Neutral Citation Number: [2016] EWHC 1870 (Admin)

Case No: CO/5715/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 26 July 2016

Before :
MRS JUSTICE LANG DBE
Between :
THE QUEEN
on the application of

HAWKSWORTH SECURITIES PLC	**Claimant**
and	
PETERBOROUGH CITY COUNCIL	**Defendant**
(1) IREEF QUEENSGATE PETERBOROUGH PROPCO S.A.R.L **(2) INVESCO REAL ESTATE** **(3) LENDLEASE** **(4) ODEON CINEMAS LIMITED** **(5) JOHN LEWIS PARTNERSHIP** **(6) PETERBOROUGH CITY COUNCIL HIGHWAYS** **(7) PETERBOROUGH CITY COUNCIL COMMERCIAL AND PROCUREMENT UNIT**	**Interested Parties**

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

Hereward Phillpot QC (instructed by **Burges Salmon LLP**) for the **Claimant**
Reuben Taylor QC (instructed by **Peterborough City Council**) for the **Defendant**
Timothy Corner QC and Richard Moules (instructed by **Pinsent Masons LLP**) for the **First Interested Party**
The **Second, Third, Fourth, Fifth, Sixth and Seventh Interested Parties** did not attend and were not represented

Judgment
As Approved by the Court

Mrs Justice Lang:

1. The Claimant seeks judicial review of the decision of the Defendant's Planning and Environmental Protection Committee ("the Committee"), on 16 October 2015, to grant detailed planning permission for the redevelopment of part of the Queensgate Shopping Centre ("the Queensgate scheme") in Peterborough city centre.

2. The Claimant is the promoter of another scheme in Peterborough city centre for the redevelopment and regeneration of the land at North Westgate ("the Westgate scheme").

3. The Defendant, Peterborough City Council ("the Council"), is the local planning authority.

4. The First Interested Party is the applicant for planning permission for the Queensgate scheme. The Queensgate Shopping Centre is owned by Invesco Real Estate and managed by Lendlease. Only the First Interested Party has taken part in these proceedings and so I refer to it hereafter as "the IP".

5. Gilbart J. refused permission to apply for judicial review on 23 February 2016. On the Claimant's renewed application for permission, Ouseley J. decided, on 27 April 2016, to order a rolled-up hearing.

Facts

6. The Queensgate scheme comprises the part demolition, alteration and extension of the Queensgate Shopping Centre, including change of use and erection of a roof top extension to provide for uses within Class A1, A3-5 (shops, restaurants and cafes, drinking establishments and hot food take-away), D2 (assembly and leisure, specifically a cinema) and other associated works. The Queensgate Shopping Centre is immediately to the south-east of the site of the proposed Westgate scheme.

7. The Westgate scheme is a mixed use redevelopment involving the demolition of existing buildings and structures on the North Westgate site, the construction of new buildings and structures, the stopping up, diversion and alteration of public highways and the internal and external alteration and change of use of buildings and structures to be retained on site to provide: (i) retail uses (Classes A1, A2, A3, A4 and A5), 50,000ft^2 of office space (Class B1), hotel (Class C1), 150 residential units (Class C3), community uses (Class D1) and leisure uses including a cinema (Class D2) together with various elements of ancillary development including public realm comprising a new piazza. It is approximately 4.6 ha in size.

8. The Claimant and others objected to the Queensgate scheme on the basis of the prejudice that it would cause to the viability of the Westgate scheme. The Westgate scheme was designed and promoted as a leisure-led development, centred on the provision of a new multi-screen cinema. It was anticipated that the cinema would generate footfall and a ready market for food and drink outlets. The Queensgate scheme also included the development of a new cinema. The Claimant contended that there was only sufficient demand to support one city centre cinema, and so the grant of planning permission for the Queensgate scheme would render the Westgate scheme

unviable. The Claimant contended that it would therefore be unable to implement and deliver the Westgate scheme. This would be contrary to the Council's policy of regenerating and redeveloping the North Westgate Opportunity Area, as the proposed Westgate scheme would regenerate the North Westgate area and, if it had to be abandoned, the consequence would be planning harm.

9. The planning officer, in his report to the Committee on the Queensgate scheme, summarised the Claimant's objections and annexed its letter to the report. In addressing the issues arising from the objection, he advised that:

i) The Queensgate scheme accorded with the NPPF.

ii) "*The applicant for the North Westgate scheme has stated that if the Queensgate scheme obtains planning permission then the North Westgate scheme cannot be implemented. This is acknowledged as it is unlikely that two city centre cinemas would be financially viable. However, this is a matter of competition between the developers and not a matter of planning policy (not least because there is not a national or local planning policy that seeks to refuse policy compliant development within the city centre that has the potential to prevent the redevelopment of the North Westgate site).*"

iii) The Westgate scheme would make a "positive contribution" to the City Centre.

iv) The Queensgate scheme would be sustainable in that it would be accessible, and the provision of a cinema and restaurant quarter would contribute to the sustainability of the city centre in terms of job creation and input into the local economy.

v) The Queensgate scheme accorded with the policy objectives of Core Strategy CS4 and Policy CC3 of the City Centre Plan, encouraging trips into the city centre for leisure, social and cultural purposes to strengthen the city centre core area.

vi) The proposal for a cinema accorded with the vision for the City Centre. Policy CC3 talked about the need for a cinema within the city centre core; however it did not state that the cinema had to be on the North Westgate site.

vii) It would not be reasonable to refuse the application on the basis that the approval of the Queensgate scheme would prejudice the development of North Westgate. Policy CC3 of the City Centre Plan applied to prevent development coming forward within the North Westgate Opportunity Area from prejudicing the comprehensive development of the whole North Westgate Opportunity Area and was not to be interpreted as applying to proposed development outside the North Westgate Opportunity Area.

viii) There was no guarantee that the Westgate scheme would be delivered. It was allocated for redevelopment in the 1971 City Centre Plan and there was still a pending application dating back to 2007. On the other hand, Invesco had indicated that it expected to implement the Queensgate scheme early next year and the operator for the cinema was confirmed as Odeon.

10. The planning officer's report concluded:

> "Subject to the imposition of the attached conditions, the proposal is acceptable having been assessed in the light of all material considerations, including weighing against relevant policies of the development plan and specifically:
>
> - the principle of a city centre cinema and restaurant provision with additional retail provision for the city centre is acceptable. This is in accordance with the vision for the City Centre, Policy CC3 of the City Centre DPD and Policy CS4 of the Core Strategy,
>
> - the scale, proportions, design and use of materials would harmonise with the existing centre. This is in accordance with Policy CS16 of the Core Strategy and Policy PP2 of the Planning Policies DPD.
>
> - it is accepted that the resultant bulk and mass of the extension would have a negligible adverse effect on the setting of some listed buildings and the City Centre conservation area. However, this is outweighed by the benefits of the scheme to the vitality and viability of the city centre through the likely increase in visitor numbers through cinema and restaurant offer, improved night time economy, employment, and improved pedestrian connectivity. This is in accordance with the NPPF and Policy CS17 of the Core Strategy and Policy PP17 of the Planning Policies DPD.
>
> - the site is accessible by a choice of means of transport and the proposal is supported by a transport statement and travel plan and will not result in any adverse highway implications. This is in accordance with Policies CS14 of the Core Strategy and Policy PP12 of the Planning Policies DPD."

