Neutral Citation Number: [2016] EWHC 3303 (Admin)

Case No: CO/3470/2016

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 December 2016

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN
on the application of

(1) FRIENDS OF THE EARTH LIMITED **(2) FRACK FREE RYEDALE (BY DAVID DAVIS AND JACKIE CRAY)**	**Claimants**
- and -	
NORTH YORKSHIRE COUNTY COUNCIL	**Defendant**
THIRD ENERGY UK GAS LIMITED	**Interested Party**

- -
- -

David Wolfe QC (instructed by **Leigh Day**) for the **Claimants**
Sasha White QC and Gwion Lewis (instructed by **Legal & Democratic Services**) for the **Defendant**
Nathalie Lieven QC (instructed by **Eversheds LLP**) for the **Interested Party**

Hearing dates: 22 November and 23 November 2016

- -

Approved Judgment

Mrs Justice Lang:

1. In this rolled-up hearing of a claim for judicial review, the Claimants seek permission to challenge the decision of North Yorkshire County Council ("the Council") made on 27 May 2016 to grant planning permission to Third Energy UK Gas Limited ("Third Energy") to carry out hydraulic fracturing, or 'fracking' on a site known as the "KMA well site" at Alma Farm, Kirby Misperton, North Yorkshire ("the Site").

2. Hydraulic fracturing is a technique used to recover gas from shale rock. After drilling down into the earth, a mixture of water, sand and chemicals is injected into the rock at high pressure, allowing the gas to flow out to the surface. The term 'fracking' refers to the fracturing of the rock by this high-pressure mixture.

3. The First Claimant is an environmental campaigning organisation. The Second Claimant, Frack Free Ryedale ("FFR"), is an unincorporated association comprising of more than two thousand local residents concerned about proposals for fracking in their community. FFR is represented in these proceedings by leading members David Davis and Jackie Cray, who are local residents. Both Claimants made oral and written representations objecting to the grant of planning permission.

4. The UK's oil and gas regulator, the Oil and Gas Authority ("OGA"), has granted petroleum exploration and development licences to Third Energy on land in the Ryedale district of North Yorkshire. Within this area, Third Energy currently has operational control of six sites where one or more gas wells have been drilled. One of these six sites is the KMA well site, which was constructed in the mid 1980's.

5. There is a pipeline network which links all these wells to a gas-fired electricity generating station in Knapton (hereinafter "Knapton"), which opened in 1995. It is capable of supplying up to 41.5MW of electricity, enough to power up to 40,000 homes, by means of burning gas through a jet engine which in turn produces electricity which is then supplied to the National Grid. This process generates greenhouse gas emissions, notably carbon dioxide. Because of the dangerous effects of greenhouse gas emissions, which contribute to global warming, Knapton is operated pursuant to an environmental permit regulating emissions generally, and also a greenhouse gas emissions permit which specifically caps emissions of carbon dioxide, both of which have been granted by the Environment Agency.

6. The Council is the local Minerals Planning Authority for the area. On 9 January 2013, the Council granted planning permission for an extension to the KMA well site to drill and test up to two potential production boreholes. In the summer of 2013, Third Energy sunk the well in the extended area, known as KM8.

7. On 25 November 2014, Third Energy announced plans to move beyond its exploration of the Site to the production stage of releasing the gas discovered. As the proposed development required environmental assessment under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("the EIA Regulations 2011"), Third Energy applied to the Council for a scoping opinion.

8. Following consultation, the Council issued its scoping opinion on 9 April 2015.

9. On 29 July 2015, Third Energy applied to the Council for planning permission "*to hydraulically stimulate and test the various geological formations previously identified during the 2013 KM8 drilling operation, followed by the production of gas from one or more of these formations into the existing production facilities…*". It estimated the maximum volume of gas as between 160-1600 million cubic metres over a lifetime of approximately 9 years. A table of gas emissions, based on samples taken at different locations, was attached. The application for planning permission was accompanied by a detailed environmental statement ("the ES") based on the Council's scoping opinion.

10. The Council's Planning and Regulatory Functions Committee ("the Committee") considered the application at a two day meeting and, having resolved to grant planning permission on 23 May 2016, a decision notice granting that permission was issued on 27 May 2016.

GROUNDS FOR JUDICIAL REVIEW

11. The Claimants' grounds for judicial review were as follows:

    i) The Council unlawfully failed to take into account (as part of its consideration of the environmental impacts of the proposed development) an assessment of the material indirect/secondary/cumulative climate change impacts arising from the burning of the gas at Knapton in the production phase of the development.

    ii) The Council misdirected itself in law that it could not require Third Energy to provide a financial bond in relation to any long term environmental pollution impacts arising from the fracking.

12. In response, the Council submitted:

    i) The Council was entitled not to consider the effects of emissions generated by burning the produced gas outside the Site for which planning permission was sought. Such emissions could not be calculated. In any event, any such emissions could not exceed the levels permitted at Knapton by the Environment Agency permits.

    ii) The Council was entitled to decide not to require Third Energy to provide a financial bond, and to conclude that the financing of restoration and aftercare would instead be dealt with adequately by conditions 35 to 38 of the planning permission.

GROUND 1: ENVIRONMENTAL IMPACT ASSESSMENT

Legal framework

13. Art. 2(1) of the EIA Directive 85/337/EEC (as amended) requires Member States to adopt all measures necessary to ensure that projects likely to have a significant effect

on the environment are made subject to an assessment of their effects, before consent is given.

14. The EIA Regulations 2011 implement the EIA Directive into UK domestic law. Under reg. 3(4) of the EIA Regulations 2011, a local planning authority is prohibited from granting planning permission for EIA development, as defined, unless before doing so it has "*taken the environmental information into account and have stated that they have done so.*"

15. EIA development is defined in reg. 2(1) as "*Schedule 1 development; or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location.*"

16. It was common ground that the proposed development in this case was EIA development. Schedule 1 includes, at paragraph 14: "*Extraction of… natural gas for commercial purposes where the amount extracted exceeds… 500,000 cubic metres per day in the case of gas*". Alternatively, Schedule 2, para. 2.2(d)(i) refers to "*Deep drillings*" where the area of the works exceeds 1 hectare; and para. 2.2(e) refers to "*Surface industrial installations for the extraction of… natural gas*" where the area of the development exceeds 0.5 hectares.

