

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

CO/1619/2022

BETWEEN:

**THE QUEEN (on the application of
FEWS LANE CONSORTIUM LIMITED)**

Claimant

-and-

**SOUTH CAMBRIDGESHIRE
DISTRICT COUNCIL**

Defendant

-and-

HOMES ENGLAND

Interested Party

**SUMMARY GROUNDS OF DEFENCE
ON BEHALF OF THE INTERESTED PARTY**

References and Abbreviations

CB/x / y denotes the Claim Bundle, Tab x, page y

SFG/x denotes the Claimant's Statement of Facts and Grounds, paragraph x

DSGD/x denotes the Defendant's Summary Grounds of Defence

OR/x denotes the Officer's Report, paragraph x

DHx denotes the relevant Exhibit to the Interested Party's Witness Statement

A Chronology is attached at Appendix 1 and a List of Essential Reading at Appendix 2.

Introduction

1. The Fews Lane Consortium, ("the Claimant") has brought a claim for judicial review, seeking to quash the decision of South Cambridge District Council ("the Defendant") to grant planning permission (dated 25 March 2022) (Reference: 20/02171/OUT) [CB/Tab 2/A43-45] for:

“the development of Northstowe Phase 3A for up to 4,000 homes, two primary schools, a local centre (including employment, community, retail and associated services, food and drink, community, leisure, residential uses and other accommodation), secondary mixed use zones (including employment, community, retail and associated services, food and drink, community leisure, residential uses), open space and landscaped areas, sports pitches, associated engineering and infrastructure works, including the retention of the existing military lake and creation of a new lake, with details of appearance, landscaping, layout, scale and access reserved.” (“the Application” / “Development”) at Northstowe Phase 3A, Rampton Road, Longstanton, Cambridgeshire (“the Site”).

2. Homes England (“the Interested Party”) is an executive non-departmental public body, sponsored by the Department for Levelling-up, Housing and Communities (“DLUHC”). It is the Government’s housing accelerator, seeking to increase the number of new homes that are built across England. It owns the Site and was the applicant for planning permission.
3. Northstowe Phase 3A forms part of the largest single allocation within the Defendant’s administrative area. The Development is a key component in the delivery of housing in the Defendant’s administrative area over the next two decades.¹
4. The Application was considered at a special meeting of the Planning Committee of 6 hours in duration (28 January 2022), and approved by 8 votes against 3 votes. A separate application for Phase 3B for up to 1,000 homes (and associated development) was also subject to a resolution to grant at a subsequent meeting and granted permission on 25 March 2022.
5. The Interested Party supports the Defendant’s arguments in full, as set out initially in the Summary Grounds of Defence (dated 6 June 2022). In short:

(1) None of the four grounds are arguable;

¹ DH1 contains four plans showing the location of Phase 3A in relation to Phases 1, 2 and 3B, illustrating the general scale of the site and explaining the phased nature of its delivery.

(2) Section 31(3C) of the Senior Courts Act 1981 is engaged across all grounds: it is highly likely that the outcome for the Claimant would not have been substantially different had the conduct complained of not occurred.

6. The claim is a straightforward attack on the planning judgement of the Defendant's Planning Committee. It does not properly account for well-established principles in respect of challenges to decisions by Planning Committees nor in respect of environmental assessment. It should not be permitted to proceed any further.

Factual Background

7. The Defendant's Summary Grounds identify the applicable background, which was also set out in detail in the Officer's Report.
8. The Claimant's summary of the factual background at SFG/6-27 to the case omits certain key information. It also provides an overly selective summary of certain relevant documents. It has therefore been necessary to correct that in a number of respects.
9. The Interested Party has therefore provided an additional Witness Statement from Mr Dean Harris who is a Senior Planning and Enabling Manager at Homes England. Mr Harris was present at the Committee Meeting. Where applicable he has also sought advice from the Interested Party's wider technical team, including its consultants Arcadis. The Witness Statement has 11 Exhibits summarised at paragraph 7 of the Witness Statement, most of which are excerpted from longer documents.
10. Attached to these Summary Grounds are a Chronology (Appendix 1) and a list of Essential Reading (Appendix 2). The latter itemises a number of key references in the documents before the court and in the aforementioned Exhibits.
11. Whilst the size of the site is larger and the length of the chronology longer than would be the case for many smaller sites, this should not obscure the fact that the

legal issues in this case are far simpler than the Claimant suggests – once the full factual background is considered and not confined to the Claimant’s partial summary.

12. It is necessary to consider matters in stages, as follows:

- (1) National Planning Policy and Planning Practice Guidance, in respect Water Supply matters
- (2) The Development Plan, including the Site’s allocated status
- (3) Cambridge Water Water Resource Management Plan 2019 (December 2019)
- (4) Northstowe Phases 1, 2, 3A and 3B and the Discussion with Cambridge Water Securing Water Supply
- (5) The Environmental Scoping process (November 2018 and 4 March 2019)
- (6) Planning Application Documents: Utilities Statement (April 2020) and Sustainability Statement (January 2021)
- (7) Consultation Responses (2020 and 2021)
- (8) Officer’s Report (20 January 2022)
- (9) Committee Meeting (28 January 2022)
- (10) Post-Committee Correspondence (10 February 2022)
- (11) Decision Notice, including Conditions attached to the Permission (especially Conditions 9 and 31) (25 March 2022).

13. When these documents are considered in full, it is clear why members reached the decision that they did and why the claim is not arguable. The Claimant’s

omissions in respect of the documentation demonstrates the lack of merit in the underlying claim.