11. Further representations were then made by the Claimant which were attached to a "Briefing Update" provided to the Committee, indicating that an offer had been received from a cinema operator but the city could not support two cinemas; a cinema was the only viable "anchor" for the scheme; the scheme could be delivered by summer 2018.

12. The Committee considered both applications for planning permission at its meeting on 29 September 2015. The application for the Queensgate scheme was first on the agenda, as it had been received by the Council before the application for the Westgate scheme.

13. A transcript of the Committee's deliberations at the meeting has been obtained by the Claimant. The planning officer addressed the Committee saying:

> "…..[t]he starting point has to be development of the City Centre planning policies and had we wished to protect the

> North Westgate site from these developments which might compromise its deliverability then we would have formed a suite of policies specifically around protecting that site from harm … but we haven't done that, we have specifically not done that and therefore what you need to bear in mind is that … the consideration of planning policy is key to this and it is only outweighed if you feel, having looked at and considered yourselves that there are greater benefits associated with North Westgate scheme which outweigh your planning policies..."

14. Ms Lea, Senior Lawyer, gave the following advice:

> "The application is policy compliant. It has been summarised within your officer report and it is in accordance with the council's policy. It is within the City Centre policy area. You are aware that that includes a mix of retail and leisure uses and that is exactly what is in front of you today…. your officers have reported to you there is no reason not to approve on policy grounds. You heard about the significance of planning harm if …you were to go forward and approve this application. What you are required to do is weigh in the balance all the factors that are in front of you. It is very plain that policy is one. But also you've heard about the …impact of this application on the North Westgate area and the potential to regenerate the North Westgate area. That in and of itself is a material consideration and it is one that you must judge in terms of taking what weight you want to give to that…you need to take into consideration matters such as …when any of these schemes may be coming forward. We know that this is a full application and we know that it is deliverable and expected to come forward at quite a pace. …. Your officers have made an assessment of that for you…They have also shared with you all of the additional information that came forward from the objectors at late stage…So your officers have considered all of that … they are of the view that this application nevertheless can be recommended for approval. You now need to consider those factors yourself."

15. Ms Lea advised members to focus on the decision in respect of the Queensgate application. She said it was the view of the officers that that they had sufficient information to be able to make a judgment on whether the application was going to have such a detrimental impact on the North Westgate Opportunity Area so as to outweigh the planning policies.

16. The planning officers also referred to the fact that no decision had yet been made on the Westgate application. They confirmed that they were recommending approval of it, though they pointed out that they could not guarantee its implementation.

17. On behalf of the applicant for the Queensgate scheme, Mr Bingham of Invesco told the Committee that the project would complete in 2017. It included reorganisation of the Peterborough John Lewis store to reflect its current trading requirements. Invesco

also owned two sites within the North Westgate area. In response to the Claimant's objection, Mr Bingham said:

> "Our scheme will be brought forward quickly to stop the leakage of shoppers to other centres and facilities. That in turn, in our view, will make investments on other sites and premises in the city centre, including North Westgate more attractive, not less. We believe that what is being achieved in the city, including at Westgate will in fact stimulate the investment and the funding that is needed to develop those parts of North Westgate site that are not within Invesco's ownership."

> "Hawksworth have come forward with a scheme with a mix of uses. The application has been submitted in outline form, which only set parameters for the different uses at this stage. It is therefore flexible, so different options in different forms of development can come forward once operator interest is firmed up, as long as within those parameters."

18. The Committee decided to grant full planning permission for the Queensgate scheme, subject to conditions. Formal notice of the decision was issued on 16 October 2015.

19. The application for the Westgate scheme was considered afterwards, at the same meeting. There were no objections, and the Committee decided to grant outline planning permission, subject to conditions. Formal notice of the decision was issued on 2 October 2015.

Grounds for judicial review

20. The Claimant's grounds for judicial review were as follows.

21. **Ground 1**. In determining the two applications sequentially, rather than together, and by determining the Queensgate scheme first, the Council acted unfairly and/or unreasonably in the *Wednesbury* sense, in that it thereby prevented the Committee from undertaking a proper and effective comparison of the merits of the two schemes before deciding to grant permission for the Queensgate scheme.

22. **Ground 2.** In granting planning permission for the Queensgate scheme, the Planning Committee failed clearly to answer a question it needed to resolve in order to make its decision, namely: did it accept the Claimant's evidence that granting planning permission for the Queensgate scheme would render the Westgate scheme unviable and mean that it would not proceed.

23. **Ground 3**. The planning officer misdirected the Committee on the evidence as to the potential for prejudice to the Westgate scheme by saying that it had to be demonstrated "beyond doubt".

24. **Ground 4**. If (in the alternative to Ground 2) the Committee did not accept that prejudice to the redevelopment and regeneration of the Westgate site was likely to

occur as a result of the grant of planning permission for the Queensgate scheme, the decision was unreasonable in the *Wednesbury* sense.

25. **Ground 5**. If (in the alternative to Ground 4) the Committee did accept that such prejudice was likely to occur, it erred in law by:

    i) failing to take into account a material consideration, namely a comprehensive comparison of the relative merits and planning benefits associated with the two schemes; and/or

    ii) failing to ask itself the right question (namely what weight should be attached to the loss of the benefits associated with the Westgate scheme, and did that outweigh the policy and other factors said to weigh in favour of granting permission for the Queensgate scheme?) and to take reasonable steps to acquaint itself with the relevant information to enable it to answer that question correctly (namely, a comprehensive comparison of those factors).

26. **Ground 6**. In determining the application on the basis that prejudice to the redevelopment and regeneration of the allocated North Westgate Opportunity Area did not give rise to any conflict with development plan policy, the decision was made on the basis of an approach to the development plan that was unreasonable in the *Wednesbury* sense.

27. **Ground 7**. The reasons volunteered by the Committee for its decision to grant permission were inadequate because they did not identify what conclusions were reached on the principal controversial issue of prejudice to the Westgate scheme.

Conclusions

Alternative sites

28. The Claimant's grounds rested upon the premise that the Council was under a legal duty to compare the merits of the two schemes, which the Defendant and the IP disputed. Before considering the Claimant's grounds, it is necessary to decide whether or not that premise was correct.

29. The determination of an application for planning permission is to be made in accordance with the development plan, unless material considerations indicate otherwise: section 38(6) of the Planning and Compulsory Purchase Act 2004, read together with section 70(2) Town and Country Planning Act 1990.

30. In *Tesco Stores Limited v. Dundee City Council* [2012] UKSC 13, Lord Reed held, at [17]:

> "It has long been established that a planning authority must proceed upon a proper understanding of the development plan…."

31. The development plan must be read as a whole, with a focus on its relevant objectives and the policies which give effect to those objectives: see *Crane v. Secretary of State*

for Communities and Local Government [2015] EWHC 425 (Admin), per Lindblom J. at [40].

32. Conflict with a single policy does not necessarily mean that an application is out of accord with the development plan as a whole: *Cummins v. LB Camden* [2001] EWHC Admin 1116, per Ouseley J. at [162] -[163].

33. In principle, any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances: *Stringer v. Minister of Housing and Local Government* [1971] 1 All ER 65, per Cooke J. at page 77.

34. A consideration is 'material' if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision-maker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process, although it may not be determinative: *R (Kides) v. South Cambridgeshire DC* [2002] EWCA Civ 1370, per Jonathan Parker LJ at [121].

