Neutral Citation Number: [2022] EWHC 523 (Admin)

Case No: CO/2719/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 March 2022

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN	**Claimant**
on the application of	
HFAG LIMITED	
- and -	
BUCKINGHAMSHIRE COUNCIL	**Defendant**
(1) HAMPDEN FIELDS CONSORTIUM	**Interested Parties**
(2) TAYLOR WIMPEY UK LIMITED	
(3) BUCKINGHAMSHIRE HEALTHCARE NHS TRUST	
(4) NHS BUCKINGHAMSHIRE CLINICAL COMMISSIONING GROUP	

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Jack Parker (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Saira Kabir Sheikh QC and Michael Brett (instructed by **Legal Services**) for the **Defendant**
Morag Ellis QC (instructed by **Mills & Reeve LLP**) for the **Second Interested Party**
The **First, Third and Fourth Interested Parties** did not appear and were not represented

Hearing dates: 23 & 24 February 2022

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Approved Judgment

Mrs Justice Lang :

1. The Claimant seeks judicial review of the decision of the Defendant ("the Council"), dated 24 June 2021, to grant outline planning permission for a mixed-used sustainable urban extension ("the Development") on land between Wendover Road and Aston Clinton Road, Weston Turville, Buckinghamshire ("the Site").

2. The Claimant is a local residents' group called Hampden Fields Action Group, which objected to the Development during the planning application process.

3. The Council is the local planning authority for the area in which the Site is situated.

4. The First Interested Party ("IP1") is a consortium of landowners and developers which applied for, and has been granted, the outline planning permission. The Second Interested Party ("IP2") is the lead member of IP1. IP1 and IP2 resist the claim.

5. The Third Interested Party ("IP3") is responsible for providing planned and emergency healthcare services in hospitals and in the community in the local area. The Fourth Interested Party ("IP4") is responsible for commissioning primary healthcare services (including GP services) in the local area. IP3 and IP4 support the claim.

6. The issue in the claim is whether the Council acted lawfully in deciding to grant outline planning permission on the basis that the only health provision made was a "doctor's surgery", to be provided on Site, in accordance with the terms of an agreement made under section 106 of the Town and Country Planning Act 1990 ("the section 106 agreement"), which was contrary to the representations made by IP3 and IP4. The relief which the Claimant seeks is an order quashing the grant of outline planning permission. The Claimant no longer pursues Ground 7.

7. On 15 October 2021, Dove J. ordered that the application for permission and the substantive application for judicial review be listed for hearing on the same occasion at a "rolled-up hearing."

Planning history[1]

8. On 5 February 2016, IP1 applied for outline planning permission for the Development (to include a "doctor's surgery") as follows:

> "Outline planning permission for a mixed-use sustainable urban extension comprising: up to 3,000 dwellings and a 60 bed care home/extra care facility (Use Class C2/C3); provision of land for a Park and Ride site; a total of 6.90ha of employment land (comprising of up to 29,200 sq.m. B1c/B1/B2/B8 uses); provision of two primary schools (one 2 form entry and one 3 form entry); a mixed use local centre (3.75ha) with provision for a foodstore of up to 1,200 square metres (GFA), further retail (including a pharmacy), restaurant and café units, a doctor's surgery, gym, public house with letting rooms, professional

[1] Page references are to the hearing bundles: C = Core bundle. S = Supplementary bundle.

> services, multi-functional community space and a day nursery, and live work units; multi-functional green infrastructure (totalling 109.01 ha) including parkland, sports pitches, sports pavilions, children's play areas, mixed use games areas, including a skate park/BMX facility, informal open space, allotments, community orchards, landscaping; extensions to domestic gardens at Tamarisk Way (0.22ha); strategic flood defences and surface water attenuation; vehicular access points from New Road, Marroway, A413 Wendover Road and A41 Aston Clinton Road; a dualled Southern Link Road between A413 Wendover Road and A41 Aston Clinton Road and a strategic link road between the Southern Link Road and Marroway; internal roads, streets, lanes, squares, footpaths and cycleways and upgrades to Public Rights Of Ways (PRoWs); and car parking related to the above land uses, buildings and facilities."

9. In addition to the provision of housing, the application forms "a fundamental part" of the Aylesbury Transport Strategy's "long term vision to deliver a partial orbital route around Aylesbury". The Strategy aims to complete a "series of outer link roads that will take traffic away from the town centre", providing transport improvements and the opportunity for a more pedestrian and cycle-friendly town centre. The proposed "southern link road" is a key part of the application, and is programmed with the same completion date as other elements of the Strategy to maximise the efficiency of the transport network [Officer's Report ("OR") S/175-176, paragraphs 5.47-5.49].

10. The application was made to Aylesbury Vale District Council ("AVDC"). With effect from 1 April 2020, AVDC was amalgamated with a number of other local authorities to become Buckinghamshire Council, which is the current local planning authority.

11. The application was made following the dismissal of an appeal against non-determination of a previous application. That appeal was dismissed because of a lack of certainty about the delivery of a highways scheme (the "Walton Street gyratory"), without which the proposal could not come forward. In the course of that appeal, the Inspector advised the Secretary of State to consider a planning obligation which made provision for a health centre. The Inspector made *inter alia* the following findings [C/465 paragraph 9.609]:

> "the provision of a temporary health centre, if required, the making available of a site for a health centre, and a strategy for marketing would be consistent with the anticipated needs of the development."

The Inspector concluded that the obligation would comply with the Community Infrastructure Levy Regulations 2010 ("the 2010 Regulations"). The Secretary of State adopted this conclusion at paragraph 29 of his decision.

12. The current application was largely a resubmission of the previous scheme, amended in the light of the findings of the Inspector and Secretary of State. Materially, it made provision for a health centre.

13. The application was accompanied by an Environmental Statement ("ES"), including a 'health impact assessment', and a document setting out 'heads of terms' for the proposed planning obligation. It included the following [C/473]:

> "• Land for a health centre will be provided in the Local Centre and will be reserved for a period of time. The land will be marketed for a period of time (to be agreed with AVDC) at market value for the relevant healthcare uses. […]
>
> • If deemed necessary, a temporary building will be provided to be used as a health facility for an agreed period of time."

14. The application was considered by the Strategic Development Management Committee of AVDC on 25 October 2017. The AVDC Committee resolved that the application be "deferred and delegated to officers for **Approval**" subject to the completion of a section 106 agreement, to include *inter alia* a planning obligation to secure on-site provision of a GP surgery and/or provision of temporary services on site or within an existing nearby facility (if appropriate). At that stage, IP1 had proposed to deliver a shell and core primary care health centre of up to 600sqm.

15. IP4 made representations seeking a financial contribution for a larger primary healthcare facility, which would also meet the needs of new populations from other developments in the area, in accordance with IP4's strategy and vision.

16. IP3 made representations seeking a financial contribution to cover the cost of the estimated increased demand for secondary and tertiary health care arising from the new population in the Development.

17. The application was referred to the Council's Strategic Sites Committee because in March 2020 an updated Aylesbury Transport Model was published, requiring re-consideration of the transport aspects of the Development.

18. The OR for the Committee meeting on 24 February 2021 was published on 17 February 2021.

19. Officers published a Corrigendum Report ("CR") on 23 February 2021, replacing paragraphs 5.321 – 5.235 of the OR, as paragraph 5.322 of the OR had erroneously advised that revenue funding did not come within the scope of the 2010 Regulations. The CR also advised Members of the additional representations from IP3 and IP4.

