Neutral Citation Number: [2025] EWHC 923 (Admin)

Case No: AC-2024-LON-001298

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/04/2025

Before :

MRS JUSTICE LIEVEN

- -

Between :

THE KING on the application of
GRANTCHESTER PARISH COUNCIL

Claimant

and

GREATER CAMBRIDGE PARTNERSHIP

Defendant

and

CAMBRIDGESHIRE COUNTY COUNCIL
SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL
CAMBRIDGE CITY COUNCIL

Interested Parties

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- -

Ms Katherine Barnes (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Mr Charles Streeten (instructed by **Pathfinder Legal Services**) for the **Defendant**
The Interested Parties did not attend and were **not represented**

Hearing dates: **25-27 March 2025**

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Approved Judgment

This judgment was handed down remotely at 10.30am on 14 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LIEVEN

Mrs Justice Lieven DBE :

1. This is a challenge to the decision of the Greater Cambridge Partnership ("GCP") on 4 January 2023 to progress the Haslingfield Greenway (Grantchester section) ("HG") through the village of Grantchester. The Claimant is Grantchester Parish Council ("the PC") and the Defendant is the GCP.

2. The PC was represented by Katherine Barnes and the GCP was represented by Charles Streeten.

3. At the heart of this case is whether Councillor Bridget Smith ("BS"), a member of the GCP Executive Board, gave a binding commitment at a meeting on 17 October 2022 that the route of the HG would not go through Grantchester if the residents were opposed to it. That is an issue of primary disputed fact because the two members of the PC present at that meeting, Dr Lesley Sherratt ("LS") and Josh Newman ("JN") say the commitment was given, but BS and Peter Blake ("PB"), head of Transport at GCP, both say it was not given.

4. This case is extremely unusual because on 20 September 2024 Lang J ordered cross examination of five witnesses - BS, LS, PB, JN and Sarah Greaves ("SG") - in order to determine the disputed issue of fact. I will set out their evidence, so far as necessary, below.

5. The Grounds are:

    a. Ground One

        i. Whether there was a binding legitimate expectation that the "through Grantchester" route for the HG would not be progressed if Grantchester residents did not support it;

        ii. Even if the promise allegedly made by BS did not give rise to a binding legitimate expectation did it amount to a material consideration which the GCP was required to take into consideration when making the decision;

    b. Ground Two

        i. Whether any rational decision maker would have undertaken further investigation of the dispute as to whether a promise had been made, pursuant to the principle in *Secretary of State for Education v Tameside MBC* [1977] AC 1014.

The facts

6. The Executive Board of GCP is a joint committee set up by the Interested Parties in 2014 under s.102(1)(b) of the Local Government Act 1972 to discharge their functions in so far as they relate to the achievement of the "City Deal" (see paragraph 4 of GCP's Executive Board Terms of Reference). In summary terms, the City Deal is an agreement between the Interested Parties to develop their infrastructure with substantial funding from central government.

7. According to the Terms of Reference (Standing Orders) for GCP, the Executive Board comprises three voting members and is only quorate when all three voting members are present. Where possible the Executive Board takes decisions on the basis of consensus, but otherwise by a simple majority (see [1], [5] and [9] of the Standing Orders). There is no dispute that according to the Terms of Reference BS acting alone could not bind GCP.

8. One aspect of the City Deal involves improving the traffic congestion in and around Cambridge. One of GCP's schemes is to create a network of "Greenways" connecting outlying villages to the centre of Cambridge ("the Greenways Project"). The hope is that the Greenways will encourage residents of Cambridge and the outlying villages to leave their cars at home and instead to cycle, walk or ride horses around the network, whether commuting or for leisure.

9. The intention is to have a network of twelve Greenways. The Greenway relevant for the purposes of this claim is the HG from Haslingfield to Newnham Croft (on the edge of Cambridge) through (or close to) Grantchester.

10. Grantchester is a village about a mile to the south of Cambridge. The Claimant is the Parish Council and LS has been the Chairperson of the PC at all material times. The PC is supportive of the Greenways proposal in principle but considers the "through Grantchester" route to be unacceptable because of the harm it will cause to the character and appearance of the area including the Conservation Area. The PC has proposed that there should be an alternative route to the west of the village, along what is known as the Baulk, an ancient track. According to the plans, this alternative route is approximately 0.7 miles longer than the through Grantchester route.

11. There was an extensive history of consultation between GCP and local residents. In 2017 an initial public consultation took place on the Greenways project, including on the route of the HG.

12. In early Summer 2022 a further public consultation took place on the Greenways Project, including on the route of the HG.

13. On 10 June 2022 representatives of the PC met with GCP's Transport Team (PB and Lisa Bloomer ("LB")) to discuss the PC's concerns about the "through Grantchester" route for the HG and the Summer 2022 consultation. LB was a transport consultant tasked with leading on the HG route.

14. In July/August 2022 the Parish Newsletter referred to the need for fresh direction from the politicians. In mid-summer 2022 the PC carried out its own questionnaire to seek the views of Grantchester residents about the proposed "through Grantchester" route for the HG.

