IN THE COURT OF APPEAL (CIVIL DIVISION) **CA-2024-002003**

ON APPEAL FROM

THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

PLANNING COURT

HHJ JARMAN KC

[2024] EWHC 2017 (Admin)

BETWEEN:

THE KING (on the application of

GREENFIELDS (IOW) LIMITED)

Appellant/Claimant

-and-

ISLE OF WIGHT COUNCIL

1st Respondent/Defendant

-and-

WESTRIDGE VILLAGE LTD

2nd Respondent/Interested Party

FIRST RESPONDENT SKELETON ARGUMENT

23 DECEMBER 2024

INTRODUCTION

1. With the permission of Lewison LJ,[1] the Appellant appeals against the Order of HHJ Jarman KC to refuse permission to proceed with a judicial review

1 CofA CB/259 - 260

(Grounds 1, 2 and 4 of appeal) and to dismiss a claim for judicial review (Ground 3 of appeal). There is no appeal against the Judge's order in respect of Ground 4 of the original claim, or the Judge's findings on several aspects of Ground 1 of the original claim.

2. By its claim for judicial review, the Appellant sought to quash the decision of the 1st Respondent ("R1") to grant planning permission to the Interested Party ("R2"), for a large residential led development, comprising 473 dwellings, café, doctors' surgery, B1 office space and associated development on land south of Appley Road, Ryde, Isle of Wight. Permission was granted by way of a decision notice, dated 4 August 2023.[2] HHJ Jarman KC found the claim unarguable on all but one ground, which he then dismissed.

3. In summary, R1 submits that the Appellant's appeal against that order should be dismissed. The Judge was right for the reasons he supplied to find (what is now) Grounds 1, 2 and 4 of appeal unarguable and to dismiss (what is now) Ground 3 of appeal. In any event, the Judge's Order may be upheld on the additional grounds which are set out in R1's Respondent's Notice [3] and developed here.

SUBMISSIONS

TIMING

4. A controversial issue which cuts across Grounds 3 and 4 (and on one view, Ground 1) is whether the complaints pleaded under those grounds have been brought in time or whether there has been delay.

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2 CofA CB / 247 -257

3 CofA CB / 263, Section 6

5. By CPR 54.5(5), a claim for judicial review brought against a decision under the "Planning Acts" (as here) must be filed **"no later than six weeks after the grounds to make the claim first arose"**.

6. In the planning law context, the case law has refined several principles which guide the application of that rule to a staged decision-making exercise:

   a. **First**, a resolution by a planning committee to grant planning permission is a formal administrative act, which is itself amenable to judicial review, see: ***R(Burkett) v Hammersmith LBC*** [2002] 1 WLR 1593 at [38]. Time to challenge that administrative act runs from the time that it was made. It will remain valid and effective unless it is challenged and quashed by a court of competent jurisdiction, see: ***R (Noble Organisation Ltd) v Thanet District Council*** [2006] 1 P & CR 13 at [42]-[43].

   b. **Second**, however , *"where a public law measure is taken at the end of* ***and on the basis of*** *a series of steps* ***and its lawfulness is contingent on the lawfulness of each of the steps leading up to it****, a question may arise whether the lawfulness of the final measure …can be impugned by a claim brought within time assessed by reference to that measure by showing that an earlier step was affected by unlawfulness, even though the claimant would by then be out of time to challenge the lawfulness of the earlier step if taken by itself",* see: ***R(Fylde Coast Farms Ltd) v Fylde Borough Council*** [2021] 1 WLR 2794 at [36] [emphasis added].

   c. **Third**, accordingly, *"… it is possible to say in respect of a challenge to an unlawful aspect of the grant of planning permission that the 'grounds for the*

*application first arose' when the decision was made", **Burkett*** at [39]. ***Burkett*** is therefore authority for the proposition that where an antecedent decision (i.e. a committee resolution) vitiates the ultimate grant of planning permission, then the grant of permission itself may be challenged because it was contingent upon an earlier step which was unlawful. In such circumstances, time may be taken to run from the date of the permission not the earlier decision.

