

Rebecca Payne

From: Amanda Scholes on behalf of Planning.Responses
Sent: 24 February 2021 09:09
To: Planning Scanning
Subject: FW: P/4/21PL & P/132/20/RES Hook Lane Pagham
Attachments: Aldingbourne Judgment.pdf

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From: Raymond Cole <Raymond.Cole@arun.gov.uk>
Sent: 23 February 2021 17:15
To: Planning.Responses <Planning.Responses@arun.gov.uk>
Subject: FW: P/4/21PL & P/132/20/RES Hook Lane Pagham

Please could you upload the following e-mail and attachment to the application folders P/4/21/PL and P/132/20/RES, as correspondence from the applicant in the case of the former and a representation letter in the case of the latter?

Thank you

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From: paul collins [REDACTED]
Sent: 21 February 2021 13:52
To: Karl Roberts <Karl.Roberts@arun.gov.uk>; Neil Crowther <Neil.Crowther@arun.gov.uk>; Raymond Cole <Raymond.Cole@arun.gov.uk>

Cc: 'Nicola Swann' <[REDACTED]> Cllr. June Hamilton <[REDACTED]>
Cllr. David Huntley <[REDACTED]> Cllr. Jamie Bennett <[REDACTED]>; Cllr.
Hugh Coster <[REDACTED]> Cllr. Martin Lury <[REDACTED]>; Cllr. Jamie Bennett
[REDACTED]

Subject: P/4/21PL & P/132/20/RES Hook Lane Pagham

Dear All

Given Arun Local Plan 2018 Policies GI SP1 Green Infrastructure and development and SO DM1 Soils and the fact that this site is high grade agricultural land that is currently in use for agriculture (or would be were it not for the development proposed) I have a rhetorical question for you.....Has ADC learnt anything from the attached judgement?

Please put this e mail and the attached judgement on both the files identified.

Thank you

[REDACTED]

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IN THE HIGH COURT OF JUSTICE

CO/901/2017

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

[2017] EWHC 3450 (Admin)

Royal Courts of Justice

Thursday, 7th December 2017

Before:

MR JUSTICE HOLGATE

BETWEEN :

THE QUEEN
ON THE APPLICATION OF
ALDINGBOURNE PARISH COUNCIL

Claimant

- and -

ARUN DISTRICT COUNCIL

Defendant

J U D G M E N T

APPEARANCES

DR A BOWES (instructed by Barlow Robbins Solicitors) appeared on behalf of the Claimant.

MR G LEWIS (instructed by Arun District Council Legal Department) appeared on behalf of the Defendant.

MR JUSTICE HOLGATE:

- 1 The claimant, the Aldingbourne Parish Council ("APC") applies for judicial review of the decision by the defendant, Arun District Council ("ADC") to grant planning permission for eight dwellings on land south and east of Barnside, Hook Lane, Aldingbourne, West Sussex.
- 2 The decision notice was issued on 9th January 2017 pursuant to a resolution passed by the defendant's development committee on 2nd November 2016. The first and second interested parties are the freehold owners of the site, the third interested party holds a charge over that site, and the fourth interested party was the successful applicant for planning permission. None of the interested parties have taken part in these proceedings.
- 3 Permission to apply for judicial review was granted by Sir Wyn Williams on 12th May 2017.

Development plan policies

- 4 At the date of the decision notice, the development plan comprised the Arun District Local Plan ("ADLP") and the Aldingbourne Neighbourhood Development Plan 2014-2034 ("ANDP"). ADC resolved to make the ANDP on 9th November 2016. The ANDP had previously passed a local referendum held on 18th October 2016.
- 5 Policy EH1 of the ANDP provides:-

"Proposals for development outside of the built-up area boundary, that do not accord with development plan policies in respect of the countryside, will be resisted unless it is for essential utility infrastructure, where the benefits outweigh any harm, and it can be demonstrated that no reasonable alternative sites are available."

It is agreed between the parties that those countryside policies are GEN2 and GEN3 of the ADLP. Policy GEN2 is a policy which refers to the definition of the boundaries of the built-up area for the purposes of the local plan. The court was told that those boundaries had been defined in the neighbourhood plan, which followed the local plan.

- 6 Policy GN3 is a general countryside protection policy. It provides:-

"Outside the built-up area, as defined in the proposals map, the countryside will be safeguarded for its own sake. Development will not be permitted unless:..."

A series of exceptions is then listed and the policy concludes by stating:-

"Permission will not be given for the extension of isolated groups of buildings or the consolidation of linear or sporadic development unless the proposal accords with the criteria (i),(ii),(iii) or (v)."

- 7 Policy EH3 of the ANDP is a policy for protection of "the best and most versatile agricultural land" ("BMVAL"). That concept is defined both in the National Planning Policy Framework and in the Neighbourhood Plan to include grade 2 agricultural land as classified by DEFRA. It is common ground that the application site falls within the grade 2 classification. The policy provides:-

"Proposals for development on the 'best and most versatile' agricultural land... will be resisted unless it can be demonstrated that it would meet the following criteria:

- It supports the diversification of an agricultural enterprise or other land-based rural business;
- The need for the development clearly outweighs the harm."

- 8 As part of the background to ground 2 of this challenge, I should refer to the discussion in the Neighbourhood Plan of housing need within the district for which the defendant is responsible. Para. 2.2.4 of the ANDP states that there is an emerging development plan, the Arun Local Plan, which will cover the period 2011-2031. That had reached the stage of being "examined," but the examination had been suspended by the Inspector to allow ADC "to undertake significant work to ensure the local plan is sound". That work included the identification of the Objectively Assessed Housing Need ("OAHN") for the district. The Inspector decided that the draft local plan had proposed a housing target of only 580 dwellings a year which had not been based upon an OAHN exercise. He suggested an annual target of 845 dwellings per year, an increase of 46 per cent.

- 9 The ANDP continues:-

"As the Arun Local Plan Examination is currently suspended, no conclusions have yet been drawn about how the recommended increase in the overall housing target for the District would translate into an increase in the proposed parish allocation for Aldingbourne. However, if a pro-rata uplift were to be applied, it would result in an increase from the proposed Policy H SP1 target of 30 dwellings to approximately 44 dwellings, over the plan period to 2031."

This mathematical exercise simply related to the parish of Aldingbourne.

10 The neighbourhood plan continues:-

"In addition to identifying the Parish's housing allocation, Policy H SP1 of the emerging Arun Local Plan proposes to allocate a strategic development, for at least 2,000 dwellings, in the Barnham/Eastergate/Westergate area. This proposed allocation may include land within Aldingbourne Parish and is therefore of considerable interest and concern to the local community. For clarity, if any such strategic allocation is made within an adopted Arun Local Plan, this will need to be reflected in a future review of the ANDP."