15. On 2 August 2022 representatives for the PC met with various officers of GCP and shared the results of the above questionnaire.

16. On 3 August 2022 a letter from Peter Scrase (a member of the PC and a lawyer) included arguments about powers of officers and the Executive Board under heading 'Procedure'.

17. In September 2022 the PC wrote to BS, who was chair of South Cambridgeshire District Council and one of GCP's three Executive Board members, with the results of the above questionnaire and to request a meeting.

18. In October 2022 LB prepared a briefing note for PB in relation to a forthcoming meeting with the PC.

19. On 17 October 2022 LS and JN had a meeting with BS and PB on behalf of GCP. This is the critical meeting. At this meeting BS proposed that a further consultation on the route of the HG would be held. The PC also alleges that at this meeting BS made a promise which forms the basis for the claim (i.e. that if the consultation showed a majority of Grantchester residents opposed the "through Grantchester" route then it would not be imposed on them). GCP denies that this promise was made.

20. On 21 October 2022 LS emailed PB (cc LB, BS, JN) saying:

> *"It was good to meet with you again with Cllr Smith, and look forward to hearing the results of your survey as soon as possible.*
>
> *To follow up on one point from our meeting: your team committed to Grantchester Parish Council to include the Parish Council's proposed direct link from the Haslingfield Greenway to the Baulk part of the Barton Greenway in the forthcoming Barton Greenway consultation. This will give a good comparator for Haslingfield commuter cyclists coming in to Cambridge that way as opposed to through the heart of Grantchester and it will obviously be difficult to compare the business cases for either route if both are not priced.*
>
> *Can you kindly confirm if this has been done, as promised?"*

21. On 24 October 2022 LS sent a draft parish newsletter including reference to events at the 17 October meeting to other members of the PC. The text included: *"Cllr Smith wants to see the results of the GCP survey first too, but did confirm that if the village of Grantchester really does not want the through-village spur of the Greenway, it would not be forced on us."*

22. On 1 November 2022 representatives of the PC held a virtual meeting with LB of GCP. At this meeting the PC alleges that the promise purportedly made by BS on 17 October 2022 was reiterated. LB did not give evidence, and the Claimant does not rely on whatever was said at this meeting giving rise to a legitimate expectation.

23. On 1 November 2022 there were a series of internal emails from WSP (GCP's transport consultants) regarding the meeting of 1 November 2022.

24. On 2 November 2022 the PC note of the 1 November 2022 meeting was drafted.

25. On 10 December 2022 LS emailed BS, LB and JN saying:

> *"I am writing to thank you for the meetings we held last month, and to reflect on the proposal Lisa put forward to commit to a further, full consultation with Grantchester on the Haslingfield Greenway next year.*

> *I have relayed this to the village, who have been appreciative of it. In particular, of the commitment to including an option in the full consultation that the Haslingfield Greenway not come through the centre of Grantchester at all. But you do have our commitment as the Parish Council to work with you to try to find the most acceptable solution to the village that we can, which would be the best of all worlds.*
>
> *In our discussion, we also stressed the need for the full consultation to be in hard copy form as well as online, because of the significant proportion of Grantchester that is not online and thus is effectively shut out from a consultation where even the hard copy only makes maps available online. I'm not sure that importance of this has yet been fully taken on board by GCP. In the recent Barton Greenway consultation, some of our residents went to the meeting in Barton Village Hall and asked for hard copy, as they are not online. No hard copies were available on the night, but promises were made that they would be sent by post. They only arrived, however, after the consultation had closed. I have encouraged affected residents to write in anyway, but I really hope we can avoid this happening in the full consultation on Haslingfield Greenway next year.*
>
> *Thank you again for the meetings though. We do feel that we are making progress here, and are grateful for your time in having held them."*

26. In December 2022 the PC published an article in the parish magazine which included a reference to enquiring *"if every voice would be treated equally"* (200 cyclists vs 100 Grantchester residents) and saying *"[b]ut most reassuring is that if the vote does go the same way as the village only hard copy went, NO will be a real option and this spur of the Greenway will not be forced on the village against its will."*

27. In April 2023 the PC published a parish magazine article which included:

> *"As your Parish Council, we promised to help Greenways come up with a plan that we thought could be acceptable to the village, on condition that the final consultation also contained an option for the village to just say No to the whole idea of the Haslingfield Greenway coming through the village, and that choice be respected if made."*

28. On 19 May 2023 LS produced a draft email to GCP regarding the contents of the brochure/ consultation including an 'aide memoire'.

29. On 19 May 2023 the PC made representations to GCP regarding the proposed consultation wording including the comment:

> *"Councillors would like to see the commitment not to proceed if a majority oppose it explicitly mentioned. I am aware of the difficulties here, so although I think Councillors would prefer something firmer, suggest that the following might work:*
>
> *"If we find that building this greenway is considered substantially detrimental to or by any community on its route, we will make the*

Executive Board aware of this in our recommendation, and potentially not recommend that that section of the route proceeds.""