7. The complaints under Ground 3 and 4 relate expressly to the conduct of the Planning Committee on 27 July 2021. A complaint about the resolution of that Committee on its own terms, was clearly out of time when the claim was issued on 15 September 2023.[4]

8. The Appellant cannot avail itself of the principle in ***Burkett*** to challenge the grant of planning permission on 4 August 2023 because that decision was not *"contingent upon"* the 27 July 2021 resolution. Instead, the decision to grant planning permission was expressed on its face to be (and in substance plainly was) based on the resolution of the Planning Committee dated 25 April 2023.[5] Indeed, it was the suggestion of the Appellant to proceed in that way so as to avoid a legal challenge to any decision based on the 2021 meeting.[6]

9. The Judge rejected that argument at J.59 and instead preferred to express the effect of the April 2023 resolution as rendering academic the complaints under Grounds 3 and 4. R1 submits that the Judge was wrong not to find the complaints were also out of time. It was nothing to the point that the 2021

4 CofA CB / 190 - 246

5 CofA CB/ 247

6 CofA SB / 288 - 296

resolution was mentioned and treated as material in the 2023 Committee decision, that was simply a record of its legal status. The Committee was entitled to attach such weight to that resolution as it thought appropriate and was not bound to follow it or supply reasons for disagreeing with it, see: ***R(Blacker) v Chelmsford City Council*** [2023] JPL 492.

10. By the Appellant's own pleaded case, it is said the grounds for complaint under Ground 1 first arose from March 2022.[7] If that is correct, it follows that the complaint was also out of time by the point a claim was issued on 15 September 2023.

11. Accordingly, R1 submits that Grounds 1, 3 and 4 were out of time.

Ground 1 (Ground 3 below)

12. This Ground is a barren technicality. That is because (a) the Appellant is out of time (for the reasons above), (b) there was no material prejudice, (c) the obligation was complied with in substance and (d), the outcome would highly likely not have been substantially different in light of the lack of merit in Ground 2 (Ground 5 below).

13. A J.78, the Judge accepted those submissions bar the point about being out of time. R1 submits that he was right to find as he did.

No material prejudice

14. If it is said the failure to comply with Article 40 vitiated the legality of the grant of planning permission, the Appellant will need to show a breach of procedural

[7] SFG, para.106. CofA CB / 237, para 106.

fairness, see: ***R(Worcestershire Acute Hospitals NHS Trust) v Malvern Hills District Council*** [2023] EWHC 1995 (Admin) at [148].

15. The Appellant has failed to establish any prejudice by the draft text of the planning obligation not being on R1's planning register prior to the decision being issued. Notwithstanding the Appellant was aware of the existence of a planning obligation, it never made any request to see it. As Holgate J said in ***Worcestershire*** at [145]:

> "… when it comes to material prejudice, a person who was aware of a reference in a committee report to a background paper but who has never shown or had any interest in inspecting the document is unlikely to get very far in a claim for judicial review."

16. The Appellant challenges the Judge's factual conclusion that it never requested sight of the document. That argument should be rejected because:

    a. First, the letter from Richard Buxton Solicitors on 24 March 2022 outlined two options to avoid litigation. In either option it said that the draft s.106 ready to be signed should be made available in drat. That is simply a reference to the statutory duty at Article 40. It is not a specific request for sight of the document. Moreover, the letter is over a year before the Committee meeting on April 2023 and the grant of permission in August 2023. If no request had been made between the Committee hearing and the grant, an authority might legitimately conclude the person no longer was concerned to be furnished with a draft or was content with the summary of its contents in the Committee Report.

    b. Second, the witness statement of Imran Rahman is not a request for sight of the document. It exhibits a minute of the Appellant company held on 27 April 2023 which it notes the s.106 had not been published in draft.

There is no request for sight of that document, or even sight of the emails where that is said to have occurred by others.

c. Third, the witness statement from Naushad Rahman does not exhibit a request on behalf of the Appellant company for sight of the s.106. One request is from "Christina Nicholson for and on behalf of Ryde Residents" in October 2021 (which pre-dates the Appellant company's incorporation on 13 January 2022) and one is from Naushad Rahman in July 2023. Ms Rahman explains she is a shareholder of the Appellant company but not that she was speaking for or acting on the Appellant's behalf when she emailed R1.