11 Thus, the only review of housing allocations expressly contemplated by the ANDP related to that one site. The ANDP did not contain a policy commitment to make any additional allocations if the emerging local plan should require such action, or if identified housing sites should not proceed. In that regard, it is to be contrasted with policy H1 of the Yapton Neighbourhood Plan 2014-2029 which did. That plan provided as follows:-

"The neighbourhood plan identifies allocations to accommodate growth (policies SA1 and SA2). In addition to these allocations infill development will be considered acceptable within the built-up area subject to the provisions of policy BB1 and other material planning considerations. *Additional allocations will be made if the emerging Arun Local Plan requires such action or if the identified housing sites do not proceed.*" (emphasis added)

12 Turning to the housing policies of the ANDP, which begin at p. 28 of the plan, for reasons which have been set out in that document and were subject to statutory examination, the finally made version of the neighbourhood plan contains no specific allocations of housing land. Policy H6 deals with windfall sites in so far as they may arise within the built-up area boundary. Although this neighbourhood plan has proceeded in advance of the local plan, there is no policy in the neighbourhood plan which provides for its policies to be reviewed in the event of additional allocations becoming necessary when the local plan is adopted.

National Planning Policy Framework

13 Paragraph 112 of the NPPF provides that :-

"Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of

agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality."

Grounds of challenge

14 The claimant has been granted permission to challenge the defendant's decision on two grounds:-

- (1) the officers' report to committee failed to take into account policies dealing with the loss of best and most versatile agricultural land;
- (2) the advice given to the committee failed to take into account the appeal decision of the Secretary of State dated 13th September 2016 on a site at Yapton, alternatively to supply adequate reasons for departing from that decision.

Legal principles

15 The legal principles governing a challenge to a decision of a local planning authority to grant planning permission are well established in a number of authorities. They were summarised by the Court of Appeal in *R (Mansell) v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1324 [para.41]. I also draw attention to the judgment of the Chancellor of the High Court, Sir Geoffrey Vos, at para.63 where in the line with recent statements of the Supreme Court he deprecated excessive legal analysis and criticism of the contents of officers' reports to planning committees. Relevant legal principles have also been summarised in *R (Luton Borough Council) v Central Bedfordshire Council* [2014] EWHC 4325 (Admin) at paras.90-95 and *R (Plant) v Lambeth LBC* [2017] PTSR 453 at paras.66-69.

16 I should also refer to Sales LJ in *R (Lensbury Limited) v Richmond-upon-Thames London Borough Council* [2016] EWCA Civ 814 at para.8, where he stated:-

"An officer's report containing a planning authority's reasons for granting planning permission is to be read fairly as a whole, focusing on the substance of the matter rather than the form. It is not incumbent on an officer compiling a report for the planning committee of a local planning authority to set out and discuss each policy in turn, like a sort of examination paper. If it appears as a matter of substance on a fair reading of the report that matters relevant to the proper application of policies in the development plan have been appropriately identified and assessed, that will be sufficient. Such reports are to be read against the background that they are written for an informed audience (the planning committee) who may be taken to have a

reasonable understanding of, or the means of checking on, the local context and the legislative and policy framework in which the decision is to be taken."

17 In my judgment, that accords with the approach taken by Lord Carnwath in *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865 at para.25.

Ground 1

18 As I have said, it is common ground that the application site lies within an area treated by DEFRA in its agricultural land classification as grade 2. It therefore falls within the definition of BMVAL and falls within the scope of the protection afforded to such land in para.112 of the NPPF and policy EH3 of the ANDP.

19 It should be noted that the first sentence of para.112 requires planning authorities to take into account economic and other benefits of such land before going on to set out the protection policy. It does raise a question which may fall to be considered in some cases, as to the extent to which a particular piece of agricultural land, even of the best quality, does actually provide economic benefits.

20 In line with *Lensbury* and *Hopkins*, the court should assume that members of the planning committee were familiar with such well-known and oft-applied policy. Part of the policy requires that local planning authorities should seek to ensure that areas of poorer quality are used in preference to land of higher quality. The protection of BMVAL is a long-established and very familiar planning consideration.

21 The officers' report dealt with the subject of agricultural land in only one passage, in the following terms:-

"In respect of agricultural land, although according to DEFRA's Mapping... the site is located in an area designated as Grade 2, the land itself is not being used for farming and there is no reasonable prospect that it will in the future be farmed. It is not therefore considered that a refusal could be sustained on these grounds."

22 A judgment of that kind is consistent with the approach taken in the National Planning Policy Framework and with policy EH3 of the neighbourhood plan.

23 It is submitted that the neighbourhood plan contains criteria which suggest that policy EH3 is stricter than para.112 of the NPPF. I do not need to express any view on that. All that it is necessary for me to say for the purposes of this claim is that, although policy EH3 contains a

test as to whether the need for the development clearly outweighs harm, that in itself begs the question whether a proposal would cause any harm to the objectives of the agricultural land protection policy. The effect of the opinion expressed by officers is that it would not. On that basis, it can readily be said that there is *no* harm to be outweighed and therefore no conflict with the second criterion.

24 The first criterion simply allows for the loss of agricultural land where there is a proposal involving diversification of the rural economy, a reference to the use of land for an economic purpose other than purely agriculture. That did not arise in this case. In any event, if one truly had a situation where the loss of agricultural land involved no harm because there was no reasonable prospect of the land being used for that purpose, it is difficult to see how there could be any conflict with this policy. Accordingly, even if it might be said that the policy is stricter than para.112 of the NPPF, that adds nothing in a case where a conclusion of the kind set out in the officers' report is properly arrived at.

25 In the District Council's summary grounds of defence, ground 1 was resisted by reference to the passage from the officers' report to which I have referred. It was submitted that the reasons expressed in that passage were rational, and the defendant continued:

"Indeed, if the site was not being used for farming and there was no realistic prospect of it being used for agricultural purposes in future, it would have been arguably irrational to refuse planning permission simply on account of its formal status as BMVAL."

26 No authority was cited in support of that contention. but, as I have discussed with counsel this morning, it seems to me that that was in line with the views expressed by the House of Lords in *Westminster City Council v British Waterways Board* [1985] AC 476 at p.683F where Lord Bridge said:-

"In a contest between the planning merits of two competing uses, to justify refusal of permission for use B on the sole ground that use A ought to be preserved, it must, in my view, be necessary at least to show a balance of probability that, if permission is refused for use B, the land in dispute will be effectively put to use A."

