

**IN THE HIGH COURT OF JUSTICE
KINGSLAND MOOT DIVISION
ADMINISTRATIVE COURT**

**IN THE MATTER OF AN APPLICATION FOR PERMISSION FOR JUDICIAL
REVIEW**

BEFORE MR JUSTICE SEATON

BETWEEN:

**THE KING (on the application of
Ms KERRY MUCKLOWE)**

Claimant

-and-

COTSWOLDS COUNCIL

Defendant

PERMISSION JUDGMENT

Introduction

1. The Claimant lives in the village of Northleach in the Cotswolds. The Defendant is the local planning authority.
2. The Claimant has sought permission to apply for judicial review of the Defendant's decision to grant planning permission for a residential development of 12 two-bedroom houses ("Development") on land comprising a plum orchard at Trowley Farm, near Northleach ("Site").
3. For the reasons given below I find both grounds advanced by the Claimant to be arguable and therefore grant permission to apply for judicial review.

Factual background

4. Slugs Ltd applied for planning permission for the Development on 3 August 2022.
5. The Claimant, in a forceful (if not always syntactically cogent) consultation response submitted on 20 August 2022, objected to the application. The objection was also purportedly signed by “Sue Mucklowe, my mum”.
6. According to the Claimant, the Development would be a blight on the countryside and would destroy a rare, traditional English plum orchard.
7. Moreover, in her consultation response, the Claimant cited policy VB1 of the Cotswolds Development Plan which states that “*New housing development must be focussed on suitable sites located within village boundaries, where such sites are available.*” She pointed out that the Site is located outside the village boundary of Northleach. However, she asserted that development of the same type and scale could be accommodated on a site within Northleach without the adverse impacts of the Development. This alternative site, which the Claimant recently inherited from her uncle, Mr Steven Nuggins, currently comprises a series of derelict warehouses lying adjacent to the bowls club behind a mature line of trees. The Claimant submitted therefore that the Development would not comply with policy VB1 and should be refused.
8. A planning officer employed by the Defendant considered the application and wrote a report dated 28 October 2022, recommending that the Defendant grant planning permission (“Officer Report”). The Officer Report addressed policy VB1 at paragraph 4.5, saying:

“The Development would lie outside the village boundary of Northleach. Policy VB1 encourages development within village boundaries, but it does not prohibit development outside village boundaries, The policy does not set criteria for what is a “suitable” site, nor what makes a site “available” for these purposes. Each application for development should be considered on its own merits. The site in question is clearly appropriate to accommodate development of this scale. Accordingly, Ms Mucklow’s reference to another

site within the village boundary which she considers is better for these purposes is not relevant to whether or not planning permission should be granted and is not a material consideration that should be taken into account when deciding whether or not to grant planning permission.”

9. The planning officer accepted that the open and agricultural character of the Site would be lost, and that the development would result in the loss of a rare orchard. However, the planning officer advised that these adverse impacts were outweighed by the provision, in the context of a nation-wide housing crisis, of new homes, and recommended the planning committee to grant planning permission.
10. The Defendant’s planning committee met on 25 November 2022, during which they voted to grant planning permission, adopting the reasoning in the Officer Report. There were five Councillors on the planning committee. Councillors Clifton, Winwood, Hudson and Johnson voted in favour of the Application. During the debate which preceded the vote, Councillor Clifton spoke at length in favour of the Development, saying *“Anyone who doesn’t like this application is just a NIMBY who has no role to play in the Cotswolds’ vibrant future.”* Councillor Kurtan voted to refuse planning permission, stating in the debate that plum cultivation was an intrinsic part of the history and character of Northleach and the orchard loss could not be justified. In response to Councillor Clifton during the debate, Councillor Kurtan added that *“one person’s NIMBY is another person’s hero.”*
11. In support of her application for judicial review, the Claimant has submitted evidence showing that Councillor Clifton’s partner owns several fields adjoining the Site. The fields are currently in agricultural use, but following the grant of planning permission for the Development, Councillor Clifton’s partner has applied for planning permission for four dwellings on land adjoining the Site. The plan submitted with Councillor Clifton’s partner’s application shows that the four dwellings would use an access road provided by the Development.

Legal principles

12. Section 70(2) of the Town and Country Planning Act 1990 when read together with section 38(6) of the Planning and Compulsory Purchase Act 2004 has the effect of

requiring the Defendant to determine an application for planning permission in accordance with the policies set out in the relevant development plan unless "material considerations" indicate otherwise.

13. A local planning authority is entitled to take into account a broad range of factors as "material considerations" so long as they reasonably relate to the use and development of land. A claim that a decision is unlawful on grounds that there has been a failure to take a particular factor into account as a material consideration will only succeed if the claimant can show that the factor in question was one which the statute expressly or implicitly (because obviously material) required to be taken in account as a matter of legal obligation (R (Samuel Smith Brewery (Tadcaster) and others) v North Yorkshire County Council [2020] UKSC 3 [29]-[31]).
14. The test for apparent bias is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias (see Porter v Magill [2001] UKHL 67, [102]-[103]).

Ground 1: "The Defendant erred by failing to take into account a material consideration, namely the existence of an alternative site for the development."

15. Whilst the Officer's Report is correct to say that Policy VB1 does not provide clarity about the meaning of "suitable" or "appropriate", I consider it arguable that either:
 - a. On a proper interpretation of Policy VB1, when viewed in the light of the statutory presumption in favour of the development plan, the Defendant was under a legal obligation to consider alternative sites; or
 - b. The existence of an alternative site as advanced by the Claimant was "obviously material" in circumstances where the Officer Report concluded that there would be significant planning harms associated with the Development.

Ground 2: “Councillor Clifton’s partner’s interest in the outcome of the application for planning permission gives rise to the appearance of bias on the part of Councillor Clifton which infected the planning committee as a whole”.

16. Whilst I note the Defendant’s arguments about the remoteness of the connection between the Development and any interest that Councillor Clifton personally enjoys, I consider it arguable that Councillor Clifton’s partner’s interest in the land adjacent to the Site improperly influenced the determination of the application for planning permission.

Conclusion

17. For the reasons given above, I grant permission to apply for judicial review.

16 December 2022

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Defendant

DIRECTIONS

UPON the Claimant's application for judicial review;

AND UPON the Court granting permission on both grounds of review on 16 December 2022:

IT IS ORDERED:

1. Parties must file skeleton arguments for the substantive hearing of the judicial review, which shall address both grounds and which comply with the Moot Rules of the Kingsland Cup and Prize Moot (see especially rules 17-20), no later than 4pm on 30 January 2023 by email to kingslandcup@ftbchambers.co.uk.
2. Skeleton arguments filed in accordance with paragraph 1 above must be accompanied by a completed entry form pursuant to rules 12-13 of the Moot Rules

Mr Justice Seaton
19 December 2022