17. The Judge was right to hold that the Appellant had not requested to see sight of the s.106 agreement in draft.

Substantial Compliance

18. Further or in the alternative, the 2015 Order does not prescribe any automatic consequence of a failure to strictly comply with Article 40.

19. Where legislation lays down a statutory requirement, for example that a particular action be taken, the first question for the court is whether on a proper construction of the legislation Parliament intended that a failure to comply with the requirement should result in the total invalidity of actions which follow, such as a substantive decision. see: ***R v Soneji*** [2006] 1 AC 340 at [15]:

> "… a more flexible approach of focusing intensely on the consequences of non-compliance, and posing the question, taking into account those consequences, whether Parliament intended the outcome to be total invalidity. In framing the question in this way it is necessary to have regard to the fact that Parliament ex hypothesi did not consider the point

of the ultimate outcome. Inevitably one must be considering objectively what intention should be imputed to Parliament."

20. If total invalidity was not intended, then the second question is whether the circumstances of the case indicate that invalidity should be the consequence. That may be affected by whether there has been substantial compliance with the requirement, or whether any non-compliance has caused significant prejudice. Thus, in ***North Somerset District Council v Honda Motor Europe Ltd*** [2010] EWHC 1505 at [43], Burnett J held that:

> "'It is clear from the analysis in *Soneji* that in any case concerning the consequences of a failure to comply with a statutory time limit, there are potentially two stages in the inquiry. The first is to ask the question identified by Lord Steyn: did Parliament intend total invalidity to result from failure to comply with the statutory requirement? If the answer to that question is 'yes', then no further question arises. Yet if the answer is 'no' a further question arises: despite invalidity not being the inevitable consequence of a failure to comply with a statutory requirement, does it nonetheless have that consequence in the circumstances of the given case and, if so, on what basis? It is at this second stage that the concept of substantial compliance may yet have a bearing on the outcome. If a court has concluded at the first stage that total invalidity is not the outcome of a failure to comply with a statutory requirement, then it is unlikely at the second stage to conclude on the facts in the light of the statutory scheme that invalidity should be the consequence if there has been substantial, but not strict, compliance. That, as it respectfully seems to me, is the point that Lord Carswell was making in paragraph [67] in *Soneji*."

21. In ***R(Davies) v Oxford City Council*** [2023] EWHC 1737 (Admin), Knowles J held that placing the heads of terms on the planning register amounted to substantial compliance, see [132]:

> "First, the substance of the s 106 agreements, as contained in the heads of terms, were placed on the Register via the ORs, which were published

there. I think there was thus compliance in substance, if not in form, with the requirement to publish the s 106 Agreements."

22. The Court of Appeal refused permission to appeal against the order of Knowles J dismissing the claim by an order dated 4 October 2023. The approach of the Judge to the matter of substantial compliance with Article 40 can therefore be treated as carrying a significant weight of authority.

23. The Judge held at J.78 that, as in ***Davies***, the heads of terms were referred to in the officer's report. [8] The Judge was therefore right to find there had been substantial compliance.

No Substantial Difference

24. The Judge was right to find at J.78 and 95 the outcome for the Appellant would highly likely have been the same, had it had sight of a draft s.106 agreement. That is because the Appellant would have advanced the arguments it makes under Ground 2 of this appeal and, as they are unarguable, it is highly likely R1 would have lawfully rejected them and proceeded to grant planning permission.

Overall

25. The Judge was right to find Ground 1 unarguable.

Ground 2 (Ground 5 below)

26. The issue under this ground is whether R1 took into account an immaterial consideration, and/or acted irrationally and/or was materially misled by officers in relying on financial contribution to mitigate the effects on the highway.

[8] SB/694-695, para.8.1. CofA SB / 167 – 168, para 8.1.