30. On 23 May 2023 LB responded to LS's representations re consultation.

31. In June 2023 the PC published an article in the parish magazine which included:

> *"As your Parish Council, we promised to help GCP by highlighting your and our specific concerns, to give GCP a chance to address these, on condition that a second consultation also contained an option for the village to just say No to the whole idea of the Haslingfield Greenway coming through the village, and that choice be respected if made."*

32. In June-July 2023 the further consultation on the route of the HG took place. As part of this, on 22 July 2023, GCP held an event at Grantchester village hall at which LB gave a presentation on the revised "through Grantchester route". The PC alleges that at this event a local resident, SG, asked LB to confirm the promise purportedly made by BS and that she did so.

33. Circa July 2023 the PC's response to GCP's consultation included the following:

> *"In a meeting between the Chair and Deputy Chair of the Parish Council, SCDC Leader Bridget Smith and head of GCP Peter Blake (and also District Councillor Lisa Redrup) on 17th October 2022, Cllr Smith promised that if the Parish Council could work with GCP to bring about the best possible scheme in good faith, the if the village still voted against the scheme (as measured by Grantchester resident post codes), then the scheme would not go ahead and the Baulk route be used instead."*

34. In July/August 2023 the PC published an article in the parish magazine which included:

> *"We have been assured (by Cllr Bridget Smith, a member of the Executive Board of GCP and Leader of South Cambs District Council, albeit only verbally, but witnessed) that the Haslingfield Greenway will not proceed through Grantchester if it is against the wishes of the village."*

35. On 23 November 2023 there is an email response from LS to an email from LB with the results of the consultation which includes:

> *"Cllr Smith has given Grantchester a commitment that if Grantchester is against the route through the village, after full and due consideration of the improved scheme, then she would not want to see it imposed on the village, and the Baulk route would be used instead. Given that this has happened, the PC will be active in holding her to this."*

36. In December 2023 the PC published an article in the parish magazine which included:

> *"It was Cllr Smith who gave [JN] and I the assurance back in 2022 that if a fresh consultation took place, and we all made best efforts to make as many improvements to the route as we could [...], that if the village still then voted against it, it would not be imposed on the village against the village's will. We are working to hold Cllr Smith to that commitment."*

37. In December 2023, in advance of the meeting of GCP's Joint Assembly to consider the results of the Summer 2023 consultation, the PC wrote to BS reminding her of the promise it alleges she made on 17 October 2022.

38. On 8 December 2023 representatives of the PC met with BS who denied having promised on 17 October 2022 that the "through Grantchester" route would not be imposed on Grantchester if its residents were opposed to it.

39. On 11 December 2023 BS emailed PB (copying others) to put points on record following the meeting on 8 December 2023.

40. On 11 December 2023 the GCP's Joint Assembly met to consider the results of the consultation from Summer 2023. It accepted the recommendation of GCP's Transport Team to progress the "through Grantchester" route.

41. During Christmas 2023 the PC wrote a Christmas newsletter to Grantchester residents which included:

> *"Importantly, Cllr Smith had assured us that if, after our engagement with the project team to produce a revised design, a majority of Grantchester residents were still against the scheme, then it would not go ahead. We believe that such commitments, when given, should be honoured."*

42. On 28 December 2023 the PC wrote to GCP's three Executive Board members with its opposition to the "through Grantchester" route, including with reliance on the promise it alleges was made by BS on 17 October 2022.

43. On 31 December 2023 SG wrote to BS (and others) referring to 'changing of goalposts'.

44. On 4 January 2024 GCP's Executive Board met to consider the results of the Summer 2023 consultation, the feedback from GCP's Joint Assembly and the related recommendations from GCP's Transport Team. It decided to accept the Transport Team's recommendation to progress the "through Grantchester" route for the HG.

45. On 3 April 2024 the claim was filed.

<u>The law</u>

46. The parameters of precisely what statements can give rise to a legitimate expectation and in what circumstances are complex, with a large number of authorities on various different factual situations. When considering these cases it is important to have regard to the precise factual and legal context in which many of the judicial pronouncements were made.

47. In my judgement there are three key stages: was there a clear and unambiguous commitment; was it reasonable for the promisee (here the PC) to rely upon it; would it be inappropriate to allow the promisee to enforce the commitment.

48. In <u>*United Policyholders v AG of Trinidad and Tobago*</u> [2016] 1 WLR 3383 at [37]-[39] Lord Neuberger encapsulated these points as follows:

"37. In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be "clear, unambiguous and devoid of relevant qualification", according to Bingham LJ in R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd [1990] 1 WLR 1545 , 1569, cited with approval by Lord Hoffmann in R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2) [2009] AC 453 , para 60.

38. Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body's statutory duty — see eg Attorney-General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629 , 636, per Lord Fraser of Tullybelton. Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement. This third point can often be elided with the second point, but it can go wider: for instance, if, taking into account the fact that the principle applies and all other relevant circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement.

