



## IN THE COURT OF APPEAL, CIVIL DIVISION

REF: C1/2013/2479 &amp; C1/2013/2567

 Her Majesty's  
Court of Appeal

[SEAL]

 THE QUEEN ON THE APPLICATION OF  
CHALFONT ST PETER PARISH COUNCIL

-v- CHILTERN DISTRICT COUNCIL AND ANOTHER

22 NOV 2013

**ORDER made by the Rt. Hon. Lord Justice Lewison**

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

**Decision:** granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

Judicial Review Challenge: REFUSED

Section 113 Challenge: REFUSED

Protective Costs order: REFUSED

**Reasons****Judicial Review Challenge**

1. The question of the extent of the playing field was a question of fact, which the Council resolved on the evidence. No matter how much it is dressed up, it remains a question of fact.
2. Policy CSF 2 requires "a" replacement facility. It does not require like for like replacement especially where, as here, the local education authority was not interested in acquiring the site.

**Section 113 Challenge**

1. The judge did not hold that the Council had considered the land swap as a reasonable alternative. On the contrary, he held that because the local education authority was not interested in acquiring the site, the land swap was not "deliverable" and hence was not a reasonable alternative that had to be considered.
2. For the same reason he held that the Inspector was entitled to find that the land swap was not "sound" because it was not deliverable.

**PCO**

1. Since permission to appeal has been refused this does not arise.
2. The Respondents will not be entitled to costs at any renewed oral application; but if permission to appeal is granted at that stage the question of a PCO may be reconsidered then.

**Information for or directions to the parties**

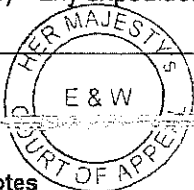
This case falls within the Court of Appeal Mediation Scheme automatic pilot categories\*. Yes  No

Recommended for mediation Yes  No

If not, please give reason:

**Where permission has been granted, or the application adjourned**

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



*By the Court*

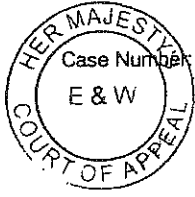
Signed: *Krishevich*

Date: 15 November 2013

**Notes**

- (1) Rule 52.3(6) 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) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 16(1) of CPR PD 52C.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 7 days of the date of the listing window notification letter and seek to agree the bundle within 21 days of the date of the listing window notification letter (see paragraph 21 of CPR PD 52C).



Case Number **C1/2013/2479 & C5/2013/2567**

DATED 15TH NOVEMBER 2013  
IN THE COURT OF APPEAL

**ORDER**

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