CO/1968/2021

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

BETWEEN:

R (ASHCHURCH RURAL PARISH COUNCIL)

Claimant

and

TEWKESBURY BOROUGH COUNCIL

Defendant

SUMMARY GROUNDS OF RESISTANCE

ON BEHALF OF THE DEFENDANT

References: CB/XX/YY refers to pages and (where applicable) paragraphs within the claim bundle.

Introduction

1. Tewkesbury Borough Council (TBC) resists the application for permission brought by Ashchurch Rural Parish Council (ARPC). The grant of planning permission for the development (known as Ashchurch Bridge over Rail - "ABoR") was lawfully made.

2. Three grounds of challenge are advanced. TBC's response to them can be summarised as follows:
    a. Ground 1: there was no failure to consider the potential impacts arising from the Masterplan Scheme, and the approach taken by TBC was internally consistent.
    b. Ground 2: the Council acted lawfully in concluding that the ABoR constituted a project in its own right when deciding whether it was EIA development. It left nothing material out of account.
    c. Ground 3: there was no lack of objectivity or apparent bias affecting the grant of planning permission. Regulation 64 of the EIA Regulations was complied with.

3. TBC submits that these grounds of challenge are wholly without merit, and permission should be refused.

Background

Introduction

4. The Tewkesbury Area Draft Concept Masterplan (January 2018) ("the Draft Concept Masterplan") sets out the concept of potential large-scale development across the area described as the "North Ashchurch Development Area" [CB/278-294].

5. The Draft Concept Masterplan envisages that development would be phased, and that it would include residential and employment development and works to improve local infrastructure.

6. The Draft Concept Masterplan lists "short term enabling interventions" which are needed to the highway network to enable wider development to take place, of which the ABoR is identified as one [CB/292].

The status of prospective wider development

7. The wider development which the ABoR would serve has not been allocated within the development plan. TBC has not determined, and is not considering, any application for planning permission for that wider development, nor for any planning permission that would determine the principle of the wider development.

8. No concrete proposals or masterplan have come forward for the wider development defining its location, composition or quantity.

9. The ABoR planning permission (aside from temporary haul roads and compounds) comprises only the physical structure of the bridge itself and associated infrastructure. It does not include any road over the bridge nor any road which would form a link between Hardwick Bank Road and the B4079.

10. The ABoR was promoted at this stage because of the considerable lead in times and constraints associated with railway assets and in order to take advantage of funding awarded through the Housing Infrastructure Fund that is subject to a spending deadline expiring in 2022.

TBC's role in promoting wider development

11. TBC is one of several local authorities playing an active role in the promotion of strategic development across the North Ashchurch Development Area. That role has included supporting a successful application for funding through the Housing Infrastructure Fund, as well as a successful bid to the Department of Housing, Communities and Local Government for Garden Community Status.

12. The workstreams associated with this complex project, so far as TBC is concerned, have been carried out by a combination of TBC's officers and consultants, under the general scrutiny of TBC's Executive Committee and the Tewkesbury Garden Town Member Panel. The latter was created by the Executive Committee to provide oversight of TBC's Garden Town programme and its membership includes TBC councillors.

13. The planning application was made on behalf of TBC (the application form and the accompanying documents were prepared by a consultant). The associated costs were met through the funding awarded to TBC and TBC does not have any proprietary or financial interest within the ABoR or potential wider development across the North Ashchurch Development Area by virtue of its landholdings.

Consideration of the planning application

14. The planning application was considered in an officer report which recommended that planning permission be granted [CB/167-228].

15. The planning application was considered by TBC's Planning Committee on 16 March 2021 which voted (by way of a recorded vote), following debate, by a majority of 10 to 7 to approve the ABoR [CB/216-228].

16. Councillors Bird and Mason sat on the Planning Committee on 16 March 2021 and voted in favour of the ABoR. They are respectively the Leader and Deputy Leader of TBC. They also sit (as do other members) on the Executive Committee and the Tewkesbury Garden Town Member Panel, as well as the Planning Committee.

