

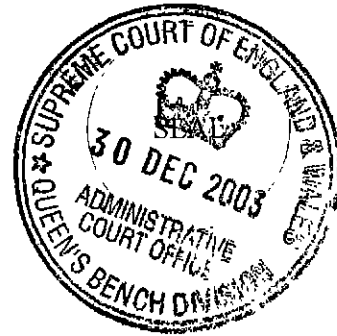


# Claim Form (CPR Part 8)

In the HIGH COURT OF JUSTICE ADMINISTRATIVE COURT ROYAL COURTS OF JUSTICE	
Claim No.	CO/6981/03

**Claimant**

- (1) NATIONAL ANTI-VIVISECTION SOCIETY
- (2) ANIMAL AID



**Defendant(s)**

THE FIRST SECRETARY OF STATE

Does your claim include any issues under the Human Rights Act 1998?  Yes  No

**Details of claim** (see also overleaf)

This is a claim to which CPR Part 8 and CPR Schedule 1 RSC Order 94 apply.

The Claim is made pursuant to section 288 of the Town and Country Planning Act 1990 for an Order that:

(1) the decision of the Defendants given by letter dated 20th November 2003, to grant permission for a building of B1(b) research use at 307 Huntingdon Road, Cambridge, be quashed;

(2) the Defendant do pay the Claimant's costs of and incidental to this Claim.

Defendant's name and address

THE SECRETARY OF STATE  
THE TREASURY SOLICITOR  
QUEEN ANNE'S CHAMBERS  
28 BROADWAY  
LONDON SW1H 9JS

Court fee	£180.00
Solicitor's costs	TO BE ASSESSED
Issue date	30.12.03

The court office at

is open between 10 am and 4 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number

Claim No.

Details of claim (continued)

PLEASE REFER TO THE ATTACHED GROUNDS

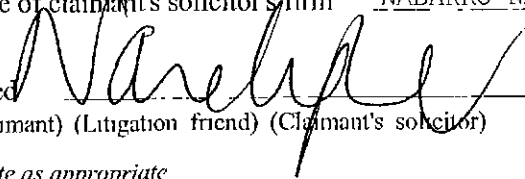
Statement of Truth

- \* (I believe) (The Claimant believes) that the facts stated in these particulars of claim are true.
- \* I am duly authorised by the claimant to sign this statement

Full name NORNA HUGHES

Name of claimant's solicitor's firm NABARRO NATHANSON

signed



position or office held PARTNER

\*(Claimant) (Litigation friend) (Claimant's solicitor)

(if signing on behalf of firm or company)

*\*delete as appropriate*

NABARRO NATHANSON  
LACON HOUSE  
THEOBALD'S ROAD  
LONDON WC1X 8RW

Claimant's or claimant's solicitor's address to which documents should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.

**(1) NATIONAL ANTI-VIVISECTION SOCIETY**

**(2) ANIMAL AID**

**V**

**THE FIRST SECRETARY OF STATE**

---

**DRAFT GROUNDS OF APPEAL**

---

This is a claim made pursuant to section 288 of the Town and Country Planning Act 1990 for an order that the decision of the Defendant given by letter dated 20 11 03 to grant planning permission for a building for B1(b) research use at 307 Huntingdon Road, Cambridge, be quashed.

The grounds of challenge are as follows:

**(1) Perversity/*Wednesbury Unreasonableness***

1. The proposed development is located in the green belt.
2. Very special circumstances must therefore be shown if the presumption against development in the green belt is to be rebutted.
3. The Secretary of State was persuaded that this proposal was of national importance and consequently justified the rebuttal of the presumption against development in the green belt.
4. However, the permission granted does not limit the use of this facility to non-human primate experimentation. Rather, it permits any B1(b) research use. This is defined as "*for research and development of products or processes*".

5. The existing permission could therefore permit a range of activities, whether of national importance or not.
6. It is submitted that to base the grant of a planning permission for development within the green belt on VSC of the national importance of a particular proposal and then not to limit the permission to that proposal is perverse/*Wednesbury* unreasonable and renders the grant itself unlawful.

