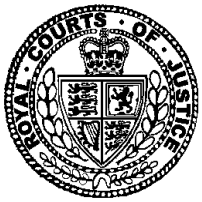

Neutral Citation Number [2022] EWHC 2883 (Admin)

Case No: CO/1603/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/11/2022

Before : HHJ Karen Walden-Smith sitting as a Judge of the High Court

- -

Between :

THE KING **Claimant**
(on the application of PEYTON DAVIES)

- and -
OXFORD CITY COUNCIL **Defendant**

-and-
(1) MK DOGAR LIMITED
(2) OXFORDSHIRE COUNTY COUNCIL
(3) PERSIMMON HOMES LIMITED

Interested Parties

- -
- -

REUBEN TAYLOR KC and MATTHEW HENDERSON
(instructed by **BDP PITMANS LLP**) for the **CLAIMANT**
ISABELLA TAFUR (instructed by **OXFORD CITY COUNCIL LEGAL DEPARTMENT)**
for the **DEFENDANT**
KILLIAN GARVEY (instructed by **DAC BEACHCRPFT LLP)**
for the **THIRD INTERESTED PARTY**

Hearing date: 3 November 2022
- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 15 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

HHJ KAREN WALDEN-SMITH

1. This is the renewed oral application for permission to bring judicial review proceedings challenging the determination of Oxford City Council to grant planning permission on 25 March 2022 for the development of land at Hill View Farm, Mill Lane, Marston, Oxford ("the site") described as "Demolition of existing buildings and construction of 159 dwellings, associated roads, infrastructure, drainage and landscaping" ("the development").

2. Permission to apply for judicial review will be refused unless there is an arguable ground for judicial review which has a realistic prospect of success:

   "Permission to apply for judicial review should be granted if a claimant shows that the one or more of the grounds gives rise to an arguable case that a reviewable error exists and there is no discretionary or other bar to bringing the claim. An arguable case requires that a point exists which merits investigation at a full hearing with all parties represented and with all relevant evidence and arguments on the law." Per Lewis J (as he then was) *Simone v Chancellor of the Exchequer* [2019] EWHC 2609 (Admin.)"

3. On 20 June 2022, Mr Tim Smith, sitting as a Deputy High Court Judge (DHCJ), ordered that permission be granted to proceed on Grounds 3A and 3B of the application to bring judicial review proceedings, but refused permission on Grounds 1A, 1B and 1C and Ground 2 of the grounds. The Claimant does not proceed on Ground 2 but does renew the application for permission on Grounds 1A, 1B and 1C, which are as follows:

   Ground 1A: The City Council (the Defendant) failed to identify that the pumping station forming part of the Development was a building and as such it failed to consider whether it was appropriate or inappropriate development for the purpose of policy G3 of the Oxford Local Plan and the National Planning Policy Framework (NPPF);

   Ground 1B: The City Council failed to consider whether and/or to the extent to which the pumping station, the attenuation pond and access ways conflicted with the purposes of including land within the Green Belt. As such it failed to consider whether it was appropriate or inappropriate development for the purpose of policy G3 of the Local Plan and the NPPF;

   Ground 1C: The City Council erred in its consideration of the impact of the pumping station, attenuation pond and access ways on the openness of the Green Belt. In particular, the City Council failed to consider the spatial aspect of openness which was a consideration that was so obviously material to the City Council's determination it was irrational to leave it out of account.

