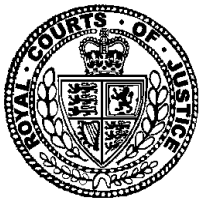

Neutral Citation Number: [2023] EWHC 3140 (Admin)

Case No:
CO/1539/2023,
AC-2023-LON-001312;
CO/1577/2023,
AC-2023-LON-001346;
CO/1673/2023,
AC-2023-LON-001419

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 6th December 2023

Before :

THE HONOURABLE MRS JUSTICE THORNTON DBE

- -

Between :

THE KING (on the application of GABRIEL CLARKE-HOLLAND)	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR THE HOME DEPARTMENT **(2) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES**	**Defendants**
- and -	
(1) BRAINTREE DISTRICT COUNCIL **(2) SECRETARY OF STATE FOR DEFENCE**	**Interested Parties**

And Between :

THE KING (on the application of WEST LINDSEY DISTRICT COUNCIL)

Claimant

- and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

(1) SCAMPTON HOLDINGS LIMITED
(2) SECRETARY OF STATE FOR DEFENCE

Interested Parties

And Between :

THE KING (on the application of BRAINTREE DISTRICT COUNCIL)

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

- and -

SECRETARY STATE FOR DEFENCE

Interested Party

- -
- -

Mr Goodman KC and Mr McCay appeared on behalf of the Claimant **(Mr Clarke-Holland)**

Mr Wald KC and Mr Thorold appeared on behalf of the Claimant **(West Lindsey District Council)**

Mr Beglan and Mr Barber appeared on behalf of the Claimant **(Braintree District Council)**

Mr Brown KC, **Mr Grant** and **Mr Ronan** (instructed by **Government Legal Department**) appeared on behalf of the First Defendant (**Secretary of State for the Home Department**)

Mr Honey KC and **Mr Rhimes** (instructed by **Government Legal Department**) appeared on behalf of the Second Defendant (**Secretary of State for Levelling Up, Housing and Communities**)

Mr Streeten (instructed by **Government Legal Department**) appeared on behalf of the Interested Party (**Secretary of State for Defence**)

Hearing dates: 31st October – 1st November 2023

- -

Approved Judgment

This judgment was handed down remotely at 14:15 on Wednesday 6th December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

The Hon. Mrs Justice Thornton :

Introduction

1. The Claimants seek judicial review in relation to the announcement in Parliament on 29 March 2023, by the Minister for Immigration, that the decommissioned Ministry of Defence sites at Wethersfield and Scampton are to be used to accommodate asylum seekers.

2. Particular aspects of the decision making under challenge include as follows:

    (i) An (undated) statement outlining "the emergency" which is said to thereby permit lawful reliance on a deemed grant of planning permission under the Town and Country Planning (General Permitted Development) (England) Order 2015.
    (ii) The direction(s) and/or reliance on the direction(s) issued by the Secretary of State for Levelling Up, Housing and Communities, pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 directing that the use of the site in question is not likely to have significant environmental effects.
    (iii) The discharge of the public sector equality duty by the Secretary of State and the content of an Equalities Impact Assessment.
    (iv) The approach taken by the Secretary of State to value for money considerations.

3. The three claims are brought by Braintree District Council, as the local planning authority for RAF Wethersfield, West Lindsey District Council, as the local planning authority for RAF Scampton, and Mr Clarke-Holland, a local resident of Wethersfield.

4. The Secretary of State for the Home Department, who has statutory responsibility for destitute asylum seekers, is the defendant in all three claims. The Secretary of State for Levelling Up, Housing and Communities who issued the screening directions is the second defendant in the claim brought by Mr Clarke-Holland. The Secretary of State for Defence is an Interested Party in all three claims as the Ministry of Defence owns both sites.

Factual background

5. The factual background has been outlined in the decisions of the Court of Appeal in Braintree District Council v Secretary of State for the Home Department [2023] 1 WLR 3087 and by Waksman J in Braintree District Council v Secretary of State for the Home Department [2023] EWHC 1076 (KB). The following summary focuses on the facts of particular relevance to the issues which arise in the present case.

The sites

6. Both sites are Crown land, defined as land in which there is a Crown interest, which includes an interest belonging to a government department (s293 Town and Country Planning Act 1990).

7. RAF Wethersfield covers approximately 828 acres. It contains runways and taxiways, as well as a number of above ground structures. It is 1.7 miles from the village of Wethersfield, 2.1 miles from the village of Finchingfield and approximately nine miles from Braintree and from the nearest A class road. It is accessed via a network of rural roads, most of which do not have footways.

8. RAF Scampton is located in Lincolnshire. It is 800 acres in size with 280 buildings and 10,000 feet of serviceable runway. The majority of the site is an airfield. RAF Scampton village is approximately 6 miles from Lincoln and there is a primary school within walking distance of the site. The site's history dates back to 1916 and it is particularly famous for its use during World War II. It is commonly known as the home of the 'Dambusters'. In recognition of the site's historic importance a number of the structures on site are listed buildings. It was, until recently, an active RAF base and was decommissioned on 1 April 2023.

The asylum system under strain

9. The Secretary of State for the Home Department has statutory responsibility to provide accommodation and other support to asylum seekers and their dependants who would otherwise be destitute. As the Court of Appeal explained in its judgment in Braintree District Council v Secretary of State for the Home Department [2023] EWCA Civ 727, the asylum system has, for several reasons, been under increasing strain in recent years.

10. Since the Covid-19 pandemic, the number of asylum seekers requiring accommodation has reached unprecedented levels. The time taken by the Home Office to process asylum applications has slowed. The Home Office had for some time been "block booking" hotel accommodation for use by asylum seekers, a system by which hotel rooms are booked and paid for, usually at preferential rates, whether or not the rooms are in fact used. In October and November 2022, a "processing facility" at Manston became overcrowded. After the overcrowding at Manston, and in light of the increasing pressure on accommodation, the Home Office started to "spot book" hotels to accommodate the overflow. Spot bookings can be released without payment if they are not needed. This approach was controversial with the local authorities in whose areas the hotels were being booked and, in some cases, they sought injunctions to prevent the use of hotels for that purpose. Spot booking was intended as a short-term solution, but the absence of suitable alternative accommodation has led to the continued use of hotels booked in that way.

The decision making in relation to the use of Wethersfield and Scampton

11. As a result of the strains on the asylum system, in January 2023, the Home Office approached the Ministry of Defence and other government departments enquiring about availability of Crown Estate assets which could be made suitable in the short term to assist with accommodating asylum seekers.

12. A submission to the Minister for Immigration, dated 27 January 2023, sought a decision to explore the use of RAF Wethersfield and RAF Scampton to accommodate single adult male asylum seekers. Timing was said to be "immediate".

13. Initial engagement was undertaken with the two local authorities in question. It revealed that West Lindsey District Council had plans in relation to the redevelopment of RAF

Scampton. In response, Home Office officials initially recommended that the site be removed from the project. Further investigation into the redevelopment plans led to the recommendation to Ministers that proposals for the site should continue on the basis the "Home Office has an urgent operational need to create additional asylum accommodation, the potential use of RAF Scampton would support this. At present there are more than 48,000 asylum seekers in hotels and the predicted small boats intake for 2023 is c.56,000 asylum seekers. The potential use of the site could also provide an option to mitigate some of the challenges seen at Manston in 2022."

14. A Ministerial Submission dated 3 March 2023 stated as follows:

> "9. To progress rapid development of the Pathfinders and comply with planning law, we intend to use permitted development rights for Crown emergency situations (Class Q). Class Q of Part 19 of Schedule 2 to the Town & Country Planning (General Permitted Development) (England) Order 2015, will grant us 12 months permission for non-detained use and related physical works. During this period, we will seek to ensure that planning permission on a longer-term basis under a Special Development Order is obtained.
>
> 10. To rely on Class Q, we will:
>
> a. prepare a statement outlining the "emergency" which requires immediate use of the site. We will issue further advice to you on the Emergency Statement shortly;
>
> b. comply with procedures relating to Environmental Impact Assessments (EnvIA)
>
> c. comply with procedures relating to Habitats Regulation Assessments and
>
> d. as soon as is practicable after commencing development, notify the local planning authority of the development."
>
> ……
>
> 39. Given the requirement to expedite delivery for 31 March 2023 there will only be limited engagement with local partners, and we will not be seeking a local consent decision from authorities….
>
> 40. As part of the engagement on previous sites for asylum accommodation we have engaged key local partners and stakeholders including the local MP, leaders and Chief Executives of the county and district councils and blue light services. Key themes from this engagement which we expect to be replicated at the Pathfinder sites include:

> a. A lack of engagement with the relevant stakeholders / local community prior to a decision being made to use the sites;
>
> b. anti-social behaviour and Home Office plans to manage this including keeping local people safe through an increased police presence in the village;
>
> c. the scale of the site and the impact on local community and services;
>
> d. remoteness of site – how will voluntary and legal services support the site; and,
>
> e. the relationship between RAF Sites and Rwanda.
>
> …..
>
> Public sector equality duty and vulnerable individuals
>
> ….
>
> 53. As outlined above there is a significant risk of community tensions which may impact on the Home Office's consideration of limb 3: foster good relations. On the commencement of engagement with the local community and statutory partners (including police, fire and health), we will further assess the impact of the Home Office's plans. In addition, we will establish multi-Agency Forums which bring together statutory and other agencies on a regular basis, both in the implementation stage and when the site is operational. This will allow the Home Office to review and update the Equality Impact Assessment. These points are set out in more detail in the Equality Impact Assessments (Annex A and Annex B)."