**(2) No evidence of Need for the Scale of Proposed Use /  
Failure to take account of a material consideration**

7. At paragraph 14.17 of his Report the Inspector states "*...if the national interest 'card' is to be played in aid as a very special circumstance, then I believe there is a direct obligation on the University to demonstrate this in some objective way.*"
8. The Secretary of State deals with national need in his DL at paragraphs 16 et seq.
9. Neither the Secretary of State decision letter nor the material submitted to the Inquiry by CU contains a justification for the scale of the proposed research centre.
10. In a highly analogous recovered planning appeal for the development of a B1b research centre in Cambridge (at Land South of Hinxton Hall – Application No: S/0888/97/O "the Hinxton Hall case") a failure to sufficiently justify the scale of that proposed development caused the Secretary of State to be unable to determine the application and to order that the matter be remitted so that scale, if possible, be justified by the developer.

11. In the Hinxtton Hall appeal, having accepted that the proposal was of national importance (HH DL para 27<sup>1</sup>) the Secretary of State nonetheless concluded that (at paragraph 28) *"He accepts the Inspector's view that your clients failed to provide sufficient evidence to justify a scheme of the scale proposed."*
12. It is submitted that in this case, where the application was for development in the Green Belt (rather than merely in an area of land which is sensitive, as in the Hinxtton Hall case), the justification of scale of the proposed development is all the more important.
13. Furthermore, in the Hinxtton Hall case, the Secretary of State acknowledged some amount of evidence as to scale (see HH IR paragraphs 14.22 and 14.23), but concluded that there was insufficient for him to allow the appeal. In this case there is no evidence as to justification of scale at all.
14. It is submitted that in granting permission for the proposed development despite the absence of evidence as to justification for the scale of the development the Secretary of State reached a decision without regard to a material consideration and which was therefore unlawful.

### **(3) Article 6 – Fair Hearing**

Impression created that the Outcome of the Inquiry was pre-determined

15. At paragraph 14.37 of his Report the Inspector states:

---

<sup>1</sup> "In his [the Secretary of State's] view the national interests arguments in favour of developing an incubation centre outweigh the harm that would be caused"

*“...from the planning inquiry viewpoint this must be seen to be fair, open and impartial. Without this, the fears of some objectors that the outcome is a foregone conclusion is granted credibility.”*

16. The minutes of the pre-inquiry meeting held on 16 09 02 record set out (at paragraph 12) some of the *“material considerations upon which the First Secretary of State would wish to be advised”*. These included *“Need for the research establishment”*. The inspector clarified that he would not hear evidence on public health, animal welfare or the morality of the proposed research (see paragraph 14). Furthermore *“national interest”* was identified by the Inspector in the Statement of Common Ground as a matter he wished to be covered at the Inquiry (paragraph 15).

17. Despite need for the research establishment being clearly identified as a matter to be examined at the public inquiry, it was argued by CU at the Inquiry that as a result of various government pronouncements in advance of the inquiry the question of need had been pre-determined and formed part of government policy. On the basis of the case of *Bushell* it was further argued that it was not the task of an inquiry or the inspector to go behind government policy.

18. It is submitted that this approach, adopted by the Secretary of State, is flawed in law for the following reasons:

The Blair Speech/Letter

19. Government Policy, such as it is, is not and cannot be so specific as to require this specific centre in this specific location (the letter from Tony Blair to Andrew Landsley CBE MP

("Blair Letter") confirms as much). Otherwise there would be no purpose served in holding the inquiry at all.

20. It is perverse and an interference with the objectors' right to a fair trial to seem to give the impression that the inquiry was to determine whether there was a national need for the proposed centre and at the same time to describe that centre as "vital" (Blair Letter).

21. The inquiry ought to be a true and open examination of the material issues before the Secretary of State. Predeterminations from Government which are not general but specific in their nature serve only to undermine this process. An example is contained in this extract from the Prime Minister's Speech to the Royal Society.

22. A further example of this practice of government predetermining the result of an inquiry about to happen is contained in the Prime Minister's observation about public order (the sole ground upon which the local planning authority refused permission and therefore plainly an important matter to be considered on appeal at the Inquiry). By stating that "*we cannot have vital work stifled simply because it is controversial*", the Prime Minister effectively predetermines two important inquiry issues. First that the proposed work is indeed vital (there was no apparent evidence before the PM upon which he could reasonably reach this view) and that the centre should not be thwarted on public order grounds (no matter how great these may be).

### The Lord Sainsbury Letters

23. In his DL (paragraphs 17 et seq.) the Secretary of State considers other documents in the context of government policy.

