Neutral Citation Number: [2022] EWHC 2087 (Admin)

Case No: CO/679/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 August 2022

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN	**Claimants**
on the application of	
(1) SAVE NORTH ST ALBANS GREEN BELT **(2) SEAN RYAN** **(3) LESLIE THOMAS GARTLAND**	
- and -	
ST ALBANS CITY AND DISTRICT COUNCIL	**Defendant**
(1) HUNSTON PROPERTIES LIMITED **(2) TRUSTEES OF THE WILL OF** **JAMES HENRY FRANK SEWELL**	**Interested Parties**

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- -

Jenny Wigley QC (instructed by **Richard Buxton Solicitors**) for the **Claimants**
Matthew Dale-Harris (instructed by **Finance & Legal Department**) for the **Defendant**
Paul Stinchcombe QC (instructed by **Sherrards Solicitors LLP**) for the **First Interested Party**
The **Second Interested Party** did not appear and was not represented

Hearing date: 26 July 2022

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Approved Judgment

Mrs Justice Lang :

1. The Claimants apply for judicial review of the decision of the Defendant ("the Council"), made on 12 January 2022, to grant outline planning permission to the Interested Parties ("the IPs") for a residential development of up to 150 dwellings at land to the rear of 112-156b Harpenden Road, St Albans, Hertfordshire, known as Sewell Park ("the Site"). The Site is within the Metropolitan Green Belt ("the Green Belt").

2. The First Claimant is an action group formed by local residents. It is represented in these proceedings by the Second Claimant, who is a Committee Member of the First Claimant, and the Third Claimant, who is its Treasurer. The Defendant is the local planning authority. The Interested Parties are the applicants for planning permission. Only the First Interested Party ("IP1") has participated in these proceedings.

3. I granted permission to apply for judicial review on the papers on 12 April 2022.

Ground of challenge

4. There were originally five grounds of challenge. However, following evidence received from the Defendant and IP1, the Claimants decided not to pursue Grounds 4 and 5. The remaining three grounds may be summarised as follows.

Ground 1

5. The advice given in the planning officer's report ("OR") to Members of the Planning Referrals Committee ("the Committee") significantly misled them as to the basis upon which it was justifiable to depart from previous decisions refusing planning permission at this Site.

Ground 2

6. The Council was under a duty to give reasons for its decision to grant permission, and why it departed from the previous decisions refusing planning permission at the Site. The reasons in the OR were inadequate and insufficient on this issue.

Ground 3

7. The OR relied upon material in support of the application for planning permission which was based on an earlier proposal for only 132 dwellings, whereas the proposal before the Committee was "up to 150" dwellings. This was misleading in a number of respects, and failed to provide Members with accurate evidence to enable them to evaluate the impacts of the proposed development. The OR contained a material error of fact at paragraph 8.2.12, describing the density of dwelling as 40 per hectare, when the correct figure was 45.5 dwellings per hectare. Therefore the Planning Committee acted unlawfully by taking into account irrelevant considerations and failed to take into account relevant considerations.

Planning application

8. The Site is 5.24 hectares in size and it is located in the Green Belt. It is greenfield meadow land. To the south and west, it borders residential dwellings in Harpenden Road and Sandridgebury Lane. There is development to the north – dwellings and playing fields. Open farmland lies immediately to the east and north east of the Site.

9. The application for planning permission, made on 7 December 2020, was for outline planning permission for 150 residential units and access, with all other matters reserved. It proposed a mix of private and affordable housing units and 255 car parking spaces. The property at 126 Harpenden Road was to be demolished to provide access to the Site.

10. There were over 270 objections to the proposal, in particular, to the harm to the Green Belt, loss of landscape and open space, environmental impacts, increased traffic congestion and pressure on schools, doctors etc. It was pointed out that previous applications at this Site had been rejected, and nothing had changed since those decisions were made. Development of sites for housing should take place via the local plan process. A petition objection was signed by approximately 1,500 local signatories. St Michael's Parish Council submitted lengthy objections, which including the following representation:

> "Previous applications/appeal for this site (in various configurations) have failed and this latest application does not appear to put forward any compelling changes to set aside the planning refusals recorded.
>
> The recent failure of the St Albans Local Plan process should not lead to a capitulation to speculative development. The current principles of Green Belt policy enshrined in the National Planning Policy Framework must prevail since no very special circumstances have been shown which would allow Green Belt status to be set aside for this development."

11. The application was considered by the Committee on 26 July 2021, and it resolved to grant planning permission, subject to the completion of an agreement under section 106 of the Town and Country Planning Act 1990 within 3 months. The agreement was not completed within the required 3 months, and so the application was referred back to the Committee.

12. On 25 October 2021, the Committee again resolved to grant planning permission, subject to completion of a section 106 agreement by 31 March 2022. The section 106 agreement was subsequently completed and the Council formally issued the grant of outline planning permission on 12 January 2022, subject to conditions.

Planning history

13. The Site has been the subject of a number of previous applications for planning permission for housing under references: 5/2011/1724 and 5/2011/2857 (the "2011

Applications”), 5/2012/2713 (the “2012 Application”) and 5/2014/0093 (the “2014 Application”).

14. The first 2011 Application (5/2011/1724) was for 116 houses and a 72 bed care home, together with the formation of new accesses to Harpenden Road, two tennis courts, and public open space. It was refused on 27 October 2011 and an appeal against that refusal was dismissed on 3 July 2012.

