



Date	19 April 2011	By Email
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Your ref	SB/KS/TDC/232288.79	
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Dear Sirs

**TW Logistics Ltd v Tendring District Council**  
**Claim No: CO/11946/2010**

We refer to your letter of 24 March and subsequent letter of 8 April in relation to the above mentioned claim. Moreover, we are aware of the case management directions that have been given.

In response to your queries regarding the witness statement of Patricia Sargent and the second witness statement of Michael Jonathan Parker and our subsequent letter to the Court of 15 January 2011, you are correct in your assumption that this will form part of the evidence before the Court in due course.

As set out in our application, in our view the case could be heard in a one day hearing. However, if your Counsel is of the view that this should be a two day matter, we do not object to you writing to the Court at this stage to inform them of your Counsel's opinion.

We note your comments in relation to our client's intention to seek judicial review of the Mistley SPD when it is adopted. At this present time our client cannot make any decision in respect of the Mistley SPD because it has not been adopted and is, as your client has pointed out, subject to amendments. Therefore it would be premature for our client to have made such as decision.

Our client will not be applying to the Court for a stay in the proceedings of the present judicial review and would like to ensure that the case is brought before the Court in a timely fashion.

We note the contents of your letter of 8 April 2011 and the fact that you were aware that our client has been unwell. That being the case, please find enclosed representations on behalf of our client which we require to be made available to the Planning Committee members prior to the meeting due to take place this evening. Our client is concerned to ensure that all members of the Planning Committee are mindful of the Council's procedures on prejudicial interest at this evenings meeting.

The issue of the judicial review of the CAMP by my client goes before the Planning Committee more than 3 weeks after the communication of Mr Parker's condition on 24 March 2011, where the reasons why it was not possible to offer meeting dates were stated, and 2 weeks after Mr Parker's letter of 5 April 2011 to the Council written following his release from hospital a few days earlier.

**SJ Berwin LLP**

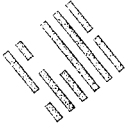
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There is therefore no confusion about the reasons why it has not been possible for my client to meet your client in March. If the Council endorses the decision and withdraws from the agreed process to resolve the dispute out of court by way of meaningful without prejudice discussions, there can be no confusion that it is the Council that is instigating withdrawal.

Finally, until now my client has enjoyed open lines of communication with officers at the Council and officers have been writing directly to my client. It is my client's view that it is correct and proper to keep this line of communication between the parties as open and informal as possible.

Yours faithfully

SJ Berwin LLP

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**Representation of Mistley Port in respect of Agenda Item A.3  
Manningtree and Mistley Conservation Area Management Plan (CAMP)**

1. We write with respect to the agenda item A.3 stated to be tabled on "a strictly without prejudice basis" at the Planning Committee meeting on 19 April 2011.

However, it is clear this is not a genuine attempt to avoid court action. The intention of this procedure is to rubberstamp the decision under review and to render court action inevitable. We cannot understand this objective.

The papers before the court number over 1000 pages; only recently your legal counsel requested the hearing at the High Court be extended from 1 to 2 days: over 1000 pages of written evidence and argument and 2 days of oral argument.

Yet members are asked to commit the Council and Mistley Port to the High Court action on the basis of a 3 page précis.

2. Any member wishing to interrogate the recommendation has no information whatsoever about the grounds of claim, legal principles involved, evidential background or planning policy framework to identify firstly why the recommendation is wrong and then to formulate reasoned arguments against the recommendation.

Why is this approach considered desirable and in the Council's best interests?

3. Members can decide a third option. Members can refer the matter back to planning and legal officers to conduct without prejudice discussions with TWL in accordance with an agreement between the Council and TWL in November 2010.

Members should not be advised it is realistic to endorse the adoption decision and then to expect to commence "without prejudice" discussions following the conclusion of the Council's position.

The without prejudice principle applies only to meaningful discussions conducted with the genuine intention of resolving the dispute and avoiding litigation.

4. Our legal challenge is necessary given the real potential of the CAMP to damage the current and future efficiency, viability and success of Mistleley Port.

In 2007, we found it necessary to fund a legal representation to the Local Plan Inquiry to challenge draft proposals seeking to constrain Mistleley Port and to promote the redevelopment of industrial buildings on and surrounding Mistleley Port. The Inspector deleted the Council's draft proposals. The CAMP was adopted as part of an unlawful strategy to resurrect the draft proposals against existing development plan policy, national policy and the findings of the Council's expert consultants Adams Hendry and MDS Transmodal.

5. On February 28 2011, the judge granted TWL an unconditional permission in respect of the five grounds on which permission for judicial review was sought. If the judge had considered any ground without merit and inarguable, permission on that ground would have been refused to limit the scope of the review. The judge in granting an unconditional permission therefore considered each of the five grounds to quash the decision to be arguable and not without merit.

6. Resolution outside of a court remedy would limit the collective exposure to further legal costs.

In November 2010, the Council's legal department proposed TWL and Council officers meet to discuss the judicial review proceedings on a without prejudice basis.

TWL assented to this proposal as we recognise the importance of genuine attempts to avoid court proceedings.

TWL was accordingly prepared to discuss the judicial review proceedings with officers at a meeting convened on 19 January 2011 but officers declined to discuss the CAMP.

7. It is important without prejudice discussions allow for the potential of admissions against the interest of the Council's defence: this is a public meeting where all comments are in the public domain and may be reported.

We do not believe this forum allows the requisite freedom to make admissions against the Council's interest. This is why the papers before the committee fail to acknowledge and to argue the merits of our judicial review claim.

Sanctioning and rubberstamping the adoption decision, especially in these circumstances, does nothing to further the case before the court and simply commits the Council and Mistley Port to the High Court action. It is an incomprehensible move by the Council.

8. It is unclear how the 4-page Appendix B relates to the Council's defence. It is neither the summary of objections at Appendix 3 2.12 to the CAMP nor the July 2010 report. It is a new document, unrelated to the original adoption documents.

Are members invited to contest the legal, planning policy and evidential statements made within Appendix B? If so: where is the information to enable any member to do so?

9. TWL was not asked to submit further representations "in lieu" of the legitimate expectation of further consultation with officers (contrary to 4.2) only to make any further representations on the adoption decision. Given the judicial review bundles already comprise over 1000 pages of evidence and argument, TWL considered further representations unnecessary.

10. We therefore ask members of the planning committee to return the matter to planning and legal officers to conduct detailed and informed without prejudice discussions in accordance with the agreement between the Council's legal department and TWL in November 2010.

As the only realistic opportunity of averting court action, this submission restricts its objective to this request.