27. The Judge was right to admit a clarificatory witness statement from Sarah Wilkinson[9] to explain how she had arrived at that figure. It is appropriate to admit such evidence in such circumstances see: ***R(Lanner Parish Council) v Cornwall Council*** [2013] EWCA Civ 1290 at [60]-[64]. That is especially the case where it is a judgment for officers how much material to put into an officer's report, see ***R v Mendip District Council, ex parte Fabre*** [2017] PTSR 1112, 1120C-D and the Appellant has directly challenged the basis of the advice which has been given within that report. In those circumstances, it would be manifestly unfair if R1 were not permitted to provide clarification to the Court.

28. The statement explains that Ms Wilkinson had established a per unit cost for the works associated with the likely traffic generation from each development and split this between the schemes, based on the indicative cost of the works. That was based on calculations made by the Ryde Transport Projects Board. Bizarrely, the Appellant maintains this Board does not exist, notwithstanding that the minutes of that very Board are exhibited to the Witness Statement of Philip Jordan (one of its own witnesses).

29. Equipped with that clarificatory material and the Transport Assessment,[10] it is straightforward to understand that the approach to highway mitigation was a lawful one.

30. Table 5.38 of the TA [11] shows that in the base + committed development + proposed development but without the Pennyfeathers scheme scenario, the Westridge Cross junction (J4) would operate marginally over capacity in the PM peak (103.3%) and Great Preston Road/Smallbrook Lane junction (J5) would operate marginally over capacity in the AM peak (101%). However, the

9 CofA SB / 41 – 45.

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11 CofA SB / 65.1 – 65.2

implementation of one of one of several alternative schemes would deliver spare capacity.

31. The Appellant draws attention to the fact that those works would require some third-party land to be deliverable, however that fact was expressly drawn to Members' attention in the update report to the 27 July 2021 Committee[12] and again in the 25 April 2023 Committee Report (which included the 2021 Report as Annex A). [13] It cannot be said that was not taken into account or that Members were misled.

32. In any event, Appendix B to the TA (paragraphs 6.6 and 6.10) demonstrates that changing the cycle times of the signals, the junctions would operate with spare capacity anyway.

33. It follows that the Judge was right to conclude at J.86 that the Pennyfeathers position was not determinative of this ground.

34. Moreover, the Judge was entitled to find at J.79 that R1 was entitled to form the view that the financial contribution would mitigate the identified harm.

35. However, Members were in any event entitled to place weight on the Pennyfeathers improvement works for the following reasons:

    a. First, as Table 5.38 in the TA demonstrated, there was no capacity issue at **any** junction in the base + committed + proposed development + Pennyfeathers scenario.

[12] 6.148. CofA SB / 180 – 186.
[13] Ibid. CofA SB / 297 – 301.

b. Second, Members would have been aware of the refusal of reserved matters at the Pennyfeathers site, given that it was refused by them only thirteen days prior to this decision (12 April 2023).

c. Third, nevertheless, Pennyfeathers remained a strategic allocation in R1's emerging Local Plan and therefore had a high likelihood of coming to fruition (together with its highway improvement works). As the Appellant accepts, the Plan had reached the stage of Regulation 19 (i.e. the plan R1 intended to submit for examination). That means that it had been approved by R1's Full Council and agreed to be published for a period of public consultation prior to submission to the Secretary of State for examination. It was therefore capable of bearing weight as an emerging policy (together with its underlying evidence).

d. Fourth, (contrary to the Appellant's submission) planning permission **had** been granted for junction improvement works at Westridge Cross, [14] demonstrating the principle of those works to be acceptable.

e. Fifth, the point at which the works would be required to mitigate the adverse highway effects of the scheme would not be required until occupation of the 100th dwelling for J5 and the 400th dwelling for J4. [15] Members were therefore entitled to consider the Pennyfeathers scheme would have been consented, and the highway works delivered, by the time they were required for this scheme.

36. Members were not (even arguably) misled or (even arguably) took into account an immaterial consideration.

[14] See Sarah Wilkinson WS, para.6 – 20/00855/FUL. CofA SB / 43, para 6.
[15] Highways Representation, 4 September 2020. CofA SB / 66 – 82.

37. The Judge was right to find Ground 2 unarguable.

Ground 3 (Ground 2 below)

38. The pleaded complaints concern meetings held on 27 July 2021, 24 August 2021 and 1 March 2022. The claim is (a) out of time (for the reasons above) and (b) unmeritorious.

