SOUTH AREA COMMITTEE MEETING – 19th November 2012

Pre-Committee Amendment Sheet

PLANNING APPLICATIONS

CIRCULATION: First

ITEM: APPLICATION REF: 12/1078/OUT

Location: Adjacent To The Oak Building & Former Regional Seat Of Government And Adjacent To Corner Of Kingfisher Way & Gilpin Road

Target Date: 16.10.2012

To Note: Additional representations have been received from the following occupants:

-25 Rotherwick Way (in support)
-7 Richard Foster Road (in support)

The representations can be summarised as follows:

-The pathway is used to avoid traffic on Hills road
-It is safe and quiet
-Having a bridge creates more options for getting to the station
-The more people who use it the safer it becomes
-The more we can open up off road cycling the better for everyone
-New residents at Trumpington Meadows will use this route
-The insertion of a DDA compliant kissing gate would prohibit cyclists (photo provided).

The above responses are a summary of the comments that have been received. Full details of the responses can be inspected on the application file or through the Council's website.

I have discussed whether a kissing gate of the type proposed would be acceptable with the Council's Access Officer. He has verbally advised the design type to be appropriate for wheelchair and scooter use. The insertion of such a gate could be conditioned as part of any approval if Members were concerned regarding potential levels of cycle use of the bridge. However, this does not form part of the proposal put forward and I am uncertain as to whether there is sufficient space for its inclusion as part of the scheme.

Amendments To Text: None

Pre-Committee Amendments to Recommendation: None

DECISION:

CIRCULATION: First

ITEM: APPLICATION REF: 12/0793/FUL

Location: Clarendon House, 16 Brooklands Avenue

Target Date: 20.08.2012

To Note: The Property (16 Brooklands Avenue) is to provide additional accommodation for visiting academics and researchers, and help support the development of CKDT, an interdisciplinary research centre in providing limited short-stay accommodation. This is for exchange academics, researchers and for scholars from arts and humanities, social, natural and biological sciences to conduct research and to study and aid development in Central Asia; and in particular providing accommodation for exchange academics, researchers and other relevant personnel to educational institutions of the Republic of Kazakhstan.

The scheme is laid out as a house, with no external works proposed. The bedrooms, which are large, will also include desk space, reflecting the occupancy by academics. There is a small room (study/office) with a single computer which will be used be occupants. The purpose is not to provide an administrative office type accommodation.

Amendments To Text:

Delete first sentence of paragraph 9.2 (*The Trust is a member of Cambridge University, particularly Jesus College...).* This is not correct, there is no formal affiliation with either the University or Jesus College.

The first section of paragraph 9.2 should read: "*A number of Trustees are members of Cambridge University, and in particular Jesus College and the proposal would therefore promote….*

Delete paragraph 6.2 ("*The highway authority recommends a number of planning conditions*."). The Highways Officer has confirmed that no conditions or informatives are necessary for this application.

Remove condition 3. This condition is unnecessary and would be difficult to enforce without further amendment.

Pre-Committee Amendments to Recommendation: None

DECISION:

CIRCULATION: First

ITEM: APPLICATION REF: 12/0956/CLUED

Location: Cantabrigian RUFC, Sedley Taylor Road

Target Date: 18.09.2012

To Note:

Additional representations have been received from the occupiers of:

-23 Sedley Taylor Road (1)
-33 Cavendish Avenue (2)

The issues raised include:

1: Comments on the contractor parking arrangements, including: its period of use; the nature of the arrangements; fees charged; extent of use: rouge parking; hours of use; use of the car park by HRSFC during contractor parking; weekend use by HRSFC of the car park (3 years); the number of boat trailers stored on the site; lack of evidence; additional evidence regarding unsafe conditions.

2: Details of the witness of a collision at the access point to the car park from Sedley Taylor Road. Concerned over intensification of use of the access and safety implications arising. Asks for a risk assessment and mitigation measures to be carried out.

The above responses are a summary of the comments that have been received. Full details of the responses can be inspected on the application file or through the Council's website.

None of the additional points raised alter my recommendation that the application for a CLUED should be granted.

Attached as appendix 1 is a copy of Judge Birtles judgement of 5 October 2012 in relation to the application for the Hills Road Sixth Form Sports Pavilion (11/0900/FUL). The attachment is for information purposes for Members, as objector's to the grant of the CLUED had referenced the forthcoming Judgment in their responses.

Amendments To Text: None

Pre-Committee Amendments to Recommendation: None

DECISION:

CIRCULATION: First

ITEM: APPLICATION REF: 11/0818/REM

Location: Land Adjacent Rutherford Road, Long Road

Target Date: 06.09.2011

To Note:

Additional consultee comments on the revised scheme have been received from the County Council's Rights of Way and Access team.

The representation seeks conditions to control position of hedges and to ensure clear width for the public footpath. (In my view this can be ensured by the conditions recommended.)

Additional representations on the revised scheme have been received from Trumpington Residents Association. The comments reiterate the Association's objections to the original scheme.

The case officer has been copied into email exchanges between the Cambridge Group of the Ramblers Association and the applicant's agent. The Ramblers Association raised concerns about the labelling of the public footpath on the application drawings as a footpath and cycle path, the height of kerbs at the bellmouth, and the narrowness of the combined cyclepath and footpath from the busway where it meets Long Road. The applicants responses to these questions have resulted in the Ramblers Association withdrawing its objection to the application.

