



In the ~~02079477876~~ **Justice**
Queen's Bench Division
Administrative Court

CO Ref: CO/12721/2009

3D/JID

In the matter of an application for Judicial Review

The Queen on the application of
John Ernest Charles Cartwright [claimant]
versus
Secretary of State for Department of Transport [defendant]

Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgements of service filed by the Defendant and Interested Party

Order by the Hon Mr. Justice Burnett

1. Cornwall County Council have permission to file out of time an acknowledgment of service and summary grounds of resistance as an interested party. Further service dispensed with.
2. Permission to apply for judicial review refused.
3. To the extent that the application for judicial review may be an in time application under section 44 of the Harbours Act 1964, it is struck out.
4. The defendant is to quantify his claim for costs for preparing his acknowledgment of service by 5th February 2010, to which the claimant is to respond by 19th February. The application for costs will then be considered by me on the papers.

Reasons:

Leaving aside all technicalities, it is quite clear that the proposed challenge has no prospect of success. The claimant suggests that the advertisement giving notice of the proposed works at Penzance Harbour was defective in two linked respects. First, it suggested that the works were to be undertaken 'in Penzance Harbour' when much of the work is outside the current area of the port itself. There is nothing in this point because 'Penzance Harbour' is defined to include an area larger than the narrow confines of the port itself. Secondly, he suggests that in using that language anyone reading the advertisement would have been misled into thinking that the works were of a more narrow scope than in fact proposed. Thus the Council failed to give a concise summary of the draft order and a general description of the works proposed, as required by the 1964 Act. This argument is unsustainable in the face of the advertisement itself, which is perfectly clear as to what is proposed. It is also fanciful to suggest that the Minister was misled.

There is no basis on which the claimant could secure relief under section 44 of the 1964 Act.

The claimant has brought proceedings for judicial review rather than issued a part 8 claim. It is arguable that permission is not required to bring such an application under Part 8, and further arguable that the claim for judicial review, launched as it was within 6 weeks of the making of the order, constitutes such an application. It is for that reason that in the alternative I strike out that claim.

Signed *Mr Burnett*
 Date: 25th January 2010

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors: []
 Ref No. []