17. Reg. 2(1) defines "*environmental information*" as:

> "the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development."

18. Reg. 2(1) further defines an "*environmental statement*" as a statement:

> "(a) that includes such information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
>
> (b) that includes at least the information referred to in Part 2 of Schedule 4."

Thus, the information required under Part 1 is such as is "*reasonably required*" whereas the information required under Part 2 is a mandatory minimum requirement.

19. Schedule 4 provides as follows:

> "**Information for inclusion in environmental statements**
>
> **Part 1**
>
> 1. Description of the development, including in particular:

(a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;

(b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;

(c) an estimate, by time and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.

2. An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for the choice made, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description of the likely significant effects of the development on the environment which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from:

(a) the existence of the development;

(b) the use of natural resources;

(c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

Part 2

> 1. A description of the development comprising information on the site, design and size of the development.
>
> 2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
>
> 3. The data required to identify and assess the main effects which the development is likely to have on the environment.
>
> 4. An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects.
>
> 5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part."

20. Schedule 4 gives effect to Article 5(1) and (3) of the Directive, together with Annex IV. On reading the provisions in the Directive, I consider it is clear that the Part 2 information is a sub-set of the Part 1 information; the distinction being that the Part 2 information is the minimum which must be provided, whereas the Part 1 information is such as may be reasonably required. The Directive neither expressly states nor implies that "*significant adverse effects*" and "*main effects*" under Part 2 paragraphs 2 and 3 respectively, are necessarily limited to "*direct effects*" under Part 1 paragraph 4. On my interpretation, any of the effects listed in Part 1 paragraph 4 are, in principle, capable of being "*significant adverse effects*" falling within Part 2, depending on the circumstances in the particular case. However, I consider that generally it would be a contradiction in terms for "*indirect, secondary, cumulative*" effects to amount to "*main effects*" for the purposes of Part 2, paragraph 3.

21. It is well-established that it is for the local planning authority to assess what information should be in the ES and whether the information contained therein is adequate. The local planning authority's assessment can only be challenged on public law grounds. See *R v Rochdale MBC ex p. Milne* [2001] Env. LR 416; *R v Cornwall CC, ex p. Hardy* [2001] Env. LR 25; *R (Blewett) v Derbyshire CC* [2004] Env. LR 29.

22. In *R v Cornwall CC, ex p. Hardy*, Harrison J. said at [56] to [58]:

> "56. In dealing with the submissions that I have summarised, I deal first with the issue of the legality of the decision to grant planning permission. In considering that issue, the starting point must be Regulation 3, which provides that the relevant planning authority shall not grant planning permission for an EIA development unless they have first taken the environmental information into consideration. By virtue of Regulation 2(1), environmental information includes the environmental statement which itself has to include the information referred to in Part II of Schedule 4 to the Regulations. I agree with Sullivan J. that it is for the relevant planning authority to judge the adequacy of the environmental information, subject of course to review by the courts on the normal *Wednesbury* principles, but information that is capable

> of meeting the requirements of Part II of Schedule 4 to the Regulations must be provided and considered by the planning authority before planning permission is granted.
>
> 57. Paragraphs 1 to 3 of Part II of Schedule 4 are not, it seems to me, in a logically correct sequence. Firstly, the environmental statement must contain a description of the development (paragraph 1). Secondly, it must contain the data required to identify and assess the main effects which the development is likely to have on the environment (paragraph 3). Thirdly, it must contain a description of the measures envisaged to avoid, reduce and, if possible, remedy significant adverse effects (paragraph 2). The requirement to provide the paragraph 2 information relating to the measures to be taken does not arise if, in the planning authority's view, there are no "significant adverse effects". Similarly, the requirement to provide the paragraph 3 information relating to the data does not arise if, in the planning authority's view, it is not required to identify and assess the "main effects" of the development.
>
> 58. Applying those principles to the facts of this case, if the nature conservation aspects relating to the bats, badgers and liverwort did not involve "significant adverse effects", there would be no requirement for the environmental statement to contain the measures envisaged to deal with them and no duty on the respondent to consider those measures before granting planning permission. Similarly, if those nature conservation aspects did not amount to "main effects" there would be no requirement for the environmental statement to contain the data to assess them and no duty on the respondent to consider that data before granting planning permission. It is therefore necessary to consider whether the respondent could rationally conclude that those nature conservation aspects did not amount to "significant adverse effects" or "main effects"."

23. In *R (Blewett) v Derbyshire County Council* [2003] EWHC 2775, Sullivan J. said (in a passage approved by the House of Lords in *R (Edwards) v Environment Agency* [2008] UKHL 22 at [38]):

> "32. Where there is a document purporting to be an environmental statement, the starting point must be that it is for the local planning authority to decide whether the information contained in the document is sufficient to meet the definition of an environmental statement…..
>
> 33. The local planning authority's decision is, of course, subject to review on normal Wednesbury principles: see *R v Cornwall CC, ex p. Hardy* [2001] JPL 786, per Harrison J. at para [65], applying R v Rochdale MBC, Ex p. Milne [2001] Env. LR 416 at para [106].

34. Information capable of meeting the requirements of Sch. 4 to the Regulations must be provided: see *Hardy (ibid)* and *R v Rochdale MBC Ex p. Tew* [1999] 3 PLR 74 at 95G.

…..

38. The Regulations envisage that the applicant for planning permission will produce the environmental statement. It follows that the document will contain the applicant's own assessment of the environmental impact of his proposal and the necessary mitigation measures. The Regulations recognise that the applicant's assessment of these issues may well be inaccurate, inadequate or incomplete. Hence the requirements in Regulation 13 to submit copies of the environmental statement to the Secretary of State and to any body which the local planning authority is required to consult. Members of the public will be informed by site notice and by local advertisement of the existence of the environmental statement and able to obtain or inspect a copy: see Regulation 17 of the Regulations and Article 8 of the Town and Country Planning (General Development Procedure) Order 1995.

39. This process of publicity and public consultation gives those persons who consider that the environmental statement is inaccurate or inadequate or incomplete an opportunity to point out its deficiencies. Under Regulation 3(2) the local planning authority must, before granting planning permission, consider not merely the environmental statement, but "the environmental information", which is defined by Regulation 2 as "the environmental statement, including any further information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development".