15. A Ministerial Submission dated 23 March 2023 said as follows in relation to duration of use of Scampton:

> "Duration of Use…
>
> 11. A decision on duration of use will have an impact on the value for money case, HOAI Analysis shows that, based on current cost estimates the Home Office's use of RAF Scampton for 2 years is considered value for money – this assumes utilities are in place. If connection to mains utilities is not possible, then the proposal would not represent value for money. VfM is more certain in the short term with high volumes and use of hotel accommodation, in the longer term there are risks as other factors impact on demand for accommodation….
>
> 12. The Home Office has a statutory duty to accommodate asylum seekers who would otherwise be destitute and the number of asylum seekers requiring accommodation has reached

> record levels. These strategic considerations plus significant other pressures on the system, such as changing intake patterns, means that we are of the view that the use of RAF Scampton for a minimum of 3 years will allow time for other mitigations such as dispersal to local authorities and case-working transformation to have a greater effect on the accommodated asylum population. As above, assuming connection to utilities is possible, HOAI analysis suggests that the use of the site for longer than 2 years increases the potential value for money due to longer return on the initial investment but reduces the certainty as the long-term position on use of hotels is subject to a number of factors including the impact of other proposals to reduce demand for accommodation. Flexibility therefore becomes important with a longer-term proposal."
>
> (underlining is the original emphasis).

16. As regards financial and accounting implications, it was said that:

> "25. Finance are engaged with the Programme and assessing proposals for budgetary impacts and affordability on an ongoing basis, as well as wider AO implications. Comprehensive AO advice will be provided imminently and this must be agreed including by HMT before the sites can be announced/progressed. A brief summary of early assessments can be found below:
>
> ……
>
> > c) Value for Money – short-term, this proposal may provide value-for-money under certain conditions, reliant upon the counterfactual being the use of more costly accommodation. Longer term forecasts of supply and demand for asylum accommodation are changeable and could alter the VFM assessment of this proposal. More detailed costings will be required to inform this assessment."

17. The same point about the significant risk of community tensions was made as in the previous submission. The timing was said to be **"**Immediate – to inform the Government's announcement on Illegal Migration, the decision is urgently required."

18. An email exchange between officials on 24 March 2023 observed that the Second Permanent Secretary was content with the value for money analysis, noting the need for Scampton to have a three year rather than two year economic life to offer positive value for money. The email went on to state that the Second Permanent Secretary "… notes that across the set of decisions there remains a high level of risk, in particular associated with legal challenge, planning controls, volumes of inflow, hotel costs, dispersal costs and volumes, overall volumes arrivals and the levels of utilisation across the different sites".

19. An earlier email that day recorded that "Tricia is satisfied with VfM on Bexhill, Wethersfield & Scampton – on the former two we are saying there is VfM across the 5

years planned for the sites...this assumes we are in hotels for that period. If we are not and/or if our costs are higher than we have estimated, there could be issues on VfM. On Scampton, our recommendation (with HS) is to use the site for 3 years rather than 2. VfM for 2 years is currently -£2m, i.e. not VfM (marginal). 3 years is VfM. There are significant variables here so Tricia should be content with those risks – we are not saying VfM fails. HMT had raised concerns about this but we have provided additional analysis and talked them through it and we think they are content."

20. On the same day, the Secretary of State for Levelling Up, Housing and Communities issued a direction that the proposed use of the site at Wethersfield was not likely to have significant effects on the environment.

21. An email dated 27 March 2023 from the director of the project for the provision of asylum accommodation (Mr Banner) indicated that the duration of use of the Scampton site was still under consideration. Relevant extracts from the email are as follows:

> "Further that the HS and Minister Immigration's positions regards during of use of Scampton is to consider the site for 2 years. The figures continue to move and latest cost estimates for the site suggest that the current VfM for 2 years is currently -£2m i.e. not VfM (marginal), which is an update on the position in the submission where it states 2 yrs is VfM. Our latest analysis indicates that 3 years is VfM and is therefore the safest assessment at present – however this could change as we learn more about the site. The Programme will continue to provide AO advice as costs iterate.
>
> …
>
> In our external communication we remain silent on the duration and suggest we remain silent with MP and partner engagement as we continue to review our AO position and therefore the length of time we occupy the site.
>
> In response to handling duration questions I recommend that we indicate the temporary nature of use i.e. 'The Home Office will use RAF Scampton on a temporary basis.' Or 'The Home Office will only use the site for a limited period of time.'"

22. On the same day, Natural England confirmed that there would be no likely significant effects from the proposed use of the sites on any nearby nature conservation sites.

23. On 28 March 2023, the Secretary of State for Levelling Up, Housing and Communities issued a direction that the proposed use of the site at Scampton was not likely to have significant effects on the environment.

24. Still on the same day, the Minister for Immigration was asked to note the Emergency Statement and agree to the use of Class Q regulations to progress development of both sites for asylum accommodation. Timing was said to be "Immediate – to ensure the programme can progress following the Home Secretary's decision to proceed with the sites, the decision is urgently required." The point made in the submission of 3 March

2023 that Class Q was to be used "to progress rapid development of the sites and comply with planning law" was repeated. The submission did not make reference to a settled position on the duration of use at the sites.

25. The day after, on 29 March 2023, the Minister for Immigration told the House of Commons that the sites would be used to accommodate asylum seekers. The Minister opened his statement by setting out various measures that were being introduced to tackle illegal migration. These included increased enforcement and removals of people with no right to remain; Anglo-French co-operation and a partnership with Rwanda to process claims. The Minister explained that the Home Office was on track to process the backlog of initial asylum decisions by the end of the year and explained the expected impact of the Illegal Migration Bill, once adopted. The Statement continues "The enduring solution to stop the boats is to take the actions outlined in our [Illegal Migration] Bill but in the meantime, it is right that we act to correct the injustice of the current situation."

The decision making documents under challenge

The Emergency Statement

26. The statement identifies the statutory duty on the Secretary of State for the Home Department to accommodate destitute asylum seekers. It explains the record levels in the numbers of asylum seekers requiring accommodation. It notes that "obtaining planning permission for new accommodation takes time, and as a consequence, the Home Office is unable to meet the immediate need for sufficient, adequate accommodation for asylum seekers". The statement explains that "As of March 2023, the Home Office is currently accommodating over 48,000 asylum seekers and over 8,000 Afghan refugees in temporary hotel accommodation at a total cost of over £7.2 million per day". The statement goes on to explain the proposal to use the sites pursuant to Class Q and explains the nature of the emergency namely the record levels of asylum seekers which is not thought to have reached its peak; the statutory responsibility on the Home Secretary; the use of block booked hotels as a short term contingency when demand for accommodation temporarily exceeds capacity at existing sites in the UK, which is significantly more expensive and increasingly difficult to source; and the impacts of Covid on decision making. Reference is also made to the situation at Manston in October/November 2022 when the Home Office processing centre became significantly overcrowded which was contributed to by a terrorist attack at another Home Office site, exacerbated by a significant power outage at Harmondsworth. This led to spot booking of hotels which was contentious. The development of the sites at Scampton and Wethersfield will provide additional asylum accommodation.

The screening directions

27. The screening directions for both sites are the same in material respects and conclude that the proposals for the sites are not likely to have significant effects on the environment and the development is not therefore EIA Development. In the accompanying analysis the project is described as the refurbishment of existing buildings and the construction of new modular buildings to provide residential accommodation and communal services for non-detained asylum seekers. The project is said to be for a 12-month period. Pre-fabricated modular units, to provide beds, will be situated on existing hardstanding and minor groundworks will be required.

Renovation of the existing barrack blocks is said to require minimal superficial work. There will be no construction, engineering works or vegetation clearance and no demolition. During the decommissioning phase modular units will be removed from existing hardstanding and transported off site.

28. A number of conclusions reached on the environmental impacts of the project reference the temporary nature of the project and its 12 month duration. Examples from the Wethersfield analysis include as follows:

> "i) The proposal to accommodate up to a total of up to 1700 people on the Site for a period of 12 months would increase the demand in the area on water supply and foul water drainage… Consultation has … confirmed…. that there is sufficient capacity for the provision of water and waste water services for the Proposed Development.
>
> ii) A total of 204 one way trips each day are estimated over the temporary 12 month period. This will result in a temporary impact on the local highway network but the number of vehicle trips are not considered to be significant in volume."

The Equality Impact Assessments

29. An Equality Impact Assessment was prepared for both sites and the documents are the same in material respects. The documents explain that the intention is to use the sites for asylum accommodation for as long as it remains expedient to do so. The equalities impact assessment are said to be a living document. Equalities impacts will be kept under review as proposals develop for the site and as the sites start and continue to be used. The assessment goes on to explain that the sites are situated in areas that have not previously been used to house significant numbers of asylum seekers and there may be impacts on community relations that need to be carefully managed in partnership with the police, local authorities and others. Reference is made in each assessment to a nearby primary school which will be discussed as part of local community engagement. The provision of on-site food, faith, and recreational facilities will minimise the impact on local communities. The Home Office will work with the accommodation service provider, police, health and other key stakeholders, including the community, in order to establish procedures which will manage associated risks in respect of community relations and to address unease, conflict and a division between the asylum seekers and the community at large. The Home Office will engage and consult through scheduled meetings and forums. Once the site is announced, the Home Office will establish a Multi-Agency Forum, bringing together statutory and other agencies on a regular basis, both in the implementation stage and when the site is operational. By working with local police liaison and the local council, the Home Office will address anti-social behaviour where it may occur through the established support from the voluntary sector. The site induction pack will include information on the local environment and ways to avoid anti-social behaviour.

The legal framework

The Secretary of State's duties in relation to asylum seekers

30. Pursuant to sections 95 and 98 of the Immigration and Asylum Act 1999 and regulation 5 of the Asylum Seekers (Reception Conditions) Regulations 2005 (SI 2005/7), if an asylum seeker or their dependant appears to be destitute or likely to be so while their application for support under section 95 is being considered, the Secretary of State for the Home Department must provide them with temporary support which includes accommodation. The statutory definition of "destitute" includes circumstances in which a person does not have adequate accommodation or any means of obtaining it.

The need for planning permission and permitted development rights

31. Section 55 of the Town & Country Planning Act 1990 ("TCPA 1990") provides that "development" means "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land". Section 57 of the Act provides that planning permission is required for "development". Section 58(1) of the Act provides that: "(1) Planning permission may be granted— (a) by a development order …".