20. Following the publication of the CR, IP4 provided a further calculation of the financial contribution it sought.

21. At its meeting on 24 February 2021, the Strategic Sites Committee approved the application "as per the officer's report". It resolved, so far as is material:

> "That permission be deferred and delegated to the Director of Planning and Environment for **approval** subject to the satisfactory completion of a legal agreement to secure ….. on-site provision of a health centre (GP surgery) and/or provision of

> temporary services on site or within an existing nearby facility (if appropriate) ….
>
> Members requested that officers continued to work collaboratively with the BHT and CCG on establishing a robust methodology for any future requests which was capable of feeding into the Council's new Local Plan process."

22. Following the Committee resolution, both IP3 and IP4 complained about the manner in which the application and their requests for financial contributions had been handled (letter of 17 March 2021 [C/806-809]).

23. On 24 June 2021, officers granted the outline planning permission, subject to the conditions set out in the decision notice. In the Delegated Determination report, officers considered the representations made in the letter of 17 March 2021 and responded to them. Officers concluded that the additional representations made would not be likely to alter the resolution made by Members. It was not considered necessary to refer the matter back to committee as there was no new material consideration which could affect or change the Committee's resolution. Officers found that the completed section 106 agreement "secures all the measures anticipated and necessary to render this application acceptable in planning terms".

24. The relevant provisions of the section 106 agreement are in Schedule 8.

    i) By paragraph 9, the Owners covenant to engage a contractor "for the construction of the Health Centre to Shell and Core" within six months of reserved matters approval, and to "use reasonable endeavours" to secure "practical completion for the Health Centre to Shell and Core" prior to the occupation of the thousandth dwelling;

    ii) Paragraphs 5-6 require the Owners to market the 'Health Centre Land' for at least 24 months in accordance with a 'Health Centre Marketing Strategy';

    iii) Paragraph 6 absolves the Owners from the requirements of paragraphs 5, if they have not managed to transfer or lease the Health Centre Land to a "health service provider" within a specified period;

    iv) Paragraph 6 is subject to the following proviso:

    > "PROVIDED THAT the Owners have first agreed in writing with the Health Commissioning Body and/or the Council an alternative mechanism to provide the Health Centre to mitigate the impacts of the Development."

    v) Paragraph 10 caps the Owners' liability under paragraphs 4-9 at £1.5 million.

25. The material definitions are as follows:

> ""Health Centre" means a permanent health centre ….up to 600 square metres (GIA), which may be provided on the Health Centre Land in accordance with Schedule 8 hereto;

> "Health Centre Land" means the part of the Land comprising not less than 0.14 hectares shown indicatively coloured dark blue on Plan 4 (or such other part of the Land as may be agreed in writing with the Council);
>
> "Health Centre Marketing Strategy" means the marketing of the Health Centre Land to relevant health providers as a potential location for a Health Centre at a market value for such uses;"

Legal principles

Judicial review

26. In a claim for judicial review, the Claimant must establish a public law error on the part of the decision-maker. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. A legal challenge is not an opportunity for a review of the planning merits: *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC 74 (Admin).

The development plan and material considerations

27. Section 70(2) of the Town and Country Planning Act 1990 ("TCPA 1990") provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act ("PCPA 2004") provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Planning obligations

28. Under section 106(1)(d) TCPA 1990, a person with an interest in the land may enter into an obligation, enforceable against any person deriving title from that person, requiring *inter alia* a sum or sums to be paid to the local planning authority.

29. Regulation 122 of the 2010 Regulations provides:

> "(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.
>
> (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.
>
> (3) In this regulation—
>
> "planning obligation" means a planning obligation under section 106 of TCPA 1990…"

30. Whether or not a proposed planning obligation meets the three limbs of regulation 122 of the 2010 Regulations is a clear matter of planning judgement for the planning decision-maker, which should not be interfered with in the absence of a legal error. In *Smyth v Secretary of State* [2013] EWHC 3844 (Admin) Patterson J. held, in respect of the Court's review of a decision of a planning inspector applying the regulation 122 test (which applies equally in this respect to decisions of local planning authorities):

> "192. In my judgment, the role for the Inspector is to apply the law and to judge whether the obligation before him meets the statutory tests. That is a matter for his planning judgement. The role of the court is to review that judgement on conventional public law principles and no more. It is not to step into the Inspector's shoes and start exercising its own planning judgement on the matters before the Inspector. That would be an impermissible exercise of its powers."

Planning officers' reports

31. The principles to be applied when considering a challenge to a planning officer's report were summarised by the Court of Appeal in *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452, per Lindblom LJ, at [42]:

> "42. The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarise the law as it stands:
>
> (1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms* [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of Zurich Assurance Ltd., t/a*

Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin), at paragraph 15).

(2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local

> planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere."

32. In *BT plc v Gloucester CC* [2001] EWHC Admin 1001; [2002] 2 P&CR 33 Elias J. observed, at [118]:

> "It is important that the principal issues and the key information are put to [members], but it is not necessary, or indeed desirable, that the report should be exhaustive. Plainly there will always be room for dispute as to whether the report should in certain respects have been fuller, or whether certain guidance should have been expressly referred to, particularly in a development which is as large and significant as this one. But it is not for the court to second guess the officers."

33. Where a local planning authority resolves to approve the recommendation of an officers report, it can be assumed that they accepted the reasoning of that report (*R (Palmer) v Herefordshire Council* [2016] EWCA Civ 1061; [2017] 1 WLR 411 per Lewison LJ at [7]).

34. The reasons given must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues. Reasons need refer only to the main issues in the dispute and not to every material consideration, and the reasons can be briefly stated, with the "degree of particularity required depending entirely on the nature of the issues falling for decision" (*South Bucks v Porter (No 2)* [2004] 1 WLR 1953). A claimant must also show the reasons advanced (or lack of reasons) leave room for genuine as opposed to forensic doubt as to what was decided and why *(R (CPRE Kent) v Dover DC* [2017] UKSC 79 at [42]). It must be shown that "the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given" (*Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 W.L.R. 153, per Lord Bridge of Harwich at p. 167).

Grounds 1 to 3

35. Grounds 1 to 3 overlap as they all concern primary care services which are commissioned by IP4 and so it is convenient to consider them together.

Claimant's grounds of challenge

Ground 1

36. The Defendant's decision that the proposals for the health centre were adequate to meet the needs of the Development and/or complied with regulation 122 of the 2010 Regulations was unlawful because it failed to take into account relevant considerations; took into account irrelevant considerations; and it was irrational. The Defendant failed to give adequate reasons for its decision.

37. *(a) Failure to take account of relevant considerations*. The OR [C/190] reported IP4's position as being "that the current position does not strictly align with the requirements of the CCG in respect of multiple smaller sites across the Aylesbury area, however they are committed to working with the developer to achieve the ambition in the longer term." That summary did not reflect IP4's position in respect of the health centre proposals and was significantly misleading. The Council did not grapple with IP4's submissions of 4 February 2019 and 19 February 2021 to the effect that the provision of a building of 600 sqm would not adequately mitigate the adverse impact on primary healthcare services because it was too small and the land offer was open to the private sector in addition to the NHS.

38. *(b) Irrelevant considerations taken into account*. The reason given to Members at the Committee meeting why the provision of a building of 600sqm would meet primary healthcare needs was that that amount of floorspace exceeded the equivalent floorspace area (419sqm) used by the CCG to calculate the financial contribution required to deliver a larger health centre (see the oral advice given to Members by Ms Kitchen). However, IP4 had repeatedly stated that a 600sqm health centre would be too small, and it referred to the floorspace calculations to establish what would be an appropriate financial contribution towards a larger healthcare facility.

