Neutral Citation Number: [2023] EWHC 1731 (Admin)

Case No: CO/3909/2022

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

Cardiff Civil and Family Justice Centre
2 Park Street Cardiff CF10 1ET

Date: 10/07/2023

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court
Between :

THE KING (on the application of) THE LLANDAFF NORTH RESIDENTS' ASSOCIATION	**Claimant**
- and -	
CARDIFF COUNCIL	**Defendant**
-and-	
(1) DŴR CYMRU CYFENGEDIG **(2) REDROW HOMES (SOUTH WALES)** **(3) ST FAGANS NO 1 & 2 TRUSTS** **(4) ST FAGANS NO 3 TRUST**	**Interested Parties**

Ms Isabella Buono (instructed by **Leigh Day Solicitors**) for the **claimant**
Mr Robert Williams and Dr Alex Williams (instructed by **Legal Services**) for the **defendant**
Mr Richard Kimblin KC (instructed by **Hugh James Solicitors)** for the **first interested party**
Ms Nina Pindham (instructed by **Burges Salmon LLP)** for the **second to fourth interested parties**

Hearing dates: 29 June 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 10 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

HHJ JARMAN KC:

Introduction

1. In January 2016 the defendant, as local planning authority (the authority), adopted the Cardiff Local Development Plan 2006-2026. One of its strategic policies, KP2(C), provided for an allocation of a large area of land to the northwest of Cardiff for mixed use development with a minimum of 5000 homes. There had been a lengthy period of preparation and consultation in respect of that policy prior to its adoption, including with the first interested party (Dŵr Cymru), as statutory undertaker with the responsibility of providing a sewerage system under the Water Industry Act 1991 (the 1991 Act). In 2014, the second interested party (the developer) applied for planning permission to build just under 6000 homes on an area of the land so allocated known as Plasdŵr. The application was accompanied by an environmental statement (ES) which stated that Dŵr Cymru had confirmed that the significant volume of foul sewage which would be generated by the proposal could be accommodated on its network, but a hydraulic modelling assessment (HMA) would be needed before the extent of infrastructure improvements and storm water removal from the network could be finalised. Outline permission was granted on the application in March 2017, condition 24 of which required a HMA to be approved.

2. Dŵr Cymru in November 2021 submitted an application to build a pumping station to serve the developer's proposal. This would comprise a pumping station at the north end of a large open space called Hailey Park to the east of, and on the banks of, the River Taff. The site of the pumping station is about 1Km away from the site of the developer's proposed development. Also included in the application is a valve kiosk on the other side of the river. What is not included is a pipe under the river to connect the two, as Dŵr Cymru proposes to use permitted rights to construct it. The authority granted that application in September 2022.

3. At the same time, the authority granted an application made by the developer to discharge condition 24 after a HMA had been obtained. Two applications were made, because of re-design, and each was granted by the authority, the latest one in September 2022.

4. The claimant is an association of residents of Llandaff North, which adjoins Hailey Park to the east. With permission granted by Steyn J, it challenges both decisions of the authority to grant planning permission for the pumping station and to discharge condition 24.

5. In respect of the former, there are four grounds of challenge which may be summarised thus:

    i) The authority failed to take into account that there is functional interdependence between the Plasdŵr development and Dŵr Cymru's application and wrongly took into account that the pumping station will serve other developments in the area;

ii) The authority failed to consider an integral part of Dŵr Cymru's proposal, namely a scheme to remove surface water from its network thus increasing its capacity for foul sewerage. So considered, the scheme as a whole would amount to Schedule 2 development under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (the EIA Regulations) requiring an environmental statement (ES);

iii) The officer's report in respect of the application failed to set out crucial details of the construction works and their impacts;

iv) That report also failed to set out impacts on rugby pitches in Hailey Park.

6. The grounds in respect of the discharge of condition 24 are:

i) The authority did not take into account a material consideration namely the need to obtain a further HMA for the scheme now proposed, which differs from that dealt with in the submitted HMA;

ii) The authority failed to consider the need for an ES to include a description of the reasonable alternatives and the main reasons for the option chosen;

iii) The authority failed to consider the environmental effects of various offsite works which were part of such effects of the developer's proposal.