40. In the light of the environmental information the local planning authority may conclude that the environmental statement has failed to identify a particular environmental impact, or has wrongly dismissed it as unlikely, or not significant. Or the local planning authority may be persuaded that the mitigation measures proposed by the applicant are inadequate or insufficiently detailed. That does not mean that the document described as an environmental statement falls outwith the definition of an environmental statement within the Regulations so as to deprive the authority of jurisdiction to grant planning permission. The local planning authority may conclude that planning permission should be refused on the merits because the environmental statement has inadequately addressed the environmental implications of the proposed development, but that is a different matter altogether. Once the requirements of Schedule 4 are read in the context of the

> Regulations as a whole, it is plain that a local planning authority is not deprived of jurisdiction to grant planning permission merely because it concludes that an environmental statement is deficient in a number of respects.
>
> 41. Ground 1 in these proceedings is an example of the unduly legalistic approach to the requirements of Schedule 4 to the Regulations that has been adopted on behalf of claimants in a number of applications for judicial review seeking to prevent the implementation of development proposals. The Regulations should be interpreted as a whole and in a common-sense way. The requirement that "an EIA application" (as defined in the Regulations) must be accompanied by an environmental statement is not intended to obstruct such development. As Lord Hoffmann said in *R v North Yorkshire County council ex parte Brown* [2000] 1 AC 397, at page 404, the purpose is 'to ensure that planning decisions which may affect the environment are made on the basis of full information'. In an imperfect world it is an unrealistic counsel of perfection to expect that an applicant's environmental statement will always contain the "full information" about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may well be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting 'environmental information' provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations (*Tew* was an example of such a case), but they are likely to be few and far between.
>
> 42. It would be of no advantage to anyone concerned with the development process – applicants, objectors or local authorities – if environmental statements were drafted on a purely 'defensive basis', mentioning every possible scrap of environmental information just in case someone might consider it significant at a later stage. Such documents would be a hindrance, not an aid to sound decision-making by the local planning authority, since they would obscure the principal issues with a welter of detail."

Conclusions

The Scoping Opinion

24. The Claimants submitted that the terms of the Scoping Opinion required the ES to assess the environmental impacts arising from the burning of the gas at Knapton in the

production phase of the development. On my assessment of the evidence, this submission was incorrect.

25. Third Energy's EIA Scoping Request, dated 16 January 2015, stated at paragraph 2.3 that the proposed development would consist of five principal phases:

    i) Pre-Stimulation Workover

    ii) Hydraulic Fracture Stimulation

    iii) Production Test

    iv) Production

    v) Site Restoration.

26. For the production process (which was conditional on the success of the earlier phases), the KM8 well would be hooked up to the existing production equipment on site, and natural gas would be "*transferred to Knapton Generating Station via pipeline where it is used to generate electricity, which is then transferred into the national transmission system*" (paragraph 4.4).

27. In Section 5 of the Scoping Request, Third Energy identified "Air Quality" and "Greenhouse Gas Emissions" as possible environmental impacts. It set out in Tables 14 and 17 the potential for environmental impact from each of the development phases. Under the "Production" phase, for both "Air Quality" and "Greenhouse Gas Emissions" the only impact to be assessed was listed as "Fugitive emissions from the well", with a "Negligible" impact.

28. In my view, it was entirely clear from the Scoping Request that Third Energy did not consider that the EIA in respect of the production phase should include any assessment of the environmental impacts of burning gas from the KMA well site at Knapton.

29. In response, the Council prepared its Scoping Opinion, issued on 9 April 2015. The Scoping Opinion referred to the five phases of development, explaining that if production took place, the well would be hooked up to the existing production equipment at the site and it would produce gas for electricity generation at the existing Knapton Station. Also, at Phase 2 – Hydraulic Fracture Stimulation – the Opinion referred to the removal of fracking fluid to Knapton, together with gas used in testing.

30. The Scoping Opinion stated, at pp.14, 15:

> "The scoping of the project has been carried out on the basis of the information submitted by …. Third Energy UK Gas Ltd in their Scoping Request.
>
> …..
>
> The Applicant has proposed a range of assessment requirements to be included in the Supporting Statement to the Application and the Environmental Statement. It is considered

> that the Scoping set out in that letter broadly covers all the main environmental and cumulative impacts of the proposed development….. There are particular aspects which the County Council consider should be addressed in more detail. These are highlighted in the section below and take account of the responses of consultee organisations."

31. The Scoping Opinion then set out the following "comments":

> "Air Quality
>
> This impact has been proposed to be 'scoped' into the prospective Environmental Statement citing reference to the need to assess *"emissions from generators, emissions from vehicles transporting equipment, materials, personnel and waste to and from the site and also potential for fugitive emissions from the well"*. However, regard should also be had to the responses to consultation relating to matters of air quality including dust, odour and any other fugitive emissions arising from any aspect of the proposed development as well as the specific queries which have been raised; including concerns relating to radon and/or methane gas leakage, other noxious emissions, and use of chemicals in the '*fracking*' process. Particular regard should be had to the comments within the Environment Agency's consultation response dated 24th February 2015, that of Ryedale District Council and Public Health England (both received on 26th February 2015), that of the Director of Public Health at the County Council (received on 23rd February 2015) and the consultation response of Natural England dated 16th February 2015."
>
> "Climate change (including greenhouse gas emissions)
>
> This impact has been proposed to be 'scoped' into the prospective Environmental Statement citing reference to the need to assess the potential for impact from each phase of the proposed development. In particular, regard should be had to the responses to consultation relating to matters of how the proposed development is compatible with the climate change agenda and the nation's carbon reduction targets. Particular regard should be had to the comments on climate change adaption made by Natural England in its response dated 16th February 2015."

32. At the end of the table of comments, the Opinion added:

> "General comments resulting from the consultation exercise also include recommendations that every aspect of the proposed development must be assessed with regard to its potential environmental impacts including, for example, the use of the existing underground pipeline as mentioned in the Scoping

> Request documentation that those impacts should have regard to each stage of the proposed development from commencement of construction through to cessation of operations, site restoration and on-going management and monitoring in the short-, medium- and long-term. Furthermore, an outline of the main alternatives as well as an indication of the main reasons for the choice of site, taking into account the environmental effects, should be provided ….."

