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AC-2024-LON-002887

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 March 2025

Before :

Dan Kolinsky KC

(sitting as a Deputy Judge of the High Court)

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Between:

R (oao DEBORAH GLASS WOODIN on behalf of FRIENDS OF GRANDPONT NATURE PARK)

Claimant

and

OXFORD CITY COUNCIL

Defendant

Peter Cruickshank, instructed by Richard Buxton Solicitors for the Claimant

Meyric Lewis KC, instructed by Oxford City Council Legal Services for the Defendant

Hearing dates: 4 -5 February 2025

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Approved Judgment

This judgment was handed down remotely at 10 am on 10 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Judgment Approved by the court for handing down.

Dan Kolinsky KC (sitting as a Deputy High Court Judge):

1. The Claimant brings this judicial review claim on behalf of the Friends of Grandpont Nature Park ("FGNP"), an unincorporated association. She challenges the Defendant's decision dated 8 July 2024 to grant planning permission to itself for the construction of a pedestrian and cycle bridge (known as Oxpens Bridge) across the River Thames from Grandpont Nature Park to Oxpens Meadows.

2. Permission to proceed with the judicial review claim was granted by Lang J on 3 October 2024.

3. There are five grounds of challenge. The parties' agreed formulation of the issues is as follows.

   a) (ground 1) whether the Defendant erred in law by making a material mistake of fact in relation to statements made in the committee report and/or by officers in committee.

   b) (ground 2) whether the Defendant was given unlawful advice that they could not revisit its Council's Environmental Impact Assessment ("EIA") screening decision.

   c) (ground 3) whether the Defendant erred in law (i) by regarding the proposed development as being a "standalone" project rather than being "integral to" a wider development project (and whether that was irrational in the Wednesbury sense) and/or (ii) by adopting a flawed approach to the question of whether an EIA was required, in that (as alleged) it relies on a future EIA for a different planning application being done later.

   d) (ground 4) whether (i) it was unlawful of officers to advise members that they should not allow themselves to be lobbied on the planning application and/or (ii) there was inadequate "separation of powers" in the decision made by the Defendant.

   e) (ground 5) whether the Defendant erred in law by failing to take account of a material consideration, namely, a 2016 report produced for Oxfordshire County

Council entitled "Riverside Routes to City Centre: Existing Route Improvements – Gasworks Railway: Feasibility Report" ("the 2016 Report").

4. This judgment addresses matters in the following order:-
    a. Factual Background
    b. Legal Approach – overview
    c. Alleged Material Error of Fact (ground 1)
    d. Challenges to the EIA procedure (grounds 2 and 3)
    e. Procedural Challenges (ground 4)
    f. Alleged Failure to take account of a material consideration (ground 5).

Part A: Factual Background

5. Grandpont Nature Park ("GNP") is an 8 acre nature park on the south bank of the River Thames, close to Oxford Town Centre. GNP is sited on land of a former gas works facility which ceased to function in the 1960's. GNP was established in the 1980's. It does not have any specific protected planning designation but is valued locally as a nature reserve.

6. To the north of GNP across the River Thames is the Oxpens area. This consists of brownfield land, the Oxford ice rink and Oxpens Meadow.

7. To the west of GNP, on the other side of mainline railway tracks, is the Osney Mead area.

8. As discussed further below, Oxpens and Osney Mead are each allocated for development in the Oxford Local Plan 2036 ("the Local Plan") adopted on 8 June 2020.

9. An existing bridge crosses into GNP from the north side of the Thames. This is the Gasworks Bridge. It is a former railway bridge which has been repurposed as a pedestrian and cycle bridge. It lies approximately 100m to the east of the site of the proposed Oxpens Bridge and east of castle mill stream. There is a connection into Oxpens meadow in a location which has been susceptible to flooding.

10. The planning permission under challenge is for a new pedestrian and cycle bridge from Oxpens Meadows (on the north side of the River Thames), across the river and into GNP on the south side of the river. The planning permission covers associated works and new connecting paths on the south side of the river in GNP.

11. On 16 December 2021 Stantec UK Limited on behalf of the Defendant wrote to the Defendant's planning department to request a screening decision to determine whether an EIA was required under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

12. The Defendant issued a negative screening opinion on 7 January 2022 indicating that an EIA was not required.

13. The planning application was submitted on 23 October 2023. The description of development applied for was "*Construction of a pedestrian/cycle bridge across the River Thames, from Grandpont to Oxpens Meadows comprising:*

    (i) A steel bridge structure with a total span of 98.90m with a river span of 23.9m;
    (ii) Associated access points;
    (iii) Improvements to existing footpath/cycleway connections;
    (iv) *Ecological enhancements and ancillary development including hard and soft landscaping".*

14. The application was considered by the Defendant's planning committee on 19 March 2024 ("the March Committee Meeting"). The planning officers' report to that meeting recommended approval of the scheme ("the March OR"). It advised (in the executive summary section and planning material considerations section) that the principle of development was supported by the policies of the Local Plan. It evaluated a range of planning considerations and addressed objections to the proposal (as well as recording some support for it).

15. The Planning Committee resolved to approve the application in line with the officers' recommendation. The notes of the discussion at the March Committee Meeting show

that some members opposed the application. There was debate about whether the project should be treated as EIA development due to its relationship with the wider development of the area. A motion to refuse the application was proposed but defeated.

16. Following the March Committee Meeting, the Defendant's Planning Review Committee ("PRC") called in the application for redetermination for the following reasons:

> *"The building of a new bridge adjacent to an existing bridge is not an efficient use of land or resources to deliver sustainable growth and development and is therefore contrary to policies RE1 and RE2 in the Local Plan"*
>
> (Policy RE 1 is a sustainable design and construction policy. Policy RE 2 is concerned with the efficient use of land).

17. The PRC met to determine the application on 18 April 2024. A further planning officers' report ("the April OR") was prepared. It attached the March OR as an appendix and advised that the reports should be read together. The April OR addressed issues which had been raised in debate at the March Committee Meeting (see paras 1.6 and 1.21) and those raised by the call-in resolution.

18. The April OR is discussed further below. By way of overview:-

    a. It addressed (at paras 1.23-1.29) the concerns expressed in the call-in resolution as to the compatibility of the proposal with policies RE1 and RE2. It concluded that the proposal was compatible with those policies.

    b. It addressed (at paras 1.30-1.33) the justification for a new bridge in preference to upgrading the Gasworks Bridge.

    c. It addressed (at paras 1.34-1.37) the impact of the proposed bridge on GNP.

    d. It advised in para 1.38 that funding for the bridge was not a material planning consideration.

e. It reiterated advice given orally at the March Committee Meeting that the proposal had been screened and an EIA was not required (see paras 1.39-1.41). It stated (at para 1.41) that "*the application for the bridge is a standalone development that can be delivered on its own without the need for the Oxpens or Osney Mead allocations to be delivered and vice versa. Therefore the bridge does not need to be screened with the surrounding allocations and was therefore screened on its own merits*".

f. Having addressed other planning considerations including flooding, the April OR advised that the proposal accorded with the development plan and that planning permission should be granted.

19. Prior to the PRC meeting in April ("the April Meeting"), there was correspondence between FGNP and members of the PRC seeking to arrange a site visit. This correspondence is discussed further in respect of ground 4 below.

20. The PRC resolved to grant planning permission by a narrow majority of 5 votes in favour and 4 votes against. A note of the lengthy meeting shows that (using the paragraph numbers of the note of the meeting):-

a. Members were shown visualisations of the proposed bridge and its relationship with GNP (paras 28-30).

b. Objectors spoke against the proposal (for a total of six minutes) (paras 32-35). They focussed on the need for an EIA to take account of the bridge's wider role in the regeneration of the area.

c. Supporters spoke in favour of the proposal (paras 41-45).

d. The Chair (and other members) identified some key points on which clarification was sought. This included whether an EIA was required. Ms Sally Fleming (advising planning lawyer) dealt with what the chair framed as the "fairly fundamental question" of whether the proposed bridge was "integral" to

wider development (para 57). She explained why she did not consider that it was (see para 63).

e. A lengthy discussion ensued in which members raised concerns and asked questions. The EIA issue resurfaced during the discussion.

f. The resolution to grant planning permission passed by five votes to four.

21. The planning permission was issued on 8 July 2024.

Part B: Legal Framework

22. Planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise (see s.38(6) of the Planning and Compulsory Purchase Act 2004).

23. The applicable statutory provisions in respect of EIA are discussed in Part D below.

24. The applicable provisions of the statutory scheme in respect of the determination of planning applications made by a local planning authority are discussed in Part E below.

25. Where, as here, criticism is made of the advice given to members in reports to committee, the approach of the Courts has been authoritatively summarised by the Court of Appeal in Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314 at para 42. The essence of that approach is that such reports 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. 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. 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. 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.

