "…? whenever a court is confronted by failure
>
> to take a required step, properly or at all, before a power is exercised ('a procedural failure'), the court should first ask itself whether the intention of the legislature was that any
>
> act done following that procedural failure should be
>
> invalid. If the answer to that question is no, then the court should go on to consider the interests of justice generally and most particularly whether there is a real possibility that either the prosecution or the defence may suffer
>
> prejudice on account of the procedural failure. If there is such a risk, the court must decide whether it is just to allow the proceedings to continue."

6 Mr Clarke submits that section 52 of the Licensing Act goes on thereafter to endow the licencing authority with the power to hold a hearing and to take steps in relation to a premises licence. The section he says by clear interpretation does not apply with the review application which has not been made in accordance with section 51 of the Licensing Act and the applicant does not comply with the requirements of service of the review application and the licensing authority is not complied with the requirements of advertising and inviting representations. It is said there is no other reasonable interpretation in the circumstances. The solicitors then go on to include long sections on statutory interpretation and say nothing as to how those are going to help anybody in the particular circumstances of this case. Although resort to those authorities is educational and one always needs to be better informed, it leaves me none the wiser as to how to interpret this particular statute. It is said that the statutory language within section 52 gives rise to something more fundamental than a failure to comply with the provision set out within regulations which might be regarded as a formality and which could be overlooked if no prejudice resulted.

7 The submission continues that the language of section 52 is different and that it establishes clear pre-requisites to the triggering of the section at all. It is only the triggering of section 52 , within the primary legislation, that affords the licensing authority its jurisdiction to hear the review and impose steps as a consequence. Without it, it is argued that the licensing authority has no jurisdiction act and this cannot be cured.

8 Here, it is said in section 52 there is no ambiguity, no inconsistency and no drafting error. The plain meaning of the words is clear. That meaning does not produce any absurd result. The deliberate contrast, it is argued, with other provisions could not be plainer. The reason for it is obvious and was plainly observed and set out by District Judge Staveley in her judgment, which of course I do not have.

9 Further authority is resorted to in the form of R (on the application of) Bristol Council v Bristol Magistrates' Court [2009] EWHC 625 (Admin) in the Administrative Court . There Mr John Howell QC stated:

> "16. The first question is whether any application for a premises licence has been made in accordance with section 17. If it has not been so made, then the licensing authority has no power to grant any licence (see section 17(1)(a)). To be made in accordance with section 17, an application has to be in the prescribed form and be accompanied by an operating schedule in a prescribed form, which includes, among other matters, a statement of the steps which is proposed to take to promote the licensing objectives."

The solicitors have added emphasis to the section within their skeleton argument, which I believe I have added in this judgment. Therefore, it is said that because of the absence of a notice for some 3 days there can be no jurisdiction to hear a review. The solicitors further go on to place some reliance on *Seal v Chief Constable of South Wales Police [2007] UKHL 31* . They say that this deals with very different subject matter, but considers pertinent issues. For some reason they do not trouble themselves to deal with the exact subject matter of that particular authority. If they did it would undermine their submission however.

10 To do justice to the argument I must deal with paragraph 7 where it was said in that particular authority:

> "The important question is whether, in requiring a particular condition to be satisfied before proceedings are brought, Parliament intended to confer a substantial protection on the putative defendant, such as to invalidate proceedings brought without meeting the condition, or to impose a procedural requirement giving rights to the defendant if a claimant should fail to comply with the requirement; but not nullifying the proceedings …? "

The argument continues that recognising the reassurance and protection there should lead to a strict interpretation of procedural requirements within this statute.

11 It is said that the consequence of the failure to comply with the regulations is that the review application was invalid. The hearing should not have been convened and the determination is null and void. The purported determination, it is said, should therefore be quashed. If a review application is still relevant thereafter it will need to be recommenced in accordance with statutory regulations.

12 A responsible authority (in this case it was the Chief Constable of Avon and Somerset Constabulary) or any other person may apply to the relevant licensing authority for review of a premises licence. Section 51 of the Licensing Act 2003 sets out the procedure upon the application for review of premises licence:

> "Application for review of premises licence.
>
> (1) Where a premises licence has effect, an interested party or a responsible authority may apply to the relevant licensing authority for a review of the licence.
>
> (2) Subsection (1) is subject to regulations under section 54 (form etc. of applications etc.)
>
> (3) The Secretary of State must by regulations under this section–
>
> (a) require the applicant to give a notice containing details of the application to the holder of the premises licence and each responsible authority within such period as may be prescribed;
>
> (b) require the authority to advertise the application and invite representations about it to be made to the authority by interested parties and responsible authorities;
>
> (c) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any interested party;
>
> (d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period."