33. The comments on "Air Quality" did not suggest that the impact of emissions at Knapton ought to be assessed. However, the Claimants relied upon the breadth of the comments on "Climate change (including greenhouse gas emissions)", and the reference to the need for assessment at each phase of the proposed development, as support for their submission that the impact on emissions at Knapton could and should have been included in the ES. I am not satisfied that these comments were intended to refer to or include emissions at Knapton, because of the context in which they were made. The planning officer relied in particular upon the representations from Natural England, dated 16 February 2015 in relation to "Climate Change Adaptation". Those representations advised that the ES should identify how the development's effect on the natural environment would be influenced by climate change, and how ecological networks would be maintained, reflecting the principles in the "England Biodiversity Strategy" published by Defra. Natural England did not suggest, directly or indirectly, that the impact of the emissions from the burning of the gas at Knapton ought to be assessed.

34. The Opinion also referred to other responses to the consultation, under the heading "Climate Change" and in the "General Comments" paragraph, but none of these suggested that the impact of emissions from Knapton ought to be assessed either. Although both Claimants made written representations, neither referred to the emissions from burning the gas at Knapton, and the consequent impact.

35. It is particularly significant that the Environment Agency, which has responsibility for regulating Knapton, did not advise that the impact of the emissions from Knapton ought to be assessed. In its representations dated 23 February 2015, under the heading "Greenhouses Gases", it stated:

> "Greenhouse Gases
>
> We note from Section 5.5.5 that an assessment of the impacts of greenhouse gas emissions will be produced. We understand that gas from the KM8 well will be captured and sent via the existing pipeline to Knapton Generating Station and as such no flaring of gas at the site is proposed. In Table 17 the applicant has described the risk of fugitive emissions as 'negligible'."

36. Inclusion of the emissions at Knapton would have been a significant extension to the scope of the ES, as Knapton was off-site, some distance away, and governed by its own planning permission and environmental permits. I would have expected such a significant extension to be referred to expressly by the Council if it required Third Energy to assess it. In the absence of any express reference to the impact of the emissions at Knapton, either in the Scoping Request or in any of the representations

or anywhere in the Opinion, I do not consider it can be inferred that the Scoping Opinion's broadly-expressed references to examining the environmental impacts of each phase of the development also included the impact of emissions at Knapton.

The Environmental Statement

37. The Claimants submitted that the ES was defective because of the omission of any assessment of the environmental impacts of burning gas from the KMA well site at Knapton, which were either part of the direct effects of the project or part of its indirect, secondary or cumulative effects.

38. I do not consider that the Claimants' submissions were well-founded, and I accept the submissions of the Council and Third Energy on this point. In my judgment, the Council was entitled, in the exercise of its judgment, to conclude that an assessment of the environmental impacts of burning gas from the KMA well site at Knapton was not required, for the following reasons.

39. The application for planning permission did not include any development at Knapton. Knapton already had planning permission and it was already authorised by the Environment Agency to burn gas from existing well sites, thus generating potentially harmful emissions, including carbon dioxide. No increase in capacity at Knapton was sought as part of this proposal. Any gas produced from the KMA well site and piped to Knapton would be within the existing limits of the permits already conferred by the Environment Agency. Paragraph 122 of the National Planning Policy Framework ("NPPF") advises planning authorities that they should focus on whether the development is an acceptable use of land, rather than on control of processes or emissions where these are subject to approval under pollution control regimes, and it should be assumed that those regimes will operate effectively. The gas supply from KMA would be indistinguishable from the gas piped from other well sites, and so its environmental impact could not be separately quantified. The argument that the proposed development was an integral part of a more substantial project which included Knapton was rightly abandoned by the First Claimant. Applying the guidance given in *Hardy* and *Blewett*, I do not consider that the Claimants have established any defect in the ES or any error of law in the Council's reliance upon it.

40. The Claimants further submitted that, despite the representations that the environmental impacts of burning gas from the KMA well site at Knapton ought to be assessed, the Council failed to address this issue, adequately or at all, and failed to take it into account when granting planning permission.

41. I am satisfied that the Council was well aware of these issues and took them into account when resolving to grant planning permission. They were raised in the objections which were included in the detailed Officers' Report. Members were well-informed about Knapton; the carbon dioxide emissions caused by burning gas to generate electricity; and the legislative and policy imperative to combat climate change. The resolution passed on 27 May 2016 set out the Council's concluded view that the ES contained the information reasonably required to assess the environmental effects of the development.

42. I set out below the evidence and my reasoning in more detail.

43. Third Energy submitted its ES, together with the application for planning permission, on 29 July 2015. It set out the five phases of the proposed development. If production of gas was found to be commercially viable, the gas would be transferred via pipeline to Knapton to generate electricity.

44. Chapter 12 of the ES addressed the environmental impact from greenhouse gases generated on site during the five phases of the development, from vehicle emissions, from equipment and fugitive emissions. It conclusions were summarised as follows:

> "**EXECUTIVE SUMMARY**
>
> - The proposed development is being undertaken within an existing wellsite where multiple drilling operations, natural gas production and the injection of produced liquids have been undertaken over the last 20 years
>
> - The proposed development does not contemplate flaring of natural gas. Natural gas will be exported off site via an existing underground pipeline to Knapton Generating Station where it will be used to generate electricity.
>
> - The impact from greenhouse gases has been assessed for all five (5) phases of the proposed development, although the potential impact will be greatest during the first two phases, pre-stimulation workover and hydraulic fracture stimulation/well test.
>
> - A baseline for greenhouse gases has been established using both contextual data and baseline air quality monitoring. The total greenhouse gas emissions emitted in 2013 from the energy supply sector was 189.7 $MtCO_2$ equivalent (189,700,000 tonnes).
>
> - Embedded mitigation is incorporated into the development proposals through the design and construction of the KM8 borehole in accordance with the applicable regulation, a vigorous equipment maintenance and monitoring programme by the Applicant, the short term temporary eight (8) week duration of the pre-stimulation workover and hydraulic fracture stimulation/well test phases and the monitoring of natural gases, with associated process controls.
>
> - Additional mitigation is provided by way of competent supervision, best industry practice and monitoring.
>
> - The expected release rate of greenhouse gases during the proposed development will be circa 1,680 tCO_2 equivalent with the maximum upper estimate of 2,602 tCO_2 equivalent. The maximum upper estimate equates to a percentage contribution of 0.0014% to the total UK

> greenhouse gas emission from the energy supply sector in 2013.
>
> - The residual effects from greenhouse gases with mitigation in place are considered by the Assessment Team to range from **Neutral/Slight to Slight** with the potential for a **Negligible** change in the baseline conditions."

