

PT-RAPS v DBERR/Prenrgy– Judicial Review, High Court on 22nd May

Prior to the Hearing

Prenergy Solicitors wrote to the court in late April requesting that the case be fast-tracked because in their words “the future of the project was being threatened”. A rolled up hearing, (permission then review on the same day) was granted and the hearing itself was brought forward by two months. [Prenergy Solicitors had written in their letter to the court that “we are conscious that Mr Justice Collins should be advised of cases where commercial prejudice is caused by delay”. This request later transpired to be accurate as Justice Collins was indeed the judge assigned to the hearing.]

PT-RAPS now had less time to raise vital funds for residents legal challenge and less time to apply for a cost protection order (which would cap costs in the event of the decision going against us).

The Hearing

Our day in court started badly from the off. The court having already discussed the application for cost protection (as it was the first item on the court agenda) agreed that residents had met all the qualifying criteria. Mr Justice Collins, then ruled that the application, was late and residents would now have to proceed without cost protection. This set the tone for rest of the morning.

PT-RAPS Barrister Reuben Taylor outlined the poor air quality track record of Port Talbot, its recent failures in statutory EU air quality standards (for pm10) and the duty imposed on the Secretary of State and the Welsh Assembly to make sure those standards were attained. He then went through the five points of law which he believed had not been properly addressed by the Secretary of State’s in his consent decision for the 350MW biomass power station on 20th November last year. Jeremy Bailey who witnessed the proceedings on behalf of pt-raps commented, “throughout the morning session our barrister tried hard to get his legal arguments across, but for those listening in the public gallery the thread was near impossible to follow, as Justice Collins repeatedly interrupted the flow”.

It is not possible to cover all the points of law raised in the session but one important aspect which residents wanted established by the court was the responsibility of the planning authority (in this case DBERR) to take account of air quality limits being exceeded as a planning consideration and not just placing the responsibility solely on the Environment Agency to make a *fait accomplis* decision. The following passage of planning law text and the emphasis it places on human health and EU air quality standards appears clear enough:

LAQM (PG) 03

7.36 Local planning authorities may be faced with numerous individual, small planning applications which separately might not be considered to have a significant impact on air quality but which cumulatively would have a significant impact. Each planning application should be determined on its individual merits in accordance with the development plan unless material considerations indicate otherwise. In practice, this should mean that individual small-scale applications that accord with the development plan may well continue to receive approval until there is a danger an Air Quality Objective may be breached.

This text, although seemingly unambiguous as a point of law, the judge placed a low emphasis on it. Our barrister and solicitor, who advised us throughout, could not foresee this statute being

treated in the way it was. Ignoring it effectively removed obligations from DBERR and Neath Port Talbot Council for capping development (even when air quality limits were in danger of being breached). Clearly, if local planning authorities and Government become detached from the solution, they potentially become part of the problem. This is such a case in point.

Where does that leave our main argument; that polluting developments should not to be pushed through planning when Port Talbot consistently fails air quality, or is close to it. Two days on from the judgement and I don't feel any different than I did before the hearing. I will never accept that the needs of development should take primacy over statutory limits for a harmful pollutant and by implication people's health. This may be the unfortunate legal precedent that results from this judgement.

Mr Justice Collins said he was satisfied that the Environmental Agency in Wales could control pollution in Port Talbot within their PPC permitting process used for industry, despite PT-RAPS arguing that many potential sources of pm10 such as vehicles and dust emissions from stock piles are not always controllable through this arrangement. His judgement determined that the legal responsibility for capping development (in areas where air quality standards are not being met) is solely the responsibility of the EAW, and they had a legal obligation to turn Prenergy's application down if statutory limits would be exceeded.

Despite making our legal claim within the three-month deadline required by the court we were deemed by Justice Collins not to have not filed our claim "promptly" and that was judged to be prejudicial to the developer. Costs for this were awarded against us too.

We believed, being advised by our solicitors and barrister, that we followed the correct procedure at all times in line with the planning review judicial system. Jeremy, Allan and myself undertook this legal challenge on behalf of PT-RAPS in good faith, because we felt that health was not being adequately protected. We still feel this. We believed, as did our barrister and solicitor that we had strong case in law that it stood a good chance of succeeding.

The names on the claim Jeremy, Allan and myself must accept the judgement of the court on behalf of residents and the costs awarded against us, although at this stage we reserve the right to contest them.

We are extremely grateful for all the support of those who have given to the fundraising of the legal case and supported us in our attempts to raise the profile of "clean air quality for all in the town. This campaign will not end until justice has been achieved.

Peter Wilson
PT-RAPS