



Case No: C1/2009/0884

**Neutral Citation Number: [2009] EWCA Civ 1017**  
**IN THE SUPREME COURT OF JUDICATURE**  
**COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**(MR RABINDER SINGH QC)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Wednesday, 15<sup>th</sup> July 2009

**Before:**

**LORD JUSTICE KEENE**

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**The Queen on the application of  
STAMFORD CHAMBER OF TRADE  
AND COMMERCE & ANR**

**Applicants**

**- and -**

**THE FIRST SECRETARY OF STATE FOR  
COMMUNITIES AND LOCAL GOVERNMENT & ANR**

**Respondents**

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(DAR Transcript of  
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**Mr M Bedford** (instructed by Matthew Arnold & Baldwin LLP) appeared on behalf of the **Applicants**.

**Mr J Litton** and **Mr C Zwart** (instructed by the Treasury Solicitors) appeared on behalf of the **Respondents**.

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**Judgment**

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**Lord Justice Keene:**

1. I only have to decide whether there is a properly arguable point here which holds out some realistic prospect of success. Having listened to counsel on this matter, I have come to the conclusion that there is, but for one reason, in essence, only. That is that the applicants in this matter did not have any realistic opportunity to make representations to the Secretary of State before she made her decision not to save Policy T1. The council's position as publicly expounded had been that it would seek to save Policy T1. The request that ultimately went in to the Secretary of State from the local planning authority, in which Policy T1 was not to be saved, does not appear ever to have received publicity and was not the subject matter of any public decision by a committee or subcommittee of the local planning authority, but was dealt with exclusively at officer level.
2. Although in terms of the timing there might have been in that sense an opportunity for interested parties to make representations to the Secretary of State, unless they were aware that the local planning authority had changed its position they might well have felt that there was no particular need for them to make representations. That seems to me to raise issues of the fairness of procedure during this transitional period between the old planning system and the new planning system that ought to be considered by the full court. Whether it is expressed in terms of legitimate expectation of consultation or legitimate expectation of being made aware of the change of position on the part of the local planning authority does not seem to me to matter greatly.
3. Most of the other arguments advanced by Mr Bedford on behalf of the applicants do not seem to me to have anything like as much force, but I do not propose to shut them out.
4. I will grant leave to appeal in this case, with particular emphasis on the matter that I have indicated.

**Order:** Application granted.