Case No: CO/11087/2010

Neutral Citation Number: [2012] EWHC 292 (Admin)

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

Birmingham Civil Justice Centre
33 Bull St, Birmingham, B4 6DS

Date: 17/02/2012

Before :

MR JUSTICE BEAN

- -

Between :

ESMOND JENKINS	**Claimant**
- and -	
GLOUCESTERSHIRE COUNTY COUNCIL	**Defendant**
- and -	
(1) MORETON C CULLIMORE (GRAVELS) LIMITED	
(2) COTSWOLD WATER PARK SOCIETY	
(3) ENVIRONMENT AGENCY	**Interested Parties**

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Paul Brown QC (instructed by **Richard Buxton, Environmental and Public Law, Cambridge**) for the **Claimant**
Paul Cairnes (instructed by **Nigel Roberts, Director of Law and Administration Gloucestershire County Council**) for the **Defendant**
Hugh Richards (instructed by **Willans LLP Cheltenham**) for the **First Interested Party**
Gwion Lewis (instructed by **Jonathan R Taylor, Legal Services (Midlands), Environment Agency)** for the **Third Interested Party**
The Second Interested Party did not appear and was not represented

Hearing dates: 24 - 25 January 2012

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Judgment

Mr Justice Bean:

1. The Claimant seeks judicial review of the decision of Gloucestershire County Council ("GCC" or "the Council") dated 23 July 2010 to grant planning permission to the two Interested Parties ("Cullimore" and "CWPS") for:-

> "the progressive extraction and processing of sand and gravel with restoration using imported inert fill to a mix of wetland, grassland and recreational use, together with replacement visitor parking and access to the Keynes Country Park"

   on land to the East of Spratsgate Lane, Shorncote, Gloucestershire ("the Quarry Site").

2. Shorncote is a small hamlet of some 10 residential dwellings, including Old Manor Farm, Glebe Farm, Manor Farm and Old Manor Barn. Old Manor Barn, Old Manor Farm and Manor Farm are Grade 2 listed buildings. In addition, All Saints Church is a Grade II* listed 12th Century church in the care of the Churches Conservation Trust. All of the properties in Shorncote are within a geographic radius of between 170 metres and 400 metres of the Quarry Site.

3. The Claimant, his wife and their two children live at Old Manor Barn, Shorncote, Gloucestershire. Old Manor Barn was converted to residential use in 2005 pursuant to planning permission and listed building consent granted by Cotswold District Council ("CDC") in 2003. Lying approximately 170m from the northern boundary of the Quarry Site, it is the closest residential property to the proposed extraction area.

4. Together with Old Manor Barn, the Claimant owns a smallholding of approximately 8.5 acres, including a field which lies between the southern boundary of the curtilage of Old Manor Barn and the northern boundary of the Quarry Site. The field is regularly used by the Jenkins family for exercising and riding the horses, and is set out with horse jumps for that purpose.

5. The area around Shorncote has been the subject of mineral extraction for many years, principally for sand and gravel. As a result of these past quarrying activities the surrounding area is now an important nature and recreational area known as the Cotswold Water Park. This is an area of approximately 40 square miles and 132 lakes. CWPS is responsible for its operation. The Quarry Site lies at the western end of the Water Park.

6. Immediately to the east of Shorncote is Shorncote Quarry, which is still operational. Sand and gravel has been extracted from the Shorncote Quarry area along a line which extends both to the north-east (where it adjoins Dryleaze Quarry) and the south-east of Shorncote, over a total distance of about 3km.

The permission under challenge

7. The permission challenged in these proceedings was granted pursuant to an application ("the Application") submitted by the Interested Parties jointly in December 2008, but not formally validated by GCC until 3 March 2009 ("the Application"). The Application followed a previous similar application by Cullimore

alone which had been made in March 2008; but which, following adverse comments from statutory consultees and members of the public, was withdrawn on 19 December 2008.

8. The consent permits extraction and progressive restoration of the Quarry Site over a limited four year period.

9. The Quarry Site lies within the Cotswold Water Park to the south of the village of Shorncote. The Water Park is the product of quarrying activities in the area over many years. The site is outside any area designated as being of landscape or nature conservation or archaeological importance.

The Gloucestershire Minerals Local Plan

10. The Secretary of State has published a number of Minerals Policy Statements. MPS 1, issued in November 2006, sets out general policy in relation to mineral extraction. It refers to the need to maintain adequate landbanks containing permitted reserves of all relevant aggregate minerals in order to ensure continuity of minerals supply; and states that Minerals Planning Authorities (MPAs) such as GCC "should use the length of the landbank in [their] area as an indicator of when new permissions for aggregates extraction are likely to be needed." The landbank indicator for sand and gravel is stated to be "at least 7 years". At the time the application was submitted Gloucestershire's landbank of sand and gravel stood at approximately 6 years.

11. The development plan for the Shorncote area includes the Gloucestershire Minerals Local Plan 1997-2006 ("GMLP"), which was adopted in May 2003. It seeks to meet the need for minerals in Gloucestershire over the planned period by identifying "Preferred Areas" for the extraction of minerals.

12. When the draft GMLP was being prepared in 1999, the Quarry Site was initially proposed as a Preferred Area. However, there were objections to that proposal which were considered by an independent Inspector at the Minerals Local Plan Inquiry in 2002. Having heard the objections to the identification of the Quarry Site as a Preferred Area, the Inspector concluded that the effect of mineral extraction at the Quarry Site on the adjoining Keynes Country Park would be "unacceptable, even for a short duration": in particular, his view was that it would not be possible to put in place the sort of extensive bunding or stand-off areas which would be needed to mitigate the effects of windblown dust and noise on such a small site. He therefore recommended the removal of the Quarry Site from the list of Preferred Areas.

13. GCC accepted the Local Plan Inspector's recommendation. As a result, the Quarry Site is not a Preferred Area in the adopted GMLP. In removing the Quarry Site from the list of Preferred Sites, GCC expressly recognised that, while this would not prevent an application for extraction being brought forward, any such application would have to satisfy the policies of the GMLP "and in particular [be] considered against the criteria of Policy A4".

14. Following subsequent consultation Cullimore and the CWPS reached agreement on a set of working principles and site design details to ensure that the operation of the site for minerals extraction would not have an unacceptable impact on the enjoyment of visitors to the Country Park, the surrounding area and the local community. CWPS

changed its position from opposing mineral extraction from the site at the time of the GMLP inquiry to joining with Cullimore as co-applicant.

