



Neutral Citation Number: [2019] EWCA Civ 1272

Case No: C1/2018/2847

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
QUEEN'S BENCH DIVISION
PLANNING COURT
THE HON MRS JUSTICE ANDREWS
[2018] EWHC 3421 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/07/19

Before :

LORD JUSTICE LINDBLOM

LORD JUSTICE HICKINBOTTOM

and

LORD JUSTICE BAKER

Between :

**THE QUEEN ON THE APPLICATION OF
ANGUS BATES**

Appellant

- and -

MALDON DISTRICT COUNCIL

Respondent

- and -

WALLACE ANDREW CANT

**Interested
Party**

Victoria Hutton (instructed by **Prettys Solicitors LLP**) for the **Appellant**
Josef Cannon (instructed by **Maldon District Council**) for the **Respondent**
The Interested Party did not appear and was not represented

Hearing date: 10 July 2019

Approved Judgment

Lord Justice Hickinbottom :

The Background

1. This appeal concerns a site at Maypole Wood, Maypole Road, Langford, Essex comprising a cluster of agricultural/commercial buildings in the form of a brick built enclosed barn, an open-sided barn and a large pre-fabricated outbuilding with an open-sided lean-to structure surrounded by a concrete apron set within just over 90 acres of existing woodland and grassland (“the Site”).
2. In November 2014, the Interested Party (“the Developer”) applied for planning permission from the Respondent local planning authority (“the Council”) to convert the brick built element of the existing buildings and construct a one-storey extension wing to provide a single three-bedroomed dwelling; and to demolish the other existing buildings. The Appellant, who resides in a property which shares a drive with the Site, objected.
3. To assist the Council’s Planning Committee, a report was prepared by one of its Planning Officers, Hilary Baldwin (“the Officer”) (“the 2015 Report”).
4. At paragraph 7.4.1, under the heading “Housing Need”, the report recorded that the Council could not demonstrate a five-year housing land supply, and therefore, as a result of the combined effect of paragraphs 14 and 49 of the National Planning Policy Framework (“the NPPF”), there was a policy presumption that permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies within the NPPF taken as a whole, or specific policies in the NPPF indicated that development should be restricted (“the tilted balance”).
5. Policy S2 of the then-current local plan (the Adopted Maldon District Replacement Local Plan) provided for a locational strategy through defined development boundaries and sought to protect areas outside those boundaries from new development in the interest of protecting the countryside and coastal landscapes. However, in paragraph 7.2 of the 2015 Report, under the heading “Principle of Development and Sustainability”, it was said that, because the Council could not demonstrate a five-year housing land supply, the locational policies were deemed out-of-date and therefore sites outside the defined development boundaries could be judged to be sustainable through the generally applicable NPPF criteria.
6. In respect of the extent to which the development would assist with housing need, having acknowledged that the Council had a housing land shortfall such that the tilted balance applied, the 2015 Report said that the proposal would only provide one new dwelling; and it would not assist in meeting the housing shortfall need as set out in the Strategic Housing Market Assessment and the emerging policy in the local development plan which focused on the need for smaller (one- or two-bedroom) dwellings (paragraphs 7.4.4-7.4.5). The Officer concluded (at paragraph 7.4.5):

“The provision of a dwelling that do [sic] not meet the identified need is considered to be of very limited weight when determining this application.”

That reflected the fact that the extent to which a proposed development will meet a housing shortfall is one factor which goes to the benefits of a new housing development in a shortfall area (Hallam Land Management Limited v Secretary of State for Communities and Local Government [2018] EWCA Civ 1808; [2018] JPL 63 (“Hallam”) at [51] per Lindblom LJ).