Permitted Development

32. The Town and Country Planning (General Permitted Development) (England) Order 2015 SI/2015/596 is a development order made pursuant to section 59 TCPA 1990. Article 3(1) grants planning permission for the classes of development described as permitted development in Schedule 2. Article 3 provides in relevant parts:

> "(1) Subject to the provisions of this Order…planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.
>
> (2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2.
>
> ...
>
> (10) Subject to paragraph (12), Schedule 1 development or Schedule 2 development within the meaning of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations") is not permitted by this Order unless—
>
> ...
>
> (b) the Secretary of State has made a screening direction under regulation 5(3) of those Regulations that the development is not EIA development within the meaning of those Regulations...
>
> (11) Where—
>
> (b) the Secretary of State has directed that development is EIA development within the meaning of those Regulations that

development is treated, for the purposes of paragraph (10), as development which is not permitted by this Order."

33. Schedule 2, Part 19 is entitled "Development by the Crown or for national security purposes". Class Q provides:

> "Q. Permitted development
>
> Development by or on behalf of the Crown on Crown land for the purposes of—
>
> (a) preventing an emergency;
>
> (b) reducing, controlling or mitigating the effects of an emergency; or
>
> (c) taking other action in connection with an emergency."

34. Q.1 Conditions:

> "Development is permitted by Class Q subject to the following conditions—
>
> (a) the developer must, as soon as practicable after commencing development, notify the local planning authority of that development; and
>
> (b) on or before the expiry of the period of 12 months beginning with the date on which the development began—
>
> (i) any use of that land for a purpose of Class Q ceases and any buildings, plant, machinery, structures and erections permitted by Class Q is removed; and
>
> (ii) the land is restored to its condition before the development took place, or to such other state as may be agreed in writing between the local planning authority and the developer, unless permission for the development has been granted by virtue of any provision of this Schedule or on an application under Part 3 of the Act."

Q.2 Interpretation of Class Q:

> "(1) For the purposes of Class Q, "emergency" means an event or situation which threatens serious damage to —
>
> (a) human welfare in a place in the United Kingdom;
>
> (b) the environment of a place in the United Kingdom; or
>
> (c) the security of the United Kingdom.

> (2) For the purposes of sub-paragraph (1)(a), an event or situation threatens damage to human welfare only if it involves, causes or may cause —
>
> (a) loss of human life;
>
> (b) human illness or injury;
>
> (c) homelessness;
>
> (d) damage to property;
>
> (e) disruption of a supply of money, food, water, energy or fuel;
>
> (f) disruption of a system of communication;
>
> (g) disruption of facilities for transport; or
>
> (h) disruption of services relating to health.
>
> (3) For the purposes of sub-paragraph (1)(b), an event or situation threatens damage to the environment only if it involves, causes or may cause—
>
> (a) contamination of land, water or air with biological, chemical or radioactive matter; or
>
> (b) disruption or destruction of plant life or animal life."

Environmental Impact Assessment

35. Regulation 5(3) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/571) provides in material part:

> "5. – General provisions relating to screening …
>
> (3) A direction of the Secretary of State shall determine for the purpose of these Regulations whether development is or is not EIA development.
>
> (4) Where ….. the Secretary of State has to decide under these Regulations whether Schedule 2 development is EIA development, the …. Secretary of State must take into account in making that decision—
>
> ……
>
> (c) such of the selection criteria set out in Schedule 3 as are relevant to the development."

36. Schedule 3 is titled "Selection Criteria for Screening". The criteria include: the characteristics of the development (including size, design and cumulation with other existing and/or approved development); the location of the development (including existing and approved land use, relative abundance of natural resources); as well as the types and characteristics of the potential impact (including the magnitude and spatial extent of the impact).

The Public Sector Equality Duty

37. Section 149 of the Equality Act 2010 requires a public authority in the exercise of its functions, to have due regard to the need to:

> "(1)…
>
> (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
>
> ……
>
> (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
>
> (a) tackle prejudice, and
>
> (b) promote understanding."

Grounds of challenge

38. Four grounds of challenge are advanced by the Claimants:

i) Reliance on Class Q permitted development right: All three Claimants challenge the reliance by the Secretary of State on Class Q permitted development rights in the General Permitted Development Order. It is said that the Secretary of State misinterpreted the definition of 'emergency' in Part 19, Class Q in the adoption of her "Emergency Statement", or alternatively reached an irrational conclusion under it.

ii) EIA screening directions: Mr Clarke Holland challenges the Screening Direction issued in relation to Wethersfield as unlawful because it determines whether there are likely significant effects from the development on the premise that the development will subsist for a period of only 12 months, which is (a) an incorrect understanding of the "project" to be assessed, since the project is to last for longer than 12 months; and/or (b) a failure to consider the cumulative impacts of the project. Braintree District Council and West Lindsey District Council challenge the reliance by the Secretary of State for the Home Department on the screening directions, on the basis that the "project" is in fact something different and the Secretary of State for the Home Department acted to frustrate the statutory purpose of the EIA Regulations.

iii) Public Sector Equality Duty: Braintree District Council and West Lindsey District Council contend that the Secretary of State was in breach of her duty under section 149(1)(c) of the Equality Act to have due regard to the need to foster good relations between persons who share a relevant protected characteristic and those that do not. The assessment of community relations in the Equalities Impact Assessments identifies that the proposal will lead to asylum seekers being placed in areas of the country not previously used to accommodating asylum seekers, and that there may be impacts on community relations. The need for local consultation is identified in the assessment but this did not, as a matter of fact, take place before the decision to use the site, contrary to Bridges v Chief Constable of South Wales Police [2020] 1 WLR 5037 at §175.

iv) Value for money: Braintree District Council contends that in failing to acquire information available and relied upon within the Home Office about the necessary operational appraisal period of the Wethersfield Site being (at least) 5 years in order to establish value for money, the Secretary of State for the Home Department either failed in her duty to acquire information that was necessary to making a lawful decision; or alternatively left out of account a mandatory consideration which was bound to have relevance to her decision. As a further alternative, the Secretary of State proceeded on a mistaken basis, sufficient to amount to an error of law, that the accounting officer tests were satisfied without a specific operational period being identified.

Applications before the Court

39. At the hearing, there were two applications before the Court:

i) West Lindsey District Council applied to amend its grounds of claim to refer to events on the Scampton site postdating the decision under scrutiny which are said to demonstrate that the Home Office was planning to, or had, undertaken development at Scampton which had not been screened for its environmental impacts. The Secretary of State objected to the amendment.

ii) Braintree District Council sought permission to introduce a new ground, namely the value for money ground set out above. No objection was taken by the Secretary of State for the Home Department to the introduction of the ground but it was said to be without merit.

The witness evidence

40. The witness evidence before the Court included as follows:

Evidence adduced by the Claimants

i) An expert report by Dr Darling, an associate professor in human geography at Durham University produced on behalf of the Claimants. His report addresses current and previous arrangements for relevant housing provision under sections 95 and 98 of the Immigration and Asylum Act 1999; comparative statistics for the number of asylum seekers presently and previously; and causes of pressure on the asylum system and alternatives.

ii) A statement from Ms Willman, solicitor and senior consultant at Deighton Pierce Glynn Solicitors, exhibiting contracts entered into for the provision of services at the sites.

iii) A statement from Mr Banner, senior civil servant and project director for the Home Office's Accommodation Centres Project.

iv) A statement from Mr Burns, senior civil servant and project director for the Home Office's Accommodation Centres Project.

v) A statement from Mr Salmon, the head of the Planning Response Unit in the Department for Levelling Up, Housing and Communities, and who took the screening decisions.

Discussion

Reliance on Class Q permitted development rights

The decision of Waksman J

41. Waksman J addressed the interpretation of 'emergency' for the purposes of Class Q permitted development rights in Braintree District Council v Secretary of State for the Home Department & Anor [2023] EWHC 1076 (KB). He treated the question as a matter of law for the Court to determine. In doing so, he observed that he was not dealing with a judicial review of the Secretary of State's decision to adopt the Emergency Statement (§34). He concluded that 'emergency' is exhaustively defined within paragraph Q2 of Part 19 (§71). A 'situation' which threatens serious damage to human welfare in a place in the United Kingdom contemplates something which may occur over a period of time and/or which is of a continuing nature (§71). Class Q uses clear and precise language and whether it applies to any particular case will depend on the facts of that case (§80). Part Q is concerned only with Crown land. The twelve month period emphasises the temporary nature of the Class Q right. Originally it was for six months only (§31).

42. Waksman J rejected the submission by Braintree District Council that he should be guided by dictionary definitions of "emergency", which include words like sudden, unexpected, or unforeseen. He said this would amount to a gloss on the statute where the statute has provided its own discrete definition (§72). He also rejected the submission that the obligation on a developer to notify the local planning authority after commencing the development is an indicator that the right must contemplate some unforeseen event (§73). Nor did he accept any kind of ranking between Class Q and section 293A of the Town and Country Planning Act (applications for urgent planning permission) such that if the event or situation in question truly falls under section 293A, it cannot also fall within Class Q (§ 76). He rejected the submission that any serious situation of national significance which government policy seeks to address could, in theory, allow the government to disregard the planning regime by claiming a Class Q right (§79).

43. Waksman J applied the law as he considered it to be, to the facts. He concluded that the unprecedented number of asylum seekers constituted a situation which had emerged over time (§81). The real prospect of homelessness of asylum seekers in significant

numbers absent some further accommodation being found constitutes the threat of serious damage to human welfare, as defined (§83). He cited the numbers of asylum seekers as between 120,000 – 140,000 this year in circumstances when the continued use of hotels was not sustainable not simply because of cost but because of the issues with local authorities and the approaching summer months and the award on one occasion of injunctive relief (§84). The duties of the Secretary of State for the Home Department mean the reliance on Class Q could not be viewed as a policy question of how to provide more homes nationwide.