13 Section 52 of the Licensing Act 2003 governs the determination of the application for a review. Section 52(1) specifies it applies where (a) the relevant licensing authority receives an application made in accordance with section 51 ; (b) the applicant has complied with any requirement imposed on him under subsection (3)(a) or (3)(d) of that section and (c) the authority is complied with any requirement imposed on it under subsection(3)(b) and (d) of that section. Section 181 of the Licensing Act 2003 specifies:

> "181 Appeals against decisions of licensing authorities.
>
> (1) Schedule 5 (which makes provision for appeals against decisions of licensing authorities) has effect.
>
> (2) On an appeal in accordance with that Schedule against a decision of a licensing authority, a magistrates' court may–

(a) dismiss the appeal,

(b) substitute for the decision appealed against any other decision which could have been made by the licensing authority, or

(c) remit the case to the licensing authority to dispose of it in accordance with the direction of the court,

and may make such order as to costs as it thinks fit."

14 This enables the claimant to appeal against decisions of the licensing authority. In this case it was to revoke his licence, as it has done. On an appeal, in accordance with Schedule 5 of the Act 2003, against the decision of a licensing authority the Magistrates' Court may:

"(a) dismiss the appeal;

(b) substitute for the decision appealed against any other decision which could have been made by the licencing authority or

(c) remit the case to the licensing authority to dispose of it in accordance with the direction of the court

and may make such order as to costs as it thinks fit."

15 Paragraph 8 of Schedule 5 of the Licensing Act 2003 goes on to deal with further consequent matters. This applies where an application for review of premises licence is decided under section 52 :

"Review of premises licence

(1) This paragraph applies where an application for a review of a premises licence is decided under section 52.

(2) An appeal may be made against that decision by–

(a) the applicant for the review,

(b) the holder of the premises licence, or

(c) any other person who made relevant representations in relation to the application.

(3) In sub-paragraph (2) 'relevant representations' has the meaning given in section 52(7)."

16 It in fact specifies who can appeal. Paragraph 38 of the Licensing Act (premises licences and club premises certificates) Regulations 2005 set out the requirements for advertisement of the application for review by the licensing authority:

"Advertisement of review by licensing authority

(1) Subject to the provisions of this regulation and regulation 39, the relevant licensing authority shall advertise an application for the review of a premises licence under section 51(3), of a club premises certificate under section 87(3) or of a premises licence following a closure order under section 167–

(a) by displaying prominently a notice–

(i) which is–

(aa) of a size equal or larger than A4;

(bb) of a pale blue colour; and

(cc) printed legibly in black ink or typed in black in a font of a size equal to or larger than 16;

(ii) at, on or near the site of the premises to which the application relates where it can conveniently be read from the exterior of the premises by the public and in the case of a premises covering an area of more than 50 metres square, one further notice in the same form and subject to the same requirements shall be displayed every 50 metres along the external perimeter of the premises abutting any highway; and

(iii) at the offices, or the main offices, of the licensing authority in a central and conspicuous place; and

(b) in a case where the relevant licensing authority maintains a website for the purpose of advertisement of applications given to it, by publication of a notice on that website;

(2) the requirements set out in paragraph (1) shall be fulfilled–

(i) in the case of a review of a premises licence following a closure order under section 167, for a period of no less than seven consecutive days starting on the day after the day on which the relevant licensing authority received the notice under section 165(4); and

(ii) in all other cases, for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority."

This does not appear to require the authority to advertise a review in a newspaper, as used to be the case in respect of old licensing applications. Regulation 12 of the 2005 hearing regulations governs procedure of that Tribunal and need not be set out in full in this case.

The Facts

17 The facts here appear to be that on 20th March the first respondent advertised an application for review on its web page and affixed notices to the premises concerned on either side of the entrance doors. On 2nd April the first respondent was made aware that the notices on the premises had been removed, possibly two to three days earlier. They were immediately replaced. It appears to be common ground that the notices were only removed from the premises for a few days in the middle of the notice period.