15. The Council and the applicants for planning permission consider that the proposed development would avoid the sterilisation of a valuable resource and contribute to the need for sand and gravel in both the region and the county. The development also seeks to address an existing and serious problem with car parking in the Country Park, by providing dedicated car parking in areas away from pedestrian and cycle routes around the Park, and contributing towards the safer enjoyment of the environment by visitors.

16. CDC objected to the proposed development on the ground of noise but not of dust. Their refusal to object on the grounds of dust was the subject of an application for judicial review by the claimant (CO/3200/2010) but permission was refused and the matter was not taken further.

17. GCC were required to consult with the Environment Agency ("EA") on development proposals involving mining operations and certain aspects of flood risk, and the environmental statement submitted with the application included a flood risk assessment. The Environment Agency had objected to the previous 2008 application. Its initial comments as statutory consultee in response to the 2009 application raised some issues about which further information was required, but indicated that some of their previous concerns had been addressed. This response was regarded by the Claimant as insufficiently vigorous and was also the subject of an application for judicial review (CO/4256/2010). Permission was refused and again the claim did not proceed further.

18. Following extensive consultation and full consideration of the concerns raised by the Claimant the EA withdrew its objection to the application, subject to the imposition of appropriate conditions. It set out its position in a letter of 24 June 2010. The claimant sought judicial review (CO/10045/2010) of the EA's withdrawal of its objection. Again permission was refused, both on paper by David Holgate QC and when renewed at an oral hearing before Judge McKenna QC. An application for permission made to the Court of Appeal was refused on the papers by Carnwath LJ. I understand that a renewed application to the full court is listed to be heard on 7 March 2012.

This application for judicial review

19. This claim was issued on 20 October 2010. On 18 February 2011 David Holgate QC, sitting as a deputy judge of the High Court, granted permission for judicial review on all four pleaded grounds. In respect of Ground 3 he made it clear that the permission granted in this claim does not include the argument that the EA's consultation response was itself unlawful.

20. The grounds of challenge, excluding those no longer pursued, are as follows:-

(1) <u>Mineral working outside a Preferred Area</u>: Misinterpretation or misapplication of Policy A4 of the GMLP;

(2) <u>Noise:</u> Misrepresentation of the views of the Environmental Health Officer; failure to take relevant Supplementary Planning Guidance into account;

> (3) Flooding: Failure to comply with the publicity requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 ("the EIA Regulations"); deferment to conditions of a flooding issue which should have been resolved prior to any decision to grant permission; and failure to give reasons for permission being granted notwithstanding that issue;
>
> (4) Dust: Misleading the Committee by inaccurate statements in the Officer's Report; and irrationality, namely failure to take into account a material consideration.

It will be convenient to take grounds 3 and 4 in reverse order.

Ground 1: Policy A4 of the Gloucestershire Minerals Local Plan

21. Policy A4 of the GMLP states that:

> "Proposed aggregate mineral working outside the Preferred Areas defined in this Plan will only be permitted where they are in accordance with and will secure the effective implementation of the objectives and other policies of the Plan by providing for either
>
> A. The provision of aggregates not found in the Preferred Areas defined in this Plan where it can be demonstrated that the mineral is of a specification, or will meet a forecast shortfall, which is required to maintain the County's appropriate contribution to local, regional and national need, and where it is demonstrated that such provision would be significantly more acceptable overall than a site or sites in a Preferred Area.
>
> or,
> B. [not applicable]"

22. Paul Brown QC for the Claimant submits that what he describes as the exceptional nature of the circumstances in which policy A4 contemplates the grant of permission for a site outside the Preferred Areas is made clear by the supporting text in para 3.4.5 of the GMLP, as follows:

> "Proposals for aggregates mineral development outside of the Preferred Areas will not be permitted unless exceptional circumstances prevail…. It is possible that on the basis of new information becoming available about mineral resources outside areas identified in the Plan that an operator could bring forward an application site which might be significantly more acceptable overall than a site identified in the Plan. Although in practise these circumstances should be rare, any such applications should be determined in light of development control and other relevant policies of the Plan …. Following the appraisal undertaken by the MPA … it is unlikely that any such sites outside the Preferred Areas would be significantly more acceptable overall."

23. In advising members on compliance with policy A4 in this case, the Officer's Report identified shortfall of permitted reserves against the requirement for a 7-year landbank; noted that there were about 9 million tonnes of unworked Preferred Areas; and at para 7.6, in relation to the second criteria in Policy A4(A), quoted advice from the Minerals Policy Officer as follows:

> "Bullet 2 – the acceptability of the proposal overall compared to the Preferred Areas
>
> This will relate to any material considerations raised in the consultation of the proposal. A key issue will be those matters raised in 10.8 of the Inspector's Report (Dec 2001) and the MPA consideration of the Inspector's Report (Sept 2002) pages 97-99. What is central here is that the reasons for the Inspector recommending that the site not be included in the MLP are considered and potentially overcome in the current proposals. If the landbank issue is considered as outlined above, the main issue is that any potential harmful impacts to the amenity of the users of the Country Park can be mitigated. The Inspector particularly highlighted windblown dust and noise. It needs to be established that these issues can be satisfactorily mitigated and that the pollution control agencies, such as the CDC Environmental Health Officer, have no concerns [about] this proposal."

24. In paras 7.80-7.83 of the Report, the writer (Mr Betty) advised that "Policy A4 provides for permission to be granted outside the preferred areas based on a number of criteria, including whether there is a forecast shortfall in the county's landbank. In the case of Gloucestershire there is a predicted shortfall in its landbank and the proposed extraction will contribute towards reducing it. With this being the case I am of the opinion that the proposal is in accordance with Part A of Policy A4 of the MLP and that there are no policy grounds for the site not to be considered for mineral extraction by the MPA."

25. Mr Brown submits that this advice materially misrepresented the effect of the policy, by concluding that Policy A4 was satisfied simply because there was a forecast shortfall which the Application would help to reduce. In order to satisfy Policy A4, a proposal for mineral extraction outside the Preferred Areas must not merely satisfy other policies of the GMLP: it must also be significantly more acceptable than development within the Preferred Areas. The advice, he suggests, did not even recognise the existence of this second criterion, let alone explain how it might be satisfied.