39. Quite apart from these points, like most widely expressed propositions, the broad statement set out at the beginning of para 37 above is subject to exceptions and qualifications. It is, for instance, clear that legitimate expectation can be invoked in relation to most, if not all, statements as to the procedure to be adopted in a particular context (see again Ng Yuen Shiu [1983] 2 AC 629 , 636). However, it is unclear quite how far it can be applied in relation to statements as to substantive matters, for instance statements in relation to what Laws LJ called "the macro-political field" (in R v Secretary of State for Education and Employment, Ex p Begbie [2000] 1 WLR 1115 , 1131), or indeed the macro-economic field. As the cases discussed by Lord Carnwath show, such issues have been considered by the Court of Appeal of England and Wales, perhaps most notably, in addition to Begbie , in R v North and East Devon Health Authority, Ex p Coughlan [2001] QB 213 , R (Nadarajah) v Secretary of State for the Home Department [2005] EWCA Civ 1363 , and R (Niazi) v Secretary of State for the Home Department [2008] EWCA Civ 755 , and also by the Board in Paponette v Attorney General of Trinidad and Tobago [2012] 1 AC 1 ."

49. The burden of establishing a commitment which is clear, unambiguous and devoid of relevant qualification rests on the person asserting it, see *Re Finucane* [2019] HRLR 187.

50. The present case concerns an alleged "substantive" legitimate expectation. In other words, that the PC is not simply bound to follow a particular procedure, but rather the PC asserts that it has a legitimate expectation as to the substantive decision, namely the

route of the HG. The caselaw draws a distinction between what will be required in cases of substantive legitimate expectation rather procedural expectation.

51. In R (Bhatt Murphy) v the Independent Assessor [2008] EWCA Civ 755, a case concerning an alleged substantive expectation, Laws LJ at [43] referred to the specific characteristics of such a case and to R (Coughlan v (North and East Devon HA) 2001 QB 213 and said at [46]:

> *"These cases illustrate the pressing and focussed nature of the kind of assurance required if a substantive legitimate expectation is to be upheld and enforced."*

52. The next stage of the analysis is whether if such a clear and unequivocal statement was made, whether it was reasonable to place reliance upon it, and whether any such reliance was "legitimate". This stage of the analysis is perhaps most clearly set out by the House of Lords in R v IRC (Ex p Matrix Securities Ltd) [1994] 1 WLR 334, a case concerning assurances allegedly given by the Inland Revenue, at 356:

> *"But the courts can only restrain the revenue from carrying out its duties to enforce taxation obligations imposed by legislation where the assurances given by the revenue make it unfair to contend for a different tax consequence, as a result of which unfairness the exercise of its statutory powers by the revenue would constitute an abuse of power: see per Lord Templeman, at p.8646.*
>
> *…*
>
> *If the taxpayer either knows or (by reason of revenue circulars) ought to have known that a binding clearance can only be obtained in a particular way and a purported clearance has been obtained in a different way, there is nothing unfair if the revenue says that the purported clearance (being to the knowledge of the taxpayer given without authority) is of no effect and does not bind it."*

53. The approach to deciding whether the promisee ought to have known that the promisor had no power to bind the public authority has been considered in a number of cases. In South Bucks DC v Flanagan [2002] 1 WLR 2601 it was argued that Mr Flanagan had a legitimate expectation that enforcement notices would be withdrawn because of what had been said to the Magistrates by the local authority's solicitor. Keene LJ said at [23]-[24]:

> *"23.. It is impossible to regard it as part of the usual authority of a solicitor, appointed to prosecute for a breach of the enforcement notice, to agree to a withdrawal of the underlying notice itself. That would be an action of great significance to the local planning authority, extending far beyond the issue of the particular breach of the notice for which the prosecution has been brought. The continuing validity and force of the underlying notice are not the subject matter of those proceedings in the magistrates' court but are truly extraneous to them. It would put local planning authorities, who exercise their powers in the public interest, at the mercy of every advocate instructed to prosecute for such a breach if*

they were to be held bound by an agreement or representation made by that advocate as to the future validity and force of an otherwise unimpeachable enforcement notice. I find myself in full agreement with Harrison J.'s conclusion that authority to withdraw the notices themselves goes beyond what could reasonably be regarded as normally incidental to the conduct of prosecuting for a breach.

24.. I conclude, therefore, that Mr Ikram did not have ostensible authority on behalf of the Council to agree to a withdrawal of the existing enforcement notices or to agree that any future action would be by issuing fresh notices. His ostensible authority in respect of the enforcement notices did not extend beyond agreeing to withdraw the criminal prosecutions. The latter was also within his actual authority. It may be noted that it could well be that, in the present case, a fresh enforcement notice could not be made effective in any event, because of the ten year limit on taking action against non-operational breaches of planning control. Be that as it may, the conclusion which I have reached is sufficient to determine this appeal."

54. In similar vein in R (Reprotech) v East Sussex CC [2003] 1 WLR 348 it was argued that the local authority was estopped from requiring a further planning permission by reason of what had been said by the county planning officer. Lord Hoffman at [32] said:

"The opinion of the county planning officer could not reasonably have been taken as a binding representation that no planning permission was required. Planning officers are generally helpful in offering opinions on such matters but everyone knows that if a binding determination is required, a formal application must be made under what is now section 191 or 192. Nor was the committee resolution such a representation. If, as I consider, it was not a determination, it cannot have been a representation that it was. And there is no basis for finding any agreed assumption on the basis of which the parties acted."

