



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

CO/3340/2021

In the matter of an application for judicial review

THE QUEEN

on the application of

MOUNT EDEN LAND LIMITED

Claimant

-and-

WESTMINSTER CITY COUNCIL

Defendant

-and-

JAMES SPALLONE

Interested Party

**Notification of the Judge's decision on the application for permission to
apply for judicial review (CPR 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgements of Service filed by the Defendant and Interested Party,

ORDER by Mr Mathew Gullick QC, sitting as a Deputy High Court Judge

1. The application for permission to apply for judicial review is refused.
2. The costs of preparing the Acknowledgement of Service are to be paid by the Claimant to the Defendant, summarily assessed on the standard basis in the sum of £7,265.00.
3. Paragraph 2 above is a final costs order unless within 14 days of the date of this Order the Claimant files with the Court and serves on the Defendant a notice of objection setting out the reasons why it should not be required to pay costs (either as required by the costs order, or at all). If the Claimant files and serves notice of objection, the Defendant may, within 14 days of the date it is served, file and serve submissions in response. The Claimant may, within 7 days of the date on which the Defendant's response is served, file and serve submissions in reply.
4. The directions at paragraph 3 apply whether or not the Claimant seeks reconsideration of the decision to refuse permission to apply for judicial review.
 - (a) If an application for reconsideration is made, the Judge who hears that application will consider the written representations filed pursuant to paragraph 3 above together

with such further oral submissions as may be permitted, and decide what costs order if any, should be made.

(b) If no application for reconsideration is made or if an application is made but withdrawn, the written representations filed pursuant to paragraph 3 above will be referred to a Judge and what order for costs if any, should be made will be decided without further hearing.

Reasons

1. This Claim was not filed promptly as required by CPR 54.5. In any event (and irrespective of the points made as to alternative remedies) it has no realistic prospect of success on the merits for the reasons given in the Defendant's Acknowledgment of Service and the Interested Party's Acknowledgment of Service. Accordingly, I refuse permission to apply for judicial review.
2. As the Defendant correctly points out, the Interested Party requested that the Claimant consent to the transfer of the 'shadow' premises licence. The Claimant's response to that request was an emphatic refusal. The Claimant does not suggest what other steps the Interested Party was required to take in order to come within section 44(6)(a) of the Licensing Act 2003.
3. The central question raised by this Claim is really, in my view, that identified in the final sentence of paragraph 22 of the Defendant's Summary Grounds of Defence: i.e. whether section 44(6)(a) simply has no application in circumstances where consent to transfer of the premises licence has been positively refused, and thus whether a premises licence holder who has refused a request to have their licence transferred in effect has a veto on any transfer to a person who fulfils the second criterion in section 44(6)(b). In my view, it is clear that if Parliament had intended this to be the case then it would have said so expressly. The language of "*all reasonable steps*" used in the statute is in my view clearly apt to include both circumstances where the proposed transferee has been unable to obtain any decision from the holder of the licence and also where the holder of the licence has (as in the present case) positively refused to transfer the licence.

4. The Defendant ought in these circumstances to have its costs of the Acknowledgment of Service. The amount sought by the Defendant in respect of its costs is considerable; however, a signed schedule with a breakdown of the time spent and the disbursements has been provided and the Claimant has not (as far as I am aware) filed any response to it or challenged the rates charged / individual items. That said, however, the Defendant has not provided any more detailed explanation for the sums claimed than appears on the face of the schedule and I am of the view that some reduction is obviously justified on a standard basis assessment. For example, I do not consider that all the Solicitor time (including e.g. 3 hours for bundle preparation) should be recovered at Grade A rate, and there is nothing to indicate why as many as 8 hours of attendance on the client was necessary. I also do not consider that the Claimant (which instructed Junior Counsel) should pay on an *inter partes* assessment on the standard basis for the instruction of Leading Counsel to draft Summary Grounds of Defence. I will therefore allow, adopting a broad brush approach:
- a. A total of 10 hours of the Grade A fee earner's time: £2,690.00 (no VAT is charged on the Solicitor's fees);
 - b. Half the amount claimed for Counsel's fees (on the basis of the instruction of one Junior Counsel): £3,812.50 (plus VAT of £762.50).

Signed:



(Order signed on 22 November 2021)

The date of service of this order is calculated from the date in the section below

For completion by the Administrative Court Office

Sent / Handed to

either the Claimant, and the Defendant [and the Interested Party]
or the Claimant's, and the Defendant's [and the Interested Party's] solicitors

Date: 23/11/21

Solicitors: **LT LAW**
Ref No. **LANA TRICKER**

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed Form 86B within 7 days of the service of this order.

A fee is payable on submission of Form 86B. ***For details of the current fee please refer to the Administrative Court fees table at***

<https://www.gov.uk/court-fees-what-they-are>.

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from the gov.uk website at <https://www.gov.uk/get-help-with-court-fees>