1) National Planning Policy and Planning Practice Guidance

14. The National Planning Policy Framework paragraph 20² sets the overarching context for water supply as a strategic matter, to be addressed through development plans and not individual applications (with all underlining and bold emphasis added both here and below):

20. *Strategic policies should set out an overall strategy for the pattern, scale and design quality of places, and make sufficient provision for:*
- a) housing (including affordable housing), employment, retail, leisure and other commercial development;*
 - b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk ...*

15. The Planning Practice Guidance Chapter 34 Water supply, wastewater and water quality then confirms at paragraph 34-016-20140306: Considerations for planning applications”:³

Water Supply

Early engagement with the local planning authority, the Environment Agency and relevant water and sewerage companies as appropriate can help establish whether particular water and wastewater issues need to be considered.

*Planning for the necessary water supply would normally be addressed through authorities’ strategic policies, which can be reflected in water companies’ water resources management plans. **Water supply is therefore unlikely to be a consideration for most planning applications.** Exceptions might include:*

- large developments not identified in plans that are likely to require a large amount of water; and/or*
- significant works required to connect the water supply; and/or*
- where a plan requires enhanced water efficiency in new developments as part of a strategy to manage water demand locally and help deliver new development.*

² DH2

³ This version of the PPG has been in force since 22 July 2019, but very similarly worded versions have been in force since 23 March 2015

16. The above provision was expressly cited by the Defendant's officer, Mr Stephen Kelly, during the Committee meeting and recorded in the transcript.⁴ In short, it is well-established that where water supply matters have already been considered at the strategic level, there is no requirement or expectation that those issues should be revisited at the application stage.

2) Development Plan, including the Site's Allocated Status

17. In the instant case, the Site has been allocated for major strategic development for over 15 years. This commenced with the South Cambridgeshire Core Strategy (adopted January 2007).⁵ In July 2007, an Area Action Plan was adopted (alongside the Core Strategy).⁶ Both of these development plan documents allocated the Site for 10,000 houses. In September 2018, the Northstowe allocation was again confirmed under the South Cambridgeshire District Local Plan (2018).⁷
18. The application therefore benefited from two very strong presumptions: the statutory presumption in favour of the development plan under section 38(6) of the Planning and Compulsory Purchase Act 2004, and the allied national policy presumption in favour of sustainable development ("PFSD") under NPPF 11c: *"For **decision-taking** this means: c) approving development proposals that accord with an up-to-date development plan without delay"*.
19. Each of these development plan documents was subject to Strategic Environmental Assessment ("SEA") under the Environmental Plans and Programmes Regulations 2004 through Sustainability Appraisals under section 19(5)(a) PCPA 2004, which were themselves drawn up in the context of a detailed evidence base.

3) Cambridge Water Water Resource Management Plan 2019

⁴ Transcript: Stephen Kelly: CB/Tab 4/A552

⁵ DH4: Core Strategy, Policy ST/2 Housing Provision and paragraphs 2.10 and 2.11

⁶ DH5: Policy NS/2 Development Principles and Policy NS/3 The Site For Northstowe

⁷ DH6: Chapter 2: Spatial Strategy: Policy S/6: The Development Strategy to 2031; Chapter 3: Strategic Sites: Policy SS/5: Northstowe Extension and paragraph 3.36

20. The Site falls within the catchment area of the Cambridge Water Company for the supply of drinking water, but within the catchment area of Anglian Water for sewerage (i.e waste water). Both fall within the 20 water companies regulated by the Water Industry Act 1991. Under section 37 of that Act, they are required to maintain a water supply system in their respective areas.
21. Under sections 37A-D of the same Act,⁸ each company is required to publish a Water Resource Management Plan (“WRMP”), every five years, with the last such set of plans drawn up in 2019 and the next in 2024. WRMPs explain how the company intends to achieve a secure supply of water for its customers and a protected and enhanced environment. WRMPs must forecast supply over a 25 year period (considering both supply and demand). Given that range, they are produced on a rolling basis, with evidence-gathering and consultation prior to publication. The next set of WRMPs will not be published until the end of 2024, i.e. almost three years after the grant of permission in this case.
22. WRMPs are themselves subject to strategic environmental assessment under the Environmental Assessment of Plans and Programmes Regulations 2004.
23. The Cambridge Water WRMP 2019 explained that in assessing supply, it had taken account of committed development and related population projections within existing local authority development plans.⁹ This document expressly referred to CW’s provision of a supply to development at Northstowe (at that stage Phase 1).¹⁰ The final section on SEA confirmed that the proposed programme did not include any options assessed as having major adverse effects.¹¹

⁸ Section 37A-D and the Water Resources Management Plan Regulations 2007

⁹ DH7: Cambridge Water WRMP, Executive Summary, Pages 8-9, especially page 9, paragraph 1: local authority development plans; Pages 20-21, Section 1.10: Our proposed programme; Section 2.7: Links to other plans, especially page 29: Section 2.7.4 Local authority plans; Chapter 3: Scope of Plan, specifically page 34, 3.2 Plan Period: 2020/12 to 2044/45; Chapter 6: Baseline demand for water, specifically, page 72 Overview, page 75: Stage 3: Plan-based forecasts and accompanying graph (Figure 7) on page 76;

¹⁰ DH7: Cambridge Water WRMP, p36, [3.6]: “There is one inset appointment in our area of supply held by Anglian Water for a development at Northstowe. We provide a bulk supply for this.”;

¹¹ DH7: Cambridge Water WRMP, p186, [11.5]

24. As the Defendant has noted, the Environment Agency has a separate statutory role (s.22(3) of the Water Act 2014, amending s.2 of the Water Industry Act 1991): to prevent the deterioration of the status of each body of groundwater as an environmental objective (Regs. 12 and 13(5)(a) of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017).
25. The Environment Agency's Water stressed areas – final classification 2021 document cited by the Claimant is a separate document to the WRMPs.
26. As the Defendant has noted, the document makes clear that it: *"must not be used for other purposes such as development planning or water resources planning"* [B37]. The purpose of this EA document is purely to assess the use of a standard of 110 litres per day for new developments and to assess the use of compulsory metering. As explained below, it was this standard of 110 litres per day which the development will be required to meet.