55. In Royal Borough of Windsor and Maidenhead v Dewar [2003] EWHC 154 there was a dispute between the Police Authority and the local authority as to whether a promise allegedly made about the party affiliation of the next chairman was binding. Maurice Kay J held that no legitimate expectation arose and said at [13]:

"… This, in turn, is connected with the third question: was it reasonable of the Royal Borough to rely on the letter as a source of legal entitlement? In my judgment it was not. I reach this conclusion not only on the basis of its failing to satisfy the "clear and unambiguous" test, but also because I do not consider it reasonable for a public authority to assume without more that a member, albeit the Chairman, of another public authority with which it is connected is in a position to obligate that other public authority in circumstances such as those prevailing in this case. Generally, cases in which legitimate expectation is successfully relied upon involve a representation to a member of the public or a private interest. Even then, the question arises whether the representee knows or ought to have known that the person making the representation had no power to bind the authority (see Matrix Securities Ltd v. Inland Revenue Commissioners

[1994] 1 WLR 334). Assuming that, in principle, one public authority may be able to raise legitimate expectation against another (and, in the absence of fuller submissions, I leave that as an assumption), it is more difficult for a public authority to resist the suggestion that it ought to have known that the person making the representation had no power to bind his principal. I do not consider that the Royal Borough can resist it here. For all these reasons, the case based on legitimate expectation fails."

56. The next question is the relevance of the nature of the promise or undertaking allegedly given to whether a legitimate expectation can arise. If the promise would interfere with the public authority's statutory duty then it cannot give rise to a legitimate expectation, United Policyholders para 38, citing *AG of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629 at 636. In the present case it is accepted that there is no statutory duty to act, merely a power. However, the nature of that power, and of the discretion being exercised is relevant and will in part turn on who can rely on the expectation. In *Coughlan* Lord Woolf said:

> *"57. ... (c) Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.*
>
> …
>
> *59. ... Nevertheless, most cases of an enforceable expectation of a substantive benefit (the third category) are likely in the nature of things to be cases where the expectation is confined to one person or a few people, giving the promise or representation the character of a contract. We recognise that the courts' role in relation to the third category is still controversial; but, as we hope to show, it is now clarified by authority."*

57. The final case which is of some assistance is *R (Jefferies) v Secretary of State for Home Department* [2018] EWHC 3239. The Claimant sought to argue that he (and others) had a legitimate expectation that Part 2 of the Leveson Inquiry relating to the press would take place on the basis of an alleged promise given to him by the then Prime Minister David Cameron MP. The facts of the case are very different from the present, but Davis LJ at [85] referred to the nature of how the promise was given being relevant to the reasonableness of binding reliance being placed upon it:

> *"85. ... It is surely not satisfactory, however, that a legitimate expectation should be claimed to derive from the purported recollection of an oral statement made several years earlier. I do not say, I stress, that a legitimate expectation can never arise from an oral assurance. But the very fact that a postulated assurance is given orally may of itself be revealing of there being no intention, objectively or subjectively, that an expectation would or should be engendered."*

58. At [92(2)] the Court referred to the context of the alleged statement being in the realm of the "macro-political" and that being a factor which militates strongly against there being a legitimate expectation. *Jefferies* might be seen as a case at one end of a spectrum, given that the alleged promise was said to have been given by the Prime Minister and the subject matter, restrictions on the media, intensely political. The context of a decision about HG is quite different, being far less in the realms of high politics. However, it too is a decision made by elected representatives which impacts upon third parties and which bears some political importance. These are not determinative factors but they are relevant to whether a legitimate expectation would arise.

The Evidence

59. The first issue in the case is whether a clear and unambiguous promise or commitment was made. It was because of the dispute of primary fact on this issue that Lang J ordered oral evidence and cross examination. However, unfortunately oral evidence frequently does not, and did not in this case, much elucidate the situation.

60. Dr Sherratt (LS) was very clear in her evidence. She had attended the 17 October 2022 meeting with JN. There had been a discussion with BS about the problems with the official survey and BS had proposed that there would be a fresh consultation. LS said the PC were happy to provide assistance in a fresh consultation and to attempt to address village residents' concerns about the through Grantchester route. BS had said that if the PC gave its help as discussed and the village still did not want it then the through Grantchester route would not be forced on the village.

61. LS said she had a clear recollection of the meeting. She accepted that BS had not used the word "veto" but said that a clear commitment had been given that the through route would not be imposed on the village.

62. She was asked about a number of the subsequent documents, upon which both sides rely. LS accepted that in the email dated 21 October 2022 to PB she referred to the fresh consultation, but not to the alleged promise. However, LS said this was because it was the consultation which needed to be implemented and she had not thought it was necessary to refer to the promise at that point.

