



Neutral Citation Number: [2023] EWHC 2817 (Admin)

Case No: CO/2809/2021
AC-2023-MAN-000252

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

Thursday, 9th November 2023

Before:
FORDHAM J

Between:
THE KING (on the application of
(1) DLR HOLDINGS LIMITED
(2) ORANGE BOX SYSTEMS LIMITED)

Claimants

and
(1) YORK MAGISTRATES' COURT
(2) THE ENVIRONMENT AGENCY

Defendants

Judgment Approving Consent Order

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.

.....
FORDHAM J

MR JUSTICE FORDHAM:

Introduction

1. This judgment is a sequel to the permission-stage judgment I gave in these judicial review proceedings on 31 March 2022: see [2022] EWHC 765 (Admin) (“First Judgment”). The background to the case, and the issues – including the issue which has prevailed – is explained in the First Judgment.
2. I am now asked to make an Order by consent between the Claimants and the Second Defendant (the Agency).

Determination on the Papers

3. This is a determination on the papers, but it is a judicial act engaging the open justice principle and I am satisfied that I should give my reasons, embodied within a judgment in the public domain, rather than within a court order sent to the parties and placed on the court file.
4. I am satisfied that there is no need for a hearing. The consent is between the Claimants and Agency, which will be reflected in a preamble to the Consent Order. Those parties have been in agreement as to the Order which the Court should make in this case, since January 2023. The First Defendant (the Magistrates) had filed an Acknowledgment of Service recording that they did not wish to file any submission in this case. On 13 June 2023 the Agency’s in-house lawyer informed the Court that the Magistrates had contacted the Agency to confirm (a) that they do not wish to sign any consent order but (b) that they had no objection to the order. CPR PD54A §16 speaks of “all parties” consenting. But I have specific confirmation that the Magistrates do not object to the making of the order. This is not like R (Kirklees Council) v Secretary of State for Transport [2023] EWHC 2459 (Admin), where a party made and maintained an objection. I am satisfied that this would enable me to deal with the matter under CPR PD54A §16. But even if that were wrong, there is in any event power to determine the claim on the papers, where everyone is agreed that there does not need to be a hearing (CPR 54.18). Nobody thinks this case needs a hearing. It would burden the parties with wholly unnecessary additional legal costs.

Order

5. I am going to make the Order in the terms of the Consent Order. That is because I am satisfied as to the legal correctness of the point described in the schedule of agreed reasons, and the appropriateness of the terms of the Order.
6. I will Order:

UPON the Claimants and the Second Defendant having agreed that the decision of the Magistrates should be quashed for the reasons set out in the schedule of agreed reasons

IT IS ORDERED that:

- (1) *The warrants pursuant to s108 and schedule 18 Environment Act 1995 issued by the First Defendant on 18 May 2021 authorising the entry of the Second Defendant’s officers and others onto premises at Cumberland Street and Amsterdam Road, Hull, be quashed.*

- (2) *It is declared that the warrants referred to in paragraph (1) above were unlawfully issued.*
- (3) *It is declared that the Claimants are entitled to the return of all property removed during the execution of said warrants and that copies of such material (whether hard copy, digital or otherwise) and any records of interviews pursuant to s108(4)(j) Environment Act 1995 and any photographs or video recordings made during the execution of the warrants should be destroyed within 28 days of the date of this Order.*
- (4) *The Claimants' claim for damages to be transferred to Manchester County Court for further case management directions.*
- (5) *The Second Defendant do pay the Claimants' costs of the proceedings resulting in the quashing order, to be the subject of detailed assessment if not agreed.*
- (6) *The Second Defendant do pay on account 60% of those costs, totalling £34,810.94 out of the total of £58,018.24 claimed, within 28 days of the date of this order.*

7. The statement of agreed reasons in the schedule is as follows:

- (1) *By a decision dated 18 May 2021, the First Defendant issued two warrants pursuant to section 108 and schedule 18 of the Environment Act 1995 authorising entry of persons authorised by the Second Defendant onto premises at Cumberland Street and Amsterdam Road, both in Hull.*
- (2) *As alleged in the Claimants' Ground 1 as specified in their Statement of Grounds dated 12 August 2021, the Second Defendant concedes that these warrants were unlawful by virtue of referring on their faces to a power of "search" when at the time no such power was exercisable by the Second Defendant.*
- (3) *The Second Defendant concedes that as the warrants were unlawfully issued, they fall to be quashed and that the material gathered or produced by its officers and those accompanying them in the course of executing those warrants falls to be destroyed (any original documentation having already been returned to the First Claimant).*