45. The greenhouse gas emissions from the adjacent well sites were treated as a cumulative effect. There was no consideration of the impact of emissions from burning gas at Knapton, either from the proposed development or the other well sites.

46. The ES listed the likely significant effects of greenhouse gases on climate change at paragraph 12.7.1, and recognised that "*contribution to greenhouse gas emissions could have interactive effects on the general environment through the impact on climate change as a whole*" (paragraph 12.7.3). However, through mitigation, the likely significance of any impact as a result of the proposed development was "*slight*" and the potential for interactive effects was "*extremely low*".

47. The Council duly consulted on the application for planning permission. Objectors expressed their concerns about the ES's failure to assess the impact of emissions generated at Knapton. The Second Claimant commissioned detailed and lengthy expert evidence, which objected in principle to further development of fossil fuel (shale gas) instead of developing greener forms of energy which would reduce emissions of carbon dioxide. A report by KVA Planning Consultancy, dated October 2015, said:

> "12.26 An assessment is needed, based on the whole project. This application has merely added up the greenhouse gases during the development and production stages ….neglecting the CO2 emissions of gas produced from the project is misleading.
>
> 12.27 The assessment needs to include the real dangers of the whole scheme and not just the carbon footprint of the development and extraction process. The project involves release of fossil hydrocarbons. The current submission is therefore underestimating the quantities of greenhouse gases by orders of magnitude.
>
> 12.28 There is no attempt at a risk assessment to consider the impact of those greenhouse gases. The clear intention is that the fuel will be burnt and the waste CO2 will be emitted to the atmosphere in a decade when it is clear that National and International policy is to cut such emissions…"

48. The First Claimant sent a written objection dated 25 November 2015 stating that the assessment of cumulative effects in the ES was flawed, because (*inter alia*) emissions from Knapton generating station had not been assessed:

> "1.9 Impacts from the Knapton generating station should be assessed through EIA in addition because a "functional connection" exists between the generating station and the fracking site. Leading case law makes clear that "proposals should not be considered in isolation if in reality it is properly to be regarded as an integral part of an inevitably more substantial development" (Swale BC ex p. RSPB [1991] 1 PLR 6. The courts have also made clear that sites which are "functionally interdependent" must be assessed as a single project. (R (Burridge) v Breckland DC [2013] EWCA Civ 228).
>
> 1.10 In this case, the functional connection …. arises out of the supply of fresh water from Knapton in order to frack and the return flow of gas to the station to burn so as to generate electricity. The applicant should therefore assess the emissions, including the greenhouse gas emissions from the Knapton station so far as these are occasioned by or connected to the application as well as other environmental impacts in accordance with the [EIA Directive]."

49. Although this representation was placed before the Council when it made its decision, the First Claimant now accepts that Knapton could not be treated as part of a more substantial development, since no development was taking place at Knapton.

50. In October 2015, the First Claimant also pointed out that Knapton generating station was an inefficient model, about half as efficient as newer models. Friends of the Earth made further representations in March 2016, stating that the application was contrary to national policy on mitigating climate change (NPPF 93 and 94).

51. In my judgment, these detailed objections ensured that the potential environmental impact of burning the gas at Knapton generating station was made clear to the Council – both officers and members – well before the decision to grant planning permission was taken. The Officer's Report set them out in some detail. The onus rested on the Claimants to make good their assertion that the Council failed to consider these objections or take them into account when making its decision. I am unable to find any support for the Claimants' assertion in the evidence.

52. The Claimants were critical of the Officer's Report, arguing that it erroneously failed to comment on the objectors' representations about greenhouse gas emissions at Knapton and failed to advise the Committee why assessment of these was not included in the ES, contrary to the Scoping Opinion.

53. The principles applicable to challenges to officer's reports were summarised by Lindblom LJ in *R (Lee Valley RPA) v Epping Forest DC* [2016] EWCA Civ 404 at [31]:

> "31. It is well established that planning officers' reports to committee must be read not in an unduly critical way, but fairly and as a whole. Councillors on planning committees can be expected to be reasonably familiar with local circumstances and

> with relevant policies at national and local level, and to understand what statute requires of them when determining an application for planning permission. If criticism is directed at an officer's report as a means of attacking an authority's grant of planning permission, the question for the court will always be whether the officer has failed to guide the members sufficiently, or has actually misled them, on a matter essential to their decision. Where the officer's advice is founded on planning judgment it will be unassailable unless demonstrably bad as a matter of law. There is ample authority to this effect (see, for example, the judgments of Pill L.J. and Judge L.J., as he then was, in Oxton Farms, Samuel Smith's Old Brewery (Tadcaster) v Selby District Council, 18 April 1997 , 1997 WL 1106106)."

54. In *R (Luton BC) v Central Bedfordshire Council* [2014] EWHC 4325 (Admin), Holgate J. helpfully reviewed the authorities at [90] to [95]:

> "90. A great many of LBC's grounds involve criticisms of the officers' reports to CBC's committee. Accordingly, it is necessary to refer to the legal principles which govern challenges of this kind. I gratefully adopt the summary given by Mr Justice Hickinbottom in the case of *The Queen (Zurich Assurance Ltd trading as Threadneedle Property Investments) –v- North Lincolnshire Council* [2012] EWHC 3708 (Admin) at paragraphs 15-16:
>
> > "15. Each local planning authority delegates its planning functions to a planning committee, which acts on the basis of information provided by case officers in the form of a report. Such a report usually also includes a recommendation as to how the application should be dealt with. With regard to such reports:
> >
> > (i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the reasoning of the report, particularly where a recommendation is adopted.
> >
> > (ii) When challenged, such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole. Consequently:
> >
> > > "[A]n application for judicial review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the

> meeting of the planning committee before the relevant decision is taken" (*Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council* (18 April 1997) 1997 WL 1106106, per Judge LJ as he then was).