63. On 24 October 2022 LS sent a draft of the next parish newsletter to the other members of the PC. In that document she wrote:

> *"Cllr Smith wants to see the results of the GCP survey first too, but did confirm that if the village of Grantchester really does not want the through-village spur of the Greenway, it would not be forced on us. She clearly thinks it is a pity that Grantchester might 'miss out' on the Greenway, but she did seem to come away [from] the meeting with a better understanding of the demographic and geography of Grantchester. …"*

64. On 1 November 2022 there was a virtual meeting between representatives of the PC, including LS and JN, and a number of officers of the GCP, including LB. LS wrote a Note of that meeting in which she recorded LB as saying that there would be another fully informed public consultation, and *"GCP want the public to take this decision"* and *"If it does turn out to be a NO to the through-Grantchester route for the*

Haslingfield Greenway (or this spur of it), there would then be thought given to what other links might not then need to go ahead." At the end of the Note LS wrote *"But most reassuring is that if the vote does go the same way as the village-only hard copy vote went, NO will be a real option and this spur of the Greenway will not be forced on the village against its will."*

65. LS accepted that this part of the note was her commentary, rather than anything that had been said by LB.

66. In December 2022 the next edition of the parish magazine was published. This explained the consultation process that was going to happen and said: *"And if the majority held to the opinion that the Haslingfield Greenway should not come through the centre of the village, then, simply, it would not. ... GCP suggested that they would do a postcode analysis of votes, so that local views could be given especial weight."*

67. Mr Newman (JN) had also attended the 17 October 2022 meeting. He also said he had a reasonably clear recall of the meeting. His evidence largely accorded with that of LS about what happened at the meeting. In his witness statement he stated that BS had said: *"if the village still doesn't want the Greenway, it won't be forced on them"* and this remained his oral evidence.

68. It was striking that he said that he didn't remember thinking during the meeting that what BS had said meant the village had a veto, but only that the route would not be "forced on us". This is a good example of the problem when lawyers fixate upon words spoken by non-lawyers, and perhaps of why oral statements in a non-formal setting should very rarely give rise to legally binding commitments, particularly those affecting third parties. To a lawyer, certainly one practising in the field of public law, if the route was not going to be "forced on" the village, then that was in effect a veto. But that was not how JN interpreted whatever BS said at that moment.

69. He said it was only in the car going back to Grantchester with LS that the importance of what BS said "occurred to me". He said that he believed BS's statement was "really important and strong" as she was the head representative of the District Council.

70. Councillor Smith (BS) has been the Leader of South Cambridgeshire District Council since 2018. She is that Council's representative on the GCP and its Vice-Chair. She accepted that she had very little independent memory of the meeting of 17 October 2022 and my strong impression was that most of her evidence was based on what she thought she would have said, rather than actual memory of what she did say. I make entirely clear at this point that that is not a criticism of her or her evidence. She fairly pointed out that she has many meetings, including many with parish councils.

71. She was absolutely clear that she would not have given a binding commitment that the village could effectively veto the through route. She would have considered that an improper thing to do. She accepted that she might have said something along the lines of "the views of the village will be respected", but that would have been in the sense of taking them into consideration, not respected in the sense of necessarily being complied with.

72. Her evidence was that she listened to the concerns of the PC at the meeting and gave an undertaking that she would communicate them to the other Liberal Democrat

members. She thought that she had phoned Councillor Bearpark (another member) after the meeting but accepted that that might have been after the meeting in December 2023.

73. There were a number of points when it was apparent that BS did not have a particularly good or clear memory of events. She had mistaken LS for the clerk to the PC, she said she had made notes of a meeting when it seems likely that she had not, and she had possibly referred to phoning Councillor Bearpark after the wrong meeting.

74. Mr Blake (PB) is the transport manager for GCP and was present at the meeting of 17 October 2022. LB produced a briefing note for the meeting, which proposed a further consultation. The briefing note said:

> *"**Proposed Way Forward***
>
> *There is no clear consensus and a number of conflicting views between the survey results. GCP therefore propose to defer the decision on the Grantchester section of the Haslingfield route until formal public consultation (not engagement) can be undertaken. This is proposed for Summer 2023.*
>
> *In the run up to the consultation, GCP would like to work collaboratively with Grantchester Parish Council, local Members, key stakeholders and landowners to develop options for this section of the route, which include proposals for landscaping and suitable materials for use in Grantchester as a conservation area. This will enable the public and residents or Grantchester to truly understand what this section of the route would look and feel like.*
>
> *The options would then be taken out to public consultation, along with an option for no Greenway in this location. The results of the public consultation will then determine whether the Grantchester section of the route will be included or omitted from the Haslingfield Greenway route."*

75. He was clear in written and oral evidence that at no point in the meeting was a veto given to village residents. He said BS stuck to the briefing note. He said in oral evidence that he would have intervened if he had heard BS making any promise as alleged. He was perhaps slightly less adamant when I asked him to go through what had happened at the meeting, but he said "I didn't leave that meeting thinking there would be a right of veto for the Parish Council".

76. It was put to him that on 19 May 2023 he had been copied into an email from LS to LB in which it is said that a commitment had been given not to proceed against the wishes of the Grantchester residents, but he had not responded to rebut this suggestion. PB said he had no recollection of the email.

