

[2023 Gib LR 56]

**PERIMETER HOLDINGS LIMITED v.
COLLECTOR OF CUSTOMS (Ag.)**

SUPREME COURT (Restano, J.): January 13th, 2023

2023/GSC/001

Administrative Law—judicial review—delay—under CPR r.54.5(1), claim to be filed promptly and within three months—permission to apply for judicial review refused as claimant failed to do so

The claimant sought permission to apply for judicial review.

The claimant was a licensed tobacco vendor. Its licence contained a number of restrictions including that tobacco be stored only at licensed premises. In January 2022, the claimant requested permission to transfer its storage licence from its existing premises to a new store nearby. On January 19th, 2022, the defendant replied stating that, after careful consideration and under the absolute discretion granted to him under the Tobacco Act 1997, he had decided not to allow the transfer. There were then several emails sent between the claimant and the defendant. The claimant stated that the lift at the current licensed storage premises was old and unserviceable, which caused difficulties. The defendant referred back to its email of January 19th. The defendant encouraged licence holders to transfer their storage premises closer to their main retail premises, which would render a transport licence unnecessary. On April 9th, 2022, the claimant suggested alternative storage premises, also near the current storage premises. The defendant replied on April 20th, 2022 refusing to allow the proposed transfer to the second premises. On July 8th, 2022, the claimant wrote to the defendant stating that it had not had a reasoned decision as to why the transfer of the tobacco store had not been approved and the defendant was put on notice of a judicial review claim if there was no reply within seven days. The defendant replied on July 20th, 2022 stating that his decision was communicated on January 19th, 2022, that the claimant had storage premises, and that there was no merit in changing the licence conditions. The claimant sent a further letter on August 11th, 2022 repeating that it wished to transfer its storage licence and setting out its reasons, including that the beneficial owner of the new proposed store was a shareholder and would allow it to use the store rent free. It stated:

“We set out the current application clearly now so if it is your intention to refuse the application without assigning any logical or acceptable reason, we will be in a position to alert the court to these facts and

that we have [given] you every opportunity to respond in the course of your public duties.”

The defendant replied on October 19th, 2022 referring to its decisions of January 19th, 2022 in respect of the first proposed premises, and on April 20th, 2022 in respect of the second.

The claimant applied for permission to apply for judicial review of the defendant’s refusal to approve the transfer of the tobacco store. Its claim form was dated September 27th, 2022. The date of the decision was not referred to but it was stated that the final application notice was dated August 11th, 2022. The claimant said that the defendant had not provided any rational or reasonable grounds for refusing the application. Some of the correspondence was not included in the bundle served with the claim form, including emails exchanged in April 2022.

Held, refusing the application:

(1) Under CPR r.54.5(1), a judicial review claim must be filed promptly and in any event within three months after the grounds to make the claim first arose. It was clear that April 20th, 2022 was the date, at the latest, when time started to run. It was at that point that the claimant knew that the application in relation to the second proposed premises had been refused. The claimant already knew by then of the reasons why the defendant was opposed to a transfer of a store in this area, namely that he wanted to encourage licence holders to transfer their storage premises to an area closer to the main retail premises. The fact that details about the ownership of the second proposed premises were provided in the communication of August 11th, 2022 did not change that. The application had therefore not been made promptly or in any event within three months and was out of time. No application for an extension of time was made and no reason for the delay was provided. Permission would therefore be refused on the ground of delay (paras. 38–44).

(2) The claimant had excluded any reference in the claim form to the April 2022 exchange and to the decision of April 20th. It had also failed to complete the section of the claim form which required the date of the decision to be given. The April exchanges and the email of October 19th, 2022 which referred to the decision of April 2022 (as well as the decision of January 19th, 2022) were not included in the claimant’s accompanying bundle of documents. This constituted a failure on the part of the claimant to disclose material facts and appeared to be an attempt to circumvent time limits. This was another reason for refusing permission (para. 45).