39. *(c) Inadequate reasoning*. There was nothing in the material available to the Claimant to enable it to understand how the proposed health centre would meet the primary health care needs of the Development, and how it would comply with the tests in regulation 122 of the 2010 Regulations. Nor were reasons given as to why IP4's concerns had been dismissed.

40. *(d) Irrationality*. The Claimant submitted that it was irrational for the Council to conclude that the proposal would adequately mitigate the adverse impact on primary healthcare services by reference to the equivalent floorspace requirement used in the calculation of IP4's request for a financial contribution towards a larger health centre, without any evidence in support, and in the face of repeated representations from IP4 that the proposal was not viable or deliverable.

Ground 2

41. The Claimant submitted that officers' advice given to Members as to the health centre provision that would be secured through the section 106 agreement was significantly misleading, and led Members to take into account irrelevant considerations. Officers advised in the CR that:

> "The S106 secures the offer of land and building to shell and core standard to the CCG first, and in the event CCG do not require or do not want the facility offered, it is only after further discussions with the CCG that the site would be offered on the open market." [C/216]

42. The Claimant submitted that the agreement did not "secure" the offer as it imposed a cap on the cost in the sum of £1,500,000. It was to be marketed to "relevant health providers" and there was no assurance that it would be made available to IP4 in preference to other health providers. Under the terms of the agreement, having offered

the site to a 'health service provider', the owner is free to market the site on the open market if, having used reasonable endeavours, it has been unable to enter into a lease or transfer at a market value to such health provider.

43. It was also suggested by officers that there was "flexibility" for further discussions to take place with IP4 in order that its needs could be met at some later stage. [C/216], [C/235]. The Claimant submitted that there was no such provision for this within the section 106 agreement.

Ground 3

44. The Claimant submitted that Members acted upon misleading advice from officers and took into account an irrelevant factor, namely, the alleged lateness of IP4's representations seeking a financial contribution, when deciding to proceed to grant outline planning permission at the meeting on 24 February 2021, instead of deferring a decision in order to consider IP4's representations further.

Conclusions

45. In my judgment, there was ample material to justify the advice given by officers to Members, and the decisions made by the Committee, and subsequently by the delegated officers, in the exercise of their planning judgment. Officers and Members considered IP4's representations and requests with an appropriate degree of care, but they did not accept them, and were not obliged to do so.

46. At the heart of IP4's representations was the submission that IP1 should be required to mitigate the adverse impacts of the Development on health services. However, the Council did not accept IP4's assessment of the extent of any mitigation required. The ES submitted with the application concluded that the Development would have "a negligible effect on GP provision" because the GP to patient ratio in the area is well below the Healthy Urban Development Unit ("HUDU") standard. Furthermore, it is likely that some of those moving to the Development will be existing residents in the area and therefore will already be registered with GPs [S/106]. This conclusion was accepted in the OR and has not been challenged in these proceedings.

47. Prior to the AVDC Committee meeting on 25 October 2017, IP4 made no objection to the doctor's surgery proposal. It raised a concern about temporary provision, which was subsequently resolved in the manner set out in paragraphs 2 and 3 of Schedule 8 of the section 106 agreement. Then, on 30 July 2018, IP4 put forward a request for a cash contribution instead. The cash contribution was proposed to be put towards the fulfilment of "a strategic plan to build one large, "super" surgery" [C/500], comprising a health centre of some 2000sqm to be located on the Site on allocated employment land. An updated proposal was sent to the Council on 19 October 2018. This set out IP4's view that "individual contributions towards individual health facilities… would run contrary to current health service strategy" [C/507]. IP4's preferred approach was to pool contributions from a number of different proposal developments to create one facility to serve both the developments and existing populations, ideally on land identified as employment land in the application masterplan.

48. In the support of this strategy, IP4 provided some calculations based on "NHS [England] space recommendations… calculated only on the increase in population these individual developments would bring to the area". For this application, IP4 identified that the "NHSE recommendation space = 600sq Metres"; that IP1 had offered "a building of 600sq Metres"; and estimated construction costs for that space at £2,500 per sq. metres + VAT = £1,800,000 (£1,500,000 less VAT) [C/509].

49. The Council provided detailed responses to IP4's requests first on 30 August 2018 and subsequently on 7 December 2018. These pointed to a number of serious concerns including:

    i) Ambiguity as to how IP4 is funded and the risk of "double-taxation" from increases in IP4 funding from other sources and developer contributions;

    ii) Insufficient evidence from IP4 as to the impact of the application on primary care services; and

    iii) No information or realistic timeframe for the delivery of the "super hub" proposed, noting that no site for the facility was provided in the application.

50. In further correspondence, on 19 December 2018, IP4 reiterated its stance that, although the contribution proposed by IP1 met the needs arising from the application, it was not in line with IP4's strategy [C/520]. IP4 stated that:

> "it is acknowledged that the current offer provides for the immediate residents of the Woodlands and Hampden Fields development, it goes against the strategic estates vision […]"
>
> "Currently on offer is a 600m2 site… Whilst this would be sufficient to meet the required minimum, in theory, it would be delivered in a way that does not align with the future provision of primary health care."

51. This same stance was reiterated in IP4's letter of 4 February 2019 [C/530-534]. The offer of a building to serve a single development was said to be not in line with the "strategic vision for the future delivery of primary healthcare", and "inadequate to deliver the national and local vision". Once again however, IP4 provided further calculations from the 'HUDU model' which made clear that the 600sqm of floorspace proposed by IP1 was sufficient to meet the needs directly generated by the application: at [C/535], the floorspace requirement for "GP and Primary Care Services" is calculated as "552.64sqm". The sufficiency of the floorspace proposed was also reflected in the NHS England space guidance attached to that correspondence, giving graded advice about the internal space requirements of primary care facilities "for use in initial feasibility studies", which recommends that a practice with 8,000 patients (approximately 1,000 more than the potential population of this Development) needs 667sqm of floorspace.

52. The Council subsequently sent IP4 the relevant draft provisions of the planning obligation on 27 March 2019. IP4 replied on 8 April 2019 that they had no amendments to propose. In particular, IP4 took no exception or proposed any amendment to the provisions requiring IP1 to market the land earmarked for a health centre to one or more

"health service provider", nor to the cap on liability of £1.5 million. The terms of the section 106 agreement remained open to discussion until executed and drafts had been published for that purpose. Prior to that time, it could have been amended.

53. On 30 April 2019, IP4 wrote to the Council suggesting that the approach taken by the West Kent Clinical Commissioning Group, set out in an attached report, could be adopted. This assumed a financial contribution of £360 per person in any new development. Ms Kitchen, Corporate Planner at the Council, responded in detail to this alternative approach on 5 March 2020 [C/587-588], setting out clear concerns about an absence of clear justification for the approach, and concluding that the "West Kent model does not address the previous concerns raised and the CCG would still be required to provide more evidence that the need for the contribution does arise directly from the development such that they are necessary to render them acceptable."

54. On 10 July 2020, IP4 met Council officers to discuss the strategic case for a single "Hampden Fields Primary Care Facility". A report by its consultants Turner Townsend in July 2020 set out the forecast patient yield as 2.4 patients per home, totalling 7,200. The Turner Townsend report stated, at paragraph 3.5.1, that a ratio of around 16 patients per sqm for surgery floorspace has been robustly tested nationally. In fact, the floorspace of 600sqm for the GP surgery at the Development has made a more generous allowance of 12 patients per sqm.

