FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 1
P14/24

Lord President
Lord Malcolm
Lord Pentland

OPINION OF THE COURT

delivered by LORD CARLOWAY, the LORD PRESIDENT

in the reclaiming motion

in the cause

CAZ RAE

Petitioner and Reclaimer

against

GLASGOW CITY COUNCIL

Respondents

WHEATLEY HOMES GLASGOW LIMITED

Interested Parties

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Reclaimer: MacGregor KC, Deans; Drummond Miller LLP (for Brown & Co Legal LLP)
Respondents: Burnet KC, Colquhoun; Harper Macleod LLP
Interested Parties: JDC Findlay KC, Dunlop; Shepherd & Wedderburn LLP

14 January 2025

Introduction

[1] This is a reclaiming motion from an interlocutor of the Lord Ordinary dated 1 August 2024 (2024 SLT 974) refusing to reduce a decision of the respondents not to conduct an

Environmental Impact Assessment of the demolition of four tower blocks on the Wyndford Estate in Maryhill.

Legislation etc.

[2] European Union Directive 2011/92/EU on the assessment of the effects of projects on the environment is prefaced (recital 7) by a statement that development consent for projects which are "likely to have significant effects" on the environment should only be granted after an assessment of the "likely significant environmental effects" has been carried out. The assessment involves the developer providing certain information (rec 12) followed by "[e]ffective public participation" in the decision making process (rec 16). This is designed to increase accountability and transparency in that process (see also recs 17 and 19). Article 2(1) requires member states to adopt all measures which are necessary to ensure that this occurs. Article 3 describes what is to be done by way of information and public consultation.

[3] The Directive is implemented by the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. These are highly detailed and prescriptive. Regulation 2 defines an EIA development as including a Schedule 2 development which is "likely to have significant effects" on the environment by virtue of its nature, size or location. It is agreed that the demolition of the tower blocks falls within Schedule 2.

[4] In terms of regulation 3, planning permission for an EIA development should not be granted unless an EIA has been carried out. An EIA is a process which commences with an EIA report from the developer, then involves public consultation and ultimately reaches a reasoned conclusion by the planning authority upon the available material (reg 4(1)). It requires to identify, describe and assess the "direct and indirect significant effects" (reg 4(2), see also (5)).

[5] Whether a particular development is an EIA one depends upon the conclusion of a screening opinion (reg 6). Such an opinion may be requested from the planning authority by a developer (reg 8(1)) who must describe any aspects which are "likely to be significantly affected" by the development. The developer can describe any features which are intended to avoid or to prevent "significant *adverse* effects" (reg 8(3); emphasis added).

[6] Regulation 7 is in the following terms:

> "*7.— General provisions relating to screening*
>
> (1) When making a determination as to whether Schedule 2 development is EIA development, a planning authority ... must—
>
> (a) ... take into account—
>
> (i) such of the selection criteria set out in schedule 3 …; …
>
> (2) Where a planning authority adopt a screening opinion ...—
>
> (a) that screening opinion ... must be accompanied by a written statement giving, with reference to the criteria set out in schedule 3 as are relevant to the development, the main reasons for their conclusion as to whether the development is, or is not, EIA development; and
>
> (b) where the screening opinion… is … that development is not EIA development, the statement referred to in paragraph (a) must state any features of the proposed development or proposed measures envisaged to avoid or prevent significant *adverse* effects on the environment" (emphasis added).

[7] The Schedule 3 criteria include, first, the characteristics of the development. Regard must be had to its size and design, any cumulative effects when taken along with other existing or approved developments, the use of natural resources, and the risks of accidents and to health. Secondly, location, in the sense of the sensitivity of areas likely to be affected, has to be considered. This includes existing land use and the abundance, availability, quality and capacity of natural resources. Thirdly, the characteristics of any potential impact on the environment must be looked at. This will include its magnitude, nature, intensity, probability, duration, frequency, reversibility and the possibility of reducing any impact.