15. The second 2011 Application (5/2011/2857) was a duplicate of the first and was refused on 10 February 2012. An appeal against that refusal was dismissed on 12 March 2013. The appeal decision was subsequently quashed by the High Court, as confirmed in the Court of Appeal (*Hunston Properties Limited v (1) Secretary of State for Communities and Local Government and (2) St Albans City and District Council* [2013] EWHC 2678 (Admin); [2013] EWCA Civ 1610). The appeal (known as ‘Appeal A’) was then redetermined and again dismissed by the Secretary of State on 11 August 2015.

16. The 2012 Application (5/2012/2713) was for the erection of 85 dwellings, the formation of new accesses to Harpenden Road, two tennis courts, and public open space. This was a reduced number of dwellings and the care home was omitted. The extent of the proposed built development was restricted to the west of a ‘rounding-off’ line referred to in the appeal decisions. The 2012 Application was refused permission by the Council on 16th January 2013.

17. An appeal against that refusal (known as ‘Appeal B’) was heard at the same time as the above redetermined appeal in respect of 5/2011/2857 (Appeal A), and also dismissed on 11 August 2015.

18. The 2014 Application was essentially a resubmission of the 2012 Application, again with the built development restricted to the west of a ‘rounding-off’ line, although the red line boundary of the application site was increased in size in the 2014 Application to incorporate the wider site considered under the 2011 Application.

19. The Council’s primary reason for refusal in each of the 2011 Applications, the 2012 Application and the 2014 Application was the same and recorded as follows:

> “The proposed development, and its scale, represents inappropriate development within the Metropolitan Green Belt which would cause substantial harm to the fundamental intention and purposes of including land in the Green Belt, by reason of encouraging urban sprawl and compromising its openness, and the applicant has failed to demonstrate compelling reasons that the intended financial contributions and benefits meet the very special circumstances necessary to warrant the fundamental policy objection being overridden. The proposal is thereby contrary to Policy 1 ‘Metropolitan Green Belt’ of the St Albans District Local Plan Review, 1994 and the aims and objectives of Planning Policy Guidance Note 2.”

20. As set out above, the redetermination of the appeal against the refusal of the 2011 Application ref 5/2011/2857 and the appeal against the refusal of the 2012

Application were heard together at an inquiry in July 2014. Both appeals (Appeal A and Appeal B) were recovered by the Secretary of State and were dismissed. The Secretary of State agreed with the recommendation of the Inspector who reported on the Inquiry (see Appeal Decision dated 11 August 2015). Again, the primary reason for refusal related to the location of the Site in the Green Belt. The Secretary of State considered that the proposals "would significantly reduce the openness of the Green Belt, to its considerable detriment, and would amount to unrestricted sprawl, compromising, in the main, two of its purposes, thereby adding appreciably to the substantial harm by virtue of inappropriateness" (paragraph 12).

Policies

21. As the Site is in the Green Belt, it is subject to saved Policy 1 of the St Albans Local Plan Review 1994, which forms part of the Council's adopted statutory development plan. In summary, Policy 1 provides that, except in very special circumstances, permission will not be granted for development in the Green Belt, other than for specified purposes (none of which apply here). Policy 1 states:

> "Within the Green Belt, except for development in Green Belt settlements listed in Policy 2 or in very special circumstances, permission will not be given for development for purposes other than that required for […]
>
> New development within the Green Belt shall integrate with the existing landscape. Siting, design and external appearance are particularly important and additional landscaping will normally be required. Significant harm to the ecological value of the countryside must be avoided.
>
> ….."

22. National policy on the Green Belt is set out in the National Planning Policy Framework ("the Framework"). The significance of the Green Belt is set out in paragraphs 137 and 138:

> "137. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
>
> 138. Green Belt serves five purposes:
>
> a) to check the unrestricted sprawl of large built-up areas;
>
> b) to prevent neighbouring towns merging into one another;
>
> c) to assist in safeguarding the countryside from encroachment;

> d) to preserve the setting and special character of historic towns; and
>
> e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land."

23. Development within the Green Belt is generally inappropriate and restricted to permitted exceptions. Paragraphs 147 and 148 provide:

> "147. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
>
> 148. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations."

24. There is specific policy in respect of new buildings in the Green Belt, which applies in this case. Paragraph 149 provides:

> "149. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
>
> a) buildings for agriculture and forestry;
>
> b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
>
> c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
>
> d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
>
> e) limited infilling in villages;
>
> f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and

> g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
>
> - not have a greater impact on the openness of the Green Belt than the existing development; or
>
> - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority."

25. Paragraph 150 provides that certain other forms of development are also not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. None of the forms of development listed in paragraph 150 is applicable here.

26. In 2013 and 2014 Brandon Lewis MP made Ministerial Statements which stated:

> "The Secretary of State wishes to make clear that, in considering planning applications, although each case will depend on its facts, he considers that the single issue of unmet demand … for conventional housing, is unlikely to outweigh harm to the green belt and other harm to constitute the 'very special circumstances' justifying inappropriate development in the green belt."

