Case No: CO/1001/2016

Neutral Citation Number: [2016] EWHC 2832 (Admin)
**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/11/2016

**Before** :

**MR JUSTICE GARNHAM**

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**Between :**

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| **Michael Mansell** | **Claimant** |
| **- and -** | |
| **Tonbridge & Malling Borough Council** | **Defendant** |

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**Ms Annabel Graham Paul** (instructed by **Richard Buxton Environment & Public Law**) for the **Claimant**
**Mr Juan Lopez** (instructed by **Tonbridge & Malling Borough Council**) for the **Defendant**

Hearing dates: 25 October 2016

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# Judgment

**THE HONOURABLE MR JUSTICE GARNHAM:**

Introduction

1. On 7 January 2016, Tonbridge & Malling Borough Council ("the Council") granted planning permission to Croudace Portland for the erection of four residential dwellings and associated access, parking and landscaping on land at Rocks Farm, The Rocks Road, East Malling in Kent. The decision to grant planning permission was made by the members of the Council's Area 3 Planning Committee at a planning committee meeting on 7 January 2016, with an effective date of 13 January 2016. In reaching that decision, members of the committee were advised by an officer's report which recommended approval.

2. Croudace Portland and East Malling Trust, the present owners of the site, are interested parties in these proceedings. The Defendant is the Council. The application is brought by Michael Mansell who lives in a listed property next door to the site in respect of which planning permission was granted. Before me, Mr Mansell was represented by Ms Annabel Graham Paul and the Council by Mr Juan Lopez. The interested parties were not represented. I record here my gratitude for the clear and helpful submissions, both written and oral, advanced by both counsel.

The Factual Background

3. The site of the proposed development is in land to the south east of East Malling village. The land is designated in the local plan as "countryside", and the village is designated as an "other rural settlement". Part of the village is a designated conservation area. The Claimant's property, which lies at the border of the conservation area, is grade 2 listed. It dates from 1507.

4. The development is for four five bedroomed houses, each served by a double garage or car barn with parking for four cars. The development site is presently part of an agricultural holding comprising a large agricultural building of some 600m$^2$ and a residential bungalow used by a caretaker. The agricultural building has in the past been used as an apple store. I was told that the building remains in use. The development contemplates that both buildings would be demolished. The site is owned by the East Malling Trust. The intention is that it will be sold to the Applicant for planning permission, namely Croudace Portland.

5. A report was prepared for the planning committee by (or on behalf of) the Council's Director of Planning, Housing and Environmental Health (hereafter "the Officer"). The report runs to some eighteen pages. The report explains that the reasons for reporting to the committee were first the fact that the development involved "*departure from the adopted development plan*" and second because of high levels of local interest. The report described the site and the relevant planning history, which was limited to the grant of planning permission for the building of the bungalow in 1957, and a summary of the consultation.

6. Part 6 of the report contains the operative discussion by, and advice from, the Officer to the committee. The section began by reminding members that as the local planning authority the Council was required to determine planning applications in accordance with the Development Plan in force unless material considerations indicate otherwise.

The report went on to note that the application site was open countryside, outside the village settlement confines of East Malling and that accordingly identified restrictions applied to such development. I will need to return to consider in a little detail the advice contained in Part 6 of the report. For the present, however, it is convenient simply to note that the report concluded with the following observations:

> *"6.42 …it is important to understand that the starting point for the determination of this planning application rests with the adopted Development Plan. Against that starting point there are other material planning considerations that must be given appropriate regard, not least the requirements set out within the NPPF which is an important material consideration and the planning and design of the proposal for the site in the context of the permitted development fall back position. The weight to attribute to each of those other material planning considerations, on an individual and cumulative basis, and the overall balance is ultimately a matter of judgement for the Planning Committee. My view is that the balance can lie in favour of granting planning permission."*

7. On 7 January 2016 a supplementary report was produced by the Officer and a recommendation, amended as to matters of detail, was made. Later that day the Area 3 committee resolved that the application be approved in accordance with the main and supplementary reports of the Officer.

8. A pre-action protocol letter was sent on behalf of the Claimant on 10 February 2016. A response was sent on 22 February 2016 and these proceedings were commenced on 23 February 2016.