4. In refusing permission to bring judicial review proceedings on Grounds 1A, 1B and 1C, the DHCJ set out the following observations:

   1) Grounds 1A-1C relate to various aspects of the Defendant's consideration of the impact on the green belt, especially in relation to the pumping station. There is a degree of overlap between some of them but taking the individual grounds in turn:

a) Ground 1A concerns the treatment of the pumping station. Reading the officer's report fairly and as a whole I consider that the Defendant did assess the impact on the basis that it was a building. Moreover it is entirely reasonable for the Defendant to rely upon the fall-back position established by permitted development rights. The First interested Party has elected to apply for an express permission rather than to rely upon Thames Water's permitted development rights. Those permitted development rights are clearly available. The Claimant's objection in its Reply is that there is no evidence of Thames Water's permitted development rights. Those permitted development rights are clearly available. The Claimant's objection in its Reply is that there is no evidence of Thames Water's willingness to exercise those rights. That is hardly surprising since the facility is being applied for expressly and hence there would be no need for Thames Water to say anything about permitted development rights. (By the same token, equally there is no evidence that it would not be willing). It was entirely reasonable for the Defendant to rely upon the likelihood of the statutory authority being willing to construct a facility designed to serve a development that needed it.

b) In relation to Ground 1B I accept that the passages from the officer's report cited by the Defendant in its SGR make clear beyond all but forensic doubt that the necessary policy consideration has been undertaken.

c) The same can be said for Ground 1C. It is true that the comments in the officer's report are limited but they do enough to reveal that the right considerations were in mind and were applied.

None of Grounds 1A – 1C are arguable.

5. The issue for this court, on the renewed application, is to consider afresh whether there is an arguable case that there was a distinct and material defect in the OR.

Factual Background

6. MK Dogar Limited (the First Interested Party) applied to Oxford City Council (the Defendant) for planning permission for the development on 30 November 2020. The Planning Committee of the Defendant met to consider the application on 26 May 2021 and were provided with a report on the planning application by a planning officer (the OR).

7. The site is described in the OR as follows:

> "The application site measures 3.67 hectares in total area and consists of an open agricultural field and light industrial units. The site is located on the urban periphery of Oxford to the north west of Old Marston and formerly fell within the Oxford Green Belt. The site is allocated in the Oxford Local Plan under policy

> SP25 for residential development consisting of a minimum of 110 dwellings. Following the adoption of the Oxford Local Plan and the sites subsequent allocation for residential development, the land at Hill View Farm was released from the Oxford Green Belt. A section of the red line of the application site to the west and north west of the light industrial buildings still falls within the Oxford Green Belt, this area of the site is shown on the proposed site plan to contain landscaping, drainage/SuDS features, access paths and public open space"

and I have had the opportunity of seeing those elements of the development referred to in the grounds which fall within the Green Belt.

8. The OR dealt with the Greenbelt Development in paragraphs 10.13 to 10.20 as follows:

> 10.13 Policy G3 of the Oxford Local Plan requires that proposals for development in the Green Belt will be determined in accordance with national policy.
>
> 10.14 The NPPF (paragraphs 144-145) draws a distinction between appropriate and inappropriate development in the Green Belt. Inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances, this precludes the construction of new buildings other than those listed under Paragraph 145 of the NPPF; or specific types of development listed under Paragraph 146 of the NPPF. Hill View Farm, alongside the adjacent site to the south east (Land West of Mill Lane) was released from the Oxford Green Belt at the time that the Local Plan was adopted in June 2020.
>
> 10.15 The red line site plan includes a section of land to the west which falls within the green belt. Consequently, the proposals involve some limited development which falls within the Green Belt, this includes an attenuation pond, SuDS, access paths, biodiversity enhancement measures, public open space and a small pumping station. The section of the site lies to the west of the existing western boundary hedgerow and range of light industrial buildings, and consists of an agricultural field, which is also under the ownership of the applicant.
>
> 10.16 The development proposed within the parameters of the Green Belt would not consist of any new buildings. The only above ground "structures" on the green belt land are those associated with the pumping station, which would consist of a 1.2 metre high equipment cabin and metal fencing associated with the pumping station, the majority of pumping station would be below ground infrastructure. In terms of the use, officers consider that this would constitute an engineering operation, along with the associated SuD's works, which would be considered to be not appropriate development within the context