(3) Further, the court was not persuaded that the claimant had an arguable ground for judicial review which had a realistic prospect of success. The focus appeared to be on the fact that the proposed new store, which was close to the existing store, would clearly be beneficial to the claimant and that the defendant’s failure to provide reasons when refusing the transfer gave rise to a claim because this was self-evidently irrational or unreasonable conduct. The defendant’s main reason for the refusal was that it wished to

encourage the transfer of stores to an area which was closer to the main retail premises which would render a transport licence unnecessary. He also made the point that a storage licence of this sort was a rare concession in the first place. Clearly, the defendant's position was that any change to the current arrangements for the storage of tobacco would need to provide for a store which was nearer the claimant's shop. The claimant might agree or disagree with the defendant's decision but that was not the question for the court. Judicial review challenges were not about disagreements about factual matters. What the claimant needed to show was that it had an arguable case with a realistic prospect of success based on established principles of administrative law. All the claimant had done was to assert that no reasons had been given or that the reasons advanced by the defendant were irrational, unreasonable or inconsistent with the provisions of the governing statute, but it had failed to explain why it said that this was the case in a proper administrative law sense (paras. 46–48).

Legislation construed:

Tobacco Act 1997, s.8:

“Subject to any relevant rule of law any person who is aggrieved by—

- ...
 (b) any term or condition included in a wholesale or retail licence issued to him save for such a term or condition as is described in section 6(3), (4) and (5) above;

...
 may apply to the Supreme Court for judicial review in accordance with rules of court.”

Civil Procedure Rules (S.I. 1998/3132), r.54.5(1):

- “(1) The claim form must be filed—
 (a) promptly; and
 (b) in any event not later than 3 months after the grounds to make the claim first arose.”

C. Finch (instructed by Verralls) for the claimant;

C. Wright (instructed by Office of Criminal Prosecution and Litigation) for the defendant.

PERMISSION DECISION

1 **RESTANO, J.:**

Introduction

This is my extempore permission decision in respect of a judicial review application brought by the claimant against the defendant's refusal to allow it to transfer its tobacco storage premises.

2 Whilst the court will generally first consider the question of permission without a hearing, I adjourned this application to an oral hearing on notice.

Although the oral hearing was only a short one, this was arranged to give the claimant an opportunity to address the question of delay raised by the defendant in the grounds filed for contesting the claim. I also felt that an oral hearing would be helpful because I was finding it difficult to follow the way the claim had been pleaded and I was unable to track down some items of correspondence which appeared to be missing from the bundle of correspondence accompanying the claim form.

3 The hearing was listed for hearing on December 7th, 2022 but because Mr. Finch was admitted into hospital the day before, the hearing was adjourned to January 12th, 2023. On January 12th, 2023, Mr. Finch informed the court that he had secured a meeting with the Chief Minister to discuss this matter and sought to adjourn the hearing on that basis. Ms. Wright, however, confirmed that she had received no instructions to agree to an adjournment and, in the circumstances, I proceeded with the application.

The claim

4 The claimant is a licensed tobacco vendor which operates from its premises at Watergardens. The claimant's tobacco retail licence ("the licence") contains a number of restrictions including that tobacco be stored only in licensed premises. The claimant also holds a transportation licence also issued by the defendant which sets out the conditions for the transportation of tobacco and which, amongst other things, allows transportation of tobacco from the store to the shop.

5 At present, the claimant's store is at Unit 31, 6 Garrod Road, off Devil's Tower Road. This claim has come about following the claimant's unsuccessful request to transfer its storage licence from its existing premises, first to a lock-up garage at No. 14 Eaton Park, and then to a store at No. 1 Eaton Park, both at Devil's Tower Road and thus near the current store. The claimant applies for permission to seek judicial review of that decision.

6 The claim form is dated September 27th, 2022. Section 3.1 (details of the decision to be judicially reviewed) of the claim form states that the decision being challenged is:

"Refusal under powers given pursuant to sections 6 and 12 of the Tobacco Act to approve the transfer of an existing store specified in the Applicant's tobacco retail licence used to store tobacco products to another specified location in the same geographical area, and/or refusing to answer fully and fairly correspondence reference the same, and failure to give any or any rational reason in that correspondence for the said refusal or the failure to respond with a reasoned decision. The final application notice was dated 11 August 2022, to which no response has been received and a reasonable time has elapsed."

7 Section 3.2 which provides for the date of the decision to be given has been left blank and instead, “N/A” has been added in manuscript in this part of the form.