The Legal Framework

9. Central to this challenge are criticisms of the Officer's main report to the planning committee, seen in the light of national and local planning policy. There was no dispute between the parties as to the relevant legal principles to be applied in considering such a challenge.

10. Those principles are conveniently set out in the judgment of Hickinbottom J in R (on the application of Zurich Assurance Ltd) v North Lincolnshire Council [2012] EWHC 3708). At paragraph 15 of that judgment Hickinbottom J said the following:

> *"15. Each local planning authority delegates its planning functions to a planning committee, which acts on the basis of information provided by case officers in the form of a report. Such a report usually also includes a recommendation as to how the application should be dealt with. With regard to such reports:*
>
> *i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the*

*reasoning of the report, particularly where a recommendation is adopted.*

*ii) When challenged, such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole.*

*Consequently:*

*"[A]n application for judicial review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken" (Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18 April 1997) 1997 WL 1106, per Judge LJ as he then was).*

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

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

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

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

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

11. The first of the claimant's grounds of challenge concerns a concept in planning law known as "fall back position". Because such a comparison may be a material consideration, a planning committee will often compare, on the one hand, the developments for which planning permission is sought, with, on the other, what the applicants could do with the land and premises without the permission.

12. The provision governing what the applicants could do with this land at these premises without planning permission is the Town and County Planning (General Permitted Development) (England) Order 2015 (the "2015 GPDO").

13. Paragraph 3 of the 2015 Order provides, at subparagraph (1), that "*planning permission is … granted for the classes of development described as permitted development in Schedule 2*." Part 3 of Schedule 2 identifies a number of classes of permitted development. Class Q permits certain development in respect of agricultural buildings.

14. Class Q provides that permitted development is

> *"development consisting of (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order and (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3…".*

15. Paragraph Q.1 provides that

> *"development is not permitted by Class Q if… the cumulative floor space of the existing building or buildings changing use under Class Q within an established agricultural unit exceeds 450sqm."*

16. It is also material to note that subparagraph (h) provides that

> *"the development under Class Q (together with any previous development under Class Q) would result in a building or buildings having more than 450sqm of floor space having a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order…".*

17. It is common ground between the parties that the relevant legal principles relating to fall back were set out in R v Secretary of State for the Environment and Havering BC [1998] EnvLR189. In that case Mr Lockhart-Mummery QC, sitting as a Deputy High Court Judge, accepted submissions that there were three elements to the fall back test:

> *"First whether there is a fall back use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is*

*"yes" a comparison must be made between the proposed development and the fall back use."*

The Relevant National Guidance

18. At the relevant time the national planning policy was contained in a document called the National Planning Policy Framework ('NPPF').

19. Paragraph 7 of the NPPF asserts that there are three dimensions to sustainable development: economic, social and environment. Paragraph 11 provides that planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 14 provides (as far as is material):

> *"At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision taking…*
>
> *For decision taking this means*
>
> - *approving development proposals that accord with the development plan without delay; and*
>
> - *where the development plan is absent, silent or relevant policies are out of date granting permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole or specific policies in this Framework indicate development should be restricted."*

20. Paragraph 49 and 50 of the NPPF provide as follows:

> *"49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."*
>
> *50. To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:*
>
> - *plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such*

*as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);*

- *identify the size, types, tenure and range of housing that is required in particular locations, reflecting local demand; and*

- *where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time."*

21. Paragraph 55 provides as follows:

> *"55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:…"*

The Competing Arguments

22. Ms Annabel Graham Paul, for the Claimant, advances four arguments. First she says that the Defendant Council adopted an unlawful approach to "fall back". In particular, she says that they erred in finding that the existing agricultural building could be converted into three dwellings under permitted development rights. That argument turns first, on the proper construction of Class Q, of Part 3 of Schedule 2 of the 2015 GPDO, a provision that provides for permitted development in the case of agricultural buildings, and second, on the question whether the Council erred in concluding that there was more than a theoretical possibility of implementing a lawful fall back.