4) Northstowe Phases 1, 2 and 3A and 3B and Discussions with Cambridge Water Securing Water Supply

27. The Northstowe Site has already seen the delivery of houses at Phases 1 and Phase 2 has commenced.
28. As part of the process of delivery of these Phases and the contemporaneous preparation of Phase 3B, the Interested Party had already engaged with Cambridge Water and Anglian Water and identified continuing adequacy of water supply.
29. Discussions with Cambridge Water regarding Phase 2 and 3 water supply had been ongoing for some time, notably between December 2016 and January 2019. The relevant excerpts of e-mail correspondence are exhibited to Mr Harris' Witness Statement at DH8. In summary, on 1 December 2016 it was confirmed that work would be required to update the network and a booster station but that there was "spare capacity for approximately 6000 additional dwellings". This was

again confirmed on 10 December 2018. Terms of payment were agreed on 13 December 2018.

30. Water supply was therefore secured for the whole Northstowe development in 2018, followed shortly by a payment made by Homes England to Cambridge Water on 22 January 2019 to secure delivery of that supply.¹²

(5) The Environmental Scoping Opinion (4 March 2019)

31. In November 2018, the Interested Party submitted a Scoping Report to the Defendant to request a Scoping Opinion under Regulation 15 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations”). At [14.5.13] and [14.5.17], it was expressly stated that:

“[14.5.13] “As the population grows there can be impacts on the available quality and quantity of water as more water is required for supply and soil infiltration capacity becomes more limited as well as increases in discharge rates of treated wastewater on recipient watercourses. Therefore, water efficiency measures are to also be considered.”

[14.5.17] “Operation phase effects listed above in relation to water quality and supply, flood risk, and hydromorphology form part of the standard considerations for development and have therefore been scoped out due to being considered through embedded mitigation described below.”

32. At the point of submitting the Scoping Report:

(1) The agreements with Cambridge Water described above were at an advanced stage and the water supply was already being secured;

(2) The Cambridge Region WRMP 2014 was also in place explaining how environmental aspects of water abstraction would be dealt with in cooperation with the Environment Agency;

¹² DH8

(3) The Draft WRMP 2019 was being progressed and had itself been subject to SEA;

(4) The Environment Agency had not requested that water supply matters be addressed further.

33. Against this legislative and factual backdrop, and Northstowe's allocation, it was reasonably concluded that there was no need to consider issues in relation to water supply and any potential environmental impacts any further.

34. On 4 March 2019, the Council issued an Environmental Scoping Opinion identifying the scope of the Environmental Statement in support of the application. This stated in terms at page 7: "*The Councils consider that the general approach with regard to waste and water resources is acceptable.*"¹³

(6) Planning Application Documents: The Utilities Statement (April 2020) and Sustainability Statement (January 2021)

35. The Planning Application was supported by a Utilities Statement (dated April 2020) which expressly identified Cambridge Water as the provider for potable water.

36. At paragraph 4.5.5, the Utilities Statement confirmed: "*4. Cambridge Water supplies the area around Northstowe... and has confirmed that they have adequate water resources to serve the proposed Northstowe development, ...*" In the Conclusion section at 5.1.2 it was expressly recorded that:

'The anticipated utility requirements (foul drainage, potable water, gas, electricity and telecoms) for the Application Site have been reviewed by assessing the future demand taking into consideration sustainability objectives for the Northstowe development. This aligns with previous capacity secured as part of Phase 2, and the infrastructure being constructed across Phase 3A (as part of the Phase 2 infrastructure works).'"

¹³ DH10: Environmental Scoping Opinion 2019, p7: Section 16: Waste and Resource Management

37. The Interested Party therefore correctly conveyed the position in respect of future supply within the supporting documentation before the Defendant, given the agreement reached between 2016 and 2019.
38. The Application was also supported by a site-wide Sustainability Statement (dated January 2021, updating an earlier statement submitted with the application) which committed to efficiency measures, in line with the EA's 110 litres per person per day target. This would later be conditioned through Condition 31 (see point (11) below). The Sustainability Statement confirmed that:

Water Use

The policy requirements in the South Cambridgeshire Local Plan 2018 (Policy CC/4: Water Efficiency) are that all new residential Developments must achieve as a minimum water efficiency equivalent to 110 litres per person per day. Moreover, the policy requires that proposals for non-residential Development must be accompanied by a water conservation strategy, which demonstrates a minimum water efficiency standard equivalent to the BREEAM standard for 2 credits for water use levels unless demonstrated not practicable.

*In response to policy, the development will have a target of no more than 110 litres per day person water consumption in line with planning policy and the higher standards within Building Regulations. It should be noted that the level of commitment needs to be a balanced approach whereby measures are retained by residents and do not have other implications such as carbon impacts. This will be achieved through efficiency measures such as water efficient taps and through implementation of rainwater harvesting where appropriate. As part of the reserved matters applications, the proposed Development will demonstrate the minimum water efficiency standard equivalent to the BREEAM standard for 2 credits (unless this is demonstrated as not feasible).*¹⁴

(7) Consultation Responses (2020 and 2021)

39. The Claimant has cited the Environment Agency's first letter (dated 4 August 2020) [A104-105] but fails to reflect the progression of events through the final letter (dated 25 August 2021) [A124] and the Committee meeting where they expressly referred to water supply by Cambridge Water. At no stage did the EA object to the application or the provision of water supply by Cambridge Water. Cambridge Water were contacted but did not provide a consultation response.

