



Neutral Citation Number: [2021] EWHC 1820 (Admin)

Case No: CO/1065/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**SITTING IN LEEDS**

Date: 1<sup>st</sup> July 2021

**Before :**

**MR JUSTICE FORDHAM**

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**Between :**

**JOHN McCAFFREY**  
**- and -**  
**THE COMMISSIONERS FOR HER MAJESTY'S**  
**REVENUE AND CUSTOMS**

**Claimant**

**Defendant**

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**David Martin-Sperry** (instructed by direct access) for the **Claimant**  
**James Fletcher** (instructed by HMRC) for the **Defendant**

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Hearing date: 1.7.21

Judgment as delivered in open court at the hearing

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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

**MR JUSTICE FORDHAM :**

Introduction

1. This is a renewed application for permission for judicial review. The public authority action impugned in the judicial review proceedings is the action of the execution on 26 November 2019 of a warrant which had been issued by the crown court on 18 September 2019. Relevant for present purposes are activities in the execution of that warrant which took place at Bewick Main DH2 1BQ on the morning that the warrant was executed. One of the things that happened was that HMRC officers entered an office room, at the back of “Unit 1 Bewick Main”, where items including documents were seized, as was CCTV equipment. The essence of the claim for judicial review is that the execution was unlawful. For the purposes of today the submission is that the claim is arguable. There are also questions relating to delay and to the suitability of judicial review in light of the issues. The Judge who considered the case on the papers was Julian Knowles J, who did so on 3 March 2021. He refused permission for judicial review and there were three relevant strands in his reasoning. One strand is that he found that there had been delay and that there was no good reason to extend time. Another strand was that he concluded that judicial review was inappropriate in the light of the factual disputes. A third strand was that he concluded that the claim was unarguable. The Claimant exercised the right to renew the application for permission for judicial review to an oral hearing, a right open to him (in circumstances where the claim had not been certified as totally without merit). Although the Claimant is required to give grounds for renewal, today’s hearing is not in the nature of the ‘review’ or ‘appeal’ from Julian Knowles J’s paper refusal. I have the function of considering the case afresh, and arriving at my own independent conclusions, based on the materials as they are before me, and the submissions written and oral which have been made to me.

The hearing

2. The mode of hearing was a remote hearing by Microsoft teams. That was a mode of hearing arranged by the Court in communication with the parties. I am quite satisfied that that mode of hearing involved no prejudice to the interests of any party or person. I was able to hear submissions in exactly the way I would have done had we been present together in a court room. I was also able to afford an opportunity which was both practical and effective, for both Counsel to speak with their clients to deal with two particular points that had arisen during the hearing, and on which it was appropriate to allow an opportunity. I am quite satisfied that it was fair and appropriate, having regard to the overriding objective, to proceed today; and that there was no basis for any adjournment. The Claimant did not attend the hearing but he was not required to do so. It was a matter for him whether he wished to make arrangements to be present. As it was, he was represented by Counsel. Counsel, moreover, was able to speak to him about a point that had arisen during the hearing, concerning an email which he had relied on. Perhaps most importantly, the Claimant had himself been able to draft a skeleton argument which was placed before me and made the points that he wished to make for the purposes of today’s hearing. Indeed, in circumstances where the Court had that document Mr Martin-Sperry, for understandable reasons, commended the written submissions to the Court and, although not drafted by him, put forward the skeleton argument and felt that he did not need to develop any particular point in it. I interpose that the open justice principle

was secured: the case and its start-time were published in the cause list, together with an email address usable by any person wishing to observe the hearing.

### Three question-marks

3. Mr Martin-Sperry did raise orally three question-marks as to redactions in the Defendant's documents. As he fairly and properly put it, those redactions were such as "might be perfectly legitimate", but he wanted to register with the Court a "concern" as to candour, in case there was any risk that what lay behind those redactions was content that could support the claim, and in particular might support an allegation of bad faith. Mr Fletcher for the Defendant was able to take the opportunity to have sight of what was behind two of the redactions and speak to the representative of the Defendant who had access to and could see and tell him what was behind the third. Mr Fletcher was able to confirm, and Mr Martin-Sperry was right to accept the confirmation, that the Defendant had complied with its duty of candour and had disclosed materials that would be relevant to support the claim including any suggestion of bad faith. Having received that confirmation the points raised orally by Mr Martin-Sperry were rightly not pursued.