17. The following declaration was given in relation to both members (as well as other members) at the Planning Committee Meeting prior to consideration of the planning application:

> "Is a member of the Tewkesbury Garden Town Member Reference Panel but has not, either individually or as a member of the Panel, been directly or closely

involved in the detail of the planning application neither had the application been discussed at the Panel" [CB/217-8].

Consideration of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations")

18. The ABoR constitutes Schedule 2 (10b) development for the purposes of the EIA Regulations. In accordance with the EIA Regulations, an Environmental Impact Assessment Screening Report (EIAR) dated 13 May 2020 was submitted to TBC in advance of the planning application [CB/53-132].

19. The conclusion reached in the EIAR was that the ABoR is unlikely to cause significant effects on the environment [CB/122].

20. Within its adopted screening opinion dated 22 June 2020, TBC determined that the ABoR constituted Schedule 2(10b) development, however having regard to the criteria in Schedule 3, TBC determined that the proposal is not likely to have significant effects on the environment and therefore is not EIA development [CB/155-166].

21. The officer report stated the outcome of the screening decision [CB/180].

Legal Framework

Officer reports

22. The principles to be applied when considering a challenge to a planning officer's report were summarised by Lord Justice Lindblom in *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452 at [42]:

> "42. The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarise the law as it stands:
>
> (1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms [1997] E.G.C.S. 60* (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court…
>
> (2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council [2011] UKSC 2* , at paragraph 36, and the

judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre (2000) 80 P. & C.R. 500* , at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council [2016] EWCA Civ 1061* , at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council [2016] EWCA Civ 795*), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council [2017] EWCA Civ 152*). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council [2017] EWCA Civ 427*). But unless there is some distinct and material defect in the officer's advice, the court will not interfere."

Material considerations

23. The question of whether something is a material consideration is a question of law, whereas the weight which it should be given is a question of planning judgement (*per* Lord Hoffman in *Tesco Stores Ltd v Secretary of State* [1995] 1 WLR 759, p780).

24. Where development has the purpose of enabling other development to proceed, as long as it has a sufficient connection, it is lawful to take that matter into consideration as a factor in favour of granting planning permission (*per* Lindblom J in *R (Thakeham Village Action Ltd) v Horsham DC* [2014] Env LR 21 at [201]). The scope for enabling development is wide (*Ibid* at [214]).

Environmental impact assessment: determining the “project” and cumulative effects

25. What constitutes the "project" for the purposes of the EIA Regulations is a matter of judgement for the planning authority, subject only to a challenge on grounds of *Wednesbury* rationality or other public law error (see the judgment of Lang J in *R*

(Wingfield) v Canterbury CC [2019] EWHC 1975 (Admin) at [63] and the case-law cited therein).

26. When considering an application for planning permission for an initial phase of development, the decision whether to treat the effects of a contemplated scheme as cumulative effects of the former is a matter of fact and degree for the authority (*per* Laws LJ in *Bowen-West v Secretary of State* [2012] Env LR 22 at [28-30]).

Procedural impropriety

27. The test for apparent bias is whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias *(per* Lord Bingham of Cornhill in *Porter v Magill* [2002] 2 AC 357 at [103]).

28. Members of a planning committee are entitled to have a predisposition in favour of granting planning permission, which is to be distinguished from actual or apparent pre-determination (*R (Lewis) v Redcar and Cleveland BC* [2009] 1 WLR 83, *per* Pill LJ at [63], Rix LJ at [95] and Longmore LJ at [106]).

Ground 1: the alleged failure to consider the harm arising from the Masterplan Scheme and the alleged inconsistent approach in dealing with the Masterplan Scheme.

29. TBC acted entirely rationally and lawfully in its assessment of the ABoR.

30. The officer report explains the context of the ABoR as one of the short term enabling interventions identified in the Draft Concept Masterplan to enable potential future development across the North Ashchurch Development Area [CB/181-182].

31. It is well established that where development has the purpose of enabling other development to proceed, as long as it has a sufficient connection, it is lawful to take that matter into consideration as a factor in favour of granting planning permission.