27. This guidance was not incorporated into subsequent editions of the Framework. Associated guidance in the Planning Practice Guidance ("PPG") has since been removed from the PPG. In my view, this fact does not detract from the strong protection that the Framework does provide for the Green Belt, and the clear expression of policy, in paragraph 149, that a "local planning authority should regard the construction of new buildings as inappropriate in the Green Belt". This policy is subject to exceptions, but unmet housing need, as such, is not one of them. Outside of the permitted exceptions, permission should only be given for Green Belt development in very special circumstances.

28. As the Council could not demonstrate a five year housing land supply and the Local Plan is out-of-date, paragraph 11(d) of the Framework applies and permission should be granted unless the application of the Green Belt policies in the Framework provide a clear reason for refusing planning permission for the proposed development.

Inspector's decision re Colney Heath

29. The Council and IP1 placed reliance upon a recent decision of an Inspector that found very special circumstances which justified new development in the Green Belt. On 14 June 2021, an Inspector allowed an appeal (APP/B1930/W/20/3265925) and granted planning permission for the development of up to 100 dwellings (45 affordable) on a

Green Belt site at Colney Heath, bordering St Albans and Welwyn Hatfield. The Inspector stated in her decision:

> "48. It is common ground that neither SADC nor WHBC can demonstrate a five year supply of deliverable homes. Whilst there is disagreement between the parties regarding the extent of this shortfall, the parties also agreed that this is not a matter upon which the appeals would turn. I agree with this position. Even taking the Council's supply positions of WHBC 2.58 years and SADC at 2.4 years, the position is a bleak one and the shortfall in both local authorities is considerable and significant.
>
> 49. There is therefore no dispute that given the existing position in both local authority areas, the delivery of housing represents a benefit. Even if the site is not developed within the timeframe envisaged by the appellant, and I can see no compelling reason this would not be achieved, it would nevertheless, when delivered, positively boost the supply within both local authority areas. From the evidence presented in relation to the emerging planning policy position for both authorities, this is not a position on which I would envisage there would be any marked improvement on in the short to medium term. I afford very substantial weight to the provision of market housing which would make a positive contribution to the supply of market housing in both local authority areas.
>
> …
>
> 53. The uncontested evidence presented by the appellant on affordable housing for both local authorities illustrates some serious shortcomings in terms of past delivery trends. In relation to WHBC, the affordable housing delivery which has taken place since 2015/16 is equivalent to a rate of 23 homes per annum. The appellant calculates that the shortfall stands in the region of 4000 net affordable homes since the 2017 SHMA Update, a 97% shortfall in affordable housing delivery. If the shortfall is to be addressed within the next 5 years, it would require the delivery of 1397 affordable homes per annum. In SADC, the position is equally as serious. Since the period 2012/13, a total of 244 net affordable homes have been delivered at an average of 35 net dwellings per annum. Again, this equates to a shortfall also in the region of 4000 dwellings (94%) which, if to be addressed in the next 5 years, would require the delivery of 1185 affordable dwellings per annum.
>
> 54. The persistent under delivery of affordable housing in both local authority areas presents a critical situation. Taking into account the extremely acute affordable housing position in both SADC and WHBC, I attach very substantial weight to the

> delivery of up to 45 affordable homes in this location in favour of the proposals."

Legal Framework

Judicial review

30. In a claim for judicial review, the Claimant must establish a public law error on the part of the decision-maker. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. A legal challenge is not an opportunity for a review of the planning merits: *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC 74 (Admin).

The development plan and material considerations

31. Section 70(2) of the Town and Country Planning Act 1990 ("TCPA 1990") provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act ("PCPA 2004") provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

32. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of this provision, beginning at 1458B:

> "Section 18A [the parallel provision in Scotland] has introduced a priority to be given to the development plan in the determination of planning matters….
>
> By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed. If it is thought to be useful to talk of presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission….. By virtue of section 18A if the application accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the application does not accord with the

> development plan it will be refused unless there are material considerations indicating that it should be granted….
>
> Moreover the section has not touched the well-established distinction in principle between those matters which are properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell L.J. observed in *Loup v. Secretary of State for the Environment (1995) 71 P. & C.R. 175*, 186:
>
> > "What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations."
>
> Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues.
>
> …..
>
> In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide

> whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse."

33. This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] PTSR 983, per Lord Reed at [17].

Consistency in decision making

34. Previous decisions relating to the same or similar development in the same or similar location are material considerations in determining an application for planning permission. They must be taken into account and the decision-maker must give reasons for departing from them. It is a matter of judgment for the decision-maker whether to follow or to depart from a previous decision, and so it may only be challenged on public law grounds.

35. The leading case is North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P & CR 137 in which Mann LJ held:

> "In this case the asserted material consideration is a previous appeal decision. It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable. One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases *must* be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.
>
> To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then

> ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they may have to be elaborate."

36. The principles to be applied when considering a challenge to a planning officer's report were summarised by the Court of Appeal in *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452, per Lindblom LJ, at [42]:

> "42. The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarise the law as it stands:
>
> > (1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms* [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council* [2012] EWHC 3708 (Admin), at paragraph 15).
> >
> > (2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the

> judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.
>
> (3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere."'