[8] The Scottish Government's Planning Circular No. 1 on the 2017 Regulations states:

> "41. The Regulations expressly provide that a developer may, when requesting a screening opinion, include a description of any features of the proposed development, or proposed measures, envisaged to avoid, or prevent significant adverse effects on the environment, and the planning authority must take this information into account in reaching a screening opinion.
>
> 42. The extent to which mitigation or other measures are taken into account in reaching a screening opinion will depend on the facts of each case. In some cases, the measures may form part of the proposal, be modest in scope or so plainly and easily achievable that it will be possible to reach a conclusion that there is no likelihood of significant environmental effects. The planning authority must have regard to the information provided by the developer, and should interpret this in light of the precautionary principle and taking into account the degree of uncertainty in relation to the environmental impact, bearing in mind that there may be cases where the uncertainties are such that Environmental Impact Assessment is required.
>
> 43. Where, in reaching a screening opinion, a planning authority takes into account proposed mitigation measures, the authority should subsequently consider the need for appropriate obligations to ensure these measures are delivered and included in any subsequent grant of permission, regardless of whether or not the development is EIA development."

Background and Procedural History

[9] The Wyndford Estate in Maryhill, Glasgow includes a group of four 26-storey tower blocks containing around 600 flats. In February 2022, the Glasgow Housing Association (now Wheatley Homes Glasgow Ltd, the interested parties) decided to demolish the blocks. The petitioner lives near the Wyndford Estate with her children. She is opposed to the demolition.

[10] On 31 January 2023, Historic Environment Scotland refused a listing request; the blocks not being of special architectural or historic interest. As part of a planned £100 million regeneration scheme, the blocks are to be replaced with low rise buildings containing 386 affordable homes and a new two-storey community hub. An initial screening opinion was carried out in order to determine whether an Environmental Impact Assessment was required.

[11] The respondents' screening opinion of 14 March 2023 determined that an EIA was not required. The petitioner successfully challenged that determination by judicial review. The

opinion was reduced of consent on 12 September 2023 on the basis of inadequate reasoning. A second screening opinion was issued on 13 October 2023. This again determined that no EIA was required. The petitioner challenged this decision. Although the Lord Ordinary held that this second screening opinion was based on an error of law, he declined to reduce it because the application of the correct legal test would have produced the same result (see *infra*).

Statement of Methodology

[12] Safedem are the contracted demolition company. They produced a statement of methodology. The blocks are to be demolished by controlled explosions, similar to those used in an earlier demolition of two other blocks. The works are to take around 24 months to complete, with noise being permitted on week days only from 8.00am until 5.00pm. Properties, which are adjacent to the blocks, are to remain occupied throughout.

[13] Controls to mitigate the impact of potential risks were analysed. There were three main stages. First, there was the pre-demolition stage which included pre-start surveys, including those for birds, bats and other wildlife. Traffic management plans had been mapped out. The statement endeavoured to ensure the methodical, sequential execution of the demolition in order to provide safety and security to members of the public, the environment and the surrounding area. Safedem have to obtain details of utility services in order to liaise with the relevant providers on their disconnection and relocation while the work is being carried out.

[14] The second is the demolition stage. Particular attention is given to dust control. This is to be achieved by spraying water and monitoring air quality. Fire safety and waste management policies are detailed along with procedures to segregate waste materials. The recycling target is 99%. All asbestos materials are to be removed prior to demolition. There is to be a "soft stripping" of the blocks to remove any fixtures, fittings and non-load bearing walls.

Safedem conducted 3D modelling which ran simulations in order to predict the collapse mechanism and the debris spread.

[15] The third stage concerns post demolition risks and mitigations. The site is to be monitored for any instability in the remaining structures and debris. Clean up squads and road sweepers are to be provided. If any residential property is deemed unsafe, the occupants will be taken to an Evacuation Centre, where alternative accommodation will be provided.

[16] Brian Hamilton, a chartered structural engineer and the director of the Wyndford Demolition project, provided an affidavit. He had some 30 years experience of working with Safedem on various demolition projects. He regarded their proposal for demolition to be a tried and tested method, with Safedem having the appropriate experience for the task. Mitigation of risk formed part of the demolition process. Lisa Davidson, a planner with the respondents, was part of the screening opinion team. The developer's mitigatory proposals were part of the application and followed industry best practice. They were straightforward and easy to implement. There was no reason to doubt their effectiveness.