26. Policy A4 is rather oddly drafted. In one situation it is easy to interpret. Where the County Council is faced with rival applications for planning permission for mineral working of a particular type, one from a site in a Preferred Area and one from a site outside any Preferred Area, and either site would provide sufficient minerals to make up the relevant shortfall, the application for the non-Preferred Area site should not be approved unless it is significantly more acceptable overall than the Preferred Area

site. But that is not the position here. GCC were faced with a significant and increasing shortfall. There was and is no evidence of any other available site in the county, whether within a Preferred Area or otherwise, where planning permission has been sought for mineral working, or even pre-planning application discussions held.

27. In opening the Claimant's case Mr Brown submitted that in such a situation the Defendant's duty was to examine all potential sites in all the Preferred Areas of the county to see whether any of them might be suitable and available. Paul Cairnes for the Defendant council, supported by Hugh Richards for Cullimores, submitted that policy A4 only required examination of any alternative site or sites in a Preferred Area anywhere in the county where planning permission for mineral working has been applied for, or pre-application discussions have begun. In reply, Mr Brown put forward an alternative: the developer, he suggested, must examine all the potential sites in at least *one* of the Preferred Areas, and the Council must be able to rule those out if it is to grant the application.

28. Mr Brown's preferred meaning is in my view unsustainable. Mr Cairnes rightly criticised it as amounting to a requirement of a mini-Local Plan exercise across the county every time a mineral working site is under consideration. It would have been easy for the policy to require a proposed site outside a Preferred Area to be "significantly more acceptable overall than any potential site in any Preferred Area" if that had been the intention; but that wording was not used. Moreover, if alternative sites with owners willing to seek planning permission had been readily available, there would not have been a significant and increasing shortfall in the sand and gravel landbank.

29. The alternative meaning put forward by Mr Brown in reply is even less attractive. If a wider search than the one suggested by Mr Cairnes were required, I can see no rational basis for confining it to one Preferred Area (presumably selected at random, or because it had fewest sites and therefore involved the least trouble).

30. In my view the Defendant's interpretation of the policy is the correct one. A non-Preferred Area site used to meet a shortfall must be significantly preferable to any *available* site in a Preferred Area. It is therefore unnecessary to consider the authorities on whether the interpretation of a planning policy is a matter for the decision-makers or the court.

Ground 2: Noise

31. Shorncote is a quiet rural area, with background noise levels of around 36 dB(A) L aeq (A-weighted decibels averaged over one hour – I shall use the abbreviation dB(A)). National guidance in Minerals Policy Statement 2 ("MPS2") advises that noise from mineral extraction should not generally exceed 10dB(A) above existing background levels. This general rule may be relaxed in circumstances where the recommended level would be difficult to achieve without imposing unreasonable burdens on the mineral operator. In such cases, the limit should be as near to the + 10dB(A) level as practicable during normal working hours, subject to a maximum of 55dB(A).

32. The noise chapter of the environmental statement ("ES") which originally supported the application wrongly identified the nearest residential property as Old Manor Farm.

This error was pointed out by CDC's Senior Environmental Health Officer, Mr Brassington, in a memo dated 7th May 2009. As well as being CDC's Senior EHO, Mr Brassington also advised GCC on matters such as dust and noise.

33. Until receipt of Mr Brassington's comments the authors of the ES were apparently unaware of the existence or location of Old Manor Barn. As a result, an updated noise assessment was produced. This predicted that noise levels at Old Manor Barn during working hours at the Quarry Site would be between 45dB(A) and 49dB(A), thus potentially being more than 10db(A) greater than at present.

34. On 3 June 2009 CDC, on Mr Brassington's advice, decided to object to the Application due to the noise impact on the residents of Shorncote. Mr Brassington concluded that the predicted noise level of 49 dB(A) was too high, given the low background noise levels in the vicinity. In his view, having regard to the Secretary of State's guidance in MPS2, noise levels should be limited to 46dB(A), that is to say 10dB(A) above working background levels.

35. It is clear from the terms of the guidance in MPS 2 that the 10dB(A) margin was not an absolute limit, and Mr Brown did not argue that it was. He rightly accepted that GCC was, in principle, entitled to disagree with CDC and Mr Brassington on this issue. However, he complained that the Officer's Report dismissed Mr Brassington's objections on the grounds that his comments were based on the guidance in PPG24, the general guidance note on "Planning and Noise", rather than on the advice in MPS 2. Since Mr Brassington had referred to MPS 2 in his memorandum of 7 May 2009 this was, says Mr Brown, an erroneous criticism, and therefore an irrelevant consideration.

36. The GCC Officer's Report has at paragraph 7.110 a detailed and entirely accurate summary of the relevant section of MPS 2, including the proviso that in many circumstances it will be difficult to achieve compliance with the 10d(B)(A) margin without imposing unreasonable burdens on the minerals operator. It goes on at 7.116 to refer to CDC's noise objection, which argued that the proposal would result in unacceptable levels of noise pollution and cited PPG 24. In those circumstances the inaccuracy in attributing this citation to Mr Brassington rather than to the District Council which employed him was immaterial, indeed microscopic.

Noise: the SPG for the Water Park

37. Mr Brown next submits that Mr Brassington's views on the unacceptability of the predicted increase in noise levels at Shorncote should have been given added weight by the fact that CDC has adopted Supplementary Planning Guidance ("SPG") to assist with the control of development in the Water Park. The SPG designates four zones within the Water Park, each of which identifies the particular types of recreational development and the intensity of use which are considered appropriate within it, in part by reference to the proximity of residential properties.

38. The Quarry Site lies within Zone B, which the SPG defines as a "Low Intensity Recreation Zone", where the development for recreational use of land or water is acceptable in principle, but where

> "the proximity of existing settlements requires that control be exercised over the type of use in order to protect nearby residents."

39. The SPG explains that uses in "Low Intensity Recreation Zones"

> "should not cause excessive noise, attract large numbers of people or generate high traffic volumes. Sites in low intensity zones may attract between 5 and 10 cars or 15 and 30 people per hectare at peak use."