7. The Officer recommended refusal on two grounds, namely:
 - i) The Site comprised land in employment use, and the evidence supplied was insufficient to demonstrate that the loss of such employment land was justified as required by the local plan. The proposed development was therefore contrary to both the local plan and the NPPF.
 - ii) The provision of a dwelling in a rural landscape setting would result in an incongruous development that would have an unacceptable urbanising effect by way of visual intrusion and encroachment into the rural landscape setting; and which would fail to protect or enhance the natural beauty, tranquillity, amenity and traditional quality of landscape setting and fail to make a positive contribution to the locality. It would therefore be contrary to several policies within the local plan, and also the principles and guidance within the NPPF.
8. Ms Hutton submitted that the Officer’s conclusion was not expressly written in tilted balance terms; and it cannot therefore be said for certain that she applied that test. However, as I have described, she made it clear that a five-year housing land supply could not be demonstrated, and the general consequence of that in terms of the tilted balance. There is nothing to suggest that she did not apply that test in coming to her conclusion. The Officer thus concluded that the development would be contrary to the local plan, and, despite the tilted balance, permission should be refused.
9. However, on 22 April 2015, contrary to that recommendation, the Council’s Planning Committee granted planning permission for the development, subject to 15 conditions, nine of which had to be fulfilled before the commencement of any works (“the 2015 Permission”). The development was required to commence within three years of the grant of planning permission (i.e. by 22 April 2018); and, by Condition 11, all forms of demolition or construction work were prohibited between 1 March and 31 August.
10. Reasons for the grant of permission are no longer available. There was at that time no statutory obligation for reasons to be given on the face of the decision; and it seems that there is no available minute of the decision which sets out the Committee’s reasons for not agreeing with the Officer. Ms Hutton submitted that it is therefore impossible to say whether the Committee applied the tilted balance test or not. However, the 2015 Report made clear that the tilted balance applied, and there is no evidence to suggest that the Council acted perversely and unlawfully in ignoring that advice and not applying it. In any event, if they applied a simple balance, there would be nothing in Ms Hutton’s primary argument that there was a material change in circumstances between the 2015 Permission and the 2018 Permission as in the former case the Council was unable to demonstrate a five-year housing land supply and in the latter case it was. In the Appellant’s favour, I shall proceed on the basis that the Committee applied the correct, tilted balance.

11. In the event, having obtained the 2015 Permission, the Developer made no attempt to satisfy any of the conditions precedent or commence the development. Instead, on 1 February 2018 (by when, as the result of a combination of the required start date and Condition 11, it was impossible to satisfy the conditions precedent in the 2015 Permission, which was consequently not capable of implementation), he submitted a second application for planning permission for the same development. The Appellant again objected; and, in his objection, he relied upon two particular matters relevant to this appeal, namely:
 - i) the Council could now demonstrate a five-year housing land supply, so that (it was said) no weight at all could be carried by housing need; and
 - ii) there was no reasonable prospect of the 2015 Permission being implemented before it expired, and the Developer had tacitly accepted that it would not be implemented, so that (it was said) the existence of the 2015 Permission could not be regarded as a fall-back position or a material consideration.
12. On 13 April 2018, the Officer produced a report on the application (“the 2018 Report”) recommending grant. The report acknowledged that the proposed development was identical to the development approved in the 2015 Permission (paragraph 1.2.3); and, although it noted that a new approved local development plan had been adopted and the proposed development would not be in accordance with that plan, “the direction of travel” of the policies was very similar and had to be balanced “with the extant permission which carries significant weight in this instance” (paragraph 5.1.10).
13. The 2018 Report recorded that the Appellant had objected on the basis that, “The Council can demonstrate its 5YHLS”; and had made the point that, “No chance of extant permission being implemented”. The report did not mention paragraph 49 of the NPPF or the “tilted balance” – which, of course, did not apply because of the demonstrable five-year housing land supply – and it also noted that the Strategic Housing Market Assessment had identified a need for a higher proportion of smaller houses (paragraph 5.3.1). In the circumstances, as a contribution towards the housing need, the report concluded that the proposal should be given “minimal weight”.
14. In addition, at paragraphs 5.1.2 and 5.1.5, the 2018 Report recognised that the site was outside the development boundaries in the approved local plan; although it was Previously Developed Land, in respect of which the NPPF encourages re-use. It concluded (at paragraph 5.1.9) that “the potential impact upon sustainability in terms of the economic, social and environmental impact of one dwelling over that of a commercial use of the Site was considered minimal...”.
15. As an overall conclusion, the 2018 Report said (at paragraph 6.1):

“Having regard to all matters considered above, it is noted that in many respects the proposal would not be deemed to fall within the definition of sustainable development as defined in the Maldon District Local Development Plan. However, the extant permission is considered to be a material consideration of demonstrable weight. Due to the weight that must be afforded to the extant permission at the Site, notwithstanding the difficulties that may exist around implementation of that permission, it is considered that the

[Council] should approve the development. Furthermore, the Council considered that the benefits outweighed the harm in 2014 and broadly the circumstances are therefore consistent.”