Second Screening Opinion

[17] Following the successful judicial review, on 13 October 2023 the respondents issued the second screening opinion that an EIA was not required. The opinion set out, in a tabular format, each of the criteria set out in Schedule 3 to the 2017 Regulations. There was a column seeking "yes" or "no" answers to whether the particular criterion was applicable, followed by a column headed "Briefly describe potential impact" and then a final column headed "Is this likely to result in a significant *adverse* effect on the environment?" (emphasis added).

[18] From the answers to the final column, the assessed environmental impact was, in summary, as follows: (a) the demolition will only use water and energy. This use was not on a

scale which would result in a significant adverse environmental effect; (b) 98% of demolition waste will be recycled and 10,000m³ of the demolished material will be crushed and retained on site. The effect is unlikely to be significant; (c) dust generation will be controlled by wetting the surfaces and by providing the crusher with a water supply. A boundary exclusion zone will be set up for the explosions. Asbestos will be identified and removed by an approved, licensed asbestos removal contractor. The proposed mitigation measures will effectively control the release of pollutants and any hazardous, toxic or noxious substances into the air; (d) the mitigation measures will effectively control the release of pollutants and the risk of contamination of land or water; (e) noise, vibration and the release of light will be limited to the specified hours of work; (f) control and mitigation measures will be in place to limit the risk of accidents and to ensure safe working practices; (g) the blocks will be demolished in a methodical and progressive sequence by the controlled use of explosives; (h) the risk of a significant effect from the proposed development was low. Filters will be installed in manholes and traps to capture any demolished materials that could otherwise be carried off by surface water and into the drainage infrastructure. This will prevent pollution of the River Kelvin; (i) the development will not have a significant adverse impact on the function or integrity of Sites of Importance for Nature Conservation or the Green Corridor. The loss of the trees will not have a significant adverse environmental effect. Any impact will be mitigated by replacement planting; and (j) all existing residents of the blocks are being re-housed, leaving the blocks unoccupied during the works. Neighbouring residents will be temporarily inconvenienced by the exclusion zones. There will be a temporary evacuation of residents on the day of the explosions. Mitigation measures will support neighbouring residents over the temporary period. The effect is unlikely to be significant.

[19] The final, general question of whether there was "a high or low probability of a potentially significant effect?" was answered as "low". The conclusion was that an EIA was not required because the proposal was unlikely to cause a significant adverse effect on the environment. It was not therefore an EIA development as defined in regulation 2. The developer had proposed appropriate mitigation measures to prevent, repair or reduce any potential impact.

The Lord Ordinary

[20] The Lord Ordinary reasoned that the purpose of the 2017 Regulations was to ensure that relevant environmental issues were taken into account (*R (Finch)* v *Surrey CC* [2024] PTSR 988). The Regulations had to be interpreted against that background; to allow meaningful public participation in EIA development decisions. The Regulations provided criteria for determining whether a development ought to be subject to an EIA. The phrase "likely to have significant effects on the environment" was one that had to be construed as a whole (cf *R (Loader* v *Communities and Local Government Secretary* [2012] EWCA Civ 869 at paras 26-27; and *R (Bateman)* v *South Cambridgeshire DC* [2011] EWCA Civ 157 at para 20). Whether there was a real risk or serious possibility of such effects remained a matter for the judgement of the planning authority, such that a decision to adopt a screening opinion could be challenged only on limited grounds (*R (Finch)* at paras 56 and 58). If there was any doubt, following the precautionary principle, an EIA was required (*R (Champion)* v *North Norfolk DC* [2015] 1 WLR 3710 at para 51). Some inherent elements of the development, which would avoid significant effects, may be taken into account at the screening stage. Modest mitigatory measures were to be considered (*Gillespie* v *First Secretary of State* [2003] Env LR at paras 37, 46 and 49). The Scottish Government's Planning Circular (*supra*) was an accurate statement of the law.

[21] The respondents' assessment of the selection criteria appeared in the screening checklist. Instances in which potential impacts had been identified, but where mitigatory or remedial measures would contribute to the ultimate decision, were specified. The respondents' decision to take mitigatory measures into account had not been shown to be outwith the range of decisions reasonably open to them. They had set out the relevant criteria and stated their view on whether there was likely to be a significant adverse effect on the environment. A detailed and full assessment of the potential impact was not required in a screening opinion.