7. Before me, the authority was represented by Ms Buono, the defendant by Mr Williams and Dr Williams, and Dŵr Cymru by Mr Kimblin KC. The remaining parties, the developer and the landowners, were represented by Ms Pindham. Each made focussed submissions in writing and orally. The parties agreed a list of issues, a chronology, and a list of legal principles. Not only was this helpful but it assisted the fulfilment of the overriding objective in that although the hearing was listed for two days, submissions were completed in one. This may be seen as a model of how such cases should be presented, and I am grateful to all concerned.

Statutory framework

8. The agreed legal principles may be summarised as follows.

9. Schedule 2 of the EIA Regulations relates to development likely to have significant effects on the environment by virtue of factors such as its nature, size, or location. These include urban development, other than housing, of over 1 hectare, and housing development of over 150 houses.

10. Regulation 2(1) provides that EIA is the process of preparing an ES, consultation, publication, and notification, examining the environmental information, and reaching a reasoned conclusion of the significant effects of the proposed development on the environment. It also provides that a screening opinion means a written opinion as to whether development is EIA development. Regulation 6 provides that a proposed developer may request such an opinion from the relevant planning authority, and the request must be accompanied by a description of the development and its likely significant effects. Regulation 9 deals with subsequent applications where environmental information has already been provided. Regulation 17(3) requires an

environmental statement to include a description of the reasonable alternatives studied by the applicant and an indication of the main reasons for the option chosen.

11. Article 2(1) of EU Directive 2011/92/EU (the Directive) requires EU Member States to adopt all necessary measures to ensure that projects likely to have a significant effect on the environment are made subject to an assessment of their effects, before consent is given. "Project" is defined in article 1 as "the execution of construction works or other installations or schemes" and "other interventions in the natural surroundings and landscape".

12. The EIA Regulations use the term "development" rather than "project". Nothing turns on that difference in this case. They remain in force notwithstanding the withdrawal of the UK from the European Union. Their meaning and effect should continue to be determined in accordance with retained EU and domestic case law, as well as retained general principles of EU law, under section 6(3)(a) of the EU (Withdrawal) Act 2018.

The 1991 Act

13. Turning now to examine the duties and powers of Dŵr Cymru under the 1991 Act in more detail, section 94 imposes a general duty to provide a sewerage system. The owner or occupier of premises may requisition the provision of a public sewer for domestic purposes under section 98, and the undertaker may charge for such a provision under section 99. Section 101 provides a right to connect sewers and drains to the public sewer, on notice. Undertakers may lay pipes in streets and on other land and may enter land for works purposes, to survey, for sewerage purposes and other purposes under sections 158 and 159 and 168-171. "Pipe" is widely defined to include "accessories.'"

Legal principles

Projects

14. In *R (Ashchurch Rural Parish Council) v Tewkesbury BC* [2023] EWCA Civ 101, Andrews LJ, giving the lead judgment, said at [74] that the term "project" should be interpreted "broadly, and realistically". At [80], she added that the identification of the project is based on a fact-specific inquiry.

15. What constitutes the project is a matter of judgment for the planning authority, subject to challenge on grounds of rationality or other public law error. Lang J in *R (Wingfield) v Canterbury City Council* [2019] EWHC 1975 (Admin) at [64] after a review of the authorities, identified four criteria against which that judgment may be made: (i) whether two sites are owned or promoted by the same person; (ii) simultaneous determination; (iii) functional interdependence; and (iv) stand-alone projects. These were cited with approval in *Ashchurch* at [81] as "a non-exhaustive list of potentially relevant criteria, which serves as a useful aide-memoir."

16. These criteria were recently considered by Holgate J in *R (Together against Sizewell C Ltd) v SSESNZ* [2023] EWHC 1526 (Admin). At [73-4], he said:

> "The weight to be given to them will depend upon the circumstances of each case and is a matter for the decision maker.
>
> Interdependence would normally mean that *each* part of the development is dependent on the other, as, for example, in *Burridge v Breckland District Council [2013] JPL 1308 at [32] and [42]*."

17. At [70], Holgate J pointed out that an irrationality challenge presents a high threshold:

> "The threshold for irrationality in the making of such a judgment is a difficult obstacle to surmount (see e.g. *Newsmith Stainless Limited v Secretary of State for the Environment, Transport and the Regions [2017] PTSR 1126*)."