40. The SPG is principally directed at identifying the leisure and recreation uses which will be appropriate in the Water Park. Mr Brown submits, however, that it is nonetheless relevant that CDC has determined that sites within Zone B are locations where "the proximity of existing settlements requires that control be exercised over the type of use in order to protect nearby residents". If Shorncote is sufficiently close to the Quarry Site to be sensitive to noise caused by recreational activities such as car-parking or watersports, it must also be close enough to be affected by equivalent or greater levels of noise caused by mineral extraction.

41. The GCC Officer's Report made no reference to the SPG in the context of the noise impact of the mineral extraction. GCC only considered the issue of compatibility with the SPG in the context of the proposed after-uses for the Quarry Site (car parking) and never in connection with the mineral extraction itself. However, the advice in the SPG that Shorncote needs and deserves protection from noise by restricting the use of Zone B in general and the Quarry Site in particular to low intensity uses was equally relevant when considering the impact of mineral extraction and the appropriate level for setting noise limits.

42. In the circumstances, says Mr Brown, GCC failed to take into account an important relevant consideration in addressing the issue of noise during the working life of the quarry, namely the fact that the Quarry Site lies within an area in which adopted planning policy indicates that only low intensity (low noise) uses should be permitted.

43. With respect to Mr Brown, I consider that this adds nothing to the argument about the noise level of 49dB(A). Of course mineral extraction is not a "quiet recreational activity": indeed it is not a recreational activity at all. But the SPG as to what leisure and recreational use in the area is appropriate is not a material consideration on an application for permission for minerals extraction. The SPG is not part of the development plan, and in so far as it recognises the desirability of limiting noise in areas close to existing settlements, it is both less specific and less stringent than MPS 2. It was not a relevant matter which GCC were bound to take into account in reaching their decision on the noise issue.

Ground 4: Dust

44. As noted above, the Claimant's land includes a field immediately adjacent to the Quarry Site, which would be separated from the extraction area by a bund only 2m high. The Claimant and his family use the field for equestrian purposes.

45. In January 2007 CDC had granted planning permission for the "erection of stables and tractor sheds at Old Manor Barn, Shorncote, Cirencester, Gloucestershire". The application drawings indicated the extent of the Claimant's smallholding, including

the Field. In the Design and Access Statement which accompanied the Claimant's application for this permission, the Claimant had explained that the proposed use of the stable and tractor shed was:-

> "for the stabling of 4 horses, and storage of tractors and implements used exclusively to maintain 8.5 acres of pasture. All the horses kept on the property are owned by my family and consequently the proposed structure is intended solely to support my family's own smallholding/equestrian activities."

46. The stable block constructed in 2007 is used by the Claimant and his family to stable horses, which are exercised in the field. Mr Brown submits that the Claimant's use of the field in this manner is consistent with the information provided by him when seeking planning permission for the erection of the stable block. At no stage has it been suggested to the Claimant that his use of the field is in breach of planning control, contrary to policy or in any other way inappropriate, or that it should cease.

47. In objecting to the Application, the Claimant specifically identified not only the impact which dust arising from the extraction would have on his residence (and on other residences in Shorncote), but also the effect which it would have on his family's use of the field for equestrian purposes. At the start of 2010 his concerns in this regard were shared by Mr Brassington. However, by the time that CDC's Planning Committee met on 31st March 2010 to consider what stance to take on the Shorncote application (which was of course for the County Council, not CDC, to decide) their Officer's Report advised them that:

> "an objection on the grounds of dust affecting the land adjacent to the north of the application site has not been raised. This is because these fields, although used for purposes ancillary to the enjoyment of the residential property known as 'Old Manor Barn', are considered by Officers to have an agricultural, rather than a domestic or equestrian use."

48. CDC therefore objected to the Application on the grounds of noise alone.

49. The GCC Officer's Report dealt with dust in some detail. At para 7.94, it recorded the fact that Peter Brett Associates ("Brett"), experts instructed by the Claimant, had raised concerns about the impact of dust on the use of the Claimant's field for keeping horses, and informed members that a Dust Management Plan ("DMP") had been submitted in February 2010. Mr Betty went on to state:

> "It is my opinion that the submitted DMP will provide sufficient mitigation to limit the dust created at the site and that the measures outlined will prevent windblown dust leaving the site. The EHO is satisfied that the DMP meets best practice guidance and that the scheme will mitigate dust levels at the site…………….
>
> The CDC EHO stated in a response dated 17th February 2010 that the DMP reflected good industry practice and subsequently CDC withdrew their objection regarding dust.

The EHO acts as the MPA's advisor on matters such as dust and noise and is consulted through the local authority (CDC) on environmental matters relating to planning applications. In this case the EHO has accepted that the DMP reflects good practice and that if there was to be a problem with dust CDC could take action as a statutory nuisance and that dust issues raised by the objectors can be dealt with through the implementation and operation of a DMP that have been approved by the MPA. If consent is granted for the proposal the DMP will be enforced via planning condition."

50. It is clear from notes of the GCC members' site visit on 15 July 2010 that Mr Brassington was by then of the opinion that the proposed mitigation measures were sufficient. Mr Brown's pleaded argument that there was a material misrepresentation of Mr Brassington's views to the Committee cannot succeed.

Dust: failure to take material consideration into account

51. Mr Brown's alternative argument on dust is this: if and in so far as the GCC Officer's Report relied upon the fact that CDC had withdrawn its objection regarding dust, it was irrational and resulted in GCC's members failing to take into account the actual impact of the Application on the Claimant's use of the land for equestrian purposes. In particular, the Claimant's intention to use his land for equestrian purposes was explicitly spelt out in his application for permission to erect the stables, which CDC approved. CDC has at no stage suggested that there is anything improper or inappropriate in his use of the field for that purpose. There is therefore no reason why the Claimant's use of the field should cease. At no stage in the GCC Officer's Report were members asked to consider for themselves whether the impact on equestrian use would be acceptable. In the circumstances, GCC failed to take into account or to grapple properly with the actual impact of the proposed development on the Claimant's residential use and the use of his fields for equestrian purposes.

52. I have already noted that an application for judicial review against CDC on the grounds of failure to object on grounds of dust was unsuccessful. The report commissioned by the claimant from Brett, raising concerns about the impact of dust on the use of the field for equestrian purposes, was available to CDC when it withdrew its objection on dust grounds. It was also expressly referred to paragraph 7.94 of the Officer's Report in the present case.

