



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: CA-2023-001482



R (Boswell) –v– Secretary of State for Transport & Air

CA-2023-001482

ORDER made by the Rt. Hon. Lord Justice Coulson

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision:

Permission to appeal: **GRANTED**

For the avoidance of doubt, the Court of Appeal will **NOT** determine for itself the so-called "secondary issue".

Reasons

1 The appellant's grounds set out what the appellant describes as "a single ground of appeal". The judge may well have been right in her conclusion but I consider that the contrary case making up this single ground has a real prospect of success.

2 That view is further confirmed by the following: i) Holgate J granted JR permission, so recognised the arguability of this point; ii) the judge herself described parts of the relevant assessment as "unhelpfully expressed"; and iii) the judgment in relation to the assessment of combined carbon emissions has potentially wide implications.

2 I refuse to grant permission for the appellant to raise what the skeleton argument describes as the "secondary issue". This is not raised in the Grounds of Appeal because the judge made no determination upon it. In the circumstances, and in particular in the absence of any first instance determination of the issue, it would not be appropriate for the Court of Appeal to determine the point *de novo*. Furthermore, that would inevitably cause additional work, additional cost and potential delay before the appeal on the principal point is heard and resolved.

3 Accordingly, I grant permission to appeal on the so-called "primary issue" only.

Information for or directions to the parties

Mediation: Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? NO

Pilot categories:

- | | |
|---|---|
| <ul style="list-style-type: none"> • All cases involving a litigant in person (other than immigration and family appeals) • Personal injury and clinical negligence cases; • All other professional negligence cases; • Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual; | <ul style="list-style-type: none"> • Boundary disputes; • Inheritance disputes. • EAT Appeals • Residential landlord and tenant appeals |
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If yes, is there any reason not to refer to CAMS mediation under the pilot? NO

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation? NO

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition

Signed: BY THE COURT
Date: 17 October 2023

Notes

- (1) Rule 52.6(1) provides that 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.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

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