¹⁴ DH11

This was within a context where discussions had taken place over an extended period of time and they had expressly agreed to supply.

(8) Officer's Report (20 January 2022)

40. The quality and detail of the Officer's Report is self-evident, over 690 paragraphs and almost 200 pages, navigating a much wider range of issues than water supply. Contrary to the Claimant's characterisation, the Report (a) expressly identified Policy CC/7, (b) explained the nature of the provision of supply by Cambridge Water and (c) cited the concerns of consultees, including members of the public.¹⁵
41. The Report also made clear (OR/598) [A232] that Condition 31 would require all new residential development to achieve as a minimum, water efficiency equivalent to 110 litres per day. Condition 31 was presented in an initial draft form [A291] and then updated to its final form in an update document [A523]. Condition 31 was also supported by Condition 7 referring to the Site Wide Sustainability Statement, which in turn would be supplemented by further Sustainability Statements for key phases (Conditions 10, 12 and 28).

(9) Committee Meeting (28 January 2022)

42. The question of water supply was then discussed extensively at the meeting, as the transcript excerpts show. Of particular importance was the detailed advice given by Mr Kelly (from the Defendant's professional planning perspective) and Mr Ireland (from the EA).
43. Mr Kelly's response at 1:01:47 to 1:07:25 was accurate and very thorough, confirming variously:

(i) The Site is a long-standing allocation;

¹⁵ Including late comments from the public on the issue of water supply (set out at A534-A536)

- (ii) The statutory consultees (notably the EA) had expressed no objection;
- (iii) Work was ongoing with Cambridge Water and others to identify new supply as part of the new Local Plan;
- (iv) There were a number of mitigation measures both short-term and long-term that could be put in place;
- (v) Condition 31 would expressly limit water use to 110 litres per day (the EA's own target);
- (vi) For the purposes of PPG 31-016, the site was allocated and the conditions would deliver enhanced efficiency.

44. This was just one of a number of such very full contributions by Mr Kelly during the meeting.

45. The EA's representative, Mr Ireland, followed and echoed that contribution confirming no objection and, in particular, the EA's confidence that water supply would be able to meet the needs of the development itself. Mr Ireland's advice referred expressly to Condition 31 **[A554]**:

"[I]n terms of the sustainability based upon the water resource management plans and the current scales of development across East Anglia, then, yes, that is still considered to be sustainable and part of that is relates to the required condition or the proposed condition 31 which related to the 110 litres per head per day from design of properties for water usage. So with that management of the of the design, we know we can't change people's habits in terms of their own personal use, but that is, yes, with the design code, we're confident that that current water supply is able to to be met for the needs of the development itself"

46. When combined with Mr Kelly's advice, the professional advice was clear, consistent and comprehensive.

47. In respect of deferral, the Minutes expressly record *"The Chair gave the Committee an opportunity to propose a deferral, but no such proposal was forthcoming."* **[A549]** The

Claimant has notably failed to address the fact that deferral was raised in the context of a number of matters, and never specifically isolated to water supply issues only.

(10) Post-Committee Correspondence

48. The Claimant has based a significant part of its case upon a single e-mail from Daniel Clark (Water Resources & Environment Manager for Cambridge Water) to the Defendant (10 February 2022: 18:09).

49. The e-mail makes clear:

- (i) The Site is already allocated and has therefore been accounted for in the WRMP 2019;
- (ii) Additional growth can be met through optimising existing supplies and through demand management;

50. The final paragraph does not say what the Claimant wishes it to. Mr Clark's essential observation is that the WRMP 2024 would be subject to consultation later in 2022 and availability and timings of new supplies beyond 2025 would be confirmed through that document. Mr Clark merely states that the EA's change of approach to deterioration from abstraction: " may result in further reductions in available supplies in the short-medium term from 2025". The vehicle for addressing that is correctly described as the future WRMP.

51. The response is near-identical to Mr Kelly's oral response at the hearing, in respect of the ongoing and long-term nature of the WRMP exercise, which is of course conducted in discussion with bodies such as the Defendant. It demonstrates that Mr Kelly was entirely correct to state that deferral to address water supply was not merited [A549], advice which Members accepted.

(11) Decision Notice and Conditions

52. At SFG/27, the Claimant has referred very briefly to the conditions attached to the permission, including Condition 31. The Claimant has asserted that there is no condition relating to water supply. That is not a correct summary. Water supply considerations are integrated throughout the conditions, within a context where water supply has already been secured (see point (4) above). In this manner, the Environment Agency correctly took the view that not only would the water supply arrangements be sufficient, but that best practice in respect of efficiency would be used as each phase of the Development was built out.
53. Condition 7 requires compliance with the site-wide Sustainability Statement throughout the delivery of the whole Site:

Compliance with approved documents

The development hereby approved shall be carried out in accordance with the approved documents as set out below, except to the extent that those details are superseded or expanded by an approved Design Code or by any Reserved Matters approval or other approval pursuant to any condition of this planning permission.

...