77. When assessing the factual allegations, the burden of establishing the promise lies on the Claimant, see *F v Surrey CC* [2023] 4 WLR 45 at [50]. In assessing the oral evidence I have closely in mind what was said by Leggatt J (as he then was) in *Gestmin v Credit Suisse* [2013] EWHC 3560 at [22]:

> *"22. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."*

78. And Cockerill J in *Jaffe v Abwicklungs* [2024] EWHC 2354 (Comm) at [286]:

> *"The positioning of this issue also suggests that this was not the main focus of interest. There is scope for "Chinese whispers" both in the taking of a note and in its interpretation, particularly when there is a discussion immediately afterwards. While the natural tendency is to imagine a note written up later in the same day or the next morning is as good as a transcript the evidence on the fall off of memory in the immediate aftermath of an event is clear and clearly collated in the speech of Popplewell LJ."*

79. LS and JN were very firm and clear in their recollection of the meeting, but as is referred to in *Gestmin*, that does not mean that their evidence is necessarily accurate. I do not think any of the witnesses were trying to mislead, or were anything other than entirely honest in their belief in their recollections. However, I do think there was a strong element of "confirmation bias" in LS and JN's evidence. They both wanted a commitment from BS that the through village route would not be forced on them. She was probably trying to reassure them that the views of village residents would be taken very seriously and, in that sense, "respected". But in my view, it is extremely unlikely that she would have given anything that amounted to a clear unequivocal promise that in effect (even if not in these words) the villagers would have a veto.

80. JN was very honest in saying that he had not understood that a binding commitment had been given during the meeting itself. PB was clear that he did not hear such a promise. I have no doubt that if he had heard it, then he would have intervened. It is a basic proposition of local government process that individual councillors cannot give binding commitments. Any competent officer who heard such a promise would have intervened, even if not in the meeting then immediately afterwards to BS.

81. Ms Barnes suggested that PB might have not been concentrating at the key moment, but that rather reinforces the suggestion that even if some words were spoken, they would not have been clear and unequivocal.

Conclusions

82. The starting point is whether the alleged promise was made and in sufficiently clear and unequivocal terms to give rise to a legitimate expectation. LS was very clear in her evidence, and there is evidence that very soon after the meeting she was asserting that a commitment had been made by BS. However, BS and PB were equally clear that the commitment would not have been made, and if BS had made any such statement PB would have intervened.

83. The burden of proving the promise lies on the Claimant, and the standard of proof is the balance of probabilities. I apply the principles set out in *Gestmin*, that oral evidence as to what was said is a very uncertain way of establishing the truth of what happened. LS, and indeed JN, wanted a firm commitment to be given. JN did not leave the meeting with the same understanding as LS, but his position "firmed up" after the conversation in the car.

84. BS had a much less clear recollection than LS, and was a witness who relied strongly on what she believes she would have said, rather than having a memory of what she actually did say. However, in my view it is unlikely that she would have given anything that could amount to a binding commitment, and that if she had done so PB would have intervened at the meeting or immediately thereafter. One of the functions of an officer who accompanies a member to a meeting is to ensure that they do not say things that are likely to lead to legal problems. PB is an experienced local government officer and if he had understood anything like a binding commitment to have been given, I am confident he would have intervened.

85. Ms Barnes suggests PB may have lost concentration and not appreciated what had been said. This is of course possible, but it merely confirms my view that whatever words were said they did not amount to a clear unequivocal representation that could give rise to a legitimate expectation.

86. I accept that on the facts of the case it is inherently unlikely that BS would have given a binding commitment. She is a highly experienced local councillor. She is fully aware of the limitation on her power to bind other councillors or the Council. To give such a binding commitment at an informal meeting, when she knew she had no power to do so, would have been a fairly extraordinary thing to do. BS did not strike me as being at all likely to have made an error of such magnitude. It would have been even more surprising given that the other Executive members of the GCP came from different Councils, so BS would have had even less justification to feel she could bind their decision making.

87. The subsequent documentation suggests that LS did think she had some form of commitment, but the precise content of that commitment is not clear. For example, precisely how "the views of the villagers" would be assessed is not clear.

88. What level of detail and specificity is required for a legitimate expectation to arise will depend on the context and the consequences of the promise. In this case the Claimant is asserting a substantive legitimate expectation which would have detrimental consequences for third parties, namely those people who would have to use the less direct route of the HG via the Baulk Route. If the alleged commitment was binding, these people would have been consulted in good faith, but with no idea that the village

had effectively been given a veto. In my view it would have to be a particularly clear and unequivocal promise that could give rise to a binding legitimate expectation in such circumstances. This is supported by the requirement Laws LJ gave in *Bhatt Murphy* for a "clear and focused" commitment. it is also supported by Davis LJ in *Jefferies* at [85] that the fact that the alleged assurance was given orally may be an indication that there was no intention, objectively or subjectively, to give a binding promise.

89. The cases where a substantive legitimate expectation has arisen, such as *Coughlan*, are cases where the detrimental impact on third parties is largely indirect. In *Coughlan* the impact would only have been through the Council budget. In *Bibi* it would have been on people losing priority on the housing waiting list. Here the detrimental impact is much more direct, and that in my view leads to a need for a particularly clear promise.