Amendments To Text: None

Pre-Committee Amendments to Recommendation: None

DECISION:

CIRCULATION: First

ITEM: APPLICATION REF: 12/1033/FUL

Location: 100 Glebe Road

Target Date: 04.10.2012

To Note: Nothing

Amendments To Text: None

Pre-Committee Amendments to Recommendation: None

DECISION:

CIRCULATION: First

ITEM: APPLICATION REF: 12/1020/FUL

Location: 167 Queen Ediths Way

Target Date: 01.10.2012

To Note: Nothing

Amendments To Text: None

Pre-Committee Amendments to Recommendation: None

DECISION:

Appendix 1

Neutral Citation Number: [2012] EWHC 2684 (Admin)
Case No: CO/1830/2012

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

Royal Courts of Justice
Strand, London, WC2A 2LL
5 October 2012

B e f o r e :

HIS HONOUR JUDGE BIRTLES
(Sitting as a Deputy Judge of the High Court)

Between:

THE QUEEN	
On the application of RICHARD LYON	**Claimant**
- and -	
CAMBRIDGE CITY COUNCIL	**Defendant**
- and -	
HILLS ROAD SIXTH FORM COLLEGE	**Interested Party**

Mr Richard Buxton
(instructed by Richard Buxton Environmental & Public Law) for the Claimant
The Defendant was not present and was not represented
Mr James Pereira (instructed by Messrs Eversheds) for the Interested Party
Hearing dates: 1 August 2012

HTML VERSION OF JUDGMENT

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HIS HONOUR JUDGE BIRTLES :

Introduction

1. This is the judgment arising from cross applications by the Claimant and the Third Party. The Claimant's applications are (a) for permission to apply for judicial review and (b) for a Protective Costs Order. The Third Party's application is to strike out the Claimant's statement of case pursuant to CPR 3.4(2). On 13th June 2012 Mr Justice McCombe ordered that the applications be heard together with a time estimate of one day. He gave directions for preparation for the hearing.

2. I heard the applications on 1st August 2012 and reserved judgment.

3. The Claimant was represented by Mr Richard Buxton, solicitor-advocate. The Defendant had filed an Acknowledgement of Service but was not represented by

solicitor or counsel at the hearing although there were Council officers present at court. The Interested Party was represented by Mr James Pereira of Counsel. I am grateful to both Mr Buxton and Mr Pereira for their written and oral submissions.

The Factual Background

4. The claim is a challenge to the Defendant's decision to grant full planning permission on 23rd November 2011 for the demolition of an existing sports pavilion and the relocation and erection of a new sports pavilion, with associated secure open air store at Hills Road Sixth Form College, Cambridge. I take the site description from the planning report prepared by Miss Sophie Paine for the South Area Committee, dated 7th November 2011: trial bundle pages 249-283. Hills Road Sixth Form College sports ground is located separately from the main sixth form campus on land, which has Long Road to the south, Sedley Taylor Road to the east. The sports ground comprises of land owned directly by the College and a further parcel of land to the south, which is owed by a Trust, of which the College is one of the trustees, and is shared with the Cantabrigian Rugby Club. To the west of the site is the Cambridge to London railway line and to the north is Homerton College. Along the length of the playing fields, the site is boarded by residential properties, which are on the west side of Sedley Taylor Road. These properties are all detached with gardens averaging 60 metres in length, abutting the applications site.

5. There is an existing pavilion situated on the eastern boundary of the site, approximately the mid point of the playing field. It was built in the 1930's and is traditional in appearance with a hipped pan tile roof central to the building and two flat roofed extensions, one to either side, which provide changing facilities for sports teams.

6. There are two narrow access roads, which lead down to the playing fields, one from the corner of Sedley Taylor Road and Luard Road (north access) and the second is between 23 and 23a Sedley Taylor Road (south access). The latter of these two access roads is used predominantly to serve the Cantabrigian Rugby Club car park and club house.

7. The site presently has two football pitches, two rugby pitches and a cricket pitch.

8. The site is allocated as protected open space in the Cambridge Local Plan (2006). On the eastern boundary with properties in Sedley Taylor Road ,the tree belt is protected by tree preservation orders. Number 23 Sedley Taylor Road is grade two listed.

9. The Third Party sought planning permission to demolition the existing sports pavilion and to relocate it to the south on the playing fields, constructing a building which is better suited for its purposes.

10. The building has been designed in order to accommodate changing facilities for both sexes, a team room, visitor facilities and officials' changing. This is resulted in a linear form for the building, which has an open veranda for spectators and team members, all underneath a gable and roof, which has a low roof height of 2.5 metres rising to a ridge of 8 metres.

11. The open air storage at the rear of the building is protected to the north and south sides by a 2.4 metre high metal fence to secure the area.

12. The new pavilion would be located 23 metres into the playing fields, to the north of the existing Cantabrigian car park, 20 metres from the common boundary with properties on Sedley Taylor Road. The building takes the form of a 'L' shape. The

front elevation of the building which fronts the playing field is 36.5 metres in length and has a side return on the northern elevation, which measures 11 metres in depth.

13. There are two helpful diagrams at trial bundle pages 148 and 150 showing the existing and proposed pavilion sites together (at page 150) with the relocation of rugby pitch one and alterations to the cricket wicket. There is a revised site location plan at trial bundle page 103.

History of the Application

14. On 28th June 2011 the Interested Party wrote to local residents informing them of its plan to replace the existing pavilion at its sports ground. It explained that a planning application was to be submitted to the Defendant in July 2011, and invited residents to a briefing to discuss the proposals on 13th June 2011: trial bundle page 115.

15. The Interested Party submitted its planning application to the Defendant on 27th June 2011 and local residents were notified of the application by the Defendant on the 11th August 2011: trial bundle pages 116-164. Residents, including the Claimant, made representations to the Defendant about the application: trial bundle pages 175-210.

16. The Defendants South Area Committee resolved to grant planning permission to the Interested Party on 7th November 2011 in accordance with its officers recommendation: trial bundle pages 249-284 (officers report) and pages 293-296 (committee minute.) The decision was unanimous, and was taken following a site visit. The committee's consideration of the application lasted for over an hour: trial bundle pages 326G (last paragraph); 326H (fourth paragraph); and 326K (top paragraph.).