Sustainability Statement January 2021

54. Conditions 9 and 10 then provide for the development to be delivered in a phased manner, which is entirely conventional given its scale.
55. Condition 12 sets in place requirements for reserved matters applications, including at (k) “A sustainability conformity statement setting out how the development will achieve the sustainability targets set out at each phase approval stage.” and at (l) a “Sustainability Statement, content to be included as specified in Condition 28.”
56. Condition 28 (Sustainability Strategy) then requires that

“All reserved matters applications shall be accompanied by a Sustainability Statement setting out how the proposals meet the commitments and targets set out in the site-wide Sustainability Statement and Energy Strategy.

The Statement will also set out how each reserved matters application will address the requirement for the development to deliver an example of excellence in sustainable development and healthier living related to sustainable design and construction having regard to issues such as energy efficiency, renewable and low

*carbon energy, smart energy systems, climate change adaptation (including overheating), healthy homes, **water efficiency**, an integrated approach to water management and the role of the built and natural environment in improving health and wellbeing. This could include trials of building technologies to inform later stages of the development. ..."*

57. Condition 31 is critical in integrating water supply considerations into those phases, for each Development Parcel. [A64] and [A552]

31 Water Efficiency

Notwithstanding the information contained within the Sustainability Statement (July 2021), no part of any Development Parcel containing residential development, pursuant to this outline permission, shall commence until a scheme detailing water conservation and management measures for that particular Development Parcel has been submitted to and approved in writing by the Local Planning Authority. The scheme shall detail water efficiency measures sufficient to ensure that potential consumption of potable water by persons occupying a new dwelling does not exceed 110 litres per person per day.

Each Development Parcel shall thereafter be implemented in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority. The scheme shall include a water efficiency specification for each dwelling type, based on the Water Efficiency Calculator Methodology or the Fitting Approach sets out in Part G of the Building Regulations 2010 (2015 edition) or successor document.

For all non-residential development, the scheme shall include a water efficiency specification, based on the BREEAM Wat01 Water Calculator or successor document, demonstrating the achievement of 2 credits for water efficiency (Wat01).

Reason: There is a high demand for limited water resources in the East of England; therefore, it is necessary to manage water use by incorporating practicable water conservation measures in accordance with Policy CC/4 of the South Cambridgeshire Local Plan 2018 and NAAP policy NS/21, the Greater Cambridge Sustainable Design and Construction SPD 2020, and the aims and objectives of the NPPE.

58. The target of 110 litres per person per day is the Environment Agency's "tighter standard" for new developments [B37]. The nature of the target had been consistently explained through the Sustainability Statement as set out above. The Claimant's assertion that water supply was not dealt with through conditions is simply wrong.

Case Law

59. The Interested Party concurs with the Claimant's summary of the relevant provisions of the Town and Country Planning Act 1990, Planning and Compulsory Purchase Act 2004 and the EIA Regulations at SFG/28-35.
60. The Interested Party further endorses the Defendant's citation of the following cases:
- (a) *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452 at §42 in respect of officer's reports;
 - (b) *R (Morge) v Hampshire CC* [2011] UKSC 2 at §36 in respect of the correct approach to Committee members consideration of such reports;
 - (c) *R (Maxwell) v Wiltshire Council* [2011] EWHC 1840 (Admin) at §43: the importance of focussing on the substance of the report; and
 - (d) *R (Khan) v LB Sutton* [2014] EWHC 3663 at §144 and §121 in respect of the content of environmental reports.
61. In addition, the following principles are of relevance to Grounds 1 and 2 in respect of Committee procedure:
- (e) *R v Exeter City Council ex. p J L Thomas* [1991] 1 QB 471, 483H-484A citing *The King v London County Council* [1915] 2 KB 466, 489 (applied in *Scottish Widows plc v Cherwell DC* [2013] EWHC 3968 (Admin), [20]): the court should consider the "general tenor of the discussion rather than the individual views expressed by committee members, let alone the precise terminology used".
 - (f) *R(SPVRG Ltd) v Pembrokeshire County Council, Heritage Leisure Development (Wales) Ltd* [2022] EWHC 143 (Admin), at §135 and 142: the court should have regard to both the Report and also any oral update at the meeting:

142. *I reject the contention that the Council failed to consider or lawfully take into account the flood risk. When the adequacy of a planning officer's advice is called into question, the court does not expect to find a flawless discussion of every planning issue. If the Officer's Report had remained uncorrected, there may have been a risk that the committee might have mistakenly considered that the flood risk was not a material planning consideration, rather than that it was a material consideration which officers considered did not warrant significant weight. However, it is manifest that any such risk was averted by the way in which the officers addressed the issue orally. Mr Popplewell informed the committee repeatedly that TAN 15 and the flood risk were material considerations. It is plain from the transcript of the committee meeting that the members of the committee understood that they had to consider TAN 15 and the flood risk in determining the Application, and they did so.*

62. In respect of EIA, the Court of Appeal's summary of the relevant principles in *Finch v Surrey CC* [2022] EWCA Civ 187 paragraph 15, notably sub-paragraph (7):

*(7) Establishing what information should be included in an environmental statement, and whether that information is adequate, is for the relevant planning authority, subject to the court's jurisdiction on conventional public law grounds (see the judgment of Sullivan J. in *R. (on the application of Blewett) v Derbyshire County Council* [2003] EWHC 2775 (Admin); [2004] Env. L.R. 29, at paragraphs 32, 33 and 41). The applicable standard of review has consistently been held to be the "Wednesbury" standard (see the judgment of the Supreme Court in *R. (on the application of Friends of the Earth Ltd.) v Heathrow Airport Ltd.* [2020] UKSC 52; [2021] PTSR 190, at paragraphs 142 to 145 ; the judgment of the Court of Appeal in *R. (on the application of Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214; [2020] PTSR 1446, at paragraphs 136 to 144 ; the judgment of Coulson L.J. in *Gathercole v Suffolk County Council* [2020] EWCA Civ 1179; [2021] PTSR 359, at paragraphs 53 to 55 ; the judgment of Laws L.J. in *Bowen-West*, at paragraphs 27 to 46; and the judgment of Lang J. in *R. (on the application of Friends of the Earth) v North Yorkshire County Council* [2016] EWHC 3303 (Admin); [2017] Env. L.R. 22 – otherwise known as *Frack Free Ryedale* – at paragraphs 21 to 23). The "Wednesbury" standard of review in its modern application has been elucidated by the Divisional Court (Leggatt L.J. as he then was, and Carr J. as she then was) in *R. (on the application of the Law Society) v The Lord Chancellor* [2018] EWHC 2094 (Admin); [2019] 1 W.L.R. 1649 (at paragraph 98) .*