27 It is unnecessary in this judgment to consider subsequent authority which held that the *BWB* case should not be misunderstood as having laid down a competing needs test as a matter of law. That issue does not arise for the purposes of the present case, because the judgment of the officers, if properly arrived at, was that there was no realistic prospect of the land being used in

future for agricultural purposes. The same stance as that set out in the defendant's acknowledgement of service was maintained in the skeleton prepared on its behalf by Mr Lewis and filed as recently as 4th December, only 3 days before the hearing.

- 28 However, para.32 of the claimant's Statement of Facts and Grounds also challenged the judgment expressed in the officers' report to which I have referred:-

"Officers instead advised members that there was 'no reasonable prospect that it will in the future be farmed'. That advice is misleading. First, it is not based on any evidence. Certainly D points to no such evidence within its pre-action response."

- 29 So the parish council was submitting to the court that although it had taken this point in its pre-action protocol letter before even bringing these proceedings, the response from the District Council did not suggest that there had in fact been any evidence to support the officers' judgment. Nor did the District Council claim that the nature of the issue was such that, as a matter of law, the judgment reached in this case did not require to be supported by specific evidence on that subject.

- 30 Permission was granted by Sir Wyn Williams on the basis of the basis of Statement of Facts and Grounds. The defendant, and indeed the interested parties, were given an opportunity to put forward detailed grounds of defence and any evidence upon which they wished to rely in order to refute the grounds of challenge. Nothing has been put before the court to show that the Council had any evidence to support the bare conclusion, or rather assertion, contained in the officers' report, or to explain why this was a case where no such evidence was necessary. No evidence was adduced to explain the circumstances leading to this conclusion being drawn, which was critical to the Council's decision to treat the proposal as not conflicting with either para.112 of the NPPF or policy EH3 of the ANDP.

- 31 There are, of course, conclusions in certain areas of planning which do not require to be supported by expert or technical evidence, for example, aesthetic judgments. It is useful to have in mind the discussion of this subject by Simon Brown J, as he then was, in *Trusthouse Forte Hotels Ltd v Secretary of State for the Environment* [1987] 53 P & CR 293, 302.

- 32 Although the claimant's skeleton argument for this hearing did not pursue the argument in para.32 of the Statement of Facts and Grounds, Dr Bowes today confirmed on behalf of the claimant that it was still very much in contention. The skeleton had simply relied upon a failure to take into account para.112 of the NPPF and policy EH3 without more. In my judgment this argument was doomed to failure, if the claimant's position had remained that it was not

mounting a legal attack on the statement in the officers' report that there was no realistic prospect of the land being used for agriculture.

- 33 Paragraph 18 of the defendant's skeleton added to the submissions in the council's summary grounds of defence by relying upon the decision of the High Court in *Tiviot Way Investments v Secretary of State for Communities and Local Government* [2015] EWHC 2489 (Admin) at para.30 to the effect that officers were not required laboriously to work through the text of each policy in the development plan engaged by the proposal. This statement is similar to the dictum of Sales LJ to which I have already referred.
- 34 As Patterson J put it in *Tiviot*, when applying s.38(6) of the 2004 Act there is no requirement for a planning authority to adopt a mechanistic approach, which assesses the proposals against each and every policy that may be prayed in aid of, or against, a development, but rather there should be an evaluation of the main policy areas within the development plan that are relevant to the proposal to be determined and an assessment of how the proposal fares against them. What is required is an application of such policies in substance, with or without an explicit reference to them by name.
- 35 At some point after 5.00 p.m. yesterday, the court was told for the first time that the parties were on the point of agreeing a consent order for the approval of the court. The reasons which the parties subsequently put forward in para.2 of the schedule annexed to their draft merely suggested that the decision should be quashed because of a failure on the part of the defendant to have regard to policy EH3 of the ANDP and para.112 of the NPPF. Without more, that joint submission was hopeless, for the reasons I have already explained. Accordingly, and not simply because of the last-minute request for the court to approve a consent order, it was necessary for the matter to be canvassed in oral submissions this morning, to see how the ground of challenge might properly be put.
- 36 With the assistance of counsel, I am just persuaded that the decision should be quashed, but solely on the basis of ground 1, in relation to the judgment which was reached by officers in the passage which I have quoted, and which was adopted by members in their decision to grant planning permission.
- 37 It is trite law that it is a matter for the judgment of officers as to how much material to put into a report to members of the committee, and how far to go in obtaining evidence in order to support the views expressed in the report. The same applies to the members of the committee in deciding what to take from the report, what to accept, what to question, and whether to pursue

matters further. The well-established principle is that that type of decision can only be challenged on irrationality grounds (see, for example, the *Khatun* case and also *Plant*). Nonetheless, I am satisfied that this decision should be quashed.

- 38 However, one of the problems with the opinion in the officers' report is that it is expressed as a bare assertion, without any indication whatsoever as to the basis upon which it had been reached. The defendant has not attempted to support that judgment by referring, for example, to material which was before the local authority and/or before the members which might have explained that basis. So the reader is left completely in the dark as to whether any consideration was given to matters which might inform a judgment, such as, for example, the specific quality of the soil on the application site, the location of the site, and its disposition relative to other land uses, the extent to which that might affect its suitability for agriculture, and any economic factors which might affect the future likelihood of the site being used for agriculture. There is no evidence before the court that these matters were explored with officers at the meeting of the committee. Given the manner in which the case has come before the court today the submissions have been limited, but I am not satisfied that in these circumstances the officers' judgment was one which did not require to be supported by any evidence at all.
- 39 If the court had been shown some evidence before the council which supported the officers' opinion, it might have been possible in the circumstances of this case for them, and the committee, to arrive at it without the need for expert technical evidence. But although I am unable to express any view in this case on that aspect, it does not detract from the point that there is no evidence before the court of the officers giving any consideration as to the basis upon which the council would be entitled to reach the conclusion expressed in the report, or the extent to which information was required in order to support the judgment. This was a critical point for the purposes of dealing with the application of the agricultural land policy, and the decision cannot stand on that basis.
- 40 Mr Lewis, on behalf of the council, confirmed that his client was not prepared to submit to judgment on ground 2, and there is no proposal from the claimant that the court should quash the decision on that ground.
- 41 I agree with the view which had been taken by the parties. For my part, I do not think there is any merit whatsoever in ground 2. The complaint here relates to the appeal decision of the Secretary of State on a site at Yapton. In a nutshell, it was said by the claimant that this appeal decision was material because of the views expressed by the Secretary of State in that decision

letter as to the weight to be attached to policies restricting development outside the built-up area boundary in the Yapton Neighbourhood Plan.