### The claim

4. The Court was and is left with a clear set of the written submissions made by the Claimant himself, at various stages, and in the various bundles, which I identified to the parties that I both have and have read. Those documents, together with what has been put forward on behalf of the Defendant in writing – which I am quite satisfied it is appropriate for the Court to consider, if necessary with an extension of time insofar as not impliedly already granted by Julian Knowles J – provide me with a clear basis for being able to assess the permission-stage issues and the appropriateness of a grant of permission for judicial review, looking at all of those issues independently and afresh.
5. The primary, or at least the strongest, basis on which the Claimant submits – in the materials before the Court – that the execution of the warrant was unlawful, as I see it, comes to this. The Claimant emphasises that the warrant, on its face, was referable and executable in relation to "Unit 1" and "Unit 6" at Bewick main. He submits that the search and seizure which in fact took place, when the warrant came to be executed, covered a distinct unit, "Unit 1A". That distinct unit was the office, from which the CCTV and certain other materials and equipment were seized. The Claimant's case is that that was a clearly separate property and there was no authority to search it or seize anything from inside it. The Claimant says that Unit 1A is physically distinct. It is self-contained. Its self-contained nature is obvious and can be "proved" by the photos before the Court. The physically self-contained nature is also supported by other documents including a report from an architect, Macplans Ltd, which has been put before the Court. The Claimant says that Unit 1A is historically distinct. He describes it as having a distinct postcode, historically DH3 1ST, and as having had an address in which Bewick Main was spelt with an "e" at the end of the word "Bewicke". The Claimant has submitted various documents to the Court which he says substantiates his claims that Unit 1A had its distinct nature and history. Most importantly and essentially for the logic of his judicial review claim, the Claimant submits that the historical as well as the physical distinctiveness of Unit 1A was such as to make it unlawful for the search and seizure to have taken place as it did in

relation to the small office room. He relies on a number of points in that regard, by reference to a number of documents, including materials relating to postcodes; and also materials relating to Land Registry documents and searches, whether physical or online. The Claimant also submits that Unit 1A was clear and distinct functionally. He has described it as the premises of “my business” in a complaint letter dated 6 January 2020. In his pre-action letter before claim dated 4 February 2020 (a version of which dated 5 February 2020 is also before the Court), the clear description is given of the Claimant’s business, as “Montana Freight Services, Unit 1A, Bewicke Main, DH3 1ST.”

6. A number of other points are made in the grounds for judicial review and in the various sets of written submissions that are made. I have considered all of them. One example is a separate challenge that is made relating to the seizure of the CCTV which is said to have been unlawful in circumstances where it was not specified on the face of the warrant that such equipment could be seized.

### Delay

7. I will deal first with the topic of delay. It is worth saying at this point that there was a related claim for judicial review CO/845/2020. Permission for judicial review in those proceedings was refused by Steyn J on 22 June 2020. That was a claim relating to the same warrant, but it was a challenge to the act of the issuing of the warrant (18 September 2019). It was a claim pursued by “Pallas Transport Services Ltd and Sylvia Pallas”(there is a typo in the the name of the order of Steyn J). Pallas Transport Services Ltd had been named on the face of the warrant. Sylvia Pallas had been named on the application for the warrent. On the evidence, Pallas Transport Services Ltd is the company of Shirley Pallas who, on the evidence, was the partner of the Claimant. It is unsurprising that there would have been lines of communication between the two. Permission for judicial review in claim CO/845/2020 was refused by Steyn J on the basis firstly of delay and secondly because there was no substance in that challenge in the light of the “highly likely: not substantively different” test, so far as concerned any matter relating to disclosure to the crown court by HMRC in obtaining the warrant.
8. The Claimant’s position in relation to delay comes to this. He submits that he should be taken to have been within, and not outside, the backstop 3 months for judicial review, and the claim should not be characterised as lacking in promptness. He says that although the claim for judicial review bears an issue date of 16 March 2020 and a fee paid on 16 March 2020 £154, the background is that he had in fact submitted documents on 24 February 2020, which the Court had received on 25 February 2020, after contact with the Court on 21 February 2020. He says that the court staff made an error in relation to what he says in his skeleton argument was “the date the claimant’s claim was served on the court”, which was “resolved” by his subsequently receiving “an apology” (on 7 July 2020). He also says that it would be unfair to “penalise” him for any delay, particularly in circumstances where the court staff acted to “reward” the Defendant as to delay. That is because, he says, the court lawyer (Mr Lee) acted to “assist” the Defendant, by contacting the Defendant (on 25 June 2020) in circumstances where the Court had not received any acknowledgement of service, to check whether the papers had been received. In his skeleton argument, the Claimant describes his feeling that Mr Lee was “not operating independently” or “subconsciously acting in the passive interests of the Defendant”. Court staff having,