16. The 2018 Report therefore recommended approval; and, that same day, an appropriate planning officer acting for the Council under delegated powers granted planning permission subject to similar conditions as were attached to the 2015 Permission (“the 2018 Permission”), expressly on the following basis:

“I... agree with the Officer’s recommendation above after taking into account the content of the [2018 Report], plans, supporting documents, consultation responses and any and all relevant material considerations...”.

In these circumstances, there is of course an assumption that the decision-maker adopted the 2018 Report as his reasons for granting permission.

The Proceedings

17. The Appellant sought judicial review of that decision on several grounds including that, in considering the 2018 Application, the Council had adopted an unlawful approach to the 2015 Permission. On 7 November 2018, Andrews J refused the application on all grounds. With permission from Lewison LJ, the Appellant now appeals against that refusal, on the sole ground that the judge was wrong to conclude that, in considering the 2018 Application, the Council’s treatment of the 2015 Permission was lawful.
18. Although the ground is put in various ways to which I shall shortly return, whilst accepting that the 2015 Permission was a material consideration for the purposes of the 2018 Application, Ms Hutton essentially submits that, in considering that later application, the Council failed properly to take into account a material change of circumstance, namely that, whereas in 2015 the Council accepted that it could not demonstrate a five-year supply of housing land, in 2018 it could demonstrate such a supply.

The Law

19. The relevant law is well-trodden and uncontroversial. For the purposes of this appeal, it can be formulated in the following propositions.
- i) Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise (section 38(6) of the Town and Country Planning Act 1990). The NPPF is no more and no less than a material consideration for these purposes. The weight given to a material consideration is quintessentially a matter for the relevant planning decision-maker.
 - ii) A previous planning decision in relation to the same land is capable of being a material consideration, because (a) if the permission is capable of implementation, it may provide a fall-back position, and (b) in any event, there is a public interest in consistency of decision-making.

- iii) However, in relation to the latter, (a) consistency in planning decision-making is not a principle of law, but a principle of good practice which has been traditionally supported by the courts (Hallam at [73]); (b) the proposition that like cases should be decided alike presupposes that the cases are not distinguishable in some material respect (North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P&CR 137 as frequently approved by this court, recently in (e.g.) Baroness Cumberledge of Newick v Secretary of State for Communities and Local Government [2018] EWCA Civ 1305; [2018] PTSR 2063 at [29] per Lindblom LJ); (c) it is therefore necessary for a planning decision-maker to consider the relevant planning history, and whether there has been a material change of circumstances since an earlier decision in relation to a similar development or similar issue; and (d) a planning decision-maker must in any event always exercise his own judgment, and is neither bound by the earlier decision nor bound to give that decision any particular weight, weight being a matter for him to assess in all of the circumstances
- iv) An officer's report must be read as a whole and in a straightforward and common sense way, and on the basis that it is drafted for an informed readership (R (Siraj) v Kirklees Metropolitan Council [2010] EWCA Civ 1286), recently confirmed in Mansell v Tonbridge and Malling District Council [2017] EWCA Civ 1314 at [42] per Lindblom LJ).
- v) In respect of a planning decision taken under delegated powers, there is a duty on the planning officer to give reasons for his or her decision (regulation 7 of the Openness of Local Government Bodies Regulations 2014 (SI 2014 No 2095)).
- vi) Where a planning decision is taken in line with an officer's report, then there is an assumption that the reasons for that decision are those set out in the report (Palmer v Herefordshire Council [2016] EWCA Civ 1061 at [7] per Lewison LJ).
- vii) The reasons given for a decision must enable an informed reader to understand why the matter has been decided as it has, and what conclusions were reached on the principal important controversial issues; but again they must be considered on the basis that they are drafted for informed parties who are well aware of the issues involved and the arguments advanced (South Bucks District Council v Porter) [2004] UKHL 33; [2004] 1 WLR 1953 at [36] per Lord Brown of Eaton-under-Heywood).
- viii) Where a planning decision-maker differs from an earlier decision-maker on a crucial planning issue (e.g. whether a first floor extension would in principle harm the appearance of a conservation area), he is thus required to "grasp the intellectual nettle of the disagreement" and explain his reasons for disagreeing in terms of analysis (Dunster Properties Limited v First Secretary of State [2007] EWCA Civ 236; [2007] 2 P&CR 26 at [23] per Lloyd LJ; and R (Davison) v Elmbridge Borough Council [2019] EWHC 1409 (Admin) at [47] per Thornton J).