39. The Judge was right at J.72 to find the actions of Cllr Brodie did not give rise to an appearance of bias.

40. The eight complaints upon which the Appellant relied would not, when taken with all other material facts, lead a fair-minded and informed observer to conclude that there was a real possibility that Cllr Brodie was biased, cf. ***Porter v Magill*** [2002] 2 AC 357 at [103].

41. A decision maker is "biased" if they have a *"prejudice against one party or its case for reasons unconnected with the legal or factual merits",* see: ***Bubbles & Wine Ltd v Lusha*** [2018] EWCA Civ 488 at [17].

42. A "real possibility" does not require probability. However, "it is a test which is founded on reality" and demands not only any possibility but a ***real*** possibility, see: ***Resolution Chemicals Ltd v H Lundbeck A/S*** [2014] 1 WLR 1943 at [36].

43. As explained in ***Harb v Aziz*** [2016] EWCA Civ 556 at [69], the test is:

> "… an objective test. It ensures that there is a measure of detachment in the assessment of whether there is a real possibility of bias… Litigation is a stressful and expensive business. Most litigants are likely to oppose anything that they perceive might imperil their prospects of success, even if, when viewed objectively, their perception is not well-founded."

44. Against those principles, R1 addresses the Appellant's nine[16] complaints in turn:

a. Cllr Brodie (as acting Chair) had a discretion under the R1's Constitution whether to permit Cllr Churchman to speak. The basis for Cllr Brodie's decision not to permit Cllr Churchman to speak was entirely rational and understandable, Cllr Churchman did not identify any material planning consideration which was not already before the Committee. Exercising the discretion afforded to him under the Constitution in that manner cannot possibly give rise to an appearance of bias.

b. Cllr Brodie was entitled to express his concern about Cllrs Jarman, Medland and Adams attending and participating. He did not prevent them speaking. They made up their own minds. The Judge was right to find at J.70 that a concern about predetermination was a legitimate one.

c. Even though Cllr Brodie did not intend to direct Cllr Price not to attend the meeting,[17] R1 accepts (as it did below) that it likely was read that way. However, as set out under Ground 4 below, that was a lawful application of the standing orders under R1's Constitution as it stood at the time. It cannot be said to give rise to an appearance of bias in such circumstances. In any event, Cllr Price attended and voted for the proposal at the 25 April 2023 meeting.

[16] ASk, para.65. CofA CB / 79-82, para(s) 39-42.
[17] CofA SB / 37, para 11

d. Cllr Lilley decided not to participate in the 27 July 2021 meeting because of the advice of R1's Monitoring Officer. It was Cllr Lilley who sought advice from the Monitoring Officer, Christopher Potter, concerning his attendance and participation in the 27 July 2021 meeting. That advice was delivered over the telephone and by an email exchange, between 22 and 27 July 2021.[18] The final email ahead of the meeting on 27 July 2021,[19] is expressly framed as "advice". That was advice which Cllr Lilley expressly accepted. [20] Properly construed, the email advice was not a direction that Cllr Lilley could not take part, instead it was advice that he should not. In such circumstances *"[i]t is for the Councillor to weigh up that advice in light of perhaps other advice available to him, and exercise his or her own judgment."* see: ***R(United Co-operatives Limited) v Manchester City Council*** [2005] EWHC 364 (Admin) at [14]. It was not inevitable that Cllr Lilley would have followed that advice. Indeed, in a later email on 30 July 2021,[21] he understood clearly it was advice and not a direction. Cllr Brodie gives evidence that he did not exclude Cllr Lilley, rather Cllr Lilley telephoned him upset about the advice of the Monitoring Officer.[22] That characterization of the evidence is entirely born-out by the contemporaneous material.

e. The conduct comes nowhere near an appearance of bias. It would not be out of place in a judicial hearing for a Judge to interrogate submissions or witness evidence in that manner. The Judge was right to find at J.71 that Cllr Brodie was entitled to be concerned that Members focus on