Duty to give reasons

37. Whilst there is no statutory duty to give reasons for a decision to grant planning permission, the Supreme Court in *R (CPRE Kent) v Dover DC* [2017] UKSC 79, [2018] 1 WLR 108 determined that, in some circumstances, local planning authorities will be under a common law duty to give reasons for a grant of planning permission. Lord Carnwath explained, at [59]:

> "Typically they will be cases where, as in *Oakley* and the present case, permission has been granted in the face of substantial public opposition and against the advice of officers, for projects which involve major departures from the development plan, or from other policies of recognised importance….. Such decisions call for public explanation, not just because of their immediate impact; but also because …..they are likely to have lasting relevance for the application of policy in future cases."

38. The standard of reasons required in a planning appeal was set out by Lord Brown in *South Buckinghamshire District Council v Porter (No 2)* [2004] 1 WLR 1953, at [36]. The reasons given must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues. Reasons need refer only to the main issues in the dispute and not to every material consideration, and the reasons can be briefly stated, with the "degree of particularity required depending entirely on the nature of the issues falling for decision".

39. In *CPRE Kent*, Lord Carnwath confirmed, at [37] – [42], that this standard of reasons is also applicable to the grant of planning permission by local planning authorities. He concluded that the essence of the duty is, in the words of Sir Thomas Bingham MR, whether the information so provided by the authority leaves room for "genuine doubt … as to what (it) has decided and why" (at [42]).

40. Where a local planning authority resolves to approve the recommendation of an officer's report, it can be assumed that they accepted the reasoning of that report (*R (Palmer) v Herefordshire Council* [2016] EWCA Civ 1061; [2017] 1 WLR 411 per Lewison LJ at [7]).

41. When an officer's report is relied on as providing the reasons for a decision, the report is subject to a potentially higher standard of scrutiny than that set out by Lindblom LJ in *Mansell*. In *R (Rogers) v Wycombe DC* [2017] EWHC 3317 (Admin), at [56], I held:

> "On the authorities, there is a distinction between the latitude which the courts accord to the officers when giving advice to the decision-maker, and the more exacting standards required of decision makers who are under a duty to give reasons to the public for their decisions."

See also *R (Gare) v Babergh DC* [2019] EWHC 2041 (Admin), per Mr M. Rodger QC, sitting as a Judge of the High Court, at [41].

Ground 1

Submissions

42. The Claimants submitted that the OR gave significantly and seriously misleading advice to the Committee concerning the previous determinations of applications for

planning permission at the Site.

43. The Council, supported by IP1, submitted that the advice that the officer gave was not factually wrong. It was open to her to give this advice in the exercise of her planning judgment, and it was not seriously or significantly misleading in a material way, applying the test in *Mansell*.

Conclusions

44. It was common ground that the OR has to be read fairly and as a whole, bearing in mind that it was written for Members with local knowledge.

45. At the outset, the officer set out the essential details of the previous planning applications and refusal decisions. She correctly directed herself in accordance with the *North Wiltshire* test:

> "2.8 This decision, together with all other decisions in the planning history, has been taken into account in this report. Weight has been given to the importance of consistency in planning decision making and the main reasons for reaching a different recommendation are set out in the body of this report below."

46. In her summary of objections, the officer noted the objections based upon the need for consistency with the previous decisions which refused planning permission (paragraph 5.3.1. 42-43; 5.4).

47. The officer correctly summarised local Green Belt policy in Policy 1 of the St Albans Local Plan Review, and national Green Belt policy in the Framework.

48. At paragraph 8.15, the OR stated:

> "8.15. <u>Planning history of site as a material consideration</u>
>
> 8.15.1. The site has an extensive planning history, with a number of applications for development having been refused. These are detailed in the planning history section of this report.
>
> 8.15.2. It is noteworthy that a number of material considerations have changed since 2015:
>
> 1. The housing need position has worsened in the District;
>
> 2. The Local Plan has been withdrawn, and the new plan is at a very early stage, no material weight can be applied to it in decision making;
>
> 3. The ministerial statement of 2015 which indicated that housing need in itself was unlikely to constitute very special circumstances has been withdrawn from the NPPG;

> 4. This is a different proposal, which draws upon a previous masterplanning process. Whilst that process has limited weight, officers are of the view that it represented a good quality approach to the masterplanning of this site. Adherence to those principles can be achieved through the use of parameter plans."

49. The Claimants submitted that points 1 and 2 were seriously misleading. They did not take issue with points 3 and 4.

50. As to point 1 above, the Claimants submitted that the OR identified the current housing land supply to be 2.5 years. This was within the range determined by the Inspector and the Secretary of State in the 2015 appeal decision, namely, "somewhere between the appellant's figure of 2.4 years and the Council's figure of 3.73 years" (the Inspector did not accept the Council's figure). Therefore it was misleading to state that the position had worsened since 2015.

51. I consider that the officer was entitled, in the exercise of her planning judgment, to advise that the housing position had worsened since 2015. The Council stood by its assessment of a housing land supply of 3.73 years as at the inquiry in July 2014. That was significantly more than the current figure of 2.5 years.

52. The Planning Statement Addendum (June 2021) submitted by the IPs, set out, at paragraph 39, a list of material differences between 2015 and 2021. It included the worsening of the affordability ratio in St Albans, from 13.62 in 2015 to 16.12 in 2020. The officer did not refer expressly to this in her report, but she must have been aware of this. It supported her conclusion.