23. Ms Graham Paul's second ground is that the Council adopted an unlawful approach to the NPPF. In particular, she says that the Council provided no basis for finding that the up-to-date development plan was in any way inconsistent with the policies in the NPPF and that the officer's reliance on the NPPF was insufficiently reasoned.

24. Third, Ms Graham Paul contends that the Council failed properly to consider the effects of the development on listed buildings and the Conservation Area. Finally,

she argues that there was a failure properly to consider whether the planning committee lacked jurisdiction to determine the application. Resolving that ground will necessitate consideration of the constitution of the Council committees.

25. In response, Mr Lopez, on behalf of the Defendant argues that the Defendant's interpretation of the 2015 Order was correct. He says, furthermore, that the Council was entitled to conclude that the fall back suggestion was realistic and that that is sufficient to make fall back a material consideration.

26. As to ground 2, Mr Lopez argued that the officer's approach to the NPPF was entirely proper. As to ground 3, he says that the Claimant's criticism '*defies all practical reality*' and amounts to an '*impermissible challenge…to planning judgment*'. As to the jurisdiction challenge, the Defendant asserts that the question whether the development is '*in fundamental conflict with the development plan*' was a matter of planning judgment and that the decision in this regard could not fairly be characterised as irrational.

Discussion

*Ground 1 – Fall back*

27. The Officer addressed the question of "fall back" at paragraphs 6.14 to 6.16 of his report:

> *"6.14 In practical terms for this site, the new permitted development rights mean that the existing agricultural barn could be converted into three residential units. Some representations point out that only a proportion of the barn could be converted in such a manner (up to 450sqm) but the remainder – a small proportion in terms of the overall footprint – could conceivably be left unconverted and the resultant impacts for the site in terms of the amount of residential activity would be essentially the same. The building could be physically adapted in certain ways that would allow for partial residential occupation and the extensive area of hardstanding which exists between the building and the northern boundary could be used for parking and turning facilities.*
>
> *6.15 The existing bungalow within the site could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building. Such a scenario would, in effect, give rise to the site being occupied by a total of four residential units albeit of a different form and type to that proposed by this application. This provides a realistic fall back position in terms of how the site could be developed.*
>
> *6.16 I appreciate that discussion concerning realistic 'fall back' positions is rather complicated but, in making an assessment of any application for development, we are bound to consider what the alternatives might be for a site: in terms of*

*what could occur on the site without requiring any permission at all (historic use rights) or using permitted development rights for alternative forms of development."*

28. Ms Graham Paul argues that the officer erred in that approach. She says that the Council's analysis falls at both the first and the second of the two hurdles. She says that permitted development under the 2015 Order would not be such as to permit the conversion of this agricultural building into three homes in the manner envisaged by the Officer. And she argues that it is not been shown that there was any real prospect of such a conversion occurring.

29. Critically, Ms Graham Paul contends that the restriction to 450sqm in subparagraph (b) applies to the floor space of the whole of the existing building in respect of which development is contemplated. She says that the proper construction involves identifying the whole building in respect of there is to be any change of use and then adding up the floor space of that existing building. The result must then be less than 450sqm. She says that interpretation is supported by the inspector's decision in a case called Mannings Farm. In that case, the inspector said the following:

> *"9. The floor space of the existing building…far exceeds the maximum permitted threshold, of 450sqm, as set out in Q.1(b). I note the intention is to reduce the size of the building as part of the proposal but Q.1(b) clearly relates to existing floor space and there is no provision in the GPDO for this to be assessed on any other basis."*

30. In my judgment this construction of paragraph Q.1(b) fails because it disregards the definition section of the Order. The critical expression in subparagraph (b) is "*the existing building or buildings*". Paragraph 2 of the Order defines "*building*" as "*any part of a building*". Accordingly, the paragraph should be read as meaning "*the cumulative floor space of the existing building or any part of the building changing use*…" If that is right, it is self-evident that the limit on floor space relates only to that part of the building which is changing use.