18. Although two sets of proposed works may have a cumulative effect on the environment, this does not make them a single project for these purposes. Two potential projects but with cumulative effects may need to be assessed, see *R (Larkfleet Ltd) v South Kesteven DC* [2015] EWCA Civ 887, Sales LJ (as he then was) at [36]. At [38] he continued:

> "The EIA Directive is intended to operate in a way which ensures that there is appropriate EIA scrutiny to protect the environment whilst avoiding undue delay in the operation of the planning control system which would be likely to follow if one were to say that all the environmental effects of every related set of works should be definitively examined before any of those sets of works could be allowed to proceed (and the disproportionate interference with the rights of landowners and developers and the public interest in allowing development to take place in appropriate cases which that would involve). Where two or more proposed linked sets of works are in contemplation, which are properly to be regarded as distinct "projects", the objective of environmental protection is sufficiently secured under the scheme of the Directive by consideration of their cumulative effects, so far as that is reasonably possible, in the EIA scrutiny applicable when permission for the first project…is sought, combined with the requirement for subsequent EIA scrutiny under the Directive for the second and each subsequent project. The adequacy and appropriateness of environmental protection by these means under the EIA Directive are further underwritten by the fact that alternatives will have been assessed at the strategic level through scrutiny of relevant development plans…"

19. However, the device of splitting a project into smaller components that fall below the EIA thresholds in an attempt to avoid the requirement to carry out an environmental assessment (colloquially known as salami slicing) is not permissible. The failure to take account of the cumulative effect of several projects must not mean that they all

escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment, see *Wingfield* at [51-52].

20. At [72] in *Sizewell,* Holgate J said:

> "But the Directives and jurisprudence of the European Court of Justice recognise that it is legitimate for different development proposals to be brought forward at different times, even though they may have a degree of interaction, if they are different "projects". The Directives apply in such a way as to ensure appropriate scrutiny to protect the environment, whilst avoiding undue delay in the operation of the planning control system. Undue delay would be likely if all the environmental effects of every related set of works had to be definitively examined before any of those works could be allowed to proceed. Where two or more linked sets of works are in contemplation, which are properly to be regarded as distinct "projects", the objective of environmental protection is sufficiently secured under the Directives by consideration of their cumulative effects, so far as that is reasonably possible, when permission for the first project is sought, combined with the requirement for subsequent scrutiny under the Directives for the second and each subsequent project."

Statutory undertakers

21. The problem of granting planning permission for substantial residential development to connect with a sewage network which was not adequate to bear the additional load, was dealt with by the Supreme Court in *Barratt Homes Ltd v Dŵr Cymru Cyf* [2009] UKSC 13. The narrow point in that case was whether a sewerage undertaker has a right to select the point of connection or to refuse a developer the right to connect with a public sewer because of dissatisfaction with the proposed point of connection. The court concluded that it did not. Lord Phillips, giving the lead judgment of the majority, addressed the wider problem at [45], referring also to the regulator of the industry, OFWAT:

> "If conditions of planning permission are to provide the answer to the problem of the connection of private sewers to public sewers which are not adequate to bear the additional load, it would seem essential that there should be input to planning decisions from both the relevant sewerage undertaker and OFWAT."

22. At [58], he observed that it was desirable that the statutory undertaker and OFWAT should be consulted as part of the planning process. Consequently, sewage undertakers became further involved in the planning process and amendments were made to the 1991 Act. The Secretary of State for Wales made the Town and Country Planning (General Permitted Development) Order 1995. By Article 3(1), planning permission is granted for the classes of development which are described in Schedule 2. In Part 16 of Schedule 2 development undertaken by undertakers is permitted under Class A(a) for all the development authorised under the 1991 Act which is not above

ground level. Article 3(10) provides that planning permission is not granted by Article 3(1) and Schedule 2 Part 16 unless the local planning authority has adopted a screening opinion (or equivalent ministerial direction) under the EIA Regulations.