18 On 18th April 2013 the claimant was informed of the first intended date for a review hearing. The following day the claimant drew the removal of the notices to the attention of the first respondent. It is plain to me that he was aware they had been removed and was aware they had been replaced and he does not contend otherwise at this hearing. It seems to me that that date should be a trigger for a judicial review application. Nothing in that regard was done until October 2013. If complaint was to be made about that, it should have been made considerably sooner. We will return to that topic in a moment.

19 The original application for judicial review appears to be nearly 6 months after the claimant knew that the authority had decided that section 52 applied and thus stated their intention to convene a hearing. He is clearly out of time in that regard. The question of the removal of notices was raised by the claimant before a sub-Committee on the 18th July 2003. It appears the claimant maintained that would have invalidated the hearing but he would not subsequently take the point, I am told, if the sub-Committee would agree to adjourn the case so he could bring his witnesses and prepare his case. We are told that the request for an adjournment was then refused. The application of course dates back to March.No criticism of can be railed against the Licensing Committee for refusing to adjourn. A hearing subsequently continued and the premises licence was revoked. The claimant then

entered a notice of appeal, dated 20th September 2013, against that revocation of his premises licence. An appeal, we are told, is fixed for February 2014.

20 Regulation 38 of the Licensing Regulations does not form a wholly rigid condition precedent to a valid review hearing. Its purpose I find is to inform interested persons of the review and the intention to hold a review. It seems to me to be the equivalent of a letter before action to passing citizens, denizens or nearby occupiers or is akin to a notice of an application for planning permission or other similar planning notice.

21 The purpose of the notice is to allow preparation of responses to review of the licence. The intention of Parliament here is plainly to ensure that those who have an interest in premises have a chance to make representations. A defective notice will not always thwart any review. There are circumstances in which it might do so. For instance, if an interested party or owner of premises had no notice at all of the review. But the plain purpose here is to ensure that those within an interest in a review are heard. The purpose is publicity, consultation and the extension of a right to be heard. The legislature plainly intended that if a procedural failure took place a review might be adjourned, for the power is within the regulations to do so, to give an opportunity to people to be heard, if for instance they have been taken by surprise. The licencing regulations and the review regime is not a game of happy families, with a player forfeiting a turn if they do not say "please". The review here was no surprise to Mr Clarke, who had ample notice and adequate time and facility to prepare for the hearing. The purpose of Parliament is made even plainer if we see what the whole point of this is. Paterson's Licensing Acts provides at Chapter 1, paragraph 348:

> "Where the appropriate procedural notices have been properly given and advertised in accordance with the regulations and the authority is satisfied that the application is not frivolous or vexatious or repetitious, then it must hold a hearing to consider the application for review and any relevant representations.
>
> Relevant representations can be made by the holder of the premises licence, the responsible authority or any other party and seemed to be tied to the period during which the licensing authority first receives the appropriate application.
>
> It is important also to note that relevant representations can relate only to the four licensing objectives. Any representations which do not fall within the general ambit of those objectives cannot form part of the authority's considerations."

22 I have tested my conclusion by analogy. I referred previously to similar requirements for notices being placed in accordance with planning legislation. The requirement of for the posting of notices of application is therefore not confined to the Licensing Act . Planning legislation requires publicity and consultation. For example, section 65 of the Town and Country Planning Act 1990 which provides:

> "Notice etc of applications for planning permission

(1) A development order may make provision requiring–

(a) notice to be given of any application for planning permission, and

(b) any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used …?

(5) A local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of this section have been satisfied."

23 I was guided in my consideration of the current case by the approach taken in this somewhat analogous area. The *Court of Appeal judgment in the case of Main v Swansea City Council & Ors [1985] 49 P&CR 26* , was a decision on the equivalent requirements of section 27 of the Town and Country Planning Act 1971 . The wording of which contains the same mandatory wording: "shall not entertain an application for planning permission", as does section 65(5) of the Act of 1990.