31. That was also the approach adopted by the Inspector in the case of Agricultural Buildings at Bennetts Lane, Binegar, Somerset. I was shown a number of inspectors' decisions on this topic but, in my view, it was the Inspector in this case, Mr Rory Cridland, who provided the most thorough analysis of the point. The Inspector said this:

> *"4. Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2105 ("the Order") permits development consisting of a change of use of a building and any land within its cartilage, from a use as an agricultural building to a dwelling house together with building operations reasonably necessary to convert it. However, paragraph Q.1(b) excludes such development where the cumulative floor space of the existing building changing use within an established agricultural unit exceeds 450m$^2$. The term "building" is defined by the Order as including "any part thereof".*

> *5. The proposal would result in a change of use of part of the existing agricultural building, currently measuring around 960m$^2$ of floor space, to a residential dwelling house with a floor space measuring approximately 449m$^2$. The appellants propose to demolish the remaining part of the building but retain agricultural use of the land by returning it to pasture. The Council however contend that paragraph Q.1(b) limits such conversions to smaller agricultural buildings which fall below the 450m$^2$ threshold.*
>
> *6. Although I acknowledge that the wording of paragraph Q.1(b) of the Order is not explicit on this point, when read in conjunction with the definition of 'building' set out in Article 2(1) of the Order, there is a strong indication that the paragraph permits the part conversion of an agricultural building. This is supported by Planning Practice Guidance (PPG) which states that "the maximum floor space that may be converted is 450m$^2$ of floor space of a building or buildings within a single established agricultural unit". As such, I find that paragraph Q.1(b) of the Order allows for the part conversion of an agricultural building provided that total floor space to be converted does not exceed 450m$^2$."*

32. The inspector went on in that decision to refer to correspondence from the Department for Communities and Local Government. I too was shown that correspondence. That correspondence indicates that it is the view of the Department that the reference to "*part of a building*" in the definition section of the Order means that "*in the case of a large agricultural building, part of it could change use…and the rest remain in agricultural use*."

33. The proper construction of Class Q is plainly a matter for me, but for the reasons set out above my analysis of the relevant provisions coincides with that adopted by Mr Inspector Cridland and that suggested by the Department.

34. Ms Graham Paul contends that that construction of subparagraph (b) means that it adds nothing to subparagraph (h). I can see the force of that submission and, as a matter of first principle, statutory provision should be construed on the assumption that the draftsman was intending to add something substantive by each relevant provision. Nonetheless, giving the interpretation section its proper weight, I see no alternative to the conclusion that Class Q imposes a floor space limit on those parts of the buildings which will change use as a result of the development. In those circumstances, I reject the Claimant's challenge to the Officer's construction of the Class Q provisions in the 2015 Order.

35. Ms Graham Paul's second challenge under this head relates to the requirement that there is more than a theoretical possibility of implementing such a lawful fall back development.

36. In paragraph 6.15 of the report the Officer concluded that the fall back position was "realistic". In my judgment he was entitled so to conclude. The evidence establishes that there had been prior discussions between the Council and the Planning Agent

acting for the East Malling Trust who owns the site. It was crystal clear from that contact that the Trust were intending, one way or another, to develop the site. Alternative proposals had been advanced seeking the Council's likely reaction to planning applications. It is in my view wholly unrealistic to imagine that were all such proposals to be turned down the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible.

37. It was not a precondition to the Council's consideration of the fall back option that the interested party had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect. The officer was entitled to have regard to the planning history which was within his knowledge and the obvious preference of the Trust to make the most valuable use it could of the site.

38. Ms Graham Paul argues that, whatever the wishes and intentions of the interested party, it would not, in fact, have been possible to convert the agricultural building into residential use simply by reliance on permitted development. She says that if the aim had been to convert the building to three houses, whose total floor area was less than the maximum of 450m$^{2,}$ there would have been a significant part of the building unused. She points to paragraph (i) of Class Q which provides as follows:

> *"Development is not permitted by Class Q if…(i) the development…would consist of building operations other than*
>
> *I) the installation or replacement of*
>
> *(aa)windows, doors, roofs, or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling house; and*
>
> *II) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i)…"*

39. Ms Graham Paul also points to the need for planning permission if the bungalow on the site was to be converted and if the hardstanding was to be used for parking and the like.