32. Cases where this approach has been upheld include developments where a material consideration was the financial contribution that they would make towards improvements to heritage buildings rendering them viable (see *R Westminster City Council Ex Parte Monahan* [1989] JPL 107) or towards development on the same site that will enable the continuation of an employment generating business (*R (Thakeham*

Village Action Ltd) v Horsham DC [2014] Env LR 21). In *Northumberland v Secretary of State* (1990) 59 P&CR 468 it was held that when authorising an opencast coal mine the Secretary of State was entitled to take into account that the profit would enable deep mine production elsewhere which would otherwise be less profitable.

33. As enabling development, the ABoR has an obvious connection to potential future development across the North Ashchurch Development Area. Therefore, it was rational and lawful for the officer report to advise the Planning Committee that the ABoR would create public benefits in so far as it would enable this future potential development [CB/198 and 200].

34. The weight given to those public benefits when balancing the less than substantial harm to the Grade II listed buildings Northway Mill and Mill House and within the overall planning balance was a matter for TBC's planning judgement.

35. Furthermore, the suggestion that there was a failure to consider a material consideration is misconceived.

36. The officer report correctly acknowledged that the application did not seek permission for the future highway that would utilise the ABoR, nor to any planned housing and employment development [CB/189], and that the wider development was not yet allocated within the development plan [CB/181-182].

37. Whilst the ABoR is needed to facilitate future development (and thus the officer report was entitled to advise that this weighs in favour of the proposal), the officer report was correct to acknowledge that it does not create the impacts that might flow from future development which would be considered when future applications come forward [CB/183, 186 and 189].

38. Furthermore, the officer report explained why the application needed to be progressed at this stage, before plans are prepared for wider development, which related to the need to utilise funding and to the constraints associated with railway assets [CB/182 and 191].

39. In so far as the impacts arising from future development are concerned, the officer report identifies the possibility for such impacts, including on the highways network, and the need for them to be considered when planning applications come forward in future [CB/189].

40. ARPC's proposition that the planning application will "inevitably" lead to further development is irrational [CB/26/27]. Further development will require applications for planning permission which will be considered on their merits. Moreover, until those applications have been prepared and considered, the suggestion there necessarily will be "harm" arising from future development is entirely speculative.

41. The Transport Assessment included indicative traffic modelling in relation to a potential future residential development and a link road connected to the ABoR. This indicative modelling was recorded in the officer report as demonstrating that either a roundabout or a single-controlled junction would offer a suitable connection between the link road and the surrounding network [CB/185-186].

42. The indicative traffic modelling did not, as ARPC suggests [CB/24/22], show that the indicative level of residential development considered will result in a reduction in highway network performance. The modelling has been misunderstood. In fact, the traffic modelling showed an improvement in the AM peak hour and possible potential improvements in the PM peak hour (with junction improvements) when comparing the baseline scenario against DS2 ("DS2" means the ABoR, link road and residential development) [CB/149].

43. There can be no suggestion that members were not aware of possible future impacts, including on the highway network, arising from wider development that the ABoR would facilitate. The officer report [CB/185-186] stated that the link road, the connection to the existing highway network and associated residential development would be the subject of future planning applications that each would be supported by their own Transport Assessment; and the acceptability of those applications could not be pre-determined.

Ground 2: the alleged failure to consider Phase 1 of the Masterplan Scheme in considering whether the ABoR constituted EIA development.

44. TBC when screening the proposals had express regard to the potential future development that the ABoR would facilitate, noting in the adopted screening opinion that "whilst the bridge is to facilitate a new settlement, no planning application has been submitted for that new settlement and it is not subject to any Local Plan allocation" [CB/165].

45. The context of the adopted screening opinion was the EIAR which reasoned that potential contemplated development could not be robustly assessed within the screening decision because of the high degree of uncertainty surrounding its nature and scope [CB/122]. This was a lawful judgment to make.