55. A more detailed written report was provided in November 2020. This set out a high level strategic case for the provision of a large primary care facility in southern Aylesbury, capable of accommodating all the growth identified in the Local Plan, and replacing one of the Westongrove GP practice's existing three sites. The preferred site was at the Stoke Mandeville Hospital. An "outline business case" and "full business case" [C/676-677] was envisaged, but no follow-up work of this nature, providing any greater clarity about the scheme, such as a site, funding arrangements, or viability, was provided to the Council.

56. The Claimant made a lengthy and detailed submission to the Council. However, only five paragraphs were concerned with healthcare. The only issue raised in respect of primary care provision was that the developer was only required to deliver a shell and core building. None of the issues raised in this judicial review claim were raised. Whilst accepting that the Claimant had a sufficient interest to bring this claim, Ms Sheikh QC submitted that the absence of any objections from the Claimant called into question the merits of the claim, as did the fact that IP4 did not bring its own challenge to the Council's decision, nor did it instruct counsel to represent it at the hearing.

57. The OR confirmed that the AVDC Committee had resolved that the decision was delegated for approval, subject to completion of a satisfactory agreement to secure on-site provision of a health centre (GP surgery). It set out the policy framework, including Policy HE1 of the Weston Turville Neighbourhood Plan which seeks developer contributions to fund improvements to health facilities where the Clinical Commissioning Group has demonstrated that the development will create pressure on service provision and a requirement can be justified.

58. The OR advised Members on primary healthcare provision at paragraphs 5.318, 5.319, 5.325:

> "Healthcare
>
> 5.318 Baseline research as part of the ES established a tendency for GP Practices within proximity of the Application Site to operate patient list sizes notably lower than the relevant standards which would indicate potential spare capacity within the area. However, included within the Proposed Development has the potential to deliver an on- site GP Surgery to meet the needs of the new residents of the Proposed Development. The ES anticipates that the Proposed Development is considered to have a negligible effect on GP provision. The proposals will make provision for a GP surgery which will be secured by way of legal agreement. The socio economics chapter of the ES addendum has been updated to reflect changes in planning policy and provide an update of the cumulative effects. In addition, a Health Impact Assessment (HIA) was undertaken and submitted as a new appendix to the socio-economic chapter. The HIA concludes that the proposals are anticipated to result is a range of positive impacts upon health and well-being within the development and beyond. The proposals provides for additional healthcare facilities through the provision of the GP Surgery, which could include facilities/clinical uses.
>
> 5.319 The Aylesbury CCG advise that the current position does not strictly align with the requirements of the CCG in respect of multiple smaller sites across the Aylesbury area, however they are committed to working with the developer to achieve the ambition in the longer term. It is recognised that this is an outline application which makes provision for land and building (shell and core) for a health centre, and the details would be a matter to be considered at the reserved matters stage. The CCG seek to ensure the provision of healthcare facilities (GP surgery provision) are designed in accordance with the NHS established principles. In addition the CCG requested provision be made in the S106 for a financial contribution towards temporary healthcare facilities (earlier in the construction) to support the development in an existing facility (rather than a temporary porta-cabin on site). This can be secured in the S106 agreement.
>
> …
>
> 5.325 ……On balance, the proposed development provides adequately for healthcare facilities having regards to the CIL regulations and should be afforded neutral weight in the planning balance."

59. In response to representations made by IP4, officers explained in the CR [C/216]:

> "The S.106 secures the offer of land and building to shell and core standard to the CCG first, and in the event CCG do not require or want the facility offered, it is only after discussion

> with the CCG that the site would be offered on the open market. The application is in outline and the details of the precise location, scale and size would be considered at the reserved matters stage. In addition, there is a financial contribution towards a temporary health care to increase capacity of an existing health centre if required in advance of the Health Centre being provided. That is considered sufficient for such accommodation.
>
> The S106 requirements can only secure mitigation that is necessary to make the development acceptable and mitigate its impact. It cannot seek to provide for the needs of the existing community or services that would be delivered outside the scope of this application."

60. On 23 February 2021, the day before the Committee meeting, IP4 sent a short email to the Council, attaching a short, one-page "financial calculation for contribution towards the health facility to mitigate the impact of the proposed development ref 16/00424 and indeed 16/0104/AOP" (the Woodlands development) [C/802]. It was a request for a financial contribution of £2,189,372.41 calculated on a new basis. This put forward an assessment for an additional 419.32sqm of net internal primary care floorspace "to support [the] new population". Neither the floorspace calculation nor the financial contribution were explained or any detailed justification offered, other than that GP surgeries were already full.

61. Ms Kitchen addressed this new representation orally in her presentation to Members, and identified a number of concerns with the new request from IP4:

> "… our Officers have had considerable discussion with the CCG regarding the requirements of the CCG and also the concerns that we have as Officers that the information provided to date for the financial contribution is inadequate and not sufficiently advanced to enable the Council to conclude that their request meets the very high CIL Regulation tests and at this stage the following main concerns remain and need to be addressed before any conclusions can be reached as to whether the contributions meet the CIL tests.
>
> ….the main concerns … we haven't had any details …specifying the project to deliver the infrastructure to which the contributions are requested other than a very early stage of a concept, there's no detailed assessment of the project or site that would satisfy that this would be sufficiently progressed and have evidence of being deliverable, much of the data and its sources and underlying assumptions are not explained in detail, the running costs are not explained in details similar to the concerns that we've raised and set out in details in relation to the hospital trust, the calculations provide little information on existing infrastructure capacity or provide a comparison of existing capacity and predicted impact of the development and this is a

> major limitation and this information is needed so that the impacts of the development alone can be ascertained.
>
> So the Section 106 contributions being requested are based on average bill costs rather than an identified capital project cost and other funding availability. And the Section 106 contributions are based on the assumption that the current use and cost of the CCG floor space will be a broad indicator of likely floor space need, so we believe that there's no quantitative evidence that's been provided to demonstrate why the existing floor space is unable to accommodate growth needs arising from the development and it's unclear in terms of how it actually addresses the needs of concealed households.
>
> In terms of the proposal before you, the CCG have not taken into account that the proposed development includes a health centre which would be provided on the site and that would exceed the [419 sqm] requirement that's set out in their latest submissions and through the Section 106 that would be offered to the CCG as land and building to shell and core standard. So what is on offer is a [600 sqm] building and a site of 0.14 ha. So Section 106 requirements can only secure mitigation that is necessary to make the development acceptable and mitigate its impact.
>
> The offer has potential for flexibility to meet the wider strategic vision for delivery of health and care in the future and in addition to the site and core to build offer for the CCG, there is a financial contribution towards a temporary health care facility to increase capacity of an existing health centre if that is required in advance of the health centre itself, the permanent facility, being provided and we believe that this is sufficient for such accommodation and meets the needs of the growing population arising from this site.
>
> ….Officers have drawn attention in the corrigenda to paragraph 34 of the NPPF which states that plans should set out contributions expected from development for infrastructure, including health, and the request for such contributions has not been made through the Emerging Local Plan which was first published and consulted back in 2017 and included this proposed allocation."