26. A similar approach applies by analogy to challenges based on guidance given by officers at the planning committee meeting. It is necessary to consider such advice in context.

Part C: Alleged Error of Fact (ground 1)

(i) The development plan policies

27. Chapter 9 of the Local Plan identifies Areas of Change and site allocations. The site allocation policies are accompanied by icons which identify key features (as explained in para 9.2 of the supporting text). One such icon refers to "improving walking and cycling".

28. Policy AOC1 is entitled "Area of Change: West End and Osney Mead". It indicates that planning permission will be granted for new development within the Area of Change where it would take opportunities amongst other things to "enhance connectivity throughout the area, including along and across waterways" and "enhance the pedestrian and cycling experience".

29. Policy SP1 relates to sites in the West End. The policy is accompanied by the improving walking and cycling icon. Oxpens is identified as a site to which this policy relates with a minimum of 450 homes to be delivered. The text of the policy states: *"Planning permission will only be granted for development on Oxpens where it enhances Oxpens Field to create a high quality open space, includes new high quality and well located public realm, creates an active frontage along Oxpens Road, enhances connectivity to Osney Mead including future proofing the proposals so that they do not prevent the landing of a foot/cycle bridge across the Thames and has regard to the Oxpens SPD*".

30. Policy SP 2 applies to Osney Mead. It similarly emphasises the importance of improving cycling and walking connections, connectivity with the town centre and providing links across the river.

31. The proposals and policies map shows that Oxpens Meadows (also known as Oxpens Field) is within the Area of Change covered by policy AOC1.

32. GNP is not within the Area of Change covered by policy AOC 1.

(ii) Submissions

33. The Claimant's argument is framed around the criteria for judicial review on grounds of a material error of fact. The requirements (from para 66 of the Court of Appeal's decision in E v SSHD [2004] QB 1044) are: (i) the mistake must be of an existing fact; (ii) the fact must be established (i.e. the correct position could have been shown by objective and uncontentious evidence); (iii) the claimant cannot fairly be held responsible for the error; and (iv) the mistaken impression must play a material part in the reasoning. This has been applied in planning cases – see for instance Harrison v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 16 (Admin) where the error in question which led to the quashing the decision was whether a flood risk assessment had been undertaken.

34. The Claimant relies on various passages of the March OR and April OR and advice given at meetings which she contends indicate a material error of fact.

35. The Claimant's argument is put as follows.

a. The existing fact is the respective locations of GNP and the policies AOC1, SP1 and SP2.

b. The mistake is that the March OR at paragraph 2.3 states that: "*Policy AOC1 of the Oxford Local Plan (OLP) designates the area in which the bridge is proposed as an 'Area of Change'*", and the April OR stated at paragraph 1.27: "*The bridge will be located within an area of change as identified in policy*

AOC1 of the Oxford Local Plan… it will also sit comfortably within the 'Area of Change"".

c. Neither of those propositions are correct: GNP is not within an Area of Change nor is it a site for development.

d. The mistake is compounded in the conclusions to both reports: the March OR states (para 10.7): "*The principle of a new river bridge in this location is therefore supported in policy…" ;* the April OR states (at paragraph 1.35): "*As set out previously the Local Plan and West End SPD supports the inclusion of a bridge in this location*…" Paragraph 1.44 of the April OR repeats this wrong proposition.

e. The Planning Officer (Mr Murdoch's view) at the March Committee Meeting was that the bridge is *"an aspiration throughout the local plan, in a number of policies, that talks about providing a crossing across the site here*" was also wrong.

36. The Defendant's response is that Policy AOC1 of the Oxford Local Plan <u>does</u> designate "the area in which the bridge is proposed" as an 'Area of Change'. The area of change is on the north side of the river and the majority of the bridge is in that area – and has to "land" somewhere on the south of river.

37. The Defendant stresses the thrust of the policies are that "*planning permission will be granted… within the area of change where it would… enhance connectivity throughout the area, including along and <u>across</u> waterways*" (see AOC 1) and, policy SP1: *"planning permission will only be granted for development at Oxpens where it… enhances connectivity to Osney Mead including future proofing proposals so they do not prevent the landing of a foot/cycle bridge <u>across</u> the Thames*…" (emphasis added).

38. The Defendant submits that the analysis that "*The principle of a new river bridge in this location is therefore supported in policy and is acceptable in principle..."* was correct. It contends that Mr Murdoch was correct to say that the bridge is "*an aspiration*

throughout the local plan, in a number of policies, that talks about providing a crossing across the site here".

39. In substance, the Defendant submits the impugned analysis was in fact correct. There was no "mistake of fact".

40. It is common ground that if there was an error of fact, the Claimant was not responsible for it.

(iii) Discussion

41. This ground hinges on understanding the extent to which the development plan supports a bridge in this location.

42. The meaning of the development plan is ultimately a question of law for the Court – see Tesco Stores Limited v Dundee City Council [2012] PTSR 983.

43. In determining the meaning of the development plan, I focus primarily on understanding the words of the development plan policies read together with the proposals map.

44. It is clear that the plan does support a bridge in this location. The northern part of the bridge is unquestionably located in an Area of Change in the plan. The plan explicitly supports improving cycling and pedestrian routes and enhancing connectivity across waterways. No new bridge in Oxpens Meadow could do so without crossing the Thames.

45. As I read the development plan, there is support for a bridge in Oxpens Meadow. It is plain that such a bridge would need to cross the Thames to achieve the development plan's objectives. A bridge in Oxpens Meadow which crosses the river must, as a matter of geography, land in GNP.

46. The impugned analysis in the March OR and April OR is consistent with that reality. The Claimant's legal argument is not.

47. Mr Cruickshank on behalf of the Claimant argued that a bridge to the west of the railway track was contemplated. He suggested that this would more directly connect Osney Mead and Oxpens. I accept that such a bridge would be consistent with the development plan policies. This notional bridge would start and end in the Area of Change but would cross areas outside Area of Change in the policies map.

48. Be that as it may, as I read the development plan, a bridge in the location proposed is within the contemplation of the wording of the applicable policies. The Oxpens Bridge as proposed would achieve the objectives of the development plan in a location which is contemplated.

49. As the Defendant submits, the bridge has to land somewhere. GNP is the only candidate location for landing a bridge which starts in Oxpens Meadow (which is a location within the contemplation of the policies discussed).

50. My conclusion is that there was no material error of fact in the advice given to members that a bridge in this location was supported by the development plan policies.

51. This interpretation of the development plan policies accords with how the policy has been understood in practice.

52. Policy SP1 contains a reference to the "Oxpens SPD". That document is a supplementary planning document which was adopted (in 2013) following consultation. It contains several explicit indications that a bridge in this location crossing into GNP from Oxpens Meadows was contemplated when the development plan policy was formulated (see masterplan at figure 5.5 and figure 6.1 and figure 6.3 and the indicative landscape proposal – figure 6.18). I have not used this document as aid to interpretation of the development plan. But I note that it does corroborate the conclusion that I have reached as to the meaning of the development plan policy.

53. Similarly (also by way of sense check) the latest version of the SPD (West End and Osney Mead SPD) November 2022 contemplates the bridge (see table 2; key infrastructure priorities include "Oxpens Bridge" and figure 10 "movement strategy"

which shows a bridge in the location now proposed as well as contemplating further possible improvements in connectivity to the west of the railway track).

54. I am satisfied that the interpretation given by officers was correct. It gave practical utility to the development plan's commitment to a bridge crossing the Thames to improve connectivity.

55. In reality, this has been the well understood meaning of the development plan policies. That this is so, is reinformed, to some extent, by the way in which this legal argument has emerged. The suggestion that the location of the bridge was inconsistent with the development plan had not been raised in the objections to the planning application or in the lively debate at the March Committee Meeting or the April Meeting. It did not feature in the main letter before claim which was sent following advice from Counsel then instructed. Rather the point was first made in a supplementary letter before claim sent immediately before proceedings were issued.

56. The point now taken does not withstand the exercise of giving practical utility to the development plan policies' support for a bridge crossing the Thames. It would not be logical for the provisions of the development plan to support some of the bridge (i.e. the part located in Oxpens Meadow) but preclude it from landing outside of the Area of Change. This is the only way in which a bridge which starts in Oxpens Meadows could achieve the connectivity aims of the development plan. The correct legal interpretation of the development plan results in a workable policy.

57. For these reasons, I reject the Claimant's first ground of challenge. In my assessment, there was no error of fact in the Defendant's analysis that the development plan supported a bridge in the location proposed.