[22] In order to make a finding of irrationality, the court required a proper basis upon which to determine that the respondents' view of the sufficiency of the information available was irrational. There was insufficient material to permit the court to conclude that the respondents' view was irrational, even allowing for the heightened degree of scrutiny which was called for. The respondents' use of the words "significant adverse effect" on the environment in its screening opinion, as opposed to the criterion set out in the Regulations, *viz* "significant effects", was an error. It had to be assumed that the wrong test had been used throughout the opinion. Nevertheless, the adoption of the correct test would have produced the same outcome. No member of the public had been deprived of the guarantees of access to information and participation in decision-making, which it was the function of the EIA Directive and the 2017 Regulations to safeguard.

Submissions

Petitioner

[23] The test for whether an EIA was required was that the development was likely to have significant effects on the environment by virtue of factors such as its nature, size or location (2017 Regulations, reg 2). There were five grounds of appeal. First, the Lord Ordinary erred in

relying on a case (*R (Finch)* v *Surrey CC*) which had been decided after the substantive hearing, and upon which he had not been addressed. The Lord Ordinary adopted an inquisitorial approach which deprived the parties of a fair opportunity to address the court on the implications of *R (Finch)*. The petitioner had not had a fair hearing either at common law (*Wyman-Gordon* v *Proclad International* 2011 SC 338 at para [58]) or in terms of Article 6 of the European Convention (*R (Osborn)* v *Parole Board* [2014] AC 1115).

[24] Secondly, *R (Finch)* held (para 58) that whether something was "significant" was a value judgement. The provisions were procedural in nature (*ibid* para 62); concerned about how a decision was to be taken. The public had to have an opportunity to express their views (para 63). The planning authority had to have sufficient evidence upon which to make a decision (para 75). It was an error to assume that non-planning regimes, such as the asbestos regulations, would operate in a manner which would avoid significant effects (*ibid* para 108, citing *R (Lebus)* v *South Cambridgeshire DC* [2003] Env LR 17 at paras 41-46 and *R (Champion)* v *North Norfolk DC* at paras 49-51). It was wrong to conclude that there was no need to gather information on environmental impacts if it would make no difference to the decision (para 152, citing *Berkeley* v *Environment Secretary* [2001] 2 AC 603). It was an error to reason that no EIA was required because mitigation measures were possible. *R (Finch)* recognised the value of the significant environmental effects being addressed in an EIA, even if there could be appropriate mitigation measures. Had the Lord Ordinary applied these principles, he would have held that the respondents erred in taking into account the mitigatory and remedial measures.

[25] The Scottish Government's Planning Circular failed to take into account *R (Lebus)* in so far as it suggested that it was possible to say that the effects were not significant if a mitigating measure could deal with these effects. The imposition of planning conditions could not eliminate the existence of such effects (*R (Lebus)* at paras 41 and 42, citing *British*

Telecommunications v *Gloucester CC* [2002] 2 P&CR 33 at para 73). There required to be public consultation on the efficacy of the conditions (*R (Lebus)* at para 45, followed in *R (Champion)* at para 49). Mitigation measures could be considered at the screening stage, but cases involving a material doubt required an EIA (cf *Gillespie* v *First Secretary of State* at para 36).

[26] Thirdly, the respondents had failed to consider all the required matters (reg 7(1)(a)(i)). The petitioner had argued that the methodology statement showed that the respondents' decision had been based on insufficient information. Additional surveys still had to be carried out. The correct test was whether there was sufficient information on which to base a decision (*R (Finch*) at para 74). It was not for the petitioner to show that the respondents' error was material. The petitioner had no duty to furnish the court with evidence which showed that, had the respondents' additional surveys been carried out, new information would not have come to light.

[27] Fourthly, the respondents had applied the wrong test. The correct test was whether the proposed development was likely to have a significant effect on the environment. The respondents had asked whether the development was likely to have a significant *adverse* effect on the environment. The Lord Ordinary correctly held that this was an error in law. He then misdirected himself by refusing to reduce the decision. There was a logical contradiction in the Lord Ordinary stating that it was an error to consider only adverse effects but then to fail to grant reduction on the basis that, in practical terms, only adverse effects were important. The Lord Ordinary accepted that the respondents had asked themselves the wrong question. This was a matter which was fundamental to the lawfulness of the decision, but the Lord Ordinary determined that asking the wrong question was not of practical importance.