63. The consistent theme through all of the above case law, including *R (Kides) v South Cambridgeshire DC* [2002] EWCA Civ 1370, is the importance of the exercise of planning judgement and that the court should be slow to interfere with such decisions.
64. The courts have also emphasised the importance of the permission stage in preventing challenges with no merit from proceeding. As Lord Carnwath noted in

the parallel context of the Habitats Regulations in *Champion v North Norfolk DC* [2015] UKSC 52, [66]: “In future cases, the court considering an application for permission to bring judicial review proceedings should have regard to the likelihood of relief being granted, even if an irregularity is established.”

Ground 1: Failure to assess the proposed development against local plan policy CC/7 and failure to take into account material considerations relevant to whether the proposed development met the policy requirements

65. Ground 1 is wholly unarguable.
66. The Committee were well aware of Policy CC/7. The policy was cited in the Report [A250] and would have been very familiar to Members given their experience on Committee. It was clearly referenced as a possible reason for refusal should members be minded to refuse [A549].
67. The matters covered by this policy were discussed throughout the meeting [A549-550]. The Committee were expressly advised by Mr Kelly at 1:01:47 to 1:07:25 as to why there was no basis to refuse the application on the basis of water supply grounds. Simply put, the majority on Committee agreed.
68. Policy CC/7 requires a judgment to be exercised as to whether the applicant has demonstrated “adequate” water supply sources at the point of decision [CB/Tab 8/C278].
69. In the instant case, the Utilities Statement correctly recorded that the supply for the whole of Northstowe Phases 2 and 3 had already been secured by agreement with Cambridge Water.
70. Mr Kelly was correct to cite the work ongoing with the new Local Plan and the WRMP process. The Committee therefore exercised their judgement that it was not appropriate to refuse the application or defer until some later date.

71. The Claimant has effectively sought to build its entire case on just two sentences in the final paragraph of the e-mail from Mr Clark [A540]. Contrary to SFG/45-47. Mr Clark did not state that there was a “*clear risk*” of acceptance of harm/deterioration to the aquifer. Mr Clark’s response reserved the position. He correctly referred to the broader regulatory/assessment position under the WRMP process. He expressly confirmed that the Northstowe Phase 3A had been reflected in the WRMP 2019 and accounted for. He explained that all further supply issues will be dealt with through the next WRMP 2024.
72. The single e-mail does not begin to cross the *Kides* threshold. The Defendant was entitled to take the view that the Committee were (a) already well aware of the issue, (b) that the application had been considered with this issue in mind and (c) that there was no basis for concluding that they would have made any different decision.
73. The Claimant’s additional reference to the original EA letter from August 2020 (i.e. the start of the determination period) adds nothing. The EA never objected, including in their correspondence from August 2021 [A124]. They were present at the meeting on 28 January 2022 and advised that they were content [A554]. The Committee were entitled to rely upon that assurance.
74. For the purposes of section 31(3C) SCA 1981, it cannot be overlooked that this is an allocated site, which is a core element of the Defendant’s development plan and central to its delivery of housing, for the purposes of section 38(6) PCPA. It is wholly implausible that Members would have reached any different view overall as to whether to grant permission (or defer consideration) simply on the basis of the Clark e-mail.

Ground 2: Misleading advice as to the deferral of the consideration of the Application in order to seek further information and irrational failure to seek the information that the EA had advised should be obtained

75. Ground 2 fails for the same reasons as Ground 1.

76. Mr Kelly was correct to state that securing all such information on future water supplies would be challenging and subject to an uncertain timescale, for exactly the reasons given by Mr Clark: the WRMP 2024 consultation had not even begun yet, still less publication.
77. Mr Kelly's advice on deferral covered a range of considerations (building heights, foul water capacity, local groundwater levels). He explained his view that nothing would be achieved by a deferral. Members plainly agreed.
78. Deferral was a question for Members' judgement. They were entitled to take the view that the further information would make no difference.

Ground 3: Irrational failure to require the EIA to include information as to the potential significant environmental effects caused by the water supply needs of the proposed development

79. Ground 3 is again wholly without merit. It places emphasis upon several short sentences within correspondence from the EA as at 4 August 2020 (almost 16 months prior to the Committee meeting), without looking to the broader course of events – notably the EA's sustained non-objection to the application.
80. Regulation 18(4)(b) makes clear that the ES should only *"include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment."*
81. Under Regulation 18(4)(c), the ES should *"be prepared, taking into account the results of any relevant UK environmental assessment, which are reasonably available to the person preparing the environmental statement, with a view to avoiding duplication of assessment."*
82. The decision under Regulation 25 in respect of further evidence was for the Defendant to make, and not the EA. In doing so, the Defendant was plainly

entitled to have regard to the broader position: including the development plan position and the EA's position (as far back as consultation on the Scoping Report).