as the Claimant characterises it, acted to “assist” the Defendant, provoking the Defendant being able to file an acknowledgement of service and summary grounds, needing the indulgence of a substantial extension of time, it would be grossly unfair to penalise the Claimant for any delay, insofar as there was any delay. He urges the Court to deal with the case on its substantive legal merits.

#### Reliance on an email from the Court

9. One part of the Claimant’s narrative in relation to the sequence of events, in the skeleton argument that he drafted, is his contention that Ms Cole at the Administrative Court in Leeds “contacted the Claimant via email at 11:40am on the 27<sup>th</sup> February 2020 to request payment” of the fee, in circumstances where the Court was in possession of this application for judicial review. Based on that email, the Claimant says: “therefore the claim was submitted on time”. I have been able to establish the following as facts. Firstly, that email (11:40 27.2.20) has been placed before the Court ‘blocked and pasted’ into an email chain, relating to the present case, involving the Court communicating with the Claimant at his personal email address. Secondly, in ‘blocking and pasting’ that email into that chain, the addressee of Ms Cole’s email of 27 February 2020 at 11:40 has not been included. Thirdly, by reference to the Court’s own files, that email was sent at that time (11:40) on that date (27.2.20), and the addressee to the email was the email address of Pallas Transport Services. Fourthly, that that email related to a payment of £154 in respect of a judicial review claim received at the Court “on 27 February 2020”. I am also able to put those four facts alongside the circumstances relating to the other claim for judicial review, brought by Pallas Transport Services Ltd and Sylvia Pallas, in relation to which Steyn J refused permission for judicial review (I interpose: giving reasons which referred to that claim having been filed on 27 February 2020). There are obvious concerns and question-marks which arise out of the reliance that has been placed on that email from Ms Cole at 11:40 on 27.2.20, to support contentions made by the Claimant about the filing of this claim for judicial review. Mr Martin-Sperry was able to speak to the Claimant, during breaks in the hearing this morning, about this concern. His submission is that there is before the Court nothing to indicate any bad faith; that another party may have removed the addressee; and that in any event I should proceed on the basis that there was no intention on the part of anyone, still less the Claimant, to deceive anyone, still less the Court. He has raised with me the procedural implications were this part of the case to be of significance, including any enquiry or opportunity for a further response, and possibly even an adjournment. What I propose to do, in all the circumstances, is to say no more about this topic. I have recorded the position as it was today before the Court. I interpose that I was told by Mr Martin-Sperry, after having delivered my ex tempore judgment, that a possible explanation being suggested by or on behalf of the Claimant was that a third party may have needed to make space by removing a line of text, with that third party choosing to remove the addressee line of text, for that reason. I observe that the document has various spaces on its face and moreover forms part of a section of the bundle comprising of a 3-page chain.

#### Delay: continued

10. The grounds for judicial review accompanying Form N461 were dated 4 March 2020. Then, and at the time on which they were issued by the Court and the fee was taken (16 March 2020), they needed an extension of time. The judicial review claim form

(N461) recognised that, seeking an extension of time. In those circumstances, the question of delay is engaged. Delay is, moreover, engaged by the principle described in R (Goode) v Nottingham Crown Court [2013] EWHC 1726 (Admin) at paragraph 31, which emphasises the importance of promptness in any judicial review challenge to the validity of a search warrant, “in order that the parties know where they stand and that any criminal investigation ... is not hindered”. That principle, in my judgment, is clearly applicable to a judicial review challenge to the execution of a search warrant, for very much the same reasons of principle. However, in all the circumstances, I do not need to delve any further into the matters relating to the chronology of the filing of the claim for judicial review or contact between the Claimant and the Court.