23. In *Marcic v Thames Water Utilities Ltd* [2003] UKHL, the House of Lords held that there is no duty at common law for undertakers to provide adequate sewers so as to avoid flooding by overloading. Lord Hoffmann said at [70]:

> "The 1991 Act makes it even clearer than the earlier legislation that Parliament did not intend the fairness of priorities to be decided by a judge. It intended the decision to rest with the Director, subject only to judicial review. It would subvert the scheme of the 1991 Act if the courts were to impose upon the sewerage undertakers, on a case by case basis, a system of priorities which is different from that which the Director considers appropriate. "

24. That principle was applied in *Manchester Ship Canal v United Utilities Water Limited* [2022] EWCA Civ 852. Nugee LJ, giving the lead judgment, held that to hold that statutory undertaker liable for trespass or nuisance for unauthorised discharges into the canal would be inconsistent with the statutory scheme applicable to it as sewerage undertaker. In the present case there is some disagreement between the parties on how this principle is to be applied.

The court's approach to planning decisions

25. The next set of principles relate to considerations which were material to the decisions of the authority under challenge. Such considerations fall into three broad categories. The first comprises those identified by statute as considerations to which regard must be had. The second are those identified by the statute as considerations to which regard must not be had. The third are those to which the decision-maker may have regard as a matter of judgment, see *R (Friends of the Earth Ltd) v Heathrow Airport Ltd* [2020] UKSC 52. The test whether a consideration falling within the third category is so obviously material that it must be taken into account is the *Wednesbury* irrationality test. Lord Hodge and Lord Sales, giving the lead judgment, said at [120]:

> "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."

26. Next is the law relating to conditions attached to planning permissions. These are not to be read like statutes but as by a reasonable reader, see *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74 at [36] and *Lambeth LBC v Secretary of State* [2019] UKSC 33 at [19].

27. The principles relating to the proper approach of the court to a report compiled by planning officers for a planning authority as part of the latter's decision-making process are summarised by Lindblom LJ, giving the lead judgment, in *Mansell v Tonbridge & Malling Borough Council & Ors* [2017] EWCA Civ 1314 at [42] as follows:

> "The principles are not complicated. Planning officers' reports to committee are not 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 consequence of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact… or has plainly misdirected the members as to the meaning of a relevant policy…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…But unless there is some distinct and material defect in the officer's advice, the court will not interfere."

28. Such a report is not required to consider the various issues in exhaustive detail. Part of a planning officer's expert function "must be to make an assessment of how much information needs to be included… in order to avoid burdening a busy committee with excessive and unnecessary detail", see Sullivan J in *R v Mendip District Council v Fabre* (2000) 80 P & CR 500, at 509, cited with approval in by Singh LJ in *R (Sahota) v Herefordshire Council* [2022] EWCA Civ 1640 at [23]. That a report could have explored issues in greater detail does not necessarily mean it has materially misled the committee.

29. The circumstances in which a decision may be amenable to judicial review based on a mistake of fact were examined by Carnwath LJ (as he then was) in *E v SSHD* [2004]

EWCA Civ 49. At [66] he said:

> "…First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been 'established', in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning."

The pumping station

30. I now turn to apply those principles to the facts of this case and deal with the background to the planning permission for the pumping station in a little more detail. The application was accompanied by a planning statement by Dŵr Cymru's consultants, Arup, which stated that the need for the proposed development "derives from" the grant of planning permission for 6000 homes at Plasdŵr. Arup submitted a screening request in relation to the sewage scheme which was being provided for that development, recognising that it was "effectively part of" that development on the basis that it would provide that additional capacity needed "to serve the increase in the local population size." Arup considered the proposed development to be listed as Schedule 2 development and identified several potential impacts, including to protected sites of international significance such as those located on the Severn Estuary, but did not consider the impacts to be significant.

31. The authority issued a negative screening opinion on the basis that the sewage scheme and the residential development are stand-alone projects, and gave several reasons. The two schemes would not be located on adjacent land. The former was being undertaken by Dŵr Cymru and the latter by the developer. The former was being undertaken not only to serve the latter but also other existing and potential developments in the area so that there was a functional relationship between the two but no functional interdependence. The former was considered to be the project for EIA purposes and did not exceed the thresholds set out in Schedule 2. Accordingly, the authority did not consider whether any potential impacts would be significant. A separate screening opinion was issued in respect of the pumping station, which mirrored that in respect of the sewage scheme.