17. On 23rd November 2011 the Defendant formally granted the Interested Party full planning permission for the demolition, relocation and replacement of its sports pavilion (reference 11/0900/FUL): trial bundle pages 13-19. Condition 15 of the permission provided for a travel plan. It said this:

> "15. Prior to the commencement of development of the proposed sports pavilion, the applicant shall submit a Travel Plan which shall be approved in writing by the Local Planning Authority. The Travel Plan shall specify the methods to be used to discourage the use of the private motor vehicle for trips to and from the existing site and neighbouring streets of Luard Road and Sedley Taylor Road and the arrangements to encourage the alternative sustainable modes of transport to the site including public transport, car sharing, cycling and walking. The Travel Plan shall be implemented as approved upon the use of the pavilion and monitored in accordance with details to be agreed in writing by the Local Planning Authorities.
>
> Reason: To ensure that travel to and from the proposed sports pavilion is encouraged to be as sustainable as possible in recognition of the existing poor access arrangements (Cambridge Local Plan 2006 polices 8/3 and 8/4)" : trial bundle page 17.

18. The summary reasons for granting planning permission are at trial bundle page 19. They say this:

> "In granting planning permission the Council took the view that it would be unreasonable to try and rectify existing issues associated with access to and from the playing fields and that it would be unreasonable to place any additional restriction on either the use of

the sports pavilion or the playing fields given that the application was for a replacement pavilion and no new facility was being added. As such, it was considered that the proposal would not significantly worsen what are existing access issues. The Council was also mindful of the reasonable scope for additional conditions to control or improve the southern most access, being outside of application site, not within the singular control of the applicants and being limited in terms of any improvements that could be made. Given that there was no intensification of proposed use, the application was determined to be based on sufficient information regarding the nature of and levels of future use and this was reflected in extensive consultation responses received from the Highways Authorities. Additional parking provision with the site access from the northern most access would require a further planning application and would not necessarily be supported given the status of the playing fields as protected open space and the likelihood that this may further increase vehicular movements through this access which is substandard. Other issues regarding amenity, privacy, drainage and noise and disturbance to neighbours were considered but were not considered sufficient to justify a refusal of planning permission. These issues were considered within the officer report and debated by members during the committee meeting. The decision has been made having prior to all other material planning considerations, none of which was considered to have been of such significance as to justify doing other than granting planning permission."

19. Following the grant of planning permission, the Defendant received a lengthy letter dated 5th December 2011 from …….who is the resident at 23 Sedley Taylor Road and a leading objector to the application: trial bundle pages 313A-313O. The Defendant replied on 6th January 2012 with a detailed response: trial bundle pages 326A-326K . There was extensive further correspondence between various players including …….. on 29th December 2011 and others in relation to the discharge of planning condition 15 in relation to the Travel Plan: trial bundle pages 313T-318; 322-326; 327-357. There was further correspondence about other matters including the supply of further documentation by the Defendant: trial bundle pages 362 – 383.

20. On or about the 20th December 2011 a number of residents (it is not known whether it included the Claimant) sent a "Letter Before Claim" to the Defendant: trial bundle pages 462-465. The Defendant replied on the 6th January 2012: trial bundles pages 406-408.

21. On 21st February 2012 the Claimant lodged a claim form on what was expressed to be "a protective basis": trial bundle pages 1-6. Mr …..submits that the claim form was incomplete because it did not have a statement of facts, nor a detailed statement of grounds. Instead it attached the letter before claim dated 19th February 2012 while conceding that a statement of facts and grounds was likely to be needed: trial bundle pages 7-12. Mr …… also submitted that the application itself was incomplete because it was not accompanied by copies of the documents on which the Claimant proposed to rely, nor relevant statutory material, nor a list of essential reading for the Court.

22. The Claimant also applied for a stay of proceedings for 28 days, which was agreed by the Defendant and the Interested Party, and for a Protective Cost Order (which was not agreed). Both the Defendant and the Interested Party filed Acknowledgments of Service. The Interested Party responded with summary grounds: trial bundle pages 27-28.

23. When the stay expired on 20th March 2012, a further stay was agreed between the parties until 10th April 2012 to facilitate a meeting between them in an attempt to resolve the dispute.

24. A meeting was held between the Claimant and Mr …….and the Interested Party on 2nd April 2012, following which the Interested Party sent a letter to local residents dated 5th April 2012 setting out its position on the key issues: trial bundle pages 30-31.

25. On 5th April 2012 the Court wrote to the parties, advising that any further grounds from any of the parties should be lodged with the Court by 15th May 2012. On the same day, the Claimant wrote to the Court asking for a stay of 14 days from 10th April 2012 (which was the date when the agreed stay expired): trial bundle page 450. Neither the Defendant nor the Interested Party consented to this application and no stay was ever granted.

26. On 13th April 2012 the Defendant wrote to the Claimant by email (copying it to the Interested Party) seeking clarification as to whether he intended to pursue the claim. It pointed out that if the Defendant and the Interested Party were to have the normal 21 days to respond to the detailed statement of facts and grounds and supporting documents, these would need to be filed by 24th April 2012 if the Defendant and Interested Party were to meet Court's requested deadline: trial bundle pages 451-452. No response was received.

27. On 24th April 2012 the Claimant made a formal application to the Court requesting a further extension of time to 16th May 2012 to lodge his detailed statement of facts and grounds: trial bundle pages 32-34. Both the Defendant and the Interested Party opposed this application and submitted representations to the Court: trial bundle pages 38-40.

28. On 15th May 2012 the Interested Party made an application to the Court for the Claimant's statement of case to be struck out pursuant to CPR 3.4(2): trial bundle pages 72-75.