35. The weight (if any) to be attached to a material consideration in determining an application for planning permission is entirely a matter for the decision-maker: *Tesco Stores Ltd. v. SSE* [1995] 1 WLR 759, per Lord Hoffman at 780F-H.

36. The task of the local planning authority is to consider the planning merits of the particular application for planning permission. Generally, land may be developed in any way which is acceptable for planning purposes and so the planning legislation does not require the local planning authority to consider whether the proposed development would be more appropriately located at an alternative site. Where a potential alternative site is brought to the attention of the local planning authority, the circumstances may be such that (1) the authority must have regard to it; or (2) the authority may have regard to it in the exercise of its planning judgment; or (3) the authority ought not to have regard to it.

37. In *Trusthouse Forte Hotels Ltd v. Secretary of State for the Environment* (1987) 53 P. & C.R. 293 at 299 Simon Brown J. identified the following propositions from the authorities:

> "(1) Land (irrespective of whether it is owned by the applicant for planning permission) may be developed in any way which is acceptable for planning purposes. The fact that other land exists (whether or not in the applicant's ownership) upon which the development would be yet more acceptable for planning purposes would not justify the refusal of planning permission upon the application site.
>
> (2) Where, however, there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse

effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it.

(3) Instances of this type of case are developments, whether of national or regional importance, such as airports (see the *Rhodes* case), coalmining, petro-chemical plants, nuclear power stations and gypsy encampments (see *Ynstawe, Ynysforgan and Glais Gypsy Site Action Group v. Secretary of State for Wales and West Glamorgan County Council*.) Oliver L.J.'s judgment in *Greater London Council v. Secretary of State for the Environment and London Docklands Development Corporation and Cablecross Projects Ltd.* suggests a helpful although expressly not exhaustive approach to the problem of determining whether consideration of the alternative sites is material:

> "… comparability is appropriate generally to cases having the following characteristics: First of all, the presence of a clear public convenience, or advantage, in the proposal under consideration; secondly, the existence of inevitable adverse effects or disadvantages to the public or to some section of the public in the proposal; thirdly, the existence of an alternative site for the same project which would not have those effects, or would not have them to the same extent; and fourthly, a situation in which there can only be one permission granted for such development, or at least only a very limited number of permissions."

(4) In contrast to the situations envisaged above are cases where development permission is being sought for dwelling houses, offices (see the *GLC* case itself) and superstores (at least in the circumstances of *R. v. Carlisle City Council and the Secretary of State for the Environment, ex parte Cumbrian Co-operative Society Ltd.*).

(5) There may be cases where, even although they contain the characteristics referred to above, nevertheless it could properly be regarded as unnecessary to go into questions of comparability. This would be so particularly if the environmental impact was relatively slight and the planning objections were not especially strong: See *Sir Brandon Meredith Rhys Williams v. Secretary of State for Wales and others* and *Vale of Glamorgan Borough Council v. Secretary of State for Wales and Sir Brandon Rhys-Williams*, both of which concerned the siting of the same sewage treatment works.

…"

38. In *Mount Cook Land Ltd v. Westminster City Council* [2004] JPL 470, Auld LJ, at [30], accepted the following to be correct statements of the law:

> "(1) in the context of planning control, a person may do what he wants with his land provided use of it is acceptable in planning terms.
>
> (2) there may be a number of alternative uses which he could choose, each of which would be acceptable in planning terms;
>
> (3) whether any proposed use is acceptable in planning terms depends on whether it would cause planning harm judged according to relevant planning policies where there are any;
>
> (4) in the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative uses on the application site or of the same use on alternative sites are normally irrelevant in planning terms;
>
> (5) where… an application proposal does not conflict with policy, otherwise involves no planning harm and, as it happens, includes some enhancement, any alternative proposals would normally be irrelevant;
>
> (6) even, in exceptional circumstances where alternative proposals might be relevant, inchoate or vague schemes and/or those which are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight."

39. In *Derbyshire Dales DC v. Secretary of State* [2009] EWHC 1729 (Admin), [2010] 1 P. & C.R. 19, Carnwarth LJ summarised the law on alternative sites as potential material considerations in planning decisions at [14] to [37]. That summary was endorsed by Sales LJ in *R (Luton BC) v. Central Bedfordshire Council* [2015] EWCA Civ 537, who summarised the principles at [71]:

> "(i) There is an important distinction between (1) cases where a possible alternative site is *potentially* relevant so that a decision-maker does not err in law if he has regard to it and (2) cases where an alternative is *necessarily* relevant so that he errs in law by failing to have regard to it (paragraph 17).
>
> (ii) Following [*CREEDNZ v. Governor-General* [1981] 1 NZLR 172], [*Re Findlay* [1985] AC 319] and *R (National Association of Health Stores) v. Secretary of State for Health* [2005] EWCA Civ 154, in the second category of cases the issue depends upon *statutory construction* or whether it can be shown that the decision-maker acted *irrationally* by failing to take alternative sites into account. As to the first point, it is necessary to show that planning legislation either expressly requires alternative sites to be taken into account, or impliedly does so because that is "so obviously material" to a decision on a particular project that a failure to consider alternative sites

> directly would not accord with the intention of the legislation (paragraphs 25-28).
>
> (iii) Planning legislation does not expressly require alternative sites to be taken into account (paragraph 36), but a legal obligation to consider alternatives may arise from the requirements of national or local policy (paragraph 37);
>
> (iv) Otherwise the matter is one for the planning judgment of the decision-maker (paragraph 36). In assessing whether it was irrational for the decision-maker not to have had regard to alternative sites, a relevant factor is whether alternative sites have been identified before the decision-maker (paragraphs 21, 22 and 35 and see *Secretary of State v Edwards* [1995] 68 P. & C.R. 607 where that factor was treated as having "crucial" importance in the circumstances of that case)."

40. The Claimant relied in particular upon *R (Chelmsford Car and Commercial Limited) v. Chelmsford Borough Council* [2005] EWHC 1705 (Admin), [2006] 2 P. & C.R. 12 in which two competing applications for planning permission were made to construct 12 affordable dwellings. Exceptionally, the local plan provided for this development outside the existing settlement boundary to meet an identified local need. Since it was common ground that only one of the two applications could be granted, under the terms of the local plan, Sullivan J. held that "*[c]ommon sense would suggest that in these particular circumstances a comparison between the merits of the two sites would inevitably be a material consideration*" (at [14]). He concluded that the local planning authority had been inconsistent, unreasonable and unfair in only partially considering the planning factors and merits of the rival application when granting planning permission.

41. Applying these principles to this case, I accept the Council's submission that it was not under a legal duty to consider the merits of the alternative Westgate scheme site when deciding the Queensgate scheme application.

42. First, there was no statutory requirement, either express or implied, to do so.

43. Second, I accept the Council's submission that the Queensgate scheme was acceptable in planning terms and it did not conflict with the development plan.

44. The Core Strategy, adopted in February 2011, supported improvement in the quality of the commercial, retail, cultural, leisure and recreational facilities in the city centre, an area which included both schemes. It identified the North Westgate area as one of a number of areas where opportunities existed to improve the offer of the city centre, with potential for residential, employment, retail, leisure, open spaces and other forms of development (paragraph 5.9.6). Policy CS4 supported retail expansion in the city centre, especially in the North Westgate area. At paragraph 6.12.6, the Core Strategy stated:

> "The overall spatial strategy proposes the intensification and regeneration of the city centre with the provision of an additional 4,300 homes. This offers an ideal opportunity to help

> improve the range of facilities and attractions and the image of the city. This is already beginning to happen with the proposed mixed-use development of the opportunity areas, particularly the North Westgate development which will focus on new retail provision but will also include housing and leisure, with the possible development of a cinema. The CCAAP will provide more detail on the location and type of culture, leisure and tourism facilities proposed for the city centre."