24 There an application was made for outline planning permission, the development of land and a certificate under section 27 of the 1971 Act stated the requisite notice of the application had not been given to all other owners of the land. It identified the local planning authority as being the only "other" owner of the land but in fact a small, albeit not *de minimis* part of the land was in fact owned by another person who was not specified and whose identity was and subsequently remained unknown. The certificate however did not state, as it should have done under such circumstances, that the requisite notice had been published in a local newspaper as required by section 27 of the Act. In January 1977 the local planning authority granted outline planning permission and approval of reserved matters was subsequently granted. The scheme involved not involved development of a land owned by the unspecified person but the applicant, who made no claim to be the owner of that plot of land, nonetheless applied for judicial review, complaining about that noncompliance. His application was dismissed by Woolf J (as he then was) and by the Court of Appeal on appeal. The Court of Appeal held that a factual error in a certificate under section 27 of the 1971 Act might be no more than an irregularity which did not go to the jurisdiction of a local planning authority to entertain the application for planning permission but that a factual error, even if not so gross as to make the certificate no certificate at all, was not necessarily a mere irregularity in respect of which an applicant was not entitled to relief. It held that in that case the defects in the certificate were sufficient in principle to entitle the court to strike down the subsequent grant of outline planning permission in certain circumstances but that the grant was not a complete nullity. The decision was one for the discretion of the court. On the facts of that case the court did not exercise its discretion to quash the grant of planning permission. It is clear from that case it appears from page 31

of the report that the claimant had also argued that the applicant for planning permission and the plaining authority knew the certificate was false. But this contention was rejected on the facts both by the trial judge and the Court of Appeal.

25 It is also clear that the Court of Appeal considered the provisions of the Act in force at that time were designed to ensure that owners of land were given notice of applications affecting their land, so if the notification requirement was not complied with, even if due to honest error, then on the application of the owner of the relevant piece of land the permission might set aside. However, it is also clear that the Court of Appeal, having considered the authorities, was satisfied the court did have a discretion whether or not to quash. What they said at page 37 of the report was the court must consider the consequences of non-compliance in the light of the concrete state of facts and the continuing chain of events in a particular case. They recognise that the court must look not only at the nature of the failure but also at such matters as the identity, the application for relief, the lapse of time, the affect on other parties and the public and so on. They said that in that case they had no doubt that the defect in the certificate was sufficient to enable the court to strike down a subsequent grant in certain circumstances. But equally they had no doubt that the defects were not such as to render the grant a complete nullity. That the matter was therefore one of discretion and, as I have said, they declined on the facts of that case to exercise their discretion to strike down.

26 Any inadequacy in the posting of the notice in this case was of no material effect. Clarke and McDaid before the House of Lords deals with the entirely different provisions of the indictment rules and the Indictments Act . A prerequisite, my Lords held, to a fair trial in a criminal case, was that there should be a signed indictment. What my Lords do not say is that in every case a breach of a particular procedural defect will rob a subsequent decision of all validity. The search, as always, is one for Parliamentary intention. I have expressed myself firmly of the view that Parliament did not intend that a decision taken after a minor defect or irregularity in some advertising provisions, should affect the subsequent determination of a review of the premises licence.

27 In this case the claimant knew that a review was taking place, he had ample notice of that review and notice of the review was posted outside his premises for a significant period of time. The notice was absent for only two or three days on any arguable case on the facts. Mr Clarke prepared for his subsequent review. He went to the review and his voice was heard. Any irregularity, if it can be called an "irregularity" here was so slight as to have no effect at all on the ultimate decision or on fairness. The absence of the notice posted on the premises was for a very short period of time and has given rise to no injustice. It amounts to what I would describe as an immaterial irregularity. It did not and could not give rise to any injustice to the claimant in this case, when we see ultimately there was a full hearing at which he was able to participate and in which he did participate.

28 As an error of law there is nothing at all in the point on the notices. The claimant has no arguable case and permission is refused. The magistrates were perfectly entitled to decline to make a preliminary ruling as requested by the claimant. There is no statutory mechanism for such initial determination to be made and the

magistrates did not need to cast about to find a new procedural device to regulate their own procedure so as to permit such a preliminary determination. I refuse permission in respect of that ground. I refuse permission also because the claimant has a live, viable alternative remedy in the form of his appeal to the Magistrates' Court. Where an applicant applies to the High Court for judicial review and there is an alternative remedy available to him by way of appeal, the court should always ask itself when deciding whether or not to grant the relief sought which of the two alternative remedies is the more convenient and effective in the circumstances, not only for the applicant but in the public interest and should exercise its discretion accordingly — see the licencing case of *R v Huntingdon District Council ex parte Cowan & Or [1984] 1 All ER 58* , in particular the passage at 63G and 63H. This will be a clear case in which the claimant would be left to his untrammelled, unfettered right to a rehearing before the magistrates. Bearing in mind the public interest in the case and the interests of justice generally, the court is bound to withhold relief at least for the time that alternative available remedy was available. I further refuse permission because the claim arising from the allegedly defective notice was not made within 3 months of the defect being known to claimant, nor was it made promptly.