Part D- EIA Issues (ground 2 and 3)

(i) The decision making process

58. A screening request was made on 18 December 2021.

59. The screening opinion dated 7 January 2022 briefly indicates why the development did not require an EIA. It identifies the project as an infrastructure project covering 4.39ha and thus an infrastructure project within schedule 2 of the 2017 Regulations. It refers to the application of the criteria in schedule 3 of the 2017 Regulations concluding that the development would not be likely to have significant environmental effects. It emphasised that the proposed development was not located in an environmentally sensitive areas. It took account of proposed mitigation measures.

60. It stated:

"In addition the proposed Oxpens development is considered EIA development and the application will be accompanied by an environmental statement. It is stated in the supporting letter that the Oxpens environmental statement will consider the likely significant cumulative effects of the Oxpens development with other existing and/or approved development, as well as the proposed Oxpens Bridge and Osney Pathworks".

61. As indicated in para 15 above the EIA issue was raised at the March Committee Meeting.

62. The oral advice given at that meeting was "*the bridge is a standalone application and it can come forward with or without the allocated sites*".

63. This was confirmed in the April OR at paras 1.39-1.41 which states: *"The application for the bridge is a standalone development that can be delivered on its own without the need for the Oxpens development and Osney Mead development to be delivered and vice versa*".

64. The issue was discussed in detail in the April Meeting. The advice given was as follows:

Sally Fleming (planning lawyer):

"….the definition of integral… is it should be … necessary, essential, fundamental. …. it would … be good for the connectivity within the city from one area to other areas and that the bridge could and would presumably go ahead whether or not those other new developments go ahead or not and vice versa. ……[My] understanding is that if the bridge doesn't go ahead, then the – both the proposed developments could come

ahead on their own. So in my view, I don't think it is integral which is why we say that it wasn't necessary to do an EIA".

She subsequently elaborated on this guidance by reference to relevant caselaw (see further para 81 below).

(ii) Legal Framework

65. Regulation 3 of the 2017 Regulations prohibits the grant of planning permission for EIA development unless an EIA has been carried out in respect of that development.

66. The issues in this case draw on inter-related strands of caselaw as to:-

    a. How local planning authorities should assess whether development is EIA during the planning process

    b. How the project to which the EIA process applies is determined.

67. Both topics have been the subject of extensive litigation.

Assessment of whether the development is EIA development

68. The judgment of Sir Duncan Ouseley in Swire v Ashford BC [2021] EWHC 70 (Admin); [2022] 2 P&CR 2 at paras 62-84 explains the decision making process comprehensively. I draw from that analysis the following key points.

    a. Regulation 3 of the 2017 Regulations prohibits the grant of planning permission for EIA development unless an EIA has been carried out. There is no provision in the EIA Regulations which provides for a negative screening opinion to have any legal effect (unlike a positive screening opinion in Reg 5).

    b. There is a duty necessarily implied into the 2017 Regulations that the planning authority, at the time it grants permission, should be satisfied that the development is not EIA development. This is a continuing duty which applies when there has been a negative screening opinion (as well as when there has not been).

c. In Evans v First Secretary of State [2003] EWCA Civ 1523 at paras 23-24, Simon Brown LJ discussed (obiter) whether an Inspector who was faced with a negative screening opinion ought to invite reconsideration by the Secretary of State. He considered that he should not do so "*merely because on the same facts, he finds himself in disagreement with the Secretary of State*". Whether he was obliged to refer back was to be judged by the touchstone of rationality. In R (Mageean) v SSLG [2012] Env LR 124, Sullivan LJ characterised this as "*eminently sensible advice*".

d. Most cases about the continuing applicability of negative screening opinions have arisen in the context of changes of circumstances – see for example Mageean – where the inscription of World Heritage Site near a windfarm was not a sufficient change to require a reference back to the Secretary of State by the Inspector.

e. Having examined further caselaw in the local authority context, Sir Duncan Ouseley stated (at para 79 of Swire):

> *"The negative screening opinion, provided it is not itself irrational, will have this continuing relevance: it will provide a benchmark against which the significance of the changes will be judged both by the planning officer, and by the court reviewing the rationality of any new assessment or how the reasonable planning officer would view the changes".*

Sir Duncan Ouseley stated at para 81:

> *"where there has been a negative screening opinion which the planning officer considered, and reasonably concluded did not alter the basis for the negative screening opinion, and that the development was still not likely to have significant environmental effects, there would be no breach of Reg. 3 in the grant of planning permission"* .

The relevant project

69. In R (Ashchurch Rural Parish Council) v Tewkesbury Borough Council [2023] EWCA Civ 101 the Court of Appeal confirmed that the identification of the project to be assessed for the purpose of EIA is not necessarily circumscribed by the ambit of the

specific application for planning permission. The identification of the project was a fact specific question which was ultimately a matter for the planning authority subject to challenge on grounds of irrationality.

70. The Tewkesbury case concerned a bridge serving a proposed garden town development. It was part of a larger phased development programme. Access to the land which was to form phase 1 of the development scheme was achieved by the construction of the road bridge over a main railway line. The Court of Appeal decided that the authority had erred in treating it as a standalone development as it clearly formed an integral part of an envisaged wider development. The factual context of that case was that the bridge served "*no other purpose than to unlock the sites to the east of the railway line for developmen*t" (para 98).

71. As to the decision making process in Tewkesbury, the Court of Appeal held at para 83 that the relevant planning judgment as to whether the proposal formed part of the wider project had "*never been exercised*". The Court of Appeal held that the local planning authority were obliged to consider this (see para 96).

72. The Court of Appeal considered that the "*difficulty of carrying out any assessment of the impacts of a larger project which is lacking in detail, is a matter which is separate from and irrelevant to the question whether the application under consideration forms an integral part of that larger developmen*t" (para 90).

73. As to what is expected from the fact specific enquiry identifying the project, the Court of Appeal endorsed the guidance given by Lang J in R (Wingfield) v Canterbury City Council [2020] JPL 154 at paras 63-64 as providing "*a non-exhaustive list of potentially relevant criteria, which serves as a useful aide-memoire*".

74. In Wingfield, Lang J rejected the contention that housing developments on adjacent sites were part of the same project. She emphasised that the judgment was one for the local planning authority and in para 64 gave the following guidance:

"Relevant factors may include:

• Common ownership: Where two sites are owned or promoted by the same person, this may indicate that they constitute a single project (Larkfleet at [60]).

• Simultaneous determinations: Where two applications are considered and determined by the same committee on the same day and subject to reports which cross refer to one another, this may indicate that they constitute a single project (Burridge at [41] and [79]).

• Functional interdependence: Where one part of a development could not function without another, this may indicate that they constitute a single project (Burridge at [32], [42] and [78]).

• Stand-alone projects: Where a development is justified on its own merits and would be pursued independently of another development, this may indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme (Bowen-West at [24]–[25])".

75. In Burridge and Breckland DC v Greenshoots Energy Ltd [2013] EWCA Civ 228, the Court of Appeal considered that a biomass renewable energy plant and a nearby combined heat and energy plant which were connected by an underground pipeline to carry fuel between the same sites, were part of the same project because of their functional interdependence (see paras 32, 41, 34 and 78).

76. In R (Larkfleet) v South Kesteven DC [2016] Env LR 4 (CA), the Court of Appeal rejected the proposition that a link road was part of the same project as a proposed urban extension. The link road was legitimately treated as a separate project in circumstances where there was an independent planning need for the link road whether or not the urban extension was developed.

(iii) The Grounds of Challenge

77. I address the grounds (and their various iterations) in a slightly different order to how they were advanced. My order reflects the way in which the decision was taken by the Defendant.

Ground 3 – integral or standalone

78. The first part of ground 3 as advanced by the Claimant is that the Defendant erred in law by regarding the proposed development project as a "standalone" project rather

than being "integral" to a wider development project. It is alleged that this was irrational.

79. It is clear that the Defendant did proceed on the basis that the bridge project could be assessed as a "standalone" project rather than as integral to wider development.

80. The screening opinion dated 7 January 2022 proceeds on that basis. It does not contain any specific reasoning which evaluates the relationship of the bridge with surrounding sites.

81. As set out above, this issue was highly contentious in the decision making process.

    a. Oral advice was given to the March Committee Meeting that the "*bridge was a standalone application and it can come forward with or without the allocated sites*".

    b. This was reiterated in the April OR at para 1.41.

    c. This question continued to be a main focus of controversy in the April Meeting. I have set out part of Ms Fleming's advice in para 64 above. She also set out a detailed analysis of the applicable caselaw as follows:

    "....there was another case which the objectors haven't mentioned, but was in fact mentioned in the Tewksbury case and that's the case of R on the application of Wingfield against Canterbury City Council and that looked at the question of whether something was one project or two. There were two developments and it was a question of whether it was one composite project or whether it was two and obviously dependent on that was whether the proper EIA was carried out. And the judge gave them helpful sort of pointers in which to consider when you're looking at that question

    Firstly, whether or not there was common ownership between the sites, the two developments. So where two sites were owned or promoted by the same person, that could indicate they constituted a single project. In this case, the bridge that the land is, the vast majority of it is owned by the City Council. As I understand it, the Oxpens site is owned, the developable part is owned by OXWED, the company, and the area that won't be developed is owned by the City Council, so the two sites are different in that respect.