40. However, as Mr Lopez submits, the Council does not have to shut its eyes to the fact that the proposed development might include elements that required planning permission. In fact, Ms Graham Paul conceded that the fact that planning permission for such parts of the development, notably the car parking, could be sought was a legitimate planning consideration. The building could be converted, so as to provide dwelling houses limited in floor space to 450m$^{2,}$ by the construction of internal walls without using the whole of the internal space of the barn.

41. In my judgment therefore, it would have been unrealistic to have concluded that, were the present application for permission to be rejected, the interested party would do nothing to develop this site. On the contrary it was plain that development was contemplated and that some development could have taken place pursuant to Class Q. The Council was entitled to have regard to the fact that there might be separate applications for permission in respect of some elements of the scheme and to advise

that appropriate regard must be had to material planning considerations including the permitted development fall back position. Accordingly I reject the second element of the Claimant's challenge on ground 1.

*Ground 2 – Unlawful Approach to NPPF*

42. Ms Graham Paul accepts that the Council were entitled to have regard to the NPPF but she says that that framework must be interpreted and applied correctly. She says that, in his treatment of paragraphs 49, 50 and 55 of the NPPF, the officer failed to do so.

43. As regards paragraph 49 Ms Graham Paul points out that the Defendant's development plan was in place and up-to-date. She says that the Defendant had a five year supply of deliverable housing sites and that accordingly there was no warrant for dis-applying the local plan. Accordingly she argues that the presumption in favour of sustainable development set out in paragraph 14 of NPPF was not operative.

44. Ms Graham Paul concedes that it is open to a decision maker to find the development was sustainable, and that sustainability may be capable of being a material consideration outweighing a conflict with the development plan. But, she argues, on the facts of the present case, there was no basis for finding that the development plan was inconsistent with the NPPF and there was no analysis of any suggested justification for departure from the development plan.

45. As to paragraph 50 of the NPPF Ms Graham Paul says that that relates to plan making and not decision taking and accordingly is irrelevant to the decision being made by the committee on this occasion. As to paragraph 55 Ms Graham Paul says there was insufficient analysis to justify departing from the plan.

46. I remind myself of what was said by Judge LJ, as he then was, in Oxton Farms, the case cited at paragraph 15(ii) by Hickinbottom J in the Zurich case referred to above. I have to ask myself whether the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken. I fail to see how such a criticism could be made of the officer's report in this regard in the present case.

47. As is conceded by Ms Graham Paul sustainability may be capable of being a material consideration in considering a conflict with a development plan. What the officer did in the present case, in paragraph 6.10 of the report, was to invite the committee to note the effect of paragraphs 49, 50 and 55. It is not suggested that those paragraphs were misrepresented. Nor is it alleged that the Officer failed to point out that the proposed development fell outside the local plan. Nor did he fail to point out the objection to the principle of the proposed development (in both the latter cases he did so in paragraph 6.6). In my judgment in those circumstances it cannot sensibly be argued that the officer misled the committee in any material respect.

48. It is argued that those three paragraphs of the NPPF were irrelevant. I reject that suggestion too. As set out above, the NPPF provides for a presumption in favour of sustainable development which it says should be seen "as a golden thread" running through decision taking. The weight to be given to those considerations in any given

case is a matter for the planning authority but it cannot, at least on facts such as the present, be said that the underlying principle is irrelevant.

49. Finally, it is suggested that the Officer's report did not set out enough to justify departure from the development plan. In my judgment the report accurately and fairly sets out the competing considerations and it was a matter for the judgment of the planning authority how those considerations were resolved. In those circumstances I reject ground 2.

*Ground 3 – Conservation Area*

50. In support of her third ground Ms Graham Paul refers me to the general duty in relation to listed buildings and conservation areas in the exercise of planning functions, provided for by Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. She points to the need for special attention to be paid to the desirability of preserving a listed building and its setting, and of preserving or enhancing the character or appearance of a conservation area.

51. She refers me to paragraph 6.25 of the officer's report and the passage that reads

> *"the development has been laid out in such a way as to avoid any material intrusion within the landscape, with only glimpses of the buildings being able to be seen in views through to the site from the public domain and the conservation area…although the appearance of the site would change, as would the setting of the village, conservation area and surrounding residential properties this change is not considered to be visually harmful.".*

52. Ms Graham Paul says that such an assessment needs to be properly informed. She says that the author of the report did not visit the Claimant's property and that there is no evidence that he visited the conservation area.