[28] Fifthly, the Lord Ordinary erred by placing the burden on the petitioner to show that the error was material. The burden was on the respondents to show that the same outcome was

inevitable. The Lord Ordinary had no material about the evidence that would have been available, had the correct legal test been applied. It was not for the Lord Ordinary to assume the respondents' fact-finding role

Respondents

[29] On the first and second grounds, the respondents did not dispute that the Lord Ordinary ought to have requested submissions on *R (Finch)*, but he was not bound to do so (*Sheridan* v *News Group Newspapers* 2019 SC 203 at para [29]). *R (Finch)* did not innovate on the authorities about which the Lord Ordinary had heard submissions. None of the passages from *R (Finch)* changed the law relating to EIAs. The Lord Ordinary quoted from *R (Finch)* because: (a) it was the most recent relevant authority; and (b) it summarised the existing law in a straightforward fashion. So far as it concerned aspects of the EIA regime, it did not innovate on the law and the Lord Ordinary did not rely on it for that purpose. The parties had made submissions on *Berkeley* v *Environment Secretary* and *R (Lebus)*, both of which were referred to in the passages from *R (Finch)* quoted by the Lord Ordinary. The petitioner had not been disadvantaged by the use of *R (Finch)* as a summary of the relevant principles.

[30] On the third ground, the Lord Ordinary posed (at para [82]) the correct question of whether the respondents had sufficient information upon which to base their conclusion on significant effects. A screening opinion did not involve a detailed environmental assessment but one which, on the basis of incomplete information, was designed to identify "the relatively small number of cases" in which the development was likely to have significant effects (*R (Bateman)* v *South Cambridgeshire DC* at para 20). The question was whether it was legitimate to consider mitigation measures in deciding that an EIA was not required. *Gillespie* v *First*

Secretary of State, which formed the basis for the Scottish Government's Planning Circular, but which was not cited in *R (Finch)*, said that they could be considered.

[31] The Lord Ordinary noted that whether the respondents had sufficient information was a matter for the planning authority, in the exercise of their planning judgement. Mr Hamilton's affidavit dealt with this. The Lord Ordinary correctly recognised (at para [83]) that the material before the respondents had to be capable of providing the basis for a reasoned conclusion. He recognised that he needed some basis upon which to disagree with the respondents' conclusion that they had had sufficient information. Merely pointing to further information, which the respondents might have taken into account, was insufficient; the respondents having reasonably considered that they did not require that information in order to reach a conclusion. The Lord Ordinary's approach did not amount to a reversal of the burden of proof.

[32] On the fourth and fifth grounds, the respondents had assessed all the potential impacts which might have justified a requirement for an EIA. Had the respondents concluded that the development was likely to have significant positive effects on the environment, it would not have been appropriate to demand an EIA (cf *British Telecommunications* v *Gloucester CC* at para 65). The respondents' error was real, but of no practical moment. Reduction was a discretionary remedy. The court could refuse to grant it if it were satisfied that an error in procedure had no real effect on the outcome of the process, and that it caused the petitioner no substantial prejudice. The court should be slow to interfere with the Lord Ordinary's discretion, where its exercise was not obviously wrong.

Interested Parties

[33] On the first and second grounds, *R (Finch)* was a challenge to the grant of planning permission to drill for oil. It was not a screening opinion case, but one which concerned the

ambit of an EIA. Although the dispute arose in the context of the requirement for an EIA, the focus and concern were entirely different. The use of *R (Finch)* served to reinforce the previous case law. There was nothing in *R (Finch)* which was adverse to the petitioner, or went beyond what was common ground. The dispute was not the principle, but whether mitigation could be relied upon in the circumstances. The petitioner wrongly conflated the two stages of the process; i.e. whether the issue under challenge was a full assessment or a screening decision. Only a small number of schedule 2 developments would need an EIA given the time and expense involved (*Kenyon* v *Housing Secretary* [2021] Env LR 8 at para 13).