53. I accept Mr Cairnes' submission that the fact that CDC had previously granted the claimant planning permission to erect stables near to his house was not a bar to the development of the Quarry Site. The Claimant's field closest to the site is agricultural land. Planning permission would be required for a change of use from agricultural to equestrian and it has never been sought, still less obtained. It would be very curious if by using the field, technically unlawfully, for equestrian purposes the Claimant could create a form of *cordon sanitaire* around the field. I reject the challenge brought in respect of dust.

Ground 3: Flooding

54. Groundwater in the Shorncote area generally drains from the north-west to the south-east, through the underlying sand and gravel, towards the River Thames and the River Churn. However, although the land in the vicinity of Shorncote generally falls away from north to south, Shorncote itself lies in a local topographical depression which, at it lowest point, is at 91.8m AOD. In contrast, the northern boundary of the Quarry Site is at approximately 93m AOD. Along the western boundary of the Shorncote quarry (and so to the east of Shorncote) the voids left after extraction have in part been infilled with impermeable inert materials which prevent groundwater from draining in that direction. Consequently, because Shorncote lies in the floodplain and the local terrain is otherwise generally flat, the area is prone to flooding.

55. Before making the March 2008 application, Cullimore had sought GCC's advice on the need for and scope of any ES for mineral extraction at the Quarry Site. On 1st July 2004 GCC issued a screening opinion stating that the proposal for mineral extraction was EIA development for which an ES was required. On 3rd August 2004 GCC issued a scoping opinion pursuant to reg. 10 of the EIA Regulations, identifying the information which would be required in any ES relating to an application for mineral extraction on the Quarry Site. Under the heading "Hydrology and Hydrogeology" the scoping opinion stated:

> "A full hydrological and hydrogeological assessment of the proposal will be required to determine baseline conditions at the site, and outline the potential impact of the operation and proposed restoration on water resources and water dependant features."

56. The March 2008 application was objected to by the EA on the ground that no flood risk assessment had been submitted. As already noted, it was withdrawn on 19 December 2008, at or about the same time as the present Application was made.

57. Part 2 of the ES which accompanied the present application contained a chapter (Chapter 9) headed "Water", which concluded (at para 9.8.4) that "direct groundwater flooding of the site will not occur", but made no reference to any increased risk of flooding to Shorncote.

58. By letter dated 11 May 2009, the EA wrote to GCC, objecting to the Application *inter alia* on the basis that the information supplied did not fully address concerns which had been expressed in relation to groundwater and flood risk.

59. In June 2009 GWP Consultants ("GWP"), acting on behalf of the Interested Parties, submitted an "Addendum to Hydrogeological Baseline Study and Impact Assessment and Flood Risk Assessment". In contrast to the ES, this Addendum concluded that the proposal would lead to a 20% reduction in the width of the aquifer through which groundwater would flow, and that groundwater levels would therefore rise by between 0.34m and 1.36m. The Addendum therefore recognised that there was a potential risk of groundwater flooding, and suggested that in order to mitigate the risk of groundwater flooding "ditches around the northern and western boundaries of the site could be dug, deepened and extended in order to control groundwater levels by draining water to the elevation of the base of the ditch".

60. The Brett report commissioned by the Claimant and fellow Shorncote residents identified a heightened flood and settlement risk which had not been addressed by the applicants for planning permission. A copy was sent to the EA on 1 July 2009.

61. Having considered the Addendum and the Brett report, the EA's Groundwater and Contaminated Land Team provided its formal response to the application by letter dated 9 October 2009. In that letter, the EA advised that its previous objections on groundwater protection and flood risk had been addressed sufficiently, and that it withdrew its objection, subject to the imposition of conditions relating to drainage and monitoring. The proposed condition relating to drainage required *inter alia* the provision of:

> "details of storage available within local ditches and lakes proposed to receive drained groundwater and any changes needed to accommodate additional water."

62. Local residents continued to be concerned about the adequacy of the information which had been provided. On 4 January 2010 the Claimant sent GCC and the EA a copy of a report which had been prepared by Mr Steeves-Booker (a Shorncote resident) alleging errors in the Addendum. Mr Steeves-Booker's report took issue with GWP's suggestion that the proposed mitigation of any groundwater flooding could drain into the County ditch. He argued that this should not be allowed because the County ditch was already overloaded.

63. The EA met local residents in Shorncote on 6 May 2010. Following that meeting, and further correspondence from local residents, on 18 June 2010 consultants acting for Cullimore wrote to the EA enclosing a further document from GWP ("the Advisory Note") which provided an outline design for a "drainage feature" to the north of the proposed excavation to control groundwater levels to the north of the Quarry Site.

64. The EA's "further consultation response" of 24 June 2010, which has been the subject of a (so far) unsuccessful application for judicial review, is a long and carefully reasoned document which I shall not reproduce in detail in this judgment. The EA did not dispute that the presence of landfill would cause groundwater levels to rise to some extent, and considered that detailed drainage conditions designed to mitigate the worst affected areas would be appropriate to manage any groundwater rise and avoid impacts on local receptors. In their view there were no "in principle" reasons why groundwater levels, rise and flood risk could not be controlled through the planning conditions of which they had supplied a draft (para. 2.4.7); and the proposal to dig ditches along the northern and western boundaries to drain rising groundwater levels back to natural levels was an appropriate means of mitigating any rise in groundwater levels (para. 2.8.3).

65. In their overall conclusions, at para 6.3, the EA stated:

> "We recognise that there are flooding problems in the locality and that residents are understandably concerned about this. The MPA may wish to seek a view on this from the Local Authority or County Council as the lead on land drainage matters. However we do not consider the proposed development will exacerbate these flooding issues, from either

> a ground or surface water perspective. Again, the conditions we have recommended allow for control of this matter."

66. The Officer's Report to GCC's Planning Committee set out at some length the various representations that had been made on the issue of flooding. The report referred to Cullimore's proposals for dealing with surface groundwater *inter alia* by discharging into the County ditch. Para 7.161 recorded the views of the County's Senior Drainage Engineer that it would not be appropriate to place any additional discharge from the proposed development directly into the County ditch system and that "the operator should look at other ways of dealing with surface water run-off". Para 7.162 indicated that:

> "To address this the applicant will be required via condition to ensure that any submitted scheme to deal with surface water flows shall be designed to prevent any surface water being directed towards the County Ditches."