    The second point was, are they simultaneous determinations? So where two applications were considered and determined by the same committee on the same day and subject to reports which cross refer to one another, that could indicate they

constituted a single project. Obviously, that is not the case today, you are only considering the bridge.

The third point was the functional interdependence, where one part of a development could not function without another, that could indicate that they constituted a single project. As I've said previously, my understanding is that the bridge can go ahead without the future developments. The future developments could go ahead without the bridge.

And the last point was standalone projects where a development was justified on its own merits and would be pursued independently of another development, that could indicate that it constituted a single individual project that was not an integral part of a more substantial scheme. And we've heard that there is funding for the bridge and my understanding is that the bridge would go ahead whether or not future developments took place.

So on that basis, on the basis of the criteria that the judge set out in the Wingfield case, my view was that the bridge is not integral to the future developments and therefore EIA for it was not required.

The difference between the Tewkesbury case is that in that case it was a bridge as well and the judge remarked that the bridge, without the future developments or the developments that were adjacent to it, would go to nowhere, so there would be no point having the bridge. And I think that is a difference".

82. Drawing the threads of the legal framework and decision making process together, I observe as follows.

a. The screening opinion dated 7 January 2022 proceeded on the basis that the relevant project was the bridge. It did not grapple explicitly with the question of whether the bridge was integral to wider development so as to be a treated as a single project.

b. As the Tewksbury case confirms that question needed to be addressed.

c. It was a matter to which a fact specific planning judgment needed to be made by the planning authority.

d. The point had become controversial by the March Committee Meeting. It was discussed at that meeting.

e. It was also addressed in the April OR. It was then addressed in detail at the April Meeting by Ms Fleming.

f. As such, the Defendant kept under review (as it had to) whether the development was EIA development.

g. By the time it made its decision, the Defendant had grappled with the question of whether the bridge development and wider development should be treated as a single project. Through the oral advice at the April Meeting, the Defendant explained clearly why it considered that it should not.

83. The issue is whether the Defendant's assessment was irrational.

84. The Claimant accepts that this is the relevant question. Mr Cruickshank argues that Ms Fleming's advice was irrational because it "*flew in the face of documentation and opinion which pointed in the opposite direction*".

85. To support this contention, he makes a number of points (drawing on various sources as summarised below):-

1. At the March Planning Committee, Paul Comerford, the Defendant's agent had stated: *"The bridge is integral to the wider plan for the West End of Oxford including proposals for key development sites established in the West End SPD*".

2. The Statement of Reasons issued by Oxfordshire County Council as highway authority under s.106(3) of the Highway Act 1980 on 25 April 2024 states: "*the proposed bridge is ... deemed a key requirement for the future potential development of Osney Mead*". The phrase "key requirement" relies on future development being predicated on its delivery, which cannot be "stand-alone".

3. In the presentation of Councillor Anna Railton at the March Committee Meeting, Councillor Railton stated that the bridge should be supported as it would get the infrastructure in "*before it's needed*" and would "*unlock housing at Osney Mead*".

4. In the Minutes of the Cabinet meeting held on 16 November 2022, it is explained that "*The Growth Deal allocation was made because the bridge is a key policy requirement to unlock the growth potential of the Osney Mead site*." The funding

for the bridge comes from a fund (the infrastructure section of the Oxfordshire Housing and Growth Deal) whose express purpose is to unlock key housing sites. Cabinet member Alex Hollingsworth said: "*The project is being funded from Growth Deal funding, which was provided to the County Council for the sole purpose of providing a new crossing for the predicted increase in pedestrian and cycle traffic due to new developments*".

5. The Local Plan explicitly states that a new bridge is required by the Osney Mead development and should be part of the Osney Mead masterplan. It notes that "*a new link across the river should be provided to integrate the site [Osney Mead] with the city centre*" (para 9.20). As infrastructure whose purpose is to "integrate the site" with the city centre across the river, it is clearly an "integral" part of the wider development required by the Masterplan. This is especially so given that the aim of the Osney Mead development, according to the Local Plan, is that "*the site should begin to function as an extension of the city centre*" an aim which can only be realised "*if the connection is in place*" (para 9.20).

6. Council officers at the March Committee Meeting told members that, if they wanted to use the existence of the Gasworks Bridge as a reason to reject the Oxpens River Bridge as unnecessary, "*you would have to support that on appeal as to why you think that [existing] bridge can be used to deliver all of the growth, and to deliver, to be usable at all times*.". This is a clear recognition that the bridge is not a stand-alone project, and was not seen as such during the viability study of the Gasworks Bridge, but was rather seen as a means to deliver growth by unlocking the Osney Mead development.

7. The Bridge is listed as a "key infrastructure priority" in the West End and Osney Mead SPD.

8. The existence of the Gasworks Bridge, 100m away from the Development, goes against the position adopted by Ms Fleming. The Development can hardly be standalone if, in the absence of other developments around it, there exists an already functioning bridge, serving the same purpose, and which is very close by.

86. I agree with the Defendant's submission that the fact that adjectives such as "integral" "key" and "unlocking" were used to describe the bridge (in a variety of contexts and with varying degrees of precision) does not mean that the wider development is contingent on it.

87. In substance, Mr Cruickshank's argument deploys a range of material which simply evidences that there was legitimate scope for disagreement with Ms Fleming's evaluation.

88. But Ms Fleming's analysis drew carefully on the caselaw in differentiating the fact of support for a project to serve wider purposes and the concept that the project was so closely connected with that wider development that it must be treated as a single project.

89. Mr Fleming's evaluation carefully and cogently applied each of the non-exhaustive factor identified by Lang J in Wingfield to the specific circumstances of the proposed bridge.

90. It addressed and differentiated the position here from that which applied in the Tewkesbury case (where the bridge served no purpose other than to unlock the development).

91. In my judgment, Ms Fleming's assessment fits comfortably with the range of decided cases which show that functionally interdependent facilities (see Burridge) and infrastructure whose sole purpose is to unlock development (Tewkesbury) should be assessed together with the related development but a link road serving other purposes (Larkfleet) and two adjacent housing developments (Wingfield) can lawfully be assessed as single projects.

92. The Defendant carefully assessed the question of whether the bridge should be treated as a single project with other development and decided that it should not. Whilst the Claimant disagrees with that assessment, it cannot fairly be characterised as irrational.

93. I consider that it fell comfortably within the range of reasonable exercises of a discretionary planning judgment that was open to the local planning authority.

94. This is not a case like Tewksbury where the issue was left unaddressed. It was addressed specifically and cogently before planning permission was granted.

95. I reject the contention that there was an error of law in the Defendant's assessment of the bridge as the project for the purpose of Regulation 3 of the 2017 Regulations.

Refinement of the integral argument– the Pathworks Project Point

96. The Claimant's argument in respect of the bridge being integral to wider development was also advanced by reference to the "pathworks project". The argument was that the bridge and associated pathworks were a first phase of a wider pathworks project. This subsidiary argument was the subject of further written submissions after the hearing (with permission) whereby it was bolstered by reference to Homes England Funding documents which GNP had just obtained following a freedom of information request.

97. The gist of the argument was that it was artificial to "salami slice" the pathworks project into its component parts when its true purpose was to connect the bridge to Osney Mead (which would require further pathworks which were part of the funding package from Homes England but not part of the planning application).

98. This point featured (albeit to a limited extent) at the April Meeting as follows.
Mr Glazebrook (of FGNP) stated when objecting to the proposal:
(At para 35) "….*the Osney River Bridge is an integral part of the connection between Osney Mead and the city centre required by the Local Plan 2036. The connection must connect all the way obviously to Osney Mead, it cannot simply be split into two parts. That's known as salami slicing and is [unlawful]*…"

In the course of the meeting, Mr Murdoch (planning officer) advised as follows (para 100):

Referring to the SPD, he stated:

"That sets out quite clearly in there the existing connections that sit within the West End. It sets out that this bridge isn't just solely to deliver the Osney Meadow redevelopment there, it's actually to deliver active travel improvements for existing communities that already live there and also to improve the regeneration of the West End area, both in terms of green and blue infrastructure, access to public spaces like Grandpont Nature Reserve, to remove the Thames as a barrier to connection for that

part of the city to the rest of this city.