18 CofA SB/262.1 – 262.6

19 CofA SB / 262.2 – 262.3

20 CofA SB / 262.1 – 262.2

21 CofA SB / 262.7 -262.8

22 CofA SB / 35, para 5

planning grounds, and that any response felt by Members was a consequence of the tension between the democratic process and the legal obligation to base the decision on material planning considerations.

f. Cllr Brodie's email correspondence to Cllr Lilley post-dated the Committee hearing, it is impossible to understand how it can then be said to give rise to an appearance of bias at that meeting.

g. It is also impossible to understand how Cllr Brodie's actions to ensure concerns which had been raised were resolved can give rise to an appearance of bias. It is fanciful to suggest a person biased in favour of an outcome whereby planning permission should be granted, would have sought to have the 27 July 2021 resolution reconsidered in light of Cllr Lilley and Cllr Price not participating in the meeting.

h. The criticisms of Cllr Brodie's witness statement and disclosure exercise are unfair and significantly post-date the relevant events.

45. Those criticisms also need to be seen in the context of what Cllr Brodie actually said in the Committee:

> "… as the Chair I'm entirely comfortable with whatever you propose, provided it is sustainable. You can't just be against it. That is not – to be frank with you, from my point of view, you can't sit there and just expect the Officers to make up something that they're going to have to defend if they don't think it's defendable."[23]
>
> "I'm quite relaxed whatever decision we make, but I want it to be a planning decision. This is a Planning Committee. We have to make decisions on planning grounds. And what I'm hearing frankly, apart from the heritage stuff and the culture stuff that – I mean I think the

[23] CofA SB / 200, para 99

> Officers are desperately trying to find something for you, but you're not helping them."[24]

46. Those are not the observations of a biased chair, rather those are comments of a person seeking to ensure the committee came to a lawful decision on relevant and rational grounds.

47. Seen against that context, a fair-minded and informed observer, with the necessary objectivity, would not consider there was a real prospect of Cllr Brodie being biased in favour of one particular outcome.

48. The Judge was right to reject this ground.

Ground 4 (Ground 1 below)

49. As set out in the Respondent Notice, R1 disputes the premise of this ground. In particular, R1 submits that Cllr Price was not excluded unlawfully.

50. There is no dispute that on 21 July 2021, R1 adopted a Code of Practice for members dealing with planning, licensing and appeals, as part of its Constitution. That included (at the point of the decision) sa section on site visits, which provided as follows:

> "Only those members attending the site visit will be able to consider and vote on the matter when the regulatory committees or one of their sub committees formally meets to consider the matter".[25]

[24] CofA SB / 201, para 126

[25] CofA SB / 214

51. That plainly amounted to a "standing order" within the meaning of s.106 and paragraph 42 to Schedule 12 Local Government Act 1972, which provides as follows:

> "Subject to the provisions of this Act, a local authority may make standing orders for the regulation of their proceedings and business and may vary or revoke any such orders."

52. By that provision, R1 was able to regulate the substantive work of the Planning Committee, including regulating who may attend and participate in the business of the Committee, provided that it had a rational basis for doing so, see: ***R(Spitalfields Historic Buildings Trust) v London Borough of Tower Hamlets*** [2024] PTSR 40 at [50].

53. It was not irrational to restrict participation to those who had attended the site visit. Attendance at the site visit must mean attendance at all material parts of the site visit.

54. It appears from SB/x that Cllr Price missed around an hour of the site visit. That was clearly material. The Defendant had a lawful basis to restrict attendance at its meetings to those who had attended the entirety of the material parts of a site visit. Cllr Price was not therefore excluded unlawfully, rather he was excluded pursuant to a lawful standing order. There was no equivalent requirement in the Neath Port Talbot Council Constitution. Accordingly, the obiter observations of Collins J at [38] in ***R(Ware) v Neath Port Talbot Council*** [2007] JPL 1615 can plainly be distinguished.