83. The Report in turn reflected the development plan allocation, the WRMP work, and the consistent cooperation with Cambridge Water.
84. As set out above, water resource considerations were fully considered by the Interested Party in the preparation of the application and as part of its ongoing delivery of development at Northstowe, and presented to the Defendant through the Utilities Statement, which in turn reflects the WRMP and Cambridge Water's existing provision, based in turn on the development plan.
85. As to the EA, as early as August 2021, the EA were plainly content as to the water supply arrangements, a matter confirmed repeatedly at the Committee meeting by their representative. As the Defendant notes, the EA's position was highly significant given its primary duty in securing the long-term resilience of water supply systems (s.22(3) of the Water Act 2014, amending s.2 of the Water Industry Act 1991) and its duty to prevent the deterioration of the status of each body of groundwater as an environmental objective (Regs. 12 and 13(5)(a) of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017).
86. The irrationality threshold is extremely high and this claim does not begin to surmount it.

Ground 4: Breach of statutory duty to provide statement of reasons and a summary of the results of consultations undertaken and how those results have been addressed

87. This Ground is a good example of a ground that should be refused on the basis of section 31(3C) SCA 1981. It is also precisely the kind of technical complaint that Lord Carnwath envisaged in *Champion* as an obvious target for refusal of permission.

88. It is understood that the Defendant will issue a statement which covers all the matters required under Regulation 30 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
89. The Claimant has suffered no prejudice from the Council's omissions to date. It is entirely clear how all matters were addressed through the Officers' Report. The EA's position is also clear, as explained at the meeting, which the Claimant's director, Mr Fulton, attended [A547].¹⁶
90. It is also relevant to consider the Claimant's pre-action conduct. The Claimant's Pre-Action Protocol Letter pursued a range of very different grounds to the ones it now pursues (more closely tracking the Claimant's actual remarks to the Committee. [A547]). If the Claimant had a genuine complaint in respect of Regulation 30, this could have been resolved far more promptly within the six weeks prior to the issue of the claim.

Section 31(3C) SCA 1981 Generally

91. There was no prospect of the Defendant's Committee refusing this application on the grounds now advanced by the Claimant. This is a clear-cut s31(3C) SCA 1981 case for at least five reasons:

- (1) The Site has been allocated for 15 years. It benefits from the s38(6) PCPA 2004 presumption and the NPPF 11c presumption. Its delivery is central to the Council's development plan;
- (2) The Permission envisages careful phasing through the submission of reserved matters for development parcels, to be built out over the next 10 – 15 years. At each stage, water efficiency considerations will be considered;
- (3) The Environment Agency did not object at any stage. Nor did Cambridge Water, including when contacted after the meeting. All

¹⁶ A547: Public Speakers, 1st paragraph

professional and qualified evidence directed towards no basis for refusal on water supply grounds;

(4) It is a very-established principle under the NPPF and PPG that water supply considerations are dealt with at the strategic level – through development plans. They are also dealt with through Water Resource Management Plans;

(5) The final vote was passed by 8 votes to 3 votes. This was not a finely balanced case.

Conclusion

92. Each of the four Grounds suffers from the same, repeated flaws. They are based upon a partial summary of the factual background. They all seek to challenge a planning judgment. All ignore well-established case law.

93. The Interested Party concurs with the Defendant that this an Aarhus environmental claim.

94. For the above reasons, the Interested Party respectfully requests that:

(1) Permission be refused on all Grounds

(2) The Claimant shall pay the Interested Party's costs up to the Aarhus cap of £10,000 (*CPRE Kent*, [24]).

CHRISTOPHER YOUNG QC
JAMES CORBET BURCHER
No5 Chambers

6 June 2022

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

CO/1619/2022

BETWEEN:

**THE QUEEN (on the application of
FEWS LANE CONSORTIUM LIMITED)**

Claimant

-and-

**SOUTH CAMBRIDGESHIRE
DISTRICT COUNCIL**

Defendant

-and-

HOMES ENGLAND

Interested Party

APPENDIX 1: CHRONOLOGY

January 2007	South Cambridgeshire Core Strategy adopted
19 July 2007	Northstowe Area Action Plan adopted
1 December 2016	Correspondence with Cambridge Water in respect of water supply at Northstowe (Subsequent e-mails: 5 December, 10 December, 13 December 2018 – see final agreement: 22 January 2019)
27 September 2018	South Cambridgeshire District Local Plan adopted
November 2018	Environmental Scoping Report submitted to Council

22 January 2019	Payment received by Cambridge Water from Homes England to secure delivery of supply for Northstowe Phase 3
4 March 2019	Council issued Environmental Scoping Opinion
December 2019	Cambridge Water – Water Resources Management Plan published
24 April 2020	Application submitted (with Utilities Statement)
4 August 2020	First Letter from Environment Agency to Council
January 2021	Updated site-wide Sustainability Statement submitted
25 August 2021	Third Letter from Environment Agency to Council
20 January 2022	Officer's Report published
28 January 2022	Committee Meeting
10 February 2022	E-mail from Cambridge Water (Mr Clark) to Council
25 March 2022	Decision Notice issued granting permission

IN THE HIGH COURT OF JUSTICE
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BETWEEN:

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DISTRICT COUNCIL**

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HOMES ENGLAND

Interested Party

APPENDIX 2: ESSENTIAL READING

In addition to the Statement of Facts and Grounds, both Summary Grounds of Defence and the Witness Statement of Dean Harris (for the IP)

1) The Decision Under Challenge

1a) Decision Notice

- Condition 9: Phasing [CB/Tab 2/A50-52]
- Condition 31: Water Efficiency [A64]

b) Officer's Report ("OR")