62. At the meeting, Ms Kitchen advised Members on the lateness of the further representations received from both IP4 and IP3 [C/236]:

> "The CCG and hospital trust representations have been submitted in a late stage in terms of the application process and whilst …. quite extensive discussions have taken place, the information provided to date is still inadequate to satisfy the Council that CIL tests are met. So Officers have had regard to these submissions as material considerations and given the concerns raised about the justification for this contribution,

> further work would have been required by the CCG and the hospital trust and the requested contributions have not been the subject of viability testing either through the VALP process nor through the application process and could potentially affect the viability of the proposed development and its ability to deliver a policy-compliant scheme.
>
> Officers have taken a judgment as to whether or not it's appropriate to delay the consideration of the application for information which may or may not satisfy the CIL tests and at this point it's not certain whether a CIL-complaint Section 106 methodology may be able to be achieved and this may take several months to work through. So the delay and uncertainty over this matters must be weighed against the potential disruption and potential prejudice to the delivery of an important component part of the …transport strategy for Aylesbury, but it can be seen from the section on the housing land supply that such a delay would also put pressure on housing land supply and create difficulties in relation to the Council's ability to meet a five-year supply and this would undermine the important objectives in the NPPF which seek to ensure an adequate supply to meet objective needs.
>
> And for these reasons it's considered that the requests are outweighed as a matter of judgment at this stage by the significant delays and prejudice that would result in determining this application if the issues were first required to be resolved, particularly since at this particular moment in time there's no guarantee that the contributions will be found to be CIL-compliant."

63. Following the Committee resolution, both IP3 and IP4 complained about the manner in which the application and their requests for financial contributions had been handled (letter of 17 March 2021). On 24 June 2021, officers granted the outline planning permission, subject to the conditions set out in the decision notice. In the Delegated Determination report, officers confirmed the advice given orally at the Committee meeting on 24 February 2021. They considered the representations made in the letter of 17 March 2021 and responded to them.

64. Officers concluded that the additional representations made would not be likely to alter the resolution made by Members. It was not considered necessary to refer the matter back to committee as there was no new material consideration which could affect or change the Committee's resolution. Officers found that the completed section 106 agreement "secures all the measures anticipated and necessary to render this application acceptable in planning terms" [C/361].

65. I reject the Claimant's submission that the Court should not have regard to the delegated decision and Delegated Determination report. It was an integral part of the Council's decision-making process. It was the final stage, at which the decision to grant outline planning permission was made. It was especially relevant since both IP3 and IP4 made

additional representations, requiring officers to consider whether the application ought to be referred back to the Committee.

Ground 1

66. *Ground 1(a)*. I consider that the evidence that I have set out above clearly demonstrates that the Council took into account IP4's representations (see paragraphs 49, 52, 53, 54, 57, 58, 60, 61, 62, 63). In my judgment, members were not misled by the information and advice given by officers, as it fairly reflected the essential elements of the issues raised by IP4's representations.

67. *Ground 1(b)*. There was a considerable amount of material provided to officers which estimated the size of a health centre which would be needed to meet the health needs of the Development (see paragraphs 47, 48, 50, 51, 53, 54, 59). IP4 used that material to calculate the size and cost of a larger health centre serving several new developments. However, there was nothing in that material which stated that the estimate of floorspace was only valid when considered in the context of a larger facility. For example, in the HUDU calculations provided by IP4 on 4 February 2019 [C/535-40], the "total annual floor space requirements" for "GP and Primary Care Services" for the "Group Development Projects Report" (i.e. the combined floorspace requirement for the Development taken together with three other development coming forward) was merely the sum of the floorspace requirements for each development taken on its own.

68. It was clearly relevant for the Council to consider what on-site health centre provision (as envisaged in the application for planning permission and the AVDC resolution of 25 October 2017) would be required to meet the needs of residents living in the Development. The size of any such health centre was a relevant consideration. Officers were entitled to use the material provided to assist in its assessment of the size required. The cost of £1.5 million provided by IP4 was used to calculate the financial cap.

69. On my reading of the representations, IP4's submission that the proposed health centre was too small was made in the context of the perceived benefits of its strategic vision for a large surgery to serve several new developments. IP4 did not separately submit that a 600sqm health centre was too small to meet the needs of this Development alone. Indeed, in its letter of 19 December 2018 (paragraph 50 above), IP4 acknowledged that it would "be sufficient to meet the required minimum".

70. *Ground 1(c)*. The reasons for the decision were provided by officers in the OR (paragraph 57), the CR (paragraph 58), the advice given orally by the planning officer at the Committee meeting on 24 February 2021 (paragraphs 60-61), and the Delegated Determination report (paragraphs 62-63). In my judgment, the reasons were adequate and intelligible, and met the required legal standard. They addressed the main issue, which was whether IP1's contribution to primary care provision should be a financial contribution to a large health centre for several new developments, or provision of a doctor's surgery on Site for the residents of the Development. Although the reasons were briefly stated, they were proportionate to the fact that the issue at hand was one proposed contribution in the context of a wide-ranging and complex application.

71. *Ground 1(d)*. In my view, the Council made a rational exercise of judgment that IP1 should not properly be required to pay more than what was required to mitigate the

impact of this Development, in order to facilitate IP4's preferred strategy for future primary care provision in larger health centres. Particularly in circumstances where the size of the contribution sought was over £2 million and there were no firm plans as to how, when and where the proposed scheme would be implemented.

72. In conclusion, although I grant permission on Ground 1, Ground 1 does not succeed for the reasons set out above.

Ground 2

73. Under Ground 2, the Claimant submitted that the advice given by officers as to the provision that would be secured by the section 106 agreement was significantly misleading and led members to take into account irrelevant considerations.

74. The main focus of the challenge under Ground 2 was the advice given by officers regarding the section 106 agreement, in the CR, at [C/216]:

> "The S106 secures the offer of land and building to shell and core standard to the CCG first, and in the event CCG do not require or do not want the facility offered, it is only after further discussions with the CCG that the site would be offered on the open market."

75. In my view, the existence of the financial cap did not render the offer insecure. A financial cap of £1.5 million was unobjectionable in principle, as an open-ended and uncapped obligation would in all likelihood be overly risky for a developer and would be difficult to justify in terms of the test in regulation 122 of the 2010 Regulations. The amount of the cap was based upon build costs put forward by IP4 for the 600sqm of primary care floorspace.

76. The Claimant criticised the officer for advising that the land and building would be offered to "the CCG first", whereas the planning obligation requires the land to be marketed to "relevant health providers". The officer's statement must be seen in the context of health service procurement. IP4 has no responsibility for providing healthcare services and is unable to purchase or lease its own assets. Rather, IP4 contracts ("commissions") primary care services from providers (such as partnerships of GPs) who own and construct their own facilities using private funding (as explained by IP3 at [C/521], [C/531], [C/546]). The planning obligation requires the land in question to be marketed to relevant health providers (i.e. primary care bodies from whom IP4 could commission services) through a marketing strategy and for the developer to provide written evidence of the marketing exercise to the Council on a bi-annual basis. The term "relevant health providers" does not exclude the private sector because, in law, GP partnerships are private bodies, even though they provide NHS services. Mr Parker suggested that the unit might be let to a health provider which did not provide primary care services but the grant of outline planning permission is for "a doctor's surgery" and it was plainly envisaged by all concerned, including IP4, that it would be a GP's surgery.

77. I accept the Council's submission that it is clear that the planning obligation does in fact build IP4 into the marketing and sale process, so that it was not misleading of

officers to say that, "in the event [IP4] do not require or do not want the facility offered, it is only after further discussions with the [IP4] that the site would be offered on the open market." Where the developer has failed to enter into a transfer or lease of the Health Centre Land within the requisite period, paragraph 6.2 of Schedule 8 clearly requires the developer, prior to putting the land on the open market, that it agree in writing "an alternative mechanism to provide the Health Centre to mitigate the impacts of the Development". Liaison with IP4 is therefore built into the process, and the planning obligation allows the IP4 to take a broad view about alternative ways of meeting primary care needs in the event that a provider of primary care does not wish to take on the site.