53. The Inspector in the Colney Heath decision, to which the OR referred, found that the shortfall of all housing was considerable and significant. She found that there was persistent under delivery of affordable housing. Since the period 2012/13, only 244 net affordable homes had been delivered, which was a shortfall of around 4000 dwellings.

54. As the Council submitted at the hearing before me, it was very likely that the housing shortage was increasing over time, because of the failure to address housing need through allocations in a local plan.

55. Taken in the round, I consider that there was a sufficient basis upon which the officer could properly make this judgment.

56. As to point 2, the Claimants submitted that the position in 2015 was similar to the current position. In 2015, the Secretary of State said, at paragraph 9, that the emerging local plan documents attracted very limited weight in the consideration of the appeals for the reasons given in the Inspector's report ("IR") at IR19, namely, that the likely adoption date was well into the future (2016/2017). The Site was under consideration for development in the emerging plan.

57. In the OR, the officer explained at 8.1.3 that the draft Local Plan 2018 had been withdrawn and so no weight could be attached to it. A new Local Plan was underway but was at a very early stage as no draft policies had been produced. Therefore no weight could be attached to it in decision making (OR paragraphs 8.1.4, 8.1.5).

58. In my view, the officer was entitled, in the exercise of her judgment, to draw this distinction. The two plans were at different stages, and "limited weight" is not the same as "no weight". Moreover, since the 2015 appeal decision, two separate Local Plans had failed at examination: the Strategic Local Plan in 2016 and the Draft Local Plan in 2018. Thus, there was a persistent failure to adopt a Local Plan to address housing needs. In the absence of a Local Plan, the Council could only address its housing needs through the grant of applications for planning permission.

59. The Claimants went on to submit that the officer made significant errors of fact and omissions when comparing the impact of the Appeal B proposal with the impact of the proposed development.

60. In relation to Appeal B, the Secretary of State concluded in his decision, at paragraph 12, that the development would:

> "… significantly reduce the openness of the Green Belt, to its considerable detriment, and would amount to unrestricted sprawl, compromising, in the main, two of its purposes, thereby adding appreciably to the substantial harm by virtue of inappropriateness (IR164)."

61. The OR stated:

> "8.2.11. …. It is necessary now to consider and make a planning judgment on the harm to Green Belt purposes of the application site on its own, drawing on the evidence base as a material consideration.
>
> a) to check the unrestricted sprawl of large built-up areas;
>
> 8.2.12. The proposed development optimises the use of the site, at a net density of 40 dwellings per hectare assuming a net developable area of 3.3 ha as specified in the application submission. This density is considered appropriate for this type of location, striking a balance between optimising the site and ensuring sufficient space for important elements such as soft landscaping and screening.
>
> 8.2.13. So far as is relevant for an assessment against this Green Belt purpose, parameter plans define the extent of built development and show a green buffer around its edges and a larger area of green space in the north east corner which is the highest part of the site.
>
> 8.2.14. This contrasts with the information provided for app refs 11/2857 and 12/2713 (Appeals A and B) in the 2015 appeal decision). For these applications, layout and scale was applied for and where plans indicated built development right up to the boundaries of the site with no buffer, and where the Inspector commented this created an intensity of development

> taking full advantage of the site and which led to unrestricted sprawl.
>
> 8.2.15. It is considered that this latest application is materially different, providing a clear buffer between the site and the open countryside, and as a result does not lead to unrestricted sprawl in the same way that previous applications were considered to by the appeal Inspector. It is therefore not considered to represent unrestricted sprawl and there is not considered to be any significant harm to this Green Belt purpose. The harm is instead low to moderate.
>
> b) to prevent neighbouring towns merging into one another;
>
> 8.2.16. It is not considered that the development of this site would cause harm to Green Belt purposes in terms of neighbouring towns from merging, as the integrity of the gap between St Albans and Harpenden and St Albans and Sandridge, would be maintained.
>
> c) to assist in safeguarding the countryside from encroachment;
>
> 8.2.17. The site is bounded to the south, west and partially to the north by existing residential development. The eastern half of the northern boundary is with the Old Albanians Rugby Club playing fields – an established Green Belt use. In the south east corner, the St Albans Girls School Playing Fields adjoin the site, and these have the benefit of permission for flood lights (ref 5/2020/2217), which is an urbanising feature.
>
> 8.2.18. It is therefore the eastern boundary which adjoins open countryside, and where encroachment would be most apparent. It is therefore considered that there would be some harm to this Green Belt purpose, but the harm is not significant due to the nature of the north, south and west boundaries and by the green buffer proposed as outlined above. The previous appeal Inspector considered encroachment along with the matter of sprawl. A different assessment is required here for the reasons set out in a) above – i.e. a materially different scheme."

62. The Claimants submitted that paragraph 8.2.14 gave the misleading impression that the green buffer between the built development and the open countryside in the proposed development was an improvement upon the Appeal B scheme. It did not represent unrestricted sprawl and so the harm to the Green Belt was only low to moderate. A similar point was made in respect of encroachment at paragraph 8.2.18.

63. In fact, Appeal B was a significantly smaller development, for only 85 dwellings, and so the site was much smaller. It extended significantly less far into the countryside. The officer emphasised, at paragraph 8.2.13, that there will be an area of green space in the north east corner which is the highest part of the site, and therefore most

prominent. But the site in Appeal B did not even extend as far as the north east corner, and so the north east corner remained undeveloped in the Appeal B proposal.