#### Points about the Court staff

11. It is, however, appropriate for me to deal with two of the points that have been raised. The first point is that the Claimant submits that he received an apology (7 July 2020) arising out of (and resolving) what he says was the response of the court as to “the date the Claimant’s claim was served on the Court”. I have been able to consider the documents. The apology, which was dated 7 July 2020, related to an incident involving a conversation. The Claimant had been asked to “provide evidence of a recorded delivery receipt”. The apology was an acknowledgement that the member of staff (Ms Cole) had “misunderstood” what the Claimant had “spoken about” during the telephone conversation. The second point is the Claimant’s description of improper contact with the Defendant by the Court lawyer (Mr Lee). The skeleton argument for today’s hearing, as I have said, makes reference to Mr Lee “subconsciously acting in the Defendant’s passive interests”. I have looked at the materials. What happened in this case was this. The Court lawyer, in circumstances where they were dealing with papers to be considered by the judge, made contact (25 June 2020) with the Defendant (no email contact details for the Defendant was given in form N461). That contact was in circumstances where the Claimant’s position was that the Defendant had been served with the papers. The Court was, understandably, awaiting any acknowledgement of service. In the event, it was the Court’s contact with the Defendant that led to the response from it, namely that – from the Defendant’s perspective – it had never received notification of the proceedings. That is why the acknowledgement of service was put in with an application for time to be extended. In my judgment, there was and is no basis for the claim and characterisation being made in the skeleton argument about Mr Lee, the Administrative Court lawyer’s conduct.

#### Focusing on the substantive legal merits

12. In all the circumstances, what I am going to do in relation to delay in this case is to put the issue to one side and focus, as the Claimant has urged me to do, on the substantive legal merits of the claim. One point clearly flagged up, both by the Defendant and by Julian Knowles J on the papers, concerns the appropriateness of judicial review to deal with a case such as the present, where there are contested questions of factual dispute. The response to that, given in the papers by the Claimant, is straightforward. He is inviting the court to deal with the claim by judicial review. He does not wish to commence any private law proceedings, with a trial and oral evidence and cross-examination. The reason for that, as he makes clear, is that his position is that the distinctiveness of Unit 1A is plain on the face of the documents.

As he puts it in his written submissions the evidence is “plain to see” and “self-evident to anyone” from the photographs, particularly the “separate entrance” and Unit 1A being “completely separate” from Unit 1. He says that the Defendant’s contention to the contrary is “contradicted by the photographic evidence supplied by HMRC itself”. He says in his skeleton argument for today’s hearing that the photos “prove” the “separation and division” of the premises. I have considered all the material placed before the Court, including the photographs which the Defendant took at the time of execution of the warrant, and also a series of photographs put before the Court by the Claimant himself alongside other materials, as further evidence.

13. What the photos show is a workshop which is Unit 1. There is a large door by which you go into that workshop and there is signage above that door. It is common ground that workshop is Unit 1. It is a workshop for vehicles. At the far end of it there is a corrugated metal wall, high above, and at the bottom of that corrugated metal wall there is a white brick wall. That white brick wall has two windows in it and in between them there is a door. If you were to walk through the workshop, and through that door, on the right hand side – where one of the windows is – there is a room in which there are chairs and clothes and footwear. In that room, through another door, is a little kitchen area where you can make a cup of tea. Opposite the room (the room with the kitchen area off it), if you were to turn instead left (from the corridor between the rooms), there is the little office room which is at the heart of this case. The photos are very clear. That room has a side window to the outside. On the day of the execution of the search it had a dog calendar on the wall and some papers on the desk with a pair of glasses on them. It is straightforward for the Court to be able to see what could be seen on the ground in the premises at the time of execution of the warrant, when it is being said that the Defendant arguably acted unlawfully. The Claimant’s own photos also show the configuration clearly, including the door in the white wall. That door has a sign on it which is referable to “MOT viewing”. The area of the workshop where there is the window in the white wall, to the office with the side window and the dog calendar and the papers under a pair of glasses, has a sign that says “MOT test bay”. It is true, therefore, that there is a wall that separates the corrugated iron workshop area. But there is also a door, and that is the door that you would need to use from the workshop, to get to the chairs under which your shoes are, or to get to the kitchen area in which to make a cup of tea. It is also the door that would be relevant to get to any “MOT viewing” area. In my judgment, it is obviously significant that there are windows, and that there are two big windows within the white wall, and that they are windows to each of the two rooms at the back. Why have a big window if the office unit is intended to be distinct and self-contained and not connected to the workshop? More importantly, how can anyone executing a warrant, and considering Unit 1, reasonably do other than conclude that these – on the face of it – are part of the same premises? Much the same can be said of the door in the white wall. All of this is so, notwithstanding points made in the recent architect’s report, which gives a dotted line for entry to Unit 1A, going round the premises to the back. There is undoubtedly another door at the back, from which you could get to both of the small rooms. And there is a picnic table outside, at which anyone involved with the use of the premises could sit. The shared corridor is clearly shown in the architect’s own plan of the layout. The back door is a shared door and from the corridor are the doors to (i) the room with the chairs and shoes and (ii) the room with a side window with the dog calendar and the pair of glasses.