29 For those reasons, as given, permission to move for judicial review is refused to Mr Clarke.

30 MISS CAVENDER: My Lord, may I make application for costs by the respondent?

31 HIS HONOUR JUDGE LAMBERT: Have you a statement of those costs?

32 MISS CAVENDER: I do have. I have a statement of costs up until close of business yesterday.

33 HIS HONOUR JUDGE LAMBERT: Have you served that on Mr Clarke?

34 MISS CAVENDER: Yes, it was served on him this morning. I do not have a statement including today's costs because of course we did not know how long today's hearing would take.

35 HIS HONOUR JUDGE LAMBERT: Yes.

36 MISS CAVENDER: If I may turn my back briefly I will be able to provide it the court (Pause).

37 HIS HONOUR JUDGE LAMBERT: Okay. Thank you very much. Thank you.

38 MISS CAVENDER: Part of the reason for the level of those costs — perhaps I should explain to Mr Clarke — his service of documents was so late and the grounds upon which he sought to apply seems to vary with each further document. A great deal of additional work has been done. I am told that the costs of today hearing set at couple of hours will be about £500 in addition to the figure that my Lord already has.

39 HIS HONOUR JUDGE LAMBERT: Very well, it is my job to make a summary assessment costs. In doing that I have to first of all to decide whether or not the

costs are proportionate to the importance of the matters raised in the claim and similar and then to go on to determine whether or not they are reasonable.

40 THE CLAIMANT: Has your Honour made a judgment?

41 HIS HONOUR JUDGE LAMBERT: No, I have not made a determination. Costs normally following the event and therefore I intend to award the costs of the hearing, which I have to determine whether or not are first proportionate and then reasonable against you, because that is the normal rule.

42 THE CLAIMANT: In the event that you refuse permission?

43 HIS HONOUR JUDGE LAMBERT: Yes.

44 THE CLAIMANT: Which you have not decided yet?

45 HIS HONOUR JUDGE LAMBERT: No, I have refused permission. In my judgment I refused and said so, I refuse you permission on every ground.

46 THE CLAIMANT: What were your grounds?

47 HIS HONOUR JUDGE LAMBERT: I have just gone through them.

48 THE CLAIMANT: Okay.

49 HIS HONOUR JUDGE LAMBERT: That is what I have devoted the last half-an-hour to, as outlining the facts and telling you why you have no arguable case.

50 THE CLAIMANT: Based on the 1971 Act — yes?

51 HIS HONOUR JUDGE LAMBERT: It is not traditional to cross-examine a judge. I know you do so charmingly about that. I have said what I have said. I have been through it. I have said you have no arguable case on the grounds point. I am not going to go through a long explanation of what I have just said because it is just that.

52 MISS CAVENDER: I wonder whether I may suggest that a copy of my Lord's remarks may be provided in writing both to Mr Clarke and those responding. That may assist him in digesting what your Lordship has said.

53 HIS HONOUR JUDGE LAMBERT: I am not going to copy—

54 MISS CAVENDER: A transcript at some stage.

55 HIS HONOUR JUDGE LAMBERT: Mr Clarke will have to pay for a transcript if he wants a transcript of that.

56 What I have said is that you have not an arguable case. I have been through it at some length on the point they cannot hold a review if there is a small defect in the notice provisions. I have said that Clarke and McDaid was a case that your solicitors put before me does not govern the situation. I have looked and saw what the intention of Parliament was in relation to this section. I thought it more analogous to a planning case. I drew your attention to Main v Swansea City Council , where the Court of Appeal decided, in a planning case where they had to give notice of a particular application, defects in notice will not render it null and void. That was the

basis of that. For the reasons which I gave, I refuse you permission to apply for judicial review.

57 THE CLAIMANT: Okay your Honour. Do I have a right of appeal against this?

58 HIS HONOUR JUDGE LAMBERT: You do. It is a final decision and therefore you have a right of appeal to the Court of Appeal (Civil Division) against my decision but you need permission. Could we go back to permission when we have done costs. Would that suit you?

59 THE CLAIMANT: Yes.

60 HIS HONOUR JUDGE LAMBERT: We go back to the question of appeal. Okay. What it is traditional to do is to say if there are any arguments in principle as to why the costs should not be paid. There is probably not a great deal of argument open to you. If you lose you normally pay the costs.

