



**IN THE COURT OF APPEAL**

ON APPEAL FROM THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

104742009

**BEFORE** LORD JUSTICE LLOYD  
LORD JUSTICE RICHARDS  
And LORD JUSTICE SULLIVAN

- 3 AUG 2010

**B E T W E E N**

COURT 68  
Application No.

KEITH GARNER

APPELLANT/CLAIMANT

C1/2010/1272  
C1/2010/0592

- and -

ELMBRIDGE BC

RESPONDENT/DEFENDANT

- and -

- 1. GLADEDAL GROUP LTD
- 2. NETWORK RAIL INFRASTRUCTURE LTD

INTERESTED PARTIES

- and -

- 1. WW-UK
- 2. FFRIENDS OF THE EARTH

INTERVENERS

**ON READING** the Appellant's Notice sealed on 18 May 2010 filed on behalf of the Appellant applying for permission to appeal with appeal to follow if granted against the order of Mr Justice Nicol dated 27 April 2010 in respect of the case ref C1/2010/1372

**ON READING** the Appellant's Notice sealed on 11 March 2010 filed on behalf of the Appellant applying for permission to appeal with appeal to follow if granted against the order of Mr Justice Nicol dated 27 April 2010 in respect of Case ref C1/2010/0592

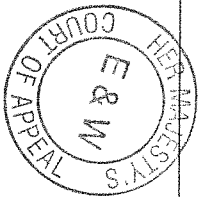
**AND READING** written submissions on behalf of the Interveners

**AND ON HEARING** Mr Richard Drabble QC & Mr David Wolfe of counsel on behalf of the Appellant, Mr James Findlay QC & Mr Robert Williams of counsel on behalf of the Respondent and Mr Jeremy Hayam of counsel on behalf of the Interveners

**IT IS ORDERED** that



1. Appeal 2010/0592 is allowed.
2. Permission to appeal is granted in Appeal 2010/1272.
3. Appeal 2010/1272 is allowed.
4. Paragraphs 1, 2 and 3 of Nicol J's order of 3 March 2010 are set aside.
5. Nicol J's order of 27 April 2010 is set aside.
6. Gerald McAully and Keith Garner Ltd are added as Claimants in CO/10474/2009.
7. The Defendant's liability in costs to the Claimants in CO/10474/2009 shall be limited to £35,000 + VAT.
8. The Claimants' liability in aggregate to the Defendant in CO/10474/2009 shall be limited to £5,000.
9. The Claimants shall have no liability for costs to the Interested Parties in CO/10474/2009.
10. The Interested Parties shall have no liability for the Claimants' costs in CO/10474/2009.
11. The Respondent shall pay the Appellants' costs of these appeals in the sum of £15,000 + VAT of which £12,625 shall be payable in any event and within 21 days hereof with the balance of £ 5,000 payable subject to the final determination of the challenge in CO/10474/2009



*By the Court*

**THURSDAY 29 JULY 2010  
IN THE COURT OF APPEAL**

ON APPEAL FROM  
THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

KEITH GARNER

- and -

ELMBRIDGE BOROUGH COUNCIL

- and -

1. GLADEDALÉ GROUP LTD  
2. NETWORK RAIL INFRASTRUCTURE LTD  
- and -

1. WW-UK  
2. FFRIENDS OF THE EARTH

ORDER

Copies to:

Queen's Bench Division - Administrative Court  
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London/ Chancery Lane  
Ref: T6/2069/70

Messrs Keigh Day & Co  
Dx 53326  
CLERKENWELL  
RS/RSCAJE

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\* This order was drawn by Ms C Otchere (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to Ms C Otchere, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is 020 7947 7677