14. Also clearly shown on the photographs are documents. It is possible to see in the room which is being described by the Claimant as the “distinct” Unit 1A, which he says are the premises for ‘his business’ (“Montana Freight Services”), that there are documents which are “Pallas Transport Services Ltd” documents (under the glasses). There are other “Pallas Transport” documents, clearly visible on a noticeboard in that same room (on the same wall as the dog calendar). There is no difficulty in seeing which room those documents appear in because the glasses, the typewriter, the dog calendar, and the side window are all clearly evident. That is the room said to be “Unit IA” with its distinctiveness and that is the Unit said to be the place of the business of the Claimant (Montana Freight Services) as distinct from the use of Unit 1 and Pallas Transport.
15. There is another point clearly shown on the photographs. It is that there are words ‘etched’ into both of the two windows of the white wall. They are most visible in relation to the window in the little room that leads to the kitchen, which room has the chairs and the clothes. The words in the window are “White House MOT Centre”. But it is also possible to see that the same wording appears in the photographs of the window to the other room, the room with the dog calendar and the side window. This is clear from the Claimant’s own photographs. The Claimant’s photograph which shows the picnic table outside enables one to see, through the outside window, to the inside window and see lettering on that in a window. White House MOT Centre moreover matches the wording on a van that was parked outside at the time of the execution of the warrant, seen in one of the photos. “White House Services”, like “Pallas Transport Ltd”, was expressly named in the search warrant.
16. If one next considers the position in relation to signage, the starting point is that there is a clear sign outside the workshop when one enters. The sign says “Pallas Transport Services”. On entering and walking through the workshop area there is no other sign that is visible, from any photograph, or would have been visible to anyone executing the warrant, except for the etched wording in the windows in the white wall which, as I have explained, reads “White House MOT Centre”. There is no signage – on a building, on a window, or on a door, whether an outside door at the back or an internal door from the workshop or the corridor- which says “Unit 1A”. There is no sign – in any of those locations – that says “Montana Freight Services”. Moreover, the Defendant’s evidence records that no documents which were found in the office with the side window said “Montana Freight Services”. The evidence is also that a Mr Cooper was present who took those who executed the warrant and pointed out the rooms at the back; and that the computer login was “Pallas 2”, for the computer in the room with the side window.
17. In my judgment, there is no prospect that a judicial review Court would intervene, on the basis that the execution of this warrant was unlawful, by reference to what is said to be the physical, historical and functional distinctiveness of the side room with the side window.
18. It is conspicuous that, even now, the Claimant has produced, for example, a licence from 1995 and a newspaper from 2005. It is notable that points are made about postcodes which go no further than the suggestion that there may have been a postcode of “DH3 1ST”, although it is non-existent or defunct or non-functional as a postcode today. Points are made about Land Registry but, in my judgment, in the context of the position on the ground in the light of all the evidence, there is no



arguable basis on which a Court could or would properly interfere with the actions taken by the Defendant in the execution of this warrant. I emphasise the “actions in the execution of the warrant” because, unlike the other judicial review which challenged the issuing of the warrant, this is a claim which squarely impugns the actions in relation to its execution. That is the necessary focus of the claim, although I add that I have seen nothing that could breathe viability into any challenge seeking to impugn any earlier action or step.

19. In my judgment, far from being a case where the evidence before the Court clearly shows arguable unlawfulness in the execution of this warrant, this is a case in which the evidence before the Court clearly shows that it is unarguable that there was any such unlawfulness. I mentioned at the outset that a distinct point was raised in relation to the CCTV. The Claimant is right that the CCTV does not feature on the face of the warrant as material or equipment that could be seized. But Parliament has through section 19 of the Police and Criminal Evidence Act 1984 conferred a specific power which covers this seizure, and the contemporaneous documents record and reflect that it was that power that was being invoked when the CCTV equipment was seized.

