Neutral Citation Number: [2026] EWHC 904 (Admin)

Case No: AC-2026-LON-000875 & 000874

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/04/2026

Before:

THE HONOURABLE MRS JUSTICE LIEVEN

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Between:

The King
(Royal Mint Court Residents' Association)

Claimant

- and –

(1) Secretary of State for Housing, Communities and Local Government
(2) London Borough of Tower Hamlets
(3) Chinese Embassy in the UK

Defendants

Between:

The King
(Royal Mint Court Residents' Association)

Claimant

-and-

Secretary of State for the Home Department

Defendant

-and-

(1) Secretary of State for Housing, Communities and Local Government
(2) London Borough of Tower Hamlets
(3) Chinese Embassy in the UK
(4) Secretary of State for Foreign, Commonwealth and Development Affairs

Interested Parties

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Lord Banner KC and Matthew Henderson (instructed by **Leigh Day**) for the **Claimant**
Robert Williams KC (instructed by **Government Legal Department**) for the **Secretary of State for Housing, Communities and Local Government**
Katharine Elliot (instructed by **Government Legal Department**) for the **Secretary of State for the Home Department** and the **Secretary of State for Foreign, Commonwealth and Development Affairs**

Hearing date: 30 March 2026
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Approved Judgment

This judgment was handed down remotely at 14:30 on 17 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE LIEVEN

Mrs Justice Lieven:

1. This is a judgment following a case management hearing concerning the grant of planning permission for a new embassy for the People's Republic of China ("PRC") at Royal Mint Court ("the site"). The Claimant is a local residents' association. There are two claims, a statutory challenge pursuant to s.288 Town and Country Planning Act 1990 ("TCPA"), to which the Secretary of State for Housing, Communities and Local Government ("SSHCLG") is the First Defendant, and a judicial review of the Secretary of State for the Home Department's ("SSHD") decision to provide an extensive range of measures associated with the development to protect national security ("the Mitigation Measures").

2. The Claimant is the Royal Mint Court Residents' Association, represented by Lord Banner KC and Matthew Henderson. The SSHCLG was represented by Robert Williams KC. The SSHD and the Secretary of State for Foreign, Commonwealth and Development Affairs were represented by Katharine Elliot.

3. This judgment concerns two issues;

   a. Whether in the judicial review claim the Claimant should benefit from costs protection under the provisions of CPR Part 46 and the Aarhus Convention;

   b. Whether the SSHCLG should pay the Claimant's costs of amending the s.288 claim.

   I will only set out the background so far as it is relevant to those two issues.

4. On 20 January 2026, the same day as the SSHCLG's decision letter ("DL"), the Minister for Security in the Home Office told Parliament:

   "This Government, and the last, have been aware of the potential for a new embassy at this site since the Chinese Government completed the purchase in 2018. The issues that continue to be raised in media reports are not new to the Government or the intelligence community, and an extensive range of measures have been developed to protect national security. We have acted to increase the resilience of cables in the area through an extensive series of measures to protect sensitive data, and I can confirm that, contrary to reporting, the Government had seen the unredacted plans for the embassy and the Government have agreed with China that the publicly accessible forecourt on the embassy grounds will not have diplomatic immunity, managing the risk to the public."

5. The SSHD confirmed in her summary grounds in the judicial review proceedings that she authorised the Mitigation Measures on 19 November 2025. However, the SSHD did not confirm or deny the nature and scope of the Mitigation Measures for reasons of national security.

6. The Claimant argues that it is apparent from the Minister's statement that the 'bodies with responsibility for national security' (in the language of [DL 62]) were only satisfied about the security risk posed to (amongst other matters) certain cables because of 'an extensive series of measures to protect sensitive data'.

7. The Claimant relies on reports in The Times dated 21 January 2026 (Oliver Wright, "MI5 to move cables away from China mega-embassy over spy fears") quoting Sir Ken McCallum (MI5 Director General) and Anne Keast-Butler (Director of GCHQ) as having written to the Home and Foreign Secretaries to confirm that '[…] intelligence agencies had put together a "package of national security mitigations for the site" which were "expert, professional and proportionate"' and that '[…] The package of mitigations deals acceptably with a wide range of sensitive national security issues, including cabling'. The Times reported that this 'package of national security mitigations' had been designed to minimise threats from the proposed development, including 'plans to relocate critical cables

away from [it] to reduce the risk of espionage'. The Claimant argues that The Times' characterisation of the Mitigation Measures was not denied by the Government at the time; it was put to GLD in the Claimant's pre-LBC letter of 24 January 2026, and thereafter in the LBC itself, and no attempt has yet been made by GLD to gainsay it.