46. Thus, ARPC are simply incorrect to suggest that TBC "accept[ed] without question that the ABoR is to be considered in isolation" and "did not turn its mind to whether parts of the Masterplan Scheme should also be considered" [CB/24/19]. The matter was considered and a lawful judgment made in relation to it.

47. The conclusion reached by TBC was that the ABoR is a project to be considered in isolation, and the potential effects of this future development could not be considered cumulatively with the ABoR. Both these findings were matters for TBC's planning judgement (see the case-law cited earlier).

48. The so-called salami slicing cases on which ARPC relies are distinguishable from the present case. They concerned concrete proposals developed concurrently that formed part of a wider project.
    a. *R (Burridge) v Breckland District Council* [2013] JPL 1308 concerned concurrent planning applications for a biomass renewable energy plant and a combined heat and power plant connected by an underground gas pipe.
    b. *Ecologistas en Accion v Ayuntamiento de Madrid (C-142/07)* EU:C:2008:445; [2009] P.T.S.R. 458 concerned five segments of an urban road enlargement project in Madrid that had been split into separate projects.
    c. *Commission v Spain* [2005] Env LR 20 concerned a single long distance rail construction project, split into small local projects with the result that the section in question was (and the project as a whole) as not subject to EIA.
    d. *R (Thakeham Village Action Ltd) v Horsham DC* [2014] Env LR 21 concerned concurrent planning applications on sites that were used for a business cultivating mushrooms for developments that were respectively for residential development and for further development to support the mushroom cultivation business.

49. By contrast with those cases, and as is reflected in the reasoning TBC gave in the adopted screening report (quoted above), it is established that an authority when screening an initial phase of development may consider it as an isolated project where

no planning application or local plan allocation has been made in relation to future phases of development, such that the wider development is unspecified or uncertain.

50. The fact that an initial phase is designed to "enable" potential future development does not mean that they are part of the same indivisible project. In *Preston New Road Action Group v Secretary of State* [2018] Env LR 18, Lindblom LJ (in a case concerning exploratory fracking but without any extraction, which could be the subject of a future planning application) said at paras 64-65:

> 64… What any future extraction project might comprise was also, at this stage, a matter of conjecture. So it was not only unnecessary, and inappropriate, for the environmental effects of that unknown development to be included in the EIA for the present project. It was also impossible.
>
> "65. That logic is not disturbed by Mr Willers' submission that the purpose of the exploration project was not merely to establish the presence of a commercial resource of shale gas, but also to enable commercial extraction. The fact that commercial extraction would only be proposed if the exploration project proved the presence of a commercial resource does not mean that the two operations are necessarily and indivisibly parts of the same project. They are not. Extraction, if it is ever proposed, will only proceed after exploration and monitoring have been carried out. But this does not justify the concept that the two projects, if there are two, will have "cumulative" effects on the environment, or that the present project – for exploration – will have "indirect" or "secondary" effects that are, in truth, impacts associated only with a hypothetical future project – for extraction."

51. Ouseley J in *R (Save Britain's Heritage) v Secretary of State* [2014] Env LR 9 said at [480]:

> "I would also draw attention to the fact that Mr Harwood accepted that there will be cases where future stages are so uncertain and the immediate application is being pursued for its own merits that the future stages can be disregarded. He took issue with the proposition that there was insufficient detail in respect of Phases 2 and 3 to require them to be considered in the context of the screening direction in relation to the Chapel. However that is a question of fact and for the reasons given earlier I do not consider that the Secretary of State erred in taking the view that consideration of Phases 2 and 3 was premature…."

52. Illustrating the boundary between the two kinds of cases, Davis LJ in *R (Burridge) v Breckland District Council* (supra) said this at [78] (in a case concerning concurrent planning applications which were to be treated as a single development):

> "…There are, as it seems to me, formidable objections in requiring a planning authority to have regard to some possible further development in contemplation, but not yet specified, or effectively in point of practice obliging a planning authority to consider all such applications on a case by case basis: when the 1999 Regulations are plainly designed to contrary effect. But the

present case is different. Here, revised application 1372 and application 0445 were specifically linked. Not only, as the judge inevitably found, were the two applications "functionally interdependent": they were also, in my view, and with all respect to the judge, to be regarded as part of the same substantial development."