45. Policy CS18 encouraged the development of new cultural, leisure and tourism facilities, giving priority to areas identified for regeneration, with a particular focus on the provision of new facilities in the city centre as part of the overall policy for its regeneration.

46. The City Centre Plan, adopted in December 2014, made more detailed proposals for the development of the city centre. It recognised a need for the city centre to improve its "cultural offer" including a "centrally located cinema" to improve the evening economy.

47. It identified the City Centre Core Policy Area as the heart of the city, which included both the Queensgate shopping centre and the North Westgate Opportunity Area, among other localities. Under the heading "*Description of the Area*", paragraph 5.2.7 proposed the North Westgate Opportunity Area for "*redevelopment for a mix of uses, including retail, leisure, community and residential*". Paragraph 5.2.8 described the area as "*an important transition between the central commercial core and the inner city residential area to the north, which is characterised by relatively high levels of deprivation and inequality*"; stressed that the new development should link the two communities; and said that the Council would "*use its compulsory purchase powers where necessary for land assembly to ensure the optimum redevelopment solution*".

48. Under the heading "*Vision for the Area*", paragraph 5.2.11 provided for "*new retail and leisure provision, particularly further improvements to the Queensgate shopping centre and the North Westgate Opportunity Area*". Paragraph 5.2.13 went on to say:

> "Elsewhere, there will be more incremental new development, including residential, retail, cafes, bars and restaurants, combined with high quality public spaces. The evening economy will be diversified, for example through provision of a new cinema, to help create a a more lively and attractive environment where people want to visit, work and live …."

49. Policy CC3 provided:

> "Within the North Westgate Opportunity Area … planning permission will be granted for comprehensive mixed-use redevelopment including retail, housing, office and leisure uses, which is well integrated with the existing retail area…Individual proposals which would prejudice the comprehensive redevelopment of this Opportunity Area will not be permitted."

50. Policy CC3 went on to make provision for the Northminster Opportunity Area and the market.

51. It then stated:

> "Elsewhere in the City Core Policy Area, the city council will expect and support, in principle, proposals that would help to deliver the following:
>
> - a net increase in dwellings …
> - improved connectivity for pedestrians and cyclists …
> - mixed-use development …
> - development which encourages trips into the city centre for shopping, leisure (including a cinema), social and cultural purposes;
> - additional high quality office space; and
> - the conservation and restoration of historic shop fronts."

52. In my view, on a proper interpretation of the policies, a city centre cinema was proposed, but not in any specific part of the City Core Policy Area. Thus, proposals for a cinema in the Queensgate shopping centre or the North Westgate Opportunity Area or another locality within the City Core Policy Area would all have been consistent with the local plan. Moreover, whilst "leisure uses" were proposed for the North Westgate Opportunity Area, these could cover a broad range of activities, not just a cinema.

53. Whilst the local plan did identify the North Westgate Opportunity Area as an underused area in need of regeneration in the public interest, it did not provide that, in consequence, development proposals in the North Westgate Opportunity Area should be prioritised ahead of development proposals for other parts of the City Core Policy Area, to ensure that they were not jeopardised by competition. The policy could have been drafted so as to achieve that aim but in fact it did not include any such provision. Finally, in my view, the policy statement that the Council was willing to use its compulsory purchase powers indicated its intention to overcome potential difficulties with land assembly across a large area in multiple ownership. Whilst it was a sign of its commitment to the North Westgate Opportunity Area, it did not prioritise it ahead of other development.

54. Thirdly, unlike the *Chelmsford* case, this was not a case where, under the terms of the development plan, only one of two rival applications could succeed. Here, planning policies did not mean that any application for a second cinema would be refused as being contrary to the development plan. Indeed, both applications for city centre cinemas were granted by the Council. The fact that two cinemas, each promoted by competing commercial developers, would be unlikely to be commercially viable was not sufficient to bring the Claimant within the exceptional category exemplified by the *Chelmsford* case.

55. Finally, I am unable to accept the Claimant's submission that the competition which the Queensgate scheme represented to the Westgate scheme, and thus the potential threat to the current plans for the regeneration of the North Westgate area, could be properly characterised as "planning harm" of the type which the court in *Trusthouse Forte* and *Mount Cook* envisaged would trigger a requirement to consider an alternative site. The Queensgate scheme was, of itself, in accordance with planning policy and had no planning disadvantages; and the North Westgate Opportunity Area had not been prioritised in the development plan. In my view, the Claimant's submission would be an unjustifiable extension of the current law.

56. Although the Council was not under a legal duty to have regard to the alternative site, I consider that it was entitled to do so, in the exercise of its planning judgment, because of the importance of the Westgate scheme for the regeneration of the North Westgate Opportunity Area, and the risk that the Westgate scheme would founder if the Queensgate scheme was approved. Applying the analysis in *Derbyshire Dales*, endorsed in *Luton BC*, this was a case in which a possible alternative site was potentially relevant, so the Council did not err in law by having regard to it. Although the planning officer in his report did not initially advise members to have regard to it, by the date of the meeting both he and Ms Lea, senior lawyer, advised members at the meeting to treat it as a material consideration, which could in principle allow them to refuse planning permission for the Queensgate scheme, despite its compliance with the development plan. The Committee accepted that advice and decided to treat it as a material consideration. I therefore turn to consider the Claimant's grounds on that basis.

Claimant's grounds 1, 2, 4, 5 and 6

57. The Claimant's grounds 1, 2, 4, 5 and 6 alleged that the manner in which the Council considered the Westgate scheme was flawed in law, and it is convenient to consider these grounds together, to avoid repetition.

58. Under ground 1, the Claimant submitted that it was unfair or *Wednesbury* unreasonable for the Council to determine the applications sequentially, and to take the Queensgate scheme application first, since it prevented the Council from undertaking a proper and effective comparison between the two sites. In my view, the members were correctly advised, in accordance with the law and standard practice, to determine each application in turn, and to do so in accordance with the development plan, unless material considerations indicated otherwise. As I have indicated above, this was not an exceptional case, such as *Chelmsford*, in which the Council was required to depart from normal practice by considering the two applications together. In my judgment, the Council adopted a fair and reasonable approach by determining the Queensgate scheme first since that application was made first. By placing both applications before the Committee at the same meeting, and providing members with detailed information about both schemes in the planning officer's reports, the Council ensured that members were in a position to make an informed planning judgment. Members had the added advantage of receiving written representations on behalf of the promoters of the Westgate scheme (annexed to the officer's report) and hearing oral representations from counsel for the Claimant, Mr Phillpot, as well as from Invesco. It is apparent from the transcript of the debate at the meeting that members, with their extensive local knowledge, were well-appraised of the controversial issues

surrounding the proposed development of the city centre, and indeed had been lobbied prior to the meeting by advocates of the Westgate scheme. In my view, they had sufficient information before them upon which to make a decision.