8. The Claimant then submits that the s.106 TCPA obligations entered into by the PRC in respect of the development do not contain any provision relating to compensation for the Mitigation Measures. The Claimant argues that the failure to make provision under the s.106 obligation and/or under the Community Infrastructure Levy (CIL) Regulations (reg 122) for the costs of these measures to be paid by the PRC, was an error of law.

9. At the case management hearing I ordered that the s.288 claim (save for Grounds Four and Six) against SSHCLG be listed for a rolled up hearing. Ground Four raises effectively the same issue in respect of Mitigation Measures, but against the SSHCLG rather than the SSHD. I ordered that permission for judicial review and permission in respect of Grounds Four and Six would be considered at a two hour hearing in April.

10. The Claimant seeks an order for costs protection under CPR 46.24 in respect of the judicial review. This is opposed by the SSHD. There is no dispute that the s.288 challenge to the grant of planning permission does fall within CPR 46.24 and therefore a costs protection order was made by agreement.

11. The question is whether the judicial review claim falls within CPR r46.24(2)(a), which defines an Aarhus Convention claim as;

"a claim brought by one or more members of the public by judicial review or review under statute which challenges the legality of any decision, act or omission of a body exercising public functions, and which is within the scope of Article 9(1), 9(2) or 9(3) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998 ("the Aarhus Convention")'".

12. Article 9(3) of the Aarhus Convention provides:

"In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment."

13. The law on whether cases would fall within these provisions was recently comprehensively considered by the Court of Appeal in *HM Treasury v Global Feedback* [2025] EWCA Civ 624. The case concerned a challenge to HM Treasury's decision to make tariff Regulations which would give preferences to Australian imports under a Free Trade Agreement ("FTA") [4]. The Claimant was a charity concerned with environmental protection that wished to argue that the FTA would increase greenhouse gas ("GHG") emissions [5]. The Claimant applied for Aarhus costs protection, and the issue was whether the claim fell within Part IX of CPR 46. The Court of Appeal held that it did not.

14. The critical parts of the judgment of Holgate LJ are as follows;

    a. The key requirement is that *"the complaint is about a decision, act or omission which contravenes a national law which itself relates to the environment. It is insufficient for a claimant merely to say that his claim relates to the environment, or to the protection of the environment, or to an effect on the environment"* [92].

    b. In considering the judgment of Sullivan LJ in *Venn v SSCLG* [2014] EWCA Civ 1539 at [105];

> *"The clear implication of Venn is that an allegation that a decision-maker has failed to take into account a material consideration in breach of s.70(2) of the TCPA 1990 without more does not fall within Art.9(3). Section 70(2) is not itself a legal provision "relating to the environment". Such a claim does not fall within Art.9(3) unless, in addition, the material consideration left out of account was a policy (or perhaps some other measure) for the protection (or regulation) of the environment. What Sullivan LJ envisaged was that the policies applicable to most, if not all, planning applications will include some policies for the protection (or regulation) of the environment."*

c. It is clear that the fact that a claim merely raises a challenge which is in some way connected with the environment is not sufficient to engage Article 9(3) [135].

d. Whether the defendant has "contravened a national legal provision for the protection or regulation of the environment…" "will depend upon the wording, context and purpose of the provision under which the defendant has acted" [137].

e. Where there is an alleged breach of a public law principle by a defendant acting under a legal provision not related to the environment but there is an alleged environmental consequence, see [142];

"Therefore, a principle of public law, without more, does not form part of our law relating to the environment. It does not become so by being applied in a factual matrix which involves environmental impact or effect, nor could that matrix alter the non-environmental nature of the legal provision under which the defendant acts. Article 9(3) is not engaged. Indeed, if Art.9(3) were to be treated as applying to this type of situation, then it would have been unnecessary in Venn for the Court of Appeal to have relied upon the reasoning in [12] to [17] of its decision. Instead, the Court could simply and directly have said that a public law error in a decision which has an effect upon the environment, or an environmental issue, is sufficient to engage Art.9(3), irrespective of whether the legal regime under which the defendant acted served the purpose of protecting or regulating the environment. The Court did not do so."