78. In my judgment, these criticisms were forensic rather than genuine. I do not consider that the officer's advice to Members was wrong or alternatively seriously misleading.

79. The Claimant also referred to the suggestion by officers (at C/216 and C/235) that there was "flexibility" within the section 106 agreement for further discussions to take place with IP4 to meet its needs at a later stage. However, the Claimant submitted that the section 106 agreement did not include any such provision.

80. Ms Kitchen, in her oral advice to Members [C/258-259], explained that the provision in the section 106 agreement was to secure the health centre to meet the needs of this Development, and went on to say:

> "…we are aware that there may well be flexibility on the site in order to expand that facility if in the future the CCG are looking to have a larger facility to meet the needs of the wider population other than just Hampden Fields and so the provision in the Section 106 allows ….further discussions to take place if the CCG decide that they want to have further discussions about what that provision would entail…"

81. I am satisfied that it was accurate for Ms Kitchen to say that officers and IP2 envisaged that, over the course of the time it would take for this application to reach reserved matters stage, it might well be possible to negotiate and agree with IP4 to provide land at the Site which would accommodate a large health centre, serving the wider population in the area. There was suitable land available. A further development of this kind would not require a further application for planning permission, but it would require either an amendment to the section 106 agreement or a new agreement. The section 106 agreement as drafted at the time of the decision did not make provision for possible discussions for this purpose. To that extent, the advice Ms Kitchen gave was incorrect. However, I do not consider that the error was significantly or seriously misleading in a material way, since whether or not any further discussions about a larger health centre were provided for in the section 106 agreement was not likely to influence Members in deciding how to proceed in determining the decisions that they had to make at the meeting.

82. In conclusion, although I grant permission on Ground 2, Ground 2 does not succeed for the reasons set out above.

Ground 3

83. The Claimant submitted that Members acted upon misleading officer advice and took into account an irrelevant factor, namely, the alleged lateness of IP4's final representations, when deciding to grant permission instead of deferring their decision for further consideration of IP4's representations (a course which some Members were considering). IP4 had made its position clear to the Council in detail, over a prolonged period of time. If officers considered that the contribution sought might affect the viability of the Development, a viability assessment could have been undertaken by officers at an earlier stage.

84. IP4 had previously requested a financial contribution from the Council on several occasions, which the Council had duly considered. The last contact between IP4 and the Council was in November 2020. On 23 February 2021, it sent a new request for a financial contribution of £2,189 million, based on a wholly new calculation, which was set out very briefly, and without any explanatory text or justification (paragraph 60). The late arrival of this request was problematic because it arrived only one day prior to the Committee meeting, and after the publication of the OR and the CR, which contained the advice from officers to Members.

85. Because of the lateness of these representations, Ms Kitchen had to deal with them by way of oral advice (paragraph 61). She made it clear that officers had had considerable discussion with IP4 on financial contributions in the past. She gave reasons why officers could not be satisfied that it would be appropriate to require IP1 to make the contribution requested. She advised that further work would be required to assess IP4's latest proposal, including a viability assessment of the Development in the light of the increased financial contribution sought. There was no guarantee that the proposed contribution would be found to be CIL-compliant. She advised Members that a delay of several months in making a decision would prejudice the delivery of the transport strategy and create difficulties in meeting the Council's five-year housing land supply. Officers had concluded, as a matter of judgment, that the benefits of deferring a decision were outweighed by the significant delays and prejudice that would result.

86. Councillor Monger asked Mr Tucker, Strategic Projects Director of IP2, if the decision could be deferred for three months, to see if a solution could be found to meet IP4's requirements. Mr Tucker explained that the Development was "on the cusp of viability", and the time that would be required to assess viability and to re-negotiate the section 106 agreement, would take longer than three months. The delay would prejudice the timing of the delivery of not just the development, but the infrastructure that came with it, including the southern link road.

87. In my judgment, Ms Kitchen's advice to Members was neither inaccurate nor misleading. The lateness of IP4's revised representations were a relevant consideration because of the impact they had on the Council's ability to assess them in time for the meeting. Viability was a legitimate concern. Ms Kitchen's advice on the benefits and disadvantages of deferring their decision to allow for an assessment of IP4's latest proposal was fair. The judgment was ultimately one for Members to make.

88. For these reasons, although I grant permission on Ground 3, Ground 3 does not succeed.

Grounds 4 to 6

89. Grounds 4 to 6 overlap as they concern secondary and tertiary services provided by IP3 and so it is convenient to consider them together.

Claimant's grounds of challenge

Ground 4

90. The OR wrongly advised that IP3's request for a financial contribution had to be refused because revenue costs did not come within the scope of regulation 122 of the 2010 Regulations. In the CR, officers deleted that advice and the Council accepted that it was incorrect. Therefore, the sole reason given for refusal had fallen away entirely.

91. Officers significantly misled Members by failing to advise them on IP3's outstanding request for a contribution based on revenue costs. In consequence, Members failed to take this material consideration into account when making the decision to grant outline planning permission.

92. Insofar as the Council rejected IP3's request for a contribution towards revenue funding on the basis that the information provided by IP3 in support of its request was inadequate, the Council reached an irrational conclusion.

93. The Council failed to give any, or any adequate, reasons as to why officers considered that the information submitted by IP3 in support of its request for revenue funding was inadequate.

Ground 5

94. Members acted upon misleading advice from officers that they had not been able to agree a CIL-compliant methodology for the calculation of a financial contribution because of the alleged lateness in IP3's revised request for a financial contribution, when deciding to proceed to grant outline planning permission at the meeting on 24 February 2021, instead of deferring a decision in order to consider IP3's representations further.

Ground 6

95. Officers gave significantly misleading advice to Members as to the consequences of the failure to secure any planning obligation to mitigate the impact of the Development on the delivery of IP3's services, with the result that the Council failed to take into account a material consideration, namely the adverse impact on the healthcare services provided by IP3, when making its decision to grant outline planning permission.

Conclusions

96. Prior to the decision by AVDC on 25 October 2017, IP3 did not make any representations regarding the proposed Development. IP3 first contacted the Council on 1 April 2019 seeking a financial contribution of some £5,699,703 towards the running costs of its services. This submission was received three years after the application was made, and 18 months after a resolution had been passed finding the application acceptable in planning terms without the inclusion of any such contribution.

97. The Council replied in a letter of 9 August 2019 expressing the view that the contributions sought did not meet the CIL tests, as they did not demonstrably arise from the Development and therefore were not necessary to make the Development acceptable in planning terms. The Council set out its concerns about IP3's approach, namely:

    i) The assumptions underpinning IP3's calculations in terms of the number of occupants of dwellings were arbitrary and unreliable. They assumed that they will take up occupation simultaneously, and that they will all be new to the Council's (and IP3's) area;

    ii) The unsatisfactory assessment of expected activity levels arising from the Development, and the extent to which occupants may seek services from IP3 rather than another trust, and any assessment of capacity at adjoining trusts;

    iii) Uncertainty as to how any financial contribution will be used given that IP3 claims to be operating at full capacity;

    iv) Ambiguity as to the "actual need for the contributions having regard to the fact that monies sought appear to be a form of "gap funding"" which would be met by funding in a subsequent year;

    v) Some of the justification "relates to the need for the Trusts to meet delivery targets in order to maintain financial surpluses" which is not a direct consequence of the Development.