(iii) In construing reports, it has to be borne in mind that they are addressed to a "knowledgeable readership", including council members "who, by virtue of that membership, may be expected to have a substantial local and background knowledge" (*R v Mendip District Council ex parte Fabre* (2000) 80 P & CR 500, per Sullivan J as he then was). That background knowledge includes "a working knowledge of the statutory test" for determination of a planning application (*Oxton Farms*, per Pill LJ).

16. The principles relevant to the proper approach to national and local planning policy are equally uncontroversial:

(i) The interpretation of policy is a matter of law, not of planning judgment (*Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13).

(ii) National planning policy, and any relevant local plan or strategy, are material considerations; but local authorities need not follow such guidance or plan, if other material considerations outweigh them.

(iii) Whereas what amounts to a material consideration is a matter of law, the weight to be given to such considerations is a question of planning judgment: the part any particular material consideration should play in the decision-making process, if any, is a matter entirely for the planning committee (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 at page 780 per Lord Hoffman)."

91. I would also draw together some further citations:

"[The purpose of an officer's report] is not to decide the issue, but to inform the members of the relevant considerations relating to the application. It is not addressed to the world at large but to council members, who, by virtue of that membership, may be expected to have substantial local and background knowledge. There would be no point in a planning officer's report setting out in great detail background material, for example in respect of local topography, development plan policies or matters of planning history if the members were only too familiar with that material. Part of a planning officer's

> expert function in reporting to the committee must be to make an assessment of how much information needs to be included in his or her report in order to avoid burdening a busy committee with excessive and unnecessary detail." (per Sullivan J in *R v Mendip DC ex p Fabre* (2000) 80 P&CR 500 at 509).

92. In *R (Siraj) v Kirkless MBC* [2010] EWCA Civ 1286 Sullivan LJ stated at para. 19:

> "It has been repeatedly emphasised that officers' reports such as this should not be construed as though they were enactments. They should be read as a whole and in a common sense manner, bearing in mind the fact that they are addressed to an informed readership, in this case the respondent's planning subcommittee"

93. In *R (Maxwell) -v- Wiltshire Council* [2011] EWHC 1840 (Admin) at paragraph 43 Sales J (as he then was) stated:

> "The Court should focus on the substance of a report of officers given in the present sort of context, to see whether it has sufficiently drawn councillors' attention to the proper approach required by the law and material considerations, rather than to insist upon an elaborate citation of underlying background materials. Otherwise, there will be a danger that officers will draft reports with excessive defensiveness, lengthening them and over-burdening them with quotations of material, which may have a tendency to undermine the willingness and ability of busy council members to read and digest them effectively."

94 In *Morge v Hants CC* [2011] UKSC 2; [2011] PTSR 337 at [36] Baroness Hale of Richmond said:

> "…in this country planning decisions are taken by democratically elected councillors, responsible to, and sensitive to the concerns of, their local communities. As Lord Hoffmann put it in *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295, para 69: "In a democratic country, decisions about what the general interest requires are made by democratically elected bodies or persons accountable to them." Democratically elected bodies go about their decision-making in a different way from courts. They have professional advisers who investigate and report to them. Those reports obviously have to be clear and full enough to enable them to understand the issues and make up their minds within the limits that the law allows them. But the

> courts should not impose too demanding a standard upon such reports, for otherwise their whole purpose will be defeated: the councillors either will not read them or will not have a clear enough grasp of the issues to make a decision for themselves. It is their job, and not the court's, to weigh the competing public and private interests involved."

95. In *R (Bishops Stortford Federation) v East Herts DC* [2014] PTSR 1035 Cranston J held at paragraph 40:

> "The courts have cautioned against undue judicial intervention in policy judgments by expert tribunals within their areas of special competence (see *AH (Sudan) v Secretary of State for the Home Department (United Nations High Comr for Refugees intervening)* [2008] AC 678, para 30, per Baroness Hale of Richmond), and this reticence has been applied to considering the decisions of planning inspectors on issues of planning judgment: see *Wychavon District Council v Secretary of State for Committees and Local Government* [2009] PTSR 19, para 43, per Carnwath LJ. Arguably, the same applies to experienced planning committees with their training and codes of conduct." "

55. The Committee considered the application at a special two day meeting held on 20 and 23 May 2016. The Committee was assisted by a detailed 252 page Officer's Report, with supporting appendices, which recommended the grant of planning permission, plus two supplementary reports and an addendum report. The Report explained the proposal to utilise the existing pipeline to transfer gas from KMA well site to Knapton, and gave details about the generating station and its regulation by the Environment Agency (though not the greenhouse gas emissions permit). The Report quoted the objections relied upon by the Claimants, but did not respond to them directly. The Report fairly set out the legislative and policy framework within which the decision had to be made, namely:

    i) European legislation on environmental protection.

    ii) National legislation and policy on meeting climate change objectives by cutting greenhouse gases and moving away from fossil fuels (including gas) towards clean renewable energy supplies.

    iii) National policy in favour of shale gas.

    iv) National planning policy on meeting the challenges of climate change and support for a transition to a low carbon future in the NPPF and the Planning Practice Guidance ("PPG").

56. The Committee resolved, by 7 votes to 4, to grant planning permission. The resolution stated:

> "**UPON CONSIDERING** that the Environmental Statement, including further and other information submitted by the applicant, includes such information as is reasonably required to assess the environmental effect of the development and which the applicant could be reasonably required to compile; and
>
> **HAVING TAKEN INTO ACCOUNT** the environmental information relating to this application, namely the Environmental Statement, including further and other information submitted by the applicant, and duly made representations about the environmental effects of the development;"

The resolution clearly evidences the Committee's consideration of the ES and its conclusion that the ES was adequate.