The Ground of Appeal

20. Ms Hutton submits that Andrews J erred in her approach to the 2015 Permission in five, inter-related ways which are out as sub-grounds.
21. First, Ms Hutton accepted that, in considering the 2018 Application, the Officer (properly) considered the 2015 Permission to be a material consideration and that the weight to be given to that consideration was a matter for the Officer. However, she submitted that the Officer erred in the way in which she took it into account – or, rather, failed to take into account – that there was a material change of circumstances since the 2015 Permission namely that in 2015 the Council could not demonstrate that it had a five-year housing land supply, whereas in 2018 it could. Because reasons for decision to grant permission in 2015 are not available, it was (she submitted) even more important for the Officer to consider the effect of that change of circumstances in 2018. The effect was three-fold.
 - i) Whereas the tilted balance in favour of grant applied in 2015, it did not apply in 2018.
 - ii) Whereas the locational policies within the development plan were deemed out-of-date in 2015 – and therefore development outside the defined development boundaries could be justified on the more general principles of the NPPF without deference to those policies – the 2018 Application had to be considered on the basis that those locational policies were fully effective parts of the local plan.
 - iii) The change of circumstances affected – or, at least, was capable of affecting – the weight to be given to the 2015 Permission, because it reduced the similarity between the applications and thus the power of consistency.
22. In the event, Ms Hutton submitted, the 2018 Report did not grapple with the effects of the change of circumstances, not dealing at all with the change of approach to the planning balance and locational policies that was required; and, in terms of weight, simply asserting or emphasising that the 2015 Permission carried “significant” or “demonstrable” weight (see paragraphs 5.1.10, 5.4.9, 5.11.3 and 6.1), without considering that that weight might have to be discounted because of the change in housing land supply. Ms Hutton therefore submitted that the Officer had failed to grasp the intellectual nettle as she was legally required to grasp; and thus the 2018 Report and in his turn the decision-maker with delegated planning powers for the Council failed properly to take into account the material change in the housing land supply.
23. However, I am unpersuaded.
24. As I have described, the 2015 Report expressly dealt with the fact that the inability to demonstrate a five-year housing land supply meant that the tilted balance applied; and proceeded to apply it. It is true that the 2018 Report does not expressly refer to the fact that the tilted balance did *not* then apply; but, to determine whether it properly took into account that patently material change, the report has to be read as a whole. From its conclusion in paragraph 6.1 (quoted above), it is clear that the tilted balance was (correctly) not applied in the 2018 Report.

25. Similarly, as I have described, in the 2015 Report, under the heading “Principle of Development and Sustainability”, it was recognised that, because the Council could not demonstrate a five-year housing land supply, the locational policies such as Policy S2 were deemed out-of-date and therefore sites outside the defined development boundaries could be judged to be sustainable by the application of the generally applicable NPPF criteria. In the 2018 report, again under the heading “Principle of Development”, the Officer made clear that she understood – and took into account the fact that – the locational policies in the local plan had full effect; and the proposed development fell outside the development boundaries and in that respect it was contrary to the local plan.
26. Ms Hutton submits that, in considering the 2015 Permission, the Officer effectively failed to consider discounting the weight that should be attached to it because of the material change in the housing land supply. However:
- i) This point appears to me to derive from an exegetical analysis of the 2018 Report of a type which is discouraged as being inappropriate when considering an officer’s report.
 - ii) The Officer correctly addressed the planning balance in each of the 2015 and 2018 Reports. It is clear that, in the 2018 Report, she properly addressed the effect of the change in the housing land supply in one respect (i.e. the approach to the planning balance, including the effect on the correct approach to the locational policies), and there is no evidence to suggest that she then failed properly to take into account that same change when considering the appropriate weight to be given to the 2015 Permission as a material consideration.
 - iii) The weight to be given to the 2015 Permission was, of course, a matter for the Officer (and, in his turn, the planning decision-maker). In fact, the weight given to the contribution of the development to housing need was expressed to be “minimal” compared with “very limited” in the 2015 Report, i.e. even less weight was given to this factor in 2018 than in 2015, reflecting the changed housing land supply position.
27. Ms Hutton submitted that the 2018 Report showed that the Officer had failed to “grasp the intellectual nettle” referred to by Lloyd LJ in Dunster (see paragraph 19(viii) above). However, the nettle – if nettle it be – is different here. Lloyd LJ talked of the intellectual nettle requiring the explanation of a disagreement with an earlier decision in apparently similar circumstances. In this case, the Officer was agreeing with the earlier decision of the Planning Committee, and merely had to explain why she took the approach she did to the only change in circumstances namely the change in housing land supply.
28. Ms Hutton submitted that what was missing from the 2018 Report in this regard was an acknowledgement that, as a result of that change, the locational policies in the local plan applied with full force and the tilted balance did not apply; and she had taken these matters into account in concluding that, applying section 38(6) of the Town and Country Planning Act 1990 (see paragraph 19(i) above), the 2015 Permission should nevertheless be given significant weight in the planning balance such that, despite the proposed development being contrary to the local plan, permission should be granted.