32. The authority's planning officer issued a report on the application for planning permission in respect of the pumping station in September 2022, and included the following, referring to Dŵr Cymru by its English name, Welsh Water:

> "Detailed consideration has also been given as to whether the 'Sewer Reinforcement Scheme' forms part of the same project as the strategic mixed-use development of Plasdŵr. However, it was concluded that there are a number of factors that militate strongly against the scheme being an extension to the mixed-use scheme including that the proposal is:
>
> • being constructed on/under land which is not directly connected or adjacent to the mixed-use scheme and, in reality,

> is an expansion of the existing public sewerage network and, therefore, they are effectively stand-alone projects;
>
> • being undertaken by Welsh Water, a statutory undertaker, not the developer of the mixed-use scheme and on land within separate ownership;
>
> • being undertaken not to serve only the foul needs of the mixed-use scheme, but also of existing (and potential future) developments in the area, therefore, whilst there is a functional relationship there is no functional interdependence.
>
> 3.13 In light of the above, Members should note that a revised Screening Opinion has been adopted for the current application, which mirrors the Opinion for the overall infrastructure works (i.e. is not considered under 11(c) and is concluded to - not amount to EIA development)."

Ground 1-interdependence

33. Ms Buono submits that this reasoning is wrong and that there is functional interdependence between the Plasdŵr development and the pumping station as the two are dependent on one another, however else the pumping station might have been funded. The fact that it may serve other developments in the area is immaterial. The authority should have had regard to Arup's description of the wider sewage scheme as part of the Plasdŵr development because it is required to serve the latter. This is not mentioned in the report.

34. In my judgment, as the other parties submit, the officer was entitled to deal with this issue in this way and the authority was entitled to rely upon it. The fact that the pumping station is needed for the Plasdŵr development does not mean that it will not also serve other existing and potential developments in the area, and the officer and the authority were entitled to have regard to those matters. The high threshold of irrationality in this approach has not been surmounted.

Ground 2-surface water removal

35. The next ground is that the authority left out of account an integral part of the project, the surface water removal scheme. The removal of such water from the sewage network was identified by Arup as needed as a result of lack of capacity at the Hailey Park connection point. Had this been taken into account, then it may together with the pumping station proposal amount to Schedule 2 development by, for example, exceeding the one hectare threshold.

36. However, the officer was aware of this issue because the discharge application was considered on the same day and the report for that application referred to the application in respect of the pumping station. It was noted that Dŵr Cymru would be responsible for surface water removal and that the Plasdŵr development could not be fully occupied until such works had been completed. There are many options for removal as part of the management and improvement of a large urban network. In my

judgment there was no obligation on the officer or the authority to work through such options.

Ground 3-construction

37. The officer's report did not set out details of the construction works for the pumping station, their duration, or impacts. These are likely to include noise, air pollution, visual intrusion, and diversion in the setting of a public park. The report referred to the construction and environmental management plan, and one of the proposed conditions was that the development should be undertaken in accordance with such a plan. The officer said this at [9.7.1]:

> "Some disruption and inconvenience is likely to result from demolition and construction works, however, given the scale and nature of the works being undertaken in accordance with the submitted CEMP. It should be noted that the contents of the CEMP are wide ranging and separate legislation, including control in respect of health and safety and over noise and other sources of pollution, are relevant in respect of some matters."

38. The level of detail was a matter for the officer's judgment, and it was not irrational to approach the matter in this way. In my judgment the report is not materially misleading.

Ground 4- the rugby pitches

39. Finally, it is contended that the report made no mention of the fact that one of the two rugby pitches at the north end of Hailey Park where the pumping station is to be situated, will be partly taken out of use for the duration of the works, and on completion one of the pitches would need to be reconfigured. The officer's report stated that the loss of land caused by the development would not negatively impact the adjacent areas of informal and formal recreational space. The local rugby club did not object. The report referred to the fact that the authority's park officer who is responsible for the management of Hailey Park had no objections, having considered the impact on the pitches and associated changing rooms.

40. Policy C4 of the local plan refers to the loss of open space, which in my judgment clearly contemplates such loss which is permanent. Again, the level of detail was a matter of judgment for the officer. There is no irrationality and nothing materially misleading.