8 Section 5 (statement of facts relied on) states that since January 2022 the claimant has been attempting to alter the licence to change its current approved store off Devil’s Tower Road to another store in Eaton Park in Devil’s Tower Road. The claimant says that there are good reasons for the request. In particular, it refers to the fact that the proposed store is larger and that the lift in its current store is constantly in a state of disrepair which presents a problem for Ramesh Kripalani of Perimeter Holdings Ltd., who has health issues. Further, the beneficial owner of the proposed store is a shareholder of the claimant who is keen to assist by exchanging the smaller store for which rent is paid for this larger store without the need to pay rent. This part of the claim then goes on to state that the Collector of Customs has steadfastly refused to countenance the amendment of the licence and has failed to give reasons for this. Again, the date of the actual decision is not referred to in this section of the claim form. The challenge to the unspecified decision is that the Collector has not provided any rational or reasonable grounds for his refusal to the application.

9 Section 6 (detailed statement of grounds) states that:

(1) The decision refusing the amendment to the licence is not rational or reasonable despite the personal and commercial requirements of the licence holder and its officers, and the fact that the new store is in the same location as the existing store and close to other approved stores in the same development.

(2) No rational or reasonable reasons have been given for the decision nor a response to correspondence provided within a reasonable time, contrary to the defendant’s public duties under the Tobacco Act.

(3) The power to grant a licence is in the absolute discretion of the Collector but the power to issue also includes the power to amend the licence from time to time and the Collector exercising that duty cannot act irrationally or unreasonably.

10 Section 8 (remedy sought) seeks an mandatory order “commanding” the Collector to hear and determine the application to amend the licence on rational and reasonable grounds promptly and within the legitimate parameters of the Tobacco Act and unless such grounds exist, to permit the store transfer requested. Damages are also sought.

11 An accompanying bundle was served with the claim form which included a number of relevant emails and correspondence at tab 5 which are not paginated. Given the vague terms in which the claim has been pleaded it is necessary to set out some of this correspondence. As I have said earlier, some relevant items of correspondence appear to be missing

from this bundle but Mr. Finch was unable to shed any light about this because he did not bring his bundle of documents to court for the hearing.

12 On January 4th, 2022, Ray Pilley, the claimant's lawyer, sent an email to Stuart Crawford at Customs requesting amendment of the licence and proposed transfer of store from Unit 31, Garrod Road, Devil's Tower Road to lock-up garage 14 at Eaton Park. A reply was provided on January 19th, 2022 which states as follows:

"The Collector of Customs, after careful consideration and under the absolute discretion granted to him under the Tobacco Act 1997, has decided not to allow the proposed premises at Eaton Park, lock-up garage No. 14, Devils Tower Road to be used for the storage of tobacco. Perimeter Holdings Limited already holds a storage premises located close to the proposed premises, the Collector of Customs therefore does not see any logistical or practical benefit to transfer the premises and is of the view that the current storage premises are adequate for purpose."

13 On January 31st, 2022, Mr. Pilley sent an email to Mr. Crawford stating:

"With the greatest of respect to the Collector, the rationale behind the request for my Client Company was not to acquire an additional store, per se, but merely to acknowledge the fact that Ramesh has significant health issues. The Collector may be aware that Unit 31, 6 Garrod Road is located on the first floor and he may or may not be aware that the lift serving the Unit is extremely elderly and unserviceable. I am instructed that on several occasions Ramesh has arrived at the store, not only with tobacco but with wine and spirits for which he uses the store, only to find that he has had to carry heavy cases of bottles upstairs. I have gone to the trouble of obtaining current medical records for Ramesh and attach the same hereto. The summary on page 1 is clear. I should be most grateful if they could be kept in confidence. May I ask the Collector kindly to give consideration to the request and revert at his convenience in light of the foregoing"

14 On February 4th, 2022, Mr. Crawford sent Mr. Pilley an email as follows:

"In relation to the request to transfer the store, I refer you to my email of 19th January 2022 where I communicate the Collector of Customs decision not to allow the transfer of the store. Following further consideration in light of the information provided in your email, the decision to not allow the transfer remains. You mention in your email to Andrea Lombard on 15th July 2021 that Mr. Aaron Caruana will be employed as a sales assistant at the shop, together with any other employee(s) that may be working at the shop, this should provide

enough assistance to transport any goods to and from the store. Further to this, your client is able to obtain another store that would be more convenient to him to store any wines and spirits separately.”