> of green belt land. The fencing and single equipment cabin associated with the pumping station would be minimal would be in scale and height and would be screened by adjacent landscaping and planting and would not affect the openness of the green belt. The pumping station would therefore align with the provisions of Paragraph 146 of the NPPF.
>
> 10.17 The proposals within the Green Belt also include the provision of access pathways, including a new pedestrian and cycle link connecting to the A40 cycle path and connections from the development site into this adjacent space allowing access for residents of the new development and other members of the public. This space has a recreational function as an area of public open space, whilst also providing biodiversity enhancements in conjunction with providing SuDS for the development site…the land provided within the Green Belt would provide additional public open space above and beyond the policy requirements. This would bring into public use what is currently an agricultural field that does not benefit from public access which would provide recreational benefits to future residents and members of the public.
>
> 10.18 Officers consider that the development proposed within the parameters of the Green Belt would be "appropriate development" in line with the provisions of paragraph 14 and 146 of the NPPF. Namely the development would fall under either the definition of engineering operations or a change of use from agricultural to recreational land, both of which are listed as appropriate forms of development. Officers therefore consider that the development would be acceptable in line with paragraph 145 and 146 of the NPPF and Policy G3 of the Oxford Local Plan.
>
> 10.19 The impact of development on the site with regards to the design, scale and quantum of development and corresponding impact on the landscape character and therefore of the openness of the Green Belt is assessed in further depth in the landscape and design section of this report.
>
> 10.20 […]

Statutory framework

9. Section 70(2) of the Town and Country Planning Act 1990 provides that:

> In dealing with an application for planning permission or permission in principle the authority shall have regard to—

> (a) the provisions of the development plan, so far as material to the application,
>
> …, and
>
> (c) any other material considerations.

Green belt policy

10. Policy G3 of the Oxford Local Plan provides that

> Proposals for development in the Green Belt will be determined in accordance with national policy. Planning permission will not be granted for inappropriate development within the Green Belt, in accordance with national policy.

11. National policy on the protection of the Green Belt is set out in the NPPF which sets out the following:

> 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. The two relevant in this case are:
>
> (a) to check the unrestricted sprawl of large built-up areas
>
> (b) …
>
> (c) to assist in safeguarding the countryside from encroachment;
>
> (d) …
>
> (e) …
>
> 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.

> 149. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
>
> a) …
>
> 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) …
>
> d) …
>
> e) …
>
> f) …
>
> g) …
>
> 150. 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. These are:
>
> a) …
>
> b) engineering operations;
>
> c) …
>
> d) …

The Challenge

12. The Claimant seeks permission to bring judicial review proceedings on the basis that the OR failed in a number of respects, in particular a failure to identify that the pumping station as a new building (see paragraph 10.16); that it failed to consider whether the pumping station, attenuation pond and access ways conflicted with Green Belt purposes (see paragraphs 10.16 and 10.17); and failed to appropriately consider openness – taking into account visual impact and not spatial impact (see paragraph 10.16).

13. The principles governing how a court considers a challenge to the contents of an OR provided to the planning committee have been set out usefully in the well-known authority of *R (Mansell) v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, per Lindblom LJ:

> "The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. 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 … 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… 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… 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… unless there is some distinct and material defect in the officer's advice, the court will not interfere. "

14. It is essential that the court must not intrude on the decision-maker's exercise of planning judgment, except where the principles of public law compel it to do so (see Lord Carnwath JSC in *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3).