So it's a wider construct that the infrastructures as to standalone projects set out within there to help deliver those overall aims. It's not solely to do with Osney Mead Industrial Estate. If you go into the SPD, the Osney Mead Industrial Estate has a movement strategy which identifies it's got a number of connections already, this is just one additional connection that we consider would be beneficial to improving active travel, sort of pedestrian, cycle routes. But the Osney development could still come forward because there are still two other connection points to Osney Mead through Ferry Hinksey Road, through Osney town. And that's set out quite clearly within those documents, it's a whole suite of connections, and the options around all of these different connections is all set out within a spatial framework…..".

99. The Claimant's argument is that the advice given to members that the bridge was not integral to other development was seriously misleading and irrational "*because the evidence pointed in the other direction*" due to the *"interconnected nature of the pathworks development*". The Claimant submitted that it was irrational to view the current application (comprising the bridge and 'phase one' of the connecting path works) as a separate project which 'stands alone' from the phase two pathworks (including envisaged flood alleviation works) which are required to be undertaken to complete the new connection.

100. Various extracts from the recently disclosed Homes England Funding material were relied upon which stressed the connection between the infrastructure improvements for which funding was being sought and the housing development at Osney Mead.

101. The Claimant argued that there was a clear parallel with how the Court of Appeal had referred to the funding document in paras 20-21 and 91 of Tewkesbury.

102. I acknowledge that the Court of Appeal did refer to funding documentation in Tewkesbury as part of their analysis that the bridge in that case was wrongly assessed as a standalone project. However, the factual context of that case was different. As made clear in para 98, the bridge in that case "served no other purpose" than to unlock the development site. It had been known locally as the "bridge to nowhere" (para 16).

103. In the advice given to members both Ms Fleming and Mr Murdoch explained why the factual circumstances of the present case were in their assessment materially different. The bridge as an infrastructure project was part of a wider strategy for improving

connectivity in the existing situation and supporting the envisaged redevelopment. In that context, a reasoned and rational analysis was put forward for treating the bridge as the project to be assessed for the purpose of the 2017 Regulations.

104. Moreover, as Mr Lewis KC observed in his written response, whilst the funding documentation highlights that connectivity projects and flood alleviation work were being combined for funding purposes, it was also clear that the funding could be drawn down and the work undertaken separately. This reinforces rather than undermines the analysis that the bridge could lawfully be assessed on its own terms (unlike the position in Tewksbury).

105. The Claimant has failed to establish that the analysis that the bridge was not integral to other development was irrational. It is the nature of such fact specific judgments that reasonable people may differ on them. It is unsurprising that phrases and nuances can be drawn out of funding documents which emphasise the role of the bridge in facilitating development. However, a careful analysis of the circumstances of the case shows that this is a factually different situation from the bridge in Tewksbury. It is clear in my assessment that the Defendant's officers' grappled with the issue in the advice given to members at the April Meeting and did so lawfully.

106. I also consider that there is force in the submissions made by Mr Lewis KC as to the unsatisfactory nature of the evolving nature of this ground of challenge. It is generally inappropriate for parties to challenge decision by reference to documents which were not available to the decision maker. The Claimant's written submissions seeking to undermine the rationality of advice given to Members at the April Meeting by reference to the Homes England funding documents is an example of the kind of "rolling review" depreciated by the Court of Appeal in Kenyon v SSHCLG [2021] Env LR at para 28.

107. I therefore reject this part of ground 3.

Ground 3 – part 2 (alleged reliance on future EIA)

108. The second part of ground 3 is a contention that the Defendant adopted a flawed approach to the question of whether an EIA was required, in that (as the Claimant alleges), it relied on a further EIA for a different planning application being done later.

109. The legal foundation for this complaint is the Court of Appeal's judgment in Tewkesbury at para 104 which it observes (as part of its critique of the specific decision making process at issue in that case) that, to the extent that the planning authority's decision in that case had relied upon : *"the fact that EIA assessment will be carried out in future as and when Phase 1, or other aspects of it, became the subject of planning applications*", it fell into error.

110. In the present case, the Claimant's argument extracts a sound legal principle but applies it in a way that does not reflect a fair evaluation of the Defendant's decision making process in this case.

111. The screening opinion dated 6 January 2022 states:

> *"In addition the proposed Oxpens development is considered EIA development and the application will be accompanied by an environmental statement. It is stated in the supporting letter that the Oxpens environmental statement will consider the likely significant cumulative effects of the Oxpens development with other existing and/or approved development, as well as the proposed Oxpens Bridge and Osney Pathworks*."

112. The use of the words "in addition" indicates that this point was not essential to primary conclusion reached that the development was not EIA development. I accept the Defendant's submission that the reference to the future EIA being prepared was a factual observation. Read fairly, it did not amount to reliance upon an as yet unassessed exercise as the basis for decision that the bridge was not EIA development.

113. Moreover, as is clear from the decision making process described above, the Defendant's decision making process did not stop there. The advice at the March

Committee Meeting, in the April OR at paras 1.39-1.41 and by Ms Fleming at the April Meeting set out the basis on which the bridge was being treated as a single project which was not EIA development. No part of that exercise relied upon an EIA process yet to be undertaken in respect of other developments as a relevant part of the decision.

114. I therefore reject the Claimant's argument that the Defendant unlawfully relied upon a future EIA.

Ground 2 (alleged misdirection)

115. Ground 2 of the Claimant's case is that the Defendant's officers gave wrong and unlawful advice that members could not revisit the EIA screening opinion.

116. The ground of challenge relies upon interventions from Mr Murdoch the planning officer at a point in the debate after Ms Fleming had given her advice on the identification of the project.

117. The chair of the meeting had stated: "*I feel that the integral point has been answered at length, legally by the lawyer, Sally Fleming, and unless you want it repeated it's clear*" (para 95).

118. Councillor Latif asked for it to be repeated and stated that "*I don't know that we have had the opportunity to challenge that interpretatio*n".

119. Thereafter, Andrew Murdoch, the planning officer stated as follows:

"*So ultimately you're not here to decide whether this is integral. The argument that's been raised about the integrality… is not here for you to consider today. What you're considering is the planning application that's in front of you which is for a bridge.*

Now, the point that's been raised about whether this is integral relates to whether an EIA should be – should have been prepared, and that obviously is something that we've already stated why we think that …. wasn't essentially needed. It was screened for an EIA, but we didn't think it… an EIA was needed. That's a matter I guess if the applicant seek to challenge the decision, that's not necessarily a matter for the Committee to decide today.

You couldn't refuse the application on the basis that an Environmental Impact Assessment hasn't been done, because effectively you're then trying to screen the

development and there's a number of threshold process to go through that, so that isn't necessarily for you to consider today".

120. Later in the debate, Mr Murdoch stated:

"Council has already a screening opinion. So the assessment as to whether an EIA is needed follows a set process through the EIA regulations and comes prior to the submission of the application. The applicant submitted a screening request to the Council and the screening request is where you review the application against set criteria and decide whether it's development that would need an EIA. And then if it is development that would need an EIA, you then have to assess whether you think it's going to have significant environmental impacts and you go through that process.
That's separate to the application process you've got here.
The Council have had an EIA screening opinion. They've screened it prior to submission and their view is that an EIA was not necessary. It's not necessarily open to the Committee as a material consideration whether people agree with that screening request or not. It's not therefore, in my view, a material consideration by which you could refuse the planning application on that basis, because you would need to set out and justify why you think that screening opinion was incorrect, and that's not before you today".

121. The Claimant submits that Mr Murdoch's advice was unlawful because, it was a direction that members could not or must not revisit the screening decision.

122. It is necessary to consider Mr Murdoch's intervention in context of the whole meeting and the legal and practical guidance in the caselaw as summarised by Sir Duncan Ouseley in Swire.

123. It is correct that the Defendant, as local planning authority, retained the duty to be satisfied that the development was not EIA development before it proceeded to grant planning permission for it without an EIA (see Swire discussed above at para 68).

124. However, the context for Mr Murdoch's intervention was:-

a. A negative screening opinion had already been issued.

b. That screening opinion had been criticised on the specific ground that the development should be assessed together with other development as the project because it was "integral" to other development.

c. Members had been given clear and specific advice by Ms Fleming as to why she considered the other development was not integral to it and therefore there was no basis for revising the EIA screening decision which had already been taken.

d. As a matter of law, the planning authority had ongoing responsibility for ensuring that planning permission was not granted for EIA development without an EIA.

e. The professional advice was that there was no basis to revisit the screening opinion.

f. In Evans and Mageean in the context of the division of responsibility between an Inspector and the Secretary of State the Court of Appeal's guidance focussed on whether there was a realistic basis for reconsideration of a screening opinion.

g. Here, there is a different decision making context. The legal responsibility rests on the planning authority. Members exercise powers as the planning authority. However, it remains necessary to be realistic and practical about the division of responsibilities. Screening opinions are not ordinarily given by members of the planning committee. They are generally issued by professional planning officers applying a specific framework for evaluation.