Breach of the obligation to advertise

67. There is no issue between the parties that the Application was for a form of development which required environmental impact assessment under the EIA Regulations. Accordingly, before planning permission could be granted GCC was obliged to follow certain procedures for publicity and consultation, following which it had to take into account the "environmental information" as defined under the Regulations: reg. 3(2).

68. "Environmental information" is defined under reg. 2(1), and includes "the environmental statement", and representations made by consultees and other duly made representations.

69. "Environmental statement" is defined as a statement:-

> "(a) that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be expected to compile, but
>
> (b) that includes at least the information referred to in Part II of Schedule 4."

70. Inclusion of the information described in Part II of Schedule 4 is therefore mandatory. Part II requires that the ES includes:

> "a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects" (para 2); and
>
> "the data required to identify and assess the main effects which the development is likely to have on the environment" (para. 3).

71. Regulation 19, so far as material, provides:-

> "19. – (1) Where the relevant planning authority, the Secretary of State or an inspector is dealing with an application or appeal in relation to which the applicant or appellant has submitted a statement which he refers to as an environmental statement for the purposes of these Regulations, and is of the opinion that the statement should contain additional information in order to be an environmental statement, they or he shall notify the applicant or appellant in writing accordingly, and the applicant or appellant shall provide that additional information; and such information provided by the applicant or appellant is referred to in these Regulations as "further information".
>
> (2) Paragraphs (3) to (9) shall apply in relation to further information and any other information except so far as the further information and any other information is provided for the purposes of an inquiry or hearing held under the Act and the request for the further information made pursuant to paragraph (1) stated that it was to be provided for such purposes.
>
> (3) The recipient of further information pursuant to paragraph (1) [or any other information] shall publish in a local newspaper circulating in the locality in which the land is situated a notice stating - …….
>
> (d) that further information [or any other information] is available in relation to an environmental statement which has already been provided;
>
> (e) that a copy of the further information [or any other information] [and of any statement referred to as an environmental statement for the purposes of these Regulations which relates to any planning permission or subsequent application] may be inspected by members of the public at all reasonable hours.
>
> (f) an address in the locality in which land is situated at which the further information [or any other information] may be inspected and the latest date on which it will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);
>
> (g) an address (whether or not the same as that given pursuant to sub-paragraph (f) in the locality in which the land is situated at which copies of the further information [or any other information] may be obtained;"

72. "Any other information" is defined by reg. 2(1) as:

> "any other substantive information relating to the environmental statement and provided by the applicant or the appellant as the case may be."

73. In *Berkeley v. Secretary of State for the Environment* [2001] 2 AC 603 Lord Hoffmann observed that:

> "The Directive requires not merely that the planning authority should have the necessary information, but that it should have been obtained by means of a particular procedure, namely that of an EIA. And an essential element in this procedure is that what the Regulations call the "environmental statement" by the developer should have been "made available to the public" and that the public should have been "given the opportunity to express an opinion" in accordance with Article 6(2) of the Directive. ……………
>
> The directly enforceable right of the citizen which is accorded by the Directive is not merely a right to a fully informed decision on the substantive issue. It must have been adopted on an appropriate basis and that requires the inclusive and democratic procedure prescribed by the Directive in which the public, however misguided or wrongheaded its views may be, is given an opportunity to express its opinion on the environmental issues. …………..
>
> A court is therefore not entitled retrospectively to dispense with the requirement of an EIA on the ground that the outcome would have been the same or that the local planning authority or Secretary of State had all the information necessary to enable them to reach a proper decision on the environmental issues."

74. The witness statement of Jason Betty, Principal Planner for GCC and the author of the Officer's Report, says that:

> "A letter was sent out to all contributors on the 6th July 2010 (including the Claimant) informing them that the Officer's Committee Report was publicly available to be viewed from the 14th July 2010, i.e. 7 days before the determination of the application."

Mr Betty goes on to state that:

> "All details on the ditch design and hydrology were put on public access before the 16th July 2010. A copy was sent to the Parish Council on the 20th July and a copy to the Claimant on the 19th July 2011. It is therefore incorrect to infer that the interested parties only saw them on the 20th July."

75. Irrespective of which of the two timetables outlined above is correct, the publicity afforded to the details on the ditch design fell well short of the statutory requirements.

The documents referred to, in particular the Advisory Note submitted on 19 June 2010, were additional information provided by the Interested Parties. They related to the mitigation measures proposed to deal with the problems of flooding identified in the Addendum report. They were accordingly within the definition of "any other information" for the purposes of reg. 19(3). Contrary to reg 19(3), the additional information was not advertised in the manner required, nor made available to the public for a period of at least 21 days as required.

76. Mr Cairnes did not submit that there is evidence, either in Mr Betty's witness statement or elsewhere, that the Advisory Note was advertised and made available for inspection for a minimum period of 21 days in accordance with reg. 19(3). Rather he submitted that the County Ditch issue is not "any other information" within the meaning of the regulation because, in the light of the view taken by the EA, the development was not likely to have "significant adverse effects"; and that therefore the Advisory Note did not "relate to" the ES and was not information "reasonably required to assess the environmental effects of the development."

77. The Advisory Note had not been requested by GCC: it was thus not "further information" as defined by reg. 19(1). But it was substantive information relating to the ES and provided by the applicants for planning permission. It sought to address objectors' concerns on a significant issue, namely flood risk, by giving "a description of the measures envisaged in order to avoid, reduce, and if possible remedy significant adverse effects". (Schedule 4, part II, paragraph 2). It was therefore "any other information" within the reg. 2(1) definition and caught by the publicity provisions of reg. 19(3)(d) to (g). The fact that it satisfied the EA is immaterial on this point.

78. I therefore find that there has been a breach of the advertising requirements of the EIA Regulations. Counsel were agreed that in the event of my so finding the consequences of the breach should be the subject of further argument.

Deferment to a condition

79. Where information is required in order to "identify and assess the main effects which a development is likely to have on the environment" (Schedule 4, Part II, para. 3 of the Regulations), the decision-maker, whether a local planning authority or an inspector appointed by the Secretary of State, cannot postpone the provision of that information to a condition. The authority must have sufficient details of any impact on the environment and of any mitigation measures in order to enable it to comply with its obligation under reg.3(2) of the EIA Regulations to "take the environmental information into consideration" before granting planning permission.