- 42 In DL15, the Secretary of State said "he notes that the independent examiner found the Yapton Neighbourhood Plan sound, and he thus finds it complies with the Framework. He notes that policy H1 states that 'additional allocations will be made if the emerging Arun Local Plan requires such action or if the identified housing sites do not proceed.' As such he concludes that while the YNP is currently underpinned by an outdated OAN, policy H1 has flexibility to allow any shortfall in housing supply to be met. As such *he gives significant weight to the housing policies of the YNP*" (emphasis added).
- 43 In para.16, the Secretary of State found "that the proposal is in conflict with policy BB1, as it is not in the built-up area boundary and does not fall within any of the exemptions listed in the policy. He agrees that policy BB1 is out of date in the absence of a 5-year housing land supply. However, given his conclusions in policy H1 at para.15 above, he gives it significant weight..."
- 44 On any fair reading it is apparent that the Secretary of State decided in the circumstances of the Yapton Neighbourhood Plan to give significant weight to the built-up area boundary policy because of the weight he gave to the plan's commitment within policy H1 to provide additional housing allocations in the event of that being required by the Local Plan when finally adopted. That would take into account (inter alia) the OAHN and the distribution of housing at local plan level following the examination process. As I have pointed out, no such policy was included in the neighbourhood plan applicable to Aldingbourne. This point was clearly taken by the District Council in its defence to the challenge, and there has been no response from the claimant to it.
- 45 Under ground 2 the claimant merely submits that this decision should be quashed because of non-compliance with the principles laid down by the Court of Appeal in *North Wiltshire District Council v Secretary of State for the Environment* [1993] 65 P & CR 137 at p.145 in the very well-known passage from the judgment of Mann LJ. In summary, where the consistency principle is truly engaged, it is necessary for the decision maker to have regard to an earlier decision, and if intending to disagree with it, to express his reasons for that conclusion.
- 46 It is plain from any fair reading of the officers' report that regard was had to the earlier decision. Despite what is said to the contrary in the Statement of Facts and Grounds, the real attack under ground 2 must therefore focus on the reasons given by the officers. It is said that their reasons for distinguishing the Yapton decision were significantly misleading and unlawful.

47 The officers' report pointed out that the Council was unable to demonstrate a 5-year land supply. It also pointed out that the OAHN figure had been re-assessed by consultants commissioned by the District Council and had increased to a figure of 919 units per annum. That came from a report produced in October 2016. The officers' report stated:-

"The NPPG has provided clear guidance on the issue of the weight that can be given to both the adopted local plan and emerging or made neighbourhood plans where the district council cannot demonstrate the 5-year supply of deliverable housing sites. Therefore the adopted development plan policies relating to housing supply are out of date, and the emerging local plan policies carry limited weight at this time. The relevant policies for the supply of housing in the ANDP including the development boundary should also not be considered up to date, as they do not reflect the council's updated OAN."

48 I do not consider that any legal criticism can be made in respect of that paragraph. Read properly, the last sentence makes it plain that the weight to be attached to relevant policies in the ANDP was reduced because they did not reflect the updated OAHN. That is a matter of planning judgment which cannot be impugned in the High Court.

49 Turning to the Secretary of State's decision on the Yapton site, the officers' report said:-

"The decision appears to run contrary to the advice in the NPPG referenced above; that the housing policies of a neighbourhood plan should not be considered up to date where there is now demonstrable 5-year housing land supply. ADC are seeking legal advice on the implications of this decision for similar sites outside the built-up area boundary of made neighbourhood plans. Although the ANDP is not yet made, the decision may have implications for this site when it is. It is hoped an update will be available at the meeting to inform members of the outcome of this legal advice."

50 The claimant's Statement of Facts and Grounds sought to challenge the officers' report without making any reference whatsoever to the advice which was in fact given to the members. There was a brief reference simply to the minutes, but they do not disclose the nature of the advice. It was unacceptable for the claimant to put forward ground 2 in this manner. It now appears that two paragraphs were read to the members from the opinion produced by counsel. The remainder of the opinion is the subject of legal professional privilege. It was only as the result of an enquiry made by the court yesterday that that information was obtained. The opinion stated:-

"I think that it would be wrong to view the Yapton decision as somehow establishing any new general policy principles to apply to other schemes in the council's area as the Yapton decision was clearly predicated very heavily on the particular wording of policy H1 in the YNP. I do not understand this wording to be a common formulation used in neighbourhood plans generally in the council's district. If I am correct in that understanding it seems to me that even pending the judgment of the court on the s.288 claim, officers will be able to distinguish the Yapton decision on the basis that it turned on the particular wording of policy H1."

51 I see no legal basis upon which that advice could possibly be impugned. At no stage has the parish council sought to do so, although it must have been aware of this advice. In addition, the second paragraph from counsel's opinion read to the members, identified a further freestanding point for distinguishing the Yapton decision:-

"I also consider the Yapton decision to be distinguishable given that it was decided before the council published the most recent GL Hearn study indicating that the district's OAN is now even higher at 919 DPA. This recent increase in the OAN provides a perfectly rational and therefore lawful basis for giving the issue of housing need more weight than was given to it by the Secretary of State in the Yapton decision when the OAN was lower."

52 Again, I can see no legal basis for criticising that judgment and none has been advanced at any stage in the papers before the court. I am not prepared to quash the decision on the basis of ground 2. However, the position does remain that the decision must be quashed for the reasons I have given under ground 1, and that is the order that the court will make.

DR BOWES: My Lord, I am grateful. There is just one very small factual matter which I think I think entirely my error, which is that the planning committee actually met on 2nd November.

MR JUSTICE HOLGATE: Well, that's what you say in the skeleton.

DR BOWES: Yes, right. And I said the 9th in another place, in my statement of facts and grounds.

MR JUSTICE HOLGATE: Well, as I understand it, the decision to make the neighbourhood plan was made on the 9th.

DR BOWES: That's the council meeting, yes.

MR JUSTICE HOLGATE: Ah, it's a meeting of the council, not the development committee.

DR BOWES: The full council, that's right, and that is my -- I misunderstood that.

MR JUSTICE HOLGATE: Which, of course, it would be.

DR BOWES: Yes.

MR JUSTICE HOLGATE: I went back to the minutes.

DR BOWES: On p.15.

MR JUSTICE HOLGATE: But you are right. I will have to correct that. Thanks.

DR BOWES: I'm so sorry, my Lord. That is my error.