125. In the context of the detailed consideration which had already been given to screening issues by officers, I regard Mr Murdoch's intervention as giving practical guidance as to what was realistic rather than offering an authoritative statement of the legal principle.

126. The gist of his intervention (understood in context) was:-:

a. officers have screened the proposed development

b. officers have advised on the identification of the project and explained their assessment that there is no basis to revisit the screening decision

c. it is not necessary to revisit the screening opinion

d. moreover, it would not be practical to screen the development on a different basis during the meeting.

127. In his interventions, Mr Murdoch twice used the word "necessarily". This is consistent with him conveying the above sentiment rather than telling members that they were legally precluded from forming their own view (as the ground of challenge contends).

128. Viewed in the context of the rest of the meeting, Mr Murdoch advised members that he did not consider there was any realistic evidential basis for them to treat the bridge as EIA development.

129. In so doing, I do not consider that Mr Murdoch's comments to the meeting were seriously misleading or vitiated the decision. The gist of his advice was that there was no realistic basis to reopen the screening question.

130. In the context of the thorough evaluation of the "integral" issue which Ms Fleming had already given members, there was no error of law in the advice given to members at the meeting by Mr Murdoch.

131. Drawing all of these threads together, I reject grounds 2 and 3.

Part E: Procedural Issues (ground 4)

132. Ground four raises several iterations of alleged procedural impropriety. I discuss each part of the argument in turn.

(i) lobbying

133. The first part of this ground relates to correspondence which arose before the April Meeting.

134. The central allegation is that officers unlawfully advised members that they should not allow themselves to be lobbied on the planning application.

135. In R (Holborn Studios) v Hackney LBC [2020] EWHC 1509 (Admin), Dove J held that advice given to members of the planning committee, that they should not have been receiving representations from members of the public in respect of planning applications, was unlawful and inconsistent with the Defendant's code of conduct. However, in the circumstances of that case, Dove J held that there was no substantial prejudice as the objectors made oral representations at the meeting (see para 81). He would not have quashed the decision on this ground. The decision was quashed on an unrelated ground (non-disclosure of viability information).

136. In the course of his judgment Dove J stressed (at para 78) that article 10 (freedom of expression) issues were engaged in communication between the public and elected representatives who sit on planning committees. He noted that restrictions on such communication would be difficult to justify.

137. Dove J observed in R (Legard) v Royal Borough of Kensington and Chelsea [2018] EWHC 32 (Admin) at para 143 that it is to be expected that democratically elected representatives are expected to receive and consider representations and lobbying from those interested in these issues.

138. In the present case, the reference to lobbying arose in the context of FGNP inviting members to attend a site visit (which FGNP would host).

139. On 8 April 2024, FGNP emailed the members of the PRC stating:

> *"We would like to invite you to visit the site of the proposed bridge at the Grandpont Nature Reserve with us next Monday (15th April) at 3.30pm. We would very much like to show you the nature reserve, in particular the part which would be most affected by the bridge, and to* ***outline our concerns with the proposal****. Of course, we understand you need to keep an open mind at the meeting, but we feel it is important for you to see the nature reserve to get a full understanding of what is being proposed"*. (emphasis added)

140. On 11 April 2024, a councillor responded:

> *"Thank you for your email and for the invitation to attend a site visit to Grandpont Nature Reserve. As you mention in your email, as members of a planning committee we legally have to ensure we have kept an open mind ahead*

of the meeting and we cannot do/say anything that may suggest we have predetermined the decision we come to on the application. This includes not allowing opportunities for interested parties to "lobby" us. Due to this, the council's planning lawyer has told members of the planning review committee that we should not attend this site visit, unless a planning officer was also attending".

141. The advice which the councillor referred to was sent to the members of the Planning Review Committee in an email dated 9 April 2024 by Sally Fleming, Planning Lawyer.

"If you are a member of the Planning Review Committee, or if you will be substituting for a member of the committee at that meeting, you are strongly advised not to accept this invitation unless a Planning Officer is also present.

Although the invitation is referred to as a site visit, it would also be an opportunity for members of the public who are present at that site visit and who are objectors to the scheme, to lobby you on the application. You will recall, from the training you have received on good practice for Planning Committee members, that you should not allow yourselves to be lobbied before a meeting as this could be seen as influencing your judgment of the application which could then lead to any decision of the committee being challenged.

As this is a very controversial application which has now been referred to the Planning Review Committee, I consider that it would be unwise for members to attend a meeting with either the Applicant or objectors even with Planning Officers in attendance as this could be seen as unfairly influencing your decision.

I should point out that if you do accept this invitation and an officer is not present, then you may be asked to recuse yourself from the committee meeting".

142. On 13 April 2024, the FGNP emailed councillors as follows:

"We understand you have been advised by Democratic Services of the City Council against visiting the site with us on Monday as this constitutes being 'lobbied'. You are allowed to be 'lobbied'. It is not illegal for opponents to share their concerns with Cllrs about a planning proposal, so long as you retain an open mind. Arguably, seeing the site, because this proposal is so site-specific ... will enable you to have a better perspective of the proposals - which could work either way.

We will try and get a planning officer to join us at our proposed visit on Monday at 3.30 (in retrospect, that might have been more sensible).

But if you don't feel able to join us, we urge you to visit the site yourselves, as it will facilitate an open minded, but more informed decision".

143. In the event, the site visit did not take place. It is unclear in the material before me what efforts were made to arrange for a planning officer to attend and what response any such efforts were met with.

144. The Defendant's Constitution includes a Planning Code of Practice which contains the following provisions.

Lobbying of councillors (para 24.8 b))

"*When they are lobbied, councillors should be careful not to say anything that could give the impression they have already made up their mind. They should stick to advising on procedures and suggesting that the person writes to the Head of Planning Services with their views in order that the comments may be reflected in the officer's report. If councillors do express an opinion to objectors or supporters, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material planning consideration at committee*".

Site visits (para 25.15):

"*A site visit by a planning committee is only likely to be necessary if:*

- *the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers or*
- *issues relevant to the determination of the application can only be properly understood by seeing the site.*

In considering a planning application the planning officers will decide whether a site visit by members is necessary, based on the above criteria, and if so will arrange the site visit. An individual member of the relevant planning committee can make a request for a site visit but it is the officers who will make the decision.

If members of the relevant planning committee ask for a site visit at a committee meeting then the committee will decide.

When a site visit is requested by a member of the relevant planning committee justification for visiting the site should be judged on the criteria above.

The reasons why the site visit is requested will be recorded and kept on the file. Site visits will only be attended by members of the relevant committee and supporting officers. Other people such as applicants, owners or members of the public will not be invited to attend site visits. Applicants or owners will only be present if they are required to give access to a site. Applicants or owners present

> *must not be directly engaged by councillors and all councillor questions must be addressed to the accompanying officer.*
> *Councillors should not seek or accept representations, either as a committee or as individual members, during the visit. Councillors should not comment on the application and will not take any decisions during a site visit but may ask questions of the officer or seek clarification, particularly about the layout of the site or the development and its surroundings, but not in relation to the merits of the application*" (emphasis added).

145. I note that these provisions of the Code of Practice reflect the need to find an appropriate resolution of two public interest considerations which may pull in different directions.
    a. On the one hand, as Dove J has rightly stressed in Holborn Studios, it is important that interested members of the public having access to their elected representatives.
    b. On the other hand, there is a need to ensure that the relevant discussions of the factors which influence the determination of planning applications take place in a public forum.

146. The Code of Practice's provisions in respect of site visits reflect an appropriate level of caution as to the danger that influential discussions could take place outside of the public meeting and in circumstances where not all affected stakeholders are present.

147. Similar tensions were discussed in the context of the lobbying by ministers involved in call-in decisions in Court of Appeal's decision in Broadview Energy Development Limited v Secretary of State for Communities and Local Government [2016] EWCA Civ 562. The present context is different but there are similar tensions to navigate between allowing access to democratic representatives and ensuring that the decision making process takes place in a transparent and fair way.

148. The Claimant submits that Ms Fleming's advice was erroneous in contending that councillors should not allow themselves to be lobbied on the planning application.

149. I agree that, if that were to have been the totality of Ms Fleming's advice, it would have gone too far. It would have been inconsistent with Dove J's emphasis on access

to democratic representatives in Holborn Studios and contrary to the terms of paragraph 24.8 of the Defendant's Code of Practice which accepts that lobbying will takes place (and guides councillors as how to navigate that in a way which preserves the integrity of the decision making process).