80. In *Smith and Secretary of State for the Environment* [2003] EWCA Civ 262 Waller LJ, with whose judgment Sedley LJ and Black J agreed, said that the authorities on compliance with the EIA Directive and Regulations establish four principles, of which the last two are as follows:-

> "Third, the planning authority or the Inspector will have failed to comply with article 4(2) [of the Directive] if they attempt to leave over questions which relate to the significance of the impact on the environment, and the effectiveness of any

mitigation. This is so because the scheme of the regulations giving effect to the Directive is to allow the public to have an opportunity to debate the environmental issues, and because it is for those considering whether consent to the development should be given to consider the impact and mitigation after that opportunity has been given. As Harrison J put it in [*R v Cornwall County Council ex p Hardy* [2001] Env LR 26]:-

> "Mr Straker laid emphasis upon the fact that the local planning authority felt that, in imposing conditions, it had ensured that adequate powers would be available to it at the reserved matters stage. That, in my view, is no answer. At the reserved matters stage there are not the same statutory requirements for publicity and consultation. The environmental statement does not stand alone. Representations made by consultees are an important part of the environmental information which must be considered by the local planning authority before granting planning permission. Moreover, it is clear from the comprehensive list of likely significant effects in paragraph 2(c) of Schedule 3, and the reference to mitigation measures in paragraph 2(d), that it is intended that in accordance with the objectives of the Directive, the information contained in the environmental statement should be both comprehensive and systematic, so that a decision to grant planning permission is taken "in full knowledge" of the project's likely significant effects on the environment. If consideration of some of the environmental impacts and mitigation measures is effectively postponed until the reserved matters stage, the decision to grant planning permission would have been taken with only a partial rather than a "full knowledge" of the likely significant effects of the project. That is not to suggest that full knowledge requires an environmental information statement to contain every conceivable scrap of environmental information about a particular project. The Directive and the Assessment Regulations require likely significant effects to be assessed. It will be for the local planning authority to decide whether a particular effect is significant, but a decision to defer a description of a likely significant adverse effect and any measures to avoid, reduce or remedy it to a later stage would not be in accordance with the terms in Schedule 3, would conflict with the public's right to make an input into the environmental information and would therefore conflict with the underlying purpose of the Directive".

Fourth, (and here as it seems to me one reaches the most difficult area) it is certainly possible, consistent with the above principles, to leave the final details of for example a landscaping scheme to be clarified either in the context of a reserved matter where outline planning consent has been

granted, or by virtue of a condition where full planning consent is being given as in the instant case."

81. In *R (Hereford Waste Watchers) v Herefordshire County Council* [2005] EWHC 191 Admin Elias J (as he then was) said:-

> “24. *Smith* was concerned with outline planning consent, but the same principles clearly apply to the grant of planning permission itself.
>
> 25. The authorities make it clear, therefore, that if the planning authority consider that a process or activity will have significant environmental effects then the ES needs to include the detailed information identified in schedule 4 to the regulations. It cannot leave the matter to be covered by conditions at a later stage. Even if that might otherwise be a satisfactory way of dealing with the problem, it frustrates the democratic purpose of the consultation process.
>
> 26. However, as the observations of Harrison J in the *Hardy* case make clear, it is a matter for the authority itself whether or not the development will have significant effects, and its decision on the point can only be challenged on traditional public law grounds. There is a screening system whereby the authority may give a decision whether an ES is required or not, and the regulations set out the material information which the developer has to provide if it seeks such an opinion (see regs 4, 5 and 7). In this case no screening opinion was required since the developer voluntarily provided the ES. But if the information is defective because it fails to deal with all significant environmental effects, even if it deals with some of them, then the ES will be inadequate and the consultation process will not reach to its full extent. “

82. Elias J cited a passage from the judgment of Pill LJ *in R (Gillespie) v First Secretary of State* [2003] EWCA Civ 400:-

> "The Secretary of State has to make a practical judgment as to whether the project would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location. The extent to which remedial measures are required to avoid significant effects on the environment, and the nature and complexity of such measures, will vary enormously but the Secretary of State is not as a matter of law required to ignore proposals for remedial measures included in the proposals before him when making his screening decision. In some cases the remedial measures will be modest in scope, or so plainly and easily achievable, that the Secretary of State can properly hold that the development project would not be likely to have significant effects on the environment even though, in the absence of the proposed remedial measures, it would be likely

> to have such effects. His decision is not in my judgment pre-determined either by the complexity of the project or by whether remedial measures are controversial though, in making the decision, the complexity of the project and of the proposed remedial measures may be important factors for consideration".

83. Elias J summarised the material principles to be derived from *Smith* and *Gillespie* as follows:-

> "1. The decision whether a process or activity has significant environmental effects is a matter for the judgment of the planning authority. In making that judgment it must have sufficient details of the nature of the development, of its impact on the environment and of any mitigating measures.
>
> 2. Equally, it is for the planning authority to decide whether it has sufficient information to enable it to make the relevant judgment. It need not have all available material provided it is satisfied that it has sufficient to enable a clear decision to be reached.
>
> 3. In making that determination, the planning authority can have regard to the mitigating measures provided that they are sufficiently specific, they are available and there is no real doubt about their effectiveness. However, the more sophisticated the mitigating measures and the more controversy there is about their efficacy, the more difficult it will be for the authority to reach a decision that the effects are not likely to be significant.
>
> 4. If the authority is left uncertain as to the effects, so that it is not sure whether they may be significant or not, it should either seek further information from the developer before reaching a conclusion, or if an ES has already been provided it should require a supplement to the ES which provides the necessary data and information. It cannot seek to regulate any future potential difficulties merely by the imposition of conditions.
>
> 5. The authority cannot dispense with the need for further information on the basis that it is not sure whether or not there are significant environmental effects, but that even if there are, other enforcement agencies will ensure that steps are taken to prevent improper pollution. However, it should assume that other agencies will act competently and it should not therefore anticipate problems or difficulties on the basis that those agencies may not do so."

84. Mr Brown points out that GCC moved from the position set out in its scoping opinion, where the Interested Parties were required to produce a full hydrological and hydrogeological assessment of the proposal to determine baseline conditions at the site (including the detailed list of information set out in the EA's letter of 11 May

2009) as part of the ES, to a position where it was willing to leave provision of the majority of that information over to be dealt with under Condition 30. In particular, at the point when permission was granted, there had been no proper topographical survey of the area; no assessment of the effects of the low permeability infill along the edges of the Shorncote Quarry; no reliable figures for the likely rise in the volume of groundwater which would result from the proposed development; and no assessment of the capacity of the ditches in the area to cope with the excess groundwater.