44. The Court of Appeal declined to determine the local authority's appeal from the judgment of Waksman J so far as it related to the ambit of Class Q explaining that:

> "In our judgment it is neither necessary nor desirable to determine the Class Q point on this appeal. It is not necessary because our decision on the Jurisdiction Point is determinative of the appeal. It is not desirable because anything that we say on this matter would necessarily be obiter dicta and would not bind the Courts below. Worse, anything we say might put the judge in another case in which the Class Q point arises at first instance in a difficult position. At the moment that other judge will have the benefit of the approach to Class Q set out by Waksman J. That approach would not bind the other judge, both because Waksman J's findings on Class Q were obiter, and because the other judge would be of co-ordinate jurisdiction. The other judge would of course be expected to follow Waksman J's approach unless that judge considered it to be wrong." (§64)

45. Turning then to the present case. On behalf of the Secretary of State for the Home Department it was said that the vast majority of the arguments advanced by the Claimants in relation to the Class Q issue were addressed in the judgment of Waksman J. The Court of Appeal has indicated that this Court should only decline to follow Waksman J's judgment if convinced it was wrong. Waksman J's analysis is thorough, considered, and clearly right.

46. On behalf of the Claimants, it was said that the present claim is a judicial review of the Secretary of State's adoption of the "Emergency Statement" with public and planning law consequences, which were not the subject of Braintree's application for an injunction before Waksman J. To the extent there is an overlap with Waksman J's decision and the present claim, the judge's consideration of the Class Q issue was strictly *obiter*, as recognised by the Court of Appeal, and the court in fact had no jurisdiction through those proceedings to determine the issue. The remarks of Waksman J on the "emergency" point were not informed by a full and frank evidential picture from the Secretary of State, were wrong in law and ought not to be followed.

The correct approach to interpretation and the role of the Court

47. Waksman J dealt with the question of emergency as a matter of law, observing that he was not dealing with a judicial review of the Secretary of State's decision to adopt the Emergency Statement (§34). It appears from a reading of his judgment that the Secretary of State had sought to argue before him that the approach to Class Q encompassed elements of judgement which were matters for the Secretary of State and

ought to be afforded deference by the Court (§8). That submission was not however pursued in the present case. In writing before the hearing, it was said that, on the particular facts of this case, the Secretary of State was content to proceed on the basis that the question of emergency is a matter of law, particularly where the vast majority of arguments raised by the Claimants relate to the interpretation of Class Q rather than its application. The Secretary of State's position is reserved on whether the same would be true of the other categories of "emergency" under Class Q, in particular, national security. For present purposes, the case advanced was not therefore dependent upon any argument that there should be any deference to the Secretary of State's view. Nonetheless, the submission was made that the claim before this court is a claim for judicial review, amongst other things, of the Secretary of State's decision to adopt the Emergency Statement. To the extent that the Court concludes there are matters of judgement involved in whether an emergency exists, deference should be given to the Secretary of State's administrative judgement in this regard.

48. On behalf of the Claimants, it was said in writing before the hearing that the court should approach the question of emergency as a matter of law for the court to determine, at least as it relates to the present case. The question of whether there is, or might be, an emergency within the meaning of Class Q is a question of law, potentially mixed with questions of fact. Questions of deference should not be imported into the approach to Class Q. However, if the court considers that any relevant questions are ones that can only be challenged by way of *Wednesbury* review, then, the Claimants also maintain that the conclusions in the Emergency Statement were not reasonably open to the Secretary of State and are irrational.

49. The claim before Waksman J concerned an application for an injunction by Braintree District Council, as local planning authority, pursuant to section 187B TCPA 1990 to address what it considered to be a breach of planning control. In contrast, the present claim concerns a judicial review of the decision by the Secretary of State for the Home Department to adopt the Emergency Statement. The case of R (Mawbey) v Lewisham London Borough Council [2020] P.T.S.R. 164 concerned a judicial review challenge to the decision of the local planning authority that electronic communications apparatus installed on the roof of a house was permitted development under Class A of Part 16 of the GDPO. The particular issue before the Court was the meaning of the term 'mast' used in Class A of Part 16. Lindblom LJ said as follows in relation to the requisite approach:

> "19. … The meaning of the term "mast" in paragraph A.1(2)(c) is a matter of law. Before a local planning authority can determine whether a particular structure is a "mast", it must adopt the legally correct meaning. In this case, as Lang J. held, the council did not do that, and thus it erred in law. Its understanding of the provision was wrong."

50. Shortly before the hearing, I asked my clerk to email the parties the relevant paragraph of the decision in R (Mawbey) v Lewisham suggesting that the same approach may be said to be apt for the present case which also concerns a judicial review of a decision to rely on permitted development rights. The parties were asked to make any submissions on the point before the end of the hearing. Nothing was said in response in oral submissions.

51. Accordingly, I propose to start by considering the legally correct meaning of 'emergency' on the basis that before the Secretary of State could determine whether the situation in the present case is an emergency, she must have adopted the legally correct meaning of the term.

The principles of construction

52. Construing elements of the legislation for planning is not, in essence, a different exercise from the interpretation of other statutes and statutory instruments. The court's essential function is to ascertain the meaning of the words in the legislation having regard to the purpose of the provisions in question (CAB Housing Ltd v SSLUHC [2023] EWCA Civ 194 at §22 per Sir Keith Lindblom). The court routinely carries out the task of interpreting the General Permitted Development Order as an ordinary task of statutory interpretation, which reflects that the Order is legislation. The ordinary meaning of the language used is to be ascertained when construing the Order in a broad or common sense manner. It is to be expected that common words are to be given their common meaning unless there is something which clearly indicates to the contrary (R (Mawbey) v Lewisham at §19 and §20).

The interpretation of 'emergency'

53. Part Q of the General Permitted Development Order opens with paragraph Q, which is titled "Permitted Development". It sets out the scope of the right. Permitted development is "Development by or on behalf of the Crown on Crown land for the purposes of (a) preventing an emergency; (b) reducing controlling or mitigating the effects of an emergency; or (c) taking other action in connection with an emergency. Paragraph Q.1 states that development is permitted by Class Q subject to two conditions. The first is that the developer must notify the local planning authority of the development as soon as practicable after commencing it and the second is that any use must cease on or before the expiry of 12 months unless permission for the development has been granted. Paragraph Q.2 is headed "the interpretation of Class Q" and sets down a definition of 'emergency'.

54. Two arguments are advanced by the Claimants which, it is said, were either not advanced before Waksman J or were not articulated in the way now put to the Court. The first concerns the principle of statutory interpretation that, in the case of a statutory definition, the defined term may itself colour the meaning of the definition. The principle is sometimes referred to as 'the potency of the term defined.' When the definition is read as a whole, the ordinary meaning of the word or phrase being defined forms part of the material which might potentially be used to throw light on the meaning of the definition. Whether and to what extent it does so depends on the circumstances and in particular on the terms of the legislation and the nature of the concept referred to by the word or phrase being defined (see Bennion, Bailey and Norbury on Statutory Interpretation (8th edition) at §18.6 and the Supreme Court decision in R (PACCAR Inc) v Road Haulage Association [2023] 1 WLR 2594 at §48 (Lord Sales)).

55. Thus, it is said on a proper construction of paragraph Q.2, the definitional paragraph does not expand the scope of an "emergency" but further defines it. In construing the individual limbs of the definition, regard must be had to the natural and ordinary meaning of the word, which, it is apparent from dictionary definitions, includes the concepts of sudden, unforeseen and unexpected. The absence of a temporal limit to the

scope of the right in paragraph Q gives the right a potentially unreasonably broad scope unless the ordinary meaning of the term emergency is utilised. It is, for example, unclear at what point it could be said that pressures on the asylum accommodation estate shaded into an "emergency" on the Secretary of State's interpretation and development to mitigate the effects of an emergency could legitimately take place years after the event or situation giving rise to the alleged emergency.

56. Further, it is said that there is a core meaning to the term "emergency" in the context of powers afforded to government which imports a restrictive approach. The concept of "emergency powers" is one that carries a special connotation within constitutional theory. It is a principle of the rule of law – which is manifest in the common law through the principle of statutory interpretation, that emergency powers, because of their severe impact and notable departure from ordinary legal norms, are intended to be used restrictively (Nottingham City Council v Infolines Public Networks Ltd [2010] P.T.S.R. 594 at §9). The effect of Class Q is to disapply the usual rules of planning law, governing all citizens and it should be interpreted restrictively. Emergency development under Class Q could plausibly interfere with somebody else's enjoyment of their property even if that interference does not amount to a breach of their proprietary rights. Class Q is not like other permitted development rights in that it is of such breadth that it can plausibly be used to justify almost any type of development unless constrained by the core meaning of the term emergency. The Secretary of State's conceptualisation of Class Q appears to allow for a "rolling" or "permanent" emergency which will continue for as long as policies are maintained which engender a population of asylum seekers and which impose destitution on that population.

57. The second argument which it is said was not articulated before Waksman J in the way it now is, is that it must be presumed, absent positive evidence to the contrary, that the Secretary of State for the Home Department will fulfil the statutory duties under sections 95 and 98 of the Immigration and Asylum Act 1999. There is no evidence before the Court that it is physically impossible for the duties to be fulfilled absent the development on the two sites. The expert report of Dr Darling explains the lack of housing to service the demand faced by those owed the duty is due to a number of different causes. The increase in demand is only one such factor. The increase in that demand is, in part, caused by the Secretary of State's own policy choices inter alia in allowing a backlog of asylum claimants due to a slowdown in decision-making. The Secretary of State has a number of available policy levers to reduce the number of asylum seekers needing accommodation which are not limited to providing more accommodation. One measure addressed by Dr Darling would be to resume the former pace and volume at which the Home Office determined asylum applications. There has already been ample time (whether since the purported emergency began three years ago, or even in the past three months) for planning applications to have been made under section 293A TCPA 1990. If the Secretary of State's interpretation is right, the approach taken could seemingly be applied to justify "emergency" development to address the whole gamut of policy problems facing the government. That is entirely inconsistent with the purpose of the Order and of the removal of Crown immunity following the coming into force of Part 7 of the Planning and Compulsory Purchase Act 2004.