15. When considering if there has been a failure to take into account a material consideration, the Supreme Court has provided guidance, both in *Samuel Smith Old Brewery* and in *R (Friends of the Earth Ltd) v Secretary of State for Transport* [2020] UKSC 52, per Lord Hodge JSC and Lord Sales JSC:

> "… a useful summation of the law was given by Simon Brown LJ in *R v Somerset County Council, Ex p Fewings [1995] 1 WLR 1037* , 1049, in which he identified three categories of consideration, as follows:
>
> "… [T]he judge speaks of a 'decision-maker who fails to take account of all and only those considerations material to his task'. It is important to bear in mind, however, … that there are in fact three categories of consideration. First, those clearly (whether expressly or impliedly) identified by the statute as considerations to which regard must be had. Second, those clearly identified by the statute as considerations to which regard must not be had. Third, those to which the decision-maker may have regard if in his judgment and discretion he thinks it right to do so. There is, in short, a margin of appreciation within which the decision-maker may decide just what considerations should play a part in his reasoning process… It is possible to subdivide the third

> category of consideration into two types of case. First, a decision-maker may not advert at all to a particular consideration falling within that category. In such a case, unless the consideration is obviously material according to the *Wednesbury* irrationality test, the decision is not affected by any unlawfulness. There is no obligation on a decision-maker to work through every consideration which might conceivably be regarded as potentially relevant to the decision they have to take and positively decide to discount it in the exercise of their discretion. Secondly, a decision-maker may in fact turn their mind to a particular consideration falling within the third category, but decide to give the consideration no weight. … This shades into a cognate principle of public law, that in normal circumstances the weight to be given to a particular consideration is a matter for the decision-maker, and this includes that a decision-maker might (subject to the test of rationality) lawfully decide to give a consideration no weight.
>
> e) …
>
> f)…

Ground 1A: failure to identify that the pumping station forming part of the Development was a building

16. The OR identifies the policies relating to Green Belt land: both in the Local Plan and in the NPPF. It goes on to explain that *"the development proposed within the parameters of the Green Belt would not consist of any new buildings. The only above ground "structures" on the green belt land are those associated with the pumping station, which would consist of a 1.2 metre high equipment cabin and metal fencing associated with the pumping station, the majority of pumping station would be below ground infrastructure. In terms of the use, officers consider that this would constitute an engineering operation".* The Planning Officer's determination was that the "structures" on the Green Belt Land – namely the 1.2 metre high equipment cabin and associated metal fencing – was not a new building, that the majority of the pumping station would be below ground and it would constitute an engineering operation.

17. That determination was, in my judgment, a perfectly legitimate planning judgment. It cannot be said, as the Claimant seeks to say, that failing to define the 1.2 metre high equipment cabin and fencing as a building is a distinct and material defect in the OR that, but for that flawed advice, the committee's decision would or might have been different.

18. In contending that the planning officer was in error in not defining the pumping station as a new building, the Claimant relies upon section 55 of TCPA which defines "development" as being *"…the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land"* and "development" in the NPPF has the same meaning (see *Fordent Holdings Ltd v Secretary of State for Communities and Local Government*

[2013] EWHC 2844) and section 55(1A) of the TCPA that *"building operations"* includes *"operations normally undertaken by a person carrying on as a builder."*

19. There is no definition in the TCPA of *"engineering operations"* and in *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643, Ousely J held that there was "*plainly scope for overlap between the various limbs of the concept of operational development"* He further held that there was no error in approach which could be called an error of interpretation in the decision making in that case: *"the decision as to whether the development was [an] engineering operation is one of fact and degree"*. On the facts of that case he found that it would have been open to the inspector to conclude that the totality of the development was an engineering operation but he was not prepared to hold that it was not open to the inspector to conclude, as a matter of fact and degree, that the combination of what was on site was sufficient to make the development more than an engineering operation. In this matter, it was entirely open to the Defendant to find that the pumping station, mainly constructed below ground, was an engineering operation.