150. However, it is necessary to appreciate the context in which Ms Fleming was advising.

151. She plainly had in mind (as the Defendant submitted) the guidance in para 24.15 of the Code of Practice about the limited circumstances in which site visits should take place. This includes the need to avoid discussing the merits of the proposal and the advice against applicants addressing councillors directly. The purpose of this guidance is to safeguard the integrity of the decision making process by ensuring that deliberation takes places in a controlled and public meeting environment not at an informal site visit. Thus, in the context of site visits, a restrictive protocol is adopted to serve the legitimate interest of maintaining the integrity of the decision making process.

152. It is in this context that Ms Fleming gave her advice. Her view that a planning officer should be present was consistent with the Code of Practice. Her concern about the privately organised site visit was also consistent with the provisions of paragraph 24.15 as the proposal was not consistent with what that paragraph contemplated where, exceptionally, a site visit was determined to be necessary.

153. The Claimant's argument referred to the case of R (Kelly) v Hounslow LBC [2010] EWHC 1256 (Admin) in which Dove J quashed a decision in circumstances where a letter informing objectors of the right to speak at a planning meeting was not received in time. In that case, the objectors had lost a right which was promoted in the statement of community involvement. Dove J held in para 26 that the opportunity of making oral representations afforded a better opportunity to persuade members to depart from an officer's recommendation than reliance on written representations.

154. That logic cannot be transferred across to the present case. There is no right or expectation of an audience with councillors at a privately organised site visit. Rather,

there are clear indications in the Code of Practice which caution against such a course of action.

155. Here, there was no lost right to persuade. The objectors were provided with the right to make oral representations to committee and did so.

156. Moreover, this is not a case where any substantive prejudice can be said to have arisen. Representations were made at the meeting. Members were shown visualisations. They can be reasonably be assumed to have knowledge of the site. It would have been open to them to request a site visit (pursuant to paragraph 24.15 of the Code of Practice) but there is no indication that any of them thought that this was necessary to determine the planning application.

157. The Claimant's skeleton argument contained the contention that Ms Fleming's advice amounted to an interference with article 10 rights which was not justified.

158. This point was not pressed in oral submissions. In my assessment, the point falls away on the same basis that I have discussed above. If Ms Fleming had purported to prevent contact with councillors in any form then this would have raised issues under article 10 (as Dove J identifies in Holborn Studios). However, to advise Councillors against attending a privately organised site visit in the way that she did was not contrary to article 10. It served a legitimate purpose of ensuring the integrity of the decision making process and in any event cannot fairly be characterised as an unlawful interference with freedom of expression. FGNP made submissions at the meeting plainly exercising their rights of freedom of expression.

159. I therefore do not consider that Ms Fleming's advice vitiated the decision making process. The guidance against a privately organised site visit was justified. Even if some aspects of how Ms Fleming expressed her view went too far (and as above, I am not persuaded that it did), there was no substantial prejudice as FGNP addressed the meeting and put forward the basis of their objections to the proposal.

(ii) Separation of Powers

160. The second part of ground 4 alleges that there was an inadequate separation of powers in the decision made by the Council.

161. This point centres on the participation of Councillor Rowley in the Defendant's decision.

162. At the outset of the April Meeting Councillor Rowley made the following declaration.

> *"I've been reminded that I was on the Cabinet when this item was discussed there two years ago, although to be honest, I don't have any memory of it and I have no particular preconceived view on the application".*

163. Councillor Rowley duly participated in the April Meeting. The transcript records him intervening to ask a number of questions primarily focused on the extent to which the bridge was suitably designed. He asked (at para 153) whether conditions could be imposed to ensure measures are taken to ensure the safe use of the bridge for pedestrians and cyclists for example a surface treatment which was conducive to low speeds. This led to a suggestion from Mr Fowler, a senior planning officer, that this point would be best addressed by an informative. This was duly added to the resolution which passed as an addition to that which had been recommended by officers.

164. Councillor Rowley was not a serving member of the cabinet at the date of the April Meeting.

165. The decision in which he had participated took place at the cabinet meeting on 16 March 2022. Amongst other items on the agenda, the cabinet resolved in respect of the Oxpens River Bridge Design to:

> ***"Approve**, subject to agreement with Oxfordshire County Council and Future Oxfordshire Partnership (formerly Oxfordshire Growth Board), an amended funding agreement to allow additional design fees to be drawn down from the funding allocation and delegate to the Executive Director (Development) in consultation with the Cabinet Member for Planning and Housing Delivery, the Head of Law and*

Governance, and the Head of Financial Services, the detailed wording of an amended agreement to address the funding and programme issues;

*2. **Approve** the spend of an additional £150,000 from the bridge Growth Deal funds to complete design work to RIBA stage 4, subject to agreeing the amended funding agreement with Oxfordshire County Council; and*

*3. **Delegate** to the Executive Director (Development) in consultation with the Cabinet Member for Planning and Housing Delivery, the decision on the preferred option for the bridge for consultation, and then the submission of a planning application if deemed appropriate".*

166. Regulation 64 (2) of the 2017 Regulations provides as follows:

" Where an authority, or the Secretary of State, is bringing forward a proposal for development and that authority or the Secretary of State, as appropriate, will also be responsible for determining its own proposal, the relevant authority or the Secretary of State must make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the persons bringing forward a proposal for development and the persons responsible for determining that proposal".

167. The practical requirements for functional separation was considered by Holgate J (as he then was) in London Historic Parks and Gardens Trust v SSHCLG [2020] EWHC 2580 (Admin) in the context of the Secretary of State's determination of a called in planning application of the proposed Holocaust Memorial in Victoria Gardens for which he was the applicant for planning permission. Holgate J rejected the ground of challenge that reg. 64(2) failed to transpose EU Directive 2011/92. Holgate J examined the extent to which the handling arrangements met the requirements of Reg 64(2) – see paras 123-139. He identified the need for the arrangements to be published (para 126) and to ensure that they recorded the prohibition of the application of direct or indirect pressure (para 131). He held that the setting up of separate teams to deal with competing functions was sufficient. He observed at para 139:

"There is no need to prohibit any hierarchical superior to the Minister of State (or to those officials assisting him in dealing with the planning application) from being involved in or supporting the project. But plainly any such person must be prohibited from playing any part in the handling of the planning application or from putting pressure on, or giving instructions to, the decision-making team in relation to their functions under the 2017 Regulations".

168. In the present case, the statutory framework for local authorities includes express provisions which apply when a local authority determines a planning application made by itself (whether or not it is development to which the 2017 Regulations apply).

    a. Reg 3 of the Town and Country Planning General Regulations 1992 ("the 1992 Regulations") provides that the application shall be determined by authority itself unless it is called in by the Secretary of State for determination by him.

    b. Regulation 10 of the 1992 Regulations provides that:

    "Notwithstanding anything in section 101 of the Local Government Act 1972 (arrangements for the discharge of functions by local authorities) no application for planning permission for development to which regulation 3 applies may be determined—

    (a) by a committee or sub-committee of the interested planning authority concerned if that committee or sub-committee is responsible (wholly or partly) for the management of any land or buildings to which the application relates; or

    (b) by an officer of the interested planning authority concerned if his responsibilities include any aspect of the management of any land or buildings to which the application relates".

169. It is common ground that there is no breach of Regulation 10 of the 1992 Regulations.

170. Mr Lewis KC submits that, in the local authority context, Regulation 64(2) of the 2017 Regulations does not impose any additional requirement over and above the separation of functions which is already provided for in Regulation 10 of the 1992 Regulations.

171. Mr Cruickshank submits that Regulation 64(2) sets a higher standard and the separation of function requires that there shall be no overlap of any individual who has been involved in decision making relating to the promotion of development and those involved in the determination of the development.

172. I was not shown any authority on this point in the local authority context. I consider that the framework within Regulation 10 of the 1992 Regulations serves similar aims to the requirement of functional separation in Regulation 64(2).

173. I do not consider that Holgate J's observations about senior figures staying out of the planning process in paragraph 139 of London Historic Parks and Gardens Trust v SSHCLG can be read across to disqualify a past member of the cabinet of a local authority from participating in a planning decision. Holgate J's reasoning might apply to someone with particular responsibility for promoting the project participating in the planning decision. However, I do not consider that they disqualify a past member of the cabinet who has simply dealt with part of the decision making in respect of funding and played no role in the formulation of the planning proposal.

174. I do not consider that Councillor Rowley is a person "bringing forward a proposal for development" within the meaning of Regulation 64(2) of the 2017 Regulations. I therefore do not consider that there was any breach of that provision in him participating in the Planning Review Committee meeting.