58. Other arguments advanced by the Claimants repeat those advanced before Waksman J. The condition in Q.1 that a developer need only notify the local planning authority of

the development as soon as practicable after commencing development indicates that the event or situation must be unexpected or unforeseen. Finally, the Court's attention was drawn to the explanatory notes to the Civil Contingencies Act 2004 which contains materially similar wording. The examples given of emergencies encompass a sudden, unexpected, unforeseen event or situation such as a terrorist attack, disruption of fuel supplies, contamination of land with a chemical matter and an epidemic.

59. Whilst the Claimants' submissions were cogently expressed, they are, in my view, defeated by the ordinary meaning of the words used in Part Q. Paragraph Q.2 is headed "Interpretation of Class Q". Q.2(1) starts by saying that "for the purposes of Class Q 'emergency' means". The underlined words indicate the definition that then follows is intended to be comprehensive, so far as it relates to the application of Class Q. If so, the term must therefore be understood in its stipulated sense and the Court must take care not to apply a judicial paraphrase or other gloss on a statutory definition.

60. 'Emergency' is said to mean 'an event or situation' which 'threatens serious damage' to human welfare, the environment or national security. I agree with Waksman J that 'situation' contemplates something which may have occurred over a period of time and which is of a continuing nature. In this regard it may be said that there is an inherent tension between the reference to 'situation' in the definition and the interpretation proposed by the Claimants which requires the emergency to be sudden, unexpected or unforeseen. The reference to 'threatens serious damage' sets the threshold for an event or situation to become an emergency for the purposes of Class Q. The threat of serious damage must relate to one (or more) of three specified categories of harm (human welfare in a place in the UK, the environment of a place in the UK and the security of the UK). Serious damage to human welfare is defined by a list in Q .2 (2) which includes homelessness. The reference to "only if" in the paragraph indicates the list is to be treated as exhaustive. The same reference to "only if" appears in sub paragraph 3 in relation to the environment. There is no qualification in relation to serious damage to the security of the United Kingdom.

61. Turning to the principle of the 'potency of the term defined', the Supreme Court in PACCAR expressed the view that no significant potency can be attached to the term so as to colour or qualify the meaning of the definition in the absence of general consensus as to the limits of the term, as here (§49). In any event, the threat of serious damage to human welfare, the environment or national security accords, in my view, with an ordinary understanding of the term 'emergency'. Some of these emergencies could be sudden, unexpected or unforeseen, but others that are not will still satisfy the threshold test for the applicability of Class Q if they give rise to the threat of serious damage. I accept that there is no temporal limit on the scope of the right in paragraph Q. There are however other limitations to its scope. In addition to the requirement for a threat of serious damage the development must be on Crown land. It must be development by, or on behalf of, the Crown. The development is time limited. On or before the expiry of 12 months the permission ceases and the use/development must be reversed unless planning permission has been granted (the time limit used to be 6 months but was extended during Covid).

62. The condition in paragraph Q1 that the developer need only notify the local planning authority after the development has commenced cannot alter the scope of the right. The grant of planning permission derives from article 3(1) and the provisions for "permitted development" in that class not through the specific provisions for "conditions" in a

particular class. To be "permitted development" in the first place, the development in question has to come fully within the relevant description of the "permitted development" provided for within each class. If it does not, the provisions for "conditions" applicable specifically and only to "permitted development" as thus defined could not relate to it. In other words, the conditions imposed on a class of right cannot have the effect of enlarging the class (Keenan v Woking BC [2018] P.T.S.R. 697 at §33).

63. The decision in Nottingham City Council v Infolines relied on by the Claimants may be distinguished legally and factually from the present case. It concerned the interpretation of 'emergency works' in an Act of Parliament (The New Roads and Street Works Act 1991) and the disposal of property belonging to the defendant in the claim. In any event, however, the scope of emergency in Class Q is restricted. It is restricted by the requirement for a threat of serious damage in relation to three specified categories of harm. As for section 293A of the Town & Country Planning Act, there is no definition in the section as to when it is necessary to carry out development 'as a matter of urgency', which might assist the Claimants in their submission that there ought to be a ranking as between section 293A and Class Q. Moreover, there is an obvious distinction with Class Q which only permits development for up to a year. The concept of 'ranking' the applicability of the two provisions suggested by the Claimants is not therefore apt.

The interpretation of emergency in the Emergency Statement

64. Accordingly, on the interpretation arrived at above, for the Secretary of State to lawfully rely on the Class Q permitted development right, she must have been able to demonstrate the existence of an event or situation which threatens serious damage to human welfare in the UK by virtue of homelessness, which in the present case, relates to asylum seekers.

65. The Emergency Statement defines the emergency at paragraph 19:

> "It is considered that an emergency exists falling within the definition above since there currently exists in the United Kingdom a situation which threatens serious damage to human welfare because there was and remains an immediate need to provide accommodation for destitute asylum seekers which if not met would result in homelessness. Whilst a proportion of this need is currently being met through the use of hotels, this was (and still is) only intended as a short-term or stop-gap solution pending provision of more suitable alternatives.
>
> The proposed development would therefore be undertaken:
>
> i) For the purposes of preventing an emergency;
>
> ii) for the purposes of reducing and mitigate the effects of that emergency; and/or
>
> iii) as "other action" taken in connection with that emergency."

66. On the construction of emergency the Court has arrived at above, the Secretary of State used the legally correct construction of emergency in the Emergency Statement.

Application to the facts of the present case

67. Applying the approach of the Court of Appeal in R (Mawbey) v Lewisham, I incline to the view that the question of whether there is a threat of serious damage by way of homelessness of asylum seekers requires the application of judgement, which ought, primarily, to be a matter for the Secretary of State for the Home Department. The Home Office has statutory responsibility for accommodating destitute asylum seekers and consequential institutional knowledge and experience in this regard. The exercise of judgement is subject to review on the usual public law principles.

68. For present purposes, however, it is unnecessary to form a concluded view on the issue because I am satisfied that the outcome is the same whether the Court applies the law to the facts itself or reviews the judgement of the Secretary of State in this regard. On either case the Secretary of State's reliance on Class Q was, in my view, lawful.

69. The development proposed is development by or on behalf of the Crown, on Crown Land. It is not disputed that the numbers of asylum seekers are at record levels or that the Secretary of State has a legal duty to accommodate them. In October/November 2020 a particular crisis point was reached when the processing facility at Manston became dangerously overcrowded. There can be no serious dispute that 'spot booking' or 'block booking' hotels is not suitable accommodation or a sustainable longer term solution. This is due not only to the cost or to the obvious point that hotels are ordinarily intended for very different purposes. It is also due to the hostile reaction of local authorities to the practice which resulted in a spate of litigation (Great Yarmouth v Al-Abdin [2022] EWHC 3476). The numbers of asylum seekers involved are significant. The Emergency Statement explains that the total number of asylum seekers receiving support on 31 December 2020 was 110,171 which reflects a 72% increase on the numbers in December 2020. As of March 2023, the Home Office was accommodating over 48,000 asylum seekers and over 8000 Afghan refugees in temporary hotel accommodation. This is a "situation" which "may cause" (Q.2(2)) the homelessness (Q.2(2)(c)) of large numbers of asylum seekers (which could in turn lead to "human illness or injury" (2(2)(b)). Given the number of asylum seekers concerned, and the vulnerability of that cohort, the scale of damage is potentially significant, i.e. the situation "threatens serious damage" to human welfare (Q.2(1)(a)). This serious damage will arise "in a place" in the United Kingdom. That being the case, the proposed developments are action taken to "reduce, control, or mitigate" the effects of the existing emergency, or are "other action taken in connection with" that emergency (Q).

70. The Claimants submit that the Secretary of State is impermissibly using Class Q as a policy lever. It is said that there is no connection between section 95 and 98 of the Immigration and Asylum Act and Class Q. There is a presumption that the Secretary of State will comply with her statutory duties unless that presumption is specifically displaced which it has not been. Attention was drawn to the expert report of Dr Darling which explains that the current crisis has various causes including that Home Office decision making has slowed down. Having decided it is expensive to accommodate asylum seekers in hotels, Class Q is being used as a policy lever.

71. In my judgment, these submissions to do not assist the Claimants. On the interpretation of Class Q reached above, the Secretary of State is entitled to rely on Class Q, once there is a threat of serious damage to human welfare by virtue of homelessness. Its application does not require an investigation into the causes of the emergency (unless the reasons for relying on Class Q reach levels of irrationality which entitles a court to intervene).