However, in my view, on a fair reading of the 2018 Report as a whole, despite the absence of those express words, that was precisely the analysis of the Officer.

29. For those reasons, I reject this ground.
30. Second, Ms Hutton submitted that, in proceeding on the basis that it was bound to give significant weight to the 2015 Permission, the Council had unlawfully fettered its own discretion. She relied on the phrases from the 2018 Report to which I have already referred; but particularly to (i) paragraph 5.11.3 in which the Officer said that she was “bound to give significant weight” to that grant; (ii) paragraph 5.11.4 in which she said the Council would be acting unreasonably if it did not apply substantial weight to the extant permission; and (iii) paragraph 6.1 where she said that the development should be approved “due to the weight that *must* be afforded to the extant permission at the Site” (emphasis added). She submitted that weight was a matter for the planning decision-maker, and the Council erred in considering it was bound to give significant weight to the 2015 Permission.
31. Andrews J dealt with this point at [11] of her judgment:

“... It is clear from reading the [2018 Report] as a whole that the [Officer] was not intending to suggest that there was any legal obligation on the [Council] to place any specific weight on the 2015 permission. In context, all that she was saying was that in the light of the matters that she had addressed in detail in earlier passages in her report, and in the absence of any significant impact caused by the material change of circumstances, including relevant policy changes, it was inevitable that the grant of permission in 2015 for the same proposed development would be regarded as a significant factor in the balancing exercise.”
32. I agree; and could not better phrase the reasons for rejecting this ground of challenge. I do not consider that the ground is based on a fair reading of the report taken as a whole. Given that there was planning permission for the identical development, and the only difference identified was that with regard to housing land supply (which was said even in the 2015 Report to carry very limited weight), the Officer was entitled to consider that, on the facts of this case and despite the change in approach to the planning balance that the change in housing land supply dictated, it was inevitable that the Council would give the 2015 Permission significant weight. That is not the same thing as fettering its own discretion.
33. Third, Ms Hutton submitted that a fair reading of the 2018 Report as a whole revealed that the weight attached to the 2015 Permission had been counted multiple times in the planning balance, because it was taken into account (in favour of grant) in relation to (i) the principle of development (paragraphs 5.1.10 and 5.1.11), (ii) the loss of employment land (paragraph 5.4.9) and (iii) design and character of the area (paragraphs 5.6.5 and 5.6.6). Because of this multiple counting, the balance had thus been improperly tipped in favour of grant.
34. In response to Mr Cannon’s submission that the Officer appropriately considered each of the “main considerations” discretely before (in paragraph 6.1) standing back and assessing the planning balance holistically, Ms Hutton submitted that paragraph 6.1 did not rescue the 2018 Report because, in determining the weight to be given to the

principle of consistency in planning decision-making, the reasons for the 2015 permission are not available; and therefore, in respect of each of these three matters, it is not possible to know the approach the Planning Committee adopted, and the conclusion to which it came. It was therefore impossible and legally irrational for the Officer to attach the weight she did attach to the 2015 permission.