59. Under grounds 2, 4, 5 and 6, the Claimant alleged that the Council failed to ask itself the right questions and failed to take into account all relevant considerations. In my view, the Claimant failed to make good these allegations. The advice given by the officers was comprehensive. The Claimant could not properly rely upon conflicting comments made by individual members during the debate, since they could not be indicative of the basis upon which the Committee eventually made its collective decision: see *R (Tesco Stores) v. Forest of Dean* [2014] EWHC 3348 (Admin), at [23]. The minutes of the meeting did not lend support to the Claimant's criticisms. It seemed to me that the Claimant's starting point was that the decision to grant planning permission for the Queensgate scheme was inexplicable, and therefore the Claimant assumed that the Council must have erred in its decision-making process, without being able to point to any proof that such errors were in fact made. The Claimant criticised the Council for not providing sufficiently transparent reasoning to enable the Claimant to target its challenge more accurately, but as I have found under Ground 7, the Council was not required to do so.

60. I agree with the IP and the Defendant that the Council's decision was neither inexplicable nor irrational. Whilst both schemes had merit, and were in accordance with the development plan, there were a number of factors pointing in favour of the grant of planning permission for the Queensgate scheme:

    i) The redevelopment of the Queensgate shopping centre was considered important for the regeneration of the city centre.

    ii) The redevelopment could begin in the near future because Invesco had funding, the pre-lets had been identified, including Odeon as its cinema operator, and the John Lewis department store was supportive.

    iii) John Lewis' commercial requirements meant that there was a narrow window of opportunity within which the redevelopment could take place.

    iv) The Queensgate scheme could generate footfall within the city centre and thus improve the prospects of regeneration of the North Westgate Opportunity Area.

61. Moreover, there was uncertainty as to whether the Westgate scheme would in fact ever be delivered. The site had been allocated for redevelopment as long ago as 1971. This was an application for outline planning permission only. The Claimant did not have an interest in all of the land required to deliver the scheme. Officers advised in their 'Briefing Update' that the evidence submitted by the Claimant to justify a lack of affordable housing demonstrated that "*the minimum level of return for the proposed scheme would not be achieved based on the submitted details*".

62. In my judgment, the Claimant's challenges were, in reality, an impermissible attack on the merits of the planning judgments which the Council made, and the weight which it accorded to the Westgate scheme. These were matters which were entirely

within the province of the planning authority, and the court ought not to interfere with the assessments which the Council made on the material before it.

Ground 3: burden of proof

63. During the meeting, in response to a point made by Councillor Lane, Mr Harding, Head of Development and Construction, said:

> "It's not been proven beyond doubt that this Queensgate scheme will certainly stymie the North Westgate scheme and as I think has already been mentioned, even if planning permission were to be granted for the North Westgate scheme we cannot guarantee its implementation."

64. The Claimant submitted, on the basis of this statement, that the officer erroneously advised members to apply a test of "proven beyond doubt" when determining questions of fact which were relevant to the decision, relying upon *Halite Energy Group Ltd v. Secretary of State for Energy & Climate Change* [2014] EWHC 17 (Admin).

65. Mr Corner QC referred me to the observations of Sullivan J. in *Kings Cross Railway Lands Group v. London Borough of Camden* [2007] EWHC 1515 (Admin), at [65], where he said:

> "[i]n deciding whether any infelicity in this one piece of advice is sufficient to negate all of the other entirely correct advice, it is necessary to bear in mind not only the observations of Lord Justice Judge in Oxton Farms, which apply with even greater force to advice, whether legal or otherwise, which is given "off the cuff" during the course of a meeting but also the dicta of Lord Justice Pickford in *R v London County Council, ex parte London and Provincial Electric Theatres Limited* [1915] 2 KB 466, at 490(g) to 491(a)…"

66. In my judgment, the Claimant was reading too much into Mr Harding's somewhat careless off-the-cuff remark. I cannot accept that Mr Harding was advising the members to adopt a criminal standard of proof. This would be a surprising mistake for an experienced planning officer to make and there is nothing to support the Claimant's allegation in the officer's reports or in the other oral advice given at the meeting. On my reading of the transcript, Mr Harding was not purporting to advise the members as to the relevant legal test; rather he was providing his view of the likelihood of the Queensgate scheme jeopardising the Westgate scheme and the likelihood of the Westgate scheme proceeding, even in the absence of the Queensgate scheme.

Ground 7: Reasons

67. The Claimant submitted that the reasons given by the Council for the grant of planning permission for the Queensgate scheme were inadequate, because they did

not enable the Claimant to understand what conclusions were reached on the principal controversial issue, namely, the prejudice which would be caused to the Westgate scheme. In particular, the Claimant complained that the reasons for the decision did not disclose:

i) whether Hawksworth's evidence and the advice in the officer's report as to likely prejudice to the Westgate scheme were rejected or not;

ii) if that evidence and advice was rejected, the basis for rejecting it; and

iii) if that evidence and advice was not rejected, whether the Committee concluded that the loss of the Westgate scheme was outweighed by the merits and benefits associated with the Queensgate scheme, and if so, on what basis that conclusion had been reached.

68. The Defendant and IP submitted that there was no duty to give reasons in this case. In the alternative, the reasons in the minutes were adequate.

69. A local planning authority's duty to give reasons for its decisions on applications for planning permission is set out in article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) ("the 2015 Order"), which provides:

> "35. Written notice of decision or determination relating to a planning application
>
> (1) When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters—
>
> (a) where planning permission is granted subject to conditions, the notice must state clearly and precisely their full reasons—
>
> (i) for each condition imposed; and
>
> (ii) in the case of each pre-commencement condition, for the condition being a pre-commencement condition;
>
> (b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision;
>
> (c) where—
>
> (i) the Secretary of State has given a direction restricting the grant of planning permission for the development for which application is made; or
>
> (ii) the Secretary of State or a government department has expressed the view that the permission should not be granted

(either wholly or in part) or should be granted subject to conditions,

the notice must give details of the direction or of the view expressed.

(2) Where paragraph (1)(a) or (b) applies, the notice must also include a statement explaining, whether, and if so how, in dealing with the application, the local planning authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application.

(3) Where paragraph (1)(a), (b) or (c) applies, the notice must be accompanied by a notification in the terms (or substantially in the terms) set out in Schedule 5.

(4) Where—

(a) an applicant for planning permission has submitted an environmental statement; and

(b) the local planning authority have decided (having taken environmental information into consideration) to grant permission (whether unconditionally or subject to conditions),

the notice given to the applicant in accordance with article 34(1) must include a statement that environmental information has been taken into consideration by the authority.

(5) In paragraph (1)(a)(ii) *"pre-commencement condition"* means a condition imposed on the grant of a planning permission which must be complied with—

(a) before any building or other operation comprised in the development is begun; or

(b) where the development consists of a material change in the use of any buildings or other land, before the change of use is begun."

70. The formal 'Notice of Planning Permission' issued by the Council on 16 October 2015 in respect of the Queensgate application met the requirements in article 35(1)(a) to "*state clearly and precisely their full reasons for each condition imposed and in the case of each pre-commencement condition, for the condition being a pre-commencement condition*". Article 35 does not contain any statutory duty to give the reasons for granting planning permission, and accordingly the Council did not do so.

71. However, the Claimant submitted that since the Council volunteered reasons in the minutes of the Committee's meeting, their adequacy fell to be tested by the same criteria as if they had been obligatory, applying the well-established principle in *R v.*

Criminal Injuries Compensation Board, ex parte Moore [1999] 2 All ER 90, per Sedley J. at 95h.