85. In Mr Brown's submission the level of information required by Condition 30 goes well beyond that which is necessary simply to determine the acceptability of any particular drainage scheme submitted. Because of the failure to require the Interested Parties to produce the necessary information before the grant of permission, there can be no way of knowing whether it is possible to devise a drainage scheme under Condition 30 which will properly mitigate the increased rise in groundwater. He argues that it was fundamentally wrong (and an error of law) to put off to a condition questions which should have been grappled with before granting permission.

86. In the present case, he contends, this difficulty is compounded by the fact that:

(1) the EA only withdrew its objection on the basis that it considered that concerns relating to surface and groundwater flooding could be dealt with by the mitigation measures proposed, namely discharge *inter alia* into the County Ditch;

(2) however, the EA was not responsible for the County Ditch, and explicitly advised GCC to consult on their suitability to received discharge. Specifically, the EA advised GCC to satisfy itself that a condition requiring mitigation measures which involved discharge into the County Ditch was acceptable;

(3) when GCC consulted the Senior Drainage Engineer, he made it absolutely clear that discharge into the County Ditch was not acceptable, and that the Interested Parties should look for "other ways of dealing" with the problem;

(4) In circumstances where the Senior Drainage Engineer had specifically ruled out an important component of the proposed mitigation scheme, GCC could not lawfully grant permission unless it was satisfied that some other form of mitigation was available and acceptable. At the very least, GCC should have reconsulted the EA in order to ascertain whether, in those circumstances, the EA's consultation response would remain the same. More appropriately, GCC should have sought further information from the Interested Parties as to what "other ways" of dealing with the problem were available. Once received, that information should have been the subject of proper public consultation. What GCC could not do was to leave the matter over to be dealt with under Condition 30.

87. Mr Cairnes emphasises in response that the EA considered the GWP Addendum Report to be 'conservative' in its figure for groundwater rise, and concluded that groundwater rise away from the site was not a significant issue and would not result in flooding of properties. Having reached this conclusion, the EA properly indicated that detailed mitigation measures could be adequately addressed through the imposition of conditions. GCC duly imposed the conditions recommended by the EA.

The effect of those conditions is that an acceptable groundwater drainage scheme would have to be approved by GCC prior to the commencement of extraction from the site, and a detailed monitoring scheme also approved.

88. Mr Cairnes submits:

(1) GCC was required to consult with the EA as to the likely significant effects of the proposal in the context of flood risks.
(2) The EA properly considered the environmental information before issuing its consultation response.
(3) The EA was clear that it had sufficient environmental information (including proposed mitigation measures) on which to reach its conclusions.
(4) It was then a matter of planning judgment for GCC to consider the environmental information (and the EA assessment thereof) before reaching its decision.
(5) The EA's firm conclusion following its comprehensive assessment of the technical evidence and issues was that there was no justifiable basis for refusing the application on grounds of flood risk.
(6) GCC were required to consider, and entitled to rely upon, the EA conclusions and recommendations before making its determination.
(7) To have departed from the EA advice in their consultation response could have represented an unjustified reaction to the reasoned response of its statutory consultee in respect of flooding issues.

89. I have set out above the principal conclusions of the EA on the flooding mitigation issue. Using the language of Elias J in *Hereford Waste Watchers*, the available mitigation measures were specific, and there was in the EA's view no real doubt about their effectiveness. The Claimant's advisors and Mr Steeves-Booker did not agree, but GCC acted lawfully in accepting the clear and carefully reasoned advice given by the statutory consultee. The Committee were not postponing to a condition information required to assess the likely significant effects of the development on the environment. This ground of challenge therefore fails.

Failure to give reasons

90. When granting planning permission, a local planning authority is under a duty to give reasons. In the case of EIA development, the general duty is reinforced by reg 21(1) of the EIA Regulations, which provides that:

> "Where an EIA application is determined by a local planning authority, the authority shall—
>
> (a) …
>
> (c) make available for public inspection at the place where the appropriate register (or relevant section of that register) is kept a statement containing—
>
> (i) the content of the decision and any conditions attached thereto;
>
> (ii) the main reasons and considerations on which the decision is based [including, if relevant, information about the participation of the public]; and

(iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development…"

91. In *R(Telford Trustees) v Telford and Wrekin Council* [2011] EWCA Civ 896 the Court of Appeal approved the following passage in the judgment of Sir Michael Harrison in *R(Ling (Bridlington) Ltd) v East Riding of Yorkshire County Council* [2006] EWHC 1604 Admin:

> "In considering the adequacy of reasons for the grant of permission there are a number of factors which seem to me to be relevant. The first is the difference in the language of the statutory requirement relating to reasons for the grant of planning permission compared to that relating to the reasons for refusal of planning permission. In the case of a refusal, the notice has to state clearly and precisely the full reasons for the refusal, whereas in the case of a grant the notice only has to include a summary of the reasons for the grant. The difference is stark and significant. It is for that reason that I reject the claimants' contention that the standard of reasons for a grant of permission should be the same as the standard of reasons for the refusal of permission.
>
> Secondly, the statutory language requires a summary of the reasons for the grant of permission. It does not require a summary of the reasons for rejecting objections to the grant of permission.
>
> Thirdly, a summary of reasons does not require a summary of reasons for reasons. In other words, it can be shortly stated in appropriate cases.
>
> Fourthly, the adequacy of reasons for the grant of permission will depend on the circumstances of each case. The officer's report to committee will be a relevant consideration. If the officer's report recommended refusal and the members decided to grant permission, a fuller summary of reasons would be appropriate than would be the case where members had simply followed the officer's recommendation. In the latter case, a short summary may well be appropriate."

92. In the present case the Committee accepted the recommendation contained in the Officer's Report to grant permission. The Officer's Report contains very detailed reasons for the recommendation. It was entirely proper for the Committee's decision to be in relatively summary form. The reasons point adds nothing to the Claimant's other submissions.

Conclusion

93. The claim for judicial review succeeds on one issue only, namely failure to comply with the publicity requirements of the EIA Regulations. I will hear argument on remedy, costs and any application for permission to appeal on a date to be arranged.