57. Applying the tests set out in the authorities, which I have cited above, I find it impossible to conclude that the officers failed to guide the members sufficiently, or misled them, on a matter essential to their decision. The Committee members had specialist knowledge, as members of a mineral planning authority which has multiple gas wells in its region. As part of their consideration of this planning application, members visited Knapton power station. The ES and the Officer's Report provided them with a detailed account of the proposed scheme, including use of the existing pipeline to Knapton. They received detailed objections to the proposal from objectors, which included the increase in greenhouse gas emissions arising from the production of gas at the Site. The real thrust of the objections was that energy requirements ought to be met by other, less environmentally damaging means than gas production and a gas-fuelled electricity generating station. This was essentially a judgment for the Committee to make. They were extensively briefed by officers on the climate change issues, as well as the government's policy in favour of shale gas. In my judgment, members were in a position to evaluate the merits of the Claimants' representations themselves, without specific advice from the officers on the detail of the Claimants' representations.

GROUND 2: FINANCIAL BOND

58. The Claimants submitted that the Officer's Report wrongly advised the Committee that it was not legally possible to require Third Energy to provide a financial bond.

59. After amendment, the Report stated, at paragraph 7.297:

> "Notwithstanding the merit within seeking a mechanism for ensuring that key obligations are met in the event that the developer is unable (including a circumstance of company failure) and providing reassurance that obligations will be met the County Planning Authority is advised that this [i.e. the ability to require a bond or similar] is engaged in this particular instance but such a mechanism cannot be used in the

> circumstances as called for by those opposing the proposed development."

60. The application for planning permission made provision for restoration of the Site by Third Energy, and this was addressed in the ES. Objectors raised a concern that, once restoration of the Site was concluded, pollution or contamination problems might become apparent, by which time Third Energy might no longer be in a position to remedy them. They asked for a financial bond to be put in place, paid for by the industry, to cover the cost of any remediation required after the Site had been abandoned. In an exchange of emails with Third Energy, the Head of Planning at the Council appeared to favour such an approach and an opinion from leading counsel advised that it would be lawful. However, the Council subsequently took a different view. The Council refused to disclose the legal advice which formed the basis of this conclusion, relying upon legal privilege.

61. I agree with the submission by the Council that its position has to be seen in the light of the guidance in the PPG which provides:

> "**1. What are mineral resources and why is planning permission required?**
>
> …
>
> Planning for the supply of minerals has a number of special characteristics that are not present in other development:
>
> …..
>
> - working is a temporary use of land, although it often takes place over a long period of time;
>
> …..
>
> - following working, land should be restored to make it suitable for beneficial after-use.
>
> ….
>
> The mineral planning authority is the county council (in two-tier parts of the country), the unitary authority, or the national park authority. Minerals extraction may only take place if the operator has obtained both planning permission and any other permits and approvals. These include permits from bodies such as the Environment Agency, and licenses from Natural England and, in relation to coal resources, the Coal Authority.
>
> …
>
> **12. What is the relationship between planning and other regulatory regimes?**

The planning and other regulatory regimes are separate but complementary. The planning system controls the development and use of land in the public interest and, as stated in paragraphs 120 and 122 of the National Planning Policy Framework, this includes ensuring that new development is appropriate for its location – taking account of the effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution.

In doing so the focus of the planning system should be on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than any control processes, health and safety issues or emissions themselves where these are subject to approval under regimes. Mineral planning authorities should assume that these non-planning regimes will operate effectively.

….

Restoration and aftercare of minerals sites

36. Who is responsible for restoration and aftercare of minerals sites?

Responsibility for the restoration and aftercare of mineral sites, including financial responsibility, lies with the minerals operator and, in the case of default, with the landowner.

37. When should site restoration and aftercare be considered?

The most appropriate form of site restoration to facilitate different potential after uses should be addressed in both local minerals plans, which should include policies to ensure worked land is reclaimed at the earliest opportunity and that high quality restoration and aftercare of mineral sites takes place, and on a site-by-site basis following discussions between the minerals operator and the mineral planning authority

38. What are the key stages that must be considered when considering restoration and aftercare conditions?

Restoration and aftercare of mineral sites involves a number of key stages, which mineral planning authorities should take into account as appropriate when preparing restoration and aftercare conditions:

- stripping of soils and soil-making materials and either their storage or their direct replacement (i.e. 'restoration') on another part of the site;

- storage and replacement of overburden;

- achieving the landscape and landform objectives for the site, including filling operations if required, following mineral extraction;

- restoration, including soil placement, relief of compaction and provision of surface features;

- aftercare.

39. When should proposals for land restoration and aftercare be submitted to the mineral planning authority?

The minerals operator should submit the proposals as part of the planning application (section 72 and Schedule 5 of the Town and Country Planning Act 1990 advise on the conditions which may be imposed on the grant of planning permission for development consisting of the winning and working of minerals).

…

41. How should the mineral planning authority ensure that applicants will deliver sound restoration and aftercare proposals?

Mineral planning authorities should secure the restoration and aftercare of a site through imposition of suitable planning conditions and, where necessary, through planning obligations.

42. How must mineral planning authorities frame planning conditions for restoration and aftercare?

Conditions must be drafted in such a way that, even if the interest of the applicant applying for permission is subsequently disposed of, the requirements for restoration and aftercare can still be fulfilled, whether by a new operator or in the case of default, by the land-owner.

…

44. How detailed should restoration and aftercare planning conditions be for long-term extraction?

For mineral extraction sites where expected extraction is likely to last for many years, early agreement on the details of at least

the later stages of aftercare may not be appropriate. In such cases, it would still be appropriate:

- for the applicant to provide a general outline of the final landform and intended after-use;

- for the mineral planning authority to agree at the outset outlines of requirements covering the main stages of reclamation of a site (e.g. filling, restoration and aftercare), together with detailed schemes for stripping and storage of soil materials

The level of detail provided by the applicant to the mineral planning authority must be sufficient to clearly demonstrate that the overall objectives of the scheme are practically achievable.

Planning conditions for proposals with a longer term duration should:

- normally require the submission of a detailed scheme or schemes for restoration and aftercare, for agreement, by some specific stage towards the end of the life of the permission;

- where progressive reclamation is to be carried out, require submission of schemes for agreement from time to time as appropriate.

…

47. How should mineral planning authorities deal with any concerns about funding of site restoration or aftercare?

Mineral planning authorities should address any concerns about the funding of site restoration principally through appropriately worded planning conditions.