90. I agree with Mr Streeten that to find a legitimate expectation on the basis of what was said in an oral conversation at an informal meeting with no minutes could indeed open the floodgates to such claims, unless the evidence was very clear. It would also make it even more difficult for representatives of public authorities to have open and honest conversations because they would be so concerned about saying something that would then give rise to a claim such as this. That does not mean that an oral promise in such circumstances could never give rise to a legitimate expectation, but it does make it even less likely to happen.

91. For these reasons I find that no binding promise of the requisite level of clarity and unequivocality was given by BS.

92. Even if this finding of fact is wrong and a clear unequivocal statement was made, in my view it was not reasonable for the PC to believe that it would bind the GCP. The documentation suggests that the PC knew that the Executive Board of the GCP was made up of three councillors. It is absolutely trite in local government law that, save in some extremely limited statutory circumstances, a local authority cannot be bound by the decision of one member. The general principle is explained in *Dewar*. Every case is factually different and has to be read within its own context. However, in my view, any reasonably competent Parish Councillor will know that they themselves cannot bind the PC, and that same principle will apply to a local council. LS and JN, and I am confident the other Parish Councillors, were clearly very competent and reasonably well informed. It is also of some, although not determinative, relevance that the PC had a lawyer upon it, and also had assistance from Mr Scrase, albeit neither were specialists in local government law.

93. This point is made even stronger by the fact that the GCP was a joint committee of three different local authorities. That makes it even more obvious that decisions would have to be made by the Board acting together, rather than an individual member.

94. Ms Barnes submits that BS did make an individual decision on the nature of the consultation that would be undertaken. However, on the facts that is not correct. The consultation decision was made by the Board.

95. I accept that LS genuinely thought she had a commitment from BS that the through village route would not be "forced on the village". However, the fact of that genuine belief is not sufficient to found a legitimate expectation

96. It is, at least in theory, possible for a substantive legitimate expectation to arise which would fetter a public authority's exercise of discretion. That did happen in *Coughlan*. However, for the reasons I have explained above in relation to the heightened need for a pressing and focused promise, it would be an extremely unusual case for that situation to arise where there were detrimental impacts on third parties. Here no third party rights, as strictly understood, would have been impacted, but third party interests, i.e. not having to use a longer route, would have been affected. I do not find such a legitimate expectation could never arise in such circumstances, because I do not need to do so, but it would in my view be very unusual.

97. For all those reasons I therefore reject Ground One(a) - the argument that there was a binding legitimate expectation that the HG would not go through Grantchester.

98. Ground One(b) is that if the commitment was given but it does not give rise to a legitimate expectation it should still have been taken into account as a material consideration. This Ground also fails in the light of the findings that I have made above. I have found that no binding commitment was given, and therefore the GCP plainly did not have to take it into account.

99. Ground Two is that the GCP erred in law by failing to meet its *Tameside* duty of inquiry. The scope of the *Tameside* duty was considered in *R (Jayes) v Flintshire County Council* [2018] EWCA Civ 1089 where the Court of Appeal said at [14]:

> *"14. Although any administrative decision-maker is under a duty to take all reasonable steps to acquaint himself with information relevant to the decision he is making in order to be able to make a properly informed decision (Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1997] AC 1014), the scope and content of that duty is context specific; and it is for the decision-maker (and not the court) to decide upon the manner and intensity of inquiry to be undertaken into any relevant factor (R (Khatun) v London Borough of Newham [2004] EWCA Civ 55 ; [2005] QB 37 at [35]). That applies to planning decision-making as much as any other (see, e.g., R (Hayes) v Wychavon District Council) [2014] EWHC 1987 (Admin) at [31] per Lang J, and R (Plant) v Lambeth London Borough Council [2016] EWHC 3324 (Admin); [2017] PTSR 453 at [69]-[70] per Holgate J). Therefore, a decision by a local planning authority as to the extent to which it considers it necessary to investigate relevant matters is challengeable only on conventional public law grounds."*

100. It is quite hard to understand how this Ground works analytically. It is accepted by the Claimant at the meeting of 4 January 2024 the GCP were told that the PC were asserting that they had been given a binding commitment.

101. BS had said in clear terms that she had not given any such commitment. Ms Barnes submits that this was not sufficient and the GCP should have undertaken some further investigation. However, in my view there are two answers to this. Firstly, it was open to GCP to take the approach that even if BS had given some commitment, she had no power to bind GCP. In my view such an approach was legally correct. Therefore there could not possibly be any further duty of inquiry.

102. Secondly, it is very hard to see what further inquiry there could have been a duty to undertake. BS had been asked and had said unequivocally that she had not given any such undertaking. PB had confirmed that recollection. *Flintshire* makes clear that the *Tameside* duty is only subject to a rationality challenge. There was nothing irrational about the GCP considering that it had undertaken sufficient enquiries by asking the two representatives of GCP who had been present at the meeting.

103. In correspondence the Claimant had suggested that there had to be further investigation by an independent person. In oral submissions Ms Barnes suggested that the duty went no further than having another officer of GCP, who had not been previously involved, undertake a further investigation. In my view there was no legal obligation on GCP to undertake such further inquiry.

104. For these reasons I reject Ground Two.

105. I therefore dismiss this claim.