175. It is not necessary for me to decide whether Regulation 64(2) adds further requirements to Regulation 10 of the 1992 Regulations. I am satisfied in that in the particular circumstances of this case, it does not disqualify Councillor Rowley from participating in the determination of the planning application by dint of him having dealt with a funding issue relating to the project over two years previously and having no responsibility for or other involvement in the project.

176. Mr Cruickshank's primary submission was that Regulation 64(2) imposes a more stringent test than the common law of apparent bias. In the alternative, he submits that the fair minded and informed observed having considered the facts would conclude that there was a real possibility of bias (applying the Porter v Magill test – see [2002] 2 AC 357 at para 103).

177. In support of this contention, he refers to and relies on the decision of Chamberlain J in R (CPRE) v South Somerset DC [2022] EWHC 2817 where the local planning authority's decision to grant planning permission was quashed due to the chair and

vice chair of the Planning Committee's involvement with and support for the application proposals for a carnival float storage premises. Their vitiating interests were, respectively membership of the local carnival committee and membership of the Town Council who made the planning application.

178. So far as the Chair of the committee was concerned, Chamberlain J found at [53]:

> *"... [the Chair] had a longstanding association with both the CC Committee and the Eclipse carnival club. The application was presented as needed to secure the continued viability in the medium term of both the Federation (of which the CC Committee was a constituent part) and the remaining carnival clubs (of which Eclipse was one). Both the Federation's constituent committees (including the CC Committee) and the clubs (including Eclipse) were said to be supportive of the application. Eclipse appears to have had a financial interest in the outcome, because, as the application made clear, the rent it and the other clubs would pay under the agreement with Dillington was lower than for its existing premises. [the Chair] was personally pictured in the application documents among a group of individuals appearing to support the SSCP Committee (which was agent for the application). ...an observer would clearly conclude that there was a real possibility of bias".*

179. As to the Vice-Chair of the committee, Chamberlain J found that he had a prejudicial interest under the terms of the local planning authority's Member Code of Conduct and so was disqualified from voting, see at [49], i.e. both because "*a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the councillor's judgement of the public interest*" and because "*the [Council] business... relates to determining any... permission in relation to a significant person* [i.e. "*any person with whom you have a close association*", see [19]]" at [47]]".

180. Chamberlain J went on to hold at [51], applying the Porter v. Magill test, that the appearance of bias challenge was made out on the facts:

> *"In this case, the relevant facts are these. Cllr Hamilton [the Vice Chair] was one of 15 members of the Town Council and was Deputy Mayor. He was present at meetings where support for the application was expressed. Although he did not participate, the Town Council voted to become the applicant and to indicate its support by letter. On a proper construction of the Code, he had a prejudicial interest, which disqualified him from participating in the decision-making process. When taking all these facts into account, a fair-minded member of the*

> *public would conclude that there was a real possibility that he would be biased in favour of the Town Council's application*".

181. The factual circumstances in CPRE was different from the situation here. Councillor Rowley is not a serving member of the cabinet. He has played no role in the formulation or promotion of the planning application. He is a past member of the cabinet (something not surprising or necessarily unusual for a member of a planning committee). In the course of that role, over two years ago, he approved a funding decision in respect of what was then an ongoing project. He had no memory of it until his memory was jogged. His link with the Oxpens Bridge project is remote in time and function. No breach of the code of conduct is alleged. A reasonable and fair minded observer would not regard him as someone involved in the promotion of the bridge.

182. Mr Lewis KC referred to the decision of R (Webb) v Bromley LBC [2023] EWHC 2091 (Admin) (subsequent to CPRE) in which a member of the planning committee was a governor of the NHS Trust which applied for planning permission for an endoscopy unit. The member declared his interest and was not in breach of the code of conduct. Lane J decided that the decision was not vitiated by apparent bias. Lane J emphasised that as a governor the councillor stood two steps removed from the executive of the NHS Trust who were the primary decision makers.

183. Each case is fact specific. For the reasons explained above, I consider that Councillor Rowley cannot fairly be characterised as having been involved in the promotion of the bridge. His role was limited to approving a funding decision two year ago when he was on the cabinet. He is not a serving cabinet member and had no recollection of the decision he took. A fair minded observer would be satisfied that he could determine the planning application with an open mind.

184. For the reasons explained, I do not consider that the Claimant's contention that there was any unlawful inadequate separation of powers is well founded.

185. I therefore reject the fourth ground of challenge.

Part F:– ground 5

186. Ground 5 alleges that the Defendant erred in law by failing to take account of a material consideration, namely the 2016 Report (see para 3 e) above).

187. The 2016 Report was prepared by the consultants Skanska to their clients, Oxfordshire County Council discussing the feasibility of improving the Gasworks Bridge.

188. The executive summary states that "*the proposed improvements offer a lower cost option to a new foot/cycle bridge crossing the Thames south of the new Oxpens West End development site*".

189. The Claimant's case is that this document was "so obviously material" to the planning decision that the "failure to have provided it and discussed it amounts to an error of law".

190. The Claimant's skeleton argument recognises that there is a "high bar to get over". The Claimant relies on the fact that one of the Councillors (Councillor Latif) commented in the April Meeting that the proposed development was a significant cost and he was disappointed that other options had not been put forward.

191. In Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC [2020] UKSC 3 at paras 29-32, Lord Carnwath identified that material considerations which were required to be taken into account arise when "*expressly or impliedly identified in the Act or the policy as considerations required to be taken into account or alternatively ….on the facts, they were "so obviously material" as to require direct consideration*". Further guidance was provided by the Supreme Court in R (Friends of the Earth Limited) v Secretary of State for Transport [2020] UKSC 52 at 118-121.

192. In R (Peak District Council) v Secretary of State [2023] EWHC 2917 (Admin) at para 36, Thornton J explained:

> *"The widely applied analytical approach to the question of whether a particular consideration may be classed as a 'mandatory material consideration', such that a decision maker will act unlawfully in not taking it into account is explained in R (Friends of the Earth) v Secretary of State for Transport) [2021] PTSR 190 at §116-121. The question is whether the consideration in question was expressly or impliedly identified in legislation (or policy), as a consideration required to be taken into account by the decision maker "as a matter of legal*

> *obligation", or alternatively whether, on the facts of the case, it was "so obviously material" to the decision on the particular project as to require direct consideration. A consideration that is so 'obviously material' such that a failure to take it into account would be irrational would not accord with the intention of the legislation (or planning policy)".*

193. The test therefore for whether the 2016 Report was so obviously material aligns with the proposition that it was irrational to assess the planning merits of the proposal without referring to it.

194. In my assessment, the 2016 Report was part of the background material which was not so obviously material that it required explicit reference in the determination of the planning application.

195. I say this for the following reasons.

196. First, as a matter of chronology, the report relied upon is remote in time. Much has happened since it was prepared. As Mr Lewis KC explained the use of the Gasworks Bridge to improve connections in the West End had previously been considered by the Defendant. The 2016 Report was commissioned by Oxfordshire County Council (not the Defendant). The County Council did not pursue the options in the report. The report was part of a process of preparing the development proposals in Oxford's West End. The position is now incorporated in the Local Plan. The 2016 report was high level in nature. There is no indication that it reflects the County Council's views at the time of the determination of the application. The refurbishment of the Gasworks Bridge may well face planning challenges and would require a solution to be found to flooding issues in order to provide a valued connection to Oxpens. The costing of the works in 2016 does not necessarily reflect all of the works required to deliver a viable alternative, may well not reflect current design standards and the costs information in that report would need updating in order to provide any realistic barometer of costs today.

197. Second, the existence of the bridge (and some of the challenges in refurbishing it) were in fact addressed directly in the March OR (at para 10.6) and in more detail in paras 1.30-1.33 of the April OR.

198. Third, the primary focus of the planning committee's role is to determine the merits of the proposal before it. There are some circumstances where alternative schemes are relevant to the planning decision but there is no general rule that they are (see the cases referred to at para 44 of Lidl v East Lindsey DC [2024] EWHC 161 (Admin)). Here, there is no policy basis that puts alternatives in issue.

199. Fourth, the question of the extent to which the bridge provides value for money to the Council is not itself a planning consideration. The April OR advised members that funding was not a material consideration. There has been no challenge to that advice in these proceedings.

200. Fifth, the gist of the planning assessment was (correctly) that members should determine the application before them. Historic information about the process which had led to the decisions which led to the application was remote from the key planning questions that needed be addressed.

201. For these reasons, the Claimant's argument that the 2016 Report was so obviously material that was unlawful for the planning application to be determined without reference to it, is without merit.

202. I reject ground 5.

Conclusion

203. This claim for judicial review is accordingly dismissed.

204. I am grateful to Counsel for their assistance. Mr Cruickshank acted pro bono. He put considerable work into his skilful presentation of the Claimant's arguments orally and in writing.