29. On 18th May 2012 the Interested Party (and presumably the Defendant) received the Claimant's detailed statement of facts and grounds: trial bundle pages 46-71. On 13th June 2012 Mr Justice McCombe ordered that the permission hearing and the strike out application be listed for an oral hearing together: trial bundle pages 87-88.

30. The Defendant wrote in support of the Interested Party's application to strike out the claim on 20th June 2012: trial bundle pages 94-95.

The Issues

Issue One: Environmental Impact Assessment

31. Mr ….. submits that this proposal falls within the scope of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as (a) it is a Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location and (b) the area of the development exceeds 0.5 hectares. Because the Defendant as the local planning authority has not carried out a screening opinion as required by Regulation 7 and Schedule 2, paragraph 10 (b) of the Regulations the grant of planning permission is unlawful.

32. Mr ….. submits that (a) the proposed sports pavilion is not an urban development project under the Regulations; (b) that even if it was there is no reasonable basis for concluding that its construction will have significant effects upon the environment by

virtue of factors such as its nature, size or location; (c) that in any event the area of the proposed development is less than 0.5 hectares; and (d) that even on Mr **…** 's own calculations the error (if ever there be) in calculating the area of the development is *de minimis*.

Discussion

33. The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 are designed to implement Directive 85/337/EEC (as amended) (now consolidated by Directive 2011/92/EU). For the purposes of this claim Mr … does not argue that the 2011 Regulations do not properly implement that Directive.

34. Regulation 2 of the 2011 Regulations define "EIA development" as:

> "means development which is either—
>
> Schedule 1 development;
>
> Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;"

35. A "Schedule 2 development" is defined in Regulation 2(1) as meaning:

> "development, other than exempt development, of a description mentioned in Column 1 of the table in Schedule 2—
>
> any part of that development is to be carried out in a sensitive area; or
>
> any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development."

It is clear from the definition of "sensitive area" also in Regulation 2(1) that that does not apply to this development and therefore is not caught by paragraph (a) of the definition of Schedule 2 development.

36. Mr Buxton relies on Schedule 2 paragraph 10(b) of the Regulations. Paragraph 10 is headed "Infrastructure Projects". Paragraph 10(b) deals with:

> "(b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas. The area of the development must exceed 0.5 hectares."

37. In these circumstances Regulation 7 bites. It says this:

> "**7. Applications which appear to require screening opinion**.
>
> Where is appears to the relevant planning authority that—
>
> (a) an application which is fallen for determination is Schedule 1 application or a Schedule 2 application; and
>
> (b) the development in question has not been the subject of a screening opinion or screening directions; and
>
> (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

> Paragraphs (4) and (5) of Regulation 5 shall apply as if the receipt or lodging of the application were a request made under Regulation 5(1)."

38. The practical effect of this is that if there is no screening opinion or directions then the relevant planning authority (in this case the Defendant)

> "shall not grant planning permission or subsequent consent pursuant to an application to which this regulation applies unless they have first taken the environmental information into account, and they shall state in their decision that they have done so": Regulation 3(4).

39. The first issue is whether the demolition of the old pavilion and the construction of the new pavilion is an "Urban development project" within the meaning of Schedule 2 paragraph 10(b) of the Regulations. In *R (on the application of Anne-Marie Goodman and Keith Hedges) v The London Borough of Lewisham and Another* [2003] EWCA Civ 140 Buxton LJ said this at paragraph 8 of his Judgment:

> "8. In the present case, the only serious contender for a category of Schedule 2 development under which the application might fall is paragraph 10(b) of the Schedule: infrastructure projects that are urban development projects. These are very wide and to some extent obscure expressions, and a great deal of legitimate disagreement will be involved in applying them to the facts of any given case. That emboldened Lewisham to argue, and the judge to agree, that such a determination on the part of the local authority could only be challenged if it were *Wednesbury* unreasonable. I do not agree. However fact-sensitive such a determination maybe, it is not simply a finding of fact, nor of discretionary judgment. Rather, it involves the application of the authority's understanding of the meaning in law of the expression used in the Regulation. If the authority reaches an understanding of those expressions that is wrong as a matter of law, then the court must correct that error: and in determining the meaning of the statutory expressions the concept of reasonable judgment as embodied in *Wednesbury* simply has no part to play. That, however, is not the end of the matter. The meaning in law may itself be sufficiently imprecise but in applying it to the facts, as opposed to determining what the meaning was in the first place, a range of different conclusions may be legitimately available. That approach to decision-making was emphasised by Lord Mustill, speaking for the House of Lords in *R v Monopolies Commission ex p South Yorkshire Transport Ltd* [1993] 1 WLR 23 at p32G, when he said that there may be cases where the criterion, upon which in law the decision has to be made,
>
> > 'may itself be so imprecise that different decision-makers, each acting rationally, might reach different conclusions when applying it to the facts of the given case. In such a case the Court is entitled to substitute its own opinion for that of the person to whom the decision has been entrusted only if the decision is so aberrant that it can not be classed as rational.'
>
> 9. That is the decision as to whether the development is a Schedule 2 development. If the authority concludes that it is such, it then has to go on and decide whether that Schedule 2 development is also an EIA development, by determining whether it is likely to have significant effects on the environment by virtue of factors such as its nature, size or location. That is an enquiry of a nature to which the *Wednesbury*

principle does apply, and I understand Sullivan J to have so held in *R (Malster) v Ipswich BC* [2002] PLCR 251 [61]. "

40. While I accept (as I must) the exhortation of the European Court in the ***Kraaijveld*** case (C7-295, 1-5403) where the Court considered the interpretation of Annex 2 to the Directive. At paragraph 31 of its judgment the Court said this:

> "the wording of the Directive indicates that it has a wide scope and a broad purpose"

I do not think the demolition of the existing pavilion and the construction of a new sports pavilion as described in the Planning Committee report I have referred to amounts to an urban development project. Schedule 2 paragraph 10 is headed "infrastructure projects". All of the developments listed in paragraph 10 (a)-(p) are precisely that i.e. infrastructure projects. I can not see how in any true meaning of the construction of the phrase "infrastructure projects" the construction of a small sports pavilion on a small sports pitch can be classed as an infrastructure project. Indeed paragraph 10(b) set out above supports that because the references are to quote "the construction of shopping centres and car parks, sport stadiums, leisure centres and multiplex cinemas." This sports pavilion is a far cry from a sports stadium or a leisure centre. My view is supported by the European Commission's Guidance entitled Interpretation of Definitions of Certain Project Categories of Annex I and II of the EIA Directives (2008). At page 33 it says this:

> "the term "infrastructure" is widely interpreted and may include roads, power and other utilities service providing to facilitate the growth of industries."

41. At page 34-35 the guidance goes on to say that it would be advisable to interpret the scope of this projects category as including:

> (1) Projects with similar characteristics to car parks and shopping centres e.g. bus garages;
>
> (2) Construction projects such as housing developments, hospitals, universities, sports stadiums, cinemas and theatres;
>
> (3) Projects to which the terms "urban" and "infrastructure" can relate, such as the construction of sewerage and water supply networks.

42. If I am wrong about that then I turn to the question of whether or not there was no reasonable basis for the Defendant concluding that significant environmental effects were likely. As is clear from the officer's reports, the Committee Report and the correspondence the Defendant took the view that the development was not likely to have significant effects on the environment by virtue of factors such as its nature, size or location: Regulation 2(1). In my judgment they were entitled to do so.

43. The third point is the area of the project. As I have stated Schedule 2 Regulation 10(b) provides that the Regulations only bite if the area of the development exceeds 0.5 hectares. The evidence for the Defendant is contained in the witness statement of Mr …… dated 20th July 2012. He says this:

> "5. The Council has considered whether this is an EIA application (para 15) and has come to the view that the proposed development is not an Urban Development Project due to its size, scale and intensity nor is the project likely to have a significant effect on the environment because of its nature, size or location nor is it located in a sensitive area. The development footprint will affect an area of less than 0.5ha

and in all these circumstances a screening opinion was not required.

6. I have measured off-plan the combined area of the existing pavilion and the proposed pavilion including the compound. The measurements are as follows:

6.1 The existing pavilion is 24.5m across and 9m deep (220.5sqm).

6.2 The proposed pavilion and compound is 37m across and 24m deep (888sqm).

6.3 The combined footprint of the old and the new is 1108.5sqm.

6.4 1108.5sqm equates to just over 0.1ha.

7. The Interested Party's architects had provided to the Council a measurement for the red-line site area – which has been measured off their CAD plan – of 4,901sqm. I have independently measured the red-line site area by using the Council's electronic mapping system and agree with the Interested Party's architect's measurements.

8. The Interested Party's architects have provided to the Council a measurement for the blue-line area – which has been measured off their CAD plan – which is that land within the Interested Party's control, of 40,935sqm. This can be rounded up to 4.1ha, which corresponds to the answer to Q21 on the planning application form referred to in Mr ……. 's witness statement. I have independently measured the blue-line site area using the Council's electronic mapping system and agree with the Interested Party's architect's measurements.

9. Originally the Interested Party (as Applicant) submitted the application with the red-line drawn only around the footprint of the new pavilion but the Council required it to be drawn to the boundary of the roads and to include the existing pavilion for three reasons. Firstly, so that the Council can be satisfied that there is access to the public highway. Secondly, so that the landowners or others with a legal interest in the whole area can be included, identified and notified. Thirdly, so that the red-line incorporated the existing pavilion to be demolished.

10. It is fact that the red-line site area is on the border line of 0.5ha and the blue-line site area is 4.1ha and that this is mainly because the areas consist of playing fields and temporary access arrangements through them, which will remain unaltered by the completed development. In my opinion, there is no justification for aggregating these areas of unaltered land with the footprint of the replacement pavilion to conclude that it amounts to a Urban Development Project which is described (but not defined) in the Regulations to include shopping areas, sports stadium, leisure centres etc."

44. The Claimant's evidence on this matter is contained in the first witness statement of Mr ……dated 5th July 2012. Mr **……..**is the Claimant. His evidence is at paragraphs 15-28 of his first witness statement. His measurements are as follows:

(1) Revised red lined area on the drawing as 0.505 hectares;

(2) Land associated with rugby pitch number one and loss of the "missing" training pitch at 0.83 hectares: Paragraph 24;

(3) The contractors compound at 0.15 hectares: Paragraph 25 and the southern access and the old tennis courts otherwise known as "the car park" which he has measured as car park area 0.15 hectares and southern access as 0.016 hectares.

In taking these measurements Mr **…..** did not have access to the Interested Party's architect's CAD files for the project and had to take his measurements from paper print copies that have been produced to the correct site plan scale of 1:1250. He accepts there is room for error caused by manual measuring off paper due to a variety of factors. I can see no possible basis in law for including either rugby pitch number one and the loss of the "missing" training pitch. Neither can I see any basis in law for including the car park area and the southern access. They are not part of the development.

45. Mr **……** also relies on the fact that for another development at 221 Hills Road the Defendant did carry out a formal screening opinion where the site was only 0.215 hectares. I can see no relevance in this at all. Although the Court of Appeal in the *Goodman and Hedges* case did not specifically address the issue of the correct approach for the court in deciding whether a proposed development is an urban development project within the second criterion of Schedule 2 paragraph 10(b) i.e. the precise area, it seems to me that this a matter of fact and not a matter of interpretation of phrases in a piece of legislation. As such it is only reviewable on traditional *Wednesbury* grounds. In my judgment the evidence of Mr ….. is compelling. It is not arguable that the Defendant's decision on area is an error of law. For these reasons Issue One is not arguable.