53. Furthermore, there can be no suggestion on the facts of an intention of 'salami slicing' proposals in order to avoid the effect of the EIA Regulations. Future development, if and when it comes forward and in whatever form that may be, will be subject to the requirements of the EIA regime as appropriate.

54. Two further factors suggest that this ground of challenge is entirely spurious.
    a. First, TBC's decision when screening the ABoR was not criticised within any of the representations submitted on the ABoR during the consultation in the planning process including those submitted by ARPC [CB/254-257]. The arguments now advanced by ARPC in ground two in relation to the screening decision are after-thoughts. ARPC's criticism of the officer report for not discussing the matters raised in this ground and citing the relevant case-law is unfair: there was no need to.
    b. Secondly, ARPC does not point to any identified environmental impacts which it is said were or will be ignored because of TBC's approach when screening the ABoR. As Carnwath LJ (as he then was) said in *R (Jones) v Mansfield DC* [2004] Env LR 21 at [58] *"*It needs to be borne in mind that the EIA process is intended to be an aid to efficient and inclusive decision making in special cases, not an obstacle race…"

55. It was plainly lawful in the circumstances for the authority to not take into consideration, as cumulative effects, the effects of potential future development. Sir Michael Harrison in *R (Littlewood) v Bassetlaw DC* [2009] LR 21 said at para. 32:

> "32. … I simply do not see how there could be a cumulative assessment of the proposed development and the development of the rest of the site pursuant to the EIA Regulations when there was no way of knowing what development was proposed or was reasonably foreseeable on the rest of the site. The site was not allocated for development in the local plan. No planning application had been made and no planning permission given in respect of the rest of the site, and no proposals had yet been formulated for that part of the site. There was not any, or any adequate, information upon which a cumulative assessment could be based. In my judgement, there was not a legal requirement for a cumulative assessment under the EIA Regulations involving the rest of the Steetley site in those circumstances."

56. Consistent with this, the Planning Practice Guidance advises as follows (emphasis added):

> "When should cumulative effects be assessed?
> Each application (or request for a screening opinion) should be considered on its own merits. There are occasions, however, when other existing or approved development may be relevant in determining whether significant effects are likely as a consequence of a proposed development. The local planning authorities should always have regard to the possible cumulative effects arising from any existing or approved development.
> Paragraph: 024 Reference ID: 4-024-20170728"

Ground 3: the alleged lack of objectivity / apparent bias.

57. ARPC now advances additional grounds to those alleged in the pre-action protocol letter.

Regulation 64 of the EIA Regulations

58. The allegation in the Statement of Facts and grounds is founded on a materially misleading and partial quotation from Regulation 64(2) of the EIA Regulations [CB/41/para 80].

59. Regulation 64(2) applies to cases where an authority is bringing forward a proposal for development and that authority will also be responsible for determining its own proposal. It requires the authority to make "…appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the persons bringing forward a proposal for development and the persons responsible for determining that proposal." The words underlined are important and omitted from the Claimant's pleading.

60. The Claimant's submissions in relation to regulation 64 of the EIA Regulations are misconceived. They rest on the false premise that the Planning Committee at its meeting on 16 March 2021 was performing a function under the EIA Regulations in relation to the ABoR. It was not. TBC's duty in relation to the EIA Regulations had already been discharged on 22 June 2020, through the adoption of the screening opinion that determined the ABoR was not EIA development. This duty was discharged by an officer under delegated authority, prior to the submission of the planning application.

Apparent bias

61. In relation to apparent bias, ARPC has failed to point to any factor that would lead a fair-minded observer to conclude a real possibility of bias. There is no suggestion that Councillors Bird and Mason, the sole focus of ARPC's submissions, have any personal interest within the ABoR or the wider North Ashchurch Development Area.

