Claim No: CO/1361/2014

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

PLANNING COURT

IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPEAL

BETWEEN:

REDHILL AERODOME LIMITED

Claimant

-and-

1. SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

2. TANDRIDGE DISTRICT COUNCIL

3. REIGATE & BANSTEAD BOROUGH COUNCIL

Defendants

COUNCILS' PERMISSION TO APPEAL APPLICATION

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1. Like the Secretary of State, the Councils apply for permission to appeal. They gratefully adopt the submissions and grounds in the Secretary of State's application.

2. Both tests for granting permission are plainly met.

3. The Judgment affects every single Green Belt application and appeal in England. That is compelling reason enough to grant permission to appeal.

4. Likewise, an appeal would have a real prospect of success.

5. The Judgment is effectively a departure from River Club even though the particular words in question, "any other harm," have not changed, and even though the government made it clear through its impact assessment that it was not intending to change this particular aspect of Green Belt policy. The claimant's "wrap around" case, which persuaded the learned Judge, cannot not alter the plain words of paragraph 88 of NPPF. In short, "any" means "any".

6. The Judgment at [51] canvasses the possibility that some factors (e.g. biodiversity enhancement) could well be factors in favour of a proposal as part of the very special circumstances balancing exercise. On this approach, that would be so even if the biodiversity enhancement attracted only moderate weight. But, on the learned Judge's approach, moderate biodiversity *harm* generated by a proposal *cannot* weigh in the Green Belt balancing exercise (because it is below the significant harm threshold) either alone or even cumulatively with other harm. This illogicality points up the error in the Judgment.

7. Paragraph [51] describes the effect upon the landscape character and the visual impact of a development proposal as "clearly material considerations". But, on the learned Judge's approach, if it is difficult if not impossible to see how they could be material

if the decision-maker concludes that very special circumstances exist having carried out the constrained Green Belt balancing exercise. The Councils maintain that these effects *are* Green Belt harms, and that the Judge was wrong to conclude otherwise, notwithstanding the fact that Green Belt is not a landscape designation. The Aerodrome is in the Green Belt. The Inspector found that its appearance and character would be harmed. The Inspector also found slight visual impact in respect of views of the Aerodrome post-development. If these are not Green Belt harms, it begs the question: harms to what? In any event, and if nothing else, these harms go to the proposition that the Inspector's decision would inevitably have been the same even if she erred as to "any other harm". There is a real prospect of success on this point too.

8. The Judgment at [4] fairly accepts that the point in issue is "not entirely straightforward". It merits consideration by the Court of Appeal.

Conclusion

9. The Court is respectfully urged to grant permission to appeal.

STEPHEN WHALE

LANDMARK CHAMBERS, LONDON

25 JULY 2014