Issue Two: Pitch Loss

46. The Claimant alleges that the Defendant consulted Sport England, a statutory consultee, on a misleading basis that there would be no loss of pitches involved in the proposed development: trial bundle pages 68-69 paragraphs 88-89. Mr …… submits that the proposed development did not itself lead to the loss of a training pitch and Sport England was not mislead in the consultation process.

Discussion

47. The planning application went on the Council's website on 11th August 2011, with comments requested by 25th August 2011: trial bundle page 172. There is clearly an issue of fact between the Claimant and the Interested Party as to whether there was or was not a "third" football pitch. Mr …… submits that there was such a pitch and the Interested Party says there was not. The Defendant accepted the evidence provided to it via the Interested Party. The Interested Party's evidence was that the training pitch which the Claimant refers to was not a permanent pitch. It was temporarily marked out for junior football (which has now been discontinued) and for other purposes. It was removed from use prior to the submission of the Interested Party's planning application: trial bundle page 382. The Defendant also had an email from Mr ……..of the Third Party which set out the history of the matter: trial bundle page 112.

48. Finally, there was no restriction preventing the Interested Party from removing or reconfiguring the pitches in the planning conditions and the action in doing so predated the planning application. It was not therefore a material consideration for the Defendant in determining the application.

49. As I say the Defendant accepted this in evidence which was credible evidence. There was therefore no misrepresentation when the Defendant consulted Sport England. It did not fail to disclose a material factor which might have led to Sport England adopting a different view. This Issue is not arguable.

Issue Three: Intensification of Use

50. This issue centres on the access to the car park at the southern end of the Interested Party's sports ground: trial bundle page 47 paragraph 7. The Claimant does not object in principle to the relocation and replacement of the pavilion but it is concerned about the way the Defendant has gone about reaching its judgment. The Claimant's central point is that the Defendant has not addressed its failure to consider whether the improved facilities would result in more community users coming to the sports pitch and particularly by motor vehicles as players and spectators as articulated in the statement of further grounds at paragraph 72. The complaint is made that the Defendant does not explain (and did not explain) why the likely changing nature of the persons using the new facilities or coming to watch matches is unlikely to lead to intensification.

51. Furthermore, Mr …… makes these submissions: (a) that there was no consultation on the Travel Plan because it was raised in draft at the Committee meeting without being under consideration before; (b) that there were so called "secret options" put forward by the Interested Party which were not in the Officer's Report to Committee and there was again no consultation on them; and (c) that there was no evidence that the Defendant considered whether either a *Grampian* condition could be imposed or that the Interested Party could be required to enter into a unilateral undertaking with regard to traffic intensification.

52. Mr …….. makes detailed submissions contained in his skeleton argument as well as in his oral submissions. His core submission is that all the points in issue were raised with the Defendant who considered and rejected them. This was a lawful exercise by the Defendant of its planning judgment and its conclusion that the proposal would not lead to any material intensification in the use of the sports ground and would not significantly worsen the existing access situation: trial bundle page 19 is unimpeachable.

Discussion

53. I have already set out the summary reasons given by the Defendant: trial bundle page 19. See also the Interested Party's letter to the Claimant on 20th March 2012: trial bundle page 409 and its letter to residents on 5th April 2012: trial bundle pages 30-31.

54. The Claimant alleges that the Defendant failed to consider whether the proposals would result in an intensification of use and/or acted irrationally in concluding the use would not intensify. However, questions of intensification of use and access arrangements to the sports ground were considered by the Defendant in some detail prior to the grant of planning permission. For example:

> (1) The Defendant twice consulted with the Highways Department and twice received representations. The Highways Department did not consider that the proposed development would result in the intensification of use of the sports grounds or that the Interested Party could be required to resolve existing access issues which were unrelated to (and pre-dated) its application for planning permission: trial bundle pages 243 and 246. See also the comments from the Highways Officer set out in the Pre-Committee Amendment Sheet: trial bundle page 288. The relevant Highways Officer had visited the site several times: trial bundle page 326G.
>
> (2) The Defendant's planning officers considered the question of intensification and did not consider that it was likely or that any condition should be imposed regarding the southern access to the

sports ground: see officers report: trial bundle pages 256-257; 270-271.

(3) The Defendant's Development Control Forum heard the resident's concerns regarding the traffic movement and was informed by the Interested Party at the meeting of 28th September 2011 that any additional community use of the sports field would displace existing users, rather than increase use: trial bundle pages 224-228.

(4) The Defendant's South Area Committee took account of representations raised by local residents regarding the risk of intensification at the meeting on 7th November 2011: trial bundle pages 294-295. I am satisfied that there was more than adequate consultation in this case and the issue of intensification was expressly considered by the Defendant on a number of occasions in the planning process up to and including the Defendant's South Area Committee which made the decision on 7th November 2011.

55. Mr ……. second point is that the Defendant failed to consider the imposition of a Grampian condition requiring works to the southern access route: see *Grampian Regional Council v City of Aberdeen* [1984] JPL 590.

56. The reasons attached to the planning permission make it clear that the Defendant did consider the imposition of such a condition: trial bundle page 19 (reasons) and the minutes of the Committee meeting on 7th November 2011: trial bundle pages 294-295. That decision was supported by the judgment of its Highway Officer: trial bundle page 248. The Interested Party did not and does not own the access land in question. Furthermore, the Defendant's decision not to impose a Grampian condition was consistent with the guidance then in force in Government Circular 11/95 paragraph 15. In those circumstances I do not see that there is any prospect of successfully arguing that the Defendant failed to consider the imposition of a Grampian condition.

