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John Dunkley
Charlie Hopkins

Secretary of State for Communities and Local Government
Department for Communities and Local Government
Eland House
Bressenden Place
London Sw1E 5DU

Our Ref:CVH/WHA

15 February 2008

Dear Secretary of State,

PROPOSED CLAIM FOR JUDICIAL REVIEW

1

To

The Secretary of State for Communities and Local Government, and the Secretary of State for Transport ('the Secretary of State')

2

The claimant

The White Horse Alliance
Dept 237, Edgar Buildings, George St., Bath BA1 2FJ

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Reference details

Application References APP/K3930/V/07/1201863, DN5079/55/7/07 & DN5079/60/1/13

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The details of the matter being challenged

The decision that a public inquiry, being held to consider the conjoined called-in and CPO/SRO applications by Wiltshire County Council for planning permission and other consents and orders required for the Westbury Bypass Scheme, would commence on 29 April 2008 ('the Decision'). The Decision was communicated by letter from the Planning Inspectorate on 4 February 2008.

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The issue

The Westbury Bypass Scheme ('the Scheme') has attracted immeasurable controversy and objection in the local area. The proposed Claimant is an unincorporated association, representing local residents and a number of groups (CPRE Wilts, Dorset and Somerset branches, the Campaign for Better Transport, the Woodland Trust, Friends of the Earth national and Friends of the Earth South West, Southwick, West Ashton and Steeple Ashton Parish Councils, the Westbury Bypass Alliance, and the A36/A350 Corridor Alliance amongst others), formed to object to the Scheme. It was granted Rule 6 status by the Planning Inspectorate on 1 August 2007 and Rule 7 status by The Department for Transport on 26 November 2007. The proposed Claimant will be the only main party at the public inquiry other than the promoting authority, Wiltshire County Council and the Wiltshire Wildlife Trust.

The proposed Claimant is concerned that the Decision was unlawful for a number of reasons.

- (i) The Planning Inspectorate is aware that the proposed Claimant is one of only two Rule 6 parties appearing at the inquiry. The Planning Inspectorate was prepared to withdraw an earlier starting date for the public inquiry (February 2008) because Counsel retained by Wiltshire County Council was not available. However, the Planning Inspectorate has failed to take into account at all the fact, communicated by the proposed Claimant by letter on 18 January 2008, that because of other professional and personal commitments several of the expert witnesses to be called by the proposed Claimant will not be able to adequately prepare evidence for, or attend, a public inquiry beginning on 29 April 2008. As a consequence the proposed Claimant's ability to present its case in objection to the Scheme will be fundamentally undermined. In addition, the Inspectorate's failure to consult with the Alliance or to take into consideration the availability of the Alliance's professional witnesses is inconsistent and unfair, given its apparent willingness to accommodate the requirements of the County Council.

The Wiltshire County Council has its own in-house

professional engineers and advisors who will have been preparing the case for the Scheme for many years. The County Council can instruct any external legal advisors who are available for the inquiry dates set by the Planning Inspectorate.

The proposed Claimant on the other hand is a voluntary body which must raise funding, and find expert witnesses to give evidence in support of its case. To set a date for the public inquiry without discussion with the proposed Claimant, or sufficient notice, is to discriminate against objector groups wishing to present a professional case against the proposal. The proposed Claimant has been disadvantaged and prevented from presenting its case on anything remotely resembling an equal footing.

The Planning Inspectorate should have given equal consideration to the timetabling difficulties communicated to it by the proposed Claimant, as it had done in respect of Wiltshire County Council. In making the decision the Planning Inspectorate, acting on behalf of the Secretary of State, has failed to take into account a material consideration, failed to act in accordance with the common law rules of natural justice, and has denied the proposed Claimant equality of arms thereby interfering unlawfully with the rights of the many thousands of individuals represented by the proposed Claimant which are guaranteed under Article 6 of the European Convention on Human Rights (ECHR).

- (ii) As explained in our letter of 18 January 2008, the report of the Panel which held an Examination in Public (EiP) into the draft Regional Spatial Strategy (RSS) for the South West has included a number of recommendations, including recommendations for further studies and investigations, which will materially affect the determination by the Secretary of State of the various applications before her in relation to the Scheme, not least because on one reading of the Panel Report there is little if any place for the Scheme in the future Regional Spatial Strategy. If the public inquiry is held during the dates presently proposed, the further studies recommended by the Panel will not have taken place, and the consideration of the Panel Report by the Secretary of State (and adoption of the RSS) may be materially prejudiced. It would be illogical and irrational to allow those circumstances to arise. The public inquiry should be postponed until the Secretary of State has published a formal response to the Panel Report, allowed for the public consultation period and published the RSS. For these reasons, the Decision was taken in absence of a proper consideration of a highly material consideration, and/or was Wednesbury unreasonable.

- (iii) The Decision letter of 4 February 2008 contains no reasons for

the decision by the Planning Inspectorate. That decision was therefore unlawful, for want of any reasons, in any event.

For these reasons our clients consider that in taking the Decision the Planning Inspectorate, on behalf of the Secretary of State, erred in law and/or failed to take account of relevant material considerations and/or failed to give any or adequate reasons.

Our clients consider that other aspects of the Decision may also prove to be unlawful. At present further information is being assembled in relation to those other matters and we reserve the right to draw such other matters to the Secretary of State's attention as appropriate.

6 The details of the action that the defendant is expected to take

Please confirm that the Secretary of State will

- abort the intended starting date of the public inquiry, and
- arrange a new start date for the public inquiry in accordance with the reasonable requirements, and availability of witnesses, of both the proposed Claimants and the Wiltshire County Council.

7 The details of the legal advisers, if any, dealing with this claim

EarthRights Solicitors, Springfield, Kilmington, Axminster, Devon EX13 7SB
Tel/Fax 01297 34405
E mail Charlie.Hopkins@earthrights.org.uk

8 The details of any interested parties

Wiltshire County Council, County Hall, Trowbridge, BA14 8JD

9 The details of any information sought

Please refer to section 6 above.

10 The details of any documents that are considered relevant and necessary

All correspondence regarding the decision under challenge between the Planning Inspectorate and Wiltshire County Council.

11 The address for reply and service of court documents

EarthRights Solicitors, Springfield, Kilmington, Axminster, Devon EX13 7SB

12 Proposed reply date

Please provide a substantive response within 7 days of the date of this letter.

Yours faithfully,

EarthRights Solicitors

Sent to: Secretary of State, Department of Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU