Neutral Citation Number: [2020] EWHC 3355 (Admin)

Case No: CO/746/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 December 2020

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN	**Claimant**
on the application of	
SUE WYETH-PRICE	
- and -	
GUILDFORD BOROUGH COUNCIL	**Defendant**
BEWLEY HOMES LIMITED	**Interested Party**

- -
- -

John Fitzsimons (instructed via **Direct Access**) for the **Claimant**
Robert Williams (instructed by **Legal Services**) for the **Defendant**
Stephen Morgan (instructed by **Gateley Legal**) for the **Interested Party**

Hearing dates: 17 & 18 November 2020

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Approved Judgment

Mrs Justice Lang :

1. The Claimant applies for judicial review of the decision by the Defendant ("the Council") to grant planning permission for the erection of 73 dwellings at Ash Manor, Ash Green, Guildford GU12 6HH ("the Site").

2. The Claimant is a local resident and formerly the Chair of the Ash Green Residents' Association. The Council is the local planning authority for the area. The Interested Party ("IP") is the developer of the Site and made the application for planning permission.

3. Permission to apply for judicial review was granted on the papers on 13 May 2020.

Summary of facts

4. The Site forms part of a strategic allocation within the Council's "Local Plan: Strategy and Sites (2015-2034)" which was adopted on 25 April 2019.

5. The Site is approximately 3.87 hectares in size, and it is currently laid to grass. It is used in part as a paddock for horses. It includes a number of trees which are protected by way of Tree Preservation Orders ("TPOs"). There is a large pond on the northern boundary of the Site.

6. Adjacent to the Site, near the pond, there is a small complex of historic buildings and farm structures, known as Ash Manor. The largest building within the complex is Grade II* listed and has been converted into two residential dwellings, known as Ash Manor and Old Manor Cottage. The Oast House lies to the south of it and its stables are Grade II listed. To the south of this is a further residential dwelling known as Oak Barn which is also Grade II listed. The significance of Ash Manor is derived from its historic and architectural interest as a moated manor house, thought to have thirteenth century origins, with successive phases of development dating to the sixteenth, seventeenth and mid-twentieth centuries. According to Historic England, the current agricultural and open character of the setting of Ash Manor is one that has remained constant through its history. It advised that the proposed development would cause harm to the setting of the heritage assets, assessed at less than substantial harm.

7. Two previous applications for planning permission for large residential developments at the Site had been unsuccessful. There were several iterations of the proposals in this application as the IP made amendments in an effort to address the concerns which had been raised, by consultees and objectors.

8. The planning officer's report recommended the grant of planning permission. However, the Planning Committee, at its meeting of 9 October 2019, deferred a decision in order to make a Site visit, "owing to the sensitivity of the site, the lack of coalescence with the village green, the proximity of the proposed development to significant heritage assets and the associated harm caused, the layout of the site and the mix of market housing which currently offered no one-bed houses".

9. The Site visit took place on 3 December 2019. At its meeting on 4 December 2019, the Planning Committee was provided with a further report from the planning officer

and some updating sheets. The further report advised, among other matters, that the scheme had now been reduced from 77 to 73 units; the open space buffer between the development and Ash Manor had been increased by 6 metres; and the apartment blocks had been reduced to two storeys from three. The planning officer considered the amendments were an improvement, and recommended that permission should be granted.

10. The Planning Committee noted the amendments to the scheme and decided to grant planning permission, stating:

> "The Committee considered the application and agreed that the overall layout and reduction in the number of residential units proposed onsite represented a significant improvement. The new scheme had been reduced both in size and bulk and was more in keeping with the character of the surrounding area, enabling resident's *[sic]* greater enjoyment of their amenities."

11. Numerous objections were received about the proposed development. Objections about the impact of the scheme on Ash Manor were received from, among others, local residents, the Ash Green Residents Association, the Parish Council and the MP for Surrey Heath, who said his constituents had raised profound concerns about the impact on Ash Manor.

Legal framework

Decision making

12. 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 2004 ("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."

13. In *R (CPRE Kent) v Dover District Council* [2017] UKSC 79, [2018] 1 WLR 108, the Supreme Court held that there is no general duty to provide a statement of reasons for the grant of planning permission, although planning decision-makers must have rational reasons for the decisions which they make. The reasons for the decisions of planning committees are generally ascertainable from the planning officer's report and the minutes of planning committee meetings. However, where the planning committee's decision cannot be inferred from publicly available materials, typically where a planning committee has not followed the planning officer's recommendation, fairness and good administration may require that a statement of reasons be given (per Lord Carnwath at [56] – [60]).

14. In *CPRE Kent*, Lord Carnwath also considered the duty of a local planning authority to acquaint itself with the relevant information, and consider it when making its decisions. He said, at [62]:

> "62 The Model Council Planning Code and Protocol …. contains …. the following advice:
>
> > "Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse."
>
> This passage not only offers sound practical advice. It also reflects the important legal principle that a decision-maker must not only ask himself the right question but "take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly": *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, 1065B. That obligation, which applies to a planning committee as much as to the Secretary of State, includes the need to allow the time reasonably necessary, not only to obtain the relevant information, but also to understand and take it properly into account."

15. In my view, it is obvious that the public law duty to consider the relevant information, described by Lord Carnwath in *CPRE Kent*, may extend to an obligation to consider and engage with material evidence from a consultee, or an expert instructed by an applicant or an objector, depending on the facts of the particular case. In my view, the observations of Andrews J. in *Pagham PC v Arun DC* [2019] EWHC 1721 (Admin), at [55] – [56] do not suggest otherwise. However, a legal challenge to the extent of the inquiry undertaken will only succeed on conventional public law grounds: see *R (Hayes) v Wychavon DC* [2014] EWHC 1987 (Admin), per Lang J. at [29]-[31].

Planning officers' reports

16. An officer's report should be "…clear and full enough to enable them [the decision-maker] to understand the issues and make up their minds within the limits that the law allows them": *R (Morge) v Hampshire County Council* [2011] 1 WLR 268 at [36].

17. 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."

18. In *R (Luton BC) v. Central Bedfordshire Council* [2014] EWHC 4325 (Admin), Holgate J. helpfully reviewed the authorities, as follows:

> "90. A great many of LBC's grounds involve criticisms of the officers' reports to CBC's committee. Accordingly, it is necessary to refer to the legal principles which govern challenges of this kind. I gratefully adopt the summary given by Mr Justice Hickinbottom in the case of The Queen (Zurich Assurance Ltd trading as Threadneedle Property Investments) –v- North Lincolnshire Council [2012] EWHC 3708 (Admin) at paragraphs 15-16:
>
> > "15. Each local planning authority delegates its planning functions to a planning committee, which acts on the basis of information provided by case officers in the form of a report. Such a report usually also includes a recommendation as to how the application should be dealt with. With regard to such reports:
> >
> > (i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the reasoning of the report, particularly where a recommendation is adopted.
> >
> > (ii) When challenged, such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole. Consequently:

> "[A]n application for judicial review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken" (Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18 April 1997) 1997 WL 1106 106, per Judge LJ as he then was).

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

…"

91. I would also draw together some further citations:

> "[The purpose of an officer's report] is not to decide the issue, but to inform the members of the relevant considerations relating to the application. It is not addressed to the world at large but to council members, who, by virtue of that membership, may be expected to have substantial local and background knowledge. There would be no point in a planning officer's report setting out in great detail background material, for example in respect of local topography, development plan policies or matters of planning history if the members were only too familiar with that material. Part of a planning officer's expert function in reporting to the committee must be to make an assessment of how much information needs to be included in his or her report in order to avoid burdening a busy committee with excessive and unnecessary detail." (per Sullivan J in *R v Mendip DC ex p Fabre (2000) 80 P&CR 500* at 509).

92. In *R (Siraj) v Kirkless MBC [2010] EWCA Civ 1286* Sullivan LJ stated at para. 19:

> "It has been repeatedly emphasised that officers' reports such as this should not be construed as though they were enactments. They should be read as a whole and in a common sense manner, bearing in mind the fact that they are addressed to an informed readership, in this case the respondent's planning subcommittee"

93. In *R (Maxwell) v Wiltshire Council* [2011] EWHC 1840 (Admin) at paragraph 43 Sales J (as he then was) stated:

> "The Court should focus on the substance of a report of officers given in the present sort of context, to see whether it has sufficiently drawn councillors' attention to the proper approach required by the law and material considerations, rather than to insist upon an elaborate citation of underlying background materials. Otherwise, there will be a danger that officers will draft reports with excessive defensiveness, lengthening them and over-burdening them with quotations of material, which may have a tendency to undermine the willingness and ability of busy council members to read and digest them effectively.""

Heritage assets

19. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the PLBCAA 1990") provides:

> "66. General duty as respects listed buildings in exercise of planning functions
>
> (1) In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

20. The duty under section 66 PLBCAA 1990 was considered by the Court of Appeal in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council & Ors* [2014] EWCA Civ 137. Sullivan LJ held that there was an overarching statutory duty to treat a finding of harm to a listed building as a consideration to which the decision-maker must give "considerable importance and weight" when carrying out the balancing exercise. It is not open to the decision-maker merely to give the harm such weight as he thinks fit, in the exercise of his planning judgment. In *Barnwell*, the Inspector erred in not giving the harm to the listed building "considerable importance and weight" in the planning balance, and instead treating the less than

substantial harm to the setting of the listed buildings as a less than substantial objection to the grant of planning permission (at [29]).

21. National policy on "Conserving and enhancing the historic environment" in Chapter 16 of the National Planning Policy Framework (2019 ed.) ("the Framework") is to be interpreted and applied consistently with the statutory duties under the PLBCAA 1990.

22. The Framework is a material consideration to be taken into account when applying section 38(6) PCPA 2004 in planning decision-making. It is policy, not statute, but a decision-maker who decides to depart from it must give cogent reasons for doing so.

23. The relevant policies are set out below:

> "**Considering potential impacts**
>
> 193. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
>
> 194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:
>
> a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;
>
> b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.
>
> 195. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply….
>
> 196. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."

24. In *Jones v Mordue* [2015] EWCA Civ 1243, Sales LJ considered paragraph 134 of the 2012 edition of the Framework (which has been replaced by paragraph 196 of the 2019 edition), and said at [28]:

> "28. If one applies the correct approach in the present case, as set out in *Save Britain's Heritage and South Bucks DC v Porter (No. 2),* it cannot be said that the reasoning of the Inspector gives rise to any substantial doubt as to whether he erred in law. On the contrary, the express references by the Inspector to both Policy EV12 and paragraph 134 of the NPPF are strong indications that he in fact had the relevant legal duty according to section 66(1) of the Listed Buildings Act in mind and complied with it. Policy EV12 reflects that duty, and the textual commentary on it reminds the reader of that provision. Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs, set out above, which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of provisions (as the Inspector referred to paragraph 134 of the NPPF in the Decision Letter in this case) then – absent some positive contrary indication in other parts of the text of his reasons — the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned. Working through these paragraphs, a decision-maker who had properly directed himself by reference to them would indeed have arrived at the conclusion that the case fell within paragraph 134, as the Inspector did."

25. In *R(Palmer) v Hertfordshire Council* [2016] EWCA Civ 1061, Lewison LJ held:

> "7. The existence of the statutory duty under section 66(1) does not alter the approach that the court takes to an examination of the reasons for the decision given by the decision maker: *Jones v Mordue* [2015] EWCA Civ 1243; [2016] 1 WLR 2682. It is not for the decision maker to demonstrate positively that he has complied with that duty: it is for the challenger to demonstrate that at the very least there is substantial doubt whether he has. Where the decision maker refers to the statutory duty, the relevant parts of the NPPF and any relevant policies in the development plan there is an inference that he has complied with it, absent some positive indication to the contrary: *Jones v Mordue* at [28]. In examining the reasons given by a local planning authority for a decision, it is a reasonable inference that, in the absence of contrary evidence, they accepted the reasoning of an officer's report, at all events where they follow the officer's

> recommendation: *R (Fabre) v Mendip DC* (2000) 80 P&CR 500, 511; *R (Zurich Assurance Ltd) v North Lincolnshire Council* [2012] EWHC 3708 at [15]."

26. In *Pagham PC v Arun DC* [2019] EWHC 1721 (Admin), Andrews J. observed that paragraph 193 of the Framework reflected the approach to the duty under section 66(1) PLBCAA 1990, as explained in *Barnwell*. She applied the guidance given by the Court of Appeal in *Mordue* and *Palmer*, and identified the question for the Court as "whether the substance of the report has sufficiently drawn the Committee's attention to the proper approach required by the law, and material considerations" (at [37]).

27. The authorities were considered most recently by the Court of Appeal in *R (LOGS CIC) v Liverpool City Council* [2020] EWCA Civ 861, which upheld Kerr J.'s conclusion that the Defendant's application of section 66(1) PLBCAA 1990 and the Framework to the heritage assets was flawed for several reasons, which included the planning officer's failure to make adequate reference to the great weight to be given to harm to heritage assets in the balancing exercise. Kerr J. found that the planning officer's report had omitted reference to the consultation response of the Urban Design and Heritage Conservation team which strongly objected to the proposal. The Court of Appeal agreed that this was a material consideration which should have been considered by the committee. Lindblom LJ said, at [81] – [82]:

> "81. The error was not merely a failure to have regard to a material consideration. It was also a significant default in the city council's performance of its duty under section 66(1). It indicates that despite the reference made in the officer's report to the statutory duty, the policies in paragraphs 132 and 134 of the NPPF and Policy HD5 of the UDP, the duty to have "special regard" to the desirability of preserving the setting of the listed building was not complied with. Even if one could excuse the other shortcomings to which the judge referred – including the "unweighted formulation of the balancing exercise" in the officer's assessment – I think this would be a sufficiently powerful "contra-indication" on its own to displace the presumption that the section 66(1) duty was discharged. For this reason, like the judge, I am left in "substantial doubt" that the duty was performed.
>
> 82. This "substantial doubt" is only strengthened by the absence, at least from the section of the officer's report in which his assessment is set out, of any steer to the members that a finding of harm to the setting of the listed building was a consideration to which they must give "considerable importance and weight". I think the judge's conclusions here were right."

Legal challenges

28. 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).

Grounds of challenge

29. The Claimant's grounds of challenge may be summarised as follows:

    i) **Ground 1**: Failure to apply section 66(1) of the PLBCAA 1990 and failure to take account of paragraphs 193 and 194 of the Framework.

    ii) **Ground 2**: Failure to have regard to a relevant consideration, namely, the advice of Surrey Wildlife Trust in respect of a veteran tree at the Site, and acting irrationally in departing from the advice without reasons.

    iii) **Ground 3**: Failure to have regard to material considerations concerning flooding at the Site and/or acting irrationally by ignoring expert evidence on this matter.

30. At the hearing, the Claimant did not pursue the submission under ground 3 that the Council failed to instruct an independent expert to consider the groundwater issues. The Claimant also abandoned ground 4 in its entirety.

Ground 1

31. The Claimant submitted that the planning officer's report seriously misled the Planning Committee by failing to advise members on the weight to be given to the harm to heritage assets in the balancing exercise. Although he set out section 66(1) PLBCAA 1990, he did not explain that a finding of harm to a listed building is a consideration to which the decision-maker must give "considerable importance and weight" when carrying out the balancing exercise. He failed to refer at all to paragraph 193 of the Framework, which requires "great weight" to be given to the asset's conservation and the more important the asset, the greater the weight should be. He also failed to refer to paragraph 194 which requires a "clear and convincing justification" for any harm. Applying the approach of Sales LJ in *Mordue*, the Claimant submitted that there were positive indications in the report that the officer had not taken paragraphs 193 and 194 into account.

32. The Defendant, supported by the IP, submitted that, applying the authorities of *Mordue*, *Palmer* and *Pagham*, the appropriate inference to be drawn from the report was that the planning officer had properly taken into account all of the relevant provisions in the Framework. As the Planning Committee followed the recommendation of the officer, it was reasonable to assume that members had done

the same. Moreover, when the balancing exercise was undertaken, the planning officer expressly applied section 66(1) PLBCAA 1990, which he had set out fully earlier in his report. Therefore, members of the Planning Committee were not at all misled by the report.

Conclusions

33. The question I have to decide is whether, on a fair reading of the report as a whole, the planning officer gave advice that was seriously misleading, thereby misleading the members in a material way so that, but for the flawed advice, the committee's decision would or might have been different.

34. In the report for the meeting on 9 October 2019, under the heading "Impact on the setting of listed buildings", the planning officer gave advice on the statutory and policy framework. He summarised section 66(1) PLBCAA 1990. He referred to the local policies, and the national policies in Chapter 16 of the Framework on the conservation of heritage assets. He said:

> "Paragraphs 189-192 sets out the framework for decision making in planning applications relating to heritage assets and this application takes account of the relevant considerations in these paragraphs."

35. The planning officer then gave a commendably detailed assessment of the heritage assets, Historic England's comments on the proposed development, and the amendments made by the IP in response. He went on to advise the members as follows:

> "It is considered that the applicant has achieved an acceptable balance between protecting the significance of the heritage assets and providing the dwellings that are needed.
>
> Although the applicant has minimised the harm caused to the setting of the Ash Manor complex, there would inevitably be some harm caused. The applicant's Heritage Assessment notes that the proposal would result in 'less than substantial harm' to the heritage assets, a view which is supported by Historic England. The Local Planning Authority concurs with this view and would add that given the amendments which have been made to the scheme, it is now considered that the harm is at the lower end of the 'less than substantial' range.
>
> Paragraph 196 of the NPPF states that 'where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use'. The public benefits will be assessed below in the final balancing exercise."

36. At the end of the report, under the heading "Balancing Exercise and public benefit", the planning officer conducted the balancing exercise saying:

> "As noted above, it has been concluded that the proposal would result in less than substantial harm to the setting of the various listed buildings at Ash Manor. However, given the distance the new built form would be set away from the listed buildings and the treatment of the 'buffer' in between it is noted that this harm would be at the lower end of the scale.
>
> Notwithstanding this, paragraph 196 of the NPPF states that 'where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use'. With regard to the impact on the setting of the listed buildings, it is also acknowledged that in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Local Planning Authority must have special regard to the desirability of preserving the buildings or their settings or any features of special architectural or historic interest which it possesses.
>
> As required by paragraph 196 of the NPPF, the public benefits of the proposal will be set out below.
>
> The proposal would deliver a total of 77 dwellings in a mix which is agreeable to the Council's Housing Strategy and Enabling Manager…..The early provision of such a sizeable number of dwellings with an optimum mix is deemed to be a substantial public benefit of the proposal.
>
> ……As part of the application, the applicant has agreed to implement and fund a range of measures which will help to improve highway safety…. This is a significant public benefit of the proposal.
>
> The proposal would enhance the existing pedestrian and cycle connections in the locality… This is a modest public benefit of the proposal.
>
> The buffer which is being created to the south and east of Ash Manor will be a new public amenity space for future and existing residents of the area. …The proposal would therefore improve the ecological value of this part of the site which is of modest public benefit.
>
> Finally, the applicant has agreed to a wide range of contributions which will help to improve community facilities in the area…. Whilst it is acknowledged that these

> contributions are required to mitigate the impacts of the development, nonetheless they will result in public benefits.
>
> Having had special regard to the harm on the setting of the neighbouring listed buildings, which is at the lower end of less than substantial, it is the view of the Local Planning Authority that it is outweighed by the public benefits of the proposal."

37. The planning officer expressly referred to the duty under section 66(1) PLBCAA 1990, both in his advice on the statutory framework and at the critical stage of the balancing exercise. However, he did not advise members on how they were required to apply the section 66(1) duty to the balancing exercise. The application of the section 66(1) duty is not explicitly clear from the wording of section 66(1), as demonstrated by the fact that it was only after the case of *Barnwell* that it was fully appreciated by experienced planning inspectors and lawyers that section 66(1) imposed a duty to treat a finding of harm to a listed building as a consideration to which the decision-maker must give "considerable importance and weight" when carrying out the balancing exercise and that it was not open to the decision-maker merely to give the harm such weight as he thinks fit, in the exercise of his planning judgment.

38. The correct approach to adopt in the balancing exercise is also to be found in the Framework. As Sales LJ explained in *Mordue*, at [28], the Framework lays down an approach which corresponds with the duty in section 66(1) PLBCAA 1990 and so a decision maker who works through the relevant paragraphs in the Framework will have complied with the section 66(1) duty. *Mordue* concerned an Inspector's decision. Applying the *Mordue* principle to a planning officer who is advising a Planning Committee requires not only that the planning officer worked through the relevant paragraphs of the Framework, but also that he identified the paragraphs and/or summarised them for the members of the Planning Committee, so that they could apply their minds to the exercise too, since ultimately they are the decision-maker, not the planning officer.

39. The planning officer in this case did not identify paragraphs 193 and 194 of the Framework nor summarise them for members. In *Mordue*, Sales LJ said, at [28], that "when an expert planning inspector refers to a paragraph within that grouping of provisions (as the inspector referred to paragraph 134 of the NPPF in the decision letter in this case) then - absent some positive contrary indication in other parts of the text of his reasons - the appropriate inference is that he has taken into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned".

40. Can it be inferred that the planning officer in this case took into account paragraphs 193 and 194 of the Framework in the balancing exercise he conducted in his report and thereby enabled members of the Planning Committee to take them into account?

41. In my view, there were several positive indications to the contrary, giving rise to a substantial doubt as to whether the duty was performed.

    i) At the outset, the planning officer identified paragraphs 189 – 192 of the Framework as setting out "the framework for decision making" and stated that

"this application took account of the relevant considerations in those paragraphs". Paragraphs 189-192 are in a sub-section of Chapter 16, headed "Proposals affecting heritage assets". The inference is that these are the paragraphs which the planning officer has taken into account. However the next sub-section, headed "Considering potential impacts", which includes paragraphs 193, 194 and 196, was also a crucial part of the decision-making framework in this case. The planning officer later remedied his omission of paragraph 196 by expressly referring to it, but he did not at any stage remedy the omission of paragraphs 193 and 194.

ii) The planning officer's repeated reliance solely on the wording of paragraph 196 of the Framework, to describe the balancing exercise, without advising members of the Planning Committee also to take into account paragraphs 193 and 194, and/or the considerations set out in those paragraphs.

iii) The planning officer conducted a balancing exercise in which the heritage harm was balanced against the public benefits, without any indication that "great weight" should be given to the asset's conservation, and that a Grade II* listed building was an important heritage asset which should attract greater weight. As in the *Liverpool* case, the effect was to "play down the part of the exercise represented by [paragraph 193 and 194] and to tilt the balance towards emphasising the absence of substantial harm and the public benefits to be weighed on the other side of the balance": *R (LOGS CIC) v Liverpool City Council & Anor* [2019] EWHC 55 (Admin), per Kerr J. at [81].

iv) In the balancing exercise the planning officer described the weight to be given to the various public benefits as "substantial", "significant" and "modest". The heritage harm was described as being "at the lower end of less than substantial". On a fair reading, the Planning Committee was left in the position of weighing "less than substantial harm" against "substantial", "significant" and "modest" public benefits in an untilted planning balance. The effect was to repeat the error made in *Barnwell* where the "less than substantial harm" was wrongly treated as a less than substantial consideration.

42. To illustrate the flaws in this report, the Claimant adduced in evidence a report written in 2017 by the same planning officer in respect of the same Site.

43. The first three paragraphs of the section headed "Impact on the setting of Grade II* and II listed buildings" are in almost identical terms to the October 2019 report, suggesting that the text was taken from the earlier report and updated to reflect the new edition of the Framework. The critical difference is that in 2017 the planning officer advised that paragraphs 131-135 of the 2012 edition of the Framework set out the framework for decision making. These paragraphs did indeed include all the relevant guidance. Paragraph 132 contained the guidance as to "great weight" now found in paragraph 193, and the requirement for justification, now found in paragraph 194. Paragraph 134 was the predecessor provision to paragraph 196. In contrast, the Framework references which the planning officer substituted in the October 2019 report did not include all the relevant paragraphs for decision making, as I have already explained.

44. After reviewing the heritage assets, the planning officer in the 2017 report gave this advice to members:

> "The NPPF tells us that great weight should be given to the conservation of heritage assets, paragraph 132 states that 'the more important the asset, the greater the weight should be'. Ash Manor is Grade II* listed which puts it in the top 6% of all listed buildings in the country and forms a group with the nearby listed farm buildings. For the above reasons the proposal would cause less than substantial harm to this group of listed buildings. The Council is required to place great weight on the conservation of these buildings. Paragraph 134 of the NPPF states that where less than substantial harm has been identified 'this harm should be weighed against the public benefits of the proposal. This weighing exercise will be carried out in the final section of this report…"

45. None of this advice on the "great weight" to be accorded to the conservation of the heritage assets - all the greater because of the importance of the Grade II* listed building - was given to members in the October 2019 report. As this advice would have been both relevant and helpful, the omission was unfortunate.

46. In 2017, the planning officer's advice on how to perform the balancing exercise also included important guidance which was missing from the October 2019 report. The officer said:

> "**The balancing exercise**
>
> Harm v public benefits
>
> …..in light of the identified harm to designated assets, paragraph 134 of the NPPF provides a material balance to be considered within the overall statutory context provided by s.38(6) of the Planning and Compulsory Purchase Act 2004 and s.66 of the Listed Buildings Act 1990.
>
> The Council's conservation officer and Historic England have identified that the proposal would result in less than substantial harm to a number of designated heritage assets, including the Grade II* listed Ash Manor and Old Manor Cottage. Overall and having regard to the provisions of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the NPPF and policy HE4 of the Local Plan, special regard must be given to preserving the identified heritage assets and as such **considerable** importance and weight is afforded to this harm.
>
> …..
>
> Paragraph 132 of the NPPF states that 'when considering the impact of a proposed development of a designated heritage

> asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require a clear and convincing justification'. Paragraph 134 of the NPPF goes on to state that 'where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use….. While the public benefits of the scheme have been identified above, they do not, either individually or cumulatively, outweigh the harm which has been identified to the heritage assets."

47. Thus, in 2017, members were advised that the effect of section 66(1) PLBCAA 1990 was that a finding of harm to a listed building was a consideration to which the decision-maker must give "considerable importance and weight" when carrying out the balancing exercise. Members were also reminded, for the second time, of the guidance in the Framework that "great weight" should be given to the asset's conservation - the more important the asset, the greater the weight should be - and that any harm or loss required "clear and convincing justification" for any harm. None of this advice was given in the October 2019 report. The fact that, in 2017, the planning officer was recommending refusal of permission, whereas, in 2019, he was recommending a grant of permission, ought not to have had any bearing on whether or not to include this advice in the report, and it was not suggested that it did.

48. I now return to the question whether the advice was seriously misleading, thereby misleading the members in a material way so that, but for the flawed advice, the Planning Committee's decision would or might have been different. In my judgment, the planning officer must have been aware of the guidance given by the Court of Appeal in *Barnwell* on the application of the section 66(1) duty to the balancing exercise and the guidance in paragraphs 193 and 194 of the Framework, as it is well-known among professional planners and he advised on it in the 2017 report. However, on a fair reading of his October 2019 report, he did not advise members of the Planning Committee on this guidance and he did not apply it when he undertook the balancing exercise on this occasion.

49. At the hearing I asked the parties whether an experienced member of the Planning Committee, who had been referred to this guidance in other applications, perhaps even the 2017 application, might have been aware of the guidance, even though it was not to be found in the planning officer's report. When I raised this possibility with the parties, Mr Williams for the Council did not wish to rely upon it. Mr Fitzsimons for the Claimant rejected it on the basis that busy Committee members relied upon the officer's report and did not do their own research. On instructions, he said that new members had recently been appointed to the Planning Committee, following elections, and so it could not safely be assumed that they were aware of the guidance, from the 2017 application or any other. It seems to me that if a member of the Planning Committee did consider that the planning officer's report did not give accurate and/or sufficient advice on how to conduct the balancing exercise, the matter would have

been raised at the meetings. The minutes of the two meetings of the Planning Committee do not record that members sought further clarification or guidance on how to conduct the balancing exercise at those meetings. Therefore I conclude that members of the Planning Committee relied only upon the advice given in the planning officer's reports.

50. In addition to his main report, the planning officer provided a short updating report for the meeting on 4 December 2019 which addressed the amendments made by the IP to the proposed development. The planning officer advised as follows:

> "Overall, when compared to the original proposal, the changes to the scheme result in slightly less harm to the setting of the listed buildings located at Ash Manor and this should be considered when the remaining harm is balanced against the public benefit of the proposal."

51. Under the sub-heading "Balancing exercise and conclusion", the planning officer advised that "The increased buffer to Ash Manor and the changes to the apartment buildings slightly reduce the harm caused to the setting of the listed buildings. However, it is acknowledged that the harm is still at the level of less than substantial". The recommendation was to approve the application.

52. Thus, the 4 December 2019 report repeated the error of advising members to undertake an untilted balancing exercise, weighing the less than substantial harm to the heritage assets against the public benefits of the proposal without apparently taking into account the requirement to accord "considerable importance and weight" to a finding of harm to a listed building and "great weight" to the asset's conservation, as a Grade II* listed building, and the need for a "clear and convincing justification" for any harm.

53. In my judgment, the planning officer's reports did seriously and materially mislead the Planning Committee, for the reasons set out in paragraphs 37, 41 and 52 above. The 2017 report provides a useful illustration of the advice which should have been given on this occasion, but was not given, either expressly or impliedly. I am satisfied, on the balance of probabilities, that the Planning Committee could have reached a different decision if they had been properly advised.

54. It is apparent from the minutes of the meeting on 9 October 2019 that, despite the planning officer's wholehearted recommendation for approval in the report, the Planning Committee was not convinced that permission should be granted for a number of reasons, including the sensitivity of the Site and the impact on the setting of the heritage assets. Although the Planning Committee granted planning permission at the meeting of 4 December 2019, on the recommendation of the planning officer, its decision to do so was made in the face of strong objections from the local MP on behalf of constituents, local residents and the Parish Council. Historic England considered that the harm to the setting of the heritage assets remained, despite the amendments to the scheme. This was clearly a contentious application, which had been rejected on two previous occasions. For these reasons, I consider that the weight which the Planning Committee accorded to the impact on the heritage assets in the balancing exercise could have affected the outcome.

55. For the same reasons, I am not persuaded that this is a case in which relief should be refused under section 31(2A) of the Senior Courts Act 1981, as it does not appear to me to be highly likely that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred.

56. Therefore ground 1 succeeds.

Ground 2

57. The Claimant submitted that the Council erred in failing to have regard to the advice of Surrey Wildlife Trust ("SWT") that a tree at the Site (identified as T67) which was scheduled for removal was a veteran tree, and that it acted irrationally in not following SWT's advice.

58. In consequence, the Claimant submitted that the Council acted contrary to paragraph 175(c) of the Framework which provides:

> "development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists."

59. The Glossary defines "ancient or veteran tree" as "a tree which, because of its age, size and condition is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage."

60. The Council, supported by the IP, submitted that the Council had proper regard to the views of SWT, and it was entitled to conclude on the basis of the advice given by the IP's arboriculturist and the Council's arboriculturist that T67 was not a veteran tree.

Conclusions

61. The Council consulted SWT as a non-statutory consultee as part of the consultation process. SWT provides an Ecology Planning Advice Service to the Council as the Council does not have in-house ecological expertise. Its remit is to provide advice relating to protected species and habitats, including advice in relation to the protection of irreplaceable habitats as defined by para 175(c) of the Framework.

62. SWT's consultation response dated 5 March 2019 was based on a review of the application documents and Council records. It did not carry out a site visit. On its reading of the IP's initial arboricultural report, T67 was identified as having veteran features. SWT advised that:

> "…tree (T67) is retained within the proposed development and that a permanent buffer zone of semi-natural habitat, or dimensions specified above, should be secured as part of planning permission in order to demonstrate that the

> requirements of national policy and guidance are complied with and that no aged or veteran trees are to be lost or adversely affected as a result of development."

63. On behalf of the IP, Aspect Ecology responded in a Technical Briefing Note dated September 2019, stating that T67 "is certainly a large tree which may be displaying veteran-like features, notably crown die-back, whilst survey work recorded some potential for wildlife to be using the tree, particularly roosting bats". Applying the definition in the Glossary, and the guidance provided by the Ancient Tree Forum on girth and age, it concluded that T67, which has a diameter of 105 cm, should be defined as "locally notable" rather than veteran.

64. On 23 September 2019, SWT responded to Aspect's Briefing Note pointing out that, according to the Glossary, the size of the tree was a factor, but not the only factor, in determining whether a tree was veteran, as age and condition were also relevant. It also referred to published guidance indicating that size was not the only factor. SWT advised that T67 had other veteran characteristics such as significant crown die back, dead wood and lost bark and contributed exceptional biodiversity value due to its condition. Therefore it should be treated as a veteran tree. SWT concluded that:

> "loss of a tree of significant biodiversity value, regardless of absolute girth size, would be not in line with the objectives of the NPPF to seek a net gain for biodiversity as a result of truly sustainable development."

65. The planning officer consulted the Council's Tree Officer, who advised on 9 October 2019 that, although T67 had characteristics applicable to veteran trees (deadwood, decay, fungal habitat), its girth meant that it should be classified as notable, not veteran. He also advised that the level of decay at the base of the tree meant that it was liable to fall and was a health and safety risk. It was not viable to retain and manage it in the centre of the Site as it would need extensive fencing to keep people away and the likelihood was that the tree would fail anyway.

66. The planning officer's report for the meeting of the Planning Committee on 4 October 2019 stated as follows:

> "As regards the dead Oak tree (T67 on the applicant's tree survey), SWT note that due to its age and condition it should be classed as a veteran tree. While the applicant has a different opinion, SWT maintain that the tree offers 'exceptional biodiversity value'. Although this is the case, the tree in question is proposed for removal as part of the application. It should be noted that SWT did not raise this matter as a concern as part of their assessment of the previous application made on the site (17/P/00513 refers), even though the tree was in a similar condition. Nevertheless, the loss of the tree in biodiversity terms is regrettable and would result in some harm to the area. This matter will be considered in the balance below."
>
> …..

> "It is noted that an Oak tree which is protected by TPO 4 of 1974 is proposed for removal (T67 as already discussed above). This is a large tree which sits in the southern field and the Council's Tree Officer notes that the majority of its crown is dead. It is acknowledged that secondary crown is emerging on some stems, however, its long-term potential is considered to be low. While the tree is a feature of the existing site, given its existing condition, in arboricultural terms, there are no objections to its removal."
>
> ……
>
> "It is noted that the only other harm identified as part of the assessment is the loss of T67 and the resulting impact on the biodiversity of the site. While it is regrettable that T67 is to be removed, it is noted that the other improvements being made to the site, would partly offset its loss. It is considered that the loss of T67 in itself would not be sufficient justification to refuse planning permission and the harm is clearly and demonstrably outweighed by the benefits of the proposal."

67. Members of the Planning Committee inspected T67 at their Site visit on 3 December 2019.

68. The updates from the planning officer to the meeting on 4 December 2019 included the following further information about T67:

> "Oak tree
>
> Following the receipt of further concerns about the loss of the existing Oak, it is reiterated that the tree in question has recently been inspected by the Council's Tree Officer. He notes that while some secondary crown is emerging, overall, the tree is in very poor condition, with evident decay around its base. Therefore, the Tree Officer concludes that the tree is of low long-term value and that its removal is the most appropriate form of action.
>
> Notwithstanding the fact that the tree has low long-term value, if it was retained, for health and safety reasons, it would need to have a fenced exclusion zone of approximately 30 metres in diameter. Retaining the tree in situ would also have significant and material impact on the layout of the scheme.
>
> The applicant has suggested that following the felling of the tree, its trunk could possibly be retained on-site and integrated into the open space (e.g. possibly as an ecological or art feature etc.) This may help to improve the ecological biodiversity of the site and retain the link between the tree and Ash Manor. Officers believe that the applicant's offer could reasonably be secured through the condition noted below."

69. The Planning Committee's minutes of the meeting on 4 December 2019 meeting stated:

> "The Committee sympathised in relation to the loss of the 250-year old oak tree onsite that would be removed as a result of the development. The Council's Arboriculturalist officer supported its removal given that most of its crown was dead."

70. A condition was attached to the grant of planning permission requiring the IP to submit a scheme for the careful felling of T67, its storage, and details of how and where it would be re-used within the Site.

71. In my judgment, the issue as to whether T67 was a veteran tree was adequately investigated. After the issue was raised by SWT, the planning officer received the IP's detailed Technical Briefing Note and advice from the Council's Tree Officer which addressed SWT's concerns. In my view, it is unarguable that the IP's arboriculturalist and the Council's arboriculturalist were not qualified to express an expert opinion on the status of the tree, or that SWT's opinion should have been given more weight than the opinions of the arboriculturalists.

72. The planning officer summarised the issues for the Planning Committee in his October 2019 report and the December update, and he expressly mentioned the difference of view about the veteran status of the tree. On my reading of the reports, the planning officer did prefer the view of the arboriculturalists that the tree was notable rather than veteran, which was why he did not direct members to apply paragraph 175(c) of the Framework. It can reasonably be inferred that he accepted the reasons given by the arboriculturalists in their advice. He did accept that the tree had biodiversity value, as advised by SWT, and that its loss would amount to some harm, which was taken into account in the balancing exercise. It was open to members to consider all these matters in further detail if they wished to do so, and indeed they inspected the tree on their Site visit. The reasons for their conclusions are to be found in the minutes of the meeting on 4 December 2019, and the planning officer's reports. In law, they were not required to give a statement of reasons, though of course they had to have rational reasons for their decision (see paragraphs 13 – 15 above).

73. It was not irrational for the planning officer and the Planning Committee to prefer the views of the IP's arboriculturalist and the Council's arboriculturalist to that of SWT. They were entitled to take into account that the tree was likely to fall in the near future because of decay, and that this represented a health and safety risk. The proposal to keep the remains of the tree on Site after felling, both as a feature and for its ecological value, reflected an appreciation of its importance.

74. In conclusion, the Council's approach to the issue of tree T67 does not disclose any error of law and therefore ground 2 does not succeed.

Ground 3

75. The Claimant submitted that the Council failed to have sufficient regard to the representations of a local resident and expert, Dr Stephen Pedley, about the risk of

flooding at the Site, and acted irrationally by ignoring expert evidence. The planning officer did not adequately inform the Planning Committee of Dr Pedley's valid concerns.

76. The Defendant, supported by the IP, submitted that Dr Pedley did not hold himself out as an expert, and in any event, his representations were properly investigated by the planning officer, referred to in his reports, and considered by the Planning Committee, who reached a rational conclusion on the information before them.

Conclusions

77. The Site is in flood zone one, and so it is at low risk of fluvial flooding. The SUDs proposal for the proposed development was for surface water to drain by gravity and discharge into an attenuation pond, which will store water and release it via an outlet to an existing drainage ditch. The attenuation pond will be constructed at the site of the existing pond at the north of the Site, near the heritage assets. It will be larger than the existing pond, fully lined, and the outlet pipe from the existing pond will be replaced.

78. On 14 February 2019, Dr Pedley submitted objections to the scheme on several grounds, including the drainage proposals. He referred to the objections he made in respect of the drainage scheme for the previous application in 2017, pointing out that the pond would not function effectively as a retention pond, and would increase the risk of flooding and subsidence at the Ash Manor complex. Other residents also objected on the grounds of flood risk.

79. On 10 September 2019, the Lead Local Flood Authority ("LLFA") advised, in its capacity as a consultee, that it was not satisfied with the proposed drainage scheme and asked for further information regarding the proposed attenuation pond, including the concern raised by local residents that the existing pond was groundwater fed.

80. On 19 September 2019, the LLFA advised that it was now satisfied with the proposed drainage scheme, in the light of the Technical Note, dated 12 September 2019, submitted by the IP's consultants PJA, and the Geotechnical and Geo-environmental Site Investigation Report prepared by Eastwood and Partners in August 2016 for the earlier planning application. Those reports, and the WSP report, concluded that the risk of groundwater ingress into the pond which would compromise its capacity was "nominal". The clay soil was non-permeable and classified as non aquifer. When trial pits were dug in the vicinity of the pond, in August 2016, groundwater was not present. Therefore, it could be concluded that the pond was not groundwater fed. In any event, PJA advised that the attenuation pond could be lined with an HDPE geomembrane to prevent the ingress of any groundwater.

81. On 1 October 2019, Dr Pedley submitted to the Council a detailed critique of the Technical Note dated 12 September 2019, and appended the representations he had made in respect of the 2017 application. He copied in the LLFA. His own observations and the observations of other local residents demonstrated that the pond remained full of water even in dry conditions when other nearby ponds dried out. The obvious conclusion was that the pond was "sustained by ingress from groundwater, and that this occurs through very localised permeable seams in the clay". It would not

have the capacity to contain the surface water from the proposed development and so the land would become flooded, with a risk of "immense damage" to the nearby Ash Manor complex. If a waterproof membrane was installed into the attenuation pond, any displaced groundwater would have to find an alternative outlet, with the potential risk of flooding.

82. Dr Pedley was, until his retirement in July 2019, a Reader in Public Health Engineering specialising in groundwater, in the Department of Civil and Environmental Engineering at the University of Surrey. He has given advice and guidance on water quality to governments, NGO's and agencies around the world.

83. However, on this occasion, Dr Pedley submitted his representations in his capacity as a concerned local resident, not as an expert. He did not even inform the Council of his professional background and expertise – they only learned of it indirectly.

84. As I have described above, the LLFA did investigate the issue of groundwater ingress to the pond and the risk of flooding. PJA's Technical Note dated 12 September was a desktop analysis produced by qualified consultants, based upon the results of the trials conducted by the engineers who had been instructed for the previous application for planning permission, when the concern about groundwater had also been raised and investigated. After the hearing, I was sent full copies of the reports attached to the Technical Note. I was also sent the report accompanying the successful application for discharge of the drainage condition.

85. In the report for the Planning Committee meeting on 9 October 2019, the planning officer summarised the representations received. The 'Late Representations' sheet for the meeting indicated that:

> "further concerns have been raised with regard to the SUDS scheme being proposed and the accuracy of the applicant's technical documents [Officer Note: This issue has been specifically addressed by the Lead Local Flood Authority and they confirm that the SuDs and drainage scheme being proposed by the applicant is acceptable];".

This was a reference to Dr Pedley's representation of 1 October 2019.

86. The report stated:

> "local residents have raised concern about flooding and in particular it has been stated that the existing pond is fed by a spring. Residents claim that adding further water to the pond from the proposed development may mean that water levels could increase, over-top its bank and flood the surrounding land."

87. The report went on to explain how the LLFA had requested additional information from the IP in relation to this issue, and that the issue of groundwater had been adequately addressed by the Technical Note. The planning officer concluded that there was no evidence to suggest an increased risk of flooding, and therefore the proposal was policy-compliant.

88. At the Planning Committee's meeting of 9 October 2019, a speaker on behalf of the Ash Green Residents Association raised the concern about flood risks. The minutes stated:

> "In relation to comments raised by public speakers, concerns raised in relation to the pond had been assessed by the Lead Local Flood Authority who had requested additional information from the applicant. Based on that information, they were satisfied that the SUDs scheme was acceptable with the proviso of two additional conditions that secured the exact details of the SUDs scheme."

89. On 4 November 2019, the planning officer sent to the LLFA an objection received via a ward councilor from Mr Weller, the resident of Ash Manor who had seen Dr Pedley's representations on the planning portal. He said:

> "Steve [Pedley] has been lecturing at Surrey University for 40 years on water, its quality and its movements above and below ground. He is an expert in this field and has a Doctorate…His comments are based on an actual site evaluation, where the depth of the whole pond was undertaken from a small dingy. His comments are relevant and extremely worrying. And against the desk top evaluation from Bewley's agent. Should this development go ahead then all the listed buildings are under serious threat of flooding. The Barn adjacent to the pond is partly underground… and the driveway is downhill all the way from the pond to the Manor…"

90. The LLFA replied on 12 November 2019 saying:

> "We have assessed the site in the same way as others i.e. using the Non-Statutory Technical Standards for Sustainable Drainage Systems, however we are not groundwater experts and our duties are to comment on the surface water implications of development. Any other comments in relation to ground water would be outside of our remit and we would recommend that the developer addressed the groundwater comments or an independent review is carried out in relation to groundwater."

91. On 2 December 2019, a more senior official at LLFA emailed the planning officer saying that they were "satisfied that the applicant has provided sufficient information on surface water drainage (the remit of our statutory response role) subject to the conditions we have recommended...".

92. In the planning officer's report for the meeting of the Planning Committee on 4 December 2019, the planning officer repeated the text from the "Late Representations" sheet quoted at paragraph 85 above, which was a reference to Dr Pedley's representations.

93. The planning officer provided a summary of the comments made by the public speakers at the 9 October 2019 meeting, including Ms Squibb on behalf of the Ash Green Residents Association who said:

> "on-site surveys of the pond have been undertaken by residents and was noted that the capacity of the pond is less than stated by the applicant. It is noted that the pond is also groundwater fed. The use of the pond for SuDS could have a detrimental flooding impact on the surrounding area."

94. In the 'Late Representations' sheet, the planning officer referred to the further letter of objection from the Ash Green Residents Association, which stated that the existing scheme increased the risk of flooding in and around the listed buildings, and their concerns had not been responded to. The planning officer added a note as follows:

> "The drainage concerns raised by residents have been forwarded to the LLFA and they have confirmed that the scheme proposed by the applicant remains acceptable…..they do not require any further information for this application and they remain content with the drainage scheme."

95. The minutes of the Planning Committee's meeting dated 4 December 2019 recorded that:

> "The Committee also noted that the SUDs and drainage scheme was supported by the Lead Local Flood Authority (LLFA)."

96. In my judgment, the planning officer did adequately inform the Planning Committee about the groundwater and flooding issues in the reports and accompanying Late Sheets for the meetings on 9 October and 4 December 2019. The Planning Committee were also addressed on the matter by a speaker from the Ash Green Residents Association. The planning officer had to exercise his judgment on how much detail to include in the reports and he did not mislead members by not providing a fuller summary of Dr Pedley's representations. It was open to any member of the Planning Committee to look at Dr Pedley's representations and the technical evidence if they wanted more information about this issue.

97. I am satisfied, on the balance of probabilities, that the planning officer and the Planning Committee took account of Dr Pedley's representations but evidently accepted the view of the LLFA that the IP's technical evidence demonstrated that there was no increased risk of flooding, and that Dr Pedley's concerns were unjustified. Although the LLFA did not have the necessary expertise on issues of groundwater, the LLFA had the benefit of a body of evidence, presented by the IP, from consultants and engineers who were suitably qualified. Moreover, this was the second occasion on which this issue had been considered. In light of the weight of the evidence against Dr Pedley's views, the approach taken by the planning officer and the Planning Committee was not irrational.

98. For these reasons, Ground 3 does not succeed.

Final conclusion

99. The claim for judicial review is allowed, on ground 1 only, and the grant of planning permission has to be quashed.