The discharge of condition 24

41. I turn now to consider the grounds in relation to the discharge of condition 24. The condition provides:

> "STRATEGIC FOUL DRAINAGE MASTERPLAN
>
> No reserved matter application shall be approved by the Local Planning Authority until a strategic foul drainage masterplan for the whole outline permission site, accompanied by a foul drainage catchment plan and informed by a Hydraulic

> Modelling Assessment (HMA), have been submitted to and approved in writing by the Local Planning Authority. The submitted strategic foul drainage masterplan shall include details of the following:
>
> a) suitable points of connection for each foul drainage catchment to connect to the existing public sewerage system
>
> b) how each development phase within each drainage catchment will be effectively drained to the existing public sewerage system and demonstrate how each phase will accommodate and include a provision for foul drainage flows for all subsequent phases
>
> c) any improvement or reinforcement works required to the public sewerage system in order to accommodate the development
>
> d) an implementation programme, which shall take into consideration the phasing schedule and plan approved under condition 17 (PHASING).
>
> Thereafter, any subsequent Reserved Matter application shall accord with the approved details or any modification as may be approved through subsequent discharge of condition applications. No building shall be occupied on any reserved matters site until the works, identified by the Hydraulic Modelling Assessments and through part C of this condition, have been completed on the public sewerage system serving that reserved matters site.
>
> Reason: To prevent hydraulic overloading of the public sewerage system, protect the health and safety of existing residents, ensure no pollution of or detriment to the environment and to ensure the site can be effectively drained."

Ground 1-HMA

42. Thus, the foul drainage masterplan was required by condition 24 to be informed by a HMA and to include details of any improvement or reinforcement works required to the sewage network to accommodate the development. The submitted HMA did neither because the scheme now pursued was developed subsequently. The ES referred to a HMA to determine the extent of infrastructure reinforcement and/or storm water removal measurers. The ES also identified a moderate adverse environmental impact in respect of offsite works, which may be reduced to negligible, but that depended on implementation of mitigation measures as identified by a HMA. The officer's report to committee on the discharge application does not refer to the latter point but says that the lack of significant environmental effects is evidenced through the screening opinions, whereas all that these opinions do is consider the applicability of the quantitative thresholds in Schedule 2. The failure to conclude that there was functional interdependence is another criticism of this officer's report.

43. I have already determined the latter point. In response to the remainder, the other parties make various nuanced points. The crucial one, in my judgment, is that it was Dŵr Cymru who requested condition 24 to be imposed. It is clear from the reason given for the condition that its purpose was to attempt to address the sort of problem referred to in *Barratt Homes,* namely overloading the network. The officer's report on the discharge application sets out the response of Dŵr Cymru, which supported the discharge. The response made clear that the developer had been engaging with Dŵr Cymru to produce solutions and a point of connection had been agreed. Dŵr Cymru made clear that until the works to deliver the connection to the sewage network at the identified point have been completed and surface water has been removed, no communication of flows from the majority of the Plasdŵr development will be permitted to discharge to the network. In my judgment, the fact that the solution ultimately identified in the masterplan was not one of the notional solutions canvassed in the HMA does not mean that the masterplan was not informed by the HMA. The masterplan also identified mitigation measures, including connection to a point of adequacy. In my judgment it was not irrational for the authority to discharge condition 24 in these circumstances and there was nothing materially misleading about the officer's report.

Ground 2-alternatives

44. Much of the same reasoning applies to the second and third grounds, that the authority failed to consider alternatives or off-site works including surface water removal. It is not in dispute that the discharge application was a subsequent application within the meaning of regulation 9(1) of the EIA Regulations, so the issue was whether the authority had adequate environmental information already before it to assess the significant effect of the development within the meaning of regulation 9(2). The officer's report concluded that it had, and so the requirement in regulation 17(3) for the ES to describe reasonable alternatives was not engaged in the discharge application.

Ground 3- off site works

45. In terms of off-site works and surface water removal, the officer's report recognised that these are the responsibility of Dŵr Cymru as statutory undertaker and, as indicated above, Dŵr Cymru and the developer agreed that the majority of the Plasdŵr development will not be connected to the network until the works for the agreed connection and surface water removal have been undertaken.

46. In my judgment, there was nothing irrational about this approach.

Conclusions

47. Accordingly, notwithstanding the focussed submissions of Ms Buono, the claim must fail. Counsel helpfully indicated that any consequential matters which cannot be agreed can be dealt with on the basis of written submissions. A draft order, agreed as far as possible, and any such submissions, should be filed within 14 days of this judgment being handed down.