15 Mr. Pilley’s reply to this email came on February 9th, 2022 in the following terms:

“I am responding to your email of 4 February timed at 14.39. With great respect to the Collector, I am struggling to identify the logic behind his decision, unless of course there is a blanket policy to refuse any application to transfer a store. In my experience and over many years I have not come across such an approach. I can only think there has been misunderstanding and perhaps I did not make it clear. Perimeter Holdings Limited is unlikely to retain its existing store, but in any event it would not be used for the storage of tobacco. The new store which has been inspected and approved by Customs staff will be used exclusively for the storage of tobacco and or spirits. I do not propose to go into the capacity of Mr. Caruana to carry heavy weights. His prime concern is to run the much delayed cafeteria business. The proposed store is on the ground floor. Please let me know if there is anything further than I can supply in support of this application.”

16 On February 10th, 2022 Mr. Crawford wrote to Mr. Pilley and stated:

“Again I refer to my email of 19th January 2022 where I communicate the Collector of Customs’ decision not to allow the transfer of the store, the decision remains the same. If you wish to provide us with further information please do so by email so I can discuss with the Collector.”

17 Mr. Pilley wrote again to Mr. Crawford on February 26th, 2022 as follows:

“You will recall I wrote on the 10th February in the following terms:

Please thank the Collector for notifying me, through you, of his continued refusal to permit the change of store. What I require now is a reasoned decision in order that I might further advise my Client of any remedies open to it.

There has been no response in two weeks . . . If no reason is to be forthcoming other than the Collector is relying on his absolute discretion, perhaps you would be good enough to confirm that this is so and also explain the point behind examining the ‘new store’ and concluding it was perfectly acceptable . . .”

18 Although Mr. Pilley referred to his letter or email to Mr. Crawford dated February 10th, this was not included in the claimant’s bundle accompanying the claim form.

19 On March 15th, 2022, Mr. Crawford wrote to Mr. Pilley and stated:

“I have spoken to the Collector to discuss the contents of your email, again I refer to my email of 19th January 2022 where I communicate the Collector of Customs’ decision on the matter.”

20 On March 21st, 2022, Mr. Crawford sent an email to Christopher Finch, which refers back to an email Mr. Finch had sent Mr. Payas dated March 16th, 2022 (also not included in the claimant’s bundle). This states that the defendant has an absolute discretion under s.6 of the Tobacco Act and goes on to list some of the criteria which he considers relevant when considering an application, namely:

- “• Suitability of proposed store
- Location of proposed store
- Association illicit tobacco activity in the area
- Accessibility for Customs Officers
- Storage capacity at the shop premises
- Distance of store from the shop premises
- Proportionality of sales
- Proximity to residential areas

The Collector of Customs in fact encourages the licence holder to transfer their storage premises to an area closer to the main retail premises, which would render the transport licence unnecessary; furthermore the issuing of [*sic*] are rare concession made by the Collector of Customs and one that is not normally given to retail licence holders, as is the case with client.

Therefore in light of the above, after having considered the application the Collector is not minded to allow the proposed transfer of the storage premises.”

21 On April 9th, 2022, Mr. Finch sent an email to the defendant where he stated as follows:

“John in order to try and avoid costly, time-consuming litigation, which may be necessary, might I suggest that an alternative store situated at No.1 Eaton Park in the Industrial Estate would meet the company’s requirements. I am aware that other stores/garages at Eaton Park have and still are used for the storage of tobacco, including cigarettes and alcoholic beverages. Would this meet with your requirements and resolve your objection, whatever that might be?”

22 On April 20th, 2022, the defendant sent the following reply:

“Further to your email of the 9th April 2022 and after having considered the contents, the Collector of Customs is not minded to allow the proposed transfer of the storage premises to No. 1 Eaton Park. Pursuant to section 6 of the Tobacco Act 1997, the Collector of Customs has absolute discretion in the matter.”

23 This exchange in April 2022 was not included in the claimant’s bundle of documents and has been provided by the defendant.

24 On July 8th, 2022, Verralls wrote to the defendant stating that they had not yet received a reasoned decision as to why the store has not been approved. Further, they said that reference to considerations that the defendant would have had in mind was unhelpful because he had failed to identify which of those considerations he believed applied. The defendant was put on notice of a judicial review claim if there was no reply within seven days.