Environmental Impact Assessment

Legal principles

72. The relevant legal principles were not in dispute. The following are of particular relevance to the present case:

a) A screening direction is designed to identify those cases in which the development (i.e. the project which EU Directive 2011/92/EU requires to be assessed) is likely to have significant effects on the environment. That assessment is necessarily based on less than complete information. It is not intended to involve a detailed assessment of factors relevant to the grant of planning permission, nor a full assessment of any identifiable environmental effects. There has to be a sensible limit to what a screening decision maker is expected to do (R (Ashchurch RPC) v Tewkesbury BC (CA) [2023] P.T.S.R. 1377 at §77 and Kenyon v Secretary of State for Housing Communities and Local Government [2021] Env LR 8 at §15).
b) The question of what may be said to be the project that requires screening, whether there is sufficient information to issue a screening direction, and whether a proposed development is likely to have significant effects on the environment, are fact specific questions of judgement for the primary decision maker, subject to challenge on grounds of *Wednesbury* rationality or other public law error (Ashchurch at §81 and Kenyon at §10 and §12).
c) Relevant factors which may assist in determining the scope of a project include the following (R (Wingfield) v Canterbury City Council [2020] JPL 154 at §64):

    - Common ownership: Where two sites are owned or promoted by the same person, this may indicate that they constitute a single project.
    - Simultaneous determinations: Where two applications are considered and determined by the same committee on the same day and subject to reports which cross refer to one another, this may indicate that they constitute a single project.
    - Functional interdependence: Where one part of a development could not function without another, this may indicate that they constitute a single project.
    - Stand-alone projects: Where a development is justified on its own merits and would be pursued independently of another development, this may indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme.

d) The identity of the project is not necessarily circumscribed by the ambit of the specific application for planning permission which is under consideration (Ashchurch at §78).
e) The objectives of the Directive and the Regulations cannot be circumvented (deliberately or otherwise) by dividing what is in reality a single project into separate parts and treating each of them as a "project"—a process referred to in shorthand as "salami-slicing" (Ashchurch at §78).

f) Other cases, decided on different facts, are only relevant to the limited extent that they indicate the type of factors which might assist in determining whether or not the proposed development is an integral part of a wider project (Ashchurch at §80).
g) The existence and nature of cumulative environmental effects will be a question of fact and judgment in each case (Brown v Carlisle City Council [2011] Env L.R. 5 §21; Bowen-West v Secretary of State [2012] Env. L.R. 22 at §28; R (Finch) v Surrey County Council [2022] P.T.S.R. 958 at §15(5)).
h) A decision-maker may rationally reach the conclusion that the consideration of cumulative impacts from a subsequent development which is inchoate may be deferred to a later consent stage (analysis of Holgate J in R (Pearce) v Secretary of State [2022] Env LR 4 at §117 citing R (Littlewood) v Bassetlaw DC [2009] Env. L.R. 21 at pp. 413-415, particularly §32 and R (Substation Action Ltd v Secretary of State [2023] P.T.S.R. 975 at §198).

Assessing the evidence

73. There can be no doubt that the Planning Response Unit in the Department for Levelling Up, Housing and Communities proceeded on the basis the development it was required to screen on each site was a 12 month project. The conclusion reached was that there would be no likely significant environmental effects from the use of the site as proposed. Thus, the analysis accompanying the Screening Direction for Wethersfield states that "The Project is for a 12 month period". References to the 12 month duration of the project appear at a number of points in the screening analysis. An example is "Any resulting social changes would therefore be limited due to the potential geographical spread and limited numbers passing through the project site over the temporary 12 month period". There was no material dispute between the parties in this regard.

74. Similarly, the environmental consultants instructed on behalf of the Home Office proceeded on the basis that the development was a 12 month, temporary, project. The letter dated 17th March 2023 from AECOM Ltd to the Planning Response Unit in relation to Wethersfield states that "The Proposed Development is expected to be operational for a temporary period of 12 months in total".

75. The Claimants submit that the Screening Direction failed to assess the likely significant effects of the project because the evidence shows that the development is likely to last for longer than 12 months and, as a consequence, its likely significant effects will endure beyond 12 months. In particular, the Claimants contrast the references in the Screening Requests and Screening Directions (to the temporary nature (12 month) of the projects) with internal Home Office decision making documents disclosed in these proceedings. These documents were not disclosed to the Department for Levelling Up (responsible for the screening directions). The Claimants point to the stated intention in ministerial submissions to obtain planning permission on a longer term basis (via a Special Development Order). They also pointed to a procurement timeline from December 2022 indicating Home Office plans to contract for the provision of asylum services with a contract end date of 13 July 2025. As to the latter, it was said on behalf of the Secretary of State, that the timeline was not specific to the two sites. The Claimants drew the Court's attention to emails between officials about external communications to emphasise what was said to be a 'disconnect' between the 12 month project which was screened and the public and private facing aspects of the project. In particular:

> "……In our external communication we remain silent on the duration and suggest we remain silent with MP and partner engagement as we continue to review our AO position and therefore the length of time we occupy the site.
>
> In response to handling duration questions I recommend that we indicate the temporary nature of use i.e. 'The Home Office will use RAF Scampton on a temporary basis.' Or 'The Home Office will only use the site for a limited period of time.'"
>
> (email of 27 March from the civil servant leading the project)

76. The Court was referred to contracts for the provision of services on sites for longer than 12 months (typically 2 years or longer) which were not disclosed in these proceedings but were obtained by Mr Clarke-Holland's legal representatives following requests made under the freedom of information legislation.

77. I start by considering the contemporaneous decision making material generated between January to March 2023 up to, and including, the announcement in Parliament on 29 March 2023 about the use of the sites to accommodate asylum seekers.

78. The following extract from the Ministerial submission of 3 March 2023, repeated in later submissions, is apt to describe the development and the rationale for it:

> "To progress rapid development of the Pathfinders and comply with planning law, we intend to use permitted development rights for Crown emergency situations (Class Q). Class Q…will grant us 12 months permission for non-detained use and related physical works. During this period, we will seek to ensure that planning permission on a longer-term basis under a Special Development Order is obtained."

79. It is apparent from the extract above that Class Q is viewed as a specific and discrete solution to the need for accommodation. It is said to enable "rapid development of the Pathfinders" and "will grant us 12 months permission for … use and related physical works." There was a strong imperative for the 12 month period of permission for the reasons explained in the Emergency Statement. The statement identifies the statutory duty on the Secretary of State to accommodate asylum seekers and explains the record levels in the number of asylum seekers requiring accommodation. The statement goes on to make the point that "obtaining planning permission for new accommodation takes time", and "as a consequence, the Home Office is unable to meet the immediate need for sufficient, adequate accommodation for asylum seekers". Physical indications of the temporary nature of the project are the pre-fabricated modular buildings to be brought onto site and placed on the existing hardstanding, as well as the proposals for decommissioning by removal of the facilities.

80. It is apparent that the longer term use of the sites, beyond 12 months, was envisaged. The ministerial submission referred to above states that "we will seek to ensure that planning permission on a longer-term basis under a Special Development Order is obtained." Discussions amongst officials within the Home Office in and around March 2023 were canvassing various different time periods for the use of the sites, often in

general terms and by refence to value for money. There was a particular focus on when to offer West Lindsey District Council an option to purchase the Scampton site. However, no decision or settled position on the longer term duration of the sites had been arrived at by the time the Screening Directions were issued. The Equalities Impact Assessments were based on the assumption that the sites will be used for as long as expedient, without specifying a precise time period for either site. As is apparent from the chronology, the decision making was taking place at speed. There are repeated references in the ministerial submissions to the timing being "Immediate" or decisions being "urgently required." The decision making was focussed, primarily, on the use of the Class Q permitted development right because it offered a quick solution. Counsel for the Secretary of State summarised the position by explaining that the Secretary of State was aware that it might be necessary to decommission the sites at the end of the 12 month period if planning permission had not been obtained but that was a risk she was willing to take for the benefit of the 12 month breathing space offered by Class Q.

81. Aside from the discussions around possible duration of the use of the sites, there is no contemporaneous evidence before the Court of discussions about the type of any future development or of the land it would occupy. It is, moreover, apparent that there was considerable uncertainty about the future, both as to the shape of the development as well as its duration. The uncertainty stemmed from other efforts underway to reduce the numbers of asylum seekers requiring accommodation:

> "12. …HOAI analysis suggests that the use of the site for longer than 2 years increases the potential value for money due to longer return on the initial investment but reduces the certainty as the long-term position on use of hotels is subject to a number of factors including the impact of other proposals to reduce demand for accommodation. Flexibility therefore becomes important with a longer-term proposal."
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> (extract from emails between officials dated 22/23 March 2023)
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> "Value for Money – short-term, this proposal may provide value-for-money under certain conditions, reliant upon the counterfactual being the use of more costly accommodation. Longer term forecasts of supply and demand for asylum accommodation are changeable and could alter the VFM assessment of this proposal."
>
> " …our recommendation (with HS) is to use the site for 3 years rather than 2. VfM for 2 years is currently -£2m, i.e. not VfM (marginal). 3 years is VfM. There are significant variables here ..."
>
> (email of 24th March 2023 amongst officials)
>
> "Further that the HS and Minister Immigration's positions regards during of use of Scampton is to consider the site for 2 years. The figures continue to move and latest cost estimates for the site suggest that the current VfM for 2 years is currently -£2m i.e. not VfM (marginal), which is an update on the position

> in the submission where it states 2 yrs is VfM. Our latest analysis indicates that 3 years is VfM and is therefore the safest assessment at present – however this could change as we could learn more about the site. The Programme will continue to provide AO advice as costs iterate."
>
> (email of 27th March from the senior civil servant and project leader)

(underlining in the extracts above is the Court's emphasis).

82. Further explanation as to the efforts underway to reduce demand for accommodation is given in the statement by the Minister for Immigration to the House of Commons on 29 March 2023, announcing the use of the sites. The Minister begins his statement by setting out various measures that are being introduced to tackle illegal migration. The measures included increased enforcement and removals of people with no right to remain; Anglo-French co-operation and a partnership with Rwanda to process claims. The Minister explains that the Home Office was on track to process the backlog of initial asylum decisions by the end of the year as well as the expected impact of the Illegal Migration Bill, once adopted. The statement continues "The enduring solution to stop the boats is to take the actions outlined in our [Illegal Migration] Bill but in the meantime, it is right that we act to correct the injustice of the current situation."

83. The Defendants relied on a witness statement, dated 30 August 2023, by Mr Burns, a project director for the Home Office's asylum accommodation project. The statement was accompanied by a statement of truth. Mr Burns explains that there was a general understanding in the Home Department that the sites were likely to be used beyond the 12 months permitted by Class Q. However, there was no settled intention as to the duration of any use beyond 12 months or what a "longer-term basis" meant in practice as this was dependent on a range of factors. Those factors included how the sites operate in practice; the projected demand for asylum seeker accommodation which in turn was likely to be affected by a range of other factors, including an increase in the number of caseworkers to handle asylum claims, improvements in technology and the Illegal Migration Act 2023, (which received Royal Assent on 20 July 2023). The variable nature of those factors meant that, while the potential to use the sites for longer than 12 months was a consideration at the time of the decisions in March 2023, whether there would actually be any longer use, the term of that use and the form of that use were all necessarily inchoate. At the date of making this statement, no decision to use the sites beyond 12 months had been taken by the Secretary of State.