61 THE CLAIMANT: Correct your Honour.

62 HIS HONOUR JUDGE LAMBERT: But you could also argue, if you wished, that their costs are unreasonable.

63 THE CLAIMANT: Yes, your Honour.

64 HIS HONOUR JUDGE LAMBERT: What would you like to say about that?

65 THE CLAIMANT: I don't know what the costs are at the moment.

66 HIS HONOUR JUDGE LAMBERT: It would come to a total of £2,252.

67 THE CLAIMANT: I would say that was unreasonable because the time to lodge appeal.

68 HIS HONOUR JUDGE LAMBERT: Yes, let us measure that against your own claim for costs. You say you should have if you had won, £2,275. All right. I will let you develop that. You may say anything else you would like to on that subject.

69 THE CLAIMANT: No, your Honour.

70 HIS HONOUR JUDGE LAMBERT: Thank you very much indeed.

71 My summary assessment of costs is that the claimant shall pay the defendant's costs assessed summarily at the total of £2,252 which I have before me. Those costs seem to me to be, firstly, proportionate to the issues which arise in the case and reasonable. The time for work on documents done was modest. Counsel's fees are modest in this case. In those circumstances they are entirely reasonable.

72 That is my judgment on the summary assessment of costs. Now the question of appeal. As I say, you may seek permission to appeal from me and thereafter you will need to seek permission to appeal from the Court of Appeal (Civil Division) and the appropriate forms.

73 THE CLAIMANT: Do I formally write to you for permission?

74 HIS HONOUR JUDGE LAMBERT: No, the conventional thing to do is at the end of the hearing is to tell the judge why you have an arguable case on appeal that he is

wrong or there is some other compelling reason why he should give permission. That other compelling reason is often if there are conflicting cases that permission should be given for that reason, so the Court of Appeal can review the authorities or maybe even thereafter the Supreme Court.

75 THE CLAIMANT: Yes, your Honour. At the end of the court I can ask you to grant permission to appeal.

76 HIS HONOUR JUDGE LAMBERT: I am inviting you to do that now.

77 THE CLAIMANT: Okay. Yes, I would do it on the grounds that the comparison of law, 71 law, compared to the comparisons and very common interpretation of the need to fulfill all the kind of mandatory conditions was brought for within the last year. They are relevant. I think the planning law is somewhat different than the construction of the 203 law. The reason I say that is because of the amount at stake. Revocation is serious and that's why the mandatory conditions are important. That is why two magistrates actually judged against counsel for not complying. I see no difference, so the compelling case would be that the comparisons that this court has made between the Planning Act of 1971 and these current Acts that are before the court, the judgment before the court is a compelling reason. I ask for permission.

78 HIS HONOUR JUDGE LAMBERT: Thank you very much.

79 Mr Clarke seeks permission to appeal my refusal of permission to move for judicial review made today. Civil Procedure Rule 52.3(6) provides:

> "(6) Permission to appeal may be given only where –
>
> (a) the court considers that the appeal would have a real prospect of success; or
>
> (b) there is some other compelling reason why the appeal should be heard."

I do not consider that an appeal would have a real prospect of success based on what Mr Clarke submits to me, nor do I consider that there is any other compelling reason why the appeal should be heard.

80 I am not of course immune from error but it seems to me the prospects of attacking my decision in these circumstances, for the reasons given by Mr Clarke, would not have any real prospects of success before the Court of Appeal. I cannot identify any other compelling reason in this particular case. There is no general public interest here to be considered, nor are there any conflicting authorities, it seems to me, which need to be considered by the Court of Appeal (Civil Division). In the circumstances permission is refused.

81 Miss Cavender, would you be kind and draw up the order of the court for me please and submit it within 7 days if you would be so kind.

82 MISS CAVENDER: Yes, my Lord.

83 HIS HONOUR JUDGE LAMBERT: All right. We are through in that regard now. You have now exhausted — I do not mean that pejoratively — you have exhausted the jurisdiction at first instance of the Administrative Court. Your remedy against my decision is of course in the hands of the Court of Appeal (Civil Division) now. That further application will be considered by a single Lord Justice of Appeal on paper should you proceed further with it. You of course have your hearing to get ready for before the Magistrates' Court. I do not know whether or not you have a further appeal to the Crown Court after that. That is not for me.

84 THE CLAIMANT: Thank you your Honour.

85 HIS HONOUR JUDGE LAMBERT: You have back all your documents, have you not. I have not taken anything from you?

86 THE CLAIMANT: I have your Honour.

87 HIS HONOUR JUDGE LAMBERT: Thank you both very much indeed.