64. The Claimants further submitted that a resubmitted version of Appeal B (application 5/2012/2713) with a wider site boundary, allowing scope for a green buffer and north eastern green space within the site boundary, was also refused by the Council on Green Belt grounds. The failure to advise Members about this was misleading in circumstances where the proposed green buffer and open space in the north east area of the Site are relied on as distinguishing features of the proposed development.

65. The Claimants were, in my view, entitled to refer to the plans for Appeal A and Appeal B in support of their submissions, and I found the plans helpful.

66. The Appeal A proposal was for 116 dwellings and a 72 bed care home. It covered much the same area of land as the proposed development. The plan showed built development on the higher ground in the north east corner, which was particularly prominent, and would affect views and erode the countryside character, according to the Inspector's report at IR 165 – 167. In the proposed development, the north east corner will be green space, designated as Community Growing Spaces. In Appeal A, the built development extended up to the boundary, particularly in the north east corner. The boundary comprised trees and hedgerow, which acted as a buffer. However, the Appeal A plan did not make provision for a further green buffer in the form of a "green corridor" running in front of the trees and hedgerow. In the light of the above, I consider that the officer's observations about the contrast with the proposals in Appeal A were not inaccurate or misleading.

67. The Appeal B proposal was significantly smaller than the Appeal A proposal and the proposed development. It comprised 85 dwellings (71 houses and 14 flats) and no care home. The site was confined to the south western half of the site, closest to Harpenden Road, and it was behind the "rounding off" line of the existing development. The Inspector's report in the Appeal B appeal described it in the following way:

> "154. Inspector Papworth identified that the area of the composite site enclosed by the cul-de-sac to the north, the built form along Harpenden Road, and a short frontage onto Sandridgebury Lane could be regarded as rounding-off and not as sprawl. This essentially reflects the appeal site in relation to Appeal B. He considered the development of this area would amount to a thickening of the depth of built-up area on the east side of the road. However, whilst the Inspector conveys a view on the development potential of the appeal site he does not indicate the extent of such development in its built form.
>
> 155. However, in respect of Appeal B, the appellant company has submitted a layout plan with scale and access to be considered. The proposed development would extend out from the rear gardens of the houses on Harpenden Road to the notional rounding-off line. This, on plan, appears as a straight diagonal line across the composite appeal site taking no account of the topography of the land. The layout takes full

> advantage of the land available, with dwellings closely addressing the linear outer boundary of the appeal site. Whilst acknowledging the comments of the previous Inspector, in considering a specific layout and scale of development, I find that the proposed extent and intensity of development would represent unrestricted urban sprawl.
>
> 156. I have taken into account that the appellant company has indicated that they would provide a landscaping belt along the eastern boundary and that the linear nature of the rounding-off line could be varied to introduce a softer less rigid line of development across the field [177 [37, 38, 39, 40]. However, firstly I am charged with considering the scheme as submitted by the appellant company and as determined by the Council. Secondly, this proposal is for 85 dwellings. As part of this appeal I do not see how an appropriate mechanism could be put in place to re-visit the layout and extent of the development.
>
> 157. Therefore, all in all, I consider that the developments proposed would spread the existing extent of built development further into the Green Belt, equating to sprawl on this edge of the settlement, therein resulting in some harm [31]."

68. In the light of the Inspector's findings, considered alongside the plan, I do not consider that the officer was inaccurate in stating that the Appeal B proposal included built development up to the boundary of the site. The boundary would have a green buffer of trees and hedgerows but not a green corridor, as in the proposed development. However, the officer probably ought to have reminded Members of the smaller size of the Appeal B proposal (she had provided the details earlier at paragraph 2.2, and gave the reasons for refusal at paragraph 2.7) and so the impact on the Green Belt overall would be less than the impact of the proposed development, even with the green corridor buffer, and yet planning permission was still refused.

69. I make the same observations in relation to the 2014 Application, which the officer summarised earlier in the OR, at paragraph 2.9. It was essentially a re-submission of the Appeal B proposal, with development restricted to the west of the rounding off line. The main difference was that the red line site boundary was extended out to the line in the Appeal A proposal, thus giving space for more landscaping, which was a reserved matter. However, the officer's report for the 2014 proposal advised, at paragraph 9.14.5, that additional planting to the north and eastern boundary to screen the development from the wider countryside would not adequately address the substantial harm caused to the Green Belt.

70. In my judgment, the officer's failure to remind Members, in this part of her report, of the smaller size of the site and development in Appeal B, and of the development in the 2014 application, and the refusal of planning permission on Green Belt grounds, was not seriously misleading in a material way which could have made a difference to the Committee's decision. The information was elsewhere in the OR, and I consider that the lesser impacts of a smaller development would have been obvious to Members. It is possible that Members were aware of the previous applications for

planning permission at this Site, and the reasons for refusal, prior to receiving the OR, as part of their local knowledge.

71. From the Claimants' perspective, the controversial aspect of the officer's advice was her judgment that, because of the green corridor, and the area of green space in the north eastern corner in the proposed development, the harm to the Green Belt, in terms of unrestricted sprawl and encroachment, would only be "low to moderate", instead of "significant" as previously assessed. However, this falls squarely within the scope of the officer's planning judgment, and it cannot be challenged in this Court.