In particular:

(i) The letter of April 2001 from Lord Sainsbury to Sir Alec Broers (CD5);

(ii) The letter of 22 November 2002 from Lord Sainsbury to the Inspector (CD7);

24. It is submitted that neither of these letters goes so far as to require this particular centre at 307 Huntingdon Road. The need for it, its scale and its location were to be determined by means of the inquiry process. By failing to require evidence as to need and scale, and nonetheless granting permission, it is submitted that the Secretary of State has interfered with the objector's right to a fair trial.

### House of Lords Select Committee on Animals in Scientific Procedures

25. Furthermore the second Lord Sainsbury letter refers to and relies on the findings of the House of Lords Select Committee. Not only were the findings of this Committee mixed and not in direct support of the proposal (see e.g. observations of 1 at 14.37 of the IR) but it was acknowledged that that Committee did not have before it evidence as to (inter alia) "the expected benefits of research" (see para 5.24 of the Committee Report and paragraph 31 of the Government's Reply to it). It is submitted that it is perverse and an interference with objectors' rights to a fair hearing to rely on certain conclusions contained within a House of Lords Committee Report for the purpose of establishing the need for a certain type of research when that very document acknowledges that it did not have before it the



relevant evidence for such a finding. Without such evidence available to the House of Lords, or the Inquiry, it cannot be said that the objector's have had the benefit of a fair trial within the meaning of Article 6 of the Human Rights Act.

#### JIF Grant

26. Nor, it is submitted, can it be said that reliance on a JIF grant for the proposed research is sufficient evidence of the merits/need for the research such as to circumvent the duty on CU to adduce evidence as to such need. Throughout the Inquiry details of the JIF application were sought by objectors. None was produced to the inquiry. Although Lord Sainsbury places very great weight on this grant in his first letter, it is submitted that for the Secretary of State to do the same (as he apparently does) without seeking to understand the underlying rationale and/or the significance (if any) of such a grant) constitutes an interference with the objector's rights under Article 6 of the Human Rights Act 1998.

#### **(4) Perversity – The Letters from Lord Sainsbury**

27. At paragraph 21 of his DL the Secretary of State states:

*“The Secretary of State agrees with the Inspector that an award of funding cannot be an overriding criterion in determining national importance.”*

28. The first Lord Sainsbury letter, in which Lord Sainsbury expresses for the first time his support for the research centre, so far as it relates specifically to the appeal proposal relies entirely on the fact of JIF funding.

29. It is perverse for the Secretary of State to at once accept that funding should not be an overriding consideration and then to slavishly adopt the view of a Minister for whom funding was the principal consideration in reaching a view as to the national importance of the proposed research.
30. Further or alternatively, Lord Sainsbury misinterprets aspects of the conclusions of the House of Lords Select Committee and these misinterpretations are adopted by the Secretary of State in such a way as to render his decision perverse.
31. At paragraph 4.14 of its report, for example, the Select Committee concludes that "there is at present a continued need for animal experiments both in applied research, and in research aimed purely at extending knowledge". At paragraphs 2 and 6 of its response the Government concurred.
32. However in neither of these documents is there any specific endorsement of non-human primate experimentation or of the *expansion* of existing facilities for animal experiments.
33. Accordingly, to adopt the views of Lord Sainsbury, who bases his support for the proposed enlarged and expanded research facility on (inter alia) the conclusions of the House of Lords Select Committee, when those conclusions cannot support the propositions which Lord Sainsbury expresses, is to act perversely.

#### Conclusions

34. The SoS's DL is flawed in law and should be quashed on the following grounds:

(i) Perversity/Wednesbury unreasonableness –

to grant permission for any type of B1(b) use when the VSC which rebut the presumption of development in the green belt apply to a specific research proposal;

(ii) Failure to take account of a material consideration –  
No evidence as to scale of the proposal

the Secretary of State has made clear in the Hinxtton Hall case that notwithstanding national importance/need, evidence of the scale of a development (especially where sensitive land is at stake) must be before him. No such evidence was before the Secretary of State in this case.

(iii) Article 6 – Fair Hearing

Without prejudice to the Appellants contention that government policy so far as it related to the proposed development cannot be so specific as to require granting of this planning application, reliance on such policy by the Secretary of State so that objectors are deprived of a fair hearing as to the need for the research centre amounts to an interference with their rights under Article 6 of the Human Rights Act 1998.

(iv) Perversity – Adoption of Errors committed by Lord Sainsbury

The Secretary of State's adoption of certain shortcomings contained in letters by Lord Sainsbury

which endorse the proposed research centre, without considering the matters afresh, has resulted in a decision which is perverse in the public law sense.

35. Accordingly the SoS's decision should be quashed.

30 12 03