98. The Council and IP3 engaged in a protracted period of correspondence. The Council adopted a consistent position. On 26 February 2020, the Council referred back to the 9 August 2019 letter and the concerns set out therein [C/585]. On 4 June 2020, the Council reiterated the same concerns as in the 9 August 2019 letter in a detailed "Assessment of BHT technical issues". On 11 January 2021 the Council made it clear that, in line with its previously expressed concerns, it did not "accept the principle of the BHT case for S106 contributions", and alerted IP3 to the issue of the impact of further and new developer contributions on the viability of proposed developments [C/738 and C/744].

99. In the light of the Council's concerns, IP3 looked for alternative approaches. On 20 January 2021, the Defendant raised the prospect of the 'HUDU model' being employed, and both sides committed to exploring this option over a three week period.

100. On 25 January 2021, IP3 through an employee, Mr Williams, incorrectly suggested in an email that "the Council's only remaining objection is that revenue cannot be included within an S106 Agreement". Considerable reliance is placed upon this suggestion by

the Claimant in this case. I accept Ms Kitchen's evidence in her witness statement that that was not the Council's position and had not been expressed in any of the Council's correspondence with IP3. Indeed, as Mr Williams recognised, the HUDU model that the Council invited IP3 to explore "incorporates revenue payments".

101. IP3 chose to explore a further alternative based on its Capital Programme for the development of new facilities. At a meeting on 3 February 2021, the Council and IP3 discussed this further alternative which was motivated by IP3's concern that HUDU may not be appropriate for the rural context of Buckinghamshire, whilst IP3 considered that a methodology based on IP3's Capital Programme could be "more straightforward, transparent, and easier to manage" [C/758-759]. At that meeting, the Council emphasised that this new approach could be useful at a strategic level but was "difficult to apply when local plans are adopted or at an advanced stage", whilst also advising that the viability of development proposals was a "major issue" [C/759-760]. It was agreed that IP3 would do further work on their idea, and that this application and the Woodlands development could be used as a "test scenario" for the capital methodology.

102. In an email dated 4 February 2021, the Council emphasised that the application was due to be determined on 24 February 2021; that the "timing of the application is critical as it links to the delivery of the eastern and southern links roads"; that any capital contribution methodology would not have been subject to viability testing in the local plan process; and that it would likely not be ready in time for the determination of the application [C/761-762].

103. On 11 February 2021, IP3 made a request for a financial contribution of some £2,754,821 towards the capital costs of six "key facilities projects" in respect of which IP3 "has a funding gap of £13.5m, which development contributions will be required to mitigate". The projects were the expansion of the Accident & Emergency Department at Stoke Mandeville Hospital, a new Paediatric Accident & Emergency Department at Stoke Mandeville Hospital, a new endoscopy suite at Stoke Mandeville & Wycombe, a new therapies unit at Stoke Mandeville Hospital, a new diagnostic and healthcare hub at Amersham Hospital, and expanding the intensive care unit at Stoke Mandeville Hospital.

104. The OR accurately set out IP3's representations at Appendix D. Healthcare was addressed at paragraphs 5.318 – 5.325. However, paragraphs 5.321 to 5.324 were replaced by new paragraphs inserted by the CR because paragraph 5.321 erroneously stated that IP3's request for a financial contribution had to be refused because revenue costs did not come within the scope of regulation 122 of the 2010 Regulations, and the other paragraphs had to be updated in the light of further correspondence received from IP3.

105. By the time the matter was considered by the Committee, at its meeting on 24 February 2021, the relevant paragraphs in the OR read as follows:

> "5.320 Turning to acute and community healthcare, residents have raised concerns about the potential impacts on hospital provision at Stoke Mandeville Hospital. Buckinghamshire Hospital Trust (BHT) have requested contributions towards hospital services and the council have been in discussion with the Buckinghamshire Hospital Trust (BHT) regarding

contributions sought in general terms towards the cost of providing capacity for the Trust to maintain service delivery during the first year of occupation of each unit of the accommodation on/in the development. Officers have reviewed the request for a section 106 contribution BHT. BHT's request is for revenue funding for its operational costs for its acute and community care services. In considering any request for a financial contribution, the council would need to be satisfied that BHT has provided evidence and adequate justification to demonstrate in accordance with the CIL Regulations how the sums are necessary to make the development acceptable in planning terms or how they are directly related to the development or fairly and reasonably related in scale and kind to the development. (CIL Regulation 122).

5.321 In relation to the request for contributions towards the costs of service officers sought further information from BHT to address officers' concerns that the contribution sought did not meet the CIL tests. BHT have provided additional explanation about their funding mechanisms. They have explained that there is a gap in their revenue funding, and it is not possible for their funding mechanism to be adapted so that the anticipated occupation of new development can be incorporated into their revenue funding formula. This formula is set nationally and not based on forecasting.

5.322 There has been considerable discussion with BHT regarding the officers' concerns that the information provided to date is inadequate to enable the Council to conclude that their request meets the CIL tests in relation to the requested contributions towards service costs. The Council has been working collaboratively with BHT in order to assess the potential for CIL compliant contributions for capital costs arising from new development rather than revenue costs.

In an effort to address the Council's concerns regarding the approach and methodology for the revenue costs sought, BHT, in a letter dated 11 February 2021 (which was received by the Council on 18 February 2021), provided a fresh calculation for what they regard as the capital cost impact of the proposed development. This is in connection with its three-year facilities programme.

5.323 In an email to BHT dated 4th February 2021, the Council had advised BHT that it was not possible to agree a methodology prior to the imminent determination of this planning application as the work towards an agreed position statement on a methodology for section 106 contributions was still at an early stage.

> 5.324 The information provided by BHT is not sufficiently advanced at the stage to enable the Council to reach a conclusion that the CIL test has been satisfied, including how the contribution is directly related to the development proposed."

106. In the CR, officers provided a critique of the capital cost request, setting out eight main concerns in bullet points, and pointing out that the requested contributions had not been subject to any viability testing. They advised [C214]-[C/215]:

> "It is significant that the amount sought under the BHT revenue cost methodology is far higher at £5,699,703 whereas the capital cost request is £2,754,821. The difference is £2,944,882. This significant variance demonstrates the need for the Council to be satisfied that any calculations and the methodology are robust and justified.
>
> At this stage the following main concerns remain and need to be addressed before any conclusions can be reached as to whether the BHT's contributions meet the CIL tests:
>
> - Whilst six projects have been specified to deliver the infrastructure for which contributions are requested, there is limited information provided and a direct relationship with the proposed development is not demonstrated
> - The capital cost data, its sources and underlying assumptions are not explained in detail.
> - The BHT calculations do not include information on existing infrastructure capacity or provide a comparison of existing capacity and the predicted impact of the development. This is a major limitation and this information is needed so that the impacts of the development alone can be ascertained.
> - The S106 contributions being requested for this scheme are based on average build costs per sqm rather than identified capital project costs and other funding availability for the six projects.
> - There is no information on the status of the six projects, e.g. whether they are sufficiently progressed and have evidence of deliverability.
> - The S106 contributions are based on the assumption that the current use and cost of BHT clinical floorspace will be a broad indicator of likely floorspace needs. No quantitative evidence has been provided to demonstrate why the existing floor space is unable to accommodate growth needs arising from the development.
> - It is unclear if the calculations address the needs of concealed households.