72. For these reasons, Ground 1 does not succeed.

Ground 2

Submissions

73. Under Ground 2, the Claimants submitted that the Council was under a common law duty to give reasons for its decision, applying the guidance given by Lord Carnwath in *CPRE Kent* at [59]. In response, the Council and IP1 denied that the common law duty arose in the circumstances of this case.

74. It was common ground that the Council was required to give reasons for its departure from earlier decisions for the same or similar development at the same or similar site.

75. The Claimants submitted that the reasons given in the OR were inadequate as they did not sufficiently explain how planning permission for the proposed development of 150 dwellings could be justified when it had been refused for the smaller schemes proposed in Appeal B and the 2014 Application.

Conclusions

76. The Council was not under a statutory duty to give reasons for the grant of planning permission. In my judgment, this case does not fall within the class of cases identified by Lord Carnwath in *CPRE Kent* at [59] where Members had to give reasons for their decision because here the Members accepted the recommendation of the planning officer to grant planning permission. It can be assumed that Members granted permission for the reasons set out in the OR (see *R (Palmer) v Herefordshire Council* [2016] EWCA Civ 1061; [2017] 1 WLR 411 per Lewison LJ at [7]). In the alternative, if a common law duty to give reasons did arise, I consider that the reasons in the lengthy and detailed OR met the standard required by the *South Bucks* case.

77. In my judgment, the Council gave sufficient reasons for departing from the previous decisions. I have already referred to paragraph 8.15 of the OR which set out four changes to material considerations since 2015. Under Ground 1, I have addressed the distinctions which the OR drew between the proposed development and the previous proposals, at paragraphs 8.2.12 to 8.2.20. I do not consider that the officer's failure to remind Members of the smaller size site and development in Appeal B and the 2014 Application, and to state the obvious point that a smaller development and site would

have less impact on the Green Belt, amounted to a failure to give sufficient reasons, given that the information on the previous applications was available to Members elsewhere in the OR.

78. The Council was clearly heavily influenced by the recent Colney Heath Inspector's decision which considered the housing needs and supply in its district. The OR concluded at paragraph 8.7.4 that there was no material reason to apply a different weighting to the housing issues. Accordingly, it gave "very substantial weight" to the delivery of market and affordable housing, and substantial weight to the delivery of self-build plots.

79. In the previous decisions, considerable concern was also expressed about the level of housing need and the lack of housing supply in the district. However, it is clear that, on this occasion, the decisive factor was the weight which was accorded to the housing issues, which in the view of the Council, clearly outweighed the harm to the Green Belt and any other harm, and so amounted to very special circumstances, under paragraphs 147 and 148 of the Framework (see paragraphs 8.18.8 to 8.18.13 of the OR).

80. In conclusion, the OR stated, at paragraph 10.1:

> "Reasons for Grant
>
> The site is situated in the Metropolitan Green Belt (Local Plan Review Policy 1). The proposed development comprises inappropriate development, for which permission can only be granted in very special circumstances, these being if the harm to the green belt and any other harm is clearly outweighed by other considerations (paragraph 144 NPPF 2019). In this case, the harm relates to harm to the green belt, limited harm to character and appearance, and some harm to amenity during construction. There is limited conflict with the most important policies of the development plan (St Albans Local Plan Review 1994). The benefits include the provision of housing, self build housing and affordable housing, and the commitment to 10% biodiversity net gain. These other considerations are considered to clearly outweigh the harm to the Green Belt in this particular case. There are no technical objections to the application. The access is considered safe and appropriate. The impacts of the development can be appropriately mitigated by way of planning conditions and obligations in a s106 Agreement."

81. In my judgment, these reasons for the Council's decision were intelligible, sufficient and adequate, and met the required standard.

82. For these reasons, Ground 2 does not succeed.

Ground 3

Submissions

83. Under Ground 3, the Claimants submitted that the OR at paragraph 8.2.12 made a material error of fact in respect of the number of dwellings per hectare, and also seriously misled Members by failing to make it clear that much of the supporting material relied upon by the IPs was based on a development of up to 132 dwellings, not 150 dwellings.

84. In consequence, Members were not in a position to exercise their judgment as to whether or not they needed additional information and evidence to assess the actual extent and density of the development proposed (see *R (Hayes) v Wychavon DC* [2014] EWHC 1987 (Admin), at [29] – [31]).

85. In response, the Council and IP1 submitted it was apparent from paragraph 8.17.10 of the OR that the officer and Members were well aware that some of the supporting material was based on a scheme for 132 dwellings, but they were satisfied that they had sufficient information to assess the impacts of a scheme for 150 dwellings, and that an acceptable 150 dwelling scheme could come forward at reserved matters stage.

Conclusions

86. In support of the application, the IPs produced a Planning, Design and Access Statement (December 2020) for up to 150 units. Among other matters, it explained that the Site had been provisionally allocated for housing, as part of a larger development area (North St Albans Broad Location for Development, draft Policy S6), in a draft local plan (2018). The Council had to withdraw this draft local plan in November 2020, after the Examining Inspectors concluded that the Council had not met the duty to co-operate. The IPs recognised that the withdrawal of the draft local plan limited the weight that could be accorded to it, but submitted that the studies which informed the allocation remained material considerations. Therefore they included extensive details of the draft Masterplan, including an illustrative layout, which identified provision of 132 dwellings at the Site, at a density of 40 dwellings per hectare.