57. Mr …….. third point is that the Defendant should have given consideration to the use of a planning obligation. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 provides that:

> "(2) a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is –
>
> (a) necessary to make the development acceptable in planning terms;
>
> (b) directly related to the development; and
>
> (c) fairly and reasonably related in scale and kind to the development."

58. In November 2011 Government Circular 05/2005 was in force. Paragraph B7 provides that:

> "Similarly, planning obligation should never be used purely as a means for securing for the local community a share in the profits of the development i.e. as a means of securing a "betterment levy."

Furthermore, paragraph B9 provides that:

> "Planning obligations should not be used solely to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives that are not necessary to

allow consent to be given for a particular development."

59. The Defendant in this case did not consider that a planning obligation was necessary to make the development acceptable as it did not consider it would cause any intensification of use or any material worsening of the existing access issues. That was a decision of fact which was open to the Defendant, having fully considered the representations made by local residents. It was neither an unreasonable nor an irrational decision.

60. Mr ……. fourth point is that the Defendant should have considered the imposition of a condition to the planning permission to control pre-existing problems with the southern access, regardless of any intensification use associated with the proposed development.

61. In my judgment the short answer to that is contained in Government Circular 11/95 paragraphs 24-25 which says this:

> "**24.** Unless a condition fairly and reasonably relates to the development to be permitted, it will be *ultra vires*.
>
> **25.** Thus it is not sufficient that a condition is related to planning objectives. It must also be justified by the nature of the development permitted for its effect on the surroundings. For example, if planning permission is being granted for the alteration of a factory building, it would be wrong to impose conditions requiring additional parking facilities to be provided for an existing factory simply to meet a need that already exists, and similarly wrong to require the improvement of the appearance or layout of an adjoining site because it is untidy or congestive; despite the desirability of these objectives in planning terms the need for the action would not be created by the new development."

62. In the Defendant's view it was not necessary to make improvements to the southern access road in order to make the proposed development acceptable. In those circumstances its decision not to impose a condition was lawful and accorded with the guidance in the Government Circular 11/95.

63. Mr ……. fifth submission is that the Defendant acted in a procedurally unfair way by failing to disclose to third parties an email dated 29th September 2011 sent from the Interested Party to the Defendant as a follow up from the meeting held with the Defendant on the previous day: trial bundle pages 237-238; 244-245.

64. That email stated that:

> "After consulting neighbours on the original planning permission and considering their concerns in relation to access and community use, the College wishes to propose a number of options; one of which may help to alleviate resident's concerns and to be considered as a condition for the granting of planning permission:
>
> …
>
> 3. Retain the current pattern of community use of the playing fields but without on-site parking. For the avoidance of doubt there would be no vehicular access onto the playing fields from either the northern entrance of Luard Road or the southern entrance of Sedley Taylor Road with the exception of emergency services."

65. On 5th October 2011 the Interested Party sent the Defendant a slightly amended wording, which removed option 3 above and provided instead this:

> "After consulting neighbours on the original planning submission and considering their concerns in relation to access and community use, the College will take the following action, which may to help to alleviate resident's concerns.
>
> - Incorporate within the terms of the conditions for hire of the pitches
> - The maximum number (not to be exceeded) of car parking spaces available on site.
> - A statement about consideration to neighbours in residential streets.
> - Suggestions of alternative methods of transport to the site.
>
> It should be noted that the Cantabrigian Rugby Club falls outside the scope of the above."

66. As discussions between the Defendant and the Interested Party progressed different solutions were explored. The condition proposed in the email of 29th September 2011 was withdrawn by the Interested Party on 5th October 2011.

67. I am unable to see why the Committee report drafted by the Defendant's planning officer should contain each and every item in detail of the pre-agenda discussions with the Interested Party. In my judgment a failure to disclose the email of 29th September 2011 does not render the Defendant's decision unlawful. Furthermore, as the Defendant was entitled to propose only those conditions which it considered to be necessary it was under no duty in law to impose all those conditions proposed or considered by the Interested Party.

Issue Four: The Travel Plan Condition

68. Mr ….. submits that the Defendant acted unlawfully in relation to the Travel Plan in the following ways. First, it failed to consider and/or permit the Claimant and others from making representations about it or put forward alternative conditions. Second, it failed to consider whether it was appropriate to grant permission subject to a Travel Plan condition in the way that it did rather than follow Government Guidelines to the effect that a Travel Plan should occur at the planning application stage rather than after planning permission was granted. Third, the effect of the way in which the Defendant dealt with this issue prevented the Claimant and other residents making meaningful representations as to whether planning permission should be granted subject to appropriate conditions. It follows that the whole issue should have been deferred at the South Area Committee on 7th November 2011 to enable consultation. Mr …….. submits that the Defendant made a perfectly lawful decision. Although planning officers did not consider a Travel Plan necessary as a condition members clearly did. They were entitled to take that view and impose a Travel Plan condition.

Discussion

69. Condition 15 of the planning permission provides as follows:

> "15. Prior to the commencement of development of the proposed sports pavilion, the applicant shall submit a Travel Plan which will be approved in writing by the Local Planning Authority. The Travel Plan

> shall specify the methods to be used to discourage the use of the private motor vehicle for trips to and from the existing site and the neighbouring streets of Luard Road and Sedley Taylor Road and the arrangements to encourage the use of alternative and sustainable modes of transport to the site including public transport, car sharing, cycling and walking. The Travel Plan should be implemented as approved upon the use of the pavilion and monitored in accordance with details to be agreed in writing by the Local Planning Authority.
>
> Reason: To ensure that travel to and from the proposed sports pavilion is encouraged to be as sustainable as possible in recognition of the existing poor access arrangements (Cambridge Local Plan 2006 Policies 8/3 and 8/4)."