25 The reply to this letter came on July 20th, 2022 which stated that the letter of July 8th, 2022 had been received on July 15th, 2022 and further:

“The Collector of Custom’s decision was communicated to your client in writing on 19th January 2022. Perimeter Holdings Limited already holds a storage premises and, after considering the reasons for the move and the location of the proposed garage, he finds no merit in changing the conditions under which that licence was granted.”

26 Verralls sent a further letter to the defendant on August 11th, 2022 as follows:

“For the removal of doubt, the store that our client now wishes to occupy, given the unexplained difficulties which have been attendant on the past transfer request, is No. 1, Eaton Park . . .

The reasons for the transfer have already been explained to you, but for the sake of completeness, they are as follows:

- a. the current store is small and the capacity needs to be expanded for commercial purposes.
- b. The current store is on the first floor and is serviced by a lift which is constantly in a state of disrepair.
- c. Many of the goods stored can be quite heavy and Mr. Kripalani is no longer a young man and cannot easily manage the stairs.
- d. The new store is but 280 metres from the current store, and is located in a development that has other approved tobacco stores of a virtually identical nature.

- e. The beneficial owner of the new store is a shareholder in Perimeter Holdings Limited and wishes to advantage the company by surrendering the old store, for which the company pays rent, and use his own store to the company's benefit. (A copy of the lease is attached for ease of reference).

Your failure to provide a reasoned decision as to why the store transfer has not been approved previously is unsatisfactory and unreasonable, which offends against the principles of fair public law. We set out the current application clearly now so if it is your intention to refuse the application without assigning any logical or acceptable reason, we will be in a position to alert the court to these facts and that we have you every opportunity to respond in the course of your public duties.”

27 On October 19th, 2022, the defendant replied to the claimant's letter as follows:

“Having reviewed the contents of the letter please note that a decision was made by the Collector of Customs and communicated to you on the 19th January 2022 in relation to the first proposed premises for the transfer of the store (Eaton Park, lock-up garage No. 14, Devil's Tower Road). A decision was made by the Collector of Customs and communicated to you on the 20th April 2022 in relation to the second proposed premises for the transfer of store (No. 1 Eaton Park, Devil's Tower Road), which is the subject of your letter to the Collector of Customs dated the 11th August 2022.”

28 Again, this email dated October 19th, 2022 which made reference to the decision of the April 20th, 2022 was not included in the claimant's bundle and I was provided with a copy of it by the defendant.

Grounds for contesting the claim

29 The defendant filed an acknowledgment of service form on October 21st, 2022 indicating that he was contesting the entire claim. The summary grounds filed with the acknowledgment of service form primarily deals with delay and states that the application was made on January 4th, 2022, that an inspection of the proposed store was carried out on January 12th, 2022 and that the refusal decision was communicated to the claimant's lawyer on January 19th, 2022. The defendant then states that Mr. Finch sent an email to Customs on April 9th, 2022 proposing an alternative store situated at No. 1 Eaton Park that would meet the defendant's requirements. On April 20th, 2022 Customs wrote to Mr. Finch informing him that the defendant was not minded to allow the proposed transfer of storage premises to this alternative location and referred to the fact that he enjoyed absolute discretion in the matter.

30 The defendant submits that the application filed on September 27th, 2022 has been brought out of time as it has not been brought promptly and in any event within the three-month time limit required by CPR 54.5. The defendant submits that the time to bring a judicial review claim starts to run from the date on which the ground(s) to make the claim first arose which in this case would be either January 19th, 2022 or April 20th, 2022. According to the defendant's calculations, the claim has been brought either eight or five months late. The defendant submits that permission should be declined on that ground alone. It also points out that the letter from Verralls dated August 11th, 2022 is simply a ploy to circumvent the time limit for commencing the judicial review claim.

31 The defendant further submits that the Tobacco Act excludes a challenge of this sort. The defendant contends that s.8(b) of the Tobacco Act 1997 provides that (insofar as is material) a judicial review challenge can only be brought against a term or condition included in a licence except for a term or condition described in s.6(3), (4) and (5). In the defendant's submission, the transfer of a storage licence comes under s.6(3), and is therefore not subject to judicial review.

32 The defendant submits that reasons for the refusal to accede to the transfer of the claimant's store have been provided. He refers to the fact that the existing store is adequate and to the non-exhaustive criteria contained in the email he sent to Mr. Finch on March 21st, 2022, which includes encouraging any move of stores to a location nearer the shop where the tobacco is sold which would render the transport licence unnecessary.