72. I am not convinced that the principle in *ex parte Moore* applies to the circumstances of this case because, unlike the oral ruling given by the Criminal Injuries Compensation Board at the end of its hearing, the Committee's minutes were not volunteered as its formal reasons for the decision.

73. It is well-established that it is the written notice to the applicant which constitutes the grant of planning permission, from which time to appeal runs, not the decision of the committee or council recorded in the minutes. In this case, the Council's 'Notice of Planning Permission' did not volunteer reasons for the grant of planning permission.

74. The Committee was obliged to record minutes of proceedings at its meetings, pursuant to paragraph 41 of schedule 12 to the Local Government Act 1972, and present them for approval and signature at the next meeting of the committee. Typically, the recording of minutes would also be provided for in a Council's Standing Orders. Those minutes had to be made available for inspection by the public pursuant to section 100(C) Local Government Act 1972. In this case, the minutes of the meeting of 29 September 2015 were approved at the meeting of 11 November 2015, nearly a month after the decision notice, with its reasons, was issued. In my view, the Committee's purpose in drawing up the minutes was to discharge its statutory obligation under the Local Government Act 1972 to provide a record of the proceedings at its meeting, not to give its reasons for its decision pursuant to the Town and Country Planning Act 1990 and the 2015 Order.

75. If the Claimant's analysis was correct, the mere act of recording some reasons for a decision in the minutes of the meeting would trigger an obligation on local planning authorities to provide legally adequate reasons in every case where planning permission was granted, even though the Secretary of State has made an order, laid before Parliament, which does not require local planning authorities to give reasons for the grant of planning permission. This would be surprising. As recently as 2013, the Secretary of State, pursuant to his duties under the Town and Country Planning Act 1990, decided it was appropriate to remove the duty to give "summary reasons" for the grant of planning permission (Town and Country Planning (Development Management and Procedure)(England)(Amendment) Order 2013 (SI 2013/1238)).

76. However, even in cases where there is no statutory duty to give reasons, and a public body has not volunteered reasons, at common law a duty to give reasons will, in some circumstances, be implied in order to meet the requirements of fairness.

77. Prior to the introduction of a statutory duty to give reasons in 2003, the Court of Appeal held in *R v. Aylesbury Vale District Council* (1996) 76 P. & C.R. 207 that there was no general duty to give reasons for the grant of planning permission. Although in principle there could be a situation in which reasons would be required, in the instant case, it was obvious why the planning committee had reversed its earlier decision. After making a site visit and re-considering the advice of the planning officer in favour of the proposal, it must have reached a different judgment, which it was entitled to do. Pill LJ said:

> "I am not prepared, in the present statutory context, to find the existence of a general duty to give reasons for the grant of planning permission. Such an obligation is conspicuously absent from the statute. This contrasts with the obligation upon a Planning Inspector to make a statement of reasons for a decision he is empowered to make following a planning appeal (1990 Act, 6th Schedule, para 8). I would not extend that obligation by analogy to cover the situation where no duty is imposed in the statute. Moreover, just as the obligation to give reasons for a refusal is compatible with the right of appeal in that a decision whether to appeal may be based upon the perceived weight of reasons for refusal, so the absence of a right of appeal against a grant is compatible with the absence of an obligation to give reasons for the grant. A local planning authority need not under the statute give reasons for granting permission even when the grant is made against the advice of its planning advisers…On Mr Singh's terms, that would appear to be a worse situation than the one he now complains of, but Parliament must have been aware, when enacting the present scheme without imposing the obligation, of the possibility of such grants. Schiemann J. in *R v Poole Borough Council ex parte Beebee* [1991] 2 PLR 27, having considered the statutory scheme, stated obiter, at page 31G, that "all this may well point to a desire on Parliament's part not to have the implementation of policy decisions held up by legal challenge on the basis of defective reasoning". Be that as it may, to quote Schiemann J.'s comment upon his own statement, I can find no general obligation upon local planning authorities to give reasons for the grant of planning permission."

78. In *R v. Mendip DC ex parte Fabre* (2000) 80 P. & C.R. 500, a challenge was made to a grant of planning permission on the ground that it was not clear why the members had reversed their previous decision. Sullivan J. held at 510:

> "I accept that, whilst there is no general duty to give reasons for the grant of planning permission, there may be circumstances where such a duty will arise. An obvious example of such a circumstance is, in principle, where a local planning authority has changed its mind and decided to grant planning permission for a development which it has previously refused: see *ex parte Chaplin* and *ex parte Beckham*, to which I have referred above. I say "in principle" because it may be plain from all the surrounding circumstances why the council has changed its mind, as was the case in *ex parte Chaplin* (per Pill LJ at page 53). There may be cases where reasons should be set out in a minute. *Ex parte Beckham* was such a case on its facts. Equally, there may be cases where that would be unnecessary in the light of the factual background. I am satisfied that this case falls into the latter category….

> ….If there has been an earlier refusal, as recommended by a planning officer, followed by a grant of planning permission, contrary to the planning officer's consistent recommendation, some explanation will be required, since by definition it will not be possible to find it in the officer's report. So it will be necessary to search elsewhere for the reasons why the members decided to change their minds. In such circumstances, it might well be sensible at the very least to record the members' reasons in the form of a minute…"

79. In *R (Oakley) v. South Cambridgeshire District Council* [2016] EWHC 570 (Admin), Jay J. held that, despite the removal in 2013 of the statutory duty to give reasons for a grant of planning permission, it remained open to judges to intervene to imply a duty to give reasons, if fairness so required. In considering when the duty might arise, he cited the well-known principles in *Lloyd v. McMahon* [1987] AC 625, per Lord Bridge at 702-3; *ex parte Doody* [2004] AC 531, per Lord Mustill at 562C-D; and *R v. HEFC ex parte Institute of Dental Surgery* [1994] 1 WLR 242, per Sedley J., at 256H. In *Oakley*, the claimant relied on the feature identified in Sedley J.'s formulation that there was "*something peculiar to the decision*" "*some form of aberration*" which triggered a reasons duty, or as Jay J. put it, "*an explanation was called for because, without it, the decision was inexplicable*" (at [36]). Jay J. held that the duty to give reasons did not arise merely because the members did not accept the recommendation of the planning officer, nor because the application was complex with multiple issues.

80. I agree with Jay J. that the court retains a residual power to imply a duty to give reasons for a grant of planning permission. In my judgment, since the 2015 Order has removed the general duty to give summary reasons, the duty will only arise exceptionally, in order to meet the requirements of fairness. Generally, the requirements of fairness will be met by public access to the material available to the decision-maker, setting out the issues, and the arguments for and against the grant of planning permission. Typically, these will comprise the application for planning permission with supporting documents, and the planning officer's report, setting out the relevant planning policies, any environmental or other planning concerns, the outcome of consultations, objections from third parties, and the officer's assessments and recommendations. These will generally suffice to demonstrate the basis upon which the application for planning permission was granted, despite objections. As Jay J. observed in Oakley, at [38], the planning committee's disagreement with the planning officer's recommendation, is not of itself evidence of some form of aberration giving rise to a duty to give reasons, though, on the particular facts of the case, it may give rise to such a duty, as Sullivan J. observed in *ex parte Fabre*.