15. Lord Banner submits that the claim for judicial review against SSHD is interwoven with the statutory challenge. The planning system imposes a regulatory scheme for consideration of impacts arising from, and mitigations of the impacts required by, the development of land, in reg 122 CIL Regulations 2010.

16. He submits that the issues in respect of the claim for judicial review do not merely concern the environment – on the assumed basis set out above (which is neither confirmed nor denied by the SSHD for reasons of national security) – but also relate to errors in the SSHCLG and SSHD's approach to mitigation measures under the planning system which seeks to regulate and protect the environment, including in this case. This is all the more acute given the assumed basis (neither confirmed nor denied by the SSHD for reasons of national security) that there will be physical interventions which are generally captured by planning control and which are highly likely to have consequences for the built environment.

17. Ms Elliot submits that the judicial review claim does not fall within Article 9(3) and the dicta of *Global Feedback*. The claim form describes the decision as being to provide an "extensive range of measures … to protect natural security" and "an extensive series of measures to protect sensitive data". There is no alleged contravention of "provisions of […] national law relating to the environment".

18. Even if the Claimant's assumption that the Mitigation Measures would have consequences for the environment is accepted (which, as stated above, is neither confirmed nor denied by the SSHD for reasons of national security), it is clear from *Global Feedback* that that would not be sufficient to get within Article 9(3), see [92]. There is no alleged breach of national law by the SSHD.

19. In my view this case falls within the principles of *Global Feedback*. The SSHD was making a decision to support or impose the Mitigation Measures under powers related to national security, not the environment. That was both the focus of her decision and the source of her powers.

20. Lord Banner argues that the nexus between the challenged decision and the relevant provisions relating to the environment (i.e. the CIL Regulations) is much closer than in *Global Feedback*, but I do not accept that is the case. In *Global Feedback* the alleged environmental impacts were a direct result of the impugned decision, i.e. an increase in GHG emissions and therefore impacts upon climate change obligations. However, that was not sufficient to fall within Article 9(3). Similarly, here it is argued that the decision under challenge will impact upon decisions made under the CIL Regulations and the TCPA. In both cases the decisions in question are one step removed from the provisions of national law relating to the environment. There may be consequences to the environment, and there may be issues that arise in a statutory scheme for environmental protection, but *Global Feedback* makes clear that that is not sufficient to engage Article 9(3).

21. The claim against the SSHD is not that her decision contravenes a national law for the protection of the environment. That is sufficient for the case to fall outside Article 9(3) and for Aarhus costs protection therefore not to arise.

Costs of the Amended s.288 Claim

22. The Claimant argues that it should have the costs of amending its claim because the SSHCLG delayed in responding to the Pre-Action Protocol ("PAP") letter and as a result the s.288 claim was lodged in a form that subsequently required amendments.

23. The chronology is as follows:

    20 January 2026 – The SSHCLG's decision under challenge was issued.

    24 January 2026 – The Claimant sent a letter to the SSHCLG requesting early disclosure and indicating that a pre-action letter would follow, requiring a response within 14 days of its receipt.

    5 February 2026 – The Claimant sent its letter to the SSHCLG in accordance with the PAP, including a request for extensive disclosure.

    12 February – The SSHCLG sent a response to the disclosure letter of 24 January.

    13 February – The SSHCLG replied saying it would not be able to reply within 14 days and would reply on 26 February.

    19 February 2026 – The 14 day period for a reply elapsed.

    24 February 2026 – The Claimant filed the s.288 claim.

    26 February 2026 – The SSHCLG sent the PAP response to the Claimant.

    3 March 2026 – The 6-week period expired.

24. In my view this application lacks merit. Firstly, this is a complex claim in an area of great sensitivity, where doubtless SSHCLG had to communicate with other government departments on both the substance of the PAP letter and the disclosure request. The PAP letter was 22 pages long and included an extensive request for disclosure, including for necessarily sensitive communications. The 14 days for a response to a PAP letter is a general expectation, not a rule of law.

25. Secondly, the SSHCLG did inform the Claimant that they would not be able to reply within the 14 days and responded within 16 days. Although I understand the Claimant's concern not to file too close to the end of the 6-week period, particularly in the light of recent caselaw, however it was not necessary to file 5 working days before that deadline.

26. Thirdly, the points raised in the Amended Claim at paragraphs 52A and B, and 77A, could have been raised in the Reply. This may not have been ideal, but the points do not materially change the substantive Grounds, let alone add a new Ground. Therefore, it would have been acceptable to raise them in a Reply.

27. For all these reasons I determine that costs should be in the case.