53. In my judgment this argument is hopeless. The Defendants had received a design and access statement from the interested party in respect of an earlier application. That application had been amended, at the Council's invitation, to reduce the number of new dwellings and the reporting Officer was aware of that. The Officer carried out a site assessment in the usual way and had the benefit of an illustrative plan. The report makes express reference to Section 72 of the 1990 Act (in paragraph 6.28).

54. The development neighbours a conservation area but is not located within it and the officer writing the report expressed a perfectly sensible planning judgment, based on his inspection and the history as he knew it to be, that the development would change the setting of the listed buildings and conservation area but would not be harmful. Furthermore the members of the committee had the benefit of local knowledge and were able to visit the site if they chose. A number of them did so.

55. I see no basis on which it can be said that this was so ill informed a judgment as to be vulnerable to challenge. On the contrary, it seems to me a judgment the committee was perfectly entitled to reach. In those circumstances ground 3 is dismissed.

*Ground 4 – Jurisdiction*

56. Finally, there is a challenge to the jurisdiction of the Area Planning Committee.

57. I have been provided with extracts from the Defendant Council's constitution. Chapter 3 of that constitution provides that the Council "*may make arrangements under Section 101 of the Local Government Act 1972 for the discharge of any of its functions by (a) a committee; (b) a subcommittee*…" Area 3 Planning Committee is required to consist of members of certain identified wards. The function of that planning committee, like the equivalent committee for Areas 1 and 2, is described as "*function relating to town and country planning and development control…except where recommended for approval in fundamental conflict with plans and strategies which together comprise the development plan.*".

58. Paragraph 3.1 further describes the responsibility of Area Planning Committees. It says that applications for planning permission "*recommended for approval in respect of development which is in fundamental conflict with the development plan,…should be reserved for determination by Council, or by reference to the Secretary of State, as appropriate.*".

59. Ms Graham Paul argues that this application related to a proposal for a development which is in fundamental conflict with the development plan. In support of that assertion she relies on what I take to be a speaking note used by the Claimant in addressing the committee on 7 January 2016. The note reads, in material part,

> *"the report states "there is an objection to the principle of the proposed development in broad policy terms. What this actually means is that this planning application is in fundamental conflict (with) the plans and strategies which together comprise the development plan.".*

60. There is nothing in that speaking note to indicate that the Claimant was making a point about the jurisdiction of the committee. On the contrary, as I read it, he was seeking to underline a clause in paragraph 6.6 of the officer's report which precedes the clause read out. That clause reads "*consequently, the proposed development falls outside of the requirements of these policies*".

61. In my judgment, neither the remarks of the Claimant at the meeting nor the arguments advanced by Ms Graham Paul get close to establishing that this application was in fundamental conflict with the development plan. It is, of course, right that the development fell outwith the development plan; that much is acknowledged in the report. But, in my judgment, it cannot properly be said that the conflict was in any sense fundamental. This development did not significantly prejudice the fundamental aims, objectives or land allocations under the development plan as a whole. It did not prejudice strategic delivery of the plan. It did not amount to premature pre-judging of the plan making process. It was not of a type or scale which threatened the integrity of the plan.

62. Certainly, if the judgment were mine I would reject any suggestion that this development constituted a fundamental conflict. However the judgment is not mine; it is a planning judgment for the committee which can be challenged only on

Wednesbury grounds. The planning authority is entitled to a margin of appreciation in reaching such judgments and, in my view, this fell comfortably within that margin.

63. There is in Ms Graham Paul's skeleton argument an argument that there was a failure to reach a judgment as to whether Area 3 Planning Committee had jurisdiction. That was not an argument actively pursued at the hearing. In my view, however, there is nothing in it. A Council is not obliged to set out its reasoning for the allocations of particular committees for every planning application. There is implicit in the fact of the allocation to an area committee that the planning authorities made a judgment that this is not a case requiring the attention of the full Council. That was the position here and I see no illegality in that decision.

Conclusions

64. It follows that I reject all four of the grounds advanced in support of this claim and the claim must be dismissed.