[34] On the third ground, the Lord Ordinary correctly explained that the decision was a preliminary administrative one. The language of the 2017 Regulations left room for differences of opinion. The task of applying the law to the facts had been confided to the planning authority. This reflected that issues of planning judgement were a matter for the decision maker. The Lord Ordinary discussed the issue of the respondents' discretion in being satisfied that they had sufficient information in the context of the precautionary principle. That certain surveys were outstanding did not mean that a full assessment was required; it was a matter of judgement. The Lord Ordinary properly considered the issue of sufficient information. He recognised that the assessment of sufficiency was for the planning authority. The court should only interfere if the decision was irrational because it was *ultra vires*.

[35] On the fourth and fifth grounds, the Lord Ordinary noted that there was an error of law "in point of form". It was in respect of that error that he had to exercise his discretion. He had expressly directed himself to the appropriate UK Supreme Court authority (*R (Finch)* at paras 86-87). His conclusion was that, if the error had not been made, the same result would have followed. That demonstrated a correct application of *R (Finch)*.

Decision

[36] If a judge chances upon an authority which contradicts the submissions already made, the "proper course" is to afford the parties an opportunity to comment upon it (*Wyman-Gordon* v *Proclad International* 2011 SC 338, Lord Osborne, delivering the opinion of the court, at para [58]). However, he is not bound to do so. It is only necessary if fairness dictates that course (*Sheridan* v *News Group Newspapers* 2019 SC 203, LP (Carloway), delivering the opinion of the court, at para [29]). The fact that the judge does not request additional submissions does not vitiate the decision. If, as here, the new authority simply summarises or repeats what has already appeared from the cases cited, there is no need to put parties to the trouble and expense of making additional submissions.

[37] In order to succeed on this point, the complaining party would have to demonstrate that the authority, upon which the judge relied, was wrong, since otherwise it would have to be applied in any event. The reclaimer had an opportunity of addressing this court on *R (Finch)* v *Surrey CC* [2024] PTSR 988 in the reclaiming (appeal) process; notably at the hearing on the Summar Roll. She did so, but did not contend that *R (Finch)* was wrong. Looking at the process as a whole (ie including the reclaiming motion), no unfairness arises (see *Clippens Oil Co* v *Edinburgh and District Water Trs* (1906) 8 F 731, LP (Dunedin) at 750).

[38] Care must be taken before applying isolated passages of judicial *dicta* out of context. *R (Finch)* was not about a screening opinion but whether an existing EIA of a development for the extraction of hydrocarbons in Surrey ought to have analysed the "downstream" effects of the use of the product as motor fuel. The case is some distance removed from the demolition of buildings in Glasgow.

[39] In *R (Finch)*, it had already been determined, if it were not obvious, that an EIA was required and had been produced. The case concerned (see Lord Leggatt at paras 108-110) the

scope of the EIA, not whether one was needed in the first place. It determined that it was an error to assume that non-planning regimes (eg anti-pollution) would mitigate what were known to be significant environmental effects. It held (*ibid* at paras 152-154) that where a project is "likely to have significant *adverse* effects" (emphasis added), the procedural nature of the regime required the EIA to contain information on these effects to enable the public to comment upon it. That is not the issue in this case.

[40] The extent to which mitigatory measures can be taken into account in a screening opinion will vary according to the circumstances. Where, as here, the measures are "part of the proposal … modest in scope or so plainly and easily achievable", it will be possible to determine that there is, contrary to the situation in *R (Finch)*, "no likelihood of significant environmental effects" (Scottish Government Planning Circular No. 1 of 2017 addressing regulation 2 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017). The court agrees with the Lord Ordinary that the Circular is a correct statement of the law. It is derived from the language in *Gillespie* v *First Secretary of State* [2003] Env LR 30 (Pill LJ at para 36 and 37; see also Laws LJ at para 46). *Gillespie* did concern whether an EIA was required. In making that assessment it was not necessary to compartmentalise the potential adverse effects and to isolate them from proposed mitigation which was part and parcel of the development. Rather, the mitigation could be taken into account in a screening opinion. This approach accords with common sense.