62. The evidence relied upon is limited to the simple fact of their membership on the Executive Committee and the Tewkesbury Garden Town Member Panel. There are at least three reasons why this does not render their decision to participate and vote on the application procedurally improper.

63. First, it is established that where the authority itself is the applicant for planning permission, the mere fact alone that a councillor is a member of the executive committee which had a role in promoting the application does not debar them from taking part in a meeting of the planning committee to determine the application.

64. Lord Justice Pill in *Lewis* said the following (where material) at [37] and [63]:

> "37. I see no basis for the suggestion that Councillor Kay should have excluded himself from the meeting because he was a member of the council's "cabinet" which had decided to sign the heads of agreement, or for any other reason. … He had no personal interest to declare and he took the advice of Mr Frankland. Leading members of a local authority who have participated in the development of planning policies and proposals need not and should not on that ground, and in the interests of the good conduct of business, normally exclude themselves from decision-making meetings.
> …
> 63. Councillors are elected to implement, amongst other things, planning policies. They can properly take part in the debates which lead to planning applications made by the council itself. It is common ground that in the case of some applications they are likely to have, and are entitled to have, a disposition in favour of granting permission. It is possible to infer a closed mind, or the real risk that a mind was closed, from the circumstances and evidence. Given the role of councillors, clear pointers are, in my view, required if the state of mind is to be held to have become a closed, or apparently closed, mind at the time of decision."

65. In fact, members of a planning committee are entitled to have a predisposition in favour of granting planning permission, for example by having previously promoted policy supportive of particular development. This is to be distinguished from actual or apparent pre-determination (*R (Lewis) v Redcar and Cleveland BC* [2009] 1 WLR 83, *per* Pill LJ at [63], Rix LJ at [95] and Longmore LJ at [106]). A fair-minded observer is to be taken to understand the leeway which the law gives councillors to sit concurrently on different committees.

66. Secondly, the suggestion that the membership of Councillors Bird and Mason on the Executive Committee somehow biased them towards the application is bogus in circumstances where other members of the Executive Committee sat on the Planning Committee and voted against the application: Councillors Harwood and MacTiernan [CB/227-228]. A fair-minded observer would take this as a factor weighing against apparent bias.

67. Thirdly, both Councillors gave declarations that they had not had any direct or close involvement in the detail of the planning application and the application had not been discussed at the Panel [CB/217-8]. Again, a fair minded observer would take this as a factor pointing away from any apparent bias.

Code of Conduct

68. In relation to ARPC's submissions on TBC's Code of Conduct, they are based upon a misinterpretation of the Code and an incorrect understanding of the facts.

69. First, the planning committee meeting did not relate to the determination of an approval in relation to a body in which either Councillor Bird or Councillor Mason was in a position of "general control or management" that engaged paragraph 10 of the Code [CB/275].

70. A committee such as the Executive Committee is not a "body" for these purposes. Furthermore, neither councillor manages or controls the Executive Committee. The Executive Committee of the Council functions as a traditional committee where decisions are made on a democratic basis, and where members have no individual decision-making powers.

71. Secondly, and in any event, the subject matter of the committee meeting did not engage paragraph 10(4)(a) or (b) of the Code such that the Councillors were required to leave the meeting and not vote on the matter [CB/276].

No difference in outcome

72. Finally and in any event, even if (contrary to the submissions above) the Court was to determine that Councillors Bird and Mason should have abstained from voting on the planning application based upon these submissions, the error was ultimately immaterial to the outcome of the planning application.

73. The proposal to resolve to grant permission would have still been carried by 8 to 7 [CB/227-228]. Thus, it is highly likely that the outcome would not have been any different, but for any error, such that the Court would be required (absent reasons of exceptional public interest) to refuse leave and relief (Senior Courts Act 1981, s31(2A) and (3C)).

Conclusion

74. For the reasons stated, TBC submits that the grounds of challenge are wholly without merit and permission should accordingly be refused.

75. TBC seeks its costs in acknowledging service in the sum of £15,341.70

James Pereira QC
Horatio Waller
FTB
2 July 2021