Executive Summary

- OR/1-3 [CB/Tab 3/A134-A135]

Relevant Planning History - Phase 3

- OR/27: EIA Scoping Opinion (4 March 2019) [A/139]

Description of Proposal

- OR/37: Planning Application Documents, including (q) Utilities Report [A140-141]

Environmental Impact Assessment

- OR/41: Scope of Environmental Statement [A141]
- OR/43: Topics Covered by ES: including (p) Waste and Resource Management [A142]

Planning Policies

- OR/70: [A147] referencing Appendix A [A250] citing “South Cambridgeshire Local Plan – Adopted September 2018” CC/7 Water Quality

Consultation

- OR/154 Anglian Water [A160] and
- OR/158-159 Environment Agency [A160]

Planning Assessment

Section 1 – The principle of development

- OR/179-185 [A163-A164]

Section 2: Vision, Land Use and Parameters

- OR/235-242: 2(f) Phasing [A173-A174]

Section 7: Environmental Considerations

- OR/489: Section 7(f) Drainage and Flooding, Groundwater: Water supply [A214]
- OR/496-499 and 502: Water Quality: [A215-216]
- OR/562: Section 7(k) Sustainable Construction and Design: Condition 31 [A226]
- OR/586: Mitigation and Adaptation to Climate Change and Zero Carbon by 2050: staged and long-term approach [A230]
- OR/598: Water: Policy CC/4 and Condition 31 [A232]
- OR/608-613: Section 7(l): Utilities, Potable Water [A234-235]

Section 10: Planning Balance and Conclusion

- OR/679-681 [A246-247]

Recommendation

- OR/684-685 [A247]
- OR/690 referencing Appendix D: Conditions [A248]

Appendix A: Planning Policies

- “South Cambridgeshire Local Plan – Adopted September 2018” CC/7 Water Quality [A250]

Appendix D: Draft Conditions

- Conditions 9-10: Phasing [A273-276] and
- Condition 31: Water Efficiency [A291] and re-worded version [A523]

c) Committee Meeting (28 January 2022)

- Official Minutes [A545-550], especially:
- Members’ questions to Officers: Water supply and management [A546]
- Sections 7, 8, 9 & 10- Environmental considerations, cumulative impact, financial obligations/S.106 & planning balance [A548-549]

Transcript

- Stephen Kelly (Joint Director of Planning and Economic Development - Greater Cambridge Shared Planning Service) response at 1:01:47 to 1:07:25 [A551-552]
- Stephen Kelly at 1:08:11 to 1:09:09 [A553]
- Adam Ireland (Environment Agency) at 1:24:36 to 1:27:26 [A554]
- Stephen Kelly at 1:34:03 to 1:36:43 [A555-557]

d) Pre-Committee Meeting Correspondence

- Environment Agency (4 August 2020): Water Resources [A104-105]
- Environment Agency (23 February 2021): Water Resources: No further comment [A114]
- Environment Agency (25 August 2021): Water supply [A124]

e) Post-Committee Meeting Correspondence

- E-mail from Daniel Clark (Water Resources & Environment Manager South Staffs Water - Cambridge Region) to Council (10 February 2022 18:09) [A539-540]

2) National Policy

a) National Planning Policy Framework

- Paragraph 11(c) [DH2]
- Paragraph 20(a) and (b) [DH2]

b) Planning Practice Guidance

- Chapter 34: Water supply, wastewater and water quality - Paragraph: 016 Reference ID: 34-016-20140306: Considerations for planning applications: Water supply [DH3]

3) Development Plan

a) Core Strategy (2007)

- Policy ST/2 Housing Provision [DH4]
- Paragraphs 2.10 and 2.11 [DH4]

b) Northstowe Area Action Plan (2007)

- Policy NS/2 Development Principles [DH5]
- Policy NS/3 The Site For Northstowe [DH5]

c) South Cambridgeshire District Local Plan (2018)

- Chapter 2: Spatial Strategy: Policy S/6: The Development Strategy to 2031 [DH6]
- Chapter 3: Strategic Sites: Policy SS/5: Northstowe Extension [DH6]
- Chapter 4: Climate Change: Policy CC/4: Water Efficiency and Policy CC/7 Water Quality [CB/Tab 8 / 277-278]

4) Water Resources Management Plan (WRMP)

Cambridge Water WRMP 2019

- Executive Summary, Pages 8-9, especially page 9, paragraph 1: local authority development plans [DH7]
- Section 2.7: Links to other plans, especially page 29: Section 2.7.4 Local authority plans [DH7]
- Chapter 3; Scope of Plan, specifically page 34, 3.2 Planning Period: 2020/12 to 2044/45 [DH7]
- Chapter 6: Baseline demand for water, specifically, page 72 Overview and page 75: Stage 3: Plan-based forecasts [DH7]
- Chapter 11, page 186, [11.5] Strategic Environmental Assessment [DH7]

5) Correspondence between Homes England and Cambridge Water

- E-mail Correspondence between Homes England and Cambridge Water (1 December 2016 to 22 January 2019) [DH9] especially final e-mails 13 December 2018 and 22 January 2019 confirming that water supply secured

6) Environmental Assessment

a) Environmental Scoping Report, paragraphs [14.5.13] and [14.5.17] (November 2018) [DH9]

b) Environmental Scoping Opinion, page 7, Section 16 [DH10]

7) Planning Application Material

Utilities Statement [CB/ Tab 6/ B3-B29], specifically:

- Section 4.5 Water Management, including Water Supply [4.5.1]-[4.5.10] [B18-19] and 5.1.2 [B21]