MR JUSTICE HOLGATE: No, I thought I'd checked it, and I am wrong, so thank you for drawing that to my attention.

DR BOWES: I was reminded of it because as happenstance, both myself and Mr Lewis were in the council offices on that very day. We were in a public enquiry.

Secondly, my Lord, the claimant seeks an order that the defendant pay its costs.

MR JUSTICE HOLGATE: Well, you've agreed that in the sum of £20,000?

DR BOWES: We have, my Lord, yes.

MR JUSTICE HOLGATE: And no one is asking to disturb that?

DR BOWES: I am not, and I don't think Mr Lewis is, and I invite my Lord to make that order.

MR JUSTICE HOLGATE: Yes. I think I am going to reserve my position on that until I have heard a little bit more about what has been going on. For that purpose, we need to know where the officer is, please.

MR LEWIS: My Lord, I have not received a text message. I am checking my phone.

MR JUSTICE HOLGATE: Do you want me to rise? I have got to move onto other work. But, on the other hand, I can't leave what has happened not dealt with.

MR LEWIS: Indeed. I've not received a message to say----

MR JUSTICE HOLGATE: But she said she would be here by 12.00 p.m. It's not from the end of the world.

MR LEWIS: It's not, no. It's only from Littlehampton, my Lord, in Sussex, so it isn't a long train journey. I can telephone to see.

MR JUSTICE HOLGATE: Yes, I think if I just get off the bench. I think she had better get herself here pretty quickly.

MR LEWIS: Certainly.

MR JUSTICE HOLGATE: That order went out at 8 o'clock. She should have been here anyway.

You should not be attending court in a situation like this without the solicitor. Have we got someone? Okay, well I think the best thing to do is I'll give you 5 minutes so the lady can catch her breath and you can talk to each other, and then I will come back in and conclude business. And you explain where we've got to in the proceedings. Thank you very much.

MR LEWIS: I'm most grateful.

(A short adjournment)

MR JUSTICE HOLGATE: Yes.

MR LEWIS: My Lord, I am grateful for that opportunity to speak to the lady who just walked into court. She is immediately behind me. She is Helen Atkinson, my Lord.

MR JUSTICE HOLGATE: Just give me a moment, sorry.

MR LEWIS: I am grateful.

MR JUSTICE HOLGATE: Helen?

MR LEWIS: Helen Atkinson, my Lord.

MR JUSTICE HOLGATE: Thank you, and her position is?

MR LEWIS: She is a litigation solicitor and deputy monitoring officer for the council. And Mrs Atkinson has taken over this case, my Lord, over the past week or so, as a result of the main case holder, that's Mr Delwyn Jones, who is a solicitor of the council, having been signed off at work with stress. So Mrs Atkinson is----

MR JUSTICE HOLGATE: When did that happen?

MR LEWIS: He was finally signed off yesterday, my Lord, but he has been in and out of the office for the past week or so. Yes, he has missed several days, my Lord, in the past week or so, finally signed off yesterday.

MR JUSTICE HOLGATE: So, when did the stress condition start?

MR LEWIS: Should I ask Mrs Atkinson to answer directly, my Lord?

MR JUSTICE HOLGATE: Yes, we may have to hear evidence but let's see how we go.

MR LEWIS: Fine. Shall I ask Mrs Atkinson to answer directly, my Lord, or shall I----

MR JUSTICE HOLGATE: Well, let's see how we go via you.

MR LEWIS: I am told, my Lord, that Mr Jones was made redundant some two months ago and the difficulties with stress started to happen after that. And it seems that those difficulties came to a head, my Lord, when dealing with this litigation, I am told.

MR JUSTICE HOLGATE: So when was the redundancy going to take effect?

MR LEWIS: January.

MR JUSTICE HOLGATE: Right. Leaving aside the signing off, when was he going to be made redundant?

MR LEWIS: So, just to be clear, he has been signed off until 6th January so will not be returning to work at all, as I understand it.

MR JUSTICE HOLGATE: Yes. So ignoring the signing off, he was made redundant two months ago, which would be back in October, so when that notice was given, when was it due to take effect?

MR LEWIS: Mrs Atkinson's been told, my Lord, that it is 6th January, but she can't confirm it because----

MR JUSTICE HOLGATE: No, I understand there is a caveat on that. Right.

MR LEWIS: Indeed.

MR JUSTICE HOLGATE: Perhaps you could just go back to the bundle that you gave me this morning.

MR LEWIS: Indeed.

MR JUSTICE HOLGATE: Could we start, Mr Lewis, with the email at 28th November. The position is that the first indication given to the claimant that the council might concede the claim was on 28th November. Is that correct?

MR LEWIS: That's correct, yes.

MR JUSTICE HOLGATE: So that is some day last week

MR LEWIS: Yes, the 28th would be the Tuesday, my Lord, Tuesday of last week.

MR JUSTICE HOLGATE: So just over a week and after the time fixed for you to submit a skeleton to the court which was 2 weeks.

MR LEWIS: Indeed.

MR JUSTICE HOLGATE: According to an order of the court.

MR LEWIS: Indeed.

MR JUSTICE HOLGATE: And prior to the 28th, I think from what you told me, you had been trying to get instructions from the council to enable you to draft the skeleton?

MR LEWIS: Precisely. Well, instructions as to what the final position was going to be, my Lord, yes.

MR JUSTICE HOLGATE: Well. When were you seeking those instructions?

MR LEWIS: My Lord, I think there would have been correspondence between me and the council in the week preceding that, my Lord, so it must have been, therefore, the week of the --

MR JUSTICE HOLGATE: The week commencing the 21st, would it be?

MR LEWIS: Yes, it would have been around that time.

MR JUSTICE HOLGATE: And you were asking for instructions on what?

MR LEWIS: On whether we were proceeding to defend the case, my Lord, whether that was still the decision.

MR JUSTICE HOLGATE: Does that imply that you had reason to doubt whether the council would defend; that there'd been some earlier communication?

MR LEWIS: Not unilaterally from the council itself, no, my Lord. There was a -- I need to be careful not to waive privilege, my Lord.

MR JUSTICE HOLGATE: Yes. If at any stage you feel in danger of doing that you are entitled to claim it.

MR LEWIS: Certainly, certainly. But I had had discussions with the council, my Lord, about the risk involved in the litigation.

MR JUSTICE HOLGATE: Yes.

MR LEWIS: And so the discussions that took place were seeking instructions.

MR JUSTICE HOLGATE: Well, you had given advice.

MR LEWIS: Indeed.

MR JUSTICE HOLGATE: About the merits.

MR LEWIS: Indeed.