The claimant's submissions

33 Since the hearing was adjourned, Mr. Finch has provided written submissions dated January 4th, 2023 entitled "Reply to Summary Grounds of Objection" where he makes a number of submissions in response to the objection raised by the defendant as follows:

(1) The defendant understood the line of correspondence was a continuing process relating to the change of store. Further, he submits that: "It is not the decision per se that is being challenged in this sequence but the *process* by which decisions were made."

(2) When a decision maker fails to give a reason or gives a reason which is irrational, unreasonable or inconsistent with the provisions of the governing statute, any decision purporting to be made from time to time is subject to judicial review.

(3) Notwithstanding previous indications given, an application to vary a licence must be considered fairly, even if it is a renewal of a previous application but supported by additional evidence intended to impact upon his previous standpoint. Further, nearly all Government officials make

interim decisions over a period before the final decision can be said to have been made and the defendant's arguments are nothing more than stonewalling.

(4) The court has a discretion to extend the three-month period and the defendant's continued obstinacy to give rational and reasonable reasons for his decision is a factor to be taken into account.

(5) The final decision was only transmitted after the judicial review application was made. Further, once the defendant indicated that he would be considering the renewed application on additional evidence, the claimant had a reasonable expectation that he would reconsider in a fair way within a reasonable timeframe.

(6) The Tobacco Act does not preclude a judicial review of an application to transfer a storage licence.

34 At the oral hearing, Mr. Finch also submitted that because the defendant had not given valid reasons for his decision, there was no valid decision provided or alternatively, that his decision was not final. He also said that the letter of August 11th, 2022 constituted a renewed application where a materially new fact was being raised. This was that the beneficial owner of the new store was a shareholder in Perimeter Holdings Ltd. who wished to advantage the company by offering his own store to the company's benefit.

The relevant legal principles

35 The court will refuse permission to apply for judicial review unless it is satisfied that there is an arguable ground for judicial review having a realistic prospect of success. Further, judicial review proceedings are not concerned with the facts of the case and the relative advantages or disadvantages of a decision taken by a public official. The court's jurisdiction is supervisory which means (in very broad terms) that it will interfere with a decision of a public authority only if there is an error of law.

36 When bringing a claim, the claimant is under a duty to disclose all material facts. Non-disclosure is a sufficient reason for refusing permission. The duty on the claimant is to ensure that the judge has a full picture when dealing with an application for permission. That may include not merely furnishing copies of documents but drawing attention to and explaining documents which are adverse to the claim: see CPR 54.6(2).

37 Practice Direction 54A, para. 4.1 also provides that the claimant seeking permission to apply for judicial review must ensure that the claim form sets out all the material facts, *i.e.* all those facts which are relevant to the claim or application being made. Paragraph 4.2 of the Practice Direction also requires that the claim form should set out a clear and concise statement of the grounds for bringing the claim identifying the

principle of law said to have been breached and providing sufficient detail to enable the parties and the court to identify the essential issues alleged to arise.

38 Under CPR, r.54.5(1), a judicial review claim must be filed promptly and in any event within three months after the grounds to make the claim first arose. CPR 54.5(1) makes it clear that when the challenge is to a decision, the time limit will usually run from the date of the decision and that a challenge must be brought against the substantive decision that is the real basis for the complaint. It goes on to state that if a challenge is brought to a later ancillary or consequential decision or approval of the earlier decision on the ground that the later decision is unlawful as it is based on the original decision which is also unlawful, the courts may find that time starts to run from the earlier decision.

39 The court can grant an extension of time under CPR r.3(1)(2)(a) provided that there is good reason or adequate explanation to do so.

Discussion

40 Section 3.1 of the claim form states that the challenge is to the refusal to grant the transfer of the store requested, refusing to answer correspondence fully and fairly in that regard and the failure to provide reasons for the decision. Further, it refers to “the final application notice dated 11 August 2022 to which no response has been received.” Mr. Finch also said that it is not a decision that is being challenged, but a process and that any decision was only an interim decision and that the final decision came after the claim was issued. By this he was referring to the defendant’s answer to the letter of August 11th, 2022 where the defendant simply referred back to his earlier decisions of January 19th and April 20th, 2022.