87. Parameter plans were provided. Parameter plan 01, titled “Extent of development”, showed the extent of the development, and the extent of the open space, green corridors and landscape areas within the Site. By condition 4 in the permission, details of the reserved matters (including landscaping, layout and scale) had to comply with the parameter plans.

88. The IPs also produced a Landscape and Visual Impact Assessment (“LVIA”) (March 2021) whose title stated that it was in relation to an application for “residential development of up to 132 dwellings”. The attached Illustrative Layout was based on 132 dwellings.

89. In the OR at paragraph 8.1.3, the officer advised that no weight could be attached to the withdrawn Local Plan 2018, but she accepted that it may still be appropriate to

attach some weight to the evidence base prepared in support of it, and other work carried out pursuant to that plan, depending on the circumstances.

90. At paragraph 8.8.1 of the OR the officer stated that the draft masterplanning work carried out for the withdrawn Local Plan 2018 was a material consideration to which limited weight could be given. She then went on to explain the value of the earlier masterplanning work to the current planning application process:

> "8.8.2 The previous masterplanning process, whilst only carrying limited weight in decision making, was collaborative and positive, and produced a draft masterplan that whilst issues remained outstanding, was considered to represent a good quality approach to the development of the wider site, particularly in terms of layout, scale and access. It also ensured that matters such as topography were fully taken into account, which was a criticism of previous proposals. All matters except access are reserved, but parameter plans have been submitted with the application which could be conditioned so as to ensure that reserved matters submissions are in scope with the parameters set at outline stage, to result in a high quality scheme in terms of overall extent of built development, road layout and hierarchy and building height.
>
> ……
>
> 8.8.4. The broad approach to layout and scale as defined by the parameter plans is considered acceptable, and will assist the Council in securing a high quality scheme at reserved matters stage. As noted in the landscape section above, they demonstrate that sufficient space is available for green infrastructure within the site. The parameter plan reflects the site's topography proposing green areas as opposed to built form where the land is highest."

91. The officer addressed directly the question whether material based upon a scheme of 132 dwellings was appropriate for use when assessing a scheme of up to 150 dwellings, and concluded that it was. She said, at paragraph 8.17.10 of the OR:

> "132 dwellings shown on illustrative plan –some objectors have expressed concern about the illustrative plan showing 132 dwellings, this is not an issue in itself, as layout and scale are reserved matters and the illustrative plan is for information rather than approval. The description of development is for "up to" 150 dwellings. Officers are content that the information provided with the application allows a full assessment of the impacts of up to 150 dwellings to be considered."

92. Thus, paragraph 8.17.10 made it clear to Members that whilst some of the supporting material was based upon a 132 dwelling scheme, planning officers were content that an assessment of the impacts on up to 150 dwellings could be undertaken.

93. The OR drew upon the LVIA in the sections on "Impact on Character and Appearance" (paragraph 8.3), "Landscaping" (paragraph 8.4) and when assessing the loss of Green Belt land, at paragraph 8.2.4. In my judgment, officers and Members would be well able to assess these matters on the basis of a 150 dwelling scheme, particularly since the Site boundary was fixed, and the areas of open space and development within the Site were shown on the parameter plans, which were enforced by condition.

94. Density was addressed at paragraph 8.2.12 of the OR which stated:

> "8.2.12 The proposed development optimises the use of the site, at a net density of 40 dwellings per hectare assuming a net developable area of 3.3 ha as specified in the application submission. This density is considered appropriate for this type of location, striking a balance between optimising the site and ensuring sufficient space for important elements such as soft landscaping and screening." *(emphasis added)*

95. As the Claimants state, the net density of 40 dwellings per hectare is calculated upon a 132 dwelling scheme. The net density for a 150 dwelling scheme would be 45.5 dwellings per hectare.

96. I agree with the Council that this figure was not included in error. The OR was correctly recording what was "specified in the application submission" i.e. in the Masterplan details set out in the Planning, Design and Access Statement (page 274) and the Illustrative Layout drawing (page 219).

97. In order to succeed in their submission that the Committee did not have sufficient information to satisfy itself on the acceptability of a 150 dwelling scheme, the Claimants would have to demonstrate that the information provided to the Committee was *"so inadequate that no reasonable planning authority could suppose that it had sufficient material available upon which to make its decision to grant planning permission and impose conditions"* (see *R (Hayes) v Wychavon District Council* [2014] EWHC 1987 (Admin) at [31] per Lang J.).

98. It was the task of the officer to decide how much information to provide to the Committee. In my judgment, it was not irrational for the officer to conclude that the information provided in support of the application enabled a judgment to be reached on the acceptability of a 150 dwelling scheme. This was an outline application with all matters reserved except for access. Therefore, the precise form of the development would be determined at reserved matters stage. At this stage, the Committee only had to be satisfied that an acceptable 150 dwelling scheme could come forward on the Site, and they clearly were so satisfied. The officer's judgment that "the information provided with the application allows a full assessment of the impacts of up to 150 dwellings to be considered" cannot be successfully challenged.

99. For these reasons Ground 3 does not succeed.

Final conclusion

100. The claim for judicial review is dismissed.