MR JUSTICE HOLGATE: Which you don't need to go any further into.

MR LEWIS: I'm grateful.

MR JUSTICE HOLGATE: But was there any indication from the council before that week that they were thinking of submitting to judgment?

MR LEWIS: No.

MR JUSTICE HOLGATE: No. I am entitled to know, unless you say otherwise, when did you give your advice?

MR LEWIS: I would have given my advice, my Lord, on -- I would need to double check the email to be careful.

MR JUSTICE HOLGATE: Roughly speaking.

MR LEWIS: Roughly, my Lord, I think it would have been in or around the weekend of the 25th/26th November. I would need to source the email.

MR JUSTICE HOLGATE: Well, that's pretty late, as well.

MR LEWIS: It is, yes, it is.

MR JUSTICE HOLGATE: But your skeleton was supposed to be in by 13th November, was it?

MR LEWIS: I believe it was, my Lord, yes. Well, my Lord, I won't detain the court with submissions on the meaning of calendar days and so on. I know there's guidance in the Admin Court Guide on that.

MR JUSTICE HOLGATE: That would be tedious in the extreme.

MR LEWIS: It would.

MR JUSTICE HOLGATE: And not helpful.

MR LEWIS: But, my Lord, if we're working back on calendar days, my Lord, it would've been the twenty----

MR JUSTICE HOLGATE: I think I got the wrong date, maybe. About the 22nd.

MR LEWIS: 22nd, indeed, my Lord, yes.

MR JUSTICE HOLGATE: So before you were -- So had you tried to get instructions to produce a skeleton before then?

MR LEWIS: No, I hadn't.

MR JUSTICE HOLGATE: I ask these questions because in this email which is disclosed, you say:

"I do not currently have instructions to prepare a skeleton argument"?

MR LEWIS: Yes.

MR JUSTICE HOLGATE: So what does that mean?

MR LEWIS: Well, my Lord, there have been discussions with Mr Jones over the course of the Autumn about whether this matter should be defended. And, again, I am careful as to waiving privilege in that matter. And there was certainly a clear indication given by me that there would need to be a review of the case in light of the claimant's skeleton argument.

MR JUSTICE HOLGATE: And a review by whom?

MR LEWIS: A review by the Director of Place, my Lord; essentially the head of planning, Mr Karl Roberts.

MR JUSTICE HOLGATE: Mr?

MR LEWIS: Karl Roberts, my Lord.

MR JUSTICE HOLGATE: But that review would have been late in the process. You are well aware of the unacceptability of cases collapsing at the last minute in the way this one has.

MR LEWIS: My Lord, indeed, indeed. And that is why, my Lord, I have been at pains.

MR JUSTICE HOLGATE: So in actual fact what you told me earlier on wasn't quite right. You raised the question of merits, or at least reviewing the merits because of the litigation risk involved, at an earlier stage.

MR LEWIS: I had. I was cautious to -- I didn't want to put that too strongly, my Lord, because I.

MR JUSTICE HOLGATE: You hadn't given formal advice?

MR LEWIS: Precisely, precisely. I don't want to----

MR JUSTICE HOLGATE: You flagged up the question?

MR LEWIS: I'd flagged up the question and I don't want to----

MR JUSTICE HOLGATE: And it was being indicated by Mr Jones that that was a question that was going to be addressed. And what we don't know is whether it was.

MR LEWIS: What I can say, my Lord, is that there was a lively discussion between the lawyers and the planners within the council as to whether, in light of a risk assessment that they'd been given, the matter ought to be conceded. And the diff----

MR JUSTICE HOLGATE: And when did that lively debate take place?

MR LEWIS: My Lord, that's been over the course of the past week, in particular.

MR JUSTICE HOLGATE: Not very lively.

MR LEWIS: No, no.

MR JUSTICE HOLGATE: Almost sedentary.

MR LEWIS: So, my Lord, the difficulties----

MR JUSTICE HOLGATE: So what we don't know, and I am not going to press very much further, but what we don't know is what Mr Jones was doing with all this during the course of the Autumn?

MR LEWIS: That would be a fair observation, my Lord, yes.

MR JUSTICE HOLGATE: And that is during the time when he is subject, unfortunately for him, and I regret to hear it, to a redundancy notice, but no suggestion of ill health, at least at that stage.

MR LEWIS: No.

MR JUSTICE HOLGATE: And it makes one wonder what on earth his managers were doing to manage this litigation. Who's above him?

MR LEWIS: His manager within the legal department would be Mrs Louise Green, my Lord. I should say, my Lord, in the interests of full disclosure that an additional difficulty in this case is that I wasn't even advised that permission had been given in this case until well into the Autumn, this Autumn.

MR JUSTICE HOLGATE: Well, it was given on 12th May.

MR LEWIS: Indeed.

MR LEWIS: That order wasn't even communicated to me, my Lord, as the council's counsel until later. I understand that there might have been some postal difficulty. I don't have any evidence on that. But----

MR JUSTICE HOLGATE: The council had it, presumably?

MR LEWIS: Well, that's the factual issue, my Lord, because, as I understand it, Mr Jones is saying that he didn't actually receive it.

MR JUSTICE HOLGATE: The order granting permission?

MR LEWIS: The order granting permission which was emailed----

MR JUSTICE HOLGATE: There was a letter which went out from the ACO, the Administrative Court Office, on the 14th May, listing the substantive hearing. Did the council not get that?

MR JUSTICE HOLGATE: Let's ask your instructing solicitor. Because how on earth would you know to turn up today?

MR LEWIS: It is beyond the information that Mrs Atkinson has in court.

MR JUSTICE HOLGATE: Well, that's not a satisfactory answer, and we are getting to the situation where I'm going to order an affidavit to explain all this, before I decide what further action, if anything, needs to be taken about the lamentable performance of the defendant in this case.

MR LEWIS: My Lord, that is noted.

MR JUSTICE HOLGATE: How on earth does the council know that the hearing's taking place today? They must have been notified or there must be something.

MR LEWIS: I think the notification came, my Lord, when my clerks were informed of the need to contact the listing department.

MR JUSTICE HOLGATE: Well, sometimes things work more efficiently that way, don't they?

MR LEWIS: But, my Lord, I'm afraid there was, as I understand the position, my Lord, the court office----

MR JUSTICE HOLGATE: That is another question which should be written down by your instructing solicitor who is listening to this. I want these issues dealt with. A note should be taken of this.

MR LEWIS: Yes.