55. At J.95 the Judge was entitled to without permission on the basis that 25 April 2023 meeting meant the outcome would high likely have been the same, for the following reasons:

a. First, and perhaps most compellingly, Cllr Price both attended and voted **for** the proposal on the subsequent reconsideration on 25 April 2023.[26]

b. Second, because the 25 April 2023 Committee was a clear reconsideration of the entire merits, for the following reasons:

i. A new officer's report was prepared,[27] which included additional representations (e.g. from the NHS) and recommended planning permission be granted subject to revised conditions and a revised heads of terms of a legal agreement. Whilst it annexed the old reports and minutes, it was a full report, which considered all material planning considerations afresh. The "REASON FOR COMMITTEE CONSIERATION" [28] box makes plain the matter before members was the entire application for consideration.

ii. There was an update paper circulated to account for an additional representation concerning the AONB, affordable housing and traffic matters. [29] Members were advised that the matters were considered in the reports. Members were **not** told they could ignore that material (as one might expect if it was merely a

[26] CofA SB / 302 & 336, para 249.

[27] CofA SB / 298

[28] CofA SB / 300

[29] CofA SB / 301.1

meeting focused on the single consideration of curlew mitigation).

iii. At the commencement of the meeting, Justin Thorn, the Defendant's Strategic Manager of Legal Services, advised Members as follows:

> "… it is a matter for the Members of the Committee, each individual Member of the Committee, as to the debate on this item, including the breadth and length of such debate. Officers cannot limit the debate. But I can confirm Officers are not suggesting that all Members are required to debate all issues, it's just not for Officers to stifle debate when the permission has not been issued … it is the length of time and the change of membership that means that you have the full presentation material before you and then it is open to Members."[30]

iv. There then follows a full presentation by the planning officer, Sarah Wilkinson, which covered all aspects of the application.[31] The officer's presentation is followed by statements by the Town Council,[32] the IP's representative,[33] ward councillor Cllr Lilley,[34] which ranged far and wide in the considerations they raised. The planning officer is then invited to respond to those presentations.[35]

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30 CofA SB / 306 – 307, para 78

31 CofA SB / 307 – 315, para 81

32 CofA SB / 317 – 319, para 85

33 CofA SB / 319 – 321, para 87

34 CofA SB / 321 – 322, para 89

35 CofA SB / 322 – 324, para 91

v. The Chair then opened the debate to members of the Committee by saying:

> "I'd now like to move on to where we started, which is a consideration that we should take the curlews in inverted commas, obviously there's a lot more behind that, issue as a first point. That does not stop us from considering all of the other aspects of the development once we have dealt with that. That does not stop any Councillor at any stage moving forward with motions or statements."[36]

vi. The debate ranged far beyond curlew mitigation. By way of example, members decided to re-open a debate about affordable housing contributions. That resulted in members resolving to amend the recommendation before them, so as to include provision for 71% of the affordable housing be social rented.[37]

vii. The minutes faithfully record what the Transcript shows. The matter was (a) debated in full over three hours, (b) ranged beyond curlew mitigation and (c) resulted in substantive changes between the recommendation and final resolution to grant.[38] The resolution was in full and final terms (i.e. to grant conditional planning permission) and provided a sufficient and self-contained authority for officers to issue the decision notice. There was no reference back to earlier resolutions. The 2023 decision superseded all earlier decisions in their entirety.

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[36] CofA SB / 324, para 92

[37] CofA SB / 336, para 241

[38] CofA SB / 336.1 – 336.5

56. The Judge was therefore right to refuse permission on Ground 4 (Ground 1 below).

57. To the extent that the Appellant suggests that the Judge did not find it was highly likely the outcome would be the same then, as set out in the Respondent Notice, the Judge would have been entitled to find any procedural error leading to Cllr Price's exclusion academic in light of the fact he attended and voted for the proposal at the 25 April 2023 meeting.

CONCLUSION

58. The Judge was right for the reasons he gave to refuse permission to bring a claim for judicial review on the basis of Grounds 1, 2 and 4 of appeal and right to dismiss Ground 3 of appeal.

59. In any event, his order may be upheld for the additional grounds set out in the Respondent Notice.

60. R1 therefore submits that the appeal should be dismissed, and the Appellant ordered to pay the costs of the R1 in these proceedings and in the High Court, up to the collective cap of £20,000.

ASHLEY BOWES

LANDMARK CHAMBERS
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23 December 2024.