20. The Claimant relies upon section 336(1) of the TCPA 1990 which defines a building as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. Reliance is also placed upon Lord Carnwath in *Dill v Secretary of State for Housing, Communities and Local Government* [2020] UKSC 20, where he referred with approval to the three-fold test set out by Jenkins J in a rating case *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1 KB 385*:

> "I think, in addition to coming within this general range, the things in question must, in relation to the hereditament, answer the description of buildings or structures, or, at all events, be in the nature of buildings or structures. That suggests built or constructed things of substantial size: I think of such size that they either have been in fact, or would normally be, built or constructed on the hereditament as opposed to being brought on to the hereditament ready made. It further suggests some degree of permanence in relation to the hereditament, i.e. things which once installed on the hereditament would normally remain in situ and only be removed by a process amounting to pulling down or taking to pieces. I do not, however, mean to suggest that size is necessarily a conclusive test in all cases, or that a thing is necessarily removed from the category of buildings or structures or things in the nature of buildings or structures, because by some feat of engineering or navigation it is brought to the hereditament in one piece…The question whether a thing is or is not physically attached to the hereditament is, I think, certainly a relevant consideration, but I cannot regard the fact that it is not so attached as being in any way conclusive against its being a building or structure or in the nature of a building or structure…Nor can I regard the fact that a thing has a limited degree of motion in use, either in relation to the hereditament or as between different parts of itself, necessarily prevents it from

> being a structure or in the nature of a structure, if it otherwise possesses the characteristics of such."

21. There are therefore three principal matters in considering whether an object is a building within the definition in section 336(1) TCPA 1990, size, permanence and degree of physical attachment. However, the fact that it would have been possible to define the pumping station as a building does not mean that it was not open to the Defendant to conclude that the development was an engineering operation as a matter of fact and degree.

22. In further support of the finding that this was an engineering operation, the Flood Risk and Drainage Strategy, which included annotated drawings of the proposed drainage strategy, which was submitted with the planning application was prepared by civil and mechanical engineers. *Fayrewood Fish Farms Ltd v Secretary of State for the Environment* [1984] JPL 267 is authority for the proposition that an "engineering operation" is an operation supervised by an engineer and annotated plans prepared by an engineer can constitute important evidence as to whether particular operations are the kinds of works an engineer undertakes.

23. While it is contended by the Claimant that the erection of a pumping station for a housing development is an operation normally undertaken by a person carrying on business as a builder (s.55(1A) TCPA) and that the pumping station has the characteristics of a building in terms of its structure, it being fixed to the land and permanence, that does not preclude the planning officer and the Defendant concluding that it is not a building. It is a matter of fact and degree, and a planning judgment to be made with which the court does not engage.

24. The matter was dealt with relatively briefly in the OR but the parties were not at the time suggesting that the pumping station constituted a building or inappropriate development in the Green Belt and the Claimant's objection set out that: "In policy terms the use of GB land for public open space, water management and ecological mitigation or enhancement is not contrary to Green Belt policy."

25. As a fall back position, both the Defendant and Interested Party rely on the fact that even if the Defendant had been wrong to treat the pumping station as an engineering operation, the outcome would not have been substantially different as a pumping station could be constructed by or on behalf of Thames Water pursuant to the provisions of permitted development rights contained in Class B, Part 13 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 which permits development by or on behalf of a sewerage undertaker consisting of "the installation in a sewerage system of a pumping station, valve house, control panel house or switch-gear house." In the circumstances, reliance is placed upon section 31(3D) of the Senior Courts Act 1981 that permission ought to be refused.

26. The Claimant raises concerns that this line of defence was not within the OR; and that there is no evidence that Thames Water would carry out the work of constructing the pumping station (and in the paper determination it was acknowledged that there was no evidence either way). The Flood Risk and Drainage Strategy submitted with the planning application set out that it is the "responsibility of the sewerage undertaker (Thames Water) to carry out necessary upgrading works within the sewerage system to accommodate the development". The existence of permitted development rights was

well-know to the Defendant's planning officers. The Defendant is only raising this point at this stage as it is a response to the Claimant's contentions that the pumping station was wrongly considered to be an engineering operation rather than a building, so that there was an alleged failure to consider whether the very special circumstances required by the NPFF for such a development in the Green Belt had been demonstrated. The Defendant is obliged to counter the Claimant's contentions and this is a perfectly proper position for the Defendant to take.