70. The Defendant's planning officer had not proposed such a condition in her report, where the question of traffic management measures had been raised by her: trial bundle page 269 paragraph 8.36.

71. As the minutes of the South Area Committee dated 7th November 2011 make clear the Committee received representations from two objectors who specifically made points about access and intensification of use. There was a response from Mr …… from the Interested Party and following debate members proposed a condition requiring the submission of a Travel Plan to be approved in writing by the Defendant.

72. As a matter of law the Committee was entitled to impose such conditions as it considered necessary as a result of hearing all the representations (providing they satisfied the relevant legal requirements). Planning committees are entitled to disagree with the recommendations of their officers. That is precisely what happened in this case. There is no inconsistency in the Committee's findings (a) there would be no intensification of use associated with the proposed development but (b) a Travel Plan condition should be imposed. Condition 15 was not a condition preventing vehicular access which is what the Claimant wants: trial bundle page 35. In reality this issue simply ignores the extensive consultation about access and intensification of use which had taken place before the South Area Committee made its decision (including representations made at that meeting).

Conclusion

73. For these reasons I am satisfied that the Claimant has not shown that there is an arguable case that a ground for seeking Judicial Review exists which merits full investigation at a full oral hearing with all the parties and all the relevant evidence. For these reasons the application for permission to apply for Judicial Review will be dismissed.

The Application to Strike Out

74. The Application to strike out under CPR 3.4 can be dealt with much more shortly. CPR 3.4(2) provides as follows:

> "(2) The court may strike out a statement of case if it appears to the court—
>
> (a) that the statement of case discloses no reasonable grounds for bring or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;

(c) that there has been a failure to comply with the rule, practice direction or court orders."

75. In *Asiansky Television plc v Bayer Rosin* [2001] EWCA Civ 1792, having reviewed the authorities Clarke LJ (as he then was) stated at paragraph 49:

> "the essential question in every case is: what is the just order to make, having regard to all the circumstances of the case? As May LJ put it [in Purdy v Cambran [2000] CP Rep 67 para 51] it is necessary to concentrate on the intrinsic justice of a particular case in the light of the overriding objective. The cases to which I have referred emphasised the flexible nature of CPR and the fact that they provide a number of sanctions short of the draconian remedy of striking out the action. It is to my mind important that Master or Judge exercising his discretion should consider alternative possibilities short of striking out."

76. Clarke LJ went on to state that consideration should be given to the question whether striking out the claim or defence would be disproportionate. He also accepted the submission of counsel was only in a case of "flagrant abuse" would a court be likely to strike out an action where a fair trial is still possible.

77. Although this authority was not cited to me in argument it is set out in the White Book 2012 volume 1 at page 69 as a leading authority on the matter.

78. Mr …… submissions are set out in paragraphs 24-33 of his written submissions and he made oral submissions in support. He took me through the history of the case and the position as it was 15th May 2012 when the application was issued. However he accepted that circumstances had moved on in that the documents required to be submitted by the Claimant had now been submitted to the Court and of course there was a lengthy detailed statement of grounds. However, he submitted that the Claimant's statement of case should still be struck out because the Claimant had failed to comply with CPR Part 54 and Practice Direction 54A and the proceedings were therefore an abuse of the Court's process. He also submitted that the statement of case disclosed no reasonable grounds for bringing the claim.

79. Unsurprisingly Mr …….. opposes the application and made various submissions opposing it.

Discussion

80. It seems to me sensible that I should deal with the situation as it was before me on 1st August 2012. Mr Justice McCombe had made an order on 13th June 2012 ordering that the permission hearing and the strike out hearing be listed together for an oral hearing. Because of the state of the lists those matters were not heard by me until 1st August 2012. While the Claimant's conduct of the earlier part of the case can be criticised the fact of the matter was by 18th May 2012 the Interested Party (and presumably the Defendant) had received the Claimant's detailed statement of facts and grounds. The documents had been lodged and it was not for a further two and a half months i.e. until 1st August 2012 that the matter was heard. I also bear in mind that the application for permission and the application to strike out took a whole day (the time estimate by Mr Justice McCombe was quite accurate).

81. Against that background I examine CPR 3.4(2). First, I do not think after argument of that length that it can be said that the statement of case discloses no reasonable grounds of bringing or defending the claim. The length of this judgment is proof of that. The second, for the same reasons I do not think that the statement of case is an abuse of the Court's process. Third, the amended statement of grounds were indeed

substantial and clear (and very helpful). They were certainly not likely to obstruct the just disposal of the proceedings. Fourth, although there may have been technical failure to comply with CPR 54.5(1)(a) and Practice Direction 54A I do not consider that the Interested Party has been prejudiced in any material way. Mr Pereira took me to the witness statement of Miss ……. at paragraphs 28-31 dated 15th May 2012 which deals with delay to the works and prejudice to the Interested Party. The work has not yet started and although the Interested Party needs to be able to demonstrate to the Education Funding Agency that the funds have been appropriately spent before April 2013 there is no hard evidence that if the works start shortly the Education Funding Authority will actually claw back the funding if the work is not completed by that date.

82. I am also conscious that the strike out procedure is supposed to be a summary procedure. In fact in this case it became inextricably interwoven with the application for permission to apply for Judicial Review. In those circumstances I am not prepared to exercise my discretion to strike out the claim after such a substantial hearing.

Protective Costs Order

83. Mr ….. and Mr ……. made very brief oral submissions on this issue. In the circumstances and because of my conclusions I will hear further submissions as to whether I should make a Protective Costs Order in favour of the Claimant and if so for how much when Judgment is handed down.