#### Suitability of judicial review

20. In those circumstances, in my judgment, one does not arrive at the position of a case which is viable but depends on the resolution of factual disputes. If one did arrive at that position, there would have been real difficulties as to whether it could be appropriate to grant permission for judicial review. I have dealt with the Claimant’s submission that the picture is sufficiently “clear” that an evidential enquiry with cross-examination and fact-finding would not need to be imported into the judicial review process. I make clear that judicial review can, in an appropriate case, accommodate fact-finding and even cross examination. I have in mind, though, what was said in R v Chief Constable of the Warwickshire Constabulary ex parte Fitzpatrick [1999] 1 WLR 564 at 579D: “Judicial review is not a fact-finding exercise and it is an extremely unsatisfactory tool by which to determine, in any but the clearest of cases, whether there has been seizure of material not permitted by a search warrant”. I have dealt with the contention that this is a ‘clear case’, and I have dealt with the direction in which that cuts. The passage goes on: “a person who complains of excessive seizure... should not, save in [the clearest] cases, seek [their] remedy by way of judicial review but should rely on [their] private law remedy when [they] will have a tribunal [which] will be able to hear evidence and make findings of fact ...” Fitzpatrick is an old case, but it communicates what remains a current truth about judicial review and its relative appropriateness compared with alternative remedies.

#### Transfer

21. I have considered whether the Court, of its own motion, should transfer this case to continue as if by private law claim. In my judgment, it would not be appropriate to do so. The Claimant was clearly warned as to the inappropriateness of judicial review given the nature of the factual disputes which he was raising. He has decided to maintain this claim and contend for the appropriateness of judicial review. I do not hold against him, or against Mr Martin-Sperry, that no formal request was made for transfer by either of them. If I had thought that it might be the appropriate answer in this case, I would have raised it myself. But in circumstances where I have concluded that, on the basis of voluminous evidence all of which I have read, there is no

arguable unlawfulness here in the execution of this warrant, it could not in my judgment be appropriate then to transfer the claim to continue in another forum. Indeed, in my judgment, it would be contrary to the public interest to do so.

### Conclusion

22. It is for all those reasons that, having considered the matter afresh with the assistance of the written submissions that have been made and what I have been told today by both Counsel, I refuse permission for judicial review.

### Costs

23. I will now deal with any question arising in relation to costs. For the Claimant Mr Martin-Sperry commends to me the submissions made by the Claimant in writing, objecting to the costs order made by Julian Knowles J in refusing permission for judicial review on the papers. The opportunity to make such an objection was given by the Judge in the usual way and making that order. For the Defendant Mr Fletcher resists those objections and, as he put it in his skeleton argument, invites the Court to uphold the costs order of £1,575 made by the judge on the papers. Mr Fletcher makes a further cost application in the sum of £2,761.70 in relation to costs incurred subsequent to the refusal of permission on the papers. He says this is an exceptional case warranting further costs being awarded, because substantial materials were provided and issues raised which needed to be considered. In my judgment, there is no basis to disturb the costs order made by the Judge on the papers. The costs incurred and sought by the Defendant were £4,232.20 and the Judge scaled down those costs to £1,575. There is no possible basis on which the Claimant, in the circumstances, can object to that order standing. Mr Fletcher has, however, failed to persuade me that there are any good reasons to depart from the usual practice – well known to all public authorities who take the option open to them of attending an oral renewal permission hearing – and I decline to make any further costs order. I accept that further materials have been provided by the Claimant at various times. I accept that the Defendant acted properly in taking the opportunity to consider those matters. I accept that it incurred costs in doing so. Indeed I would add to the points made by Mr Fletcher that he has assisted the Court today specifically by being in attendance, because of a point that Mr Martin-Sperry raised which was a very serious potential allegation of bad faith and lack of candour, with which Mr Fletcher and his clients were able to deal. However, those matters and the other circumstances of the case do not, and do not cumulatively, in my judgment provide a proper basis for a further costs order. The points made in the Defendant's skeleton argument for today were helpful but they were a pithy encapsulation focusing in particular on delay and the unsuitability of judicial review. What assisted me most in this case from the Defendant were the summary grounds and documents which accompanied them, all of which were materials provided prior to the paper permission stage. This was not a case where consideration and the outcome have turned on some response material that the Defendant had to produce, with amended or updated summary grounds in the light of a change of position by the Claimant. I respect the further application for costs, but I refuse it.