MR JUSTICE HOLGATE: The council is, to use the legal terminology, an inferior body which is the subject to the jurisdiction of this court. That is what is meant by judicial review. It has, under the CPR, an obligation like all parties to cooperate with the court in furthering the overriding objective which means, amongst other things, dealing with cases efficiently, not just for the interests of the parties in this case, but all parties, so that resources, the finite resources of this court, are distributed fairly and proportionately across the range of all the litigants that we have to deal with, not just in planning.

So, when a council is on the receiving end of a judicial review claim, it has to file an acknowledgement of service, and this council did so in March. So one question which needs to be addressed, and if it was seriously going to be suggested by Mr Jones, or somebody on his behalf, that he was unaware of the outcome of the application for permission, what steps did the council take to find out what the answer was? Presumably they realised that under practice direction 54E this case was initially classified as significant and therefore the targets for disposal of the matter applied, and one was supposed to get to a substantive hearing within 6 months. So the claim started, when was it, February? So by the time everyone is going off for their summer holidays, you would expect the Council to know what was happening. So I don't accept what I'm being told at the moment about material not being given to the council. If this had been managed properly, someone should have been saying: "Well what's going on? I've not heard anything."

Could I just enquire more generally, please: how many JRs a year does the council receive, roughly speaking?

MR LEWIS: My Lord, it is a small local authority; I am told fewer than 10.

MR JUSTICE HOLGATE: I did wonder whether they might be to do with planning.

MR LEWIS: My Lord, I know the Sussex area quite well. By reference to my clients, it is certainly, for example, a less busy authority than somewhere like Chichester, for example, which is a more frequent litigator in the court.

MR JUSTICE HOLGATE: Well, that is something to bear in mind. Thank you. But maybe a refresher course in the practices of the High Court so that the council can be fully compliant with what is expected of it would be advisable, together with management control, senior management control, to make sure that the solicitors who, no doubt, are under considerable pressure, are in fact suitably equipped to handle this sort of specialist litigation, because sometimes the demands on both sides are quite challenging. The time limits are quite challenging. After all, the parish council had to act quickly to get its claim in within 6 weeks and that is there partly to protect the district council as well as the interested parties. So they can't just sit back and let matters drift on.

MR LEWIS: My Lord, I should say that as part of the correspondence that I've been having with the council this week, I have told them that my experience of litigating this case on their behalf tells me that I ought, if they are interested, to carry out perhaps some training on judicial review procedure.

MR JUSTICE HOLGATE: I did mention earlier on the Hamid jurisdiction which is sometimes looked at as being a big stick. It is there to correct abuses of this court's process, and sometimes, I am afraid, we do have some litigators who are serial offenders. In the absence of a satisfactory explanation, legal representatives have to appear before the President in a divisional court. Sometimes the matter is so serious that it is referred to the Solicitors Regulatory Authority. But there is also a lighter touch to it as well. It can provide an opportunity for the court to be given proper assurances that a firm of solicitors, chambers, a local authority, has taken and is taking steps to make sure that the sort of problem which has occurred doesn't happen again. It can be a process to see that lessons have been learned.

MR LEWIS: Indeed.

MR JUSTICE HOLGATE: So what you're saying is of assistance.

MR LEWIS: I have made clear to them, my Lord, in light of the difficulties that I have had in conducting this matter on their behalf, and they're aware of those difficulties, that there is an offer of training open to them.

MR JUSTICE HOLGATE: That is something we can perhaps put to one side just for the moment. But in your email, you're saying: "I don't currently have instructions to prepare a skeleton argument." So my question was: what does that mean? Did someone say: "No, don't draft a skeleton"?

MR LEWIS: No. It was: "We are reviewing our case in relation to the erm, so we do not wish you to prepare a skeleton argument at this time."

MR JUSTICE HOLGATE: Because that was going to incur costs?

MR LEWIS: Indeed, indeed.

MR JUSTICE HOLGATE: But that was a breach of the court's order, and it is unacceptable. It is not permissible for one party, whether they be a government department or a private citizen, to ignore an order made by the court and to say: "Well, we are doing our own thing; we'll provide a skeleton as and when we think it appropriate." Now, the reason for this is not only because it affects the court, but also it affects the other side along the way. They want to see what you're going to be saying so they can prepare for a hearing. Because they have no idea at that stage that you're going to cave in.

MR LEWIS: My Lord, I am very much alive to those concerns.

MR JUSTICE HOLGATE: It's actually a fairly common mistake that people think that they can vary time limits in the Administrative Court without seeking approval of the court. The short answer is: no they cannot, even if they agree them.

MR LEWIS: Yes. My Lord, it certainly wasn't the position of the council that they thought that they could vary the order. It was----

MR JUSTICE HOLGATE: Unless it was totally oblivious to it. In the event, it's dealt with in the CPR.

MR LEWIS: It is. That is all understood, my Lord.

MR JUSTICE HOLGATE: The Council does not have even a toe to stand on. And then we get the factual distraction as to whether the land is grade 2 or not. With respect, it was a distraction. Obviously, it was music to their ears to have an offer to concede that the decision should be quashed. And all they needed to do, and they could have done it more quickly, was to send their cost figures. And there seems to have been a discussion about how much, £15,000 or £20,000 but not until 6th December.

MR LEWIS: Indeed, yesterday.

MR JUSTICE HOLGATE: Well, let me just say a few words as to why this is unacceptable so that the message goes home to the Arun District Council and indeed to other litigators. It is to do with the effect of this misconduct on litigation in this court more generally. The starting point is the resources of this court. There is a limit on the number of High Court Judges set at 108 by the Senior Courts Act. Each Division has been substantially below complement and that situation persists. In the Queen's Bench Division the number of judges available has to cover all the specialist jurisdictions, for example, the Commercial Court, the TCC, the Administrative Court, the Planning Court, the EAT and the Upper Tribunal, in addition to

general QB work, serious criminal trials and assisting the Court of Appeal Criminal Division. And it does mean there is a serious risk of cases being delayed if parties fail to comply with orders and court time is wasted. Likewise when judges set time limits for skeletons, it is because they are trying to make sure they can get through cases in the time allocated.

We moved some time ago from the old-fashioned practice of having cases fully opened to the court. If we were to go back to that, a case like this would take twice as long. The judge wouldn't have read the papers in advance. The current system only works, and we are only able to list two or three substantive cases a week before a judge, because of the substantial amount of pre-reading which he or she does for each case. Typically, that happens on a Monday. So unless people provide their skeletons substantially in advance or sufficiently in advance with all the written material, a judge cannot make good use of the pre-reading time. Having spent that time, the last thing we want to happen is that it is wasted because the case then suddenly settles.

