



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: CA-2025-002294

Welham –v– Cotham School



CA-2025-002294

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

Decision: REFUSED

An order granting permission may limit the issues to be heard or be made subject to conditions

Reasons

1. As the Appellant recognises, she needs to succeed on all of grounds 1 to 4 in order for the appeal to succeed.
2. The principle of "statutory incompatibility" which emerged for the first time in this context in *NPP* is in the course of development. Ground 1 raises an important point of principle with a real prospect of success.
3. Grounds 2 to 4, however, challenges the judge's conclusion on the facts. As the judge pointed out in his judgment on consequentialia, there is a very high hurdle to a challenge to a trial judge's factual conclusions. Having considered all the evidence the judge concluded at [297] that the landowner had done enough to make it clear that public access to the land was contested. I do not read the judge's conclusion as depending on the presence of 6 signs as opposed to 3; so even if the procedural challenge is made out, I cannot see that that would undermine his overall conclusion on this ground. Quite apart from that the judge relied on the first public inquiry which attracted considerable publicity. In evaluating whether a landowner had done enough to make it clear that public access was contested, the judge was entitled to aggregate both the signs and the other forms of protest to which he referred. I do not consider that these grounds of appeal have real prospects of success.
4. Ground 5 challenges the judge's evaluative conclusion on the question whether interruptions fell within the principle of "give and take." There is no bright line for determining that question which is an evaluative question for the trial judge. I cannot see that the judge made any error of principle in arriving at his conclusion; and while a different judge might have reached a different conclusion on the facts, that is not sufficient to amount to a ground of appeal with real prospects of success.
5. The upshot is, therefore, that while I consider that Ground 1 (if it stood alone) would have justified the grant of permission to appeal, grounds 2 to 5 have no real prospects of success; and consequently the overall appeal against the judge's substantive decision does not have real prospects of success.
6. Ground 6 challenges the judge's apportionment of costs. As the Appellant recognises a trial judge has a very wide discretion on the question of costs; and having heard both the evidence and the submissions of the parties is far better able than an appeal court to allocate costs. This ground of appeal identifies no error of principle made by the judge: it takes issue with his evaluation of the conduct of the case. This ground of appeal has no real prospect of success.
7. Ground 7 challenges the judge's decision not to make an order for costs in relation to an application for committal which, in the event, did not proceed. Where parties compromise their dispute a judge cannot legitimately be criticised for not making an order for costs. This ground of appeal has no real [prospect of success.
8. Permission to appeal is therefore refused.

Information for or directions to the parties

Court of Appeal Mediation Scheme (CAMS)

Where permission has been granted or the application adjourned:

a) Does the case fall within the Automatic Referral Scheme (see below)? Yes/No (delete as appropriate)

Automatic Referral Scheme categories:

- All cases involving a litigant in person (other than immigration and family appeals)
- Boundary disputes;
- Inheritance disputes.

• Personal injury and clinical negligence cases; • All other professional negligence cases; • Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;	• EAT Appeals • Residential landlord and tenant appeals
b) If yes, is there any reason not to refer to CAMS mediation under the Automatic Referral Scheme? Yes/No (delete as appropriate)	
c) If yes, please give reason:	
d) <u>Cases outside the Automatic Referral Scheme</u> : Do you wish to make a recommendation for mediation? Yes/No (delete as appropriate)	
Where permission has been granted, or the application adjourned	
a) time estimate (excluding judgment)	
b) any expedition	

Signed: BY THE COURT

Date: 15 October 2025

Notes

- (1) Rule 52.6(1) 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) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

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