81. In my judgment, this was not a case where, exceptionally, fairness required that the Committee was required to give reasons for its decision. The decision of the Committee was in accordance with the recommendation of the officers. The applicant for planning permission (the IP) and the main objector (the Claimant) had provided detailed material and the planning officer had prepared detailed reports. In the light of the points made in favour of the Queensgate application, the decision to grant planning permission could not be characterised as inexplicable or aberrant.

82. If, contrary to my view, the minutes of the meeting of 29 September 2015 were to be treated as voluntary reasons which had to be tested by the same criteria as if reasons

for the decision were obligatory, the parties disagreed as to the standard of reasoning which was required. The Claimant submitted that Lord Brown's classic formulation in South *Bucks District Council v Porter (No 2)* [2004] UKHL 33, [2004] 1 WLR 1953, at [36], applied. The Council and the IP relied upon the principles established in the case law during the period when there was a statutory duty to give "summary reasons" for the grant of permission, arguing that the standard imposed by the common law ought not to be any higher.

83. From 2003, Article 22(1) of the Town and Country Planning (General Development Procedure) Order 1995 (as amended) provided:

> "When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters and –
>
> (a) planning permission is granted, the notice shall include a summary of their reasons for the grant and a summary of the policies and proposals in the development plan which are relevant to the decision;
>
> (b) planning permission is granted subject to conditions, the notice shall: -
>
> (i) include a summary of their reasons for the grant together with a summary of the policies and proposals in the development plan which are relevant to the decision to grant permission; and
>
> (ii) shall state clearly and precisely their full reasons for each condition imposed, specifying all policies and proposals in the development plan which are relevant to the decision;
>
> (c) planning permission is refused, the notice shall state clearly and precisely their full reasons for the refusal, specifying all policies and proposal in the development plan which are relevant to the decision."

84. In *R (Siraj) v. Kirkless MBC* [2010] EWCA Civ 1286 the Court of Appeal dismissed a challenge to the adequacy of the "summary" reasons given upon a grant of planning permission, rejecting a submission (similar to the submission made by the Claimant in this case) that the reasons had to meet the standard required of inspectors and ministers, encapsulated in the classic formulation by Lord Brown in *South Bucks District Council v Porter (No 2)* [2004] UKHL 33; [2004] 1 WLR 1953, at [36] . In *Siraj*, Sullivan LJ, giving the judgment of the court, said:

> "13 In my judgment there is no force in these criticisms, and they are based, at least in part, on a misunderstanding of the role of the respondent's summary reasons for granting planning permission in the decision-making process. When considering the content and adequacy of summary reasons it is important to bear in mind the contrast between the requirement in

paragraphs (a) and (b) in Article 22(1) of the Town and Country Planning (General Development Procedure) Order 1995 ("the GPDO"), now repealed and re-enacted in Article 31 of the Town and Country Planning Development (Management Procedure) (England) Order 2010, which at the material time required a decision notice granting planning permission to include "a summary of [the reasons] for the grant of planning permission" and paragraph (c), which required that a decision notice refusing planning permission "shall state clearly and precisely all reasons for the refusal".

14 A local planning authority's obligation to give summary reasons when granting planning permission is not to be equated with the Secretary of State's obligation to give reasons in a decision letter when allowing or dismissing a planning appeal. I mention this because, although Mr Roe in his oral submissions before us recognised that there was indeed such a distinction between summary reasons and the reasons to be expected in a decision letter, the appellant's skeleton argument relied on the speech of Lord Brown in *South Bucks District Council v Porter (No 2)* [2004] UKHL 33; [2004] 1 WLR 1953 at paragraph 36. It is important to remember that that case was concerned with the adequacy of reasons in a Secretary of State's decision letter. Although a decision letter should not be interpreted in a vacuum, without regard for example to the arguments that were advanced before the inspector, a decision letter is intended to be a "stand-alone" document which contains a full explanation of the Secretary of State's reasons for allowing or dismissing an appeal. By their very nature a local planning authority's summary reasons for granting planning permission do not present a full account of the local planning authority's decision making process.

15 When considering the adequacy of summary reasons for a grant of planning permission, it is necessary to have regard to the surrounding circumstances. precisely because the reasons are an attempt to summarise the outcome of what has been a more extensive decision making process. For example, a fuller summary of the reasons for granting planning permission may well be necessary where the members have granted planning permission contrary to an officer's recommendation. In those circumstances, a member of the public with an interest in challenging the lawfulness of planning permission will not necessarily be able to ascertain from the officer's report whether, in granting planning permission, the members correctly interpreted the local policies and took all relevant matters into account and disregarded irrelevant matters.

16 Where on the other hand the members have followed their officers' recommendation, and there is no indication that they

have disagreed with the reasoning in the report which lead to that recommendation, then a relatively brief summary of reasons for the grant of planning permission may well be adequate. Mr Roe referred us to the observations of Collins J in paragraph 28 of his judgment in R (on the application of Midcounties Co-operative Ltd) v Forest of Dean DC [2007] EWHC 1714 (Admin). For my part, I would respectfully endorse the observations of Sir Michael Harrison in paragraphs 47 to 50 of R(Ling) (Bridlington) Limited v East Riding of Yorkshire County Council [2006] EWHC 1604 (Admin)."

85. In *R (on the application of Telford Trustee No. 1 Limited and Anor) v. Telford and Wrekin Council* [2011] EWCA Civ 896, Richards LJ, giving the judgment of the court, reviewed the authorities, endorsing the passages in the judgment of Sullivan LJ in *Siraj* set out above, and said:

> "22 The passage in the judgment of Sir Michael Harrison *in R (Ling)(Bridlington) Limited v East Riding of Yorkshire County Council* [2006] EWHC 1604 (Admin) which Sullivan LJ expressly endorsed at [16] is to a considerable extent repetitious of points included in Sullivan LJ's own judgment, but it is nonetheless helpful to set it out:
>
> > "47. In considering the adequacy of reasons for the grant of permission there are a number of factors which seem to me to be relevant. The first is the difference in the language of the statutory requirement relating to reasons for the grant of planning permission compared to that relating to the reasons for refusal of planning permission. In the case of a refusal, the notice has to state clearly and precisely the full reasons for the refusal, whereas in the case of a grant the notice only has to include a summary of the reasons for the grant. The difference is stark and significant. It is for that reason that I reject the claimants' contention that the standard of reasons for a grant of permission should be the same as the standard of reasons for the refusal of permission.
> >
> > 48. Secondly, the statutory language requires a summary of the reasons for the grant of permission. It does not require a summary of the reasons for rejecting objections to the grant of permission.
> >
> > 49. Thirdly, a summary of reasons does not require a summary of reasons for reasons. In other words, it can be shortly stated in appropriate cases.
> >
> > 50. Fourthly, the adequacy of reasons for the grant of permission will depend on the circumstances of each case. The officer's report to committee will be a relevant consideration. If the officer's report recommended refusal and the members decided to grant permission, a fuller

summary of reasons would be appropriate than would be the case where members had simply followed the officer's recommendation. In the latter case, a short summary may well be appropriate."