48. When is a financial guarantee justified?

A financial guarantee to cover restoration and aftercare costs will normally only be justified in exceptional cases. Such cases, include:

- very long-term new projects where progressive reclamation is not practicable, such as an extremely large limestone quarry;

- where a novel approach or technique is to be used, but the minerals planning authority considers it is justifiable to give permission for the development;

- where there is reliable evidence of the likelihood of either financial or technical failure, but these concerns are not such as to justify refusal of permission.

However, where an operator is contributing to an established mutual funding scheme, such as the Mineral Products Association Restoration Guarantee Fund or the British Aggregates Association Restoration Guarantee Fund, it should not be necessary for a minerals planning authority to seek a guarantee against possible financial failure, even in such exceptional circumstances.

49. How and when should minerals planning authorities seek a financial guarantee?

Mineral planning authorities should seek to meet any justifiable and reasonable concerns about financial liabilities relating to the restoration of the site through agreeing a planning obligation or voluntary agreement at the time a planning permission is given.

Aftercare conditions

50. What is the purpose of aftercare conditions?

Aftercare conditions are required to ensure that, following site restoration, the land is brought up to the required standard which enables it to be used for the intended after use.

51. What is the appropriate form of aftercare conditions?

Mineral planning authorities may impose aftercare conditions in one of two ways:

- at the time of granting planning permission, specifying detailed steps to be taken; or

- through a planning condition which requires an aftercare scheme to be submitted by the applicant or other appropriate person for approval.

52. What are the limitations imposed on aftercare conditions?

There are several limitations imposed on aftercare conditions, as follows:

- they may only be imposed on permissions in conjunction with a restoration condition;

- they may only be imposed in relation to land which is to be used for agriculture, forestry or amenity (including biodiversity) following minerals working;

- they can require only planting, cultivating, fertilising, watering, draining or otherwise treating the land;

- they can only start following compliance with a restoration condition and the mineral planning authority cannot require any steps to be taken after the end of a five year aftercare period without the agreement of the minerals operator (Schedule 5 of the Town and Country Planning Act 1990 sets out the conditions relating to mineral working).

53. How do aftercare conditions apply where progressive restoration takes place?

Where sites are subject to progressive restoration, the aftercare period for each part of the site will begin once the restoration condition for the relevant part of the site has been met."

62. I accept the Council's submission that, applying PPG paragraphs 41, 42, 47 and 48, the officer was entitled to advise the Committee that this was not an exceptional case which would justify a financial guarantee. In giving that advice, the officer also rightly reviewed the protection afforded by other regulatory regimes, including the OGA, the Environment Agency and the Health and Safety Executive, and proposed conditions to achieve financial protection in another way. PPG paragraph 12 advises mineral planning authorities that they should assume that the regulatory regimes will operate effectively so as to control emissions, pollution etc. and regulate health and safety measures.

63. The conditions which the Council imposed were as follows:

"*Financial commitment – Restoration Scheme – details to be submitted*

35. No development authorised by this planning permission shall take place within the site until such time as a detailed scheme for the restoration and aftercare of the KM8 well site has been submitted to and approved by the County Planning Authority. The approved restoration and aftercare measures shall provide any necessary financial commitment required by the applicant to secure the approved scheme and these arrangements shall be retained for the duration of the development programme and for a minimum of six (6) months from the cessation of any authorised works at the KM8 well site.

Reason:

This is a pre-commencement condition and one which is considered warranted given the particular circumstance of this case and also that the securing of a financial commitment is considered necessary in this instance by virtue of the need to have the security that funds would be in place should a circumstance arise that the restoration and/or after-care of the site should fall to the 'public purse'.

36. The restoration scheme and aftercare measures approved under condition number 35 above shall be carried out in accordance with the general approach to restoration and aftercare set out in Environmental Statement Appendix 10, together with a timescale for the work, and proposals for phasing of restoration if likely to be needed. The site access shall be removed and the land restored to a condition suitable for agricultural cultivation in accordance with approved details unless prior approval is obtained for retention of access for agricultural purposes. Restoration shall be implemented within six (6) months of the cessation of gas production. Upon completion of the restoration scheme, an application shall be submitted to the County Planning Authority to restore the route of public right of way 25.53/4/1 to its original route, having been diverted in 2013 to allow the construction of the Kirby Misperton 1 wellsite extension.

Reason:
In accordance with Annex 3 ('Model planning conditions for surface area') of Part 9 within Section 27 of the National Planning Practice Guidance and in order to ensure that the restoration of the site is undertaken in accordance with the approved details and in a timely manner to avoid undue delay in the restoration of the site.

After-care Scheme – details to be submitted

37. Within six (6) months of the certification in writing by the County Planning Authority of the completion of restoration, as defined in this permission, a scheme and programme for the aftercare of the site shall be submitted to the County Planning Authority for approval in writing. The scheme and programme shall contain details of the following:

a. maintenance and management of the restored site to promote its agricultural, forestry or amenity use.
b. weed control where necessary.
c. measures to relieve compaction or improve drainage.
d. an annual inspection to be undertaken in conjunction with representatives of the County Planning Authority to assess the aftercare works that are required in the following year.

> *Reason:*
> *In accordance with Annex 3 ('Model planning conditions for surface area') of Part 9 within Section 27 of the National Planning Practice Guidance and in order to ensure that aftercare of the site is undertaken in accordance with the approved details and to ensure the land is returned to a satisfactory after-use.*
>
> *Management of the restored land for a period of five (5) years*
>
> 38. The Site shall be restored in accordance with the approved restoration scheme and the Site thereafter managed in accordance with the approved 5 year aftercare programme, unless otherwise agreed in writing with the County Planning Authority. The aftercare period shall commence from the date that the County Planning Authority confirms that the restoration works have been carried out and fully implemented in accordance with approved details.
>
> *Reason:*
> *In order to ensure the right of control of the development by the County Planning Authority in the interest of the satisfactory restoration and beneficial after-use of the site.*"

64. In my view, the terms of the conditions afford a considerable degree of protection to residents. Despite the Claimants' submission that the protection was too short-lived, it was apparent that the conditions extend beyond mere restoration to a programme of aftercare, in accordance with PPG.

65. In my judgment, the Council acted lawfully in the exercise of its discretion, in imposing these conditions and deciding not to seek a financial bond.

CONCLUSIONS

66. The Claimants' grounds were arguable, and so permission is granted, but the substantive claim for judicial review is dismissed, for the reasons set out above.