But it is far worse than that in the present case because this case was allocated two days along with the section 288 challenge which has also settled very recently. This has meant that that time could not be allocated to other litigants, so they are having to wait longer for their cases to be heard and determined because of the ineptitude of the district council in this case.

After all, at the end of the day, the point of law which was raised by ground 1 was very simple. As I said earlier on this morning, even a relatively inexperienced lawyer could see whether or not it had any real merit within a short space of time and, if not, to pinpoint the true legal flaw accurately. It should not have taken effectively 8 months from its AOS in March for the council to wake up in December or late November and to think they had no basis for defending it. That is an inexcusable waste of the court's resources as it seems to me.

It also means, of course, that because I've had to spend time on this case, other work has had to be delayed. There are knock-on consequences for other litigants. It has got to be understood by litigants such as Arun District Council, however strapped for cash they may be, that this sort of conduct will not be tolerated, simply because of the adverse effects on litigation more generally in the High Court.

So I think an order needs to be drawn up giving effect to the court's decision, namely that the grant of planning permission is quashed and the order for costs. But I do think there ought to be a proper affidavit from the head of the legal department or legal services to explain why the council handled the case in the way in which it did; what lessons it has

learnt from the experience; and what it is doing to put the matter right. And, in the light of that, I will decide whether to refer the matter further. I sincerely hope that will not be necessary. I think something positive must come out of this.

MR LEWIS: My Lord, that is certainly noted, and we will, can I----

MR JUSTICE HOLGATE: Also, may I say, and there should not be any misunderstanding about this, litigation in the Administrative Court or the Planning Court is not like general civil litigation. It's not like a common law claim for damages. Parties sometimes are able to settle liability and damages, and the judge will often congratulate them on having done so. In the Administrative Court the judge is being asked to agree with the basis upon which the decision is to be quashed. That is why we need a reasoned consent order in draft form. The practice direction makes it perfectly clear that if the judge does not agree with the proposed basis for the order sought, then the case will be heard. It has to be argued out.

So when officers in the district council suddenly wake up to the fact that their case is about to be heard, and they are thinking of settling, they cannot assume that if a consent order is put before the court after 5.00 p.m. the day before the case is going to be heard, or at any late stage, that the order is going to be approved. Indeed, the basis put forward for a consent order in this case was hopeless, and required further work by the court to identify a legally acceptable ground for quashing the planning permission. Therefore, officers should not have absented themselves from the court hearing this morning. At the very least a solicitor should have been present at the outset, and counsel should not have been left to deal with the matter alone. That was not acceptable.

It may be there was misconception within the council that they just thought that the order was going to be rubber stamped but the High Court is not a post office, and you don't turn up as and when you please.

So, how long do you think would be needed for the preparation of an affidavit, because I think this should be dealt with before Christmas. As I say, I have to be on circuit in January and February, so here we are on Thursday, 7th. I think it should be dealt with next week.

MR LEWIS: My Lord, we will meet that timeframe.

MR JUSTICE HOLGATE: Seven days, I think should be enough.

MR LEWIS: That's fine. We will do it in 7 days.

MR JUSTICE HOLGATE: 4.00 p.m. on Thursday.

MR LEWIS: 4.00 p.m. on the Thursday.

MR JUSTICE HOLGATE: Sometimes in a situation like this, in a potential Hamid situation, the other side has something to say. Do you think you are likely to?

DR BOWES: I think we are highly unlikely to, unless we are going to be of assistance-----

MR JUSTICE HOLGATE: I am not expecting it.

DR BOWES: I am grateful for that. There is obviously a cost implication for us attending.

MR JUSTICE HOLGATE: Yes, exactly. Well, there won't necessarily be a hearing. The affidavit needs to be sent through to my clerk.

DR BOWES: We might ask to be copied into that.

MR JUSTICE HOLGATE: You certainly should be copied in.

DR BOWES: But we don't anticipate any participation.

MR JUSTICE HOLGATE: Thank you. I had wondered whether part of the reason for this last minute change of stance was the submission to judgment in the parallel proceedings.

MR LEWIS: No, that wasn't----

MR JUSTICE HOLGATE: Because the grounds there, of course, are completely different and irrelevant to the present case.

MR LEWIS: Indeed. I can categorically say.

MR JUSTICE HOLGATE: That would have troubled me considerably.

MR LEWIS: Yes.

MR JUSTICE HOLGATE: And there was a question I did ask previously as to where did the impetus for submitting to judgment come from within the council. Has any member of the committee been involved, has there been any political influence on this? This must be covered as well, because if so there may be further questions. Unless there is anything further -- I don't know if you are aware of it, but it may assist the council and indeed others. There is something called the Administrative Court Judicial Review Guide (2017) .

DR BOWES: Published by the judge in charge of the Administrative Court, yes, my Lord, yes.

MR JUSTICE HOLGATE: Yes. Well, it's very user friendly. You can download it off the web, and I would suggest the council gets a copy of this, because, although it doesn't purport to be all embracing, it gives you a very good overview of the subject and tells you where to look in more detail, whether it be case law or the rules. And it is very clear, for example on p.115, about what happens with draft consent orders. That just might assist. It is updated annually. But it does not yet deal with statutory planning reviews.

DR BOWES: It may be a task for the planning liaison judge in due course.

MR LEWIS: So, my Lord, can I just be clear. There will be no judgment on costs today because my Lord wants to see the affidavit first before coming to a final judgment. Is that right?

MR JUSTICE HOLGATE: One thing that a judge can do is to reflect misconduct under the rules in an order for costs. The costs bill here was about £35,000?

DR BOWES: Yes, I think that is, yes exactly so.

MR JUSTICE HOLGATE: And you have agreed to £20,000, and no doubt that had regard partly to the time taken on ground 2.

MR LEWIS: Indeed, it did.

MR JUSTICE HOLGATE: So, if I was minded to increase the order to reflect disapproval of the way the council has behaved, there is not much scope to increase it without, I think, encroaching unfairly on a different matter. Presumably the parish council would like me to confirm the order sooner rather than later.

DR BOWES: We certainly would, my Lord.

MR JUSTICE HOLGATE: So I am going to make the order now: £20,000. And it is going to be paid quickly. Not 21 days. I think it's going to be paid in 7 days. That is how the court's disapproval of the conduct of this matter is marked.

MR LEWIS: I'm grateful. Shall we draw up an order reflecting those matters, my Lord?

MR JUSTICE HOLGATE: Would you be so kind.

MR LEWIS: Certainly. We will do that immediately.

MR JUSTICE HOLGATE: Yes, I would be grateful, so it can be dealt with.

Thank you for your help this morning.

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This transcript has been approved by the Judge.