23 In *R (Tratt) v Horsham District Council [2007] EWHC 1485 (Admin)*, at [25]-[26], and in *R (Midcounties Co-operative Ltd) v Forest of Dean District Council* [2007] EWC 1714 (Admin), at [28], Collins J expressed some difficulty with the first two of those factors. In relation to the second factor, he said at [26] of Tratt that reasons in relation to planning decisions must normally deal with the main issues that have been raised; the officer's report in that case (which concerned a mobile phone mast) indicated that the main issues were need, siting and possible health concerns; and it seemed to Collins J that "the reasons ought at least to have stated, albeit only in a sentence in each case, why those issues have been decided in favour of the Applicants". In similar vein, at [28] of the Forest of Dean case, he said that he did not accept Sir Michael's second factor: "[i]f there have been objections which raise one of the main issues in considering the application, the reasons for rejecting them will equally be reasons for granting permission". Sullivan LJ's judgment in Siraj makes clear, however, that regard is to be had to the factors set out by Sir Michael rather than to the conflicting views expressed by Collins J.

24 That point is of potential importance for the present case, since Mr Katkowski contended, as explained in greater detail below, that the Trustees were entitled to be told in the summary reasons not just *that* the proposal had been assessed to be in accordance with PPS4, but *why* the proposal had been found to be in accordance with the relevant policies in PPS4. His submissions placed substantial weight on the passage in Tratt where Collins J said that the reasons ought to state *why* the main issues have been decided in favour of the applicant for planning permission. He also relied on a passage in the judgment of Ouseley J in *R (Midcounties Co-operative Ltd) v Wyre Forest District Council* [2009] EWHC 964 (Admin), at [190], where the judge said that the fundamental test was: "can an interested person see why planning permission is granted and what conclusion was reached *on the principal issues*?" (emphasis added). It seems to me, however, that those submissions place more weight on the passages in Tratt and the Wyre Forest case than they can properly bear in the light of the principles set out and approved in Siraj. One must not lose sight of the fact that the statutory requirement is to give a summary of the reasons for the grant of planning permission, not a summary of the reasons for rejecting an objector's representations (even on a principal issue) or a summary of reasons for reasons."

86. These judgments have to be read with caution as they were considering an express statutory requirement to give "summary reasons", which is not applicable here.

87. I agree with the submission made by the Defendant and the IP that Lord Brown's formulation in *South Bucks*, which applies where a minister or inspector is giving a decision on appeal, is not the standard to be applied to a local planning authority's decision to grant planning permission. Planning appeals are an adversarial procedure, akin to court or tribunal proceedings, in which opposing parties make competing submissions, and the decision-maker adjudicates upon them, giving reasons for his conclusions on the "*principal important controversial issues*", limited to "*the main issues in dispute*" not "*every material consideration*" (per Lord Brown in *South Bucks* at [36]). In contrast, a local planning authority is an administrative body, determining an individual application for planning permission. Its reasons ought to state why planning permission was granted, usually by reference to the relevant planning policies. But it is not conducting a formal adjudication in a dispute between the applicant for planning permission and objectors, and so it is not required to give reasons for rejecting the representations made by those who object to the grant of planning permission.

88. Moreover, as Lady Hale said in *Morge v. Hampshire County Council* [2011] UKSC 2, [2011] 1 WLR 268, at [36], "*[d]emocratically elected bodies go about their decision-making in a different way from courts. They have professional advisers who investigate and report to them*...". They are politicians from all walks of life, not trained judges or civil servants. As Sullivan LJ said in *Siraj*, at [14], whereas a minister's decision on appeal is intended to be a "stand-alone" document which contains a full explanation of the Secretary of State's reasons for allowing or dismissing an appeal, a local planning authority's reasons for granting planning permission by their very nature do not present a full account of the local planning authority's decision making process, in which the planning officer's report is a crucial part. It is expected that the report will form the background to the reasons. I also consider it would be unduly onerous to impose a duty to give detailed reasons, as proposed by the Claimant, given the volume of applications which have to be processed.

89. For these reasons, I consider that where a local authority planning committee gives reasons for a grant of planning permission it need only summarise the main reasons for the decision and can do so briefly. The committee is not required to set out each step in its reasoning, nor indicate which factual matters were accepted or rejected. Indeed, as the committee will comprise a number of councillors who may well have reached their shared conclusion by different routes, it would be impractical and undesirable for the committee to set out its step-by-step reasoning. In *R (on the application of Tesco Stores Ltd) v. Forest of Dean DC* [2014] EWHC 3348 (Admin) Patterson J. held at [23]:

> "When a challenge is based on comments made by a decision maker in a planning committee meeting it is necessary to bear in mind the judgment in *R v London Borough of Camden Ex parte Kings Cross Railway Lands Group* [2007] EWHC 1515 at [63] and the fact that the committee was taking a collective decision so that it was the general tenor of the discussion that was important rather than the individual views expressed by

> committee members let alone the precise terminology used: *R v Exeter City Council ex p Thomas* [1990] 3 WLR 100. Further, in dealing with such a situation there are recognised difficulties in establishing the reasoning of a corporate body that acts by resolution. As Schiemann J said in *R v Poole Borough Council ex p Beebee and others* [1991] 2 PLR 27:
>
> > "All one knows is that at the second that the resolution was passed the majority were prepared to vote for it. Even in the case of an individual who expressly gave his reasons in council half an hour before, he may well have changed them because of what was said subsequently in debate.""

90. I do not consider that this causes any unfairness since those who have a particular interest in the outcome will already be well aware of the competing arguments and recommendations. An unsuccessful objector can safely assume that his objections were either not accepted or were not considered of sufficient weight to outweigh the case in favour of the application.

91. Applying these criteria, I consider that the minutes of the meeting on 29 September 2015 met the required standard and were adequate reasons for the Committee's decision to grant planning permission. They were lengthy: approximately 3 pages of A4. The minutes set out a full and fair summary of what was said at the meeting, by councillors, officers, the applicant and objectors, which I have been able to check against the transcript. The section headed "Reasons for the decision" summarised the conclusions on the various planning considerations, repeating the conclusions in the planning officer's report. It stated that "*the proposal was acceptable having been assessed in the light of all material considerations*". The material consideration of the impact of the proposal on the Westgate scheme had been identified earlier in the minutes, as part of the legal advice given orally at the meeting. The Senior Lawyer advised "*it was for the Committee [to] determine how much weight was placed on this*". The potential nature of the impact was plain from the summary of the representations made by the objectors, some councillors and the local Member of Parliament. The opposing arguments by the IP were also clearly summarised, namely, that the application would be beneficial as it would increase footfall and spending in the city centre, including North Westgate. In my judgment, it was clear that the majority of the Committee concluded that the Queensgate application was acceptable in planning terms, and it did not accept the Claimant's representations. In my judgment, the Committee was not required to specify how much weight, if any, it gave to the impact on the Westgate scheme and the North Westgate area. Nor was it required to set out its detailed findings, either collectively or by reference to individual councillors, on the evidence presented by the Claimant or on the advice given by the planning officer.

92. The Claimant submitted that it was substantially prejudiced because it was unable to understand why the Council granted permission for the Queensgate scheme in the light of its objections. It did not know on what basis to present its legal challenge. The Defendant had failed to respond adequately to the Claimant's requests for clarification in the pre-action correspondence. I disagree. The Claimant has obtained the transcript of the meeting which, together with the substantial amount of documentary material, and the minutes, provides a sufficient explanation for the

Claimant as to why the majority of the Committee followed the advice of its officers and granted permission for the scheme.

Conclusions

93. I grant the Claimant permission to apply for judicial review. However, for the reasons set out above, the Claimant has failed to establish that the Council's decision was unlawful, and so its claim for judicial review is dismissed.