> - BHT has not explained if there is alternative funding to address the funding gap for the six projects. It is known that BHT and the LEP made a request to government for capital funding as part of a Recovery and Growth bid. The potential role of this bid has not been accounted for within the figures. The potential role of other partner organisations in supporting delivery has not been explained.
>
> Paragraph 34 of the NPPF states that plans should set out contributions expected from development, for infrastructure including health. The request for such contributions has not been made through the emerging VALP which was first published and consulted on July- September 2017 and included this proposed allocation. The BHT representations have been submitted at a late stage in the application process. Whilst discussions have taken place the information provided to date is considered inadequate to satisfy the council that CIL Tests are met.
>
> Officers have had regard to the submissions as a material planning consideration and given the concerns raised about the justification for this contribution, further work would be required. The requested contribution has not been the subject of viability testing through the emerging VALP process nor in the application process which could potentially affect the viability of the proposed development and its ability to deliver a policy compliant scheme. Officers have taken a judgement as to whether or not it is appropriate to delay the consideration of the application, for information which may or may not satisfy the CIL tests. At this point it is not certain whether a CIL compliant s106 methodology may be able to be achieved and this may take several months to work through."

107. Officers identified that further work would have to be done by IP3 and the Council in order to address these unresolved concerns and that this would take time. Given the extensive pedigree of the application and its strategic importance, officers then set out a planning balance as to whether the application should be further delayed to allow for further talks between the Defendant and IP3 [C/216]:

> "Officers have had regard to the submission as a material planning consideration and given the concerns raised about the justification for this contribution, further work would be required. The requested contribution has not been the subject of viability testing through the emerging VALP process nor in the application process which could potentially affect the viability of the proposed development and its ability to deliver a policy compliant scheme. Officers have taken a judgement as to whether or not it is appropriate to delay the consideration of the application, for information which may or may not satisfy the CIL tests. At this point it is not certain whether a CIL compliant s106 methodology may be able to be achieved and this may take several months to work through.

> The delay and uncertainty over this matter must be weighed against the potential disruption and potential prejudice to the delivery of an important component part of the transport strategy for Aylesbury. It can be seen from the section on housing land supply above that such delay will put further pressure on housing land supply and will create difficulties in relation to the Council's ability to meet a five-year supply. This undermines important objectives in the NPPF which seeks to ensure an adequate supply to meet objective needs. For these reasons it is considered that the BHT request is outweighed as a matter of judgment at this stage by the significant delay and prejudice that would result in determining this application if the issues above were first required to be resolved particularly since, at present, there is no guarantee that the methodology and contributions will be found to be CIL compliant."

108. I repeat paragraph 62 above in respect of Ms Kitchen's oral advice to Members, at the Committee meeting on 24 February 2021, concerning late representations and delay, which applied to both IP3 and IP4.

109. I also repeat paragraphs 63 to 65 in regard to the Delegated Determination report and decision. At [C/357] to [C/360], officers addressed the issues raised in the letter of 17 March 2021. In particular, officers said that IP3's alternative methodologies of costs for infrastructure services and capital costs were both considered.

Ground 4

110. Although the OR mistakenly stated that revenue contributions were outside the scope of the 2010 Regulations, that error was clearly corrected in the CR. I am satisfied that Members were made aware of this correction and so were not misled by this error. As I have indicated at paragraph 100 above, the suggestion that this removed the Council's only remaining objection to revenue costs is contradicted by the correspondence, as well as the officers' reports, as Ms Kitchen explains in her witness statement.

111. On a fair reading of the reports, I consider that the officers' advice did have regard to IP3's alternative requests for a contribution towards revenue/service costs, as well as a contribution towards capital projects. Both requests were clearly set out in Appendix D to the OR. Furthermore, the reasoning in the reports engaged with the request for revenue funding, as follows:

    i) Officers set out IP3's request for "contributions… towards the cost of providing capacity… to maintain service delivery during the first year of occupation", stating that "BHT's request is for revenue funding for its operational costs" (OR revised paragraph 5.321);

    ii) Officers set out the rationale and additional supporting information received from IP3 (OR revised paragraph 5.321);

    iii) Officers noted that "there has been considerable discussion with [IP3] regarding the officers' concerns that information provided to date is inadequate" for the

Council to reach a conclusion as to compliance with regulation 122 "in relation to the requested contribution towards service costs" (OR revised paragraph 5.322);

iv) Officers reported that they had had "concerns regarding the approach and methodology for the revenue costs sought" (OR revised paragraph 5.322);

v) Officers compared and commented on the difference (£2,944,882) between the two calculations provided by IP3, concluding, at OR revised paragraph 5.324, that:

> "This significant variance demonstrates the need for the Council to be satisfied that any calculations and the methodology are robust and justified."

vi) In the CR [C/213], officers advised that "BHT's request is for service costs and has submitted revised calculations for such a contribution in addition to the recent capital cost calculations".

112. Therefore there is no proper basis for the Claimant's submission that the Council did not have regard to IP3's request for a contribution towards mitigating its revenue costs for the provision of secondary healthcare services. In my judgment, the Council did have regard to the request, but made a rational exercise of judgment that, on the information provided, it could not be satisfied that it met the CIL tests.

113. I consider that officers did provide adequate and intelligible reasons for not accepting IP3's requests, in the OR at paragraphs 5.320 to 5.324, and in the CR at [C/214] to [C/215] (see paragraph 106 above). These reasons met the required standard.

114. For these reasons, although I grant permission on Ground 4, Ground 4 does not succeed.

Ground 5

115. In his submissions Mr Parker dealt with Ground 5 together with Ground 3, as the Council decided not to delay its decision to await the outcome of further work on IP3's latest requests, based on new methodology. In reaching its decision, the Council undertook a legitimate balancing exercise, weighing the public interest in the determination and progression of the application, which included a key section of Aylesbury's road strategy, against the public interest in agreeing a compliant methodology for financial mitigation with IP3 (see paragraph 107). In doing so, it was entitled to take into account, as a relevant consideration, the lengthy negotiations between IP3 and the Council, including the fact that IP3 had very recently submitted a request based on an entirely new methodology, and that the request had arrived too late to be fully assessed and agreed. In my view, the Council's exercise of judgment, in deciding not to defer its decision any further, does not disclose any public law error.

116. For these reasons, although I grant permission on Ground 5, Ground 5 does not succeed.

Ground 6

117. Under Ground 6, the Claimant makes a further challenge to the decision of the Council to grant permission, instead of deferring the decision to give further consideration to IP3's request. The Claimant alleges that the officer advice given in the CR [C/216] and orally at the meeting [C/236] significantly misled Members because "the question for members was not whether 'the request' was outweighed by the delay that would be caused but rather whether the adverse impact on the provision of healthcare services by IP3 was outweighed by any such delay" (Claimant's skeleton argument, paragraph 95).

118. I accept the Council's submission that this submission takes an overly semantic approach which is at odds with the guidance given by the Court of Appeal in *Mansell*. Members were well aware that IP3 was seeking a financial contribution to offset the potential impacts of the Development on secondary health services (see C/203-204). They were not misled by the officers' use of the shorthand "IP3's request" to summarise the nature of IP3's request and the reasons for it. In my judgment, they must have been fully aware of the implications and importance of the planning judgment that they had to make.

119. For these reasons, I refuse permission on Ground 6, as I consider it is unarguable.

Final conclusions

120. I agree with the Council's submissions that, on close examination, the Claimant's case amounts to no more than thinly-veiled disagreements with the Council's lawful exercise of planning judgment. Therefore the claim for judicial review is dismissed, for the reasons set out above.

121. As I have dismissed all the grounds of challenge, I have not reached any conclusion on the Council's submission that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred, and therefore permission or relief should be refused pursuant to section 31 of the Senior Courts Act 1981.