84. A witness statement from Mr Banner, another project director, dated 4 April 2023, explained that "the numbers of future asylum seekers are difficult to predict and the impact of the Home Office's other strategies to address the current emergency will become clearer in the next 12 months. The use of the site under Class Q is not dependent on the outcome of that process as there is an urgent need for additional accommodation now."

85. In addition, evidence from Mr Salmon from the Planning Response Unit, who conducted the Screening Decision, explains the use of prefabricated modular units,

temporary fencing and generators meant he thought it was unlikely that the development on the project site would be continued beyond the 12 months in the same form. He judged it likely that the Secretary of State would either stop at that point or would have decided by then to make a more significant use of the land. He had been given no clarity about what that more significant use/development would be in terms of its location, nature, type, and scale. Accordingly, he had no material on which he could base any assessment of the likely significant effects of future plans.

86. It is well established that a Court will always be cautious in exercising its discretion to admit evidence that has come into existence after the decision under review was made as a means of elucidating, correcting or adding to the contemporaneous reasons for it (R (United Trade Action Group Ltd) v Transport for London & Anor [2022] 1 WLR 367 at §125 (Bean LJ)). The court must avoid being influenced by evidence that has emerged after the decision. The need for caution is plain. A claim for judicial review must focus on the reasons given at the time of the decision. Subsequent second attempts at the reasoning are inherently likely to be viewed as self-serving. Sometimes elucidatory evidence will be appropriate and necessary, sometimes not. But even where the evidence in question is merely explanatory, the court will have to ask itself whether it would be legitimate to admit the explanation given. The Court of Appeal observed that judges will usually be able to distinguish between genuine elucidation of a decision and impermissible justification or contradiction after the event.

87. In the circumstances of the present case, I exercise my discretion to permit the introduction of the evidence of the witnesses for the following reasons. The evidence of Mr Burns that the use of the sites beyond 12 months was 'likely' was relied upon by the Claimants in their challenge to the nature of the project. All three witnesses are responding to a challenge about what was not, but should have been, assessed, from which it follows that the contemporaneous documentation does not address specifically the points raised by the challenge. However, the explanations provided by Mr Burns and Mr Banner as to why the future was uncertain is foreshadowed in the contemporaneous material (set out above). Those references are, however, in shorthand as the documents are internal and directed to a knowledgeable audience. The witness evidence assists the Court in understanding the contemporaneous references.

88. The Claimants placed heavy reliance on evidence post dating the screening direction. This included the award of contracts for the provision of services on the sites. The earliest contract relied on is one between NHS Mid and South Essex ICB and Commisceo Primary Care Solutions for the provision of healthcare at Wethersfield for a period of 18 months which was signed on 21 June 2023. A contract with Clearsprings Ready Homes Ltd to provide services at Wethersfield for 24 months with a further 12 month extension was signed on 11 July 2023. A 2 year contract was signed with Portakabin on 11 October 2023.

89. West Lindsey District Council made an application to amend its Statement of Facts and Grounds to include events post dating the grant of permission for judicial review. The Council sought to rely, in particular, on the findings of a site visit carried out on 14 September 2023 which were said to indicate that the works being carried out at RAF Scampton go considerably beyond those in respect of which the EIA Screening Direction was issued.

90. Particular reliance was placed at the start of the hearing on letters dated 27 and 30 October 2023 from the Minister for Immigration to the constituency MPs for the two sites (Priti Patel MP and Edward Leigh MP) the effect of which, it was submitted, renders the development retrospectively unlawful. The letters state in material part:

> *"*We have always been clear that we would stand up the site in this initial period using emergency Class Q Permitted Development Rights while we consider both longer term needs and the potential to secure ongoing planning permission.
>
> I am therefore writing to inform you that we intend to seek this further permission via a Special Development Order (SDO) for a duration of three years*."*

91. In the particular context of a challenge to an EIA screening direction, the Court of Appeal has addressed reliance by parties on documents which were not available to the decision-maker as follows:

> "28 In judicial review proceedings it is generally inappropriate for parties to seek to rely on documents (and to advance arguments based on those documents) which were not available to the decision-maker. Taken at its highest, such an approach undermines the entire process of judicial review. It runs the risk that the court will be asked to conduct a kind of rolling review, in which nothing is ever finalised or settled, and it does not matter what information was available at the time the decision was taken. This serves only to encourage the all-too-prevalent attitude that, in judicial review applications, it is always possible to "have another go".
>
> ….
>
> 30 For these reasons, therefore, I have not had any regard to the documents that were not in existence or available at the time of the screening direction." (Kenyon v SSCLG [2021] Env LR 8 at §27 – 30)

92. I accept the Claimants' submission that evidence post dating a decision may be capable of throwing light on the contemporaneous decision making. However, in the circumstances of the present case, evidence post dating the screening direction is, in my view, an unreliable guide. This is because it is apparent that the decision making was urgent, conducted at speed and focussed on using Class Q. The future use of the sites would depend on the outcome of efforts to reduce the demand for asylum seekers and was to be grappled with once the sites were up and running under the Class Q right. Accordingly, I discount the evidence relied on by the Claimants that post dates the screening direction.

93. Accordingly, at the time of the Screening Directions, use of the sites beyond the 12 month period was envisaged. However, no settled plans for the duration or type of use beyond the 12 month period had been formulated because the future depended, in material part, on the outcome of efforts to reduce the numbers of asylum seekers

requiring accommodation. Future plans for the sites were, as at March 2023, inchoate. Moreover, it was envisaged that the future plans would be subject to a separate planning consent process. The references relied on by the Claimants in the emails of officials to 'handling' questions about the duration of the use of the sites reflected the, then, uncertainty as to the future.

Application of legal principles to the evidence

94. Turning then to apply the legal principles to the assessment of the evidence.

95. Both the environmental consultants instructed on behalf of the Home Office and the Planning Response Unit at the Department for Levelling Up, Housing and Communities proceeded on the basis the proposed development was a temporary 12 month project. The decision on the project, including its length, is a matter of judgement for the decision maker, subject to judicial review on the usual public law grounds (Ashchurch).

96. The formal planning document may not necessarily circumscribe the project (Ashchurch). However, on the facts of the present case, the Class Q route was seen as a 'stand-alone' or discrete solution to the urgent difficulties faced by the Home Office in light of the Secretary of State's statutory duty to accommodate asylum seekers. It was being pursued by the Home Office independent of any prospect of it continuing beyond 12 months, albeit it was considered likely that longer use of the sites would be required. The Secretary of State was aware that it might be necessary to decommission the sites at the end of the 12 month period if planning permission had not been obtained by then but this was a risk she was willing to take for the benefits afforded by the 12 month permission. Where a development is justified on its own merits and would be pursued independently of another development, this may indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme (R (Wingfield) v Canterbury County Council at §64).

97. The EIA Directive and the jurisprudence of the European Court of Justice recognise that it is legitimate for different development proposals to be brought forward at different times, even though they may have a degree of interaction, if they are different "projects" (R (Larkfleet) v South Kesteven DC [2016] Env LR 4 at §37). The threshold for irrationality in the making of such a judgement is a difficult obstacle to surmount (see e.g. Newsmith Stainless Ltd v Secretary of State for the Environment, Transport and the Regions [2017] P.T.S.R. 1126).

98. I accept the submission on behalf of the Claimants that the duration of use of the site is relevant for EIA screening and there is evidence to indicate that the use was likely to continue beyond 12 months. It is one of the criteria for screening set down in Schedule 3 of the EIA Regulations. However, it is also apparent from the evidence that no decision about the duration of use of the sites had been made by late March 2023. Moreover, Schedule 3 of the Regulations refers not only to the duration of the development but to other factors relevant to screening about which there is no discussion in the contemporaneous Home Office decision making material. These other factors include the size and design of any future development; the intensity and complexity of the development; the magnitude and spatial extent of the impact. The precise location, nature, type, and scale of any potential future use had not been discussed. It could involve a different type of development (e.g. involving the construction of permanent buildings, rather than temporary) and/or a different nature of

accommodation (e.g. including some detained accommodation or different types of non-detained accommodation sites, e.g. a main site and a feeder site). Future plans might take up more or different land at the sites.

99. The Claimants sought to rely on the decision in R v Rochdale Metropolitan Borough Council (2001) 81 P&CR 27 §389 and the analysis that where the detail of the future is uncertain then it is permissible for a screening to proceed on the basis of assessing the environmental impact understood at the time *providing* the development is tied into this envelope, as in the case of Rochdale, by a condition. It was said, by contrast, that the development permitted under Class Q is in all practical respects an unconditioned one. I do not accept the submission. Development under Class Q is subject to the paragraph Q(1)(b) condition that it ceases and is reversed within 12 months. The development would only continue to operate beyond 12 months if there is further EIA screening and planning permission granted for the operation beyond 12 months. This is relevant to the assessment of whether the procedure being followed would have the effect of avoiding the requirements for the legislation, as in a salami slicing case (R (Together against Sizewell C) v SS [2023] Env LR 29 at §84).

100. The Claimants sought to characterise the project in the present case as similar to the bridge, colloquially referred to as the 'bridge to nowhere' in Ashchurch (§82), describing the reliance on Class Q as 'a bridge to the next stage of the project'. However, the context in Ashchurch is distinguishable. In Ashchurch the bridge was only ever going to be constructed in order to serve the wider development in the Masterplan area. It had no purpose of its own. As Andrews LJ said in that case, it was difficult to see how the bridge could not be treated as an integral part of the wider project, which was a real proposal (§100). In the present case the use of the site for 12 months provides the Secretary of State with some (temporary) relief from the acute accommodation difficulties presented by the numbers of asylum seekers for whom accommodation must be found.