27. This court is obliged to consider 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" (per Lindblom LJ in *Mansell)*

28. On a fair reading of the report as a whole the members of the Planning Committee of the Defendant were not materially misled and the decision is not an unlawful one by reason of the pumping station not being identified as a building. Even if that were the case, permission to appeal is refused by reason of the application of section 31(3D) of the Senior Courts Act 1981 as planning permission would still have been granted as the pumping station could have been constructed by Thames Water pursuant to permitted development rights.

Ground 1B:the impact of the pumping station, attenuation pond and access paths on Green Belt purposes

29. The Claimant contends that the Defendant erred in failing to consider the extent of conflict with Green Belt purposes and to assess the pumping station, attenuation pond and access ways against the Green Belt purposes.

30. The OR correctly included details of the development which were within the Green Belt and the relevant local and national policies. The conclusion was that the development within the Green Belt was appropriate development. That was a reasonable and rational conclusion, succinctly but sufficiently explained.

31. The LUC assessment concluded that the site would read as an encroachment into the countryside but that was concerned with the impact of entire site of 3.47 hectares to accommodate a minimum of 110 dwellings. The impact of the pumping station, attenuation pond and access ways were considered and conclusions reached which were rational and reasonable. There is no legitimate challenge to those conclusions and ground 1B is unarguable.

Ground 1C: impact of the pumping station on openness

32. As an alternative, the Claimant further contends that the Defendant failed to consider the concept of openness for the Green Belt pursuant to provisions of paragraph 150 of the NPPF, which provides that such an operation is only appropriate if it preserves the openness of the Green Belt.

33. The criticism of the OR is that it failed consider the extent of conflict of the pumping station with Green Belt purposes:

> "The concept of "openness" here means the state of being free from built development, the absence of buildings – as distinct from the absence of visual impact (see, for example, the judgment of Sullivan J., as he then was, in *R.(on the application of Heath and Hampstead Society)* ***v*** *Camden London Borough Council* [2007] EWHC 977 (Admin), at paragraphs 21, 22, 37 and 38; and the first instance judgment of Green J. in *R onthe application of Timmins) v Gedling Borough Council* [2014] EWHC 654 (Admin), at paragraphs 26 and 68 to 75). " per Lindblom LJ in *R (Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404

"Openness" of the Green Belt is open textured and it has a spatial and visual component, see Sales LJ (as he then was) in *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466. Development can harm the spatial component of openness even if it has no impact on the visual component (*R (Heath & Hampstead Society) v Camden LBC* [2007] EWHC 977.

34. I do not accept that there was an error in the manner in which this was dealt with by the planning officer. The OR considered the pumping station to be "*minimal in scale and height"* (the spatial aspect) and that it *"would be screened by adjacent landscaping"* (the visual aspect).

35. The planning officer set out in the OR a legitimate planning judgment: "*the matters relevant to openness in any particular case being matters of planning judgment, not law"* per Lord Carnwath JSC in *R(Samuel Smith Old Brewery) v North Yorkshire CC* [2020]UKSC 3. Openness within the NPPF is a broad policy concept which does not imply freedom from any form of development and there is no legitimate challenge to the contents of the OR on this point.

36. The OR concluded that *"the development proposed within the parameters of the Green Belt would be "appropriate development" in line with the [appropriate] provisions of … the NPPF"* and while the reasons were succinct, they were sufficient to enable the Claimant to understand the reasoning for the decision.

37. This ground, 1C, is therefore also unarguable and permission is not granted.

Conclusions

38. The Defendant was entitled to reach the conclusions it did in this matter and there is no legitimate challenge to the OR. Permission under Grounds 1A, 1B and 1C is refused.

I am content to deal with any supplementary submissions with respect to consequential orders in writing unless the parties are able to reach agreement with respect to the same.