[41] If it were otherwise, any development in which routine or standard measures were to be used, and which were well-known to eliminate any adverse effects, would require an EIA. This would result in substantial delay and expense in relatively straightforward developments. That is not the intention of the Directive or the 2017 Regulations. As was said in *R (Bateman)* v *South*

Cambridgeshire DC [2011] EWCA Civ 157 (Moore-Bick LJ at para 20), when assessing the legality of a screening opinion, the court should:

> "not impose too high a burden on planning authorities in relation to what is no more than a procedure intended to identify the relatively small number of cases in which the development is likely to have significant effects on the environment, hence the term 'screening opinion'."

[42] The proposal, for which approval is required, is not just a demolition of the four blocks. It is one to carry out the demolition in a particular manner and using various conventional mitigatory measures which are designed to reduce the impact on the environment. The demolition of tower blocks is not something new to the respondents or to this area of the city. For many years the tower blocks of the 1960s have been demolished by explosives and replaced by more suitable accommodation. The respondents know that these types of demolitions can be carried out safely and without a significant effect on the environment.

[43] What is in contemplation is a temporary event, albeit one which may last two years. It is to be carried out in controlled circumstances by experienced demolition contractors. The affidavits of Mr Hamilton and Ms Davidson, which are not challenged, make it clear that what is envisaged is tried and tested. It will follow best practice. When all this is taken into account, the conclusion of the respondents' screening opinion cannot be regarded as unreasonable. The respondents have systematically gone through the criteria in schedule 3, considered each and reached an ultimate overall conclusion which cannot be faulted.

[44] There is no indication in the Lord Ordinary's opinion that he decided any fact on the basis of onus of proof. He did determine that the respondents had sufficient information upon which to make an informed screening opinion. The need to obtain further information on, for example, bats prior to carrying out the demolition does not detract from that. This is a normal step and there was no indication that such information might result in a significant adverse

impact. The respondents decided that they had sufficient information, including the statement of methodology, upon which to base their opinion. In order to challenge that, the petitioner would have to point to some material which demonstrated that this was wrong. She did not do so. Although it may well be that it would be an error for the respondents simply to assume that the existence of conditions or non-planning regimes would adequately mitigate any adverse impact, that is not what the respondents did. Rather, they assessed impact on the basis of the proposed development, including the measures set out in the statement of methodology and Safedem's record of past demolitions.

[45] It is correct to say that the test for whether an EIA is required for a schedule 2 development is whether it is likely to have "significant effects" on the environment (2017 Regs, reg 2, EU Directive rec 7, art 1(1)). It does not say "significant adverse effects". Nevertheless, again applying common sense, in the context of the development under consideration, and most developments, it will be effects which are adverse to the environment which will be looked for. This is clear from the inclusion of "adverse" in regulation 8(3), which refers to the purpose of mitigatory measures, and, more pertinent, regulation 7(2)(b) relative to the avoidance or prevention of significant adverse effects specifically in the context of a screening opinion. The purpose of an EIA is not to invite public scrutiny of positive effects on the environment except where these require to be taken into account in a balancing exercise because adverse effects also appear. The Regulations, and the Directive, cannot have been designed to require an EIA of a development which has no adverse effects. In so far as *R (Lebus)* v *South Cambridgeshire DC* [2003] 2 P&CR 5 might be thought to suggest otherwise (Sullivan J at para 51), it must be regarded as erroneous.

[46] In these circumstances, the respondents' decision, which was in line with the Scottish Government's circular, that there did not require to be an EIA because there were no significant

adverse effects, did not constitute an error of law. The court disagrees with the Lord Ordinary on this point. If, as the respondents determined, there were no significant adverse effects, there was no need to have an EIA on the basis that there were nevertheless positive significant effects.

[47] There is no need to go on to consider whether the Lord Ordinary was correct to refuse to grant decree of reduction because the same result would have followed (although upon his hypothesis of error of law, he was entitled to take that view in the circumstances). There was no material error of law to justify such a decree. For that reason, although in effect the reclaiming motion is refused, the court will recall the Lord Ordinary's interlocutor of 1 August 2024, repel the petitioner's pleas-in-law, sustain the respondents' third to sixth pleas and the interested parties' third to eighth pleas, and refuse to grant the remedies sought in Statement IV (i) to (iv) of the petition.