41 At the hearing, Mr. Finch said that the decision being challenged was the one made on August 11th, 2022 and he also appeared to be saying that the decisions made on January 19th, 2022 (in relation to garage 14 in Eaton Park) and on April 20th, 2022 (in relation to Unit 1, Eaton Park) should be ignored for the purposes of judicial review time limits. He said this was because whilst the decision of April 20th, 2022 referred to Unit 1, Eaton Park, the letter of August 11th, 2022 raised a new material fact.

42 It is difficult to understand what is meant by the reference to an “application notice” in para. 3.1 of the claim form. The letter of August 11th, 2022 appears to be nothing more than a repetition of the renewed application made on April 9th, 2022 and of matters largely previously canvassed in correspondence. The only additional fact raised at this stage, according to Mr. Finch, was that this store was owned by a shareholder of the claimant.

43 It is clear that April 20th, 2022 was the date, at the latest, when time started to run. It was at that point that the claimant knew that the application in relation to No. 1 Eaton Park had been refused. Further, the claimant already knew by then of the reasons why the defendant was opposed to a transfer of a store in this area, namely, that he wanted to encourage licence holders to transfer their storage premises to an area closer to the main retail premises. Indeed, in its letter dated July 8th, 2022 Verralls threatened judicial review proceedings within seven days if there was no further response from the defendant, which goes to show that they knew that time had started to run by then. The fact that Mr. Finch added details about the ownership of No. 1 Eaton Park in his letter of August 11th, 2022 does [not] change that.

44 The application has therefore not been made promptly or in any event within three months and it is out of time. Whilst Mr. Finch referred in passing to the court having the power to make an extension of time in his submissions, he made no application for an extension of time and no reason for the delay, let alone a good reason, has been provided. In the circumstances, I refuse permission on the grounds of delay.

45 The claimant has also excluded any reference in the claim form to the April 2022 exchange, and to the decision of April 20th. It has also failed to complete s.3.2 of the claim form altogether which requires the date of the decision to be given. Further, the April exchanges and the email dated October 19th, 2022 which refers to the decision of April 2022 (as well as the one made on January 19th, 2022) were not included in the claimant's accompanying bundle of documents. This constitutes a failure on the part of the claimant to disclose material facts and appears to be an attempt to circumvent time limits. This is another reason for refusing permission.

46 Further, I have not been persuaded by the claimant that it has an arguable ground for judicial review which has a realistic prospect of success. Mr. Finch's focus appeared to be on the fact that the proposed new store, which is only 280 metres from the existing store, would clearly be beneficial to the claimant and that the defendant's failure to provide reasons when refusing the transfer gives rise to a claim because this is self-evidently irrational or unreasonable conduct. Indeed, Mr. Finch even refers to the defendant getting "above his station" and about public officials who purport to exercise absolute discretion being the start of tyranny. At another point and in a somewhat contradictory fashion, Mr. Finch referred not to the failure to provide reasons but to the fact that the reasons advanced by the defendant were misconceived.

47 The defendant's main reason for the refusal is that it wishes to encourage the transfer of stores to an area which is closer to the main retail premises which would render a transport licence unnecessary. He also makes the point that a storage licence of this sort is a rare concession in the

first place. Clearly, the defendant's position is that any change to the current arrangements for the storage of tobacco will need to provide for a store which is nearer the claimant's shop.

48 The claimant may agree or disagree with the defendant's decision but that is not the question for the court. Judicial review challenges are not about disagreements about factual matters. What the claimant needs to show is that it has an arguable case with a realistic prospect of success based on established principles of administrative law. All the claimant has done is to assert that no reasons have been given or that the reasons advanced by the defendant are irrational, unreasonable or inconsistent with the provisions of the governing statute, but it has failed to explain why it says that this is the case in a proper administrative law sense.

Conclusion

49 This claim has been brought out of time and the claimant has failed to comply with its duty of candour. In any event, the claimant has failed to show that it has an arguable ground for judicial review which has a realistic prospect of success. The claimant's application for permission to commence a judicial review is accordingly refused. In the circumstances, it is not necessary for me to further consider the defendant's argument that s.8 of the Tobacco Act does not permit a judicial review to be brought against a decision of this sort.

50 The defendant sought his costs of this permission hearing. The costs of a defendant or interested party resisting a permission application are not usually awarded except in exceptional circumstances. The claimant, however, did not oppose the application for costs and I will therefore order that the claimant pay the defendant's costs to be assessed, if not agreed.

Application refused.