35. However, again looking at the 2018 Report as a whole, I do not consider that it can be said that the Officer failed properly to conduct the planning balancing exercise which required all material considerations to be balanced fairly together. In paragraph 6.1 of the 2018 Report, the Officer did stand back and look at the various material considerations holistically, and concluded that the material considerations in favour of the development (including the 2015 Permission) outweighed those which were adverse. In respect of the absence of reasons for the 2015 Permission, the Officer had to work with what she had; and her approach – to consider the various material considerations, and whether anything had materially changed since 2015 – was clearly appropriate and lawful. Ms Hutton in fact accepted that, except with regard to the change in housing land supply, there was no material change in circumstances.
36. Fourth, Ms Hutton submitted that the Officer had failed to recognise or take into account the fact that the 2015 Permission, although extant, could not be implemented because of the conditions which, by the time the 2018 Application was determined, could not be met. Ms Hutton accepted that, at the time the 2018 application was being considered and determined, the 2015 Permission was extant, in the sense that it did not expire until nine days after the decision was made to grant the 2018 Permission. However, because the 2015 Permission could only be implemented by demolition works which by Condition 11 were prohibited prior to the expiry of the 2015 Permission, the 2015 Permission was not capable of being implemented by the time of the 2018 Report. However, the Officer’s repeated use of the phrase “extant permission” (see, e.g., paragraphs 5.1.10, 5.2.1, 5.6.5, 5.11.3 and 6.1), often coupled with statement to the effect that that permission carries “significant weight” (paragraph 5.1.10) or “demonstrable weight” (paragraph 6.1), suggests that she considered the fact that the permission was extant added to its weight.
37. Andrews J dealt with this submission in [19] of her judgment. She considered that it had no force. I again agree.
38. In my view, it is simply not arguable that the Officer failed to take into account the fact that, in practical terms, the 2015 Permission could not be implemented by the time the 2018 Application came to be considered. As I have described, in his letter of objection, the Appellant had made that very point, as summarised by the Officer at paragraph 3.4.1 of the 2018 Report. The Appellant had submitted that, because it could not in practice be implemented (and the Developer had indicated that he did not intend to implement it), the 2015 Permission could not be regarded as a fall-back position. That was correct. The Officer did not suggest that she treated it as such: she clearly understood that the 2015 permission was not going to be implemented. However, the Appellant also suggested in his letter of objection that, because it was not going to be implemented, the 2015 permission was not a material consideration. That was incorrect: it was still a material consideration, because of the principle of consistency. It would have been material even if the time for implementation had lapsed. As Ms Hutton accepted, the Officer accepted that it was a material consideration, and treated it as such.

39. I accept that the Officer's regular use of the phrase "extant permission" in respect of the 2015 Permission is curious – I am not entirely persuaded that it was intended to emphasise the distinction between legally extant on the one hand and capable of implementation on the other, as Mr Cannon suggested – but I am satisfied that it does not betray a substantive error in analysis by the Officer. Nor, given the clear indication in the 2018 report that the 2015 Permission would lapse in a matter of days, do I consider that the planning decision-maker would have been misled by it. Although for obvious reasons a permission which can in practice be implemented is likely to attract more weight than one that cannot, the weight is a value judgment which necessarily depends on the facts and circumstances of the specific case. As Andrews J concluded, in this case, given the importance of consistency in administrative decision-making, the officer was entitled to ascribe significant weight to the 2015 Permission despite the fact that it had only days to run and was in practice incapable of being implemented.
40. Fifth and finally, Ms Hutton submitted that it was irrational of the Officer to give the weight to the 2015 Permission that she in fact gave, leading to a conclusion that permission should be granted that was itself irrational. However, in the course of her submissions, she fairly (and, in my view, entirely appropriately) accepted that, whilst gathering up threads from her other sub-grounds, this sub-ground did not add anything of substance to them. Consequently, having found none of the other sub-grounds has force, I need not say anything further about this final sub-ground.

Conclusion

41. For those reasons, I do not find that any of the strands of the single ground of appeal, looked at individually or in combination, has been made good. Subject to my Lords, I would dismiss this appeal. I should add that I have had the opportunity of seeing the additional observations of my Lord, Lindblom LJ, and confirm my agreement with them.

Lord Justice Baker :

42. I agree with both judgments.

Lord Justice Lindblom :

43. I agree that, for the reasons given by Hickinbottom LJ, this appeal must fail. I would add only this. As this court has said before, a planning officer's report must not be read in an overly critical spirit or with an unrealistic view of what needs to be set out in assessing the proposal on its merits (see, for example, my judgment in Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314 at [41]-[42], and the judgment of the Chancellor of the High Court at [62]-[64]). I see no reason to apply a different approach to a report prepared by a planning officer where the decision is being taken under delegated powers and there is a duty on the officer making the decision to give reasons for that decision, under regulation 7 of the Openness of Local Government Bodies Regulations 2014. The court will only intervene if there is some distinct and material defect in the report, such as a clear misunderstanding of relevant national or local policy. Here, as Hickinbottom LJ has said, there was no such error. The Officer's assessment of the proposed development, in the light of the Council's decision on the previous application, was sufficient to

deal with the issues on which planning judgment had to be exercised. And in my view it is not open to criticism on any public law grounds.