101. Accordingly, the judgement by the Home Office and the Department for Levelling Up, that, as at March 2023, for the purposes of the environmental screening, the project was a 12 month project, cannot be said to be *Wednesbury* irrational.

102. For similar evidential reasons, I conclude that at the time of the Screening Directions, there was no obligation to consider the cumulative effects of the proposed development with any other (or future) use of land at the sites for asylum accommodation. The future of the sites was too inchoate. Beyond an understanding that it was likely that the sites would continue in use (if further planning permission was obtained) the discussions about the future were at such an early stage that there was no reliable information available to officials to undertake a satisfactory cumulative assessment of any potential Home Office development beyond the proposed development (R (Littlewood) v Bassetlaw DC [2009] Env. L.R. 21 at pp. 413-415 and R (Substation Action Ltd v Secretary of State [2023] P.T.S.R. 975 at §198).

Public Sector Equality Duty

103. Two criticisms were advanced of the Equality Impact Assessments by Braintree and West Lindsey District Councils. Firstly, it was said that despite recognising the significant risk of community tensions, the Secretary of State undertook very limited engagement and consultation with the local authorities and local providers like the

police, fire or health services. Instead, she took the 'in principle' decision to use the sites first and proposed to carry out engagement and consultation afterwards. If the relevant material is not available to fulfil the duty before and at the time when the decision is being considered, there will be a duty to acquire it, and this will frequently mean that some further consultation with appropriate groups is required (R (Bridges) v Chief Constable of South Wales Police at §175).

104. Secondly, by analogy with the decision in R (Hough) v Secretary of State for the Home Department [2022] EWHC 1635 (Admin) the assessment was not based on a prolonged period of use of the site and was in the circumstances generalised without site specific assessment of impacts on local services and the local road network.

105. I am not persuaded by these submissions.

106. What is required of the Court when a breach of the public sector equality duty is claimed is a realistic and proportionate approach to evidence of compliance with the duty, not micro-management or a detailed forensic analysis by the Court. The duty, despite its importance, is concerned with process, not outcome, and the court should only interfere in circumstances where the approach adopted by the relevant public authority is unreasonable or perverse. (R (SG) v SSHD [2016] EWHC 2639 (Admin) §329).

107. It is apparent from the disclosed decision making documents that Ministers had taken a deliberate decision not to undertake formal engagement with local communities about plans for the sites prior to the announcement in Parliament in late March 2023, save for limited communication with the local authorities concerned. However, the Home Office had previous experience with the accommodation of asylum seekers on other sites. Its experience meant the department was aware, before it took the final decision to use Wethersfield and Scampton of the potential for community tensions and anti social behaviour and the need for plans to manage both. The Ministerial submission of 3 March 2023 includes the following analysis:

> "38. ……We know from our experience at Linton-on-Ouse that the lack of any community / local authority engagement ahead of an announcement negatively impacted public perception of the project.
>
> ……
>
> 40. As part of the engagement on previous sites for asylum accommodation we have engaged key local partners and stakeholders including the local MP, leaders and Chief Executives of the county and district councils and blue light services. Key themes from this engagement which we expect to be replicated at the Pathfinder sites include:
>
> ….
>
> b. anti-social behaviour and Home Office plans to manage this including keeping local people safe through an increased police presence in the village;

> c. the scale of the site and the impact on local community and services;
>
> d. remoteness of site – how will voluntary and legal services support the site; …"

108. The Department also had experience of dealing with events at Manston in October and November 2022.

109. Ministers understood that the sites are situated in areas that have not previously been used to house significant numbers of asylum seekers. Internally, it was acknowledged that the risk of community tension was significant:

> "Public sector equality duty and vulnerable individuals
>
> 53. As outlined above there is a significant risk of community tensions which may impact on the Home Office's consideration of limb 3: foster good relations….."
>
> (underlining is the Court's emphasis)

110. In turn, the equalities impact assessment recognised the importance of minimising the impacts on local resources. Provision was made for onsite facilities for asylum seekers, including food, leisure, faith and health facilities so as to reduce the need to rely on local resources. The need to carefully manage community relations in partnership with the police, local authorities was acknowledged. It was said that the Home Office will work with the relevant providers once the site is announced, including establishing a multi-agency forum bringing together statutory and other agencies on a regular basis. The assessment describes itself as a living document and references are made to further review as proposals develop. Specific reference is made for each site to the nearby primary school which it is said will be discussed as part of the local community engagement.

111. It was not irrational for the Secretary of State to rely on her department's understanding of the likely community tensions from previous experience gained from housing asylum seekers in other parts of the country. The Claimants have not identified any particular characteristics of the sites under scrutiny that set them apart from sites in other areas of the country. The duty of consultation said to be inherent in the duty is the conventional Tameside duty of inquiry. The obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a *Wednesbury* challenge, it is for the public body and not the court to decide upon the manner and intensity of inquiry to be undertaken. The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision. (R (Sheakh) v London Borough of Lambeth [2022] P.T.S.R. 1315 at §73; R (Campaign Against Arms Trade) v Secretary of State for International Trade [2019] 1 W.L.R. 5765 at §59).

112. There is nothing in section 149 of the 2010 Act which prevents, in an appropriate case, performance of the duty by means of a conscious decision to undertake equality assessment on a "rolling" basis. A decision to do that is not, as a matter of law, contrary

to the pre-requisites of performance identified in McCombe LJ's judgment in Bracking at §26, albeit that a decision maker who decides to proceed on a rolling basis, does so at their peril (R (Sheakh) v London Borough of Lambeth [2021] EWHC 1745 (Admin) at §164) (confirmed on appeal). Ministers acknowledged the significant risk of community tensions, based on its previous experience of housing asylum seekers on other sites. The parameters of a response to manage the risk were outlined but the detailed practicalities were left to be determined after the public announcement. The impact assessment made provision for a further review in this regard. In my judgment, the Secretary of State had not deferred discharge of her duty, only the detail of the implementation, which her department had previous experience of managing.

113. In addition, the present case is distinguishable from the case of Hough. Hough concerned a special development order for 5 years and an equalities assessment which proceeded on the basis of use of the site for two months. The Court in Hough concluded that there was a significant difference between a development proposed to continue for two months and one for five years particularly in respect of the development of community relations. Pressure on community services would be much greater over a prolonged period than for only two months.

114. In the present case the Equality Impact Assessments proceeded on the basis that the length of accommodation on site was for as long as is expedient. On behalf of Braintree it was said that the assessment should have proceeded on the basis of prolonged use but for the reasons explained above (in the ground on environmental impact assessment) the evidence demonstrates that there was no certainty about the duration of the use of the sites after the 12 month period afforded by the Class Q permitted development right.

Value for Money

115. Braintree District Council sought permission to introduce the ground after permission had been granted by the Court. The Secretary of State did not object to its introduction but submitted the ground had no merit.

116. The ground was only dealt with briefly in oral submissions on behalf of by the Council. In essence, it was submitted that the costs of accommodating asylum seekers in hotels was a key motivating aspect of the decision making under challenge. The value for money of the proposed use of the sites was referred to repeatedly in Ministerial submissions as one of four Accounting Office tests. The Home Secretary was informed of the need to satisfy the tests and that advice was under preparation by the Accounting Officer. The advice was finalised on 24 March 2023 and concluded that use of the site at Wethersfield was cheaper than hotels on the assumption that hotel use will persist in the short and medium term up to a 5 year period that Wethersfield was expected to be used for. There was said to be a risk to value for money if hotel use runs for significantly less than the 5 year period. The advice on this aspect concludes that the Accounting Officer will need to accept that there is a risk the site could not meet value for money test. The advice was not shown to the Secretary of State. Instead in the final submission before decisions were taken, the Secretary of State was told that the Second Permanent Secretary was content with the value for money analysis. In failing to acquire the (readily available) information herself, the Secretary of State either failed in the Tameside duty to acquire information that was necessary to making a lawful decision or alternatively left out of account a mandatory factor, which was bound to have relevance to the decisions. It was an obvious enquiry for the Secretary of State to make

and the material was readily available within the Home Department and known to senior officials. In the further alternative, the Secretary of State proceeded on a mistaken basis, sufficient to amount to an error of law, that the Accounting Officer tests were satisfied without a specific operational period being identified.

117. I am not persuaded by the submissions, as briefly advanced.

118. The fact that a Minister did not know about, or have their attention drawn to, a relevant consideration is insufficient by itself to vitiate the decision. A claimant needs to go further and demonstrate that the consideration was so "obviously material" that a failure to take it into account would be irrational (R (National Association of Health Stores) v Secretary of State for Health [2005] EWCA Civ 154 at §62–63 and §73–75).

119. As Counsel for Braintree Council accepted, the Secretary of State was informed about value for money considerations in relation to RAF Scampton, because there was a debate about an option to purchase to be offered to the local authority. Officials repeatedly informed ministers that the site would need to be used for 3 years to provide value for money but Ministers indicated their preference for offering the option to the local authority at 2 years. It is apparent from this debate that the Secretary of State was prepared to take decisions which she understood did not amount to value for money. Whilst there is no specific debate about value for money in relation to Wethersfield, the decision-making context was the same. Given the context of the decision making (explored in detail in the ground on environmental impact assessment), value for money was not so obviously material that it was irrational for the Secretary of State to rely on the submission that her permanent secretary was content with the value for money analysis without inquiring into the details of the underlying analysis. Other obvious motivating factors for the decision making included the Secretary of State's statutory responsibility to accommodate asylum seekers and the difficulties with current arrangements with hotels, which extended beyond cost to legal action by local authorities to prevent the use of hotels. Moreover, Accounting Officers are personally responsible to Parliament for the stewardship of its resources, not to the Secretary of State. Nor am I persuaded that the Secretary of State was operating under a mistaken understanding that value for money was satisfied however long the sites were used for. There is nothing in the decision making material to indicate an error of this sort